

1 SENATE BILL 565

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 William F. Burt

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9  
10 AN ACT

11 RELATING TO STATE AGENCIES; SEPARATING THE FIRE MARSHAL  
12 DIVISION FROM THE PUBLIC REGULATION COMMISSION; CREATING THE  
13 STATE FIRE MARSHAL'S OFFICE; CREATING THE FIRE SERVICES  
14 COUNCIL; AMENDING STATUTORY REFERENCES; TRANSFERRING PERSONNEL,  
15 FUNCTIONS, MONEY, APPROPRIATIONS, OTHER PROPERTY AND  
16 CONTRACTUAL OBLIGATIONS; CHANGING REFERENCES IN LAW AND  
17 OFFICIAL ACTS.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 8-8-6 NMSA 1978 (being Laws 1998,  
21 Chapter 108, Section 6, as amended) is amended to read:

22 "8-8-6. COMMISSION--DIVISIONS.--The commission [~~shall~~  
23 ~~include~~] includes the following organizational units:

- 24 A. the administrative services division;  
25 B. the consumer relations division;

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- 1 C. the legal division;
- 2 D. the transportation division; and
- 3 E. the utility division [~~and~~
- 4 ~~F. the fire marshal division~~]."

5 SECTION 2. Section 10-11A-2 NMSA 1978 (being Laws 1983,  
6 Chapter 263, Section 2, as amended) is amended to read:

7 "10-11A-2. DEFINITIONS.--As used in the Volunteer  
8 Firefighters Retirement Act:

- 9 A. "association" means the public employees  
10 retirement association;
- 11 B. "board" means the retirement board of the  
12 association;
- 13 C. "fire department" means a fire department with  
14 volunteer members that is certified by the [~~fire marshal~~  
15 ~~division of the public regulation commission~~] state fire  
16 marshal's office;
- 17 D. "fund" means the volunteer firefighters  
18 retirement fund; and
- 19 E. "member" means a volunteer nonsalaried  
20 firefighter who is listed as an active member on the rolls of a  
21 fire department and whose first year of service credit was  
22 accumulated during or after the year the member attained the  
23 age of sixteen. A volunteer firefighter who receives  
24 reimbursement for personal out-of-pocket costs shall not be  
25 considered a salaried firefighter."

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1           SECTION 3. Section 10-11A-6 NMSA 1978 (being Laws 1983,  
2 Chapter 263, Section 6, as amended) is amended to read:

3           "10-11A-6. DETERMINATION OF SERVICE CREDIT.--

4           A. A member may claim one year of service credit  
5 for each year in which a fire department certifies that the  
6 member:

7                   (1) attended fifty percent of all scheduled  
8 fire drills for which the fire department held the member  
9 responsible to attend;

10                   (2) attended fifty percent of all scheduled  
11 business meetings for which the fire department held the member  
12 responsible to attend; and

13                   (3) participated in at least fifty percent of  
14 all emergency response calls for which the fire department held  
15 the member responsible to attend.

16           B. The chief of each fire department shall submit  
17 to the association by March 31 of each year documentation of  
18 the qualifications of each member for the preceding calendar  
19 year; provided that the chief shall:

20                   (1) submit the documentation on forms provided  
21 by the association;

22                   (2) acknowledge the truth of the records under  
23 oath before a notary public; and

24                   (3) have the notarized forms signed by the  
25 mayor, if distributions from the fire protection fund for the

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1 fire department are made to an incorporated municipality, or  
2 the chair of the county commission, if distributions from the  
3 fire protection fund for the fire department are made to a  
4 county fire district.

5 C. For service credit that has been earned, but not  
6 credited pursuant to Subsection B of this section, a member may  
7 post or adjust service credit earned for not more than the two  
8 preceding calendar years; provided that the member shall:

9 (1) file with the association a completed  
10 "Corrected Qualification Record" or "Adjusted Qualification  
11 Record" as prescribed by the board;

12 (2) acknowledge the truth of the records under  
13 oath before a notary public; and

14 (3) have the notarized forms signed by the  
15 mayor, if distributions from the fire protection fund for the  
16 fire department are made to an incorporated municipality, or  
17 the chair of the county commission, if distributions from the  
18 fire protection fund for the fire department are made to a  
19 county fire district.

20 D. The association may request the [~~fire marshal~~  
21 ~~division of the public regulation commission~~] state fire  
22 marshal's office to verify member qualifications submitted to  
23 the association."

24 SECTION 4. Section 10-11B-5 NMSA 1978 (being Laws 2007,  
25 Chapter 149, Section 5, as amended) is amended to read:

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1 "10-11B-5. FIREFIGHTERS' SURVIVORS SUPPLEMENTAL  
2 BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

3 A. There is created the "firefighters' survivors  
4 supplemental death benefits review committee". The committee  
5 shall consist of the attorney general [~~the president of the New~~  
6 ~~Mexico fire chiefs association, the state president of the New~~  
7 ~~Mexico professional fire fighters association and the president~~  
8 ~~of the New Mexico state fire fighters' association or their~~  
9 ~~designees] or the attorney general's designee and the fire  
10 services council.~~

11 B. The firefighters' survivors supplemental death  
12 benefits review committee shall determine whether a firefighter  
13 has been killed in the line of duty and advise the state fire  
14 marshal of that determination. In addition to any other death  
15 benefits provided by law, the surviving spouse or children  
16 shall be paid two hundred fifty thousand dollars (\$250,000) as  
17 supplemental death benefits whenever a firefighter is killed in  
18 the line of duty. The benefits shall be paid from the fund.

19 C. The benefits shall be paid entirely to the  
20 surviving spouse. If there is no surviving spouse, the  
21 benefits shall be distributed in pro rata shares to all  
22 surviving children. If there are no surviving children or  
23 spouse, benefits shall be distributed to the surviving parents  
24 of the firefighter."

25 SECTION 5. Section 24-22-2 NMSA 1978 (being Laws 2001,

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1 Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as  
2 amended) is amended to read:

3 "24-22-2. DEFINITIONS.--As used in the Safe Haven for  
4 Infants Act:

5 A. "fire station" means a fire station that is  
6 certified by the [~~fire marshal division of the public~~  
7 ~~regulation commission~~] state fire marshal's office;

8 B. "hospital" means an acute care general hospital  
9 or health care clinic licensed by the state;

10 C. "Indian child" means an Indian child as defined  
11 by the federal Indian Child Welfare Act of 1978;

12 D. "infant" means a child no more than ninety days  
13 old, as determined within a reasonable degree of medical  
14 certainty;

15 E. "law enforcement agency" means a law enforcement  
16 agency of the state or a political subdivision of the state;

17 F. "safe haven site" means a hospital, law  
18 enforcement agency or fire station that has staff on site at  
19 the time an infant is left at such a site; and

20 G. "staff" means an employee, contractor, agent or  
21 volunteer performing services as required and on behalf of the  
22 safe haven site."

23 SECTION 6. Section 59A-52-1 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 947, as amended) is amended to read:

25 "59A-52-1. STATE FIRE [~~MARSHAL-CREATED~~] MARSHAL'S OFFICE

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1 CREATED.--~~[The position of "state fire marshal" is created as~~  
2 ~~the director of the fire marshal division under the public~~  
3 ~~regulation commission.]~~

4 A. The "state fire marshal's office" is created as  
5 an adjunct agency as provided in Section 9-1-6 NMSA 1978.

6 B. The office consists of the:

- 7 (1) firefighter training academy division;
- 8 (2) fire service support division;
- 9 (3) fire investigations division; and
- 10 (4) fire code enforcement division."

11 SECTION 7. Section 59A-52-3 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 949, as amended) is amended to read:

13 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER  
14 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal  
15 may employ ~~[with the consent of the chief of staff of the~~  
16 ~~public regulation commission]~~ deputy state fire marshals and  
17 other employees to assist in the execution of the marshal's  
18 duties."

19 SECTION 8. Section 59A-52-4 NMSA 1978 (being Laws 1984,  
20 Chapter 127, Section 950) is amended to read:

21 "59A-52-4. BONDING OF EMPLOYEES.--The state fire marshal  
22 shall require the bonding of those employees whose duties in  
23 ~~[his]~~ the marshal's opinion require such bonds and in an amount  
24 determined by ~~[him]~~ the marshal. The premiums of such bonds  
25 shall be paid out of the appropriation hereinafter made to the

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1 marshal."

2 SECTION 9. Section 59A-52-5 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 951) is amended to read:

4 "59A-52-5. COOPERATION WITH OTHER AGENCIES FOR PREVENTION  
5 AND CONTROL OF FIRES.--The state fire marshal is authorized to  
6 cooperate with all other groups, organizations and agencies in  
7 this state or in other states in the collection, dissemination  
8 and evaluation of information, statistics and suggestions for  
9 prevention or control of fires."

10 SECTION 10. Section 59A-52-6 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 952) is amended to read:

12 "59A-52-6. FIRE PROTECTION TRAINING PROGRAMS.--The state  
13 fire marshal shall establish and conduct training programs  
14 throughout the state for demonstrating and teaching [~~firemen~~  
15 firefighters proper methods of preventing and extinguishing  
16 fires. The marshal shall have available, from funds included  
17 in the general appropriation act of each legislature, money for  
18 use by [~~him~~] the marshal in establishing and conducting such  
19 training programs."

20 SECTION 11. Section 59A-52-7 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 953) is amended to read:

22 "59A-52-7. TEACHING FIRE PREVENTION AND CONTROL IN PUBLIC  
23 SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATION.--The state fire  
24 marshal shall prescribe reasonable rules and regulations and  
25 programs for the teaching to all [~~school children~~]

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1 schoolchildren in the state, whether in public or private  
2 schools, the proper methods of fire prevention and control.  
3 Such rules, regulations and programs shall be submitted to the  
4 [~~department of~~] public education department on or before August  
5 [~~first~~] 1 of each year. Among other things, such rules,  
6 regulations and programs shall prescribe drills for evacuating  
7 school buildings."

8 SECTION 12. Section 59A-52-8 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 954) is amended to read:

10 "59A-52-8. INVESTIGATION OF FIRE HAZARDS--ABATEMENT.--The  
11 state fire marshal is authorized to make investigations, or  
12 require [~~his~~] the marshal's deputy to make investigations, and  
13 reports of existing conditions in the state [~~which~~] that are  
14 fire hazards and to make reasonable orders for the alleviation  
15 of such situations as [~~he~~] the marshal may deem necessary. If  
16 the orders of the marshal are not carried out by persons to  
17 whom they are directed, [~~he~~] the marshal shall institute proper  
18 proceedings under municipal ordinances or state laws to require  
19 compliance with [~~his~~] the orders, as [~~he~~] the marshal may deem  
20 necessary."

21 SECTION 13. Section 59A-52-9 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 955) is amended to read:

23 "59A-52-9. MAY ENTER UPON PREMISES.--The state fire  
24 marshal [~~his~~] or the marshal's deputy, [~~his~~] authorized officer  
25 or designated agent shall have authority at all normal hours of

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

4 SECTION 14. Section 59A-52-10 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 956) is amended to read:

6 "59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS--  
7 HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire  
8 marshal or [~~his~~] the marshal's deputies or employees are  
9 authorized to make investigations deemed necessary of any fire  
10 or explosion or attempt to cause any fire or explosion in the  
11 state [~~and~~]. The marshal is authorized to require reports from  
12 [~~his~~] the deputies concerning all fires and explosions in their  
13 districts. For the purpose of such investigations, the marshal  
14 and [~~his~~] the marshal's deputies or designated persons are  
15 authorized to conduct [~~hearing~~] hearings, subpoena witnesses,  
16 take testimony and enter upon and examine any building or  
17 premises where any fire or explosion or attempt to cause a fire  
18 or explosion shall have occurred, or which at the time may be  
19 burning. The marshal or [~~his~~] the marshal's deputies or  
20 designated persons shall also have the power to cause to be  
21 produced before them such papers as they may require in making  
22 such examination. In addition, the marshal or [~~his~~] the  
23 marshal's deputies or designated persons may, in their  
24 discretion, take full control and custody of such buildings and  
25 premises, and place [~~such person~~] someone in charge [~~thereof~~]

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1 of the building and premises as they may deem proper, until  
2 their examination and investigation is completed. For  
3 evaluation of the evidence the marshal shall have access to the  
4 facilities and personnel of the [~~state police~~] New Mexico  
5 department of public safety forensic laboratory, and the  
6 executive head of such laboratory shall cooperate fully with  
7 the marshal."

8 SECTION 15. Section 59A-52-11 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 957) is amended to read:

10 "59A-52-11. WITNESSES--PER DIEM AND MILEAGE.--Witnesses  
11 or persons subpoenaed [~~under this article~~] pursuant to Chapter  
12 59A, Article 52 NMSA 1978 shall be paid as to time and expense  
13 [~~from the fire marshal's fund~~] at per diem and mileage rates on  
14 the same bases and at the same rates as currently apply as to  
15 state employees in general."

16 SECTION 16. Section 59A-52-12 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 958) is amended to read:

18 "59A-52-12. RECORDS OF FIRES OPEN TO PUBLIC.--The state  
19 fire marshal shall keep open to public inspection, at  
20 reasonable hours, all records of fires occurring within the  
21 state."

22 SECTION 17. Section 59A-52-13 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 959) is amended to read:

24 "59A-52-13. TRANSMITTAL OF EVIDENCE INDICATING CRIMINAL  
25 ACTS.--The state fire marshal shall furnish to the proper law

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1 enforcement officers any evidence [~~he~~] that the marshal may  
2 discover in [~~his~~] the marshal's investigations [~~which~~] that  
3 indicates criminal acts."

4 SECTION 18. Section 59A-52-14 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 960) is amended to read:

6 "59A-52-14. APPROPRIATIONS.--For the purposes of [~~this~~  
7 ~~article~~] Chapter 59A, Article 52 NMSA 1978, an appropriation  
8 shall be included in the general appropriation act of each  
9 legislature, the appropriation to be made from the fire  
10 protection fund, which funds are to be paid out by the  
11 secretary of finance and administration on vouchers signed by  
12 the state fire marshal."

13 SECTION 19. 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.--

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 and rules concerning  
21 the sale, servicing or use of fire safety, prevention,  
22 detection or suppression equipment or materials. For the  
23 purposes of this provision, "public occupancies" consist of  
24 places of assembly, educational occupancies, institutional  
25 occupancies, residential occupancies consisting of four [~~(4)~~]

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

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 to  
25 the effective date of the rules [~~and regulations~~] and not in

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1 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 the  
4 state fire marshal to constitute a distinct hazard to life or  
5 property shall not be exempt from [~~regulations~~] rules nor  
6 permitted to continue in service."

7 SECTION 20. Section 59A-52-16 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 962, as amended) is amended to read:

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

11 A. The [~~commission~~] state fire marshal shall adopt  
12 rules for the safe vehicular transportation, storage, handling  
13 and use of flammable and combustible liquids; provided that the  
14 [~~commission~~] state fire marshal shall not adopt any rule  
15 conflicting with the jurisdiction of the department of  
16 environment over the regulation of storage tanks pursuant to  
17 the Hazardous Waste Act or the Ground Water Protection Act.

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

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1 matter.

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

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

25 SECTION 21. Section 59A-52-17 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 963) is amended to read:

2 "59A-52-17. REGULATIONS--PUBLIC HEARING.--No rule or  
3 regulation shall be adopted or revised under Section [~~962 of~~  
4 ~~this article~~] 59A-52-16 NMSA 1978 or made effective until after  
5 public hearing thereon, of which at least twenty [~~(20)~~] days'  
6 written notice shall be given by certified mail to each motor  
7 carrier, producer, refiner, distributor or other person who or  
8 [~~which~~] that shall have registered [~~his~~] the person's or its  
9 name and mailing address with the marshal as a party interested  
10 in such proceedings, and at which any such interested party may  
11 appear and present testimony. Every such notice shall contain  
12 a copy of each rule and regulation proposed for adoption or  
13 revision pursuant to such hearing."

14 SECTION 22. Section 59A-52-18 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 964) is amended to read:

16 "59A-52-18. RULES AND REGULATIONS--STATEWIDE EFFECT--  
17 RESERVED POWER OF MUNICIPALITIES.--The rules and regulations  
18 promulgated pursuant to [~~this article~~] Chapter 59A, Article 52  
19 NMSA 1978 shall have uniform force and effect throughout the  
20 state and no municipality or subdivision shall enact or enforce  
21 any ordinances, rules or regulations inconsistent with the  
22 statewide rules and regulations promulgated pursuant to [~~this~~  
23 that] article. Nothing in [~~this~~] that article shall in any way  
24 impair the power of any municipality to regulate the use of its  
25 land by zoning, building codes or restricted fire district

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1 regulations."

2 SECTION 23. Section 59A-52-19 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 965) is amended to read:

4 "59A-52-19. POLICE POWER OF STATE FIRE MARSHAL--  
5 COOPERATION OF STATE OFFICERS.--

6 A. The state fire marshal [~~his~~] or the marshal's  
7 deputy, [~~or his~~] authorized officer or designated agent shall  
8 have full powers as peace officers to enforce the provisions of  
9 [~~this article~~] Chapter 59A, Article 52 NMSA 1978 and all rules  
10 and regulations issued pursuant to [~~this~~] that article.

11 B. The revenue officers and law enforcement  
12 officers of the state shall cooperate with the marshal [~~his~~] or  
13 the marshal's deputy, [~~or~~] authorized officer or designated  
14 agent whenever called upon by any of them for assistance in  
15 enforcing [~~this article~~] Chapter 59A, Article 52 NMSA 1978."

16 SECTION 24. Section 59A-52-20 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 966) is amended to read:

18 "59A-52-20. CEASE AND DESIST ORDERS--CERTAIN VIOLATIONS  
19 ARE MISDEMEANORS.--

20 A. When the state fire marshal [~~his~~] or the  
21 marshal's deputy, [~~or his~~] authorized officer or designated  
22 agent finds any violation of the regulations issued in  
23 compliance with [~~this article, he or they~~] Chapter 59A, Article  
24 52 NMSA 1978, the marshal or the marshal's deputy, authorized  
25 officer or designated agent shall issue an order to the owner

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1 or [~~his~~] the owner's agent to cease and desist such violations.

2 B. When there is so found any violation of any  
3 statute or rules and regulations concerning flammable liquids,  
4 a cease and desist order shall [~~issue~~] be issued if the  
5 violation constitutes an immediate and distinct hazard to life  
6 or property, and any such violation shall constitute a  
7 misdemeanor punishable by a fine not to exceed five hundred  
8 dollars (\$500). Each day such violation continues constitutes  
9 a separate offense."

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

12 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND  
13 MODIFICATIONS.--Any person aggrieved by any order of the state  
14 fire marshal [~~his~~] or the marshal's deputy, [~~or~~] authorized  
15 officer or [~~his~~] designated agent may appeal to the  
16 [~~commission~~] fire services council within ten days from the  
17 date of the service of such order. The [~~commission~~] council  
18 shall hear such party within twenty days after receipt of an  
19 appeal request and shall give not less than ten days' written  
20 notice of the hearing. Within fifteen days after such hearing,  
21 the [~~commission~~] council shall file its decision and, unless by  
22 its authority the order is revoked or modified, [~~it~~] the order  
23 shall be complied with within the time fixed in the decision,  
24 with such time to be not less than thirty days."

25 SECTION 26. Section 59A-52-23 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 969, as amended) is amended to read:

2 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS.--

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

12 SECTION 27. Section 59A-52-24 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 970) is amended to read:

14 "59A-52-24. PENALTY FOR VIOLATION OF LAW OR  
15 REGULATIONS.--Violation of any of the provisions of [~~this~~  
16 ~~article~~] Chapter 59A, Article 52 NMSA 1978 or of any of the  
17 regulations lawfully enacted pursuant thereto shall constitute  
18 a misdemeanor for which the punishment shall be a fine of not  
19 more than five hundred dollars (\$500). Each day any such  
20 violation continues shall constitute a separate offense."

21 SECTION 28. Section 59A-52-25 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 971) is amended to read:

23 "59A-52-25. PENALTY FOR VIOLATION OF CEASE AND DESIST  
24 ORDER.--Any person, firm or corporation that violates any final  
25 cease and desist order shall be subject to a penalty in the sum

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1 of five hundred dollars (\$500) for each day such violation  
2 continues. The attorney general is empowered to bring a civil  
3 suit for the enforcement of this section on the relation of the  
4 state fire marshal. [~~Any penalty collected under the~~  
5 ~~provisions of this section shall be credited to the fire~~  
6 ~~protection fund.]"~~

7 SECTION 29. A new section of Chapter 59A, Article 52 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] STATE FIRE MARSHAL--APPOINTMENT--TERM--  
10 COMPENSATION--REMOVAL--POWERS AND DUTIES.--

11 A. The state fire marshal shall be appointed by the  
12 fire services council. The state fire marshal shall be  
13 appointed solely on the basis of fitness to perform the duties  
14 of state fire marshal and without reference to political party  
15 affiliation. The state fire marshal shall be well versed in  
16 fire services, including structural fires, training,  
17 investigations and code enforcement, as well as administrative  
18 duties, including personnel, operating budgets and capital  
19 planning and expenditures. The state fire marshal shall have  
20 an understanding of insurance services office requirements,  
21 wild land firefighting and legislative advocacy.

22 B. The state fire marshal shall be an at-will  
23 employee and is exempt from the federal Fair Labor Standards  
24 Act of 1938.

25 C. The state fire marshal's annual compensation

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1 shall be subject to legislative appropriation and established  
2 by the fire services council at the start of each term and  
3 annually thereafter. The state fire marshal's annual  
4 compensation shall be no lower than that of the lowest-  
5 compensated cabinet secretary and no higher than that of the  
6 highest-compensated cabinet secretary.

7 D. The state fire marshal shall hold office from  
8 the date of appointment by the fire services council until such  
9 time as the state fire marshal retires, resigns or is  
10 terminated by the fire services council.

11 E. The state fire marshal shall:

12 (1) oversee and manage the state fire  
13 marshal's office and direct its activities;

14 (2) promulgate rules pursuant to the  
15 Administrative Procedures Act relating to the state fire  
16 marshal's office and the fire services council;

17 (3) employ and fix the compensation of staff,  
18 including directors of the state fire marshal's office's  
19 divisions, as necessary to carry out the duties of the office;

20 (4) consider advice from the fire services  
21 council concerning the adoption of fire safety management  
22 policies of the state fire marshal's office; and

23 (5) annually, prepare a budget for the state  
24 fire marshal's office."

25 SECTION 30. A new section of Chapter 59A, Article 52 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] FIRE SERVICES COUNCIL CREATED--  
3 MEMBERSHIP.--

4 A. The "fire services council" is created to advise  
5 the state fire marshal's office on fire and emergency  
6 services policy. The council consists of ten persons as  
7 follows:

8 (1) the presiding officer or designee of each  
9 of the:

10 (a) New Mexico fire chiefs association;

11 (b) fire and emergency managers

12 affiliate of New Mexico counties;

13 (c) New Mexico state firefighters

14 association;

15 (d) New Mexico emergency medical

16 technicians association;

17 (e) New Mexico fire marshals

18 association;

19 (f) the metro chiefs association; and

20 (g) New Mexico professional fire

21 fighters association;

22 (2) one person appointed by the governor;

23 (3) one person appointed by the president pro

24 tempore of the senate; and

25 (4) one person appointed by the speaker of the

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1 house of representatives.

2 B. The fire services council shall select from  
3 among its members a chair and vice chair who shall serve one-  
4 year terms. No member shall serve as chair or vice chair for  
5 more than two consecutive years.

6 C. The fire services council shall meet as  
7 frequently as necessary to conduct business or hold hearings  
8 but no less than four times per year. A majority of members of  
9 the council shall constitute a quorum.

10 D. The state fire marshal's office shall use its  
11 funding to reimburse council members for their per diem and  
12 mileage expenses in accordance with the Per Diem and Mileage  
13 Act. Council members shall otherwise serve without  
14 compensation.

15 E. The fire services council is subject to the  
16 Inspection of Public Records Act and the Open Meetings Act.  
17 Individual members of the fire services council are subject to  
18 the Governmental Conduct Act and the Financial Disclosure Act.

19 F. An employee of the state fire marshal's office  
20 who serves as staff for the fire services council shall not  
21 reveal to any person, except another council staff person, any  
22 requests or statements disclosed in confidence by a council  
23 member, except that this restriction shall not apply to any  
24 disclosure that is:

25 (1) protected pursuant to the Whistleblower

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1 Protection Act; or

2 (2) required by law."

3 SECTION 31. [NEW MATERIAL] FIRE SERVICES COUNCIL--

4 DUTIES.--The fire services council shall:

5 A. appoint a state fire marshal by a majority vote  
6 of all members of the council and conduct an annual performance  
7 review of the state fire marshal;

8 B. review and comment on proposed changes in fire  
9 codes and the proposed budget of the state fire marshal's  
10 office; and

11 C. consider complaints regarding the performance of  
12 the state fire marshal's office and make recommendations to the  
13 state fire marshal.

14 SECTION 32. 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. Based on periodic allotments approved by the  
18 marshal, the state treasurer shall distribute from the money in  
19 the fire protection fund, to each municipality and county fire  
20 district, the amount that the marshal [~~or the public regulation~~  
21 ~~commission, as the case may be~~] has certified to the state  
22 treasurer. Payment shall be made to the treasurer of any  
23 municipality and to the county treasurer of the county in which  
24 any county fire district is located for credit to the county  
25 fire district.

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

9           C. In addition to the distributions made pursuant  
10 to Subsections A and B of this section, upon certification by  
11 the marshal that the balance of the firefighters' survivors  
12 fund is less than two hundred fifty thousand dollars  
13 (\$250,000), the state treasurer shall distribute an amount from  
14 the fire protection fund to the firefighters' survivors fund so  
15 that the balance of the firefighters' survivors fund equals two  
16 hundred fifty thousand dollars (\$250,000)."

17           **SECTION 33.** Section 59A-53-19 NMSA 1978 (being Laws 2006,  
18 Chapter 103, Section 8, as amended) is amended to read:

19           "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

20           A. The "fire protection grant council" is created.

21 [~~Subject to the requirements of Subsection B of this section~~]

22 The council shall consist of:

23                           (1) a representative of the New Mexico  
24 municipal league;

25                           (2) a representative of [~~the~~] New Mexico

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1     ~~[association of]~~ counties;

2                     (3) two members appointed by the ~~[public~~  
3 ~~regulation commission who shall serve at the pleasure of the~~  
4 ~~commission]~~ fire services council who shall serve at the  
5 pleasure of the council;

6                     (4) three members, one from each congressional  
7 district, appointed by the governor who shall serve at the  
8 pleasure of the governor; and

9                     (5) the marshal, who shall serve as a  
10 nonvoting advisory member. The council shall elect a chair and  
11 vice chair from its membership.

12                     ~~[B. No appointee to the council shall be a member~~  
13 ~~or employee of the public regulation commission or the office~~  
14 ~~of superintendent of insurance.~~

15                     ~~G.]~~ B. The public members are entitled to receive  
16 per diem and mileage as provided in the Per Diem and Mileage  
17 Act and shall receive no other compensation, perquisite or  
18 allowance.

19                     ~~[D.]~~ C. The council shall develop criteria for  
20 assessing the critical needs of municipal fire departments and  
21 county fire districts for:

- 22                             (1) fire apparatus and equipment;  
23                             (2) communications equipment;  
24                             (3) equipment for wildfires;  
25                             (4) fire station construction or expansion;

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1 (5) equipment for hazardous material response;  
2 and

3 (6) stipends for volunteer firefighters in  
4 underserved areas.

5 ~~[E-]~~ D. Applications for grant assistance from the  
6 fire protection grant fund shall be made by fire districts to  
7 the council in accordance with the requirements of the council.  
8 Using criteria developed by the council, the council shall  
9 evaluate applications and prioritize those applications most in  
10 need of grant assistance from the fund. To the extent that  
11 money in the fund is available, the council shall award grant  
12 assistance for those prioritized applications.

13 ~~[F-]~~ E. In awarding grant assistance, the council  
14 may require conditions and procedures necessary to ensure that  
15 the money is expended in the most prudent manner.

16 ~~[G-]~~ F. When considering applications for grant  
17 assistance to pay stipends to volunteer firefighters in  
18 underserved areas, the council shall:

- 19 (1) define "underserved area";  
20 (2) ensure the proposed stipends will comply  
21 with the federal Fair Labor Standards Act of 1938 and United  
22 States department of labor requirements for maintaining  
23 volunteer status;  
24 (3) require a basic level of training before a  
25 volunteer may receive a stipend;

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1 (4) consider whether the fire district  
2 requires a service commitment from its volunteer firefighters  
3 in exchange for stipends; and

4 (5) weight the applications against other  
5 criteria or requirements determined by the council."

6 SECTION 34. TEMPORARY PROVISION--RECOMPILATION  
7 INSTRUCTION.--The compiler shall recompile Section 8-8-9.1 NMSA  
8 1978 (being Laws 2001, Chapter 80, Section 1) in Chapter 59A,  
9 Article 52 NMSA 1978.

10 SECTION 35. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
11 PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND  
12 REFERENCES IN LAW.--

13 A. On July 1, 2020, all staff positions, functions,  
14 personnel, appropriations, money, records, equipment, supplies,  
15 other property and contractual obligations of the fire marshal  
16 division of the public regulation commission are transferred to  
17 the state fire marshal's office.

18 B. Beginning on July 1, 2020, all references in  
19 law, rules, orders and other official acts to the fire marshal  
20 division of the public regulation commission shall be deemed  
21 references to the state fire marshal's office.

22 C. Beginning on July 1, 2020, all contractual  
23 obligations of the fire marshal division of the public  
24 regulation commission are binding on the state fire marshal's  
25 office.

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SECTION 36. REPEAL.--Section 8-8-9.3 NMSA 1978 (being  
Laws 2007, Chapter 161, Section 4) is repealed.

SECTION 37. EFFECTIVE DATE.--

A. The effective date of the provisions of Section  
30 of this act is July 1, 2019.

B. The effective date of the provisions of Sections  
1 through 29 and 31 through 36 of this act is July 1, 2020.