REPORT OF THE
DEPARTMENT OF PLANNING AND BUDGET

THE FEASIBILITY OF ESTABLISHING A VIRGINIA EMERGENCY AND DISASTER RELIEF FUND

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 49

COMMONWEALTH OF VIRGINIA
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COMMONWEALTH *of* VIRGINIA

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December 18, 1996

TO: The Honorable George Allen
Governor of Virginia

Members of the General Assembly

I am pleased to transmit this study, *Report of the Department of Planning and Budget on the Feasibility of Establishing a Virginia Emergency and Disaster Relief Fund* as requested by House Joint Resolution No. 72 of the 1996 General Assembly.

The study recommends establishment of the Virginia Emergency and Disaster Relief Program to provide financial assistance to counties, cities, towns, and public service authorities located in an area declared a state of emergency but not a major disaster for which federal assistance might be forthcoming. The funding would come from the Governor's sum sufficient authority pursuant to §44-146.28 of the Code of Virginia. The Virginia Department of Emergency Services would develop guidelines and procedures for the Governor's consideration in determining whether and to what extent financial assistance to local governments might be provided.

Sincerely,

Robert W. Lauterberg

Enclosure

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Preface

This study was conducted by the Department of Planning and Budget (DPB) and the Virginia Department of Emergency Services (VDES) pursuant to House Joint Resolution 72 of the 1996 Session of the General Assembly. The resolution requested a study of the feasibility of establishing a Virginia Emergency Relief Fund to provide state assistance to localities declared disaster areas by the Governor but not approved for assistance by the Federal Emergency Management Agency.

Members of the team were Anne Wescott, study team leader; Michael Cline; and Bill Edmonson. The team gratefully acknowledges the contributions of the VDES staff who made the study possible, including Addison Slayton, George Foresman, George Urquhart, Mary Camp, Harry Colestock, and Ralph Jones. In particular, the team would like to thank George Roarty for his work in conducting the survey of other states. Finally, the team extends special thanks to Curt Nellis, Jack Rowell, and Wallace Twigg for their valuable insights and their assistance in conducting the interviews.

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Executive summary

House Joint Resolution 72 of the 1996 Session of the General Assembly directs the Department of Planning and Budget to study the feasibility of establishing a Virginia Emergency and Disaster Relief Fund to provide state assistance to localities included in the Governor's declaration of a state of emergency but not approved for federal financial assistance. The study focuses on state aid to localities (public assistance). It centers on the issue of whether or not there is a need to revise current practices and to establish a new fund to provide assistance to local jurisdictions.

In assessing current practices, the study found that Virginia governors have used their authority to access sum sufficient funding for public assistance to local governments infrequently. There are no written policies and procedures governing this sum sufficient funding, other than the language in the Code and the appropriation act.

The most frequent recommendation from local officials interviewed for this study was to establish policy guidelines specifying eligibility criteria to receive assistance. They said that more guidance is needed specifying what is expected of local jurisdictions in order to be eligible, what costs can and cannot be covered, and what documentation is needed. The criteria should be reasonable, equitable, standardized, and clearly communicated.

Officials in 23 of the 25 localities interviewed for this study said that an emergency and disaster relief fund is needed. However, not everyone interviewed thought that a fund is needed. Of the 15 people from state agencies and other organizations interviewed, eight believe that the fund is needed, but several said that they think that the current practice generally works well.

Among the advantages of establishing a fund are that it would be an identifiable, reliable, and readily accessible source of revenue that would provide immediate financial relief in an emergency; and that it would provide for a more objective, structured, consistent, and equitable process. The disadvantages of establishing a fund include the possibility that it could serve as a disincentive for localities to obtain sufficient insurance and to meet their financial responsibilities; that it could mean that the federal government might be less likely to provide assistance if Virginia has moneys set aside for disaster relief; and that it could be seen as an entitlement program, rather than as a safety net.

According to data obtained by the study team, 20 states currently have legislation or an appropriation or both for contingency funds for disasters. Generally these are line items in their budgets, special funds, or trust funds of several hundred thousand dollars or less. Except for Florida, which has established a special fund by assessing a surcharge on property insurance, the source of revenue is the state's general fund.

Those interviewed by the study team identified a variety of potential sources of revenue for an emergency and disaster relief fund, including Virginia's general fund; proceeds from the lottery; an assessment or surcharge on property insurance; and other taxes, assessments and fees. Several people interviewed suggested establishing a pool of funds, similar to a self-insurance pool, with every jurisdiction asked to contribute.

The study team looked for revenue sources that would meet the following criteria: no new tax, assessment, or fee would be required; no current tax, assessment, or fee would be increased; counties and cities would contribute to the fund, but not to the extent that it would create a hardship, even to those that are fiscally stressed; no unfunded mandate would be created; and no program's budget would be reduced. The team found that year-end balances on ABC profits, wine tax proceeds, and taxes on the rental of passenger vehicles would meet the criteria.

VDES convened a work group which developed program guidelines and procedures, based on data collected by the study, as well as their experience and expertise.

The study team then developed three options for consideration:

- **Option 1 - Maintain the status quo.** This option would make no changes in current practices and propose no new legislation or budget amendments.

- **Option 2 - Modify current practices.** This option would propose that the Virginia Department of Emergency Services develop guidelines and procedures, based on those outlined in this study, to provide guidance to the Governor in using the sum sufficient authority when federal moneys are not forthcoming. A special fund would not be established.

- **Option 3 - Establish The Virginia Emergency and Disaster Relief Fund.** This option would propose legislation to establish the Virginia Emergency and Disaster Relief Fund. This special fund would provide grants to cities and counties that have been subject to a declared state of emergency by the Governor, but not a major disaster declared by the President. The fund would be established in accordance with the guidelines and procedures to be developed by the Virginia Department of Emergency Services, based on those outlined in this study.

Based on public comment, Option 2 is the recommended option. This option would provide for a more objective, structured, consistent, and equitable process to provide immediate financial relief in an emergency. It would not, however, result in a new tax or a reduction in funding for ongoing programs, nor would it limit the Governor's flexibility to address the unique needs of a local jurisdiction. In addition, at VDES's recommendation, the Governor would be able to provide financial assistance to a local jurisdiction the sum sufficient authority if it met the established guidelines, but the Governor had not declared a state of emergency.

Recommendation: **Legislation and a companion language amendment to the appropriation act is recommended to provide financial assistance to counties, cities, towns, and public service authorities located in an area declared a state of emergency but not a major disaster for which federal assistance might be forthcoming.**

The Virginia Department of Emergency Services would develop guidelines and procedures for the Governor's consideration in determining whether and to what extent financial assistance to local governments might be provided; however, the allotments would be considered grants made at the discretion of the Governor. The funding would come from the Governor's sum sufficient authority pursuant to §44-146.28 of the Code of Virginia.

If a jurisdiction meets the criteria set forth in the guidelines and procedures, but is in an area that has neither been declared a state of emergency nor been declared a major disaster for which federal assistance might be forthcoming, the Governor would be authorized to have the discretion to make an allotment to that jurisdiction without a declaration of emergency.

Chapter 1 - Introduction

Background

Virginia's topographical features and climatic conditions subject its citizens to many different kinds of natural disasters, including floods, tornadoes, ice and snowstorms, hurricanes, droughts, severe thunderstorms, and earthquakes. Historically, hurricanes have been the most significant threat to the Commonwealth, but floods, tornadoes, and winter storms have also caused extensive damage and destruction. Man-made disasters also have a significant impact in Virginia as witnessed by several major tire fires and almost daily hazardous materials transportation and fixed facility spills.

There are a variety of services that can be provided to individuals, businesses, and government organizations in a disaster. Local governments, state government, the federal government, and private nonprofit organizations all have a critical role to play in Virginia's integrated emergency management system.

Emergency services, as defined in § 44-146.16 of the Code of Virginia, "...means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from natural or man-made disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs."

Local role

Local governments have the primary responsibility for protecting their citizens when there is a disaster. Section 44-146.16 of the Code of Virginia defines a *local emergency* as "...the condition declared by the local governing body when in its judgment the threat or actual occurrence of a disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby..."

State role

When the disaster exceeds the financial, personnel, and equipment resources of the local jurisdiction, state agencies can supplement the work of local governments and private relief organizations. The Governor has the authority to declare a state of emergency, as specified by § 44-146.16 of the Code. A *state of emergency* is defined as "...the condition declared by the Governor when in his judgment, the threat or actual occurrence of a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him when it is evident that the resources of the Commonwealth are needed to cope with such disasters." This action allows the Governor to mobilize the National Guard, task specified state agencies with assisting the local jurisdictions, and provide financial assistance.

It is important to note that § 44-146.28 (a) of the Code states that "In the case of a declaration of a state of emergency as herein defined, the Governor is authorized to expend from all funds of the state treasury not constitutionally restricted, a sum sufficient. Allotments from such sum sufficient may be made by the Governor to any state agency or political subdivision of the Commonwealth to carry out disaster service missions and responsibilities."

The appropriation act contains similar language. Item 42 of Chapter 912, 1996 Acts of Assembly, states that "The amount for Disaster Recovery is from all funds of the state treasury, not constitutionally restricted, and is to be effective only in the event of a declared state disaster and shall be transferred to state agencies by written directions of the Governor or by such other person or persons as may be designated by him for the purpose."

Federal role

The President has the authority to provide federal resources by declaring a major disaster. This authorizes the Federal Emergency Management Agency (FEMA) and other federal agencies to provide assistance to state and local governments, including financial assistance. A *major disaster* is defined by § 44-146.16 of the Code as "...any natural or man-made disaster in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant disaster assistance above and beyond emergency services by the federal government to supplement the efforts and available resources of the several states, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him."

A Presidential declaration of a major disaster can make a broad range of federal programs and services available to individuals and families, businesses, and state and local governments. Most of the programs provided by FEMA are 75 percent federally funded and require a 25 percent match from state and local funds. Language in the Code and the appropriation act provide a sum sufficient for the Commonwealth's share of the 25 percent match. There are three major categories of assistance.

- *Individual Assistance* to families, individuals, businesses, and farmers can provide such services as housing and home repair, grants and loans for disaster-related expenses, loans for repair or replacement of damaged property not fully covered by insurance, and technical assistance.

- *Public Assistance* to state and local governments can provide for debris clearance; emergency protective measures to preserve life and property; repair or replacement of roads, streets and bridges; repair or replacement of water control facilities (dikes, levees, irrigation works, and drainage facilities); repair or replacement of public buildings and equipment; repair or replacement of public utilities; and repair or restoration of recreational facilities and parks.

- *Hazard Mitigation Assistance* provides technical assistance and funding for measures that prevent or reduce the effects of future disasters.

Study objectives and scope

House Joint Resolution 72 of the 1996 Session of the General Assembly directs the Department of Planning and Budget to study the feasibility of establishing a Virginia Emergency and Disaster Relief Fund to provide state assistance to localities included in the Governor's declaration of a state of emergency but not approved for federal financial assistance. The study focuses on state aid to localities (public assistance). It centers on the issue of whether or not there is a need to revise current practices and to establish a new fund to provide assistance to local jurisdictions.

The study has four major objectives:

- To determine the feasibility of establishing a Virginia Emergency and Disaster Relief Fund to provide financial assistance to localities included in the Governor's declaration of a state of emergency but not approved for federal financial assistance;

- To evaluate current policies governing assistance to localities declared disaster areas but not approved for federal financial assistance;

- To identify potential sources of revenue for a Virginia Emergency and Disaster Relief Fund; and

- To suggest guidelines and procedures for qualification to receive assistance from the Virginia Emergency and Disaster Relief Fund for up to 75 percent of any loss.

Methodology

Data collection for this study included:

- Structured interviews with officials from 25 local jurisdictions: the cities of Alexandria, Fredericksburg, Lynchburg, Newport News, Norfolk, Petersburg, Roanoke, Salem, Suffolk, Virginia Beach; and the counties of Alleghany, Augusta, Bedford, Campbell, Chesterfield, Clarke, Dickenson, Fairfax, Franklin, Giles, Gloucester, Goochland, New Kent, Russell, and York;

- Interviews and discussions with staff from 16 state agencies and other organizations that play a role in delivering emergency services, e.g., the Departments of Emergency Services, Health, Military Affairs, Transportation, Forestry, Fire Programs, Conservation and Recreation, Housing and Community Development, and State Police, and the American Red Cross;

- Telephone survey of emergency services officials from 21 other states that have established, or are proposing to establish, a state fund or appropriation to assist local jurisdictions in a disaster;

- Discussions with staff from federal and national organizations, including FEMA, the National Emergency Management Association (staffed by the Council of State Governments), the National Governors' Association, and the National Conference of State Legislatures;

- Department of Emergency Services' records of assistance provided for gubernatorial declarations and Presidential declarations; and

- Review of prior reports, Code citations, and other materials, particularly the 1996 *National Emergency Management Association/Council of State Governments Report on State Emergency Management Funding and Structures*; the 1995

National Conference of State Legislatures report, *Earmarking State Taxes*, and the 1994 Department of Emergency Services report, *State of Preparedness in Virginia for a Catastrophic Disaster (House Document 21)*.

Organization of the report

The report contains two additional chapters. Chapter 2 assesses current practices, examines the need to establish a state fund to provide disaster assistance to local jurisdictions, identifies potential sources of revenue to financing such a fund, and suggests program guidelines and procedures for local jurisdictions to qualify for assistance. Chapter 3 offers policy options for consideration.

Chapter 2 - Issues to be considered before establishing an emergency and disaster relief fund

Assessment of current practices

The VDES records show that there have been 38 gubernatorial declarations of a state of emergency since 1985. The Governor has provided financial assistance to localities using his sum sufficient authority on 18 occasions -- nine times as a part of the match requirement for federal disaster assistance and nine times for state assistance only. The table below lists the incidents for which public assistance was provided to local governments when the Governor had declared a state of emergency but there was no Presidential disaster declaration and no federal funds were made available. Appendix B provides additional information about financial assistance provided for both gubernatorial and Presidential declarations.

PUBLIC ASSISTANCE PROVIDED TO LOCAL GOVERNMENTS FOR DECLARED STATES OF EMERGENCY[1]

Date	Local government	Incident	Amount
May 1985	Clifton Forge	Mud slide	70,894
July 1985	Town of Big Stone Gap (Wise County)	Water tank failure	26,800
June 1987	Buchanan County	Flash flooding	60,000
July 1987	Buchanan County Dickenson County	Flash flooding	387,975
August 1991	Sussex County	Wakefield tire fire	158,000
June 1993	Lynchburg area	Windstorm	775,000
August 1993	Petersburg area	Tornadoes	1,350,000
December 1994	Town of Appalachia (Wise County)	Appalachian methane gas explosion[2]	124,022
September 1995	Statewide	Drought	78,478
Total			**$3,031,169**

Source: Department of Emergency Services, July 1996

[1] This table reflects public assistance provided to local governments when the Governor has declared a state of emergency, but it is not a Presidentially-declared disaster. It does not include assistance to individuals and families, nor does it include expenditures or reimbursements to state agencies.

[2] VDES provided direct and contractual services, but there was little or no direct financial aid to the town or county. This was primarily an operational response.

As this information indicates, Virginia governors have used their authority to access sum sufficient funding for public assistance to local governments infrequently. The availability of this resource when there is no Presidential declaration does not appear to be widely known. In fact, several of the local officials interviewed for this study were not aware that the Governor has this authority for state emergencies. Others were aware that the authority exists, but unless the locality had received assistance from this source, were not necessarily aware of current practices. There are no written policies and procedures governing this sum sufficient funding, other than the language in the Code and the appropriation act. VDES officials characterize current practices of providing financial assistance as "case by case," although the agency does attempt to provide consistency in making its recommendations to the Governor. In addition to the review by VDES, requests for assistance are reviewed by the Department of Planning and Budget and the Secretary of Public Safety, and are approved or denied by the Governor.

The study team heard many ideas to improve current practices. The most frequent recommendation was to establish policy guidelines specifying eligibility criteria to receive assistance. Those interviewed said that more guidance is needed specifying what is expected of local jurisdictions in order to be eligible, what costs can and cannot be covered, and what documentation is needed. The criteria should be reasonable, equitable, standardized, and clearly communicated. Better information is needed, several people pointed out, to help local officials plan more effectively.

There were also frequent recommendations to streamline the process, take action more quickly, and reduce the amount of documentation required. Several people who were interviewed suggested that the process be made less political and less bureaucratic, but most people believe that this would be difficult to achieve unless a separate emergency and disaster relief fund is established.

Several people recommended additional resources for training, preparedness, mitigation, and other proactive measures to prevent or reduce damage and destruction. Others suggested that VDES provide more information identifying the state resources that are available to assist localities. It was also recommended that VDES notify the General Assembly when the sum sufficient authority is utilized.

Examination of the need for a fund

When asked if an emergency and disaster relief fund is needed, officials in 23 of the 25 localities said that it is needed. Seven said that establishing a fund is a critical need; 16 said a fund is needed, but did not characterize the need as critical; one said the fund is not needed; and one was ambivalent.

The local officials were asked to prioritize the need for an emergency and disaster relief fund to provide public assistance (aid to localities) relative to the need for other kinds of assistance, including assistance to individuals and families, local emergency management funding, funding for hazard mitigation, and assistance with purchasing additional insurance. They rated the need for an emergency and disaster relief fund as the most critical need, followed by local emergency management funding, funding for hazard mitigation, and assistance to individuals and families. Assistance with purchasing additional insurance was seen as the least critical need.

However, not everyone interviewed thought that a fund is needed. Of the 15 people from state agencies and other organizations interviewed, eight believe that the fund is needed, four do not think it is needed, and three were not sure or did not discuss the question. Several said that they think that the current practice generally works well.

Advantages

There are several reasons to support establishing a fund. Such a fund should:

- Ensure that there is a minimum level of support and continuity of funding for disaster assistance;
- Be a proactive measure to support long term disaster planning efforts and good management practices;
- Provide an incentive for local jurisdictions to respond more quickly;
- Be an identifiable, reliable, and readily accessible source of revenue that would provide immediate financial relief in an emergency;
- Assist local governments, especially those that are fiscally stressed, to maintain financial solvency;
- Streamline the process and provide a more timely response;
- Heighten awareness and communicate clearly to local governments the expectations and guidelines to receive assistance;
- Provide for a more objective, structured, consistent, and equitable process; and
- Build confidence at the local level and encourage reinvestment in the community.

Disadvantages

There are also several reasons not to establish a fund. Such a fund could:

- Serve as a disincentive for localities to obtain sufficient insurance and to meet their financial responsibilities;
- Mean that the federal government might be less likely to provide assistance if Virginia has moneys set aside for disaster relief;

- Be viewed as shifting the primary responsibility for disaster relief from local jurisdictions to the state;
- Result in a new tax or a reduction in funding for ongoing programs;
- Be "raided" during the budget process and used for another purpose;
- Be seen as an entitlement program, rather than a safety net;
- Serve as a substitute for effective planning and day-to-day management;
- Distort the equitable distribution of funds, as there may be no relationship between the amount of revenue a source produces and the need;
- Limit the Governor's flexibility to address the unique needs of a local jurisdiction;
- Result in additional administrative requirements; and
- Serve as a disincentive for local jurisdictions to undertake prevention and mitigation projects.

National perspective

Officials at FEMA encourage states to establish a funding mechanism, not just to assist local jurisdictions when federal funds are not forthcoming, but for all components of a comprehensive emergency management system, with an emphasis on mitigation. Other national organizations, including the National Emergency Management Association, staffed by the Council of State Governments, and the National Conference of State Legislatures, also encourage states to study the possibility of establishing a funding mechanism.

FEMA officials suggest that other states follow Florida's lead in establishing a special fund by assessing a surcharge on property insurance. The surcharge is two dollars ($2.00) for homeowners and four dollars ($4.00) for businesses. The team found that North Carolina and Oregon are studying this concept.

According to data obtained by the study team, 20 states currently have legislation or an appropriation or both for contingency funds for disasters. Generally these are line items in their budgets, special funds, or trust funds of several hundred thousand dollars or less. Except for Florida, the source of revenue is the state's general fund.

Potential sources of revenue

The people interviewed by the study team identified a variety of potential sources of revenue for an emergency and disaster relief fund, including:

- Virginia's general fund;
- Proceeds from the lottery;

- The Transportation Trust Fund;
- The Economic Contingency Fund;
- An assessment or surcharge on property insurance;
- Voluntary contributions, perhaps through a checkoff on state income tax returns;
- A tax increase on the state income tax, the sales tax, the gas tax, sin taxes on alcohol and tobacco products, or property taxes;
- An increase in the fees for hunting and fishing licenses and off-road vehicle permits, vehicle registrations, and drivers' licenses;
- A new tax on hazardous materials;
- Court fees, fines, and charges for illegal activities;
- A tax or special assessment on those who build in a known hurricane surge or flood zone, or in a high wind threat area;
- A penny tax on soft drinks;
- An assessment on new home purchases;
- A revolving loan fund;
- A percent of the general fund year-end balance;
- A self-insurance fund, or a pool of funding, with each locality making an annual contribution;
- Disaster bonds invested in money market funds; and
- A combination of funding sources.

Several city managers and county administrators suggested establishing a pool of funds, similar to a self-insurance pool, with every jurisdiction asked to contribute. This would give local jurisdictions a sense of responsibility for the fund and a feeling of ownership. However, other officials interviewed raised the possibility that some jurisdictions might choose not to participate. There was also concern that some local jurisdictions might want to participate, but could not because they are fiscally stressed.

Criteria for revenue sources

The study team looked for revenue sources that would meet the following criteria:

- No new tax, assessment, or fee would be required;
- No current tax, assessment, or fee would be increased;
- Cities and counties would contribute to the fund, but not to the extent that it would create a hardship, even to those that are fiscally stressed;
- No unfunded mandate would be created; and
- No program's budget would be reduced.

It should be noted that the study team is not suggesting an assessment on property insurance as a potential source of revenue. Virginia currently charges a one percent assessment on property insurance that funds the Fire Programs Fund, and a one percent assessment on flood insurance that funds the Flood Prevention and Protection Assistance Fund. The study team did not want to take revenue from these other important programs or to create that perception.

Suggested revenue sources

The study team found that certain year-end balances, when the amount of revenue collected during the year exceeds the appropriation, meet the criteria. The team suggests that one or more of the following year-end balances could be used: ABC profits, wine tax proceeds, and taxes on the rental of passenger vehicles. Currently, cities, counties, and towns receive two-thirds of the ABC and wine profits, and the general fund receives one-third. The tax on rental cars is four percent of gross proceeds. Cities, counties, and towns receive the proceeds from this tax.

If any of these balances are used, the cities, counties, and towns would be contributing to the fund. However, as they would not have budgeted for the year-end balances, the additional revenue is essentially a windfall. Contributing this to the fund should not be an undue hardship, even for those cities, counties, and towns that are under fiscal stress. No new tax, assessment, or fee would be required, and there would be no increase in any current tax, assessment, or fee. This would not be an unfunded mandate, no reductions in appropriations would be required, and no program's budget would be reduced.

Suggested program guidelines and procedures

Several recurring themes were voiced by local officials interviewed for this study. If a fund is created, local officials want the eligibility criteria to be carefully crafted to meet only those major situations that put an undue burden on local resources. It is very clear that local jurisdictions have, and should have, primary governmental responsibility for responding to and recovering from an emergency or a disaster. If state assistance is warranted, it should be only to ensure that essential services are in place, and not necessarily to make whole everything that was damaged or destroyed. It should be a fund of last resort. It should not be used to replace insurance. It should not be used as a substitute for effective planning and strong, capable day-to-day management. It should not be used in place of mitigation measures that would prevent or reduce future damage. Mismanagement should not be tolerated. Although paperwork should be kept to a minimum, documentation and a clear audit trail are essential.

Guidelines

VDES convened a work group of selected staff with extensive experience and expertise to develop suggested program guidelines, using the information collected from the interviews with local officials, information from other states, and discussions with staff from other state agencies. They proposed the following guidelines.

- An emergency declaration from the Governor would be required before the proposed fund could be accessed.
- The fund would not be used to meet the match requirement for federal disaster assistance for a Presidentially-declared major disaster.
- The fund would be limited to public assistance to aid localities. State agencies would not be eligible.
- Cities, counties, towns, and public service authorities could be eligible to receive a grant for a percentage of eligible costs. The percentage could vary from 50 to 75 percent, based on the Commission on Local Government's fiscal stress index.
- Only cities and counties that have sustained total eligible costs of four dollars ($4.00) or more per capita could receive assistance from this fund. Once the county is declared eligible, towns and public service authorities could qualify to receive assistance.
- Eligible costs incurred by towns, public service authorities, volunteer fire departments, and volunteer rescue squads could be included in a county's or city's total costs.
- Unless otherwise stated in these guidelines, eligible costs would be defined to those listed in the Public Assistance component of the federal statute (Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288, as amended).
- State agencies, led by VDES, would conduct an on-site survey to validate damages and to document restoration costs. The survey would be the basis for a grant for repair or restoration.
- Cities, counties, towns, and public service authorities would maintain complete documentation of all costs for audit purposes and would provide copies of the documentation to VDES upon request.
- Counties, cities, towns, and public service authorities would be required to have property insurance or to be self-insured in order to be eligible for assistance from the fund. The fund would not cover the cost of damages that is customarily covered by property or flood insurance. Insurance deductibles would not be covered by this fund.
- The cost to local government of clearing debris from locally-owned public property could be covered.
- Regular time would not be an eligible cost.
- Snow removal would not be an eligible cost.
- The restoration of sand lost to beach erosion would not be an eligible cost.

- The cumulative effect of recent disasters during the preceding 12 months could be considered in determining eligibility for assistance.
- No site or facility could be included with less than $1,000 in eligible costs. However, the total cost of debris clearance could be considered as a single site.

Procedures

The work group proposes the following procedures to govern the establishment of a Virginia Emergency and Disaster Relief Fund:

- The Virginia Emergency and Disaster Relief Fund could be composed of the revenue collections in excess of appropriations from any one or more of the following suggested sources: ABC profits, wine tax proceeds, and gross proceeds tax on rental vehicles.
- If ABC profits and wine tax proceeds are used, both the state share and the local share of revenue in excess of appropriations could be included in the deposits to the fund.
- The revenue deposited into this fund would be capped at $1.5 million each year from revenues received in excess of official estimates. The fund could also receive appropriations from the general fund.
- VDES would administer the fund. In order to receive a grant from this fund, the request must be approved by the Governor.
- VDES's administrative expenses, not to exceed five percent of the prior year's total revenue, must be approved by the Governor to be drawn against the fund.
- Any unexpended balances remaining in the fund at the end of the fiscal year could be carried over into the next year.
- The fund would be capped at $3.0 million, including both additional revenue and revenue carried forward from the previous year. Any amount above $3.0 million would be distributed to local governments.
- Allocations from this fund would be considered discretionary state grants.
- The program would be exempt from the provisions of the Administrative Process Act in accordance with § 9-6.14:4.1 of the Code.
- Should the fund be depleted, VDES could request the Governor to approve any additional requests through the sum sufficient authority.

Chapter 3 - Policy options

Based on the analysis and findings of this study, the following policy options are offered for consideration.

Option 1 - Maintain the status quo

Option 1 would make no changes in current practices and propose no new legislation or budget amendments. This option would provide the Governor with maximum flexibility to meet the needs of local jurisdictions in a disaster.

Option 2 - Modify current practices

Option 2 would propose legislation that would amend the Code to require the Department of Emergency Services to develop guidelines and procedures, based on those outlined in this study, to provide guidance to the Governor in using the sum sufficient authority when federal moneys are not forthcoming. A special fund would not be established. The guidelines and procedures would be developed to assure consistency and equitable treatment; however, the sum sufficient moneys would continue to be awarded at the discretion of the Governor, and the Governor's decision would be final.

The guidelines and procedures would be published in draft for review and comment by local governments and any other interested party prior to adoption. They would not, however, be considered as regulations, as they would apply to a discretionary grant and would be exempt from the provisions of the Administrative Process Act in accordance with § 9-6.14:4.1 of the Code of Virginia.

The legislation would also require the Governor to report to the General Assembly money committees within 30 days of each incident in which the Governor's sum sufficient authority was accessed. The report would list the incidents, the entities that received assistance, and the amounts expended. VDES would be required to make an annual report to the General Assembly.

This option would address the concerns heard by the study team that the program is not well known and that there are no written guidelines outlining criteria for state assistance when there is no Presidential declaration.

Option 3 - Establish The Virginia Emergency and Disaster Relief Fund

Option 3 would propose legislation and a companion amendment to the appropriation act incorporating the program changes listed above, and establishing The Virginia Emergency and Disaster Relief Fund. This fund would provide grants to cities and counties that have been subject to a declared state of emergency by the Governor, but not a major disaster declared by the President, and thus the local governments would not be eligible for federal assistance.

The fund would be established in accordance with the procedures outlined in this study, and would become effective July 1, 1998 to allow revenue to accrue. Grants allocated from the fund would be discretionary, although the General Assembly would always have the option of amending the budget to assist a local jurisdiction.

This option would provide a readily accessible source of grants for local governments that experience a disaster. Placing caps on the revenue deposited into the fund and on the fund itself reduces the likelihood that the fund could be raided, or that federal assistance would be lessened.

Recommended Option

An exposure draft of this study was sent to all counties and cities, towns with emergency services coordinators, and organizations and individuals who had expressed an interest in the issue for review and comment. The comments were generally in support of providing assistance to local jurisdictions in a state of emergency, but some expressed concern about the suggested sources of revenue, most of which local jurisdictions already receive as an unbudgeted windfall at the end of the fiscal year. These was also the concern that a special fund might be raided and moneys transferred to the general fund, or that the amount in the fund may not be sufficient to meet the need. Based on these comments, Option 2 is the preferred option.

This option would provide for a more objective, structured, consistent, and equitable process to provide immediate financial relief in an emergency. It would not, however, result in a new tax or a reduction in funding for ongoing programs, nor would it limit the Governor's flexibility to address the unique needs of a local jurisdiction.

In addition, VDES staff noted that there have been occasions in past years in which the Governor has not wished to declare a state of emergency, but has wished to assist a local jurisdiction that had sustained considerable damage. They suggested that the Governor be allowed to provide financial assistance to a local jurisdiction using the sum sufficient authority if the locality met the established guidelines, but the Governor had not declared a state of emergency.

Recommendation: **Legislation and a companion language amendment to the appropriation act is recommended to provide financial assistance to counties, cities, towns, and public service authorities located in an area declared a state of emergency but not a major disaster for which federal assistance might be forthcoming. The funding would come from the Governor's sum sufficient authority pursuant to §44-146.28 of the Code of Virginia.**

The Virginia Department of Emergency Services would develop guidelines and procedures for the Governor's consideration in determining whether and to what extent financial assistance to local governments might be provided; however, the allotments would be considered grants made at the discretion of the Governor.

If a jurisdiction meets the criteria set forth in the guidelines and procedures, but is in an area that has neither been declared a state of emergency nor been declared a major disaster for which federal assistance might be forthcoming, the Governor would be authorized to have the discretion to make an allotment to that jurisdiction without a declaration of emergency.

Appendix A

GENERAL ASSEMBLY OF VIRGINIA - 1996 SESSION

HOUSE JOINT RESOLUTION NO. 72

Requesting the Department of Planning and Budget to study the feasibility of establishing a Virginia Emergency Relief Fund to provide state assistance to localities declared disaster areas by the Governor but not approved for assistance by the Federal Emergency Management Agency (FEMA).

Agreed to by the House of Delegates, February 1, 1996
Agreed to by the Senate, March 6, 1996

WHEREAS, the Commonwealth has faced an increased number of unusual natural disasters in recent years; and

WHEREAS, damage and destruction to public buildings and infrastructure due to such natural disasters have created astronomical budget crises for local governments; and

WHEREAS, there are additional costs for a wide variety of public health and safety measures arising from such natural disasters, including, but not limited to, emergency medical services, shelter, food, and curfew and law enforcement; and

WHEREAS, there are no statutory provisions authorizing the Commonwealth of Virginia to provide financial assistance to communities declared disaster areas by the Governor but subsequently not approved for assistance by FEMA; and

WHEREAS, such emergency financial assistance should not be subject to individual case evaluations by the General Assembly nor to individual case intervention by the Governor; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Planning and Budget be requested to study the feasibility of establishing a Virginia Emergency Relief Fund to provide state assistance to localities declared disaster areas by the Governor but not approved for assistance by the Federal Emergency Management Agency (FEMA). The Department shall also (i) evaluate the Commonwealth's policies governing assistance to Virginia localities declared disaster areas but which have not been approved for assistance by FEMA; (ii) determine potential sources of revenue for such fund; and (iii) suggest guidelines and procedures for qualification to receive funds up to 75 percent of any loss.

The Department shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B

PUBLIC ASSISTANCE PROVIDED TO LOCAL GOVERNMENTS
FOR BOTH GUBERNATORIALLY-DECLARED STATES OF EMERGENCY AND PRESIDENTIALLY-DECLARED DISASTERS[1]

Date	Local government	Incident	State emergency	Federal disaster	
			General fund	General fund	Federal funds
May 1985	Clifton Forge	Mud slide	70,894		
July 1985	Town of Big Stone Gap (Wise County)	Water tank failure	26,800		
August 1985	Patrick County	Flash flood	0		
September 1985	Coastal Virginia	Hurricane Gloria (threat)	0		
November 1985	Statewide	Flood		157,706	630,824
June 1987	Buchanan County	Flash flooding	60,000		
July 1987	Buchanan County Dickenson County	Flash flooding	387,975		
September 1987	Roanoke River basin	Flood	0		
November 1987	Southwest Virginia	Forest fires	0		
June 1988	York County	Forest fire	0		
July 1988	Rockbridge County	Fire	0		
July 1988	Fauquier County Page County	Forest fire	0		
November 1988	Shenandoah County	Horse recovery	0		
February 1989	Eastern Shore	Snowstorm	0		
September 1989	Virginia Beach	Labor Day disturbance	0		
October 1989	Buchanan County	Flash flooding		159,393	637,572
May 1990		Missing aircraft	0		
September 1990	Virginia Beach	Labor Day weekend	0		
March 1991	Sussex County	Wakefield tire fire	158,000		
September 1991	Virginia Beach	Labor Day weekend	0		
April 1992	Roanoke Valley	Flood		348,928	1,270,800
December 1992	Frederick County	Heavy snowfall	0		
March 1993	Statewide	Heavy snowfall, severe cold		226,423	662,982
June 1993	Lynchburg area	Summer windstorm	775,000		
August 1993	Petersburg area	Tornadoes[2]	1,350,000		
August 1993	Coastal Virginia	Hurricane Emily (threat)	0		
September 1993	Chesterfield County	Fire	0		

Source: Department of Emergency Services, July 1996

[1] This table reflects public assistance provided to local governments when the Governor has declared a state of emergency, but it is not a Presidentially-declared disaster. It does not include assistance to individuals and families, nor does it include expenditures or reimbursements to state agencies.

[2] The Presidential declaration for the Petersburg tornadoes was for Individual Assistance only.

PUBLIC ASSISTANCE PROVIDED TO LOCAL GOVERNMENTS
FOR BOTH GUBERNATORIALLY-DECLARED STATES OF EMERGENCY AND PRESIDENTIALLY-DECLARED DISASTERS[1]
(Continued)

Date	Local government	Incident	State emergency	Federal disaster	
			General fund	General fund	Federal funds
January 1994	Statewide	Severe winter weather (threat)	0		
February 1994	Statewide	Ice storm		1,440,999	4,954,508
March 1994	Statewide	Winter storm		52,026	201,797
July 1994	Charles City County	Fire	0		
December 1994	Town of Appalachia (Wise County)	Appalachia methane gas explosion[3]	124,022		
June 1995	Western Virginia	Flash flooding		732,659	2,543,692
August 1995	Coastal Virginia	Hurricane Felix (threat)	0		
September 1995	Statewide	Drought	78,478		
January 1996	Statewide	Blizzard		647,784	2,429,191
February 1996	Statewide	Winter flooding		178,802	673,461
July 1996	Coastal Virginia	Hurricane Bertha	0		
September 1996	Central Virginia	Hurricane Fran		TBD	TBD
Total			**3,031,169**	**3,944,720**	**14,004,827**

Source: Department of Emergency Services, July 1996

[1] This table reflects public assistance provided to local governments when the Governor has declared a state of emergency, but it is not a Presidentially-declared disaster. It does not include assistance to individuals and families, nor does it include expenditures or reimbursements to state agencies.

[3] VDES provided direct and contractual services, but there was little or no direct financial aid to the town or county. This was primarily an operational response.