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HOUSE BILL 609

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO THE FIRE PROTECTION FUND; PROVIDING ELIGIBILITY FOR INDIAN NATIONS, TRIBES AND PUEBLOS; MAKING AN APPROPRIATION.

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

Section 1. Section 59A-53-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 973, as amended) is amended to read:

"59A-53-2. PURPOSE.--It is the purpose of the Fire Protection Fund Law to provide for distribution of funds from the fire protection fund referred to in Section 59A-6-5 NMSA 1978 to incorporated cities, towns and villages, Indian nations, tribes and pueblos and to county fire districts, in proportion to their respective needs, for use in operation, maintenance and betterment of local fire departments, to the end that the hazard of loss by fire and fire insurance rates may be reduced and the public safety thereby promoted."

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1 Section 2. A new section of the Fire Protection Fund Law
2 is enacted to read:

3 "[NEW MATERIAL] DEFINITIONS.--As used in the Fire
4 Protection Fund Law:

5 A. "marshal" means the state fire marshal as
6 further identified in Chapter 59A, Article 52 NMSA 1978;

7 B. "municipality" means an incorporated city, town
8 or village; and

9 C. "tribe" means a federally recognized Indian
10 nation, tribe or pueblo located wholly or partly in New
11 Mexico."

12 Section 3. Section 59A-53-3 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 974, as amended) is amended to read:

14 "59A-53-3. DETERMINATION AND CERTIFICATION OF NEEDS.--

15 A. Annually, on or before the last day of May, the
16 marshal shall consider and determine, in [~~his~~] the marshal's
17 reasonable discretion, the relative needs of [~~incorporated~~
18 ~~cities, towns and villages~~] municipalities, tribes and county
19 fire districts for money in the fire protection fund, based
20 upon the information available to [~~him~~] the marshal, and shall
21 certify to the state treasurer the names of the [~~incorporated~~
22 ~~cities, towns, villages~~] municipalities, tribes and county fire
23 districts that [~~he~~] the marshal determines need the assistance
24 of a distribution from the money in the fire protection fund,
25 and the amount required by each, in accordance with the

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1 provisions of Chapter 59A, Article 53 NMSA 1978. In making
2 this determination and certification, the marshal ~~[will]~~ shall
3 consider the intent and purpose of that article that no
4 ~~[incorporated city, town or village]~~ municipality, tribe or
5 county fire district shall receive money distributed from the
6 fire protection fund merely for the purpose of accumulation
7 when the money is not required to accomplish the purposes of
8 that article.

9 B. In making a determination and certification of
10 needs, the marshal shall consider and provide for any debt
11 obligations of existing or previously existing fire departments
12 or fire districts.

13 ~~[C. For the purposes of Chapter 59A, Article 53~~
14 ~~NMSA 1978, "marshal" means the state fire marshal, as further~~
15 ~~identified in Chapter 59A, Article 52 NMSA 1978.]"~~

16 Section 4. Section 59A-53-4 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 975, as amended) is amended to read:

18 "59A-53-4. CRITERIA FOR DETERMINATION OF NEEDS.--In
19 making the determination of needs pursuant to Section 59A-53-3
20 NMSA 1978, the marshal shall first determine that each
21 ~~[incorporated]~~ municipality or tribe to be certified has
22 maintained an official fire department created by and regulated
23 in accordance with a duly enacted law or ordinance for a period
24 of at least one year prior to the date of certification and
25 possesses fire equipment and apparatus in serviceable condition

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1 to respond to a fire incident. The marshal shall also
2 determine the number of fire stations and substations located
3 in each municipality or tribe to be certified and shall certify
4 to the state treasurer the amount to be distributed to each
5 municipality or tribe for the purpose of maintaining each fire
6 station and each substation, if any, that meets the
7 requirements of the marshal and the requirements of this
8 section. Unless adjusted pursuant to Section 59A-53-5.1 NMSA
9 1978, the amounts distributed in a fiscal year for a class
10 insurance rating shall equal the following:

11	class	main station	substation
12	number 1	\$ 82,592	\$ 30,606
13	number 2	77,086	28,780
14	number 3	70,919	26,724
15	number 4	64,751	24,667
16	number 5	61,667	22,612
17	number 6	58,584	20,555
18	number 7	55,501	19,530
19	number 8	52,418	18,502
20	number 9	39,058	15,425
21	number 10	34,944	none."

22 Section 5. Section 59A-53-6 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 977, as amended) is amended to read:

24 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION.--The
25 marshal shall promptly notify each [~~incorporated city, town,~~
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1 ~~village]~~ municipality, tribe and county fire district affected
2 of [~~his~~] the marshal's determination of needs, and [~~an~~
3 ~~incorporated city, town, village]~~ a municipality, tribe or
4 county fire district may appeal from the determination of the
5 marshal to the commission, within ten days after the
6 determination of needs. The commission shall review the
7 determination of the marshal in such informal and summary
8 proceedings as it deems proper and shall certify to the state
9 treasurer annually, on or before the last day of June, the
10 results of all appeals from the determinations of the marshal.
11 The certification by the commission, or by the marshal if no
12 appeal is taken, shall be final and binding on all concerned
13 and not subject to any further review."

14 Section 6. Section 59A-53-7 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 978, as amended) is amended to read:

16 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND.--

17 A. Annually on or before the last day of July, the
18 state treasurer shall distribute from the money in the fire
19 protection fund, to each [~~incorporated~~] municipality, tribe and
20 [~~to each~~] county fire district, the amount the marshal or the
21 commission, as the case may be, has certified to the state
22 treasurer. Payment shall be made to the treasurer of any
23 [~~incorporated~~] municipality or the person responsible for the
24 administration of the assets and liability of any tribe and to
25 the county treasurer of the county in which any county fire

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1 district is located for credit to the county fire district.

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

10 C. In addition to the distributions made pursuant
11 to Subsections A and B of this section, upon certification by
12 the marshal that the balance of the firefighters' survivors
13 fund is less than fifty thousand dollars (\$50,000), the state
14 treasurer shall distribute an amount from the fire protection
15 fund to the firefighters' survivors fund so that the balance of
16 the firefighters' survivors fund equals fifty thousand dollars
17 (\$50,000)."

18 Section 7. Section 59A-53-8 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 979, as amended) is amended to read:

20 "59A-53-8. EXPENDITURE OF FIRE PROTECTION FUND MONEY.--
21 Any amount [~~so~~] distributed from the fire protection fund to
22 [~~any incorporated~~] a municipality, tribe or [~~to any~~] county
23 fire district shall be expended only for the maintenance of its
24 fire department, the purchase, construction, maintenance,
25 repair and operation of its fire stations, including

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1 substations, fire apparatus and equipment, and the financing or
2 refinancing thereof, the payment of insurance premiums on fire
3 stations, substations, fire apparatus and equipment and
4 insurance premiums for injuries or deaths of firefighters as
5 otherwise provided by law. Provided, however, that no money
6 shall be expended from the fund for any purpose relating to the
7 water supply systems of [~~any incorporated~~] a municipality,
8 tribe or district [~~nor~~] or for the improvement or construction
9 of the systems [~~nor~~] or for purchase, rental, installation or
10 maintenance of fire hydrants [~~nor~~] or for any other
11 appurtenances relating to the distribution or use of the water
12 supply system. Funds [~~so~~] distributed from the fire protection
13 fund to [~~any incorporated~~] a municipality, tribe or [~~any~~]
14 county fire district may also be expended for the expense of
15 [~~any~~] firefighters for attending [~~any~~] fire schools and
16 conventions approved by the marshal."

17 Section 8. Section 59A-53-9 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 980, as amended) is amended to read:

19 "59A-53-9. LIMITATIONS ON EXPENDITURES.--No amount so
20 distributed from the fire protection fund to [~~any incorporated~~
21 ~~city, town or village or to any~~] a municipality, tribe or
22 county fire district shall be expended in connection with the
23 construction, purchase or equipment of any fire station or
24 substation in addition to those existing upon the date of
25 distribution by the state treasurer, during the year following

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1 such distribution, without the prior written approval of the
2 marshal."

3 Section 9. Section 59A-53-10 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 981, as amended) is amended to read:

5 "59A-53-10. PURCHASE OF LAND OR BUILDINGS.--No amount so
6 distributed from the fire protection fund to [~~any incorporated~~
7 ~~city, town or village or to any~~] a municipality, tribe or
8 county fire district shall be expended or obligated for the
9 purchase of land or the construction of buildings for fire
10 stations or substations unless all obligations previously
11 incurred for those purposes and to be paid from money
12 distributed from the fire protection fund by the [~~city, town,~~
13 ~~village~~] municipality, tribe or county fire district [~~shall~~
14 have been fully paid and satisfied; and no amount shall be
15 expended or obligated for the construction of buildings for
16 fire stations or substations unless the [~~city, town, village~~]
17 municipality, tribe or county fire district proposing to expend
18 or obligate for that purpose money distributed from the fire
19 protection fund holds fee simple title, not encumbered by any
20 lien, to the land on which it proposes to construct any such
21 building; provided, however, that this provision shall not
22 prohibit construction or location of a fire station or
23 substation on land held in trust by the tribe or on land
24 donated in whole or in part to the [~~city, town, village~~]
25 municipality or county fire district for the purpose, and use

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1 of fire protection fund money for the construction or location,
2 where the donor has reserved right of reversion of the land
3 under stated conditions, if the use of money is approved by the
4 marshal in advance and after full investigation and
5 determination that the use would be appropriate and
6 reasonable."

7 Section 10. Section 59A-53-11 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 982, as amended) is amended to read:

9 "59A-53-11. VOUCHERS.--

10 A. Amounts so distributed from the fire protection
11 fund to [~~any incorporated city, town or village or to any~~] a
12 municipality or county fire district shall be expended under
13 the direction of the chief of the fire department of the [~~city,~~
14 ~~town, village~~] municipality or county fire district, upon duly
15 executed vouchers approved as required by law [~~and~~].

16 B. Amounts so distributed from the fire protection
17 fund to a tribe shall be expended under the direction of the
18 chief executive or the chief executive's designee.

19 C. In no event is any amount to be expended for any
20 purpose [~~which~~] that does not relate directly to the permitted
21 purposes specifically stated in Sections 59A-53-8 and 59A-53-9
22 NMSA 1978."

23 Section 11. Section 59A-53-12 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 983, as amended) is amended to read:

25 "59A-53-12. PROMULGATION OF RULES [~~AND REGULATIONS~~].--The

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1 marshal has authority to promulgate, modify, amend and revoke
2 from time to time rules [~~and regulations~~], including those for
3 mutual aid among and between fire departments; provided that no
4 such rules [~~and regulations~~] shall allow any fire department to
5 extend its service in any manner that would jeopardize the fire
6 insurance rates within its [~~city, town, village and~~
7 municipality or county fire district, as [~~he~~] the marshal may
8 determine, in [~~his~~] the marshal's discretion, to be necessary,
9 advisable or proper to accomplish the objectives of the Fire
10 Protection Fund Law. Among other things, these rules [~~and~~
11 ~~regulations~~] shall include, but not be limited to, a list of
12 firefighting equipment, apparatus and other items [~~which~~] that
13 may properly be purchased by [~~any incorporated city, town or~~
14 ~~village or by any~~] a municipality, tribe or county fire
15 district from funds distributed from the fire protection fund,
16 and standards of quality, construction and performance to be
17 met by major firefighting appliances, training requirements,
18 firefighting protective clothing and equipment standards, and
19 by fire stations and substations, proposed to be purchased or
20 constructed by [~~any city, town, village or~~] a municipality,
21 tribe or county fire district from money distributed from the
22 fire protection fund. All rules [~~and regulations~~] shall be
23 filed and published as required by law. [~~Regulations~~] Rules of
24 this nature heretofore promulgated by the superintendent and
25 now in effect shall continue in effect until hereafter revoked

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1 or modified. Nothing in this section shall be construed to
2 grant regulatory authority over the Volunteer Firefighters
3 Retirement Act to the marshal."

4 Section 12. Section 59A-53-13 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 984, as amended) is amended to read:

6 "59A-53-13. LIABILITY FOR UNAUTHORIZED EXPENDITURE.--
7 [~~Any~~]

8 A. Except as provided in Subsection B of this
9 section, a person who shall expend, or direct or permit the
10 expenditure of, any money distributed from the fire protection
11 fund for purposes not expressly authorized by Chapter 59A,
12 Article 53 NMSA 1978 or by rules [~~and regulations~~] duly
13 promulgated by the marshal pursuant to that article shall be
14 personally liable to the state of New Mexico for the full
15 amount of the money wrongfully expended, together with interest
16 thereon and costs. An action to recover the amount of any
17 wrongful expenditure may be commenced by the attorney general
18 or the district attorney in the county in which the wrongful
19 expenditure was made, upon the filing with the officer of a
20 verified statement describing the wrongful expenditure.

21 B. A tribe seeking money distributed from the fire
22 protection fund shall enter into a joint powers agreement with
23 the marshal. The joint powers agreement shall state the proper
24 jurisdiction and procedure to recover any money distributed to
25 that tribe from the fire protection fund and expended for

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1 purposes not expressly authorized by Chapter 59A, Article 53
2 NMSA 1978 or by rules duly promulgated by the marshal pursuant
3 to that article."

4 Section 13. Section 59A-53-14 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 985, as amended) is amended to read:

6 "59A-53-14. CLOSURE OF FIRE DEPARTMENT.--

7 A. If any fire department operated by [~~any~~
8 ~~incorporated city, town or village~~] a municipality or [~~by any~~]
9 county fire district should go out of existence or for any
10 reason cease to operate and function for a period of ninety
11 days, title to all firefighting equipment and apparatus paid
12 for in whole with distributions from the fire protection fund
13 and held by or for the benefit of the fire department shall
14 vest in the marshal and all money distributed from the fire
15 protection fund and held by or for the fire department shall
16 revert to the fire protection fund. Any person having custody
17 or control of any such fire-fighting equipment and apparatus
18 shall forthwith deliver it as directed by the marshal, and any
19 person having custody or control of the money shall forthwith
20 remit it to the state treasurer, who shall again deposit the
21 money in the state treasury to the credit of the fire
22 protection fund. An action to recover the possession and
23 control of [~~such~~] the firefighting equipment and apparatus, or
24 the money, may be commenced by the attorney general or the
25 district attorney in the county in which the equipment and

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1 apparatus or money are situate upon the filing with the officer
2 of a verified statement of the circumstances.

3 B. Notwithstanding the provisions of Subsection A
4 of this section, money distributed from the fire protection
5 fund needed to pay debt service on bonds or other obligations
6 issued by or on behalf of a fire department or fire district
7 may be used to pay such debt service, and the marshal and the
8 state treasurer shall continue to make distributions from the
9 fire protection fund for and on behalf of the fire department
10 or fire district until the bonds or other obligations are paid
11 in full.

12 C. If any fire department operated by a tribe
13 should go out of existence or for any reason cease to operate
14 any function for a period of ninety days, title to all
15 firefighting equipment and apparatus paid for in whole with
16 distributions from the fire protection fund and held by or for
17 the benefit of the fire department shall vest in the marshal,
18 and all money distributed from the fire protection fund and
19 held by or for the fire department shall revert to the fire
20 protection fund. A joint powers agreement between a tribe and
21 the marshal shall state the proper jurisdiction and procedure
22 to recover the possession and control of the firefighting
23 equipment and apparatus or the money from that tribe."

24 Section 14. Section 59A-53-16 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 987, as amended) is amended to read:

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1 "59A-53-16. NEW FIRE DEPARTMENTS.--Whenever the marshal,
2 after the last day of May in any year, determines that [~~any~~
3 ~~incorporated city, town or village~~] a municipality, tribe or
4 county fire district, operating a new fire department, has met
5 the requirements of Chapter 59A, Article 53 NMSA 1978 for the
6 first time, [~~he~~] the marshal may certify to the state treasurer
7 the name of the [~~city, town, village~~] municipality, tribe or
8 county fire district and the amount required, on the same basis
9 as provided in that article, but not to exceed an amount
10 commensurate with the period of time for which such pro rata
11 distribution is made; and distribution of the amount certified
12 shall be made as otherwise provided in that article."

13 Section 15. Section 59A-53-18 NMSA 1978 (being Laws 2006,
14 Chapter 103, Section 7) is amended to read:

15 "59A-53-18. FIRE PROTECTION GRANT FUND--CREATED--USES.--
16 The "fire protection grant fund" is created in the state
17 treasury. The fund shall consist of transfers, distributions,
18 appropriations, gifts, grants, donations and bequests made to
19 the fund. Income from the fund shall be credited to the fund,
20 and money in the fund shall not revert or be transferred to any
21 other fund at the end of a fiscal year. Money in the fund is
22 appropriated to the fire protection grant council for the
23 purposes of making distributions approved by the council for
24 the critical needs of municipal and tribal fire departments and
25 county fire districts. Expenditures from the fund shall be

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1 made on warrant of the secretary of finance and administration
2 pursuant to vouchers signed by the marshal."

3 Section 16. Section 59A-53-19 NMSA 1978 (being Laws 2006,
4 Chapter 103, Section 8) is amended to read:

5 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

6 A. The "fire protection grant council" is created.
7 Subject to the requirements of Subsection B of this section,
8 the council shall consist of:

9 (1) a representative of the New Mexico
10 municipal league;

11 (2) a representative of the New Mexico
12 association of counties;

13 (3) two members appointed by the public
14 regulation commission who shall serve at the pleasure of the
15 commission;

16 (4) three members, one from each congressional
17 district, appointed by the governor who shall serve at the
18 pleasure of the governor; ~~and~~

19 (5) a representative of a tribe with a fire
20 department appointed by the governor, who shall serve at the
21 pleasure of the governor; and

22 ~~(7)~~ (6) 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 of

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1 the public regulation commission, the superintendent of
2 insurance or any other employee of the commission or an active
3 member of a municipal fire department or a county fire
4 district.

5 C. The public members shall receive per diem and
6 mileage as provided in the Per Diem and Mileage Act and shall
7 receive no other compensation, perquisite or allowance.

8 D. The council shall develop criteria for assessing
9 the critical needs of municipal and tribal fire departments and
10 county fire districts for fire apparatus and equipment,
11 communications equipment, equipment for wildfires, fire station
12 construction or expansion or equipment for hazardous material
13 response.

14 E. Applications for grant assistance from the fire
15 protection grant fund shall be made by municipal and tribal
16 fire departments and county fire districts to the council in
17 accordance with the requirements of the council. Using
18 criteria developed by the council, the council shall evaluate
19 applications and prioritize those applications most in need of
20 grant assistance from the fund. To the extent that money in
21 the fund is available, the council shall award grant assistance
22 for those prioritized applications.

23 F. In awarding grant assistance, the council may
24 require conditions and procedures necessary to ensure that the
25 money is expended in the most prudent manner."

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