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HOUSE BILL 73

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Jeannette O. Wallace

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE STATE FIRE MARSHAL; TRANSFERRING THE STATE FIRE MARSHAL'S OFFICE AND THE FIREFIGHTER TRAINING ACADEMY TO THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; GRANTING THE STATE FIRE MARSHAL THE AUTHORITY TO DIRECT THE STATE POLICE AND OTHER LAW ENFORCEMENT PERSONNEL; CLARIFYING THAT STATE FIRE MARSHAL RULES MUST BE COMPATIBLE WITH BUILDING CONSTRUCTION RULES OF THE CONSTRUCTION INDUSTRIES DIVISION; ELIMINATING STATE FIRE MARSHAL RESPONSIBILITY FOR FLAMMABLE LIQUIDS REGULATION; TRANSFERRING PERSONNEL, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 8-8-9 NMSA 1978 (being Laws 1998,

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1 Chapter 108, Section 9) is amended to read:

2 "8-8-9. INSURANCE DIVISION. --

3 A. The director of the insurance division is the
4 "superintendent of insurance" and shall have all the powers and
5 duties prescribed to him in the New Mexico Insurance Code.

6 B. The insurance division shall consist of such
7 bureaus as the superintendent of insurance determines for the
8 orderly conduct of business [~~including the fire marshal bureau.~~
9 ~~The superintendent of insurance may organize the firefighter's~~
10 ~~training academy as part of the fire marshal bureau or may~~
11 ~~organize it as a separate bureau]. "~~

12 Section 2. Section 9-5A-3 NMSA 1978 (being Laws 1987,
13 Chapter 234, Section 3, as amended by Laws 1997, Chapter 137,
14 Section 1 and also by Laws 1997, Chapter 149, Section 2) is
15 amended to read:

16 "9-5A-3. DEPARTMENT ESTABLISHED. --

17 A. There is created in the executive branch the
18 "energy, minerals and natural resources department". The
19 department shall be a cabinet department and shall include [~~but~~
20 ~~not be limited to~~] the following organizational units:

- 21 (1) the administrative services division;
- 22 (2) the state parks division;
- 23 (3) the forestry division [~~which shall include~~
24 ~~a soil and water conservation bureau~~];
- 25 (4) the energy conservation and management

1 division;

2 (5) the mining and minerals division; ~~and~~

3 (6) the oil conservation division; and

4 (7) the state fire marshal division, including
5 the firefighter training academy as a bureau.

6 B. The state game commission is administratively
7 attached to the department. "

8 Section 3. Section 59A-52-1 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 947, as amended) is amended to read:

10 "59A-52-1. STATE FIRE MARSHAL CREATED. --The position of
11 "state fire marshal" is created as the ~~[bureau chief]~~
12 director of the state fire marshal [bureau of the insurance]
13 division of the energy, minerals and natural resources
14 department. "

15 Section 4. Section 59A-52-3 NMSA 1978 (being Laws 1984,
16 Chapter 127, Section 949, as amended) is amended to read:

17 "59A-52-3. ~~[DEPUTY STATE FIRE MARSHAL AND OTHER~~
18 ~~EMPLOYEES--QUALIFICATIONS OF DEPUTY]~~ DESIGNATION OF AUTHORITY
19 BY STATE FIRE MARSHAL. --The state fire marshal may ~~[with the~~
20 ~~approval of the superintendent, appoint or remove a deputy~~
21 ~~state fire marshal and other employees]~~ designate his
22 employees; law enforcement officers, including the state
23 police; and fire chiefs and their designees to assist in the
24 execution of the state fire marshal's duties; provided,
25 however, that the state fire marshal and ~~[any deputy state fire~~

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1 ~~marshal appointed~~ anyone designated by the state fire marshal
2 shall be experienced in fire prevention and fire fighting and
3 have ~~completed a course of training by actual attendance at a~~
4 ~~fire training school~~ successfully completed training
5 appropriate to the duties designated. All designations shall
6 be made in writing. Designations of law enforcement officers,
7 fire chiefs and other persons employed by municipal or county
8 governments shall be approved by the municipality or county."

9 Section 5. Section 59A-52-8 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 954) is amended to read:

11 "59A-52-8. INVESTIGATION OF FIRE HAZARDS--ABATEMENT.--The
12 state fire marshal ~~[is authorized to make investigations or~~
13 ~~require his deputy to make investigations and reports of]~~ may
14 investigate existing conditions in the state ~~[which]~~ that are
15 fire hazards and ~~[to]~~ make reasonable orders for the
16 alleviation of such situations as he ~~[may deem]~~ deems
17 necessary. If the orders of the state fire marshal are not
18 carried out by persons to whom they are directed, ~~[he]~~ the
19 state fire marshal shall institute proper proceedings under
20 municipal ordinances or state laws to require compliance with
21 his orders, as he ~~[may deem]~~ deems necessary."

22 Section 6. Section 59A-52-9 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 955) is amended to read:

24 "59A-52-9. MAY ENTER UPON PREMISES.--The state fire
25 marshal ~~[his deputy, his authorized officer or designated agent~~

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1 ~~shall have authority~~ may at all normal hours of operation [~~to~~
2 enter [~~in and~~] upon all buildings and premises subject to [~~this~~
3 ~~article~~] Chapter 59A, Article 52 NMSA 1978 for the purpose of
4 examination and inspection. "

5 Section 7. Section 59A-52-10 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 956) is amended to read:

7 "59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS--
8 HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire
9 marshal [~~or his deputies or employees are authorized to make~~
10 ~~investigations deemed necessary of~~] may investigate any fire or
11 explosion, or attempt to cause any fire or explosion in the
12 state, and to require reports from his [~~deputies~~] employees or
13 designees concerning all fires and explosions in their
14 districts. For the purpose of such investigations, the state
15 fire marshal [~~and his deputies or designated persons are~~
16 ~~authorized to~~] may conduct [~~hearing~~] hearings, subpoena
17 witnesses, take testimony and enter upon and examine any
18 building or premises where any fire or explosion or attempt to
19 cause a fire or explosion [~~shall have~~] has occurred, or which
20 at the time may be burning. The state fire marshal [~~or his~~
21 ~~deputies or designated persons shall also have the power to~~]
22 may cause to be produced before [~~them~~] him such papers as [~~they~~
23 ~~may require~~] he requires in making such examination. In
24 addition the state fire marshal [~~or his deputies or designated~~
25 ~~persons~~] may, in [~~their~~] his discretion, take full control and

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1 custody of such buildings and premises, and place such person
2 in charge thereof as [~~they may deem~~] he deems proper, until
3 [~~their~~] his examination and investigation [~~is~~] are completed.
4 For evaluation of the evidence, the state fire marshal shall
5 have access to the facilities and personnel of the state police
6 laboratory, and the executive head of [~~such~~] the laboratory
7 shall cooperate fully with the state fire marshal."

8 Section 8. Section 59A-52-15 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 961) is amended to read:

10 "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES
11 [~~REGULATIONS~~] RULES. --

12 A. For prevention and control of fires the state
13 fire [~~board~~] marshal shall formulate, adopt and promulgate and
14 amend or revise [~~regulations~~] rules for fire prevention and
15 safe conduct or use of public occupancies and rules concerning
16 the sale, servicing or use of fire safety, prevention,
17 detection or suppression equipment or materials. For the
18 purposes of this provision, "public occupancies" consist of
19 places of assembly, educational occupancies, institutional
20 occupancies, residential occupancies consisting of four [~~(4)~~]
21 or more family units, health care occupancies, mercantile
22 occupancies, office occupancies, industrial occupancies,
23 storage occupancies and miscellaneous structures consisting of
24 towers, underground structures and windowless buildings and all
25 buildings owned or occupied by the state government or any

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1 political subdivision thereof or by municipal governments [~~and~~
2 ~~regulations concerning the sale, servicing or use of fire~~
3 ~~safety, prevention, detection or suppression equipment or~~
4 ~~materials~~]. The [~~regulations~~] rules shall be adopted after
5 notice and public hearing. The notice shall be entitled
6 "notice of proposed rule making" and it shall contain the date
7 of the hearing and shall state the subject of the hearing. A
8 copy of the notice, along with a copy of the proposed
9 [~~regulations~~] rules, shall be filed with the [~~supreme court~~
10 ~~librarian~~] records center for publishing at least twenty [~~(20)~~]
11 days prior to the hearing. In addition, the [~~board~~] state fire
12 marshal shall make available for inspection at [~~its offices~~]
13 his office a copy of the proposed [~~regulations~~] rules.

14 B. The rules [~~and regulations~~] shall follow
15 nationwide standards [~~except in the area of life safety codes~~
16 ~~which~~] that shall be compatible with [~~the Uniform Building~~
17 ~~Code, as revised from time to time, issued by the international~~
18 ~~conference of building officials~~] state rules for building
19 construction adopted by the construction industries division of
20 the regulation and licensing department.

21 C. The rules [~~and regulations~~] shall allow
22 reasonable provision under which facilities in service prior to
23 the effective date of the rules [~~and regulations~~] and not in
24 strict conformity therewith may be continued in service.

25 [~~Nonconforming~~] Nonconforming facilities in service prior to

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1 the adoption of ~~[regulations which]~~ rules that are found by the
2 state fire marshal to constitute a distinct hazard to life or
3 property shall not be exempt from ~~[regulations]~~ rules nor
4 permitted to continue in service. "

5 Section 9. Section 59A-52-18 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 964) is amended to read:

7 "59A-52-18. RULES ~~[AND REGULATIONS]~~-- STATEWIDE EFFECT--
8 RESERVED POWER OF MUNICIPALITIES AND COUNTIES. --The rules [~~and~~
9 ~~regulations]~~ promulgated pursuant to ~~[this article shall]~~
10 Chapter 59A, Article 52 NMSA 1978 have uniform [~~force and~~
11 effect throughout the state, and no municipality or
12 ~~[subdivision]~~ county shall enact or enforce any ordinances
13 or rules [~~or regulations]~~ inconsistent with the statewide rules
14 [~~and regulations]~~ promulgated pursuant to [~~this]~~ that article.
15 Nothing in [~~this]~~ that article shall in any way impair the
16 power of [~~any]~~ a municipality or county to regulate the use of
17 its land by zoning, building codes or restricted fire district
18 ~~[regulations]~~ rules. "

19 Section 10. Section 59A-52-19 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 965) is amended to read:

21 "59A-52-19. POLICE POWER OF STATE FIRE MARSHAL--
22 COOPERATION OF STATE OFFICERS. --

23 A. The state fire marshal [~~his deputy or his~~
24 ~~authorized officer or designated agent]~~ and his employees and
25 designees shall have full powers as peace officers to enforce

1 the provisions of ~~[this article]~~ Chapter 59A, Article 52 NMSA
2 1978 and all rules ~~[and regulations]~~ issued pursuant to ~~[this]~~
3 that article.

4 B. The revenue officers and law enforcement
5 officers of the state shall cooperate with the state
6 fire marshal ~~[his deputy or authorized officer or designated~~
7 ~~agent]~~ whenever called upon by ~~[them]~~ him for assistance in
8 enforcing ~~[this article]~~ Chapter 59A, Article 52 NMSA 1978. "

9 Section 11. Section 59A-52-20 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 966) is amended to read:

11 "59A-52-20. CEASE AND DESIST ORDERS ~~[CERTAIN VIOLATIONS~~
12 ~~ARE MISDEMEANORS]~~. -- ~~[A.]~~ When the state fire marshal ~~[his~~
13 ~~deputy or his authorized officer or designated agent]~~ finds
14 ~~[any]~~ a violation of the ~~[regulations]~~ rules issued in
15 compliance with ~~[this article]~~ Chapter 59A, Article 52 NMSA
16 1978, he ~~[or they]~~ shall issue an order to the owner or his
17 agent to cease and desist such violations.

18 ~~[B. When there is so found any violation of any~~
19 ~~statute or rules and regulations concerning flammable liquids a~~
20 ~~cease and desist order shall issue if the violation constitutes~~
21 ~~an immediate and distinct hazard to life or property, and any~~
22 ~~such violation shall constitute a misdemeanor punishable by a~~
23 ~~fine not to exceed five hundred dollars (\$500). Each day such~~
24 ~~violation continues constitutes a separate offense.]"~~

25 Section 12. Section 59A-52-21 NMSA 1978 (being Laws 1984,
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1 Chapter 127, Section 967, as amended) is amended to read:
2 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND
3 MODIFICATIONS. -- ~~[Any]~~ A person aggrieved by ~~[any]~~ an order of
4 the state fire marshal ~~[his deputy or authorized officer or his~~
5 ~~designated agent]~~ may appeal to the ~~[commission]~~ secretary of
6 energy, minerals and natural resources within ten days from the
7 date of the service of ~~[such]~~ the order. The ~~[commission]~~
8 secretary shall hear ~~[such]~~ the party within twenty days after
9 receipt of an appeal request and shall give not less than ten
10 days' written notice of the hearing. Within fifteen days after
11 ~~[such]~~ the hearing, the ~~[commission]~~ secretary shall file ~~[its]~~
12 his decision and, unless ~~[by its authority the order is revoked~~
13 ~~or modified]~~ the secretary revokes or modifies the order, it
14 shall be complied with within the time fixed in the decision,
15 with such time to be not less than thirty days. "

16 Section 13. Section 59A-52-22 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 968, as amended) is amended to read:

18 "59A-52-22. JUDICIAL REVIEW OF ORDER. -- A person
19 aggrieved by a decision of the ~~[state fire marshal]~~ secretary
20 of energy, minerals and natural resources may appeal to the
21 district court pursuant to the provisions of Section 39-3-1.1
22 NMSA 1978. "

23 Section 14. Section 59A-52-23 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 969, as amended) is amended to read:

25 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS. --

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1 After expiration of time for an administrative appeal, and if
2 no such appeal has been taken, the state fire marshal may
3 commence an action in the district court for Santa Fe county to
4 enforce the cease and desist order by injunction or other
5 appropriate remedy as the district court may adjudge. The
6 [~~commission~~] secretary of energy, minerals and natural
7 resources may likewise commence an action in the district court
8 for Santa Fe county to enforce [~~its~~] his decision rendered on
9 appeal from the cease and desist order of the state fire
10 marshal. "

11 Section 15. Section 59A-53-6 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 977, as amended) is amended to read:

13 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. -- The state
14 fire marshal shall promptly notify each incorporated city,
15 town, village and county fire district affected of his
16 determination of needs, and an incorporated city, town, village
17 or county fire district may appeal from the determination of
18 the state fire marshal to the [~~commission~~] secretary of energy,
19 minerals and natural resources, within ten days after the
20 determination of needs. The [~~commission~~] secretary shall
21 review the determination of the state fire marshal in such
22 informal and summary proceedings as [~~it~~] he deems proper and
23 shall certify to the state treasurer annually, on or before the
24 last day of June, the results of all appeals from the
25 determinations of the state fire marshal. The certification by

1 the [~~commission~~] secretary, or by the state fire marshal if no
2 appeal is taken, shall be final and binding on all concerned
3 and not subject to any further review. "

4 Section 16. Section 59A-53-7 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 978, as amended) is amended to read:

6 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

7 A. Annually on or before the last day of July, the
8 state treasurer shall distribute from the money in the fire
9 protection fund, to each incorporated municipality and to each
10 county fire district, the amount the state fire marshal or the
11 [~~commission~~] secretary of energy, minerals and natural
12 resources, as the case may be, has certified to him. Payment
13 shall be made to the treasurer of any incorporated municipality
14 and to the county treasurer of the county in which any county
15 fire district is located for credit to the county fire
16 district.

17 B. The state treasurer is authorized to redirect a
18 distribution to the New Mexico finance authority in the amount
19 the state fire marshal or the [~~commission~~] secretary of energy,
20 minerals and natural resources, as the case may be, has
21 certified to him pursuant to an ordinance or a resolution
22 passed by the municipality or county and a written agreement of
23 the municipality or county in which any county fire district is
24 located and the New Mexico finance authority. "

25 Section 17. Section 59A-53-15 NMSA 1978 (being Laws 1984,
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1 Chapter 127, Section 986, as amended) is amended to read:
2 "59A-53-15. APPROPRIATION FROM STATE TREASURY. -- All money
3 [~~which~~] that from time to time is deposited in the state
4 treasury and credited to the fire protection fund is
5 appropriated to the [~~corporation commission~~] state fire marshal
6 division of the energy, minerals and natural resources
7 department for the use of the state fire marshal for the
8 purposes set out in Chapter 59A, Article 53 NMSA 1978 and shall
9 be distributed by the state treasurer and expended as provided
10 in that article. Hereafter, all sums in excess of one hundred
11 thousand dollars (\$100,000) for pro rata distribution plus
12 seventy-five percent of the approved state fire marshal budget
13 for the succeeding fiscal year plus the amount certified to be
14 distributed as provided in that article shall be credited to
15 the general fund on or before June 30 of each fiscal year."

16 Section 18. Section 60-2C-3 NMSA 1978 (being Laws 1989,
17 Chapter 346, Section 3, as amended) is amended to read:

18 "60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF
19 FIREWORKS-- ADMINISTRATION-- PERMITS AND LICENSES. --

20 A. No person may sell, hold for sale, import,
21 distribute or offer for sale, as manufacturer, distributor,
22 wholesaler or retailer, any fireworks in this state unless such
23 person has first obtained the appropriate license or permit.

24 B. The state fire marshal shall enforce the
25 Fireworks Licensing and Safety Act. All license applications

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1 shall be submitted to the [~~office of the~~] state fire marshal
2 division of the energy, minerals and natural resources
3 department. All retailers shall be required to purchase a
4 retail fireworks permit for each retail location. The retail
5 permit may be purchased from any licensed manufacturer,
6 distributor or wholesaler or from the [~~state fire marshal's~~
7 ~~office~~] division. Retail permits may be purchased at any time
8 by the licensed manufacturer, distributor or wholesaler in
9 books of twenty permits per book from the [~~state fire marshal~~]
10 division. Permits shall be numbered, and it [~~shall be~~] is the
11 responsibility of the licensed manufacturer, distributor or
12 wholesaler to keep records of the purchases of these permits
13 and to submit these records to the [~~state fire marshal~~]
14 division semi-annually on January 31 and July 31 of each year.
15 Each semi-annual report is to cover the preceding six-month
16 period. Retail permits that are unsold may be exchanged for
17 new permits.

18 C. The state fire marshal shall appoint [~~the~~
19 ~~deputies and~~] employees required to carry out the provisions of
20 the Fireworks Licensing and Safety Act. The state fire marshal
21 may also appoint any commissioned law enforcement officer or
22 duly appointed fire chief or his designee with approval from
23 the local governing body required to carry out the provisions
24 of that act.

25 D. The state fire [~~board~~] marshal division shall

1 formulate, adopt, promulgate and amend or revise rules [~~and~~
2 ~~regulations~~] for the safe handling of fireworks. "

3 Section 19. TEMPORARY PROVISION-- TRANSFERS. --

4 A. On the effective date of this act, all
5 personnel, appropriations, money, records, furniture,
6 equipment, supplies and other property of the state fire
7 marshal's office and the firefighter training academy of the
8 public regulation commission are transferred to the state fire
9 marshal division of the energy, minerals and natural resources
10 department. Five full-time equivalent positions in the
11 administrative services division of the public regulation
12 commission are transferred to the energy, minerals and natural
13 resources department.

14 B. On the effective date of this act, all existing
15 contracts and other obligations of the state fire marshal's
16 office and the firefighter training academy of the public
17 regulation commission shall be binding on the state fire
18 marshal division of the energy, minerals and natural resources
19 department.

20 C. On the effective date of this act, statutory
21 references to the state fire marshal or the state fire marshal
22 bureau of the insurance division of the public regulation
23 commission shall be deemed to be references to the state fire
24 marshal or the state fire marshal division of the energy,
25 minerals and natural resources department. Statutory

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1 references to the state fire board or the public regulation
2 commission acting as the state fire board shall be deemed to be
3 references to the secretary of energy, minerals and natural
4 resources.

5 Section 20. APPROPRIATION. -- One hundred twenty-one
6 thousand nine hundred dollars (\$121,900) is appropriated from
7 the general fund to the energy, minerals and natural resources
8 department for expenditure in fiscal year 2002 for information
9 support needs of the state fire marshal division, including
10 telecommunications, computer hardware and software,
11 infrastructure and supplies. Any unexpended or unencumbered
12 balance remaining at the end of fiscal year 2002 shall revert
13 to the general fund.

14 Section 21. REPEAL. -- Sections 59A-52-16 and 59A-52-17
15 NMSA 1978 (being Laws 1984, Chapter 127, Sections 962 and 963)
16 are repealed.

17 Section 22. EFFECTIVE DATE. -- The effective date of the
18 provisions of this act is July 1, 2001.

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