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HOUSE BILL 49

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Ray Begaye

FOR THE INDIAN AFFAIRS COMMITTEE

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~~] municipalities and tribes 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 [~~to~~] 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 of the tribe 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 firefighting 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, as amended) 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 (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.

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

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

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

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