

1 HOUSE BILL 269

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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5 and Roberto "Bobby" J. Gonzales and Joseph L. Sanchez  
6 and Raymundo Lara  
7  
8  
9

10 AN ACT

11 RELATING TO STATE AGENCIES; SEPARATING THE FIRE MARSHAL  
12 DIVISION FROM THE PUBLIC REGULATION COMMISSION; CREATING THE  
13 STATE FIRE MARSHAL'S OFFICE; CREATING THE FIRE SERVICES  
14 COUNCIL; AMENDING STATUTORY REFERENCES; TRANSFERRING PERSONNEL,  
15 FUNCTIONS, MONEY, APPROPRIATIONS, OTHER PROPERTY AND  
16 CONTRACTUAL OBLIGATIONS; CHANGING REFERENCES IN LAW AND  
17 OFFICIAL ACTS.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 8-8-6 NMSA 1978 (being Laws 1998,  
21 Chapter 108, Section 6, as amended) is amended to read:

22 "8-8-6. COMMISSION--DIVISIONS.--The commission [~~shall~~  
23 ~~include~~] includes the following organizational units:

- 24 A. the administrative services division;  
25 B. the consumer relations division;

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- 1 C. the legal division;
- 2 D. the transportation division; and
- 3 E. the utility division [~~and~~
- 4 ~~F. the fire marshal division~~]."

5 SECTION 2. Section 10-11A-2 NMSA 1978 (being Laws 1983,  
6 Chapter 263, Section 2, as amended) is amended to read:

7 "10-11A-2. DEFINITIONS.--As used in the Volunteer  
8 Firefighters Retirement Act:

- 9 A. "association" means the public employees  
10 retirement association;
- 11 B. "board" means the retirement board of the  
12 association;
- 13 C. "fire department" means a fire department with  
14 volunteer members that is certified by the [~~fire marshal~~  
15 ~~division of the public regulation commission~~] state fire  
16 marshal's office;
- 17 D. "fund" means the volunteer firefighters  
18 retirement fund; and
- 19 E. "member" means a volunteer nonsalaried  
20 firefighter who is listed as an active member on the rolls of a  
21 fire department and whose first year of service credit was  
22 accumulated during or after the year the member attained the  
23 age of sixteen. A volunteer firefighter who receives  
24 reimbursement for personal out-of-pocket costs shall not be  
25 considered a salaried firefighter."

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1           SECTION 3. Section 10-11A-6 NMSA 1978 (being Laws 1983,  
2 Chapter 263, Section 6, as amended) is amended to read:

3           "10-11A-6. DETERMINATION OF SERVICE CREDIT.--

4           A. A member may claim one year of service credit  
5 for each year in which a fire department certifies that the  
6 member:

7                   (1) attended fifty percent of all scheduled  
8 fire drills for which the fire department held the member  
9 responsible to attend;

10                   (2) attended fifty percent of all scheduled  
11 business meetings for which the fire department held the member  
12 responsible to attend; and

13                   (3) participated in at least fifty percent of  
14 all emergency response calls for which the fire department held  
15 the member responsible to attend.

16           B. The chief of each fire department shall submit  
17 to the association by March 31 of each year documentation of  
18 the qualifications of each member for the preceding calendar  
19 year; provided that the chief shall:

20                   (1) submit the documentation on forms provided  
21 by the association;

22                   (2) acknowledge the truth of the records under  
23 oath before a notary public; and

24                   (3) have the notarized forms signed by the  
25 mayor, if distributions from the fire protection fund for the

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1 fire department are made to an incorporated municipality, or  
2 the chair of the county commission, if distributions from the  
3 fire protection fund for the fire department are made to a  
4 county fire district.

5 C. For service credit that has been earned, but not  
6 credited pursuant to Subsection B of this section, a member may  
7 post or adjust service credit earned for not more than the two  
8 preceding calendar years; provided that the member shall:

9 (1) file with the association a completed  
10 "Corrected Qualification Record" or "Adjusted Qualification  
11 Record" as prescribed by the board;

12 (2) acknowledge the truth of the records under  
13 oath before a notary public; and

14 (3) have the notarized forms signed by the  
15 mayor, if distributions from the fire protection fund for the  
16 fire department are made to an incorporated municipality, or  
17 the chair of the county commission, if distributions from the  
18 fire protection fund for the fire department are made to a  
19 county fire district.

20 D. The association may request the [~~fire marshal~~  
21 ~~division of the public regulation commission~~] state fire  
22 marshal's office to verify member qualifications submitted to  
23 the association."

24 SECTION 4. Section 10-11B-5 NMSA 1978 (being Laws 2007,  
25 Chapter 149, Section 5, as amended) is amended to read:

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1 "10-11B-5. FIREFIGHTERS' SURVIVORS SUPPLEMENTAL  
2 BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

3 A. There is created the "firefighters' survivors  
4 supplemental death benefits review committee". The committee  
5 shall consist of the attorney general [~~the president of the New~~  
6 ~~Mexico fire chiefs association, the state president of the New~~  
7 ~~Mexico professional fire fighters association and the president~~  
8 ~~of the New Mexico state fire fighters' association or their~~  
9 ~~designees] or the attorney general's designee and the fire  
10 services council.~~

11 B. The firefighters' survivors supplemental death  
12 benefits review committee shall determine whether a firefighter  
13 has been killed in the line of duty and advise the state fire  
14 marshal of that determination. In addition to any other death  
15 benefits provided by law, the surviving spouse or children  
16 shall be paid two hundred fifty thousand dollars (\$250,000) as  
17 supplemental death benefits whenever a firefighter is killed in  
18 the line of duty. The benefits shall be paid from the fund.

19 C. The benefits shall be paid entirely to the  
20 surviving spouse. If there is no surviving spouse, the  
21 benefits shall be distributed in pro rata shares to all  
22 surviving children. If there are no surviving children or  
23 spouse, benefits shall be distributed to the surviving parents  
24 of the firefighter."

25 SECTION 5. Section 24-22-2 NMSA 1978 (being Laws 2001,

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1 Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as  
2 amended) is amended to read:

3 "24-22-2. DEFINITIONS.--As used in the Safe Haven for  
4 Infants Act:

5 A. "fire station" means a fire station that is  
6 certified by the [~~fire marshal division of the public~~  
7 ~~regulation commission~~] state fire marshal's office;

8 B. "hospital" means an acute care general hospital  
9 or health care clinic licensed by the state;

10 C. "Indian child" means an Indian child as defined  
11 by the federal Indian Child Welfare Act of 1978;

12 D. "infant" means a child no more than ninety days  
13 old, as determined within a reasonable degree of medical  
14 certainty;

15 E. "law enforcement agency" means a law enforcement  
16 agency of the state or a political subdivision of the state;

17 F. "safe haven site" means a hospital, law  
18 enforcement agency or fire station that has staff on site at  
19 the time an infant is left at such a site; and

20 G. "staff" means an employee, contractor, agent or  
21 volunteer performing services as required and on behalf of the  
22 safe haven site."

23 SECTION 6. Section 59A-52-1 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 947, as amended) is amended to read:

25 "59A-52-1. STATE FIRE [~~MARSHAL-CREATED~~] MARSHAL'S OFFICE

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1 CREATED.--~~[The position of "state fire marshal" is created as~~  
2 ~~the director of the fire marshal division under the public~~  
3 ~~regulation commission.]~~

4 A. The "state fire marshal's office" is created and  
5 is administratively attached pursuant to the provisions of  
6 Section 9-1-7 NMSA 1978 to the office of superintendent of  
7 insurance.

8 B. The office consists of the:  
9 (1) firefighter training academy division;  
10 (2) fire service support division;  
11 (3) fire investigations division; and  
12 (4) fire code enforcement division."

13 SECTION 7. Section 59A-52-3 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 949, as amended) is amended to read:

15 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER  
16 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal  
17 may employ ~~[with the consent of the chief of staff of the~~  
18 ~~public regulation commission]~~ deputy state fire marshals and  
19 other employees to assist in the execution of the marshal's  
20 duties."

21 SECTION 8. Section 59A-52-4 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 950) is amended to read:

23 "59A-52-4. BONDING OF EMPLOYEES.--The state fire marshal  
24 shall require the bonding of those employees whose duties in  
25 ~~[his]~~ the marshal's opinion require such bonds and in an amount

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1 determined by [~~him~~] the marshal. The premiums of such bonds  
2 shall be paid out of the appropriation hereinafter made to the  
3 marshal."

4 SECTION 9. Section 59A-52-5 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 951) is amended to read:

6 "59A-52-5. COOPERATION WITH OTHER AGENCIES FOR PREVENTION  
7 AND CONTROL OF FIRES.--The state fire marshal is authorized to  
8 cooperate with all other groups, organizations and agencies in  
9 this state or in other states in the collection, dissemination  
10 and evaluation of information, statistics and suggestions for  
11 prevention or control of fires."

12 SECTION 10. Section 59A-52-6 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 952) is amended to read:

14 "59A-52-6. FIRE PROTECTION TRAINING PROGRAMS.--The state  
15 fire marshal shall establish and conduct training programs  
16 throughout the state for demonstrating and teaching [~~firemen~~]  
17 firefighters proper methods of preventing and extinguishing  
18 fires. The marshal shall have available, from funds included  
19 in the general appropriation act of each legislature, money for  
20 use by [~~him~~] the marshal in establishing and conducting such  
21 training programs."

22 SECTION 11. Section 59A-52-7 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 953) is amended to read:

24 "59A-52-7. TEACHING FIRE PREVENTION AND CONTROL IN PUBLIC  
25 SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATION.--The state fire

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1 marshal shall prescribe reasonable rules and regulations and  
2 programs for the teaching to all [~~school children~~]  
3 schoolchildren in the state, whether in public or private  
4 schools, the proper methods of fire prevention and control.  
5 Such rules, regulations and programs shall be submitted to the  
6 [~~department of~~] public education department on or before August  
7 [~~first~~] 1 of each year. Among other things, such rules,  
8 regulations and programs shall prescribe drills for evacuating  
9 school buildings."

10 SECTION 12. Section 59A-52-8 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 954) is amended to read:

12 "59A-52-8. INVESTIGATION OF FIRE HAZARDS--ABATEMENT.--The  
13 state fire marshal is authorized to make investigations, or  
14 require [~~his~~] the marshal's deputy to make investigations, and  
15 reports of existing conditions in the state [~~which~~] that are  
16 fire hazards and to make reasonable orders for the alleviation  
17 of such situations as [~~he~~] the marshal may deem necessary. If  
18 the orders of the marshal are not carried out by persons to  
19 whom they are directed, [~~he~~] the marshal shall institute proper  
20 proceedings under municipal ordinances or state laws to require  
21 compliance with [~~his~~] the orders, as [~~he~~] the marshal may deem  
22 necessary."

23 SECTION 13. Section 59A-52-9 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 955) is amended to read:

25 "59A-52-9. MAY ENTER UPON PREMISES.--The state fire

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1 marshal [~~his~~] or the marshal's deputy, [~~his~~] authorized officer  
2 or designated agent shall have authority at all normal hours of  
3 operation to enter in and upon all buildings and premises  
4 subject to [~~this article~~] Chapter 59A, Article 52 NMSA 1978 for  
5 the purpose of examination and inspection."

6 SECTION 14. Section 59A-52-10 NMSA 1978 (being Laws 1984,  
7 Chapter 127, Section 956) is amended to read:

8 "59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS--  
9 HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire  
10 marshal or [~~his~~] the marshal's deputies or employees are  
11 authorized to make investigations deemed necessary of any fire  
12 or explosion or attempt to cause any fire or explosion in the  
13 state [~~and~~]. The marshal is authorized to require reports from  
14 [~~his~~] the deputies concerning all fires and explosions in their  
15 districts. For the purpose of such investigations, the marshal  
16 and [~~his~~] the marshal's deputies or designated persons are  
17 authorized to conduct [~~hearing~~] hearings, subpoena witnesses,  
18 take testimony and enter upon and examine any building or  
19 premises where any fire or explosion or attempt to cause a fire  
20 or explosion shall have occurred, or which at the time may be  
21 burning. The marshal or [~~his~~] the marshal's deputies or  
22 designated persons shall also have the power to cause to be  
23 produced before them such papers as they may require in making  
24 such examination. In addition, the marshal or [~~his~~] the  
25 marshal's deputies or designated persons may, in their

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1 discretion, take full control and custody of such buildings and  
2 premises, and place [~~such person~~] someone in charge [~~thereof~~]  
3 of the building and premises as they may deem proper, until  
4 their examination and investigation is completed. For  
5 evaluation of the evidence the marshal shall have access to the  
6 facilities and personnel of the [~~state police~~] New Mexico  
7 department of public safety forensic laboratory, and the  
8 executive head of such laboratory shall cooperate fully with  
9 the marshal."

10 SECTION 15. Section 59A-52-11 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 957) is amended to read:

12 "59A-52-11. WITNESSES--PER DIEM AND MILEAGE.--Witnesses  
13 or persons subpoenaed [~~under this article~~] pursuant to Chapter  
14 59A, Article 52 NMSA 1978 shall be paid as to time and expense  
15 [~~from the fire marshal's fund~~] at per diem and mileage rates on  
16 the same bases and at the same rates as currently apply as to  
17 state employees in general."

18 SECTION 16. Section 59A-52-12 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 958) is amended to read:

20 "59A-52-12. RECORDS OF FIRES OPEN TO PUBLIC.--The state  
21 fire marshal shall keep open to public inspection, at  
22 reasonable hours, all records of fires occurring within the  
23 state."

24 SECTION 17. Section 59A-52-13 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 959) is amended to read:

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1           "59A-52-13. TRANSMITTAL OF EVIDENCE INDICATING CRIMINAL  
2 ACTS.--The state fire marshal shall furnish to the proper law  
3 enforcement officers any evidence [~~he~~] that the marshal may  
4 discover in [~~his~~] the marshal's investigations [~~which~~] that  
5 indicates criminal acts."

6           SECTION 18. Section 59A-52-14 NMSA 1978 (being Laws 1984,  
7 Chapter 127, Section 960) is amended to read:

8           "59A-52-14. APPROPRIATIONS.--For the purposes of [~~this~~  
9 ~~article~~] Chapter 59A, Article 52 NMSA 1978, an appropriation  
10 shall be included in the general appropriation act of each  
11 legislature, the appropriation to be made from the fire  
12 protection fund, which funds are to be paid out by the  
13 secretary of finance and administration on vouchers signed by  
14 the state fire marshal."

15           SECTION 19. Section 59A-52-15 NMSA 1978 (being Laws 1984,  
16 Chapter 127, Section 961) is amended to read:

17           "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES  
18 REGULATIONS.--

19           A. For prevention and control of fires, the state  
20 fire [~~board~~] marshal shall formulate, adopt and promulgate, and  
21 amend or revise [~~regulations~~] rules for fire prevention and  
22 safe conduct or use of public occupancies and rules concerning  
23 the sale, servicing or use of fire safety, prevention,  
24 detection or suppression equipment or materials. For the  
25 purposes of this provision, "public occupancies" consist of

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1 places of assembly, educational occupancies, institutional  
2 occupancies, residential occupancies consisting of four [~~(4)~~]  
3 or more family units, mercantile occupancies, office  
4 occupancies, industrial occupancies, storage occupancies and  
5 miscellaneous structures consisting of towers, underground  
6 structures and windowless buildings and all buildings owned or  
7 occupied by the state government or any political subdivision  
8 thereof or by municipal governments [~~and regulations concerning~~  
9 ~~the sale, servicing or use of fire safety, prevention,~~  
10 ~~detection or suppression equipment or materials~~]. The  
11 [~~regulations~~] rules shall be adopted after notice and public  
12 hearing. The notice shall be entitled "notice of proposed  
13 [~~rule making~~] rulemaking" and it shall contain the date of the  
14 hearing and shall state the subject of the hearing. A copy of  
15 the notice, along with a copy of the proposed [~~regulations~~]  
16 rules, shall be filed with the supreme court librarian at least  
17 twenty [~~(20)~~] days prior to the hearing. In addition, the  
18 [~~board~~] marshal shall make available for inspection at its  
19 offices, a copy of the proposed [~~regulations~~] rules.

20 B. The rules [~~and regulations~~] shall follow  
21 nationwide standards except in the area of life safety codes,  
22 which shall be compatible with the Uniform Building Code, as  
23 revised from time to time, issued by the international  
24 conference of building officials.

25 C. The rules [~~and regulations~~] shall allow

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1 reasonable provision under which facilities in service prior to  
2 the effective date of the rules [~~and regulations~~] and not in  
3 strict conformity therewith may be continued in service.

4 [~~Nonconforming~~] Nonconforming facilities in service prior to  
5 the adoption of [~~regulations which~~] rules that are found by the  
6 state fire marshal to constitute a distinct hazard to life or  
7 property shall not be exempt from [~~regulations~~] rules nor  
8 permitted to continue in service."

9 SECTION 20. Section 59A-52-16 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 962, as amended) is amended to read:

11 "59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE  
12 STANDARDS--SAVINGS CLAUSE--DEFINITION.--

13 A. The [~~commission~~] state fire marshal shall adopt  
14 rules for the safe vehicular transportation, storage, handling  
15 and use of flammable and combustible liquids; provided that the  
16 [~~commission~~] state fire marshal shall not adopt any rule  
17 conflicting with the jurisdiction of the department of  
18 environment over the regulation of storage tanks pursuant to  
19 the Hazardous Waste Act or the Ground Water Protection Act.

20 B. The rules shall be in keeping with the latest  
21 generally recognized safety standards for flammable and  
22 combustible liquids. Rules in substantial conformity with the  
23 published standards of the national fire protection association  
24 for vehicular transportation, storage, handling and use of  
25 flammable and combustible liquids shall be deemed to be in

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1 substantial conformity with the generally accepted and  
2 recognized standards of safety concerning the same subject  
3 matter.

4 C. The rules shall include reasonable provisions  
5 under which facilities in service prior to the effective date  
6 of the rules and not in strict conformity therewith may be  
7 continued in service. Nonconforming facilities in service  
8 prior to the adoption of the rules that are found by the state  
9 fire marshal to constitute a distinct hazard to life or  
10 property may not be excepted from the rules or permitted to  
11 continue in service. For guidance in enforcement, the rules  
12 may delineate those types of nonconformities that should be  
13 considered distinctly hazardous and those nonconformities that  
14 should be evaluated in [~~the~~] light of local conditions. If the  
15 need for compliance with any rule is conditioned on local  
16 factors, the rules shall provide that reasonable notice be  
17 given to the proprietor of the facility affected of intention  
18 to evaluate the need for compliance and of the time and place  
19 at which [~~he~~] the proprietor may appear and offer evidence  
20 thereon.

21 D. As used in Chapter 59A, Article 52 NMSA 1978,  
22 the term "flammable liquid" [~~shall mean~~] means any liquid  
23 having a flash point below one hundred degrees Fahrenheit, and  
24 "combustible liquid" [~~shall mean~~] means any liquid having a  
25 flash point at or above one hundred degrees Fahrenheit and

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1 below two hundred degrees Fahrenheit."

2 SECTION 21. Section 59A-52-17 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 963) is amended to read:

4 "59A-52-17. REGULATIONS--PUBLIC HEARING.--No rule or  
5 regulation shall be adopted or revised under Section [~~962 of~~  
6 ~~this article~~] 59A-52-16 NMSA 1978 or made effective until after  
7 public hearing thereon, of which at least twenty [~~(20)~~] days'  
8 written notice shall be given by certified mail to each motor  
9 carrier, producer, refiner, distributor or other person who or  
10 [~~which~~] that shall have registered [~~his~~] the person's or its  
11 name and mailing address with the marshal as a party interested  
12 in such proceedings, and at which any such interested party may  
13 appear and present testimony. Every such notice shall contain  
14 a copy of each rule and regulation proposed for adoption or  
15 revision pursuant to such hearing."

16 SECTION 22. Section 59A-52-18 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 964) is amended to read:

18 "59A-52-18. RULES AND REGULATIONS--STATEWIDE EFFECT--  
19 RESERVED POWER OF MUNICIPALITIES.--The rules and regulations  
20 promulgated pursuant to [~~this article~~] Chapter 59A, Article 52  
21 NMSA 1978 shall have uniform force and effect throughout the  
22 state and no municipality or subdivision shall enact or enforce  
23 any ordinances, rules or regulations inconsistent with the  
24 statewide rules and regulations promulgated pursuant to [~~this~~]  
25 that article. Nothing in [~~this~~] that article shall in any way

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1 impair the power of any municipality to regulate the use of its  
2 land by zoning, building codes or restricted fire district  
3 regulations."

4 SECTION 23. Section 59A-52-19 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 965) is amended to read:

6 "59A-52-19. POLICE POWER OF STATE FIRE MARSHAL--  
7 COOPERATION OF STATE OFFICERS.--

8 A. The state fire marshal [~~his~~] or the marshal's  
9 deputy, [~~or his~~] authorized officer or designated agent shall  
10 have full powers as peace officers to enforce the provisions of  
11 [~~this article~~] Chapter 59A, Article 52 NMSA 1978 and all rules  
12 and regulations issued pursuant to [~~this~~] that article.

13 B. The revenue officers and law enforcement  
14 officers of the state shall cooperate with the marshal [~~his~~] or  
15 the marshal's deputy, [~~or~~] authorized officer or designated  
16 agent whenever called upon by any of them for assistance in  
17 enforcing [~~this article~~] Chapter 59A, Article 52 NMSA 1978."

18 SECTION 24. Section 59A-52-20 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 966) is amended to read:

20 "59A-52-20. CEASE AND DESIST ORDERS--CERTAIN VIOLATIONS  
21 ARE MISDEMEANORS.--

22 A. When the state fire marshal [~~his~~] or the  
23 marshal's deputy, [~~or his~~] authorized officer or designated  
24 agent finds any violation of the regulations issued in  
25 compliance with [~~this article, he or they~~] Chapter 59A, Article

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1 52 NMSA 1978, the marshal or the marshal's deputy, authorized  
2 officer or designated agent shall issue an order to the owner  
3 or [~~his~~] the owner's agent to cease and desist such violations.

4 B. When there is so found any violation of any  
5 statute or rules and regulations concerning flammable liquids,  
6 a cease and desist order shall [~~issue~~] be issued if the  
7 violation constitutes an immediate and distinct hazard to life  
8 or property, and any such violation shall constitute a  
9 misdemeanor punishable by a fine not to exceed five hundred  
10 dollars (\$500). Each day such violation continues constitutes  
11 a separate offense."

12 SECTION 25. Section 59A-52-21 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 967, as amended) is amended to read:

14 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND  
15 MODIFICATIONS.--Any person aggrieved by any order of the state  
16 fire marshal [~~his~~] or the marshal's deputy, [~~or~~] authorized  
17 officer or [~~his~~] designated agent may appeal to the  
18 [~~commission~~] fire services council within ten days from the  
19 date of the service of such order. The [~~commission~~] council  
20 shall hear such party within twenty days after receipt of an  
21 appeal request and shall give not less than ten days' written  
22 notice of the hearing. Within fifteen days after such hearing,  
23 the [~~commission~~] council shall file its decision and, unless by  
24 its authority the order is revoked or modified, [~~it~~] the order  
25 shall be complied with within the time fixed in the decision,

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1 with such time to be not less than thirty days."

2 SECTION 26. Section 59A-52-23 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 969, as amended) is amended to read:

4 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS.--  
5 After expiration of time for an administrative appeal, and if  
6 no such appeal has been taken, the state fire marshal may  
7 commence an action in the district court for Santa Fe county to  
8 enforce the cease and desist order by injunction or other  
9 appropriate remedy as the district court may adjudge. The  
10 [~~commission~~] fire services council may likewise commence an  
11 action in the district court for Santa Fe county to enforce its  
12 decision rendered on appeal from the cease and desist order of  
13 the state fire marshal."

14 SECTION 27. Section 59A-52-24 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 970) is amended to read:

16 "59A-52-24. PENALTY FOR VIOLATION OF LAW OR  
17 REGULATIONS.--Violation of any of the provisions of [~~this~~  
18 ~~article~~] Chapter 59A, Article 52 NMSA 1978 or of any of the  
19 regulations lawfully enacted pursuant thereto shall constitute  
20 a misdemeanor for which the punishment shall be a fine of not  
21 more than five hundred dollars (\$500). Each day any such  
22 violation continues shall constitute a separate offense."

23 SECTION 28. Section 59A-52-25 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 971) is amended to read:

25 "59A-52-25. PENALTY FOR VIOLATION OF CEASE AND DESIST

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1 ORDER.--Any person, firm or corporation that violates any final  
2 cease and desist order shall be subject to a penalty in the sum  
3 of five hundred dollars (\$500) for each day such violation  
4 continues. The attorney general is empowered to bring a civil  
5 suit for the enforcement of this section on the relation of the  
6 state fire marshal. [~~Any penalty collected under the~~  
7 ~~provisions of this section shall be credited to the fire~~  
8 ~~protection fund.]"~~

9 SECTION 29. A new section of Chapter 59A, Article 52 NMSA  
10 1978 is enacted to read:

11 "[NEW MATERIAL] STATE FIRE MARSHAL--APPOINTMENT--TERM--  
12 COMPENSATION--REMOVAL--POWERS AND DUTIES.--

13 A. The state fire marshal shall be appointed by the  
14 fire services council.

15 B. The state fire marshal shall serve for a term of  
16 four years, except that the initial term beginning July 1, 2019  
17 shall end on December 31, 2020. If the position of state fire  
18 marshal becomes vacant, the successor shall serve for the  
19 remainder of the term. An incumbent state fire marshal may  
20 apply to the fire services council for appointment to  
21 additional terms.

22 C. The state fire marshal's annual compensation  
23 shall be subject to legislative appropriation and established  
24 by the fire services council at the start of each term and  
25 annually thereafter. The state fire marshal's annual

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1 compensation shall be no lower than that of the lowest-  
2 compensated cabinet secretary and no higher than that of the  
3 highest-compensated cabinet secretary.

4 D. The state fire marshal shall not be removed  
5 except for incompetence, willful neglect of duty or malfeasance  
6 in office. The fire services council may remove the state fire  
7 marshal after providing the state fire marshal with notice and  
8 a hearing.

9 E. The state fire marshal shall:

10 (1) oversee and manage the state fire  
11 marshal's office and direct its activities;

12 (2) promulgate rules pursuant to the  
13 Administrative Procedures Act relating to the state fire  
14 marshal's office and the fire services council;

15 (3) employ and fix the compensation of staff,  
16 including directors of the state fire marshal's office's  
17 divisions, as necessary to carry out the duties of the office;

18 (4) consider advice from the fire services  
19 council concerning the adoption of fire safety management  
20 policies of the state fire marshal's office; and

21 (5) annually, prepare a budget for the state  
22 fire marshal's office."

23 SECTION 30. A new section of Chapter 59A, Article 52 NMSA  
24 1978 is enacted to read:

25 "[NEW MATERIAL] FIRE SERVICES COUNCIL CREATED--

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1 MEMBERSHIP--DUTIES.--

2 A. The "fire services council" is created to advise  
3 the state fire marshal's office on fire and emergency  
4 services policy. The council consists of seven persons as  
5 follows:

6 (1) the presiding officer or designee of each  
7 of the:

8 (a) New Mexico fire chiefs association;

9 (b) fire and emergency managers  
10 affiliate of New Mexico counties;

11 (c) New Mexico state firefighters  
12 association;

13 (d) New Mexico emergency medical  
14 technicians association;

15 (e) New Mexico fire marshals  
16 association; and

17 (f) the metro chiefs association; and

18 (2) one person appointed by the superintendent  
19 of insurance who shall serve at the pleasure of the  
20 superintendent.

21 B. The fire services council shall select from  
22 among its members a chair and vice chair who shall serve one-  
23 year terms. No member shall serve as chair or vice chair for  
24 more than two consecutive years.

25 C. The fire services council shall meet as

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1 frequently as necessary to conduct business or hold hearings  
2 but no less than four times per year. A majority of members of  
3 the council shall constitute a quorum.

4 D. The state fire marshal's office shall use its  
5 funding to reimburse council members for their per diem and  
6 mileage expenses in accordance with the Per Diem and Mileage  
7 Act. Council members shall otherwise serve without  
8 compensation.

9 E. The fire services council is subject to the  
10 Inspection of Public Records Act and the Open Meetings Act.  
11 Individual members of the fire services council are subject to  
12 the Governmental Conduct Act and the Financial Disclosure Act.

13 F. The fire services council shall:

14 (1) appoint a state fire marshal by a majority  
15 vote of all members of the council and conduct an annual  
16 performance review of the state fire marshal;

17 (2) review and comment on proposed changes in  
18 fire codes and the proposed budget of the state fire marshal's  
19 office; and

20 (3) consider complaints regarding the  
21 performance of the state fire marshal's office and make  
22 recommendations to the state fire marshal.

23 G. An employee of the state fire marshal's office  
24 who serves as staff for the fire services council shall not  
25 reveal to any person, except another council staff person, any

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1 requests or statements disclosed in confidence by a council  
2 member, except that this restriction shall not apply to any  
3 disclosure that is:

4 (1) protected pursuant to the Whistleblower  
5 Protection Act; or

6 (2) required by law."

7 **SECTION 31. TEMPORARY PROVISION--RECOMPILATION**

8 INSTRUCTION.--The compiler shall recompile Section 8-8-9.1 NMSA  
9 1978 (being Laws 2001, Chapter 80, Section 1) in Chapter 59A,  
10 Article 52 NMSA 1978.

11 **SECTION 32. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,**  
12 **PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND**  
13 **REFERENCES IN LAW.--**

14 A. On July 1, 2019, all staff positions, functions,  
15 personnel, appropriations, money, records, equipment, supplies,  
16 other property and contractual obligations of the fire marshal  
17 division of the public regulation commission are transferred to  
18 the state fire marshal's office.

19 B. Beginning on July 1, 2019, all references in  
20 law, rules, orders and other official acts to the fire marshal  
21 division of the public regulation commission shall be deemed  
22 references to the state fire marshal's office.

23 C. Beginning on July 1, 2019, all contractual  
24 obligations of the fire marshal division of the public  
25 regulation commission are binding on the state fire marshal's

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1 office.

2 SECTION 33. REPEAL.--Section 8-8-9.3 NMSA 1978 (being  
3 Laws 2007, Chapter 161, Section 4) is repealed.

4 SECTION 34. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2019.