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## FISCAL IMPACT REPORT

**SPONSOR** Burt **ORIGINAL DATE** 2/14/2020  
**LAST UPDATED** 2/19/2020 **HB** \_\_\_\_\_  
**SHORT TITLE** Separate Fire Marshal from PRC **SB** 245/aSJC/aSFC  
**ANALYST** Martinez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			\$1,151.2	\$1,151.2	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts/Companion with: HB11  
 Relates to: HB191, SB322

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (NMAG)  
 Department of Homeland Security and Emergency Management (DHSEM)  
 Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee amendment in Section 30A, Fire Service Council Created Membership, strikes the use of “the” in the following sentence; “ (f) the metro fire chiefs association;”

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment, requires that the State Fire Marshal shall offer training to certified firefighters to assist with fire and fire safety inspections and removes language that the State Fire Marshal shall train at least one certified firefighter per county.

#### Synopsis of Original Bill

Senate Bill 245 removes the State Fire Marshal Division from the Public Regulation Commission (PRC), and places it within the Homeland Security and Emergency Management Department (DHSEM), and makes the Fire Marshal an at-will position appointed by the

Secretary of Homeland Security.

In addition, the bill creates the Fire Services Council, consisting of a presiding officer or designee of the New Mexico Fire Chiefs Association, fire and emergency managers affiliate of New Mexico counties, New Mexico State Firefighters Association, New Mexico Emergency Medical Technical Association, New Mexico Fire Marshals Association, the Metro Chiefs Association, Metro Fire Chiefs Association, New Mexico Professional Fire Fighters Association and one designee each from the governor, president pro-tempore of the Senate and the Speaker of the House.

Section 28 of the bill amends Section 59A-52-25 of the Insurance Code striking language that previously directed any penalty collected as a result of a civil enforcement action to be credited to the fire protection fund.

The effective date of this bill is July 1, 2021.

### **FISCAL IMPLICATIONS**

The fire protection fund receives the 3 percent premium tax on auto and fire insurance collected by the Office of Superintendent of Insurance (OSI). The fees are collected in the insurance suspense fund within OSI and transferred to the fire protection fund at PRC.

In the PRC's FY20 operating budget, \$4.8 million of approximately \$96 million in fire protection funds collected annually is used to support administrative operational needs in all three programs of the agency. For example, the Legal Division in the Policy and Regulation program provides expert legal analysis for the Fire Marshal's office, and the Program Support Program provides human resources support, information technology services and administers the collection of funds from the Office of Superintendent of Insurance, and is responsible for all statutorily required disbursements from the fire protection fund.

In FY20, the breakdown of Fire Protection Funds in the PRC's operating budget is as follows:

1. Policy and Regulation Program:	\$489.7
2. Public Safety (Fire Marshall):	\$3,643.3
<u>3. Program Support:</u>	<u>\$661.5</u>
Total	\$4,794.5

If the fire protection funds are no longer available from PRC's operating budget this will result in a decrease in funding of \$1.15 million total for the Policy and Regulation Program and Program Support Program. This analysis assumes an amount of \$3.6 million in fire protection funds that support the State Fire Marshal's office will move with the State Fire Marshal's Office with passage of this bill.

In order for PRC to continue to operate as normal, providing critical regulatory services, the fire protection funds used to support the Policy and Regulation Program (\$489.7 thousand) and the Program Support Program (\$661.5 thousand), may need to be replaced with \$1.15 million in general fund revenue. This will be a recurring expense to the general fund of \$1.15 million beginning in FY21. Without replacing these funds, the agency may not be able to continue operations as normal, creating staffing issues in critical areas that support multiple areas of the

agency including, lawyers, engineers, economists, utility regulation experts, and administrative services staff.

It should be noted that there may be costs associated with moving to a new location or remodeling the existing location to accommodate the reorganization. For example, in the 2019 legislative session, Chapter 48 (Senate Bill 22) included \$1 million dollars to establish new field offices and transfer programs from other departments to the new Early Childhood Education and Care Department. Also included in the General Appropriation Act of 2020 is \$564 thousand for costs associated with the relocation of the AOC.

## **SIGNIFICANT ISSUES**

It should be noted HB11, the PRC reorganization does not make provision for the Fire Marshal Division. Section 6 of HB11 repeals existing law that creates divisions in PRC, including the Fire Marshal, but leaves in place the section of existing law defining the duties of the Fire Marshal. See Sections 8-8-6 and 8-8-9.3. Therefore, SB245 helps clarify where the Fire Marshal will reside.

The Public Regulation Commission notes:

The Fire Service Advisory Council was originally established by resolution of the PRC in September 2019. Currently, the purpose of the Fire Service Advisory Council is to provide advisory assistance to the State Fire Marshal regarding fire and emergency services issues. Under existing resolution, the authority given to the Fire Service Advisory Council is limited within the scope established by the PRC and is managed by the PRC Chief of Staff. According to this bill, the Fire Service Advisory Council will have greater authority in the operations of the State Fire Marshal's Division to include: having public hearings regarding pending rules, administering administrative hearings in appellate cases, reviewing and commenting on proposed changes in fire codes and the proposed budget of the State Fire Marshal's Office, considering complaints regarding the performance of the State Fire Marshal's Office and making recommendations to the State Fire Marshal, and making recommendation to the NM Homeland Security Cabinet Secretary on the appointment of the State Fire Marshal. Additionally, the members of the Fire Service Advisory Council will increase from 7 to 10 may contribute to split votes on the council.

The authority to consider complaints regarding employee performance of the State Fire Marshal's Office may conflict with Human Resources authority and has not been vetted by the employees' union representatives.

The bill states on Page 17, lines 22-24 "the state fire marshal shall train at least one certified firefighter per county to perform fire and fire safety inspections." This provision is in conflict with 28 of the NM County Fire Marshals who may conduct fire investigations and/or inspections already and may be receiving administration monies from the fire protection fund to carry out those services. Additionally, this provision may require counties to adopt their own fire code. The trained experienced professional fire code inspectors and fire/arson investigators of the SFMD are subject matter experts in the field of fire prevention and typically serve rural areas of the state that do not have trained fire inspectors/fire investigators. Due to statutory authority, resources, experience, and

training, the services provided by the SFMD in fire inspections/fire investigations are extensive and will better serve the NM fire service and citizens of NM.

The Department of Homeland Security and Emergency Management notes:

SB245 will enhance some important capabilities of the department. It will increase the ability to offer more refined training statewide to emergency managers and other parties. This is accomplished through the blending of the training side of each agency. This bill also opens many opportunities for the formation of a better and more capable Hazardous Material Safety Board and increases the importance of the State Emergency Commission in their duties to tie in training and subject matter expertise for prevention of serious hazmat issues across the state. Lastly, the merge with the fire marshal brings a new arm of enforcement capabilities for Tier II reporting statewide and fee collections. This would allow an enforcement of fines and additional fees for unsafe operators using hazardous chemical in the state not reporting currently per NMSA and EPA rule. Currently DHSEM is charged with these duties and with this merger could perform them better if provided for under State Fire Marshal responsibilities per statute.

The Office of the Attorney General notes:

Section 19 A. takes rule making authority from the state fire board and gives it exclusively to the fire marshal and directs that rules be promulgated governing the “sale, servicing or use of fire safety, prevention detection or suppression equipment or material.” While Section 25 charges the Fire Services Council with hearing administrative appeals for violations of those rules, it does not give the Council the authority to issue the procedural rules necessary to establish hearing procedures and ensure they conform to due process requirements. In fact, Section 29 charges the fire marshal with promulgating rules relating to the Fire Services Council, and requires only that the marshal consider the advice of the Council.

Similarly, Section 31 charges the Fires Services Council with reviewing and commenting on proposed changes to the fire codes and the proposed budget of the fire marshal’s division; considering complaints regarding the performance of the division, as well as hearing administrative appeals of the fire marshal’s order, but does not grant the Council substantive authority to actually propose rules.

## **ADMINISTRATIVE IMPLICATIONS**

The Office of the Attorney General notes:

Unless Homeland Security intends to provide counsel to the Fire Services Council, it is likely that NMAG services would be required.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB245 may conflict/or be a companion to HB11 PRC Reorganization.

Relates to HB191 and SB322 Volunteer Firefighters Recruitment and Retention Programs.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. If this bill is not enacted, PRC commissioners will continue to serve on Fire Protection Grants Council and the firefighters survivors supplemental death benefits review committee. The fire marshal division will continue to be a division of the PRC and the fire marshal will continue to be a position appointed by the PRC chief of staff.

JM/rl/al/rl