

SENATE BILL 245

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

William F. Burt

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO STATE AGENCIES; SEPARATING THE FIRE MARSHAL DIVISION FROM THE PUBLIC REGULATION COMMISSION; CREATING THE STATE FIRE MARSHAL'S OFFICE IN THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT; CREATING THE FIRE SERVICES COUNCIL; AMENDING STATUTORY REFERENCES; TRANSFERRING PERSONNEL, FUNCTIONS, MONEY, APPROPRIATIONS, OTHER PROPERTY AND CONTRACTUAL OBLIGATIONS; CHANGING REFERENCES IN LAW.

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

SECTION 1. Section 8-8-6 NMSA 1978 (being Laws 1998,

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Chapter 108, Section 6, as amended) is amended to read:

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

- A. the administrative services division;
- B. the consumer relations division;
- C. the legal division;
- D. the transportation division; and
- E. the utility division [~~and~~
- F. ~~the fire marshal division~~]."

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

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

- A. "association" means the public employees retirement association;
- B. "board" means the retirement board of the association;
- C. "fire department" means a fire department with volunteer members that is certified by the [~~fire marshal division of the public regulation commission~~] state fire marshal's office;
- D. "fund" means the volunteer firefighters retirement fund; and
- E. "member" means a volunteer nonsalaried firefighter who is listed as an active member on the rolls of a

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fire department and whose first year of service credit was accumulated during or after the year the member attained the age of sixteen. A volunteer firefighter who receives reimbursement for personal out-of-pocket costs shall not be considered a salaried firefighter."

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

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

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

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

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

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

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

(1) submit the documentation on forms provided

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by the association;

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

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

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

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

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

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

D. Prior to April 1, 2020, for service credit that

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has been earned, but not credited pursuant to Subsection B of this section, a member may post or adjust service credit earned for one or more years beginning on or after January 1, 1984; provided that the member shall:

- (1) file with the association a completed "Corrected Qualification Record" or "Adjusted Qualification Record" as prescribed by the association;
- (2) acknowledge the truth of the records under oath before a notary public; and
- (3) have the notarized forms signed by the mayor or city manager, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the board of county commissioners, if distributions from the fire protection fund for the fire department are made to a county fire district.

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

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

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

A. There is created the "firefighters' survivors supplemental death benefits review committee". The committee

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shall consist of the attorney general [~~the president of the New Mexico fire chiefs association, the state president of the New Mexico professional fire fighters association and the president of the New Mexico state fire fighters' association or their designees~~] or the attorney general's designee and the fire services council.

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

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

SECTION 5. Section 24-22-2 NMSA 1978 (being Laws 2001, Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as amended) is amended to read:

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

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

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

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

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

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

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

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

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

"59A-52-1. STATE FIRE MARSHAL'S OFFICE CREATED--STATE FIRE MARSHAL CREATED.--

A. The "state fire marshal's office" is created as a division under the homeland security and emergency management department.

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B. The position of "state fire marshal" is created as the director of the [~~fire marshal division under the public regulation commission~~] state fire marshal's office.

C. The office consists of the:

- (1) firefighter training academy program;
- (2) fire service support program;
- (3) fire investigations program; and
- (4) fire code enforcement program."

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

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

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

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

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

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

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

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

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

"59A-52-7. TEACHING FIRE PREVENTION AND CONTROL IN PUBLIC SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATION.--The state fire marshal shall prescribe reasonable rules [~~and regulations~~] and programs for the teaching to all [~~school children~~ schoolchildren in the state, whether in public or private schools, the proper methods of fire prevention and control. Such rules [~~regulations~~] and programs shall be submitted to the

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[~~department of~~] public education department on or before August
[~~first~~] 1 of each year. Among other things, such rules
[~~regulations~~] and programs shall prescribe drills for
evacuating school buildings."

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

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

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

"59A-52-9. MAY ENTER UPON PREMISES.--The state fire
marshal [~~his~~] or the marshal's deputy, [~~his~~] authorized officer
or designated agent shall have authority at all normal hours of
operation to enter in and upon all buildings and premises
subject to [~~this article~~] Chapter 59A, Article 52 NMSA 1978 for
the purpose of examination and inspection."

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

"59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS--
HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire
marshal or [~~his~~] the marshal's deputies or employees are
authorized to make investigations deemed necessary of any fire
or explosion or attempt to cause any fire or explosion in the
state [~~and~~]. The marshal is authorized to require reports from
[~~his~~] the marshal's deputies concerning all fires and
explosions in their districts. For the purpose of such
investigations, the marshal and [~~his~~] the marshal's deputies or
designated persons are authorized to conduct [~~hearing~~]
hearings, subpoena witnesses, take testimony and enter upon and
examine any building or premises where any fire or explosion or
attempt to cause a fire or explosion shall have occurred, or
which at the time may be burning. The marshal or [~~his~~] the
marshal's deputies or designated persons shall also have the
power to cause to be produced before them such papers as they
may require in making such examination. In addition, the
marshal or [~~his~~] the marshal's deputies or designated persons
may, in their discretion, take full control and custody of such
buildings and premises, and place [~~such person~~] someone in
charge [~~thereof~~] of the building and premises as they may deem
proper, until their examination and investigation is completed.
For evaluation of the evidence, the marshal shall have access

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to the facilities and personnel of the [~~state police~~
~~laboratory~~] department of public safety forensic laboratories
bureau, and the executive head of [~~such laboratory~~] the bureau
shall cooperate fully with the marshal."

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

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

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

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

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

"59A-52-13. TRANSMITTAL OF EVIDENCE INDICATING CRIMINAL
ACTS.--The state fire marshal shall furnish to the proper law
enforcement officers any evidence [~~he~~] that the marshal may
discover in [~~his~~] the marshal's investigations [~~which~~] that
indicates criminal acts."

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

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

SECTION 19. Section 59A-52-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 961) is amended to read:

"59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES REGULATIONS.--

A. For prevention and control of fires, pursuant to the State Rules Act, the state fire [~~board~~] marshal shall formulate, adopt and promulgate, and amend or revise [~~regulations~~] rules for fire prevention and safe conduct or use of public occupancies and rules concerning the sale, servicing or use of fire safety, prevention, detection or suppression equipment or materials. For the purposes of this provision, "public occupancies" consist of places of assembly, educational occupancies, institutional occupancies, residential occupancies consisting of four [~~4~~] or more family units, mercantile

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occupancies, office occupancies, industrial occupancies, storage occupancies and miscellaneous structures consisting of towers, underground structures and windowless buildings and all buildings owned or occupied by the state government or any political subdivision thereof or by municipal governments. [and regulations concerning the sale, servicing or use of fire safety, prevention, detection or suppression equipment or materials. The regulations shall be adopted after notice and public hearing. The notice shall be entitled "notice of proposed rule making" and it shall contain the date of the hearing and shall state the subject of the hearing. A copy of the notice, along with a copy of the proposed regulations, shall be filed with the supreme court librarian at least twenty (20) days prior to the hearing. In addition, the board shall make available for inspection at its offices, a copy of the proposed regulations.]

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

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

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

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

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

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

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

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

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

SECTION 21. Section 59A-52-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 963) is amended to read:

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

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

"59A-52-18. RULES [~~AND REGULATIONS~~]--STATEWIDE EFFECT--RESERVED POWER OF MUNICIPALITIES--TRAINING--

A. The rules [~~and regulations~~] promulgated pursuant to [~~this article~~] Chapter 59A, Article 52 NMSA 1978 shall have uniform force and effect throughout the state and no municipality or subdivision shall enact or enforce any ordinances or rules [~~or regulations~~] inconsistent with the statewide rules [~~and regulations~~] promulgated pursuant to [~~this~~] that article. Nothing in [~~this~~] that article shall in any way impair the power of any municipality to regulate the use of its land by zoning, building codes or restricted fire

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district [~~regulations~~] rules.

B. The state fire marshal shall SJC→~~train at least~~
~~one~~←SJC SJC→offer training to←SJC certified SJC→~~firefighter~~
~~per county to perform all required~~←SJC SJC→firefighters to
assist with ←SJC fire and fire safety inspections."

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

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

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

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

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

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

A. When the state fire marshal [~~his~~] or the
marshal's deputy, [~~or his~~] authorized officer or designated

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agent finds any violation of the [~~regulations~~] rules issued in compliance with [~~this article, he or they~~] Chapter 59A, Article 52 NMSA 1978, the marshal or the marshal's deputy, authorized officer or designated agent shall issue an order to the owner or [~~his~~] the owner's agent to cease and desist such violations.

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

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

"59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND MODIFICATIONS.--Any person aggrieved by any order of the state fire marshal [~~his~~] or the marshal's deputy, [~~or~~] authorized officer or [~~his~~] designated agent may appeal to the [~~commission~~] fire services council within ten days from the date of the service of such order. The [~~commission~~] council shall hear such party within twenty days after receipt of an appeal request and shall give not less than ten days' written notice of the hearing. Within fifteen days after such hearing, the [~~commission~~] council shall file its decision and, unless by

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its authority the order is revoked or modified, ~~[it]~~ the order shall be complied with within the time fixed in the decision, with such time to be not less than thirty days."

SECTION 26. Section 59A-52-23 NMSA 1978 (being Laws 1984, Chapter 127, Section 969, as amended) is amended to read:

"59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS.-- After expiration of time for an administrative appeal, and if no such appeal has been taken, the state fire marshal may commence an action in the district court for Santa Fe county to enforce the cease and desist order by injunction or other appropriate remedy as the district court may adjudge. The ~~[commission]~~ fire services council may likewise commence an action in the district court for Santa Fe county to enforce its decision rendered on appeal from the cease and desist order of the state fire marshal."

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

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

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

"59A-52-25. PENALTY FOR VIOLATION OF CEASE AND DESIST ORDER.--Any person, firm or corporation that violates any final cease and desist order shall be subject to a penalty in the sum of five hundred dollars (\$500) for each day such violation continues. The attorney general is empowered to bring a civil suit for the enforcement of this section on the relation of the state fire marshal. [~~Any penalty collected under the provisions of this section shall be credited to the fire protection fund.~~]"

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

"[NEW MATERIAL] STATE FIRE MARSHAL--APPOINTMENT--POWERS AND DUTIES.--

A. The state fire marshal shall be appointed by the secretary of homeland security and emergency management. The state fire marshal shall be appointed solely on the basis of fitness to perform the duties of state fire marshal and without reference to political party affiliation. The state fire marshal shall be well versed in fire services, including structural fires, training, investigations and code enforcement, as well as administrative duties, including personnel, operating budgets and capital planning and expenditures. The state fire marshal shall have an

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understanding of insurance services office requirements, wildland firefighting and legislative advocacy.

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

C. The state fire marshal shall:

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

(2) promulgate rules pursuant to the State Rules Act relating to the state fire marshal's office and the fire services council; and

(3) consider advice from the fire services council concerning the adoption of fire safety management policies of the state fire marshal's office."

SECTION 30. A new section of Chapter 59A, Article 52 NMSA 1978 is enacted to read:

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

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

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

(a) New Mexico fire chiefs association;

(b) fire and emergency managers

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affiliate of New Mexico counties;

(c) New Mexico state firefighters association;

(d) New Mexico emergency medical technician association;

(e) New Mexico fire marshals association;

(f) SFC→~~the~~←SFC metro fire chiefs association; and

(g) New Mexico professional fire fighters association;

(2) one person appointed by the governor;

(3) one person appointed by the president pro tempore of the senate; and

(4) one person appointed by the speaker of the house of representatives.

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

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

D. Council members shall be reimbursed for their

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per diem and mileage expenses in accordance with the Per Diem and Mileage Act. Council members shall otherwise serve without compensation.

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

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

(1) protected pursuant to the Whistleblower Protection Act; or

(2) required by law."

SECTION 31. A new section of Chapter 59A, Article 52 NMSA 1978 is enacted to read:

"[NEW MATERIAL] FIRE SERVICES COUNCIL--DUTIES.--The fire services council shall:

A. review and comment on proposed changes in fire codes and the proposed budget of the state fire marshal's office;

B. consider complaints regarding the performance of the state fire marshal's office and make recommendations to the

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state fire marshal;

C. provide to the secretary of homeland security and emergency management a recommendation on the appointment of the state fire marshal; and

D. hear administrative appeals of state fire marshal or deputy state fire marshal orders and modifications."

SECTION 32. Section 59A-53-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 978, as amended) is amended to read:

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

A. Based on periodic allotments approved by the marshal, the state treasurer shall distribute from the money in the fire protection fund, to each municipality and county fire district, the amount that the marshal or the ~~[public regulation commission, as the case may be]~~ secretary of homeland security and emergency management has certified to the state treasurer. Payment shall be made to the treasurer of any municipality and to the county treasurer of the county in which any county fire district is located for credit to the county fire district.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in the amount that the marshal or the ~~[public regulation commission]~~ secretary of homeland security and emergency management, as the case may be, has certified to the state treasurer pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county in

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which any county fire district is located and the New Mexico finance authority.

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

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

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

A. The "fire protection grant council" is created. [Subject to the requirements of Subsection B of this section] The council [~~shall consist~~] consists of:

- (1) a representative of the New Mexico municipal league;
- (2) a representative of [~~the~~] New Mexico [~~association of~~] counties;
- (3) two members appointed by the [~~public regulation commission who shall serve at the pleasure of the commission~~] fire services council, who shall serve at the pleasure of the council;
- (4) three members, one from each congressional

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district, appointed by the governor who shall serve at the pleasure of the governor; and

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

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

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

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

- (1) fire apparatus and equipment;
- (2) communications equipment;
- (3) equipment for wildfires;
- (4) fire station construction or expansion;
- (5) equipment for hazardous material response;

and

(6) stipends for volunteer firefighters in underserved areas.

~~[E.]~~ D. Applications for grant assistance from the fire protection grant fund shall be made by fire districts to

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the council in accordance with the requirements of the council. Using criteria developed by the council, the council shall evaluate applications and prioritize those applications most in need of grant assistance from the fund. To the extent that money in the fund is available, the council shall award grant assistance for those prioritized applications.

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

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

- (1) define "underserved area";
- (2) ensure the proposed stipends will comply with the federal Fair Labor Standards Act of 1938 and United States department of labor requirements for maintaining volunteer status;
- (3) require a basic level of training before a volunteer may receive a stipend;
- (4) consider whether the fire district requires a service commitment from its volunteer firefighters in exchange for stipends; and
- (5) weight the applications against other criteria or requirements determined by the council."

SECTION 34. TEMPORARY PROVISION--RECOMPILATION

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INSTRUCTION.--The compiler shall recompile Section 8-8-9.1 NMSA 1978 (being Laws 2001, Chapter 80, Section 1) in Chapter 59A, Article 52 NMSA 1978.

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

A. On July 1, 2021, all staff positions, functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the fire marshal division of the public regulation commission are transferred to the state fire marshal's office of the homeland security and emergency management department.

B. Beginning on July 1, 2021, all references in law, rules, orders and other official acts to the fire marshal division of the public regulation commission shall be deemed references to the state fire marshal's office of the homeland security and emergency management department.

C. Beginning on July 1, 2021, all contractual obligations of the fire marshal division of the public regulation commission are binding on the state fire marshal's office of the homeland security and emergency management department.

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

SECTION 37. EFFECTIVE DATE.--The effective date of the .215755.4AIC February 16, 2020 (1:50pm)

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provisions of this act is July 1, 2021.

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