

# Improving Legislative Oversight of CalFire's Emergency Fire Protection Budget

GABRIEL PETEK | LEGISLATIVE ANALYST | MAY 2023

## SUMMARY

The California Department of Forestry and Fire Protection (CalFire) is responsible for wildfire protection in State Responsibility Areas, which are primarily privately owned wildlands that encompass about one-third of the state's land area. In this brief, we assess the design of CalFire's budget for emergency fire protection, known as the Emergency Fund (E-Fund), and provide associated recommendations.

**Broad Flexibility Provided to Administration Under Current Process Merited in Some Cases, but Not Others.** We find that the current process provides the administration with broad flexibility to increase the amount budgeted for the E-Fund with limited opportunity for legislative review. A strong rationale for providing such extensive flexibility exists when fire protection activities are truly unexpected, urgent, and necessary to protect life and safety. However, in practice, the E-Fund supports both (1) these types of unanticipated, urgent activities and (2) various planned budget adjustments, such as funding seasonal staffing increases in advance of fire seasons that are anticipated to be more severe than usual. We find that these planned adjustments merit somewhat more legislative control given the discretionary choices they present.

**Recommend Modifying E-Fund to Enhance Legislative Oversight While Preserving Necessary Flexibility for Administration.** In this brief, we recommend specific changes to the design of the E-Fund to enhance legislative control and oversight over planned adjustments to funding for emergency fire protection. Specifically, we recommend limiting the use of the existing E-Fund to unplanned costs associated with responding to large wildfires. We also recommend creating a new fund that is separate from the E-Fund to support planned adjustments to the budget to address wildfire seasons that are anticipated to be more severe than is typical. We recommend a structure for this new fund that would provide the Legislature with somewhat greater control and oversight over these types of planned expenditures than is currently the case while retaining significant flexibility for the administration to make necessary adjustments to the amount of funding provided for emergency fire protection.

## BACKGROUND

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### Wildfire Protection Base Budget and E-Fund

**Most of CalFire's Budget Supports Wildfire Protection.** Most of CalFire's budget—roughly \$3.3 billion out of a total budget of \$3.8 billion in 2022-23—funds wildfire protection and suppression (also referred to as wildfire response or firefighting). The remaining funding supports other department responsibilities such as wildfire prevention and resource management activities aimed at improving forest health. As discussed in further detail below, CalFire's wildfire protection budget has two

components—a base amount and the E-Fund, which is an amount budgeted for emergency fire protection.

**Base Budget Intended to Pay for Day-to-Day Fire Protection Costs.** CalFire's base wildfire protection budget pays for the department's everyday firefighting operations, including salaries, facility maintenance, and other regularly scheduled costs. This amount is also intended to cover the costs associated with the "initial attack" on a wildfire—that is, the firefighting operations generally undertaken in the first 24 hours of an incident.

CalFire's base budget for wildfire protection has increased significantly over time and is estimated to be nearly \$2.9 billion in 2022-23.

***E-Fund Budget Intended to Pay for Large-Incident Firefighting Costs.*** In addition to its base budget for wildfire protection, CalFire has an amount that is budgeted for the E-Fund. This funding is intended to enable the department to pay for the costs of responding to large wildfires. As we discuss in more detail below, authorizing language in the annual budget act limits the use of the E-Fund for (1) situations where CalFire's initial attack forces are unable to cope with a wildland fire emergency, (2) additional fire detection capability and repositioning of resources during periods of high fire risk (such as red flag warnings), or (3) responding to requests for mutual aid by another government entity.

***Some E-Fund Expenditures are Eligible for Reimbursement From Other Sources.*** The E-Fund is primarily supported by the General Fund but can receive reimbursements from other sources of funding. These reimbursements are mostly from the federal government but can come from other agencies such as local governments in some cases. For example, when the federal government determines that a wildfire threatens to become destructive enough to receive a Major Disaster Declaration, it might approve a Fire Management Assistant Grant (FMAG), which reimburses the state for 75 percent of eligible wildfire protection costs. (We describe the process for requesting and securing an FMAG in our January 2019 post, [How California Governments Respond to Disasters](#).) The state can also qualify to be reimbursed by the federal government for E-Fund costs when CalFire conducts wildfire protection activities on federal lands. Notably, the federal reimbursement process can take a number of months or even years in some cases.

***Annual Budget Includes Amount for E-Fund, Based on Past Averages.*** The amount the state budgets for the E-Fund each year is based on an average of the fund's expenditures in recent prior years. For example, for 2022-23, the enacted budget included \$843 million for the E-Fund. This included \$468 million from the General Fund, calculated based on the average of the highest

five years out of the last ten years of net General Fund expenditures. The remaining \$375 million was the amount the state estimated it would receive in reimbursements, which represented the average of total reimbursements the state received in the prior five years. If the E-Fund appropriation is not fully utilized in a given year, the remainder reverts to the General Fund. In 2022-23, for instance, the wildfire season was not as severe as anticipated, so the Governor's 2023-24 budget proposal reflected a \$374 million reduction to the current-year amount (\$211 million less General Fund and \$163 million less in anticipated reimbursements).

***Department of Finance (DOF) Can Augment the E-Fund After Notifying Legislature.*** CalFire can make expenditures out of the E-Fund at any time for eligible wildfire protection costs. The Legislature provides the administration authority to increase the E-Fund if at some point during the fiscal year the department finds that the budgeted amount will not be sufficient to cover its costs. Specifically, each year the budget includes language allowing DOF to augment the E-Fund no sooner than ten days after it provides a quarterly report to the Legislature—via the Joint Legislative Budget Committee (JLBC) and the fiscal and policy committees of both houses—identifying the funding increase. These augmentations come from the General Fund. As we highlight in [Figure 1](#), the budget bill language governing the E-Fund has undergone several changes over time—including regarding eligible activities and required notifications—to balance the state's various goals, such as providing the department with greater flexibility to respond to evolving emergencies while seeking to maintain legislative oversight.

## **Current Use of the E-Fund**

***E-Fund Used for Two Main Categories of Expenditures.*** In recent years, the administration has used the E-Fund for various types of expenditures which fall into two main categories:

- ***Unplanned Large Fire Costs.*** These costs are associated with responding to large wildfires, generally those that have gone beyond the initial attack. These include staff overtime and equipment for extended attacks. Such costs also include covering

Figure 1

## History of the E-Fund Authority in the Budget Bill

**Prior to 2002-03.** Budget bill language allowed the E-Fund to be used for emergency fire protection broadly. The language required CalFire to provide quarterly reports on expenditures from the fund. However, it did not provide the Department of Finance (DOF) with the authority to increase the E-Fund administratively. Instead, if the costs of emergency fire protection exceeded the amount budgeted in the E-Fund, then the administration would seek a supplemental appropriation.

**2002-03 Through 2010-11.** In 2002-03, language was added to the budget bill to provide DOF with the authority to increase the E-Fund administratively no sooner than 30 days after CalFire provided a quarterly notification to the Legislature. During this period, the language of the budget bill continued to allow the E-Fund to be used for emergency fire protection broadly.

**2010-11 Through 2018-19.** In 2010-11, in response to concerns about the E-Fund being used for planned expenses—such as increasing staffing on engines during peak wildfire season and a contract for an air tanker—the Legislature modified the budget bill language to limit the E-Fund’s use to “situations where CalFire’s initial attack forces are unable to cope with a wildland fire emergency, for additional fire detection capability and prepositioning of resources during periods of high fire risk, or to respond to valid requests for mutual aid by another government authority.” During this period, the language of the budget bill continued to provide DOF with the authority to increase the E-Fund administratively no sooner than 30 days after CalFire provided a quarterly notification to the Legislature.

**2019-20 Through Present.** Starting in 2019-20, the language of the budget bill was changed from requiring that augmentations to the E-Fund occur no sooner than 30 days after CalFire provided a quarterly notification to the Legislature to no sooner than ten days.

E-Fund = Emergency Fund and CalFire = California Department of Forestry and Fire Protection.

or backfilling the regular shifts of those firefighters who respond to large wildfires (referred to as “move up and cover”), as well as the costs of strategically staging fire crews in key locations on a temporary basis when weather conditions suggest there is a high likelihood of a destructive wildfire (referred to as “prepositioning”).

- **Planned Fire Season Adjustments.** These costs are associated with increasing or extending staffing levels or other resources (such as contracts for exclusive use of helicopters or other types of air support) to reflect the expectation that the fire season will be more severe than could be accommodated by the base budget. Examples of these planned costs include (1) hiring seasonal CalFire staff or contracting for helicopter support earlier than would typically be the case (for example, in March rather than in June) and keeping seasonal staff or contracted resources on longer than would typically be the case (for example, until December rather than until October),

and (2) hiring additional seasonal CalFire firefighters, support staff, and National Guard crewmembers during the peak season.

**CalFire Uses E-Fund Mostly for Unplanned Large Fire Costs.** As shown in **Figure 2** on the next page, an average of 86 percent of the recent expenditures from the E-Fund have been related to unplanned costs associated with fighting large fires, whereas planned adjustments in anticipation of more severe fire seasons represented just 14 percent of recent average expenditures. However, the relative share of expenditures for planned costs varied from year to year, from a low of less than 5 percent in 2017-18 to a high of over 20 percent in 2020-21. Also notable was the variance in the overall level of annual E-Fund expenditures, driven primarily by how many large fires the state experienced in a given year. For example, E-Fund costs for both unplanned and planned activities were much higher than usual in 2020-21—\$1.2 billion compared to the recent annual average of \$734 million—due to the historically severe wildfires that the state experienced that year.

Figure 2

### Main Categories of E-Fund Expenditures

(In Millions)

Category	2017-18	2018-19	2019-20	2020-21	2021-22	Five-Year Annual Average
<b>Unplanned Large Fire Costs</b>	<b>\$910</b>	<b>\$812</b>	<b>\$365</b>	<b>\$955</b>	<b>\$740</b>	<b>\$630</b>
Extended Attack and Incidents	\$826	\$734	\$292	\$728	\$663	\$540
Move Up and Cover	42	44	39	139	42	51
Prepositioning <sup>a</sup>	42	35	34	88	36	39
<b>Planned Fire Season Adjustments</b>	<b>\$37</b>	<b>\$78</b>	<b>\$83</b>	<b>\$266</b>	<b>\$156</b>	<b>\$103</b>
Early Staffing or Extended Peak Staffing	\$6	\$29	\$64	\$51	\$63	\$35
Fire Protection Augmentation <sup>b</sup>	32	49	19	215	93	68
<b>Totals</b>	<b>\$947</b>	<b>\$890</b>	<b>\$448</b>	<b>\$1,222</b>	<b>\$896</b>	<b>\$734</b>
<b>Percent Unplanned</b>	<b>96%</b>	<b>91%</b>	<b>81%</b>	<b>78%</b>	<b>83%</b>	<b>86%</b>
<b>Percent Planned</b>	<b>4%</b>	<b>9%</b>	<b>19%</b>	<b>22%</b>	<b>17%</b>	<b>14%</b>

<sup>a</sup> Includes temporary staging of resources—such as fire engines and crews—for a short period in advance of a high-risk event (such as when there is a red flag warning).

<sup>b</sup> Includes activities such as hiring additional seasonal CalFire firefighters, National Guard crewmembers, and support staff during the peak wildfire season beyond those funded through CalFire’s base budget.

E-Fund = Emergency Fund and CalFire = California Department of Forestry and Fire Protection.

## ASSESSMENT

In this section, we assess the design of the budget for the E-Fund. We begin with a discussion of the key characteristics that the state’s budgeting approach for emergency fire protection should display. We next discuss some aspects of the state’s current budgeting approach that we assess to be consistent with the key characteristics we identify and therefore find to be justified, as well as others that we find merit modification.

### Effective Budgeting Approach for Emergency Fire Protection Should Reflect Three Key Characteristics

The state’s approach to budgeting for wildfire protection should enable CalFire to adequately respond as fires occur but also allow for sufficient legislative oversight. We believe an effective budgeting approach for emergency fire protection encompasses three characteristics: (1) the initial budget should reflect the best estimates of anticipated costs, (2) the budget should allow for midyear adjustments, and (3) the adjustment process should preserve reasonable mechanisms for legislative oversight and authority.

### **Adopted Budget Amount Should Reflect Best Estimate of Expenditures.**

The budget, as passed by the Legislature and signed by the Governor, should represent a realistic estimate or “best guess” of the expected costs of wildfire protection in the relevant fiscal year, both from the General Fund and funded through reimbursements. If the budgeted amounts for the base budget for wildfire protection or the E-Fund systematically underestimate or overestimate costs, they would not provide a transparent reflection of the costs of operating state government. Moreover, miscalculating the amounts needed for firefighting could result in the Legislature dedicating too much or too little of the remaining state funds for its other priorities than it otherwise would choose to allocate.

### **Important to Have Mechanisms for Adjusting Wildfire Budget Given Uncertainties.**

The state faces inherent unpredictability regarding the number, scale, and timing of the wildfires that will occur in any given year. This uncertainty makes it difficult for the state to accurately estimate—and budget in advance for—the level of expenditures that will be required for effective wildfire protection

during the year. Thus, even if over time the state's budgeting approach does not systematically underestimate or overestimate average wildfire protection costs, the budget almost certainly will require midyear adjustments in some years. Recognizing this, a strong rationale exists for the budget to have mechanisms to adjust the amount of funding provided for wildfire protection activities outside of the annual budget adoption process to ensure that the state has the resources it needs to adequately respond to wildfires.

***Mechanism Should Weigh Flexibility Against Preserving Legislative Authority.*** The California Constitution entrusts the Legislature with the power of appropriation, including through the annual state budget act and other legislation. This role provides an important check and balance in the state's system of separation of powers, as well as helps to ensure that state funds are being spent efficiently and effectively and in accordance with the priorities of the public (as expressed through and overseen by their elected representatives). Accordingly, the specific mechanisms provided in the budget for adjusting wildfire protection resources generally should preserve legislative control and oversight as much as possible without unduly impeding response activities.

### **Some Aspects of the Current Process Reasonable but Others Raise Some Concerns**

***Existing Approach to Setting Budgeted Amount Is Generally Reasonable.*** The administration's current approach of using some type of average of past expenditures and reimbursements when proposing the annual budget for the E-Fund makes sense. Furthermore, given that the state has been experiencing a trend towards a greater number of large and destructive wildfires, the administration's approach of averaging the five highest years over the past ten years (rather than the average of all the recent years) is reasonable. In practice, over the past decade, we find that the administration's approach has resulted in eight years in which the budget underestimated expenditures (resulting in a need for midyear augmentations to the E-Fund), but also two years in which it overestimated expenditures.

### ***Existing Process for Modifying E-Fund Provides Administration Broad Flexibility.***

The current process for making midyear wildfire protection funding augmentations gives the administration broad, nearly unlimited authority to use General Fund to increase the E-Fund's expenditures with narrow opportunities for legislative review. Specifically, the administration is only required to notify the Legislature prior to making augmentations to the E-Fund—*not* prior to committing to expenditures. Since the E-Fund typically is budgeted in the hundreds of millions of dollars, in practice, this allows the administration the ability to commit to very significant new expenditures without up-front notification to or approval from the Legislature.

***Existing Process Only Provides Ten Days for Notifications.*** Furthermore, the administration only provides such E-Fund notifications to the Legislature ten days—a period that includes weekends and holidays—in advance of DOF augmenting the fund. This provides very limited time for the Legislature to review the request and raise any potential concerns. (In contrast, most notifications to the JLBC are provided 30 days in advance of the administration taking an action in order to provide the committee with adequate time for review.)

***Existing Process Can Be Used to Bypass Traditional Budget Process.*** Under the existing authority, the administration can effectively use the E-Fund as an alternative budget process to approve funding for additional resources. We note that in some cases, the timing would have allowed the administration to request resources through the traditional budget process but it elected to use the E-Fund process instead. (We describe a recent example of this in the text box on the next page.) The use of the E-Fund in cases where the traditional budget process could have been used is problematic because the traditional process is generally more transparent and gives the Legislature more time for review and control than it has with the JLBC notification process.

***Unclear if Using E-Fund for Planned Costs Is Consistent With Legislative Intent.*** CalFire contends that it can make changes to early, extended peak, and seasonal staffing and other

planned fire protection activities based on existing budget bill language authorizing the use of the E-Fund to preposition resources. Prepositioning is typically thought of as the temporary staging of resources—such as fire engines and crews—for a *short period* in advance of a high-risk event (such as when there is a red flag warning). Notably, as displayed in Figure 2, CalFire does categorize some of its E-Fund expenditures as prepositioning. However, the department also uses this authority to support activities that it does not categorize as such and that go well beyond the typical definition of prepositioning, including significant expansions and/or extended use of resources like support staff, contracted helicopters, seasonal CalFire firefighters, and National Guard crewmembers for a period of multiple months. Whether these types of expenditures are consistent with the Legislature’s intent of the budget bill language governing the acceptable uses of the E-Fund is unclear. As we

described earlier, the Legislature narrowed the language of the budget bill in 2010-11 to limit the use of the E-Fund to “situations where CalFire’s initial attack forces are unable to cope with a wildland fire emergency, for additional fire detection capability and prepositioning of resources during periods of high fire risk, or to respond to valid requests for mutual aid by another government authority” after our office raised concerns about the E-Fund being used to support various planned expenditures.

***Existing Flexibility Is Reasonable for Unplanned Costs Related to Large Wildfires.***

When certain fire protection activities are truly unexpected, urgent, and necessary to protect life and safety, a strong rationale exists for the Legislature to provide the administration with significant flexibility to ensure that expenditures can be made without delay. We find typical E-Fund expenditures to address *unplanned*

### **Administration Has Used Emergency Fund to Hire Additional Planned Firefighting Staff**

In July 2020, the [Governor announced](#) a plan to spend \$73 million to hire 858 additional firefighters and support six California Conservation Corps crews through October 2020. The Governor funded these additional staff in part through the Emergency Fund (E-Fund), arguing it was an authorized use for “prepositioning resources during periods of high fire risk.” That this decision to augment staff occurred just a couple of weeks after the budget was passed and the new fiscal year began raised questions about why the additional resources could not have been proposed to the Legislature through the traditional budget process. Moreover, the administration did not—and was not required to—provide the Legislature with advance notification of its intent to use the E-Fund for this purpose because the costs of these resources could be supported by the E-Fund amount that was included in the budget. (The *2020-21 Budget Act* provided \$373 million from the General Fund for the E-Fund.)

Moreover, in September 2020, the administration notified the Legislature that it anticipated needing an augmentation from the General Fund to support additional E-Fund costs. However, this was well after the additional firefighters and crews had been put in place. Essentially, the administration spent the funds to hire new staff, then requested a General Fund augmentation to partially backfill these costs so that it would have sufficient E-Fund on hand to address unplanned large fire response costs. Accordingly, the notification did not provide the Legislature with a meaningful opportunity to review the discretionary decisions regarding staffing and other resources for the 2020-21 fire season to ensure that they were consistent with its priorities. This is a significant departure from the oversight role the Legislature typically plays in considering whether to approve the costs associated with new firefighting positions through the traditional budget process.

costs associated with responding to large wildfires generally meet these criteria. Thus, sufficient justification exists for the administration to retain the current high level of flexibility to support these activities that the existing E-Fund policies provide.

**Existing Flexibility Not Warranted for Planned Fire Season Adjustments.** As described previously, the E-Fund not only supports unplanned costs associated with responding to large wildfires, but it also is being used to support planned costs such as seasonal staffing augmentations. While it makes sense for the budget process to provide the administration with some flexibility to modify resource levels depending on what is expected for the upcoming wildfire season, we identify two key reasons why these types of *planned* adjustments should be subject to more legislative control. First, planned fire season adjustments (such as pre-hiring additional firefighters in advance of a

wildfire season that is anticipated to be severe) are less urgent than responding to specific, active wildfires. The department generally knows of these needs in advance and often can plan for them such as by requesting funding augmentations through the traditional budget process. Second, decisions about seasonal staffing levels involve discretionary budget choices about how to allocate response-related resources (such as how many CalFire seasonal firefighters to hire versus relying on National Guard crewmembers), and making these types of choices is a core part of the Legislature's constitutional role related to appropriating funds. Accordingly, a robust legislative review and oversight process is more important for these types of expenditure decisions as compared to unanticipated and unavoidable costs resulting from responding to large wildfires.

## RECOMMENDATIONS

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We have two recommended actions for the Legislature to address the inadequacies we have identified in the existing process for budgeting the E-Fund.

**Limit Use of E-Fund to Unplanned Costs Associated With Responding to Large Wildfires.** We recommend modifying the budget bill language governing the E-Fund to explicitly limit its use only to unplanned costs associated with responding to large wildfires—such as for overtime paid to firefighters who respond to fires that go beyond the initial attack. These costs are unanticipated and sufficiently urgent to merit the broad flexibility the existing E-Fund process provides the administration. Our recommended approach would explicitly prohibit the use of the E-Fund for activities such as pre-hiring, extended hiring, and augmentations of seasonal resources that are generally known in advance. Corresponding to this change, we recommend the administration reduce the amount it budgets for the E-Fund to reflect this more modest scope by basing it on the average of previous years of just unplanned expenditures rather than on all E-Fund expenditures. We estimate this would result in a roughly 14 percent, or

\$150 million, reduction in the amount proposed for the E-Fund in the Governor's 2023-24 budget (including both General Fund and reimbursements).

**Create New Fund to Support Planned Seasonal Costs.** In general, we recommend the Legislature require that CalFire use the traditional budget process for requesting augmentations for planned costs about which it is aware during the time period that the Legislature is still in session and engaged in the appropriation process. Such requests could be considered for funding through the annual budget act as well as subsequent trailer legislation and budget appropriation bills. Additionally, we recommend the Legislature create a new fund—from a separate budget allocation—to support planned fire season adjustments that are needed after the passage of the budget and could not reasonably have been foreseen during the budget process, potentially including costs associated with pre-hiring seasonal staff or extending peak staffing and contract levels. The creation of this new fund would allow expenditures for these activities to be made outside of the typical budget process when necessary but also provide additional legislative oversight

compared to the current process. We recommend the Legislature structure this new fund as follows:

- ***Budget Fund at Nominal Amount.*** We recommend setting the base budget for this new fund at a nominal amount, such as \$1,000. In practice, this would require the administration to request an augmentation prior to making any significant expenditures from the fund.
- ***Create a 30-Day Advance Notification Process for Augmenting the New Fund.*** We recommend that the budget bill language accompanying the allocation for this new fund specify that no augmentation to the

fund be provided sooner than 30 days after JLBC receives notification (unless the JLBC waives the 30-day review period in writing). We recommend requiring that this notification specify the activities proposed to be funded (such as the number, classifications, and durations of proposed new hires) as well as the associated costs. Furthermore, to help maximize legislative oversight, we recommend adding language specifying that this fund may not be used in cases where costs could reasonably be foreseen during the prior, current, or upcoming budget process.

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