

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 49

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

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 to tribal and 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 and tribal and  
19 county fire districts for money in the fire protection fund,  
20 based upon the information available to [~~him~~] the marshal, and  
21 shall certify to the state treasurer the names of the  
22 [~~incorporated cities, towns, villages~~] municipalities and  
23 tribal and county fire districts that [~~he~~] the marshal  
24 determines need the assistance of a distribution from the money  
25 in the fire protection fund, and the amount required by each,

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1 in accordance with the provisions of Chapter 59A, Article 53  
 2 NMSA 1978. In making this determination and certification, the  
 3 marshal ~~[will]~~ shall consider the intent and purpose of that  
 4 article that no ~~[incorporated city, town or village]~~  
 5 municipality or tribal or county fire district shall receive  
 6 money distributed from the fire protection fund merely for the  
 7 purpose of accumulation when the money is not required to  
 8 accomplish the purposes of 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-53-5 NMSA 1978 (being Laws 1989,  
 17 Chapter 312, Section 5, as amended) is amended to read:

18 "59A-53-5. ESTABLISHMENT OF ~~[COUNTY]~~ FIRE DISTRICTS.--

19 A. The county commissioners of any county or any  
 20 tribe may establish one or more ~~[county]~~ fire districts within  
 21 the county or the tribe but outside the corporate limits of any  
 22 municipality. The marshal shall determine the number of fire  
 23 stations and substations located in each ~~[county]~~ fire district  
 24 to be certified and shall certify to the state treasurer the  
 25 amount to be distributed to each ~~[county]~~ fire district for the

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1 purpose of maintaining each fire station and each substation,  
2 if any, that meets the requirements of the marshal and the  
3 requirements of this section. Unless adjusted pursuant to  
4 Section 59A-53-5.1 NMSA 1978, the amounts distributed in a  
5 fiscal year for a class insurance rating shall equal the  
6 following:

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

18 B. Additionally, prior to the disbursement of any  
19 funds, the following must be established to the satisfaction of  
20 the marshal:

21 (1) the [~~county~~] fire district has maintained  
22 an official fire department for a period of at least one year,  
23 established and governed by appropriate resolution of the board  
24 of county commissioners of the county in which the county fire  
25 district is located or by tribal law of the tribe in which the

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1 tribal fire district is located, and possesses fire apparatus  
2 and equipment in serviceable condition to respond to a fire  
3 incident;

4 (2) the geographic limits and boundaries of  
5 the [county] fire district have been clearly defined and  
6 established [~~by the board of county commissioners of the county~~  
7 ~~in which the county fire district is located, and~~], a plat  
8 showing the geographic limits and boundaries has been accepted  
9 [~~by the board of county commissioners~~] and filed as part of the  
10 official record of proceedings of the board of county  
11 commissioners of the county in which the county fire district  
12 is located or by the tribe in which the tribal fire district is  
13 located and a certified copy thereof filed with the marshal;  
14 and

15 (3) there is available within the geographic  
16 limits and boundaries of the [county] fire district an adequate  
17 water supply to be used in connection with the firefighting  
18 facilities of the [county] fire district.

19 C. The county commissioners of any county may  
20 permit a county fire district located in the county to service  
21 an area adjacent and contiguous to the district but within  
22 another county; provided that the county commissioners of the  
23 other county shall consent by resolution duly adopted to the  
24 service and to the boundaries of the other area serviced.  
25 Before commencement of service, a plat showing the geographic

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1 limits and boundaries of the county fire district and of the  
2 additional area to be serviced shall be filed with and approved  
3 by the marshal. The county commissioners of either the county  
4 in which the county fire district is located or of the county  
5 in which the area being serviced is located may terminate the  
6 service but only with the approval of the marshal.

7 D. The county commissioners of any county may  
8 permit a county fire district located in the county to service  
9 an area adjacent and contiguous to the district but within a  
10 tribal area; provided that the tribe shall consent by  
11 resolution or law duly adopted or enacted to the service and to  
12 the boundaries of the other area serviced. Any tribe may  
13 permit a tribal fire district located in the tribal area to  
14 service an area adjacent and contiguous to the district but  
15 outside the exterior boundaries of the tribal area; provided  
16 that the county commissioners or the tribe of the area  
17 serviced shall consent by resolution or law duly adopted or  
18 enacted to the service and to the boundaries of the other area  
19 serviced. The county commissioners or the tribe, whether  
20 providing or receiving fire protection services, may terminate  
21 the service but only with the approval of the marshal.

22 E. Nothing in the Fire Protection Fund Law shall be  
23 construed to prohibit memoranda of understanding or joint  
24 powers agreements between a municipality, tribe and county to  
25 provide fire protection services across jurisdictional lines."

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

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

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

20           "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND.--

21           A. Annually on or before the last day of July, the  
22 state treasurer shall distribute from the money in the fire  
23 protection fund, to each [~~incorporated~~] municipality and tribal  
24 and [~~to each~~] county fire district, the amount the marshal or  
25 the commission, as the case may be, has certified to the state

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1 treasurer. Payment shall be made to the treasurer of any  
2 [~~incorporated~~] municipality or the person responsible for the  
3 administration of the assets and liability of any tribe and to  
4 the county treasurer of the county in which any county fire  
5 district is located for credit to the county fire district.

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

14 C. In addition to the distributions made pursuant  
15 to Subsections A and B of this section, upon certification by  
16 the marshal that the balance of the firefighters' survivors  
17 fund is less than fifty thousand dollars (\$50,000), the state  
18 treasurer shall distribute an amount from the fire protection  
19 fund to the firefighters' survivors fund so that the balance of  
20 the firefighters' survivors fund equals fifty thousand dollars  
21 (\$50,000)."

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

24 "59A-53-8. EXPENDITURE OF FIRE PROTECTION FUND MONEY.--  
25 Any amount [~~se~~] distributed from the fire protection fund to  
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1 ~~[any incorporated]~~ a municipality or tribal or ~~[to any]~~ county  
 2 fire district shall be expended only for the maintenance of its  
 3 fire department, the purchase, construction, maintenance,  
 4 repair and operation of its fire stations, including  
 5 substations, fire apparatus and equipment, and the financing or  
 6 refinancing thereof, the payment of insurance premiums on fire  
 7 stations, substations, fire apparatus and equipment and  
 8 insurance premiums for injuries or deaths of firefighters as  
 9 otherwise provided by law. Provided, however, that no money  
 10 shall be expended from the fund for any purpose relating to the  
 11 water supply systems of ~~[any incorporated]~~ a municipality or  
 12 tribal or county fire district ~~[nor]~~ or for the improvement or  
 13 construction of the systems ~~[nor]~~ or for purchase, rental,  
 14 installation or maintenance of fire hydrants ~~[nor]~~ or for any  
 15 other appurtenances relating to the distribution or use of the  
 16 water supply system. Funds ~~[so]~~ distributed from the fire  
 17 protection fund to ~~[any incorporated]~~ a municipality or tribal  
 18 or ~~[any]~~ county fire district may also be expended for the  
 19 expense of ~~[any]~~ firefighters for attending ~~[any]~~ fire schools  
 20 and conventions approved by the marshal."

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

23 "59A-53-9. LIMITATIONS ON EXPENDITURES.--No amount so  
 24 distributed from the fire protection fund to ~~[any incorporated]~~  
 25 ~~city, town or village or to any]~~ a municipality or tribal or

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1 county fire district shall be expended in connection with the  
2 construction, purchase or equipment of any fire station or  
3 substation in addition to those existing upon the date of  
4 distribution by the state treasurer, during the year following  
5 such distribution, without the prior written approval of the  
6 marshal."

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

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

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1 prohibit construction or location of a fire station or  
 2 substation on tribal lands or on land donated in whole or in  
 3 part to the [~~city, town, village~~] municipality or county fire  
 4 district for the purpose, and use of fire protection fund money  
 5 for the construction or location, where the donor has reserved  
 6 right of reversion of the land under stated conditions, if the  
 7 use of money is approved by the marshal in advance and after  
 8 full investigation and determination that the use would be  
 9 appropriate and reasonable."

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

12 "59A-53-11. VOUCHERS.--

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

19 B. Amounts so distributed from the fire protection  
 20 fund to a tribal fire district shall be expended under the  
 21 direction of the chief executive of the tribe in which the  
 22 tribal fire district is located or the chief executive's  
 23 designee.

24 C. In no event is any amount to be expended for any  
 25 purpose [~~which~~] that does not relate directly to the permitted

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1 purposes specifically stated in Sections 59A-53-8 and 59A-53-9  
2 NMSA 1978."

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

5 "59A-53-12. PROMULGATION OF RULES [~~AND REGULATIONS~~].--The  
6 marshal has authority to promulgate, modify, amend and revoke  
7 from time to time rules [~~and regulations~~], including those for  
8 mutual aid among and between fire departments; provided that no  
9 such rules [~~and regulations~~] shall allow any fire department to  
10 extend its service in any manner that would jeopardize the fire  
11 insurance rates within its [~~city, town, village and~~  
12 municipality or county fire district, as [~~he~~] the marshal may  
13 determine, in [~~his~~] the marshal's discretion, to be necessary,  
14 advisable or proper to accomplish the objectives of the Fire  
15 Protection Fund Law. Among other things, these rules [~~and~~  
16 ~~regulations~~] shall include, but not be limited to, a list of  
17 firefighting equipment, apparatus and other items [~~which~~] that  
18 may properly be purchased by [~~any incorporated city, town or~~  
19 ~~village or by any~~] a municipality or tribal or county fire  
20 district from funds distributed from the fire protection fund,  
21 and standards of quality, construction and performance to be  
22 met by major firefighting appliances, training requirements,  
23 firefighting protective clothing and equipment standards, and  
24 by fire stations and substations, proposed to be purchased or  
25 constructed by [~~any city, town, village or~~] a municipality or

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1 tribal or county fire district from money distributed from the  
 2 fire protection fund. All rules [~~and regulations~~] shall be  
 3 filed and published as required by law. [~~Regulations~~] Rules of  
 4 this nature heretofore promulgated by the superintendent and  
 5 now in effect shall continue in effect until hereafter revoked  
 6 or modified. Nothing in this section shall be construed to  
 7 grant regulatory authority over the Volunteer Firefighters  
 8 Retirement Act to the marshal."

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

11 "59A-53-13. LIABILITY FOR UNAUTHORIZED EXPENDITURE.--

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

25 B. A tribe seeking money distributed from the fire

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1 protection fund shall enter into a joint powers agreement  
2 pursuant to the Joint Powers Agreements Act with the marshal.  
3 The joint powers agreement shall state the proper jurisdiction  
4 and procedure to recover any money distributed to that tribe  
5 from the fire protection fund and expended for purposes not  
6 expressly authorized by Chapter 59A, Article 53 NMSA 1978 or by  
7 rules duly promulgated by the marshal pursuant to that  
8 article."

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

11 "59A-53-14. CLOSURE OF FIRE DEPARTMENT.--

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

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1 money in the state treasury to the credit of the fire  
 2 protection fund. An action to recover the possession and  
 3 control of [~~such~~] the firefighting equipment and apparatus, or  
 4 the money, may be commenced by the attorney general or the  
 5 district attorney in the county in which the equipment and  
 6 apparatus or money are situate upon the filing with the officer  
 7 of a verified statement of the circumstances.

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

17 C. If any fire district operated by a tribe should  
 18 go out of existence or for any reason cease to operate any  
 19 function for a period of ninety days, title to all firefighting  
 20 equipment and apparatus paid for in whole with distributions  
 21 from the fire protection fund and held by or for the benefit of  
 22 the fire district shall vest in the marshal, and all money  
 23 distributed from the fire protection fund and held by or for  
 24 the fire district shall revert to the fire protection fund. A  
 25 joint powers agreement between a tribe and the marshal shall

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1 state the proper jurisdiction and procedure to recover the  
2 possession and control of the firefighting equipment and  
3 apparatus or the money from that tribe."

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

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

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

20 "59A-53-18. FIRE PROTECTION GRANT FUND--CREATED--USES.--  
21 The "fire protection grant fund" is created in the state  
22 treasury. The fund shall consist of transfers, distributions,  
23 appropriations, gifts, grants, donations and bequests made to  
24 the fund. Income from the fund shall be credited to the fund,  
25 and money in the fund shall not revert or be transferred to any

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1 other fund at the end of a fiscal year. Money in the fund is  
 2 appropriated to the fire protection grant council for the  
 3 purposes of making distributions approved by the council for  
 4 the critical needs of municipal fire departments and tribal and  
 5 county fire districts. Expenditures from the fund shall be  
 6 made on warrant of the secretary of finance and administration  
 7 pursuant to vouchers signed by the marshal."

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

10 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

11 A. The "fire protection grant council" is created.  
 12 Subject to the requirements of Subsection B of this section,  
 13 the council shall consist of:

14 (1) [~~a~~] one representative of the New Mexico  
 15 municipal league;

16 (2) [~~a~~] one representative of the New Mexico  
 17 association of counties;

18 (3) two members appointed by the public  
 19 regulation commission who shall serve at the pleasure of the  
 20 commission;

21 (4) three members, one from each congressional  
 22 district, appointed by the governor who shall serve at the  
 23 pleasure of the governor; [~~and~~]

24 (5) one representative of a tribe with a fire  
 25 department appointed by the governor, who shall serve at the

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1 pleasure of the governor; and

2                   (6) the marshal, who shall serve as a  
3 nonvoting advisory member. The council shall elect a chair and  
4 vice chair from its membership.

5                   B. No appointee to the council shall be a member of  
6 the public regulation commission, the superintendent of  
7 insurance or any other employee of the commission.

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

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

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

25                   F. In awarding grant assistance, the council may

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1 require conditions and procedures necessary to ensure that the  
2 money is expended in the most prudent manner."

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