

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2701

03/04/2014 Authored by Pelowski, Davids, Poppe, Hausman, Urdahl and others
The bill was read for the first time and referred to the Committee on Government Operations

03/24/2014 Adoption of Report: Amended and re-referred to the Committee on Public Safety Finance and Policy

03/26/2014 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

04/02/2014 Adoption of Report: Amended and Placed on the General Register
Read Second Time

04/04/2014 Calendar for the Day
Read Third Time
Passed by the House and transmitted to the Senate

1.1 A bill for an act

1.2 relating to disaster relief; creating a disaster assistance contingency account;

1.3 requiring transfer of unused disaster relief appropriations to the disaster

1.4 assistance contingency account; establishing a disaster relief cost-share

1.5 relationship between the state, local governments, and American Indian tribes

1.6 and bands; authorizing state public disaster assistance in the absence of federal

1.7 public disaster assistance; appropriating money; amending Minnesota Statutes

1.8 2012, sections 12.03, by adding subdivisions; 12.221, subdivision 4, by adding a

1.9 subdivision; 12A.02, subdivision 2, by adding subdivisions; 12A.03, subdivision

1.10 3; 12A.15, subdivision 1; 16A.28, by adding a subdivision; proposing coding for

1.11 new law as Minnesota Statutes, chapter 12B.

1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.13 **ARTICLE 1**

1.14 **DISASTER ASSISTANCE FOR PUBLIC ENTITIES; FEDERAL AID GRANTED**

1.15 Section 1. Minnesota Statutes 2012, section 12.03, is amended by adding a subdivision

1.16 to read:

1.17 Subd. 5d. **Local government.** "Local government" has the meaning given in Code

1.18 of Federal Regulations, title 44, section 206.2 (2012).

1.19 Sec. 2. Minnesota Statutes 2012, section 12.03, is amended by adding a subdivision to

1.20 read:

1.21 Subd. 6b. **Nonfederal share.** "Nonfederal share" has the meaning given in section

1.22 12A.02, subdivision 7.

1.23 Sec. 3. Minnesota Statutes 2012, section 12.221, subdivision 4, is amended to read:

2.1 Subd. 4. **Subgrant agreements; state share.** (a) The state director, serving as the
2.2 governor's authorized representative, may enter into subgrant agreements with eligible
2.3 applicants to provide federal and state financial assistance made available as a result
2.4 of a disaster declaration.

2.5 (b) When state funds are used to provide the FEMA Public Assistance Program
2.6 cost-share requirement for a local government, the state director must award a local
2.7 government 100 percent of the nonfederal share of the local government's FEMA Public
2.8 Assistance Program costs.

2.9 Sec. 4. Minnesota Statutes 2012, section 12.221, is amended by adding a subdivision
2.10 to read:

2.11 Subd. 6. **Disaster assistance contingency account; appropriation.** (a) A disaster
2.12 assistance contingency account is created in the general fund in the state treasury. Money
2.13 in the disaster assistance contingency account is appropriated to the commissioner of
2.14 public safety to provide:

2.15 (1) cost-share for federal assistance under section 12A.15, subdivision 1; and

2.16 (2) state public disaster assistance to eligible applicants under chapter 12B.

2.17 (b) For appropriations under paragraph (a), clause (1), the amount appropriated is
2.18 100 percent of any nonfederal share for state agencies and local governments. Money
2.19 appropriated under paragraph (a), clause (1), may be used to pay all or a portion of the
2.20 nonfederal share for publicly owned capital improvement projects.

2.21 (c) For appropriations under paragraph (a), clause (2), the amount appropriated
2.22 is the amount required to pay eligible claims under chapter 12B, as certified by the
2.23 commissioner of public safety.

2.24 (d) If the amount appropriated is insufficient to cover costs for paragraph (a), clauses
2.25 (1) and (2), the commissioner of public safety shall pay up to an additional \$4,000,000
2.26 from the general fund appropriation provided under this paragraph. No payment shall be
2.27 made under this paragraph until:

2.28 (1) the commissioner of public safety has given the commissioner of management
2.29 and budget an estimate of the additional funds required;

2.30 (2) the commissioner of management and budget has reported the estimate to the
2.31 chairs of the house of representatives Ways and Means Committee and the senate Finance
2.32 Committee; and

2.33 (3) the commissioner of management and budget has approved the payments.

2.34 (e) Amounts approved by the commissioner of management and budget, up to
2.35 \$4,000,000 per fiscal year, are appropriated from the general fund to the commissioner

3.1 of public safety. By January 15 of each year, the commissioner of management and
3.2 budget shall submit a report to the chairs of the house of representatives Ways and
3.3 Means Committee and the senate Finance Committee detailing state disaster assistance
3.4 appropriations and expenditures under this subdivision during the previous calendar year.

3.5 (f) The governor's budget proposal submitted to the legislature under section 16A.11
3.6 must include recommended appropriations to the disaster assistance contingency account.
3.7 The governor's appropriation recommendations must be informed by the commissioner of
3.8 public safety's estimate of the amount of money that will be necessary to:

3.9 (1) provide 100 percent of the nonfederal share for state agencies and local
3.10 governments that will receive federal financial assistance from FEMA during the next
3.11 biennium; and

3.12 (2) fully pay all eligible claims under chapter 12B.

3.13 (g) Notwithstanding section 16A.28:

3.14 (1) funds appropriated or transferred to the disaster assistance contingency account
3.15 do not lapse but remain in the account until appropriated; and

3.16 (2) funds appropriated from the disaster assistance contingency account do not lapse
3.17 and are available until expended.

3.18 Sec. 5. Minnesota Statutes 2012, section 12A.02, subdivision 2, is amended to read:

3.19 Subd. 2. **Appropriation.** "Appropriation" means an appropriation provided in law
3.20 specifically to implement this chapter, including but not limited to a statutory appropriation
3.21 to provide the required cost-share for federal disaster assistance under section 12.221.

3.22 Sec. 6. Minnesota Statutes 2012, section 12A.02, is amended by adding a subdivision
3.23 to read:

3.24 Subd. 6. **Local government.** "Local government" has the meaning given in section
3.25 12.03, subdivision 5d.

3.26 Sec. 7. Minnesota Statutes 2012, section 12A.02, is amended by adding a subdivision
3.27 to read:

3.28 Subd. 7. **Nonfederal share.** "Nonfederal share" means that portion of total FEMA
3.29 Public Assistance Program costs that is no more than 25 percent and is not eligible for
3.30 FEMA reimbursement.

3.31 Sec. 8. Minnesota Statutes 2012, section 12A.03, subdivision 3, is amended to read:

4.1 Subd. 3. **Nonduplication of federal assistance.** State assistance may not duplicate
4.2 or supplement eligible FEMA Public Assistance Program assistance. For eligible Public
4.3 Assistance Program costs, any state ~~matching~~ cost-share money made available for
4.4 that assistance must be disbursed by the Department of Public Safety to a state agency,
4.5 local ~~political subdivision, Indian tribe~~ government, or other applicant. State assistance
4.6 distributed by a state agency, other than the Department of Public Safety, to a ~~political~~
4.7 ~~subdivision~~ local government or other applicant for disaster costs that are eligible for
4.8 FEMA Public Assistance Program assistance constitutes an advance of funds. Such
4.9 advances must be repaid to the applicable state agency when the applicant has received
4.10 the FEMA Public Assistance Program assistance, and whatever state ~~matching~~ cost-share
4.11 money may be made available for that assistance, from the Department of Public Safety.

4.12 Sec. 9. Minnesota Statutes 2012, section 12A.15, subdivision 1, is amended to read:

4.13 Subdivision 1. **State ~~match~~ cost-share for federal assistance.** State appropriations
4.14 may be used for ~~payment of the state match for federal disaster assistance to pay 100~~
4.15 ~~percent of the nonfederal share for state agencies. If authorized in law, state appropriations~~
4.16 ~~may be used to pay all or a portion of the local share of the match for federal funds for~~
4.17 ~~political subdivisions and local governments~~ under section 12.221. An appropriation from
4.18 the bond proceeds fund may be used to ~~fund federal match obligations~~ as cost-share for
4.19 federal disaster assistance for publicly owned capital improvement projects ~~resulting from~~
4.20 ~~the receipt of federal disaster assistance.~~

4.21 Sec. 10. Minnesota Statutes 2012, section 16A.28, is amended by adding a subdivision
4.22 to read:

4.23 Subd. 9. **Disaster assistance.** (a) The commissioner of management and budget
4.24 must transfer the unexpended and unencumbered balance of a general fund disaster
4.25 assistance appropriation that expires as provided under this section or as otherwise provided
4.26 by law to the disaster assistance contingency account in section 12.221, subdivision 6.

4.27 (b) Expired disaster assistance transferred to the disaster assistance contingency
4.28 account is appropriated as provided under section 12.221, subdivision 6, regardless of the
4.29 specific disaster event or purpose for which the expired disaster assistance was originally
4.30 appropriated.

4.31 (c) The commissioner must report each transfer to the chairs of the house of
4.32 representatives Ways and Means Committee and the senate Finance Committee.

5.1 (d) For the purposes of this subdivision, "disaster assistance appropriation" means
5.2 an appropriation from the general fund to provide cost-share required for federal disaster
5.3 assistance or to provide other state disaster assistance under chapter 12A or 12B.

5.4 Sec. 11. **EFFECTIVE DATE.**

5.5 This article is effective the day following final enactment.

5.6 **ARTICLE 2**

5.7 **DISASTER ASSISTANCE FOR PUBLIC ENTITIES; ABSENT FEDERAL AID**

5.8 Section 1. **[12B.10] PUBLIC DISASTER ASSISTANCE; ABSENT FEDERAL**
5.9 **AID.**

5.10 This chapter establishes a state public assistance program to provide cost-share
5.11 assistance to local governments that sustain significant damage on a per capita basis but
5.12 are not eligible for federal disaster assistance or corresponding state assistance under
5.13 chapter 12A.

5.14 Sec. 2. **[12B.15] DEFINITIONS.**

5.15 Subdivision 1. **Application.** The definitions in this section apply to this chapter.

5.16 Subd. 2. **Applicant.** "Applicant" means a local government that applies for state
5.17 disaster assistance under this chapter.

5.18 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of public safety.

5.19 Subd. 4. **Director.** "Director" means the director of the Division of Homeland
5.20 Security and Emergency Management in the Department of Public Safety.

5.21 Subd. 5. **Disaster.** "Disaster" means any catastrophe, including but not limited
5.22 to a tornado, storm, high water, wind-driven water, tidal wave, earthquake, volcanic
5.23 eruption, landslide, mudslide, snowstorm, or drought or, regardless of cause, any fire,
5.24 flood, or explosion.

5.25 Subd. 6. **FEMA.** "FEMA" means the Federal Emergency Management Agency.

5.26 Subd. 7. **Incident period.** "Incident period" means the time interval of a disaster as
5.27 delineated by specific start and end dates.

5.28 Subd. 8. **Local government.** "Local government" has the meaning given in section
5.29 12A.03, subdivision 5d.

5.30 Sec. 3. **[12B.25] ELIGIBILITY CRITERIA; CONSIDERATIONS.**

5.31 Subdivision 1. **Payment required; eligibility criteria.** The director, serving as
5.32 the governor's authorized representative, may enter into grant agreements with eligible

6.1 applicants to provide state financial assistance made available as a result of a disaster
 6.2 that satisfies all of the following criteria:

6.3 (1) the state and applicable local government declare a disaster or emergency during
 6.4 the incident period;

6.5 (2) damages suffered and eligible costs incurred are the direct result of the disaster;

6.6 (3) federal disaster assistance is not available to the applicant because the governor
 6.7 did not request a presidential declaration of major disaster, the president denied the
 6.8 governor's request, or the applicant is not eligible for federal disaster assistance because
 6.9 the state or county did not meet the per capita impact indicator under FEMA's Public
 6.10 Assistance Program;

6.11 (4) the applicant incurred eligible damages that, on a per capita basis, equal or
 6.12 exceed 50 percent of the countywide per capita impact indicator under FEMA's Public
 6.13 Assistance Program;

6.14 (5) the applicant assumes responsibility for 25 percent of the applicant's total
 6.15 eligible costs; and

6.16 (6) the applicant satisfies all requirements in this chapter.

6.17 Subd. 2. **Considerations; other resources available.** When evaluating applicant
 6.18 eligibility under subdivision 1, the director must consider:

6.19 (1) the availability of other resources from federal, state, local, private, or other
 6.20 sources; and

6.21 (2) the availability or existence of insurance.

6.22 **Sec. 4. [12B.30] ELIGIBLE COSTS.**

6.23 Subdivision 1. **Eligible costs.** Costs eligible for payment under this chapter are
 6.24 those costs that would be eligible for federal financial assistance under FEMA's Public
 6.25 Assistance Program.

6.26 Subd. 2. **Ineligible costs.** Ineligible costs are all costs not included in subdivision
 6.27 1, including but not limited to:

6.28 (1) ordinary operating expenses, including salaries and expenses of employees and
 6.29 public officials that are not directly related to the disaster response;

6.30 (2) costs for which payment has been or will be received from any other funding
 6.31 source;

6.32 (3) disaster-related costs that should, in the determination of the director, be covered
 6.33 and compensated by insurance; and

6.34 (4) projects and claims totaling less than the minimum FEMA project threshold.

7.1 Sec. 5. [12B.35] APPLICANT'S SHARE.

7.2 An applicant's share of eligible costs incurred must not be less than 25 percent. The
7.3 substantiated value of donated materials, equipment, services, and labor may be used as
7.4 all or part of the applicant's share of eligible costs, subject to the following:

7.5 (1) all items and sources of donation must be indicated on the application and any
7.6 supporting documentation submitted to the commissioner;

7.7 (2) the rate for calculating the value of donated, nonprofessional labor is the
7.8 prevailing federal minimum wage;

7.9 (3) the value of donated equipment may not exceed the highway equipment rates
7.10 approved by the commissioner of transportation; and

7.11 (4) the value of donated materials and professional services must conform to market
7.12 rates and be established by invoice.

7.13 Sec. 6. [12B.40] APPLICATION PROCESS.

7.14 (a) The director must develop application materials and may update the materials as
7.15 needed. Application materials must include instructions and requirements for assistance
7.16 under this chapter.

7.17 (b) An applicant has 30 days from the end of the incident period or the president's
7.18 official denial of the governor's request for a declaration of a major disaster to provide the
7.19 director with written notice of intent to apply. The director may deny an application due to
7.20 a late notice of intent to apply.

7.21 (c) Within 60 days after the end of the incident period or the president's official denial
7.22 of the governor's request for a declaration of a major disaster, the applicant must submit a
7.23 complete application to the director. A complete application includes the following:

7.24 (1) the cause, location of damage, and incident period;

7.25 (2) documentation of a local, tribal, or county, and a state disaster or emergency
7.26 declaration in response to the disaster;

7.27 (3) a description of damages, an initial damage assessment, and the amount of
7.28 eligible costs incurred by the applicant;

7.29 (4) a statement or evidence that the applicant has the ability to pay for at least 25
7.30 percent of total eligible costs incurred from the disaster; and

7.31 (5) a statement or evidence that the local government has incurred damages equal to
7.32 or exceeding 50 percent of the federal countywide threshold in effect during the incident
7.33 period.

7.34 (d) The director must review the application and supporting documentation for
7.35 completeness and may return the application with a request for more detailed information.

8.1 The director may consult with local public officials to ensure the application reflects the
8.2 extent and magnitude of the damage and to reconcile any differences. The application is
8.3 not complete until the director receives all requested information.

8.4 (e) If the director returns an application with a request for more detailed information
8.5 or for correction of deficiencies, the applicant must submit all required information within
8.6 30 days of the applicant's receipt of the director's request. The applicant's failure to
8.7 provide the requested information in a timely manner without a reasonable explanation
8.8 may be cause for denial of the application.

8.9 (f) The director has no more than 60 days from the receipt of a complete application
8.10 to approve or deny the application, or the application is deemed approved. If the director
8.11 denies an application, the director must send a denial letter. If the director approves an
8.12 application or the application is automatically deemed approved after 60 days, the director
8.13 must notify the applicant of the steps necessary to obtain reimbursement of eligible
8.14 costs, including submission of invoices or other documentation substantiating the costs
8.15 submitted for reimbursement.

8.16 **Sec. 7. [12B.45] CLAIMS PROCESS.**

8.17 **Subdivision 1. Claims; appeal.** (a) An applicant must submit to the director
8.18 completed claims for payment of actual and eligible costs on forms provided by the
8.19 director. All eligible costs claimed for payment must be documented and consistent with
8.20 the eligibility provisions of this chapter.

8.21 (b) If the director denies an applicant's claim for payment, the applicant has 30 days
8.22 from receipt of the director's determination to appeal in writing to the commissioner. The
8.23 appeal must include the applicant's rationale for reversing the director's determination. The
8.24 commissioner has 30 days from receipt of the appeal to uphold or modify the director's
8.25 determination and formally respond to the applicant. If, within 30 days of receiving
8.26 the commissioner's decision, the applicant notifies the commissioner that the applicant
8.27 intends to contest the commissioner's decision, the Office of Administrative Hearings shall
8.28 conduct a hearing under the contested case provisions of chapter 14.

8.29 **Subd. 2. Final inspection.** Upon completion of all work by an applicant, the
8.30 director may inspect all work claimed by the applicant. The applicant must provide the
8.31 director with access to records pertaining to all claimed work and must permit the director
8.32 to review all records relating to the work.

8.33 **Subd. 3. Closeout.** The director must close out an applicant's disaster assistance
8.34 application after all of the following occur:

8.35 (1) eligible work is complete;

9.1 (2) the applicant receives the final amount due or pays any amount owed under
9.2 section 12B.50; and

9.3 (3) any extant or scheduled audits are complete.

9.4 Subd. 4. **Audit.** (a) An applicant must account for all funds received under this
9.5 chapter in conformance with generally accepted accounting principles and practices. The
9.6 applicant must maintain detailed records of expenditures to show that grants received under
9.7 this chapter were used for the purpose for which the payment was made. The applicant
9.8 must maintain records for five years and make the records available for inspection and
9.9 audit by the director or the legislative auditor. The applicant must keep all financial
9.10 records for five years after the final payment, including but not limited to all invoices and
9.11 canceled checks or bank statements that support all eligible costs claimed by the applicant.

9.12 (b) The director or state auditor may audit all applicant records pertaining to an
9.13 application or payment under this chapter.

9.14 Subd. 5. **Reporting payments.** The director must post on the division Web site a
9.15 list of the recipients and amounts of the payments made under this chapter.

9.16 **Sec. 8. [12B.50] FUNDING FROM OTHER SOURCES; REPAYMENT**
9.17 **REQUIRED.**

9.18 If an applicant subsequently recovers eligible costs from another source after
9.19 receiving payment under this chapter, the applicant must pay the commissioner an amount
9.20 equal to the corresponding state funds received within 30 days. The commissioner must
9.21 deposit any repayment in the disaster response contingency account in section 12.221,
9.22 subdivision 6.

9.23 **Sec. 9. EFFECTIVE DATE.**

9.24 This article is effective the day following final enactment.

APPENDIX
Article locations in H2701-3

ARTICLE 1	DISASTER ASSISTANCE FOR PUBLIC ENTITIES; FEDERAL AID GRANTED	Page.Ln 1.13
ARTICLE 2	DISASTER ASSISTANCE FOR PUBLIC ENTITIES; ABSENT FEDERAL AID	Page.Ln 5.6