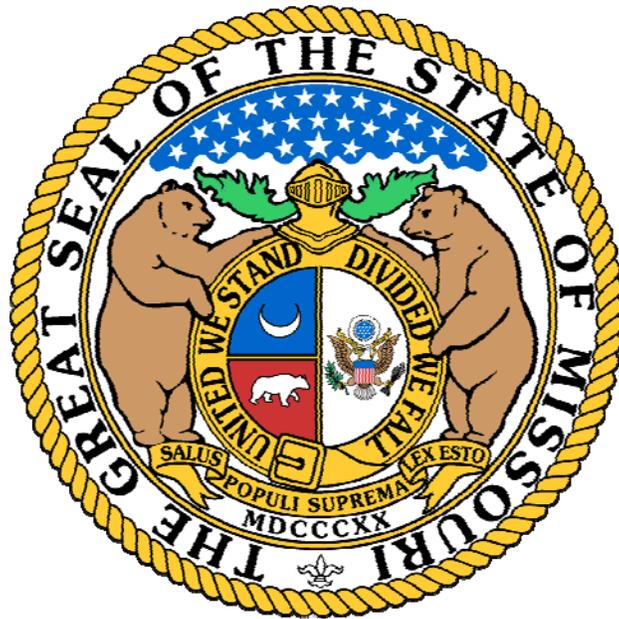


**REPORT**  
**OF**  
**THE SENATE INTERIM COMMITTEE**  
**ON**  
**NATURAL DISASTER RECOVERY**



September 2011

Prepared by:  
Senate Research Staff  
Senate Appropriations Staff

September 14, 2011

The Honorable Robert N. Mayer, President Pro Tem of the Senate  
State Capitol Building, Room 326  
Jefferson City, MO 65101

Dear Mr. President:

The Senate Interim Committee on Natural Disaster Recovery, has met, taken testimony, deliberated, and concluded its study on issues relating to the several devastating natural disasters occurring in our state during this year and the role of the state in assisting communities recover from these disasters. The undersigned members of the Committee are pleased to submit the attached report.

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Senator Ron Richard, Chair

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Senator Brad Lager, Vice-Chair

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Senator Dan Brown

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Senator Tom Dempsey

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Senator Bob Dixon

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Senator Mike Kehoe

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Senator Will Kraus

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Senator Jim Lembke

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Senator Brian Munzlinger

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Senator Brian Nieves

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Senator Mike Parson

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Senator Scott Rupp

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Senator Kurt Schaefer

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Senator Jay Wasson

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Senator Victor Callahan

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Senator Maria Chappelle-Nadal

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Senator Shalonn "Kiki" Curls

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Senator Tim Green

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Senator Jolie Justus

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Senator Ryan McKenna

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## **I. CHARGE OF THE COMMITTEE**

The State of Missouri has experienced several devastating natural disasters since April 2011, affecting all areas of the state. On Friday April 22, 2011, an EF 4 tornado touched down in St. Louis damaging over 100 homes and business and causing over 25 million dollars of damage to the Lambert - St. Louis International Airport. On Monday evening May 2, 2011, the Army Corp of Engineers activated the Birds Point – New Madrid Floodway in Southeast Missouri to lessen the threat of flooding downstream on the Mississippi River, flooding hundreds of thousands of acres of farmland and approximately 100 homes. On Sunday May 22, 2011, an EF 5 tornado touched down in Joplin destroying over 7,000 structures and killing 160 people. Several schools and one major hospital were destroyed and will have to be rebuilt. On Wednesday May 25, 2011, an EF 2 tornado touched down in Sedalia damaging several homes and businesses. Early in June 2011, the Missouri River began flooding towns and roads in Northwest Missouri. Several towns have had to be evacuated at various times since the flooding began.

A Major Disaster Declaration was issued on May 9, 2011, and includes 25 counties for individual federal assistance. Those counties include, Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Jasper, Lawrence, McDonald, Mississippi, New Madrid, Newton, Pemiscot, Pettis, Phelps, Pulaski, Reynolds, Ripley, Scott, St. Francois, St. Louis, Stoddard, Stone, Taney, and Wayne.

Federal public assistance has been granted to 38 counties. Those counties include, Barry, Bollinger, Butler, Cape Girardeau, Carter, Christian, Douglas, Dunklin, Howell, Iron, Jasper, Madison, McDonald, Miller, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Pettis, Polk, Reynolds, Ripley, St. Louis, Ste. Genevieve, St. Francois, Scott, Shannon, Stone, Stoddard, Taney, Texas, Washington, Wayne, Webster, and Wright.

A Federal Emergency Declaration was declared June 30, 2011, for the following counties: Andrew, Atchison, Boone, Buchanan, Callaway, Carroll, Chariton, Clay, Cooper, Franklin, Gasconade, Holt, Howard, Jackson, Lafayette, Moniteau, Montgomery, Osage, Platte, Ray, Saline, St. Charles, St. Louis, Warren, and the City of St. Louis.

On July 25, 2011, Governor Nixon requested a major disaster declaration from the President for the following counties: Adair, Andrew, Atchison, Buchanan, Carroll, Chariton, Clark, Holt, Howard, Knox, Lafayette, Lewis, Linn, Macon, Marion, Monroe, Platte, Ralls, Ray, St. Charles, Saline, Shelby and Sullivan. On August 12, 2011, the President approved the major disaster declaration for individual assistance for the following 6 counties: Andrew, Atchison, Buchanan, Holt, Lafayette, and Platte.

As a result of these devastating natural disasters that affected the state of Missouri in recent months and to assess the response of the state to such disasters, pursuant to Senate Rule 31, Senate President Pro Tem Robert Mayer established the Senate Interim Committee on Natural Disaster Recovery. The Committee is chaired by Senator Ron Richard and Senator Brad Lager serves as vice-chairman.

Because of the complex and varied issues involved in analyzing natural disaster response and recovery, the Committee consisted of three subcommittees. The Subcommittee on Emergency Response is composed of Senator Kehoe, Chairman, and Senators Kraus, Nieves, Dempsey, Chappelle-Nadal, and McKenna. The Subcommittee on Fiscal Response is composed of Senator Schaefer, Chairman, and

Senators Munzlinger, Brown, Lembke, Green and Curls. The Subcommittee on Insurance Response is composed of Senator Parson, Chairman, and Senators Rupp, Wasson, Dixon, Callahan, and Justus. Each subcommittee was responsible for conducting independent hearings in their issue areas, including receiving public testimony and consulting with applicable administrative agencies, and reporting their findings to the Committee.

What follows is a summary of the activities of the Committee, including information and testimony received by each subcommittee, in section II of this report and the recommendations that have been adopted by the Committee in section III of this report.

## **II. SUMMARY OF ACTIVITIES**

Each of the Subcommittees met at least once at locations throughout the state. After the Subcommittees completed the process of gathering information, the full Committee met on August 23, 2011 to receive information and recommendations from each of the Subcommittees as well as to receive additional testimony and information. The information received by each Subcommittee is detailed below, followed by the information received by the full Committee at its August 23, 2011 meeting.

### **1. Subcommittee on Emergency Response**

The Subcommittee held two meetings to receive testimony, the first in Springfield and a second meeting in Jefferson City.

#### **Testimony taken on July 21, 2011, Springfield, Missouri**

Larry Woods of the Greene County Office of Emergency Management testified as to his experience in assisting with disaster response during the 2007 ice storm in Greene County. Mr. Woods noted that emergency management is becoming more difficult in the economic downturn because of lack of funding and praised the numerous volunteers that make up the incident support teams. Mr. Woods stressed the need for a regional response approach across jurisdictions to help a wider range of people during an emergency.

Chris Harmon testified on behalf of the Red Cross and gave his perception that the state and local emergency response during the Joplin disaster was efficiently coordinated. Mr. Harmon stressed the importance of resource centers that act to direct volunteers and other emergency responders to locations where they are needed since there is usually much confusion about where services should be directed. Once again, regional coordination and pre-planning was stressed.

Mike Palmer and Martin Penning of Empire Electric gave comments on the Joplin disaster from the vantage point of a private business. They testified that Empire, as an investor owned electric and gas service provider, retains an extensive outage recover plan. With the assistance of contractors and volunteers, Empire successfully restored services to all those who could receive it within 10 days. Such an effort came with a twenty to thirty million dollar price tag to date. Mr. Palmer and Mr. Penning added that although FEMA dollars were available to local cooperatives, Empire cannot access that pool of money.

## Testimony taken on July 26, 20011, Jefferson City, Missouri

Cole County Sheriff, Greg White, came before the committee and explained the importance of local preparation as the first defense in the wake of a disaster and the critical role faith-based communities play to help those in need during a crisis. He explained that the numerous faith-based groups need to be trained to work with outside organizations for effective response.

Andrea Spillars, Deputy Director of the Department of Public Safety, appeared before the committee and submitted written testimony describing the roles that numerous state agency responders play during an emergency. Ms. Spillars explained that there is an emergency management director on the local level for all political subdivisions that the numerous agencies coordinate with during a disaster. The coordination during the flooding in South East Missouri, she testified, was very successful as an area coordination center was set up and used as an integral point of contact for state and local responders. She also stressed the importance of non-governmental responders such as faith-based organizations and private business partners.

The State Budget Director, Linda Luebbering, testified before the committee on the topic of state budget obligations triggered by the recent emergencies. She testified that the state does not yet know what its obligations will be as it is unclear how much, in federal dollars, will be available.

Loni Cotton gave public testimony regarding her experience as a member of the long term recovery committee in St. Charles County and FEMA aid recipient. Ms. Cotton described the lack of centralization of public data and lack of local administrative resources as hindrances to efficient response. The timeliness of reimbursement for providing aid, she continued, is a major issue that needs to be addressed. She cited the time consuming bidding processes for contractors as another hindrance to rebuilding areas damaged in disasters. She also stressed the need for new methods for levee management within the state.

The hearing ended with public testimony from Derrick Standley. As a regional manager for a waste management company that operated two debris sites in Joplin, Mr. Standley pointed out that the implementation of his company's response was greatly enhanced by the aid of state agencies, particularly the Department of Natural Resources, and complimented the agency for its tireless and efficient work.

## **2. Subcommittee on Fiscal Response**

The Senate Subcommittee on Fiscal Response held a hearing on Tuesday August 16, 2011 in Senate Committee Room 2 in the State Capitol. A representative of each state department, including the Missouri Housing Development Commission, and several elected officials testified as to how they responded to all of the disasters and to actual and anticipated costs associated with all disasters. In addition, Missouri Southern State University, City of Joplin, Joplin School District, and Scott Olson from the Boone County Fire Protection District/Missouri Task Force One testified.

Mr. Paul Barr, Chief Financial Officer for the Joplin Public School District, testified to estimated costs not covered by the school district's insurance and to the nature of the \$1.5 million payment

committed by the Governor to the school district for anticipated lost tax revenue. The Committee was interested to learn how that amount was calculated.

Ms. Leslie Jones, Finance Director for the City of Joplin, testified to the estimated major costs (total and city's share) for mutual aid, debris cleanup outside the emergency debris removal area, demolition of structures and foundations, infrastructure repairs and emergency operations command costs, and shared estimated lost revenue to the City as a result of the tornado.

Each state agency contributed significant and timely assistance for the needs occurring from each natural disaster. There were many instances of how helpful state agencies have been to the general public and local governments.

Each state agency, Missouri Development Housing Authority, Missouri Southern State University, State Treasurer, State Attorney General, Secretary of State, and State Auditor all testified that while they have incurred some expenses while responding to the disasters, none anticipated needing emergency supplemental funding before the next legislative session (begins January 2012). Specific examples of costs incurred can be obtained by contacting Senate Appropriations Staff.

### **3. Subcommittee on Insurance Response**

The Senate Subcommittee on Insurance Response, part of the Interim Committee on Natural Disaster Recovery, held a hearing on July 13, 2011, in St. Charles, Missouri. Subcommittee members in attendance or attending via teleconference included: Senators Parson , Rupp, Wasson, Callahan and Justus. The subcommittee was tasked to hear public testimony and consult with different state and local agencies during its investigations regarding specific areas of natural disaster recovery.

Senator Parson explained that the purpose of the subcommittee was to assist Missourians with the recent natural disasters by specifically helping them with navigating the insurance process. Senator Parsons noted that additional meetings would be held across the state and that they hope to meet three or four more times. Senator Rupp noted that they had experienced a tornado and flooding in the St. Charles area. He also noted that the insurance company response had been excellent and home repairs were being made. Flooding was discussed, but it was acknowledged that the issues are primarily federal in nature. Senator Rupp mentioned how flood plain mapping has been changed and how banks are requiring more individuals to have flood insurance in order to obtain mortgages. Melissa Palmer, the legislative liaison from the Department of Insurance, explained that the department was trying to reach out to the public to explain that while the National Flood Insurance Program is still offering flood insurance that it will not be effective in Missouri because the insurance policy must be in place at least 30 days prior to the "flood event". Thus, flood insurance must have been purchased 30 days prior to an event in order for policyholders to be covered. Many Missourians will not know that the actual "flood event" occurred when waters were released in North Dakota and not when the flood waters enveloped a specific Missouri town. Some Missourians may be surprised that their flood insurance policy will not cover their property because it was not purchased 30 days before the "flood event". Senator Rupp asked the Department of Insurance to provide information regarding flood insurance.

Melissa Palmer noted that in St. Louis and Joplin the insurance companies had their mobile response units on the ground in a very short period of time. As far as complaints, they noted that there were 369 insurance complaints for the St. Louis area and 764 for Joplin (as of July 1, 2011). Senator

Parson asked her to generalize the complaints. It appears that several of the complaints centered around how insurance companies measured the value of a home loss. There appeared to be some confusion among consumers of whether their homeowner policies provided actual cash value coverage, in which depreciation is calculated, or replacement cost coverage, in which depreciation is not calculated. Many homeowner insurance policies providing first-party insurance coverage to a homeowner provide that the amount paid to the homeowner will be the "actual cash value" of the loss. Other homeowner policies provide for "replacement cost." Measuring the value of a loss under the actual cash value policy is more difficult as it requires a determination of the current value of a piece of property in light of its original value and subsequent wear-and-tear.

Melissa Palmer also mentioned that Missouri was a valued policy state.<sup>1</sup> Some states have enacted valued policy laws under which the face value of the policy must be paid if a total loss is caused by a specified peril such as wind, fire, or lightning. Eighteen states, in addition to Missouri, have adopted valued policy statutes. In general, a valued policy statute is a statute requiring insurance companies to pay to the insured in case of total loss the full amount of insurance regardless of the actual value of the property at the time of the loss. When the value of the home is stipulated within the homeowner policy and a total loss occurs, this stipulation is conclusive; assuming the absence of fraud, collusion or misrepresentation, the insurance company is bound to pay proceeds to the insured equal to the stipulated amount.<sup>2</sup> Thus, in the event of a total loss, the agreed amount payable to the policyholder is the face value of the insurance policy. In the case of a partial loss, a valued policy statute will often specify that the proceeds be calculated as a percentage of the valuation based on the percentage of the property destroyed. Missouri's valued policy statute differs from other state statutes in several respects. First, the Missouri valued policy statute only applies to loss or damage by fire. Second, in the event of a total loss, the insurer must pay the total amount of the policy less the depreciation of the property between the time of the issuance of the policy and the loss.<sup>3</sup> Melissa Palmer stated that the valued policy statute in Kansas applies to other perils other than fire, such as tornadoes.<sup>4</sup> She further noted that

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<sup>1</sup> See §379.140, RSMo. Valued policies differ from open policies. An "open" policy is one that does not set the value of the property in the policy, but leaves the measure of loss to be determined after the loss has occurred. The face amount of the policy operates to set the maximum amount the insurer will pay under the policy but does not purport to establish the amount of payment owed in connection with a particular loss. Valued policies conclusively fix the amount the insured will recover in case of a total loss at the face value of the policy. Under replacement insurance the insurers' liability is governed by the cost to rebuild with new materials at the time of the loss. Replacement insurance and valued policies may violate the principal of indemnity by allowing a recovery in excess of actual loss.

<sup>2</sup> A valued policy is one where the recovery is fixed by agreement of the parties in advance of the loss. A valued policy law conclusively establishes the value of the insured property in the event of a total loss. 44 Am. Jur. 2d Insurance §1500 (2003). Such valuation is in the nature of a contract for liquidated damages and, in the absence of fraud, is normally conclusive as to the loss covered. George J. Couch et al., Couch on Insurance S 54:104 (2d rev. ed. 1983). A valued policy may be void, however, as a "wagering contract" if the interest insured is grossly disproportionate to the stated value. *Casablanca Concerts, Inc. v. American Nat'l Gen. Agencies, Inc.*, 407 N.W.2d 440, 443 (Minn. Ct. App. 1987). The statutory language of valued policy laws range from covering only fire to covering any covered peril.

<sup>3</sup> Depending on the particular state statute, the insurer may be allowed to offset depreciation of the property after the date of the policy's issuance. Missouri's valued policy law allows this while other states do not permit depreciation. Florida's valued policy law does not permit reduction of amount of insurance specified in fire policy by reason of depreciation in value caused by use, decay, accident, casualties, or otherwise, where such change arises from supervening cause occurring subsequent to issuance of policy, and allowance of such reduction does not amount to change of value fixed by parties when policy was issued. *American Ins. Co. of Newark, N. J., v. Robinson*, 120 Fla. 674, 163 So. 17 (1935).

<sup>4</sup> Kansas's valued policy statute, K.S.A. §40- 905 provides coverage for real property

the Department of Insurance was exploring the possibilities of modifying Missouri's valued policy law. Senator Rupp asked whether expanding Missouri's valued policy law to include other perils would increase rates and generally inquired how Kansas's rates were compared to Missouri's.<sup>5</sup>

It was also noted that legislation just passed this session to ensure that insurance company response teams are not hindered in their efforts. A provision in SB 132 (2011) prohibits political subdivisions from imposing restrictions or enforcing local licensing or registration ordinances with respect to insurer's claims handling operations at the time of any emergency, catastrophe, or other life or property threatening event which jeopardizes the ability of an insurer to address the financial needs of its insureds or the public.

Ms. Palmer also noted that approximately 3,000 to 4,000 households in Joplin were destroyed that were not insured. Several of the households were rental units. Senator Justus stated that several individuals in the Joplin area who had purchased their homes through a contract for deed (installment land sale contract) had found themselves without insurance coverage.<sup>6</sup> Senator Justus stated that the insurance companies were submitting checks to the owners of record and not the contract for deed purchasers.

Senator Wasson and Senator Callahan asked whether there is some type of insurance available to TIF districts to retire bonds or other obligations issued by a city. Senator Wasson noted that a couple of TIF districts in Joplin were completely obliterated by the tornadoes. Although the commercial property interests within the TIF district will be covered by property insurance, Senator Wasson did not know whether the TIF districts had any type of coverage to protect their own interests.

The committee also expressed concern about whether there would be any property and casualty insolvencies due to the recent natural disasters. The committee asked Melissa Palmer whether any property and casualty insurers were expected to fail because of the natural disasters and if so what impact would the insolvencies have on the Missouri Property and Casualty Insurance Guaranty Association. The committee requested that the department provide a projection of the impact the natural disasters will have on guaranty association assessments and any corresponding tax offsets. She stated that the department was not aware of any potential insolvencies due to the recent natural disasters but she would have the department check on it. Melissa Palmer also noted that two insurance companies had most of the claims in the Joplin area. Members of the committee asked Palmer if the department

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which is wholly destroyed by fire, tornado, windstorm or lightning. The value in the policy is considered the true value of the property. The statute does not apply to either new or existing policies where there is a 25% increase in coverage within 60 days before the loss.

<sup>5</sup> As to covered perils, Florida, Montana, Nebraska, North Dakota, Wisconsin, and West Virginia have valued policy statutes applicable to a broad range of covered perils. Most states, however, limit their valued policy laws to losses caused by fire. Comment, Scott Edwards, *The Wind and the Waves: The Evolution of Florida Property Insurance Law in Response to Multiple-Causation Hurricane Damage*, 34 FLA. ST. U.L.REV. 541, 543-46 (2007).

<sup>6</sup> The contract for deed is a form of owner financing. The seller remains the record owner and the buyer under such contract does not receive legal title to the property until the installment payments are completed. *Long v. Smith*, 776 S.W.2d 409 (Mo. App. 1989).

expected property and casualty insurance rates to rise or whether companies will not renew or offer insurance coverage. Ms. Palmer stated that insurance companies were precluded from denying or refusing to renew coverage during the emergency period set forth in the Governor's executive order. When asked about rates after the disaster, Ms. Palmer said she expected rates would increase across the state.

The committee requested that the Department of Insurance provide responses to the questions raised during the hearing. Melissa Palmer stated that the department will review the issues and complaints coming out of the recent natural disasters so the department can identify any weak areas in statute that the committee and legislature can address.

The committee held its next hearing at Sedalia, Missouri on July 27, 2011. The committee heard testimony from representatives of the Missouri Department of Insurance, Financial Institutions and Professional Registration, Sedalia-Pettis County Emergency Management Agency Director Dave Clippert and property owners Dale and Sharon Todd.

Officials from the Department of Insurance, Melissa Palmer and Angela Nelson, testified before the committee. Angela Nelson testified that the top complaints the department was receiving from the recent natural disasters centered on claim delays and settlement offers. Many of the claim delays in the Joplin area were from individuals who lived outside the immediate Joplin area. Some homeowners living outside the immediate Joplin area did not receive immediate claim assistance because the insurance industry concentrated their immediate efforts in Joplin because that is where the heavier damage occurred. Angela Nelson also stated that the department was receiving some mold complaints from homeowner. Whether a homeowner is covered for mold damage is determined on a policy by policy basis.

Angela Nelson stated that most of the complaints relating to settlement offers stemmed from the fact that many homeowners did not understand that many policies require the value of a home to be discounted for depreciation. Some complaints related to disparate treatment by the insurance companies. Some homeowners were told by their neighbors that they received the full settlement amount of their policy. They did not understand why they did not receive the full settlement amount as well. In other instances, many homeowners were underinsured in that they were not carrying replacement value coverage. Instead, they were covered by actual cash value policies. Under actual cash value policies, insurers will provide the current cash value of the property, usually arrived at by taking the replacement cost and deducting for depreciation brought about by physical wear and tear, age, and other factors. Other settlement offer disputes were related to whether the losses were total or partial in nature. The determination of whether a loss is partial or total is largely a matter of case law interpretation.

Angela Nelson also stated that some homeowners affected by the recent natural disasters are being denied homeowner insurance coverage when they attempt to purchase a replacement home. Some insurers may be denying coverage because the underwriting process reveals that the homeowner has a previous storm loss. Under current Missouri law, nothing prevents an insurer from denying coverage or not renewing a homeowner insurance policy because of a previous storm loss.

Angela Nelson stated that the recently passed "storm chasers" bill should help Missouri consumers. The "storm chasers" bill - Senate Bill 101 - bars contractors who fix roofs or do other exterior repairs from offering to pay a homeowner's insurance deductible as an incentive to be hired. Contractors are also be barred from representing or negotiating on a homeowner's behalf for insurance claims.

Sedalia-Pettis County Emergency Management Agency Director Dave Clippert testified that 44 mobile homes and 14 houses were destroyed by Sedalia tornado. He also noted that 19 businesses had sustained major damage. Clippert reviewed damage assessments with the committee and said he wasn't aware of any specific complaints related to insurance claims in Pettis County and noted the disparity between insured and uninsured homeowners and renters in the affected areas. He stated that a lot of individuals in trailer parks were either underinsured or uninsured. Mr. Clippert stated that the trailer owners who did not have insurance coverage abandoned their trailers and some mobile home lot owners are now stuck with the cleanup cost. Mr. Clippert stated that the only federal assistance available to the mobile home lot owners were low interest loans.

Dale and Sharon Todd shared their concerns after their insurance company declared a commercial building they own a total loss. The Todds said their policy insured the building for \$550,000, but the company had offered them \$102,000 for the actual cash value of the structure. Dale Todd said a representative from their insurance company told the couple that if the building had been destroyed by fire they would have received the total insured amount, but because the damage was caused by high winds, they would receive the total amount only after they signed a contract to rebuild. Angela Nelson stated that such split payouts are a common industry practice and suggested that the Todds could still get further disbursements if and when they contract to have the commercial building replaced. Angela Nelson encouraged them to speak with her office so that the department could reviews their insurance policy to make sure the insurance company was fulfilling their contractual and legal obligations.

#### **4. Full Interim Committee on Natural Disaster Recovery.**

On August 23, 2011, the Senate Interim Committee on Natural Disaster Recovery met at the State Capitol for the purpose of hearing reports from each of the three subcommittees as well as additional testimony from various representatives of state agencies, a statewide elected official, members of the House of Representatives, and representatives from the City of Joplin.

The Committee first heard from Mr. Mark Rohr from the city of Joplin. Mr. Rohr was asked to reflect on lessons learned from the tornado and the subsequent clean-up and rebuilding efforts. He stressed that the effort must be organized and communications between the various emergency response agencies were vital. Because of damage to phone towers, other methods of communication must be in place and operational during a disaster. He also found that having a clear chain of command was important. Under questioning from Senators Lembke and Lager, Mr. Rohr stressed the importance of mutual aid agreements and making sure that agreements are clear on what is expected so that a coordinated effort is sustained.

Representative Terry Swinger next testified regarding the damage done to land in southeast Missouri as a result of the Army Corps of Engineers decision to blow up portions of the Birds Point Levee. According to Rep. Swinger, an approximately two mile hole was created in the levee. Prior to the Corps' actions, the levee was at sixty feet. There is concern that the levee will only be built back to fifty-one feet. As the water has receded, there is significant sand build-up on the land, and valuable topsoil has been removed. Additionally, there has been damage to a number of state roads. Finally, concerns were raised about ensuring that ports along the Mississippi River are maintained and operational. Dredging in the river may need to be addressed in order to ensure the viability of the ports. Questions were raised about the financial responsibility of the Army Corps of Engineers for the damage to the land. Senator Schaefer pointed out that land owners grant easements to the Corps for the potential of the land, but he stressed that there are definitely management issues regarding the river that need to be addressed by the Corps.

Lieutenant Governor Peter Kinder, in his role as Senior Advocate, testified regarding the impact of these natural disasters on the seniors in this state. Approximately one-third of those people who died as result of the recent natural disasters were older than sixty-five years of age. A number of nursing homes were damaged in Joplin, forcing residents to vacate the homes. Other nursing homes have stepped up to take responsibility for the displaced residents. There were some issues for employees of the damaged nursing homes regarding their ability to be re-employed by other nursing homes as well as some difficulties with Medicaid transfers. The Seniors have also lost support services - the Joplin Senior Center has just recently reopened after the tornado.

The chairman of each of the three subcommittees then presented their reports, including any recommendations from the respective subcommittees, which are included in part III of this report. Of note, Senator Kehoe, chairman of the Subcommittee on Emergency Response, discussed the need for statewide access to certain individual medical and financial records by the highway patrol and other incident response teams. This led to testimony from Randy Cole, State Fire Marshal, who discussed mutual aid coordinators who operate in each of the nine regions of the state highway patrol. These coordinators maintain lists of certain information needed in a natural disaster or other emergency, including fire and emergency equipment. Such statewide list is maintained and updated by the State Fire Marshal at least annually. Questions were raised regarding software problems, such that some fire departments are unable access the regional lists. It was urged by members of the Committee that better coordination be established between the State Fire Marshal and the various fire and emergency agencies throughout the state to improve access to emergency resources.

The Committee then heard from Gwen Delano, from Senator Richard's district office, regarding her insights into the impact of the tornado and issues that are facing the community, especially concerns that have been raised with the Senator's office. Representative Bill White then testified regarding the need for property tax abatement for homes and businesses damaged or destroyed by the tornado. He discussed a potential bill for special session that would abate property taxes for damaged or destroyed property.

Tina Beer, Missouri Housing Development Commission liaison, testified regarding actions of MHDC in response to these natural disasters. She discussed the various programs available to homeowners, including a number of low-interest loan programs and the dollar amounts for such

programs. Finally, Angela Nelson and Melissa Palmer from the Department of Insurance, Financial Institutions and Professional Registration, testified that there have been approximately eighteen to twenty thousand property claims and that almost \$750 million has been paid out so far. The Department received 823 complaints/inquires regarding Joplin tornado and 373 complaints/inquires regarding St. Louis tornado and the Department has recovered approximately \$150,000.

### **III. RECOMMENDATIONS**

After review of all information received by the Committee, including the three Subcommittees, the Committee determined that the following recommendations should be made to the Missouri Senate.

1. Testimony and discussions amongst members of the Subcommittee on Emergency Response did not reveal any legislative needs. However, based upon testimony to the Subcommittee, it is recommended that state and local emergency response agencies and emergency responders continue efforts to:

A. Increase the number and capabilities of Incident Response Teams across the state.

There are currently three teams across the state and their worth has been repeatedly proven in recent disasters. In particular, the metro areas of Kansas City and St. Louis need to have well-trained teams in reasonable proximity;

B. Establish a state-wide interoperability network. The state needs to ensure that adequate funding is devoted to this effort and that cuts to funding are done only with the realization of the likely negative impact to emergency response;

C. Expand the Missouri faith-based initiative established by Cole County Sheriff Greg White;

D. Continue to focus on regionalization, mirroring the Missouri Highway Patrol troop boundaries, to maximize limited training and equipment funding and to aid in disaster response.

2. Based upon testimony and information received by the Subcommittee on Fiscal Response, the Committee makes the following recommendations:

A. In the spirit of openness and transparency, the Committee urges the Governor to inform the General Assembly of all decisions obligating the state to fund certain expenses, and in choosing the percentage splits of costs between the state and local governments. While the Governor is granted extraordinary powers in the case of an emergency, the Committee urges the Governor to seek legislative input when making major decisions;

B. Based on testimony provided before the Subcommittee, the Committee sees no need for an emergency supplemental funding appropriations bill at this time. If invoices do materialize before July 1, 2012, a supplemental funding bill could be approved early in the 2012 legislative session. In the interest of transparency, the Committee urges the Governor to utilize emergency supplemental appropriations bills or the FY 2013 regular operating appropriations bills to fund the state's share of disaster funding instead of utilizing the "E" estimated appropriations in the current FY 2012 appropriations bills;

C. With the current general revenue withholdings of \$55.9 million in the FY 2012 budget, and the additional revenue realized with stronger than expected growth in general revenue (estimated at \$159 million); it appears that more than sufficient funding exists to pay for any urgent disaster costs. The Committee urges the Governor to release the current FY 2012 withholdings on both Elementary and Secondary Education and Higher Education funding;

D. While the state's share of the costs could rise significantly, there is no urgent need to obligate funds at this time. Based on current estimates available, the Rainy Day Fund does not appear to be needed, however, it should remain an option as to financing the anticipated costs.

3. The Committee urges the General Assembly to express its will to the federal government that, based on the deliberate breach of the Bird's Point Levee by the Army Corps of Engineers, the federal government require the Corps to rebuild the levee at its previous level of sixty-two and one-half feet to ensure that adjacent land is protected from subsequent flooding.

4. The Committee urges the General Assembly to maintain oversight on any bills submitted by the federal government for the deliberate breach of the Bird's Point Levee, and to ask Attorney General Koster to investigate the possibility of legal action against the federal government, specifically the Army Corps of Engineers, regarding its action in the breach of the levee.

5. The Committee urges the General Assembly to enact laws relating to disaster relief to the following:

A. Under current law, the Neighborhood Preservation Tax Credit program provides incentives for the rehabilitation or construction of owner-occupied homes in certain areas of the state. The Neighborhood Preservation Tax Credit program should be modified to allow the authorization of tax credits under the program only for projects located within census block groups in which more than fifty percent of the residential structures were destroyed or sustained major damage as a result of a federally declared disaster.

B. The state supplemental tax increment finance laws should be modified to provide funding for redevelopment efforts in disaster areas. Such funding will be derived from the incremental increase in local economic activity taxes and payments in lieu of taxes as well as the incremental increase in the general revenue portion of state sales tax revenues and state income taxes withheld on behalf of employees.

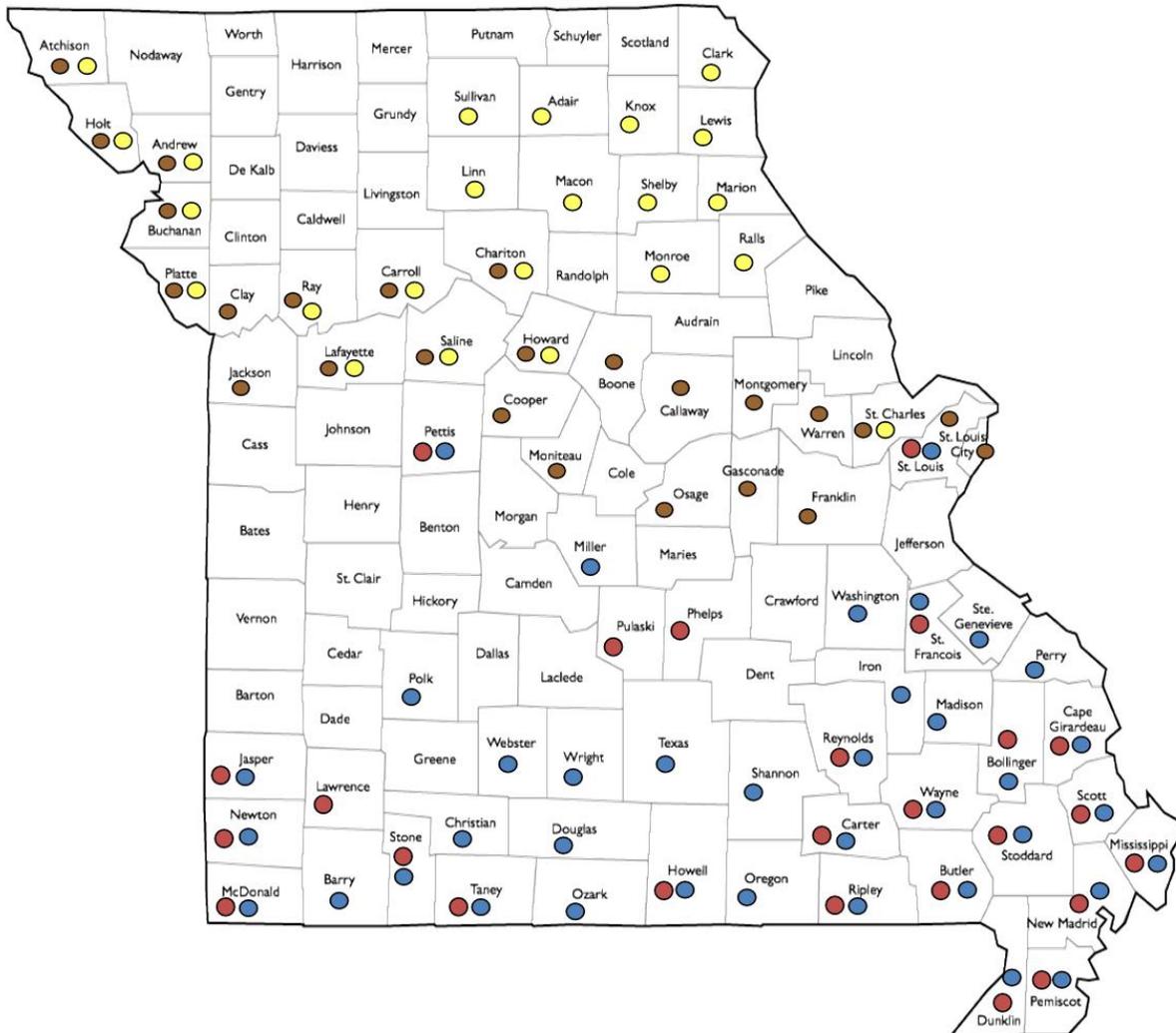
C. Additional job creation benefits should be established for companies that create ten or more new jobs within a disaster area, provided the average wage of such new jobs equals or exceeds the county average wage in the county in which the jobs are created and the company offers health insurance to all full-time employees and pays at least fifty percent of such premiums. Such companies may be allowed to retain from withholding taxes an amount equal to seven percent of new payroll for a period of five years from the date the requisite number of new jobs are created. To the extent that withholding tax retention is insufficient to provide the allowable benefit, the department of economic development will issue a refundable tax credit equal to the difference.

6. Finally, the Committee believes that disaster recovery is an on-going subject that will go beyond the life of this Committee. It is urged that a joint committee of the General Assembly be responsible for monitoring natural disaster response and recovery on an on-going basis.

# APPENDICES

# Map of Missouri Counties with Disaster Declarations

As of August 12, 2011



- Major Disaster Declaration (individual assistance)—May 9, 2011
- Federal Public Assistance
- Federal Emergency Declaration—June 30, 2011
- Requested Major Disaster Declaration—July 25, 2011

- August 12, 2011—The President approved federal disaster aid for individual assistance for the following six (6) counties: *Andrew, Atchison, Buchanan, Holt, Lafayette, Platte*

## **Federal Disaster Declarations (from FEMA web page)**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (the Stafford Act) §401 states in part that: "All requests for a declaration by the President that a major disaster exists shall be made by the governor of the affected state." A state also includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The Marshall Islands and the Federated States of Micronesia are also eligible to request a declaration and receive assistance.

### **Preliminary Disaster Assessment**

The governor's request is made through the applicable FEMA Regional Office. State and federal officials conduct a joint federal, state, and local Preliminary Damage Assessment (PDA) to determine the extent of the disaster and its impact on individuals and public facilities. This information is included in the governor's request to show that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the local governments and that supplemental federal assistance is necessary. Normally, the PDA is completed prior to the submission of the governor's request. However, when an obviously severe or catastrophic event occurs, the governor's request may be submitted prior to the PDA.

### **State Resources Overwhelmed**

As part of the request, the Governor must take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of state and local resources that have been or will be committed to alleviating the results of the disaster, provide an estimate of the amount and severity of damage and the impact on the private and public sectors, and provide an estimate of the type and amount of assistance needed under the Stafford Act. In addition, the governor must certify that, for the current disaster, state and local government obligations and expenditures (of which state commitments must be a significant proportion) will comply with all applicable cost-sharing requirements.

### **Declaration Types**

There are two types of disaster declarations provided for in the Stafford Act: Emergency Declarations and Major Disaster Declarations. Both declaration types authorize the President to provide supplemental federal disaster assistance. However, the event related to the disaster declaration and type and amount of assistance differ.

- **Emergency Declarations:** An Emergency Declaration can be declared for any occasion or instance when the President determines federal assistance is needed. Emergency Declarations supplement State and local efforts in providing emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. The total amount of assistance provided for a single emergency may not exceed \$5million. If this amount is exceeded, the President shall report to Congress.
- **Major Declaration:** The President can declare a Major Disaster Declaration for any natural event, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, fire, flood, or explosion, that the President believes has caused damage of such severity that it is beyond the combined capabilities of state and local governments to respond. A major disaster declaration provides a wide range of federal assistance programs for individuals and public infrastructure, including funds for both emergency and permanent work.

### **Assistance Available for Major Declarations**

Not all programs, however, are activated for every disaster. The determination of which programs are authorized is based the types of assistance specified in the governor's request and on the needs identified during joint PDA and any subsequent PDAs.

- **Individual Assistance**

Assistance to individuals and households.

- **Public Assistance**

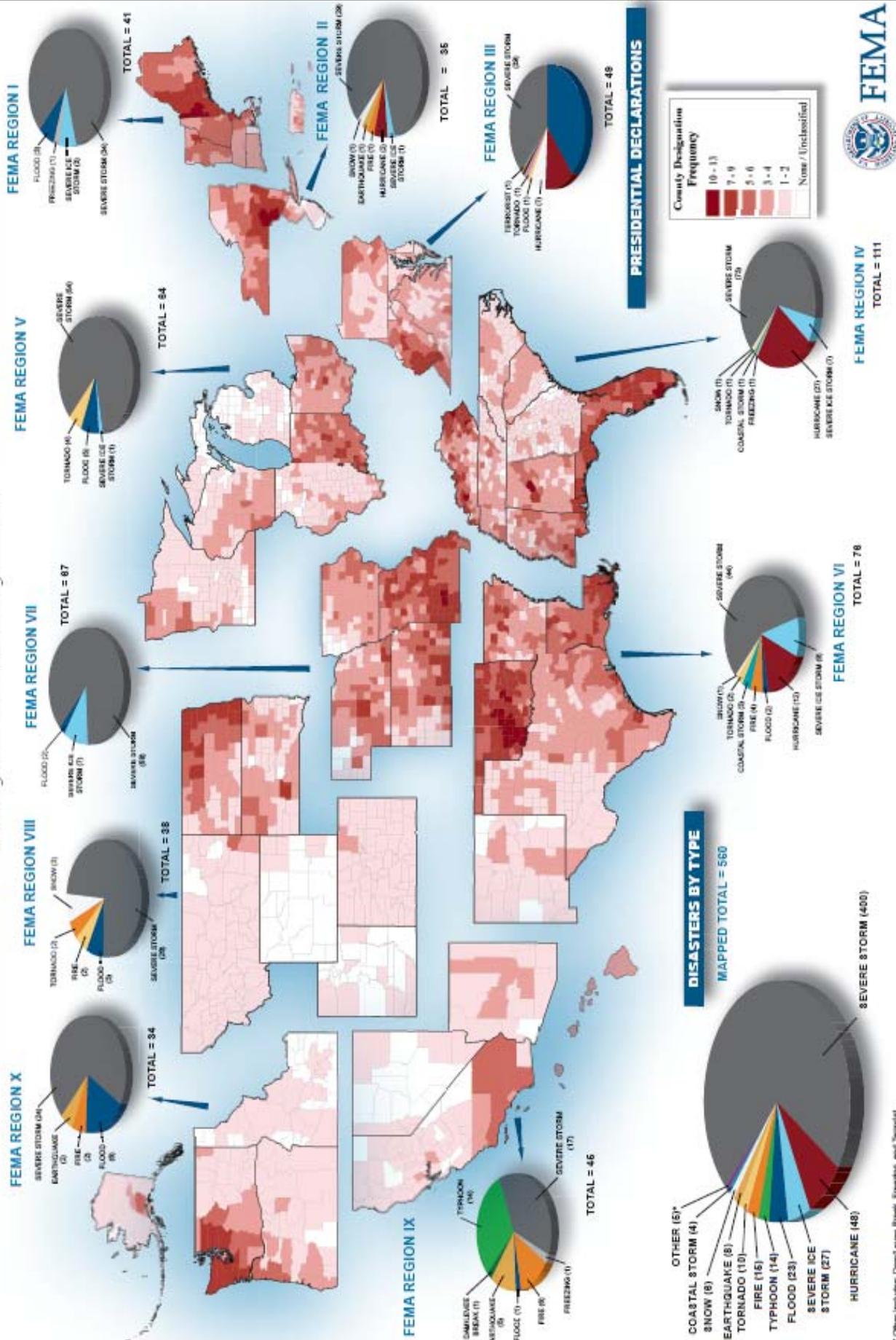
Assistance to state and local governments and certain private nonprofit organizations for emergency work and the repair or replacement of disaster-damaged facilities.

- **Hazard Mitigation Assistance**

Assistance to state and local governments and certain private nonprofit organizations for actions taken to prevent or reduce long term risk to life and property from natural hazards.

# PRESIDENTIAL DISASTER DECLARATIONS

January 10, 2000 to January 1, 2010



\* Other includes: Dam/Low Water Break, Freezing, and Tornado

## **Public (Infrastructure) Assistance Programs Available as Part of a Presidential Disaster Declaration**

**The following programs are administered by the Federal Emergency Management Agency (FEMA) and are available to eligible public jurisdictions in counties that are declared for Public Assistance by the President.**

**Public Assistance:** The FEMA Public Assistance program provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain Private Non-Profit (PNP) organizations.

### **Eligible Applicants:**

#### **State Government Agencies**

**Local Governments and Special Districts:** Any county, city, village, town, district, or other political subdivision of any State. Other State and local political subdivisions may be eligible if they are formed in accordance with State law as a separate entity and have taxing authority. These include, but are not limited to, school districts, irrigation districts, fire districts, and utility districts.

**Private Non-Profit Organizations:** Private Nonprofit organizations or institutions that own or operate facilities that are **open to the general public** and that **provide certain services otherwise performed by a government agency**. These services may include: Education, Utility, Emergency, Medical, Custodial Care, and/or Other Essential Governmental Services.

### **Eligible Facilities Must:**

Be the responsibility of an eligible applicant.

Be located in a designated disaster area.

Not be under the specific authority of another Federal agency.

Be in active use at the time of the disaster.

**Examples of eligible public facilities include:** Roads (non-Federal aid), Sewage Treatment Plants, Airports, Irrigation Channels, Schools, Buildings, Bridges and Culverts, Utilities

**Eligible Work:** To be eligible for funding, disaster recovery work performed on an eligible facility must:

Be required as the result of a major disaster event,

Be located within a designated disaster area, and

Be the legal responsibility of an eligible applicant.

**Other federal agency (OFA) programs.** FEMA will not provide assistance when another Federal agency has specific authority to restore or repair facilities damaged by a major disaster.

### **Categories of Work:**

**Category A: Debris Removal.** Clearance of trees and woody debris; certain building wreckage; damaged/ destroyed building contents; sand, mud, silt, and gravel; vehicles; and other disaster-related material deposited on public and, in very limited cases, private property.

**Category B: Emergency Protective Measures.** Measures taken before, during, and after a disaster to eliminate/reduce an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures.

**Category C: Roads and Bridges.** Repair of roads, bridges, and associated features, such as shoulders, ditches, culverts, lighting, and signs.

**Category D: Water Control Facilities.** Repair of drainage channels, pumping facilities, and some irrigation facilities. Repair of levees, dams, and flood control channels fall under Category D, but the eligibility of these facilities is restricted.

**Category F: Utilities.** Repair of water treatment and delivery systems; power generation facilities and distribution facilities; sewage collection and treatment facilities; and communications.

**Category G: Parks, Recreational Facilities, and Other Facilities.** Repair and restoration of parks, playgrounds, pools, cemeteries, mass transit facilities, and beaches. This category also is used for any work or facility that cannot be characterized adequately by Categories A-F.

**Eligible Costs:** Generally, costs that can be directly tied to the performance of eligible work are eligible. Such costs must be:

Reasonable and necessary to accomplish the work; compliant with federal, state, and local requirements for procurement; and reduced by all applicable credits, such as insurance proceeds and salvage values.

In performing work, applicants must adhere to all Federal, State, and local procurement requirements.

### **Public Assistance Application Process:**

If the Public Assistance program is granted by the President, the Missouri State Emergency Management Agency (SEMA) will conduct Public Assistance Applicant Briefings in the declared counties. Program criteria/requirements will be briefed at that time.

Application forms will be provided and collected during that briefing.

FEMA will then schedule one-on-one meetings with each applicant to develop project worksheets that will identify eligible scopes of work and cost estimates. Each applicant should be prepared to discuss, in detail, damages caused by the declared event during these meetings.

Projects will be developed based on those discussions and site visits, reviewed for eligibility, and processed for funding by FEMA.

The review, funding, and documentation process are discussed in detail during the Public Assistance Applicant Briefings.

## **Individual Assistance Programs Available as Part of a Presidential Disaster Declaration**

**The following programs are administered by the Federal Emergency Management Agency (FEMA) and are available to eligible disaster victims in counties that are declared for Individual Assistance by the President.**

**(800) 621-3362 / TTY (800) 462-7585**

### **Housing Needs:**

- **Temporary Housing** (a place to live for a limited period of time): Money is available to rent a different place to live, or a government provided housing unit when rental properties are not available.
- **Repair:** Money is available to homeowners to repair damage from the disaster to their primary residence that is not covered by insurance. The goal is to make the damaged home safe, sanitary, and functional.
- **Replacement:** Money is available to homeowners to replace their home destroyed in the disaster that is not covered by insurance. The goal is to help the homeowner with the cost of replacing their destroyed home.

### **Other than Housing Needs:**

Money is available for necessary expenses and serious needs caused by the disaster. This includes:

- Disaster-related medical and dental costs.
- Disaster-related funeral and burial cost.
- Clothing; household items (room furnishings, appliances); tools (specialized or protective clothing and equipment) required for your job; necessary educational materials (computers, school books, supplies).
- Fuels for primary heat source (heating oil, gas).
- Clean-up items (wet/dry vacuum, dehumidifier).
- Disaster damaged vehicle (must be registered, licensed, and insured to operate in Missouri).
- Moving and storage expenses related to the disaster (moving and storing property to avoid additional disaster damage while disaster-related repairs are being made to the home).
- Other necessary expenses or serious needs as determined by FEMA.

### **Crisis Counseling Assistance:**

This program provides assistance to individuals and communities in recovering from the effects of natural and human-caused disasters through the provision of community-based outreach and short-term interventions that involve the counseling goals of assisting disaster survivors in understanding their current situation and reactions, mitigating stress, assisting survivors in reviewing their disaster recovery options, providing emotional support, etc. This program is administered through the Missouri Department of Mental Health.

### **Disaster Unemployment Assistance:**

The Disaster Unemployment Assistance (DUA) program provides unemployment benefits and re-employment services to individuals who have become unemployed because of major disasters. These benefits are made available to individuals not covered by other unemployment compensation programs, such as self-employed, farmers, migrant and seasonal workers, and those who have insufficient quarters to qualify for other unemployment compensation. All unemployed individuals must register with the State's employment services office before they can receive DUA benefits.

### **Legal Services:**

When the President declares a disaster, FEMA, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal assistance to disaster victims. Legal advice is limited to cases that will not produce a fee (i.e., these attorneys work without payment). Cases that may generate a fee are turned over to the local lawyer referral service. The assistance that participating lawyers provide typically includes:

- Assistance with insurance claims (life, medical, property, etc.)
- Counseling on landlord/tenant problems
- Assisting in consumer protection matters, remedies, and procedures
- Replacement of wills and other important legal documents destroyed in a major disaster

Disaster legal services are provided to low-income individuals who, prior to or because of the disaster, are unable to secure legal services adequate to meet their needs as a consequence of a major disaster.

### **Special Tax Considerations:**

Taxpayers who have sustained a casualty loss from a declared disaster may deduct that loss on the federal income tax return for the year in which the casualty actually occurred, or elect to deduct the loss on the tax return for the preceding tax year. In order to deduct a casualty loss, the amount of the loss must exceed 10 percent of the adjusted gross income for the tax year by at least \$100. If the loss was sustained from a federally declared disaster, the taxpayer may choose which of those two tax years provides the better tax advantage.

### **Individual Assistance Application Process**

If the Individual Assistance program is granted by the President, those **disaster victims in declared counties** will be eligible to apply for this FEMA program.

FEMA will establish a toll-free number for disaster victims to apply for assistance. **This is your first (and most important) step in applying for FEMA assistance. Call (800) 621-3362 / TTY (800) 462-7585**

Operators at that number will take your name, address, and other contact information. They will then make arrangements for a FEMA inspector to meet you and view your disaster-related damages.

Disaster Recovery Centers (DRCs) may also be established. These are mobile offices where applicants may go for information about FEMA or other disaster assistance programs, or for questions related to your case.