

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 120

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

INTRODUCED BY

Patrick H. Lyons

AN ACT

RELATING TO PUBLIC SAFETY; TRANSFERRING THE STATE FIRE MARSHAL  
AND THE FIREFIGHTER TRAINING ACADEMY TO THE DEPARTMENT OF  
PUBLIC SAFETY; TRANSFERRING PERSONNEL, MONEY AND OTHER  
PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.

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

Section 1. Section 8-8-9 NMSA 1978 (being Laws 1998,  
Chapter 108, Section 9) is amended to read:

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

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

B. The insurance division shall consist of such  
bureaus as the superintendent of insurance determines for the  
orderly conduct of business [~~including the fire marshal~~

underscored material = new  
[bracketed material] = delete

1 bureau. ~~The superintendent of insurance may organize the~~  
2 ~~firefighter's training academy as part of the fire marshal~~  
3 ~~bureau or may organize it as a separate bureau]. "~~

4 Section 2. Section 9-19-4 NMSA 1978 (being Laws 1987,  
5 Chapter 254, Section 4, as amended) is amended to read:

6 "9-19-4. DEPARTMENT ESTABLISHED. -- There is created in  
7 the executive branch the "department of public safety". The  
8 department shall be a cabinet department and shall ~~[consist~~  
9 ~~of, but not be limited to, five program divisions and one~~  
10 ~~administrative division, as follows]~~ include:

- 11 A. the New Mexico state police division;
- 12 B. the special investigations division;
- 13 C. the training and recruiting division;
- 14 D. the technical and emergency support division;
- 15 E. the administrative services division; ~~[and]~~
- 16 F. the motor transportation division; and
- 17 G. the fire protection division, which shall

18 include the state fire marshal and the firefighter training  
19 academy. "

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

22 "59A-52-1. STATE FIRE MARSHAL CREATED. -- The position of  
23 "state fire marshal" is created as the ~~[bureau chief]~~ division  
24 director of the ~~[fire marshal bureau of the insurance]~~ fire  
25 protection division of the department of public safety. "

. 134150. 1

underscored material = new  
[bracketed material] = delete

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

3           "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER  
4 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal  
5 may, with the approval of the [~~superintendent~~] secretary of  
6 public safety, appoint or remove a deputy state fire marshal  
7 and other employees to assist in the execution of the state  
8 fire marshal's duties; provided, however, that the state fire  
9 marshal and any deputy state fire marshal appointed by the  
10 state fire marshal shall be experienced in fire prevention and  
11 fire fighting and have completed a course of training by  
12 actual attendance at a fire training school."

13           Section 5. Section 59A-52-15 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 961) is amended to read:

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

17           A. For prevention and control of fires, the state  
18 fire [~~board~~] marshal shall formulate, adopt and promulgate and  
19 amend or revise [~~regulations~~] rules for fire prevention and  
20 safe conduct or use of public occupancies, including rules  
21 concerning the sale, servicing or use of fire safety,  
22 prevention, defection and suppression equipment or materials.  
23 For the purposes of this provision, "public occupancies"  
24 consist of places of assembly; educational occupancies;  
25 institutional occupancies; residential occupancies consisting

. 134150. 1

underscored material = new  
[bracketed material] = delete

1 of four [~~(4)~~] or more family units; mercantile occupancies;  
2 office occupancies; industrial occupancies; storage  
3 occupancies and miscellaneous structures consisting of towers,  
4 underground structures and windowless buildings; and all  
5 buildings owned or occupied by the state government or any  
6 political subdivision thereof or by municipal governments [~~and~~  
7 ~~regulations concerning the sale, servicing or use of fire~~  
8 ~~safety, prevention, detection or suppression equipment or~~  
9 ~~materials~~]. The [~~regulations~~] rules shall be adopted after  
10 notice and public hearing. [~~The notice shall be entitled~~  
11 ~~"notice of proposed rule making" and it shall contain the date~~  
12 ~~of the hearing and shall state the subject of the hearing. A~~  
13 ~~copy of the notice, along with a copy of the proposed~~  
14 ~~regulations, shall be filed with the supreme court librarian~~  
15 ~~at least twenty (20) days prior to the hearing. In addition,~~  
16 ~~the board shall make available for inspection at its offices,~~  
17 ~~a copy of the proposed regulations.~~]

18 B. The rules [~~and regulations~~] shall follow  
19 nationwide standards except in the area of life safety codes,  
20 which shall be compatible with the Uniform Building Code, as  
21 revised from time to time, issued by the international  
22 conference of building officials.

23 C. The rules [~~and regulations~~] shall allow  
24 reasonable provision under which facilities in service prior  
25 to the effective date of the rules [~~and regulations~~] and not

underscored material = new  
[bracketed material] = delete

1 in strict conformity therewith may be continued in service.  
2 [~~Nonconforming~~] Nonconforming facilities in service prior to  
3 the adoption of [~~regulations which~~] rules, that are found by  
4 the state fire marshal to constitute a distinct hazard to life  
5 or property, shall not be exempt from [~~regulations nor~~] rules  
6 or permitted to continue in service. "

7 Section 6. Section 59A-52-16 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 962) is amended to read:

9 "59A-52-16. FLAMMABLE LIQUIDS [~~REGULATIONS~~] RULES--  
10 NATIONWIDE STANDARDS--SAVINGS CLAUSE--DEFINITION. --

11 A. The state fire [~~board~~] marshal shall formulate,  
12 adopt and promulgate and amend or revise rules [~~and~~  
13 ~~regulations~~] for the safe vehicular transportation, storage,  
14 handling and use of flammable and combustible liquids.

15 B. The rules [~~and regulations~~] shall be in keeping  
16 with the latest generally recognized safety standards for  
17 flammable and combustible liquids. Rules [~~and regulations~~] in  
18 substantial conformity with the published standards of the  
19 national fire protection association for vehicular  
20 transportation, storage, handling and use of flammable and  
21 combustible liquids shall be deemed to be in substantial  
22 conformity with the generally accepted and recognized  
23 standards of safety concerning the same subject matter.

24 C. The rules [~~and regulations~~] shall include  
25 reasonable provisions under which facilities in service prior

. 134150. 1

underscored material = new  
[bracketed material] = delete

1 to the effective date of the rules [~~and regulations~~] and not  
2 in strict conformity therewith may be continued in service.  
3 Nonconforming facilities in service prior to the adoption of  
4 [~~regulations which~~] rules, that are found by the state fire  
5 marshal to constitute a distinct hazard to life or property,  
6 may not be excepted from [~~regulations~~] rules or permitted to  
7 continue in service. For guidance in enforcement, the rules  
8 [~~and regulations~~] may delineate those types of nonconformities  
9 that should be considered distinctly hazardous and those  
10 nonconformities [~~which~~] that should be evaluated in the light  
11 of local conditions. If the need for compliance with [~~any~~] a  
12 rule [~~or regulation~~] is conditioned on local factors, the  
13 rules [~~and regulations~~] shall provide that reasonable notice  
14 be given to the proprietor of the facility affected of the  
15 intention to evaluate the need for compliance and of the time  
16 and place at which he may appear and offer evidence thereon.

17 D. As used in [~~this article~~] Chapter 59A, Article  
18 52 NMSA 1978, the term "flammable liquid" [~~shall mean any~~]  
19 means a liquid having a flash point below one hundred [~~(+100)~~]  
20 degrees Fahrenheit, and "combustible liquid" [~~shall mean any~~]  
21 means a liquid having a flash point at or above one hundred  
22 [~~(+100)~~] degrees Fahrenheit and below two hundred [~~(+200)~~]  
23 degrees Fahrenheit. "

24 Section 7. Section 59A-52-21 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 967, as amended) is amended to read:

. 134150. 1

underscored material = new  
[bracketed material] = delete

1 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND  
2 MODIFICATIONS. -- ~~[Any]~~ A person aggrieved by ~~[any]~~ an order of  
3 the state fire marshal, his deputy or authorized officer or  
4 his designated agent may appeal to the ~~[commission]~~ secretary  
5 of public safety within ten days from the date of the service  
6 of ~~[such]~~ the order. The ~~[commission]~~ secretary shall hear  
7 ~~[such]~~ the party within twenty days after receipt of an appeal  
8 request and shall give not less than ten days' written notice  
9 of the hearing. Within fifteen days after ~~[such]~~ the hearing,  
10 the ~~[commission]~~ secretary shall file ~~[its]~~ his decision and,  
11 unless by ~~[its]~~ his authority the order is revoked or  
12 modified, it shall be complied with within the time fixed in  
13 the decision, with such time to be not less than thirty days."

14 Section 8. Section 59A-52-22 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 968, as amended) is amended to read:

16 "59A-52-22. JUDICIAL REVIEW OF ORDER. -- A person  
17 aggrieved by a decision of the ~~[state fire marshal]~~ secretary  
18 of public safety pursuant to Section 59A-52-21 NMSA 1978 may  
19 appeal to the district court pursuant to the provisions of  
20 Section 39-3-1.1 NMSA 1978. "

21 Section 9. Section 59A-53-6 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 977, as amended) is amended to read:

23 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. -- The  
24 marshal shall promptly notify each ~~[incorporated city, town,~~  
25 ~~village]~~ municipality and county fire district affected of his

underscored material = new  
[bracketed material] = delete

1 determination of needs, and [~~an incorporated city, town,~~  
2 ~~village~~] a municipality or county fire district may appeal  
3 from the determination of the marshal to the [~~commission~~]  
4 secretary of public safety within ten days after the  
5 determination of needs. The [~~commission~~] secretary shall  
6 review the determination of the marshal in such informal and  
7 summary proceedings as [~~it~~] he deems proper and shall certify  
8 to the state treasurer annually, on or before the last day of  
9 June, the results of all appeals from the determinations of  
10 the marshal. The certification by the [~~commission~~] secretary,  
11 or by the marshal if no appeal is taken, shall be final and  
12 binding on all concerned and not subject to any further  
13 review. "

14 Section 10. Section 59A-53-7 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 978, as amended) is amended to read:

16 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

17 A. Annually on or before the last day of July, the  
18 state treasurer shall distribute from the money in the fire  
19 protection fund, to each [~~incorporated~~] municipality and to  
20 each county fire district, the amount the marshal or the  
21 [~~commission~~] secretary of public safety, as the case may be,  
22 has certified to him. Payment shall be made to the treasurer  
23 of any [~~incorporated~~] municipality and to the county treasurer  
24 of the county in which any county fire district is located for  
25 credit to the county fire district.

. 134150. 1



underscored material = new  
[bracketed material] = delete

1           B. The state treasurer is authorized to redirect a  
2 distribution to the New Mexico finance authority in the amount  
3 the marshal or the ~~[commission]~~ secretary of public safety, as  
4 the case may be, has certified to ~~[him]~~ the treasurer pursuant  
5 to an ordinance or ~~[a]~~ resolution passed by the municipality  
6 or county and a written agreement ~~[of]~~ between the  
7 municipality or county in which ~~[any]~~ a county fire district  
8 is located and the New Mexico finance authority. "

9           Section 11. Section 60-2C-3 NMSA 1978 (being Laws 1989,  
10 Chapter 346, Section 3, as amended) is amended to read:

11           "60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF  
12 FIREWORKS-- ADMINISTRATION-- PERMITS AND LICENSES. --

13           A. No person may sell, hold for sale, import,  
14 distribute or offer for sale, as manufacturer, distributor,  
15 wholesaler or retailer, any fireworks in this state unless  
16 such person has first obtained the appropriate license or  
17 permit.

18           B. The state fire marshal shall enforce the  
19 Fireworks Licensing and Safety Act. All license applications  
20 shall be submitted to the ~~[office of the]~~ state fire marshal.  
21 All retailers shall be required to purchase a retail fireworks  
22 permit for each retail location. The retail permit may be  
23 purchased from any licensed manufacturer, distributor or  
24 wholesaler or from the state fire ~~[marshal's office]~~ marshal.  
25 Retail permits may be purchased at any time by the licensed

. 134150. 1

underscored material = new  
[bracketed material] = delete

1 manufacturer, distributor or wholesaler in books of twenty  
2 permits per book from the state fire marshal. Permits shall  
3 be numbered, and it ~~[shall be]~~ is the responsibility of the  
4 licensed manufacturer, distributor or wholesaler to keep  
5 records of the purchases of these permits and to submit these  
6 records to the state fire marshal ~~[semi-annually]~~ semiannually  
7 on January 31 and July 31 of each year. Each ~~[semi-annual]~~  
8 semiannual report is to cover the preceding six-month period.  
9 Retail permits that are unsold may be exchanged for new  
10 permits.

11 C. The state fire marshal shall appoint the  
12 deputies and employees required to carry out the provisions of  
13 the Fireworks Licensing and Safety Act. The state fire  
14 marshal may also appoint any commissioned law enforcement  
15 officer or duly appointed fire chief or his designee with  
16 approval from the local governing body required to carry out  
17 the provisions of that act.

18 D. The state fire ~~[board]~~ marshal shall formulate,  
19 adopt, promulgate and amend or revise rules ~~[and regulations]~~  
20 for the safe handling of fireworks. "

21 Section 12. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
22 APPROPRIATIONS, MONEY, RECORDS, FURNITURE, EQUIPMENT, OTHER  
23 PERSONAL AND REAL PROPERTY, CONTRACTUAL OBLIGATIONS AND  
24 STATUTORY REFERENCES. --

25 A. On the effective date of this act, all

underscored material = new  
[bracketed material] = delete

1 personnel, appropriations, money, records, furniture,  
2 equipment and other personal and real property of the fire  
3 marshal bureau and the firefighter's training academy of the  
4 insurance division of the public regulation commission shall  
5 be transferred to the fire protection division of the  
6 department of public safety.

7 B. On the effective date of this act, all  
8 contracts and other obligations binding on the state fire  
9 marshal, the fire marshal bureau or the firefighter training  
10 academy of the insurance division of the public regulation  
11 commission shall be binding on the fire protection division of  
12 the department of public safety.

13 C. On the effective date of this act, all  
14 references in the law to the fire marshal bureau or the  
15 firefighter's training academy of the insurance division of  
16 the public regulation commission shall be deemed to be  
17 references to the fire protection division of the department  
18 of public safety. All references in the law to the state fire  
19 board or the public regulation commission in its capacity as  
20 the state fire board shall be deemed to be references to the  
21 secretary of public safety.

22 Section 13. EFFECTIVE DATE. -- The effective date of the  
23 provisions of this act is July 1, 2001.