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FISCAL IMPACT REPORT

SPONSOR: Wallace DATE TYPED: 03/07/01 HB 73/aHAFC
 SHORT TITLE: Transfer State Fire Marshal's Office SB _____
 ANALYST: Valenzuela

APPROPRIATION/

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	\$ 121.9			Recurring	General Fund
			\$ 50.0	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in The General Appropriation Act for the Public Regulation Commission and relates to Senate Bill 120

SOURCES OF INFORMATION

LFC Files
 Office of the Attorney General
 Public Regulation Commission
 Energy, Minerals and Natural Resources Department
 Department of Public Safety

SUMMARY

Synopsis of the HAFC amendment

The House Appropriations and Finance Committee (HAFC) amendment to the amended House Bill 73 would make three substantive changes to the bill. First, the amendment creates a seven-member fire board that would be responsible for approving fire prevention codes and standards in coordination with the Construction Industries Division of the Regulation and Licensing Department (RLD). The details of the board membership are provided in the amendment.

Second, the amendment deletes the original section that requires fire prevention rules comply with national and state rules for building construction adopted by RLD. Third, the amendment designates either the Secretary of the Energy, Minerals and Natural Resources Department (EMNRD) or the fire board have authority to hear and act on appeals of orders issued by the State Fire Marshal, and authority to enforce cease and desist orders.

House Bill 73/aHAFC -- Page 2

The original bill transfers the appropriations made to the SFMO and Academy to the EMNRD. Unfortunately, as written, the bill would not transfer a \$250.0 appropriation made from the Fire Protection Fund to the Administrative Services Division of the Public Regulation Commission (PRC).

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee (HGUAC) amendment to House Bill 73 strikes the language giving the State Fire Marshal authority over state police and other law enforcement personnel.

Synopsis of Original Bill

House Bill 73 amends numerous statutes to accomplish the transfer the State Fire Marshal's Office (SFMO) and the State Firefighter Training Academy ("Academy") from the Public Regulation Commission (PRC) to the Energy, Minerals and Natural Resources Department (EMNRD). The bill makes other related changes to various statutes. A section-by-section summary of the bill is provided below.

Section 1. Amends Section 9 of the Public Regulation Commission Act by eliminating the SFMO and Academy from the Insurance Division of the PRC.

Section 2. Amends Section 3 of the Energy, Minerals and Natural Resources Department Act by establishing a division of the SFMO and a bureau of the Academy within the EMNRD.

Section 3. Amends Article 52, Section 1 of New Mexico Insurance Code to establish the Fire Marshal as a division director of EMNRD.

Section 4. Amends Article 52, Section 3 of the Insurance Code to grant authority to the Fire Marshal over law enforcement personnel including the state police to assist in carrying out the duties of the State Fire Marshal. This section requires the Fire Marshal to assert this authority in writing and gives local governments approval authority.

Section 5. Makes minor corrections to language in the Insurance Code relating to the investigation of fire hazards.

Section 6. Amends Article 52, Section 9 of the Insurance Code to make minor changes to the Fire Marshal's authority to enter all buildings and premises.

Section 7. Makes minor corrections to language in the Insurance Code relating to investigations of fires.

Section 8. Amends Article 52, Section 15 of the Insurance Code to address its rules (1) relating the sale, servicing or use of fire safety, prevention, detection or suppression equipment or materials; (2) concerning health care occupancies; and (3) relating to compatibility with state rules for building construction adopted by the Construction Industries Division of the Regulation and Licensing Department.

Section 9. Amends Article 52, Section 18 of the Insurance Code to require that counties shall not enforce any ordinances or rules inconsistent with any statewide rules promulgated by the SFMO. Municipalities are already under this directive.

Section 10. Makes minor corrections to language in the Insurance Code relating to the police powers of the SFMO.

House Bill 73/aHAFC -- Page 3

Section 11. Amends Article 52, Section 20 of the Insurance Code by deleting subsection (B) and thus removing from the SFMO regulatory responsibility for flammable liquids.

Section 12. Amends Article 52, Section 21 of the Insurance Code by designating Secretary of EMNRD with the authority to hear appeals of orders issued by the SFMO and makes minor corrections to language.

Section 13. Amends Article 52, Section 22 of the Insurance Code by allowing judicial remedies for persons aggrieved by a decision of the EMNRD Secretary.

Section 14. Amends Article 52, Section 23 of the Insurance Code transfer the enforcement of cease and desist orders from the Fire Marshal to the EMNRD Secretary.

Section 15. Amends Article 53, Section 6 of the Fire Protection Fund Law [Section 59A-53-1 to 59A-53- 17 NMSA 1978] by designating Secretary of EMNRD with the authority to hear appeals of distributions made by the SFMO and makes minor corrections to language.

Section 16. Amends Article 53, Section 7 of the Fire Protection Fund Law by substituting the Secretary of EMNRD with the PRC, giving the Secretary the authority to receive or make distributions from the fund.

Section 17. Amends Article 53, Section 15 of the Fire Protection Fund Law by substituting the Secretary of EMNRD with the PRC.

Section 18. Amends the Fireworks Licensing and Safety Act [Section 60-2C-1 to 60-2C-11 NMSA 1978] to clarify that the State Fire Marshal is a division of the Energy, Minerals and Natural Resources Department.

Section 19. Provides for the transfer of all personnel, appropriations, money, records, furniture, equipment, supplies and other property of the SFMO and Academy from the PRC to EMNRD; and transfers 5.00 FTE administrative positions from the PRC to EMNRD.

Section 20. Makes an appropriation of \$121.9 from the general fund to EMNRD for expenditure in FY02 for information support needs of the SFMO including telecommunications, computer hardware and software, infrastructure and supplies. Makes all statutory references to the SFMO in PRC to SFM division in EMNRD and references of the State Fire Board or PRC to the Secretary of EMNRD.

Section 21. Repeals Article 52, Sections 16 and 17 of the Insurance Code relating to flammable liquids regulation.

Section 22. Provides an effective date of July 1, 2001.

Significant Issues

The merger of the Public Utility and the State Corporations Commissions into the PRC placed the SFMO into an organization with tremendous and diverse responsibilities: intrastate pipeline safety, electric and telecommunications regulation, regulation of health maintenance organizations (HMOs) and managed care organizations, insurance fraud, and all specializations of insurance regulation. The SFMO was organized into this group, in part, because its operating budget was paid by assessments made from the insurance industry into the Fire Protection Fund. However, its core competency of fire prevention and suppression are not compatible with the core competencies of the PRC.

House Bill 73/aHAFC -- Page 4

Consequently, the intent of the bill is to organize the SFMO and Academy into an organization with a similar mission and focus. The EMNRD has within its department, the Forestry Division, which has a similar mission as the SFMO. The Forestry Division focus is on wildland fires and forest health management, whereas the SFMO focuses on structural fires.

FISCAL IMPLICATIONS

The appropriation of \$121.9 contained in this bill is a non-recurring expense from the general fund. Any unexpended or unencumbered balance remaining at the end of FY02 shall revert to the general fund.

Of concern however is that the bill only transfers PRC administrative staff positions, without the funding. Pursuant to the House Appropriations and Finance Committee (HAFC) action on House Bill 2, the PRC has been appropriated \$250.0 from the Fire Protection Fund as an indirect cost for the administrative support provided to both the SFMO and the Academy. House Bill 73 would not transfer this amount because the bill states "all . . . appropriations . . . of the state fire marshal's office and the firefighter training academy." The \$250.0 appropriation is made to the PRC, not the SFMO or Academy.

House Bill 73 should be amended to transfer the \$250.0 appropriation to EMNRD to ensure adequate funding for the 5.00 administrative positions that are transferred.

The SFMO would require expert assistance to revise its rules or those of RLD to be compatible. A contract of not more than \$50.0 should be sufficient to manage this task. No estimates were provided by EMNRD, PRC or the SFMO on this matter.

ADMINISTRATIVE IMPLICATIONS

Enactment of House Bill 73 will invariably place a substantial administrative burden on the PRC and EMNRD. It will require the two agencies to work closely together to make the transition smooth and thorough. The bill also requires the SFMO work with RLD to develop parity between construction and building codes, which will require additional funding, as mentioned in the previous section.

Organizationally, the SFMO will be set up as a division within the EMNRD with the Academy as a bureau of the division, which will place it on equal footing with the other statutory divisions of the department. Though functionally separated, considerable synergies could develop between the SFMO, the Academy and the Forestry Division. Each of these organizations' missions are focused on fire prevention and suppression. A notable distinction of this transfer is that the SFMO and Academy would be transferred to a cabinet-level executive agency, providing the Governor direct authority over and accountability for fire-related activities.

A final point is that EMNRD has embarked upon performance-based budgeting in FY02. The SFMO and Academy are not slated for this change until FY03 and will need to work closely with the SFMO to integrate its activities into the EMNRD strategic plan.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

House Bill 73 conflicts with House Bill 2, the General Appropriations Act, which continues to appropriate Fire Protection Fund to the PRC, not EMNRD. Additionally, the bill relates to Senate Bill 120, which proposes to transfer the SFMO to the Department of Public Safety.

POSSIBLE QUESTIONS

House Bill 73/aHAFC -- Page 5

1. Would the department require additional funds to align its building code with the Construction Industries Division of the Regulation and Licensing Department?
2. As currently written, does the bill provide the proper legal authority to transfer the \$250.0 appropriation from the PRC Administrative Services Division to the EMNRD?
3. Does the EMNRD believe it will require this funding for the 5.00 FTE being transferred by the bill, or could it absorb these costs?

MFV/pr:sb