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SENATE BILL 245

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

INTRODUCED BY

William F. Burt

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,  
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;

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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 association;

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. Prior to April 1, 2020, for service credit that  
21 has been earned, but not credited pursuant to Subsection B of  
22 this section, a member may post or adjust service credit earned  
23 for one or more years beginning on or after January 1, 1984;  
24 provided that the member shall:

25 (1) file with the association a completed

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1 "Corrected Qualification Record" or "Adjusted Qualification  
2 Record" as prescribed by the association;

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

5 (3) have the notarized forms signed by the  
6 mayor or city manager, if distributions from the fire  
7 protection fund for the fire department are made to an  
8 incorporated municipality, or the chair of the board of county  
9 commissioners, if distributions from the fire protection fund  
10 for the fire department are made to a county fire district.

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

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

17 "10-11B-5. FIREFIGHTERS' SURVIVORS SUPPLEMENTAL  
18 BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

19 A. There is created the "firefighters' survivors  
20 supplemental death benefits review committee". The committee  
21 shall consist of the attorney general [~~the president of the New~~  
22 ~~Mexico fire chiefs association, the state president of the New~~  
23 ~~Mexico professional fire fighters association and the president~~  
24 ~~of the New Mexico state fire fighters' association or their~~  
25 ~~designees~~] or the attorney general's designee and the fire

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1 services council.

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

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

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

19 "24-22-2. DEFINITIONS.--As used in the Safe Haven for  
20 Infants Act:

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

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

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

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

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

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

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

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

16 "59A-52-1. STATE FIRE MARSHAL'S OFFICE CREATED--STATE  
17 FIRE MARSHAL CREATED.--

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

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

24 C. The office consists of the:

25 (1) firefighter training academy program;

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

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

6           "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER  
7 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal  
8 may employ with the consent of the [~~chief of staff of the~~  
9 ~~public regulation commission~~] secretary of homeland security  
10 and emergency management deputy state fire marshals and other  
11 employees to assist in the execution of the marshal's duties."

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

14          "59A-52-4. BONDING OF EMPLOYEES.--The state fire marshal  
15 shall require the bonding of those employees whose duties in  
16 [~~his~~] the marshal's opinion require such bonds and in an amount  
17 determined by [~~him. The premiums of such bonds shall be paid~~  
18 ~~out of the appropriation hereinafter made to~~] the marshal."

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

21          "59A-52-5. COOPERATION WITH OTHER AGENCIES FOR PREVENTION  
22 AND CONTROL OF FIRES.--The state fire marshal is authorized to  
23 cooperate with all other groups, organizations and agencies in  
24 this state or in other states in the collection, dissemination  
25 and evaluation of information, statistics and suggestions for

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1 prevention or control of fires."

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

4 "59A-52-6. FIRE PROTECTION TRAINING PROGRAMS.--The state  
5 fire marshal shall establish and conduct training programs  
6 throughout the state for demonstrating and teaching [~~firemen~~]  
7 firefighters proper methods of preventing and extinguishing  
8 fires. [~~The marshal shall have available, from funds included~~  
9 ~~in the general appropriation act of each legislature, money for~~  
10 ~~use by him in establishing and conducting such training~~  
11 ~~programs.~~]"

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

14 "59A-52-7. TEACHING FIRE PREVENTION AND CONTROL IN PUBLIC  
15 SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATION.--The state fire  
16 marshal shall prescribe reasonable rules [~~and regulations~~] and  
17 programs for the teaching to all [~~school children~~]  
18 schoolchildren in the state, whether in public or private  
19 schools, the proper methods of fire prevention and control.  
20 Such rules [~~regulations~~] and programs shall be submitted to the  
21 [~~department of~~] public education department on or before August  
22 [~~first~~] 1 of each year. Among other things, such rules  
23 [~~regulations~~] and programs shall prescribe drills for  
24 evacuating school buildings."

25 SECTION 12. Section 59A-52-8 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 954) is amended to read:

2 "59A-52-8. INVESTIGATION OF FIRE HAZARDS--ABATEMENT.--The  
3 state fire marshal is authorized to make investigations, or  
4 require [~~his~~] the marshal's deputy to make investigations, and  
5 reports of existing conditions in the state [~~which~~] that are  
6 fire hazards and to make reasonable orders for the alleviation  
7 of such situations as [~~he~~] the marshal may deem necessary. If  
8 the orders of the marshal are not carried out by persons to  
9 whom they are directed, [~~he~~] the marshal shall institute proper  
10 proceedings under municipal ordinances or state laws to require  
11 compliance with [~~his~~] the orders, as [~~he~~] the marshal may deem  
12 necessary."

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

15 "59A-52-9. MAY ENTER UPON PREMISES.--The state fire  
16 marshal [~~his~~] or the marshal's deputy, [~~his~~] authorized officer  
17 or designated agent shall have authority at all normal hours of  
18 operation to enter in and upon all buildings and premises  
19 subject to [~~this article~~] Chapter 59A, Article 52 NMSA 1978 for  
20 the purpose of examination and inspection."

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

23 "59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS--  
24 HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire  
25 marshal or [~~his~~] the marshal's deputies or employees are

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1 authorized to make investigations deemed necessary of any fire  
2 or explosion or attempt to cause any fire or explosion in the  
3 state ~~and~~. The marshal is authorized to require reports from  
4 ~~his~~ the marshal's deputies concerning all fires and  
5 explosions in their districts. For the purpose of such  
6 investigations, the marshal and ~~his~~ the marshal's deputies or  
7 designated persons are authorized to conduct ~~hearing~~  
8 hearings, subpoena witnesses, take testimony and enter upon and  
9 examine any building or premises where any fire or explosion or  
10 attempt to cause a fire or explosion shall have occurred, or  
11 which at the time may be burning. The marshal or ~~his~~ the  
12 marshal's deputies or designated persons shall also have the  
13 power to cause to be produced before them such papers as they  
14 may require in making such examination. In addition, the  
15 marshal or ~~his~~ the marshal's deputies or designated persons  
16 may, in their discretion, take full control and custody of such  
17 buildings and premises, and place ~~such person~~ someone in  
18 charge ~~thereof~~ of the building and premises as they may deem  
19 proper, until their examination and investigation is completed.  
20 For evaluation of the evidence, the marshal shall have access  
21 to the facilities and personnel of the ~~state police~~  
22 laboratory department of public safety forensic laboratories  
23 bureau, and the executive head of ~~such laboratory~~ the bureau  
24 shall cooperate fully with the marshal."

25 SECTION 15. Section 59A-52-11 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 957) is amended to read:

2 "59A-52-11. WITNESSES--PER DIEM AND MILEAGE.--Witnesses  
3 or persons subpoenaed [~~under this article~~] pursuant to Chapter  
4 59A, Article 52 NMSA 1978 shall be paid [~~as to time and expense~~  
5 ~~from the fire marshal's fund~~] at per diem and mileage rates on  
6 the same bases and at the same rates as currently apply as to  
7 state employees in general."

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

10 "59A-52-12. RECORDS OF FIRES OPEN TO PUBLIC.--The state  
11 fire marshal shall keep open to public inspection, at  
12 reasonable hours, all records of fires occurring within the  
13 state."

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

16 "59A-52-13. TRANSMITTAL OF EVIDENCE INDICATING CRIMINAL  
17 ACTS.--The state fire marshal shall furnish to the proper law  
18 enforcement officers any evidence [~~he~~] that the marshal may  
19 discover in [~~his~~] the marshal's investigations [~~which~~] that  
20 indicates criminal acts."

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

23 "59A-52-14. APPROPRIATIONS.--For the purposes of [~~this~~  
24 ~~article~~] Chapter 59A, Article 52 NMSA 1978, an appropriation to  
25 the homeland security and emergency management department shall

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1 be included in the general appropriation act of each  
2 legislature, the appropriation to be made from the fire  
3 protection fund, which funds are to be paid out by the  
4 secretary of finance and administration on vouchers signed by  
5 the ~~[marshal]~~ secretary of homeland security and emergency  
6 management."

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

9 "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES  
10 REGULATIONS.--

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

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

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

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

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

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

3           "59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE STANDARDS  
4 [~~SAVINGS CLAUSE~~]-DEFINITION.--

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

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

21           C. The rules shall include reasonable provisions  
22 under which facilities in service prior to the effective date  
23 of the rules and not in strict conformity therewith may be  
24 continued in service. Nonconforming facilities in service  
25 prior to the adoption of the rules that are found by the state

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

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

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

21 "59A-52-17. [~~REGULATIONS~~] RULES--PUBLIC HEARING.--No rule  
22 [~~or regulation~~] shall be adopted or revised under Section [~~962~~  
23 ~~of this article~~] 59A-52-16 NMSA 1978 or made effective until  
24 after public hearing thereon, of which at least twenty [~~(20)~~]  
25 days' written notice shall be given by certified mail to each

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1 motor carrier, producer, refiner, distributor or other person  
2 [~~who or which~~] that shall have registered [~~his or~~] its name and  
3 mailing address with the state fire marshal as a party  
4 interested in such proceedings, and at which any such  
5 interested party may appear and present testimony. Every such  
6 notice shall contain a copy of each rule [~~and regulation~~]  
7 proposed for adoption or revision pursuant to such hearing."

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

10 "59A-52-18. RULES [~~AND REGULATIONS~~]--STATEWIDE EFFECT--  
11 RESERVED POWER OF MUNICIPALITIES--TRAINING--

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

22 B. The state fire marshal shall train at least one  
23 certified firefighter per county to perform all required fire  
24 and fire safety inspections."

25 SECTION 23. Section 59A-52-19 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 965) is amended to read:

2 "59A-52-19. POLICE POWER OF STATE FIRE MARSHAL--  
3 COOPERATION OF STATE OFFICERS.--

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

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

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

16 "59A-52-20. CEASE AND DESIST ORDERS--CERTAIN VIOLATIONS  
17 ARE MISDEMEANORS.--

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

25 B. When there is [~~so~~] found any violation of any

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

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

10 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND  
11 MODIFICATIONS.--Any person aggrieved by any order of the state  
12 fire marshal [~~his~~] or the marshal's deputy, [~~or~~] authorized  
13 officer or [~~his~~] designated agent may appeal to the  
14 [~~commission~~] fire services council within ten days from the  
15 date of the service of such order. The [~~commission~~] council  
16 shall hear such party within twenty days after receipt of an  
17 appeal request and shall give not less than ten days' written  
18 notice of the hearing. Within fifteen days after such hearing,  
19 the [~~commission~~] council shall file its decision and, unless by  
20 its authority the order is revoked or modified, [~~it~~] the order  
21 shall be complied with within the time fixed in the decision,  
22 with such time to be not less than thirty days."

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

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

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

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

12 "59A-52-24. PENALTY FOR VIOLATION OF LAW OR [REGULATIONS]  
13 RULES.--Violation of any of the provisions of [~~this article~~]  
14 Chapter 59A, Article 52 NMSA 1978 or of any of the  
15 [~~regulations~~] rules lawfully enacted pursuant [~~thereto~~] to that  
16 article shall constitute a misdemeanor for which the punishment  
17 shall be a fine of not more than five hundred dollars (\$500).  
18 Each day any such violation continues shall constitute a  
19 separate offense."

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

22 "59A-52-25. PENALTY FOR VIOLATION OF CEASE AND DESIST  
23 ORDER.--Any person, firm or corporation that violates any final  
24 cease and desist order shall be subject to a penalty in the sum  
25 of five hundred dollars (\$500) for each day such violation

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1 continues. The attorney general is empowered to bring a civil  
2 suit for the enforcement of this section on the relation of the  
3 state fire marshal. [~~Any penalty collected under the~~  
4 ~~provisions of this section shall be credited to the fire~~  
5 ~~protection fund.]"~~

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

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

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

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

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

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

9 SECTION 30. A new section of Chapter 59A, Article 52 NMSA  
10 1978 is enacted to read:

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

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

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

18 (a) New Mexico fire chiefs association;

19 (b) fire and emergency managers  
20 affiliate of New Mexico counties;

21 (c) New Mexico state firefighters  
22 association;

23 (d) New Mexico emergency medical  
24 technician association;

25 (e) New Mexico fire marshals

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1 association;

2 (f) the metro fire chiefs association;

3 and

4 (g) New Mexico professional fire

5 fighters association;

6 (2) one person appointed by the governor;

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

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

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

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

19 D. Council members shall be reimbursed for their  
20 per diem and mileage expenses in accordance with the Per Diem  
21 and Mileage Act. Council members shall otherwise serve without  
22 compensation.

23 E. The fire services council is subject to the  
24 Inspection of Public Records Act and the Open Meetings Act.  
25 Individual members of the fire services council are subject to

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1 the Governmental Conduct Act and the Financial Disclosure Act.

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

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

10 (2) required by law."

11 SECTION 31. A new section of Chapter 59A, Article 52 NMSA  
12 1978 is enacted to read:

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

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

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

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

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

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

3           "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND.--

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

13           B. The state treasurer is authorized to redirect a  
14 distribution to the New Mexico finance authority in the amount  
15 that the marshal or the [~~public regulation commission~~]  
16 secretary of homeland security and emergency management, as the  
17 case may be, has certified to the state treasurer pursuant to  
18 an ordinance or a resolution passed by the municipality or  
19 county and a written agreement of the municipality or county in  
20 which any county fire district is located and the New Mexico  
21 finance authority.

22           C. In addition to the distributions made pursuant  
23 to Subsections A and B of this section, upon certification by  
24 the marshal that the balance of the firefighters' survivors  
25 fund is less than two hundred fifty thousand dollars

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1 (\$250,000), the state treasurer shall distribute an amount from  
2 the fire protection fund to the firefighters' survivors fund so  
3 that the balance of the firefighters' survivors fund equals two  
4 hundred fifty thousand dollars (\$250,000)."

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

7 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

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

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

10 The council [~~shall consist~~] consists of:

11 (1) a representative of the New Mexico  
12 municipal league;

13 (2) a representative of [~~the~~] New Mexico  
14 [~~association of~~] counties;

15 (3) two members appointed by the [~~public~~  
16 ~~regulation commission who shall serve at the pleasure of the~~  
17 ~~commission~~] fire services council, who shall serve at the  
18 pleasure of the council;

19 (4) three members, one from each congressional  
20 district, appointed by the governor who shall serve at the  
21 pleasure of the governor; and

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

25 [~~B. No appointee to the council shall be a member~~]

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1 ~~or employee of the public regulation commission or the office~~  
2 ~~of superintendent of insurance.~~

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

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

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

15 and

16 (6) stipends for volunteer firefighters in  
17 underserved areas.

18 ~~[E.]~~ D. Applications for grant assistance from the  
19 fire protection grant fund shall be made by fire districts to  
20 the council in accordance with the requirements of the council.  
21 Using criteria developed by the council, the council shall  
22 evaluate applications and prioritize those applications most in  
23 need of grant assistance from the fund. To the extent that  
24 money in the fund is available, the council shall award grant  
25 assistance for those prioritized applications.

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

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

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

19           **SECTION 34. TEMPORARY PROVISION--RECOMPILATION**  
20 INSTRUCTION.--The compiler shall recompile Section 8-8-9.1 NMSA  
21 1978 (being Laws 2001, Chapter 80, Section 1) in Chapter 59A,  
22 Article 52 NMSA 1978.

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

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

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

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

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

19           **SECTION 37. EFFECTIVE DATE.**--The effective date of the  
20 provisions of this act is July 1, 2021.