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FISCAL IMPACT REPORT

Dow/Martinez/
Gonzales/Sanchez/
Lara

SPONSOR _____ **ORIGINAL DATE** 1/31/19
LAST UPDATED 3/1/19 **HB** 269

SHORT TITLE Remove Fire Marshal from PRC **SB** _____

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$1,138.9	\$1,138.9	\$1,138.9	\$3,416.7	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)
 Office of Superintendent of Insurance (OSI)
 New Mexico Counties (NMC)

SUMMARY

Synopsis of Bill

HB 269 amends Article 52 of the Insurance Code by removing the State Fire Marshal from under the Public Regulation Commission, replacing it with the State Fire Marshal Office and administratively attaching the new agency to the Office of Superintendent of Insurance (OSI). In practice, the State Fire Marshal would function as a completely autonomous agency except for budget and administrative matters.

A recreated position of a State Fire Marshal would manage and oversee the State Fire Marshal Office and be appointed by a newly created Fire Services Council. HB269 sets forth the composition, powers and duties of the Fire Services Council. The Fire Services Council shall consist of a designee of each of the following:

1. New Mexico Fire Chiefs Association
2. Fire and emergency managers affiliate of New Mexico counties

3. New Mexico State Firefighters Association
4. New Mexico Emergency Medical Technicians Association
5. New Mexico Fire Marshal's Association
6. Metro Chief's Association
7. Appointee by the Superintendent of Insurance.

The Fire Services Council will hear appeals from orders of the State Fire Marshal, and will have the power to commence an action in District Court to enforce decisions on appeal from cease and desist orders of the State Fire Marshal. The State Fire Marshal shall be appointed by the Fire Services Council, and shall serve a term of four years. All staff positions, functions, personnel, appropriations, money, records equipment, supplies, other property and contractual obligations of the PRC's Fire Marshal Division will be transferred to the State Fire Marshal's office.

Additionally, the proposed legislation would remove any required concurrence in the appointment of a Deputy Fire Marshal.

HB269 contains numerous amendments to clean up language, which focus on changing statutory references to official acts and responsibilities.

FISCAL IMPLICATIONS

Section 32 (A) transfers all "appropriations," and "money," however, does not include funds collected. The State Fire Marshals current operating budget consists of Fire Protection Fund Revenue, and federal funding. HB269 is unclear in transfer of funds, as the State Fire Marshal's office does not receive any general fund appropriations.

Also, in PRC's operating budget, \$4.7 million of approximately \$70 million in Fire Protection Funds collected annually are used for administrative operational needs in all three programs of the agency. For FY19, the breakdown of fire protection funds in the operating budget are as follows:

1. Policy and Regulation Program : \$488.1
2. Public Safety: \$3,637.4
3. Program Support: \$650.8

If the Fire Protection funds are removed from PRC's operating budget this will result in a decrease in funding of \$1.1 million total for the Policy and Regulation Program and Program Support Program. This amount accounts for the decrease of \$3.6 million in fire protection funds that support the State Fire Marshal's office and will move with the State Fire Marshal's Office.

In order for PRC to continue to operate as normal, providing critical services, these fire protection funds will need to be supplemented with \$1.1 million in general fund revenue. This will be a recurring expense to the general fund of \$1.1 million beginning in FY20. Without backfilling these funds, the agency will not be able to continue operations as normal, creating staffing issues in critical areas that support multiple areas of the agency including, lawyers, engineers, and administrative services staff.

The Office of Superintendent of Insurance Submitted the Following:

OSI may not be able to administratively support the Fire Marshal's additional needs based on OSI's current ASD staffing. Thus, depending on the level of administrative support needed for the State Fire Marshal's Office, OSI may need funding for additional staff.

SIGNIFICANT ISSUES

Fire protection fund distribution and insurance services inspection office ratings (ISO fire score) are both overseen by the State Fire Marshal's office. Ratings and distributions are statutorily administered, also accounting for growth of the fund and ensuring it is evenly applied amongst all fire districts. This will not be effected by HB269.

However, the fire protection grant fund is currently overseen by the grant fund council. Council members are currently as follows:

1. Chair – PRC staff
2. PRC staff
3. Governor Appointee - 1st Congressional District
4. Governor Appointee – 2nd Congressional District
5. Governor Appointee - 3rd Congressional District
6. Representative from Association of Counties
7. Representative from Municipal League
8. State Fire Marshal (non-voting)

The grant fund is distributed to local municipalities and counties by fire protection capital outlay requests. Grant funding is currently awarded quarterly as fire departments receive capital outlay specific need, rather than awarding a one-time award at the beginning of the fiscal year. This has been a recent fiscally responsible successful change within PRC Administrative Services Division to appropriately administer grant funding. HB269 is unclear if the same fire grant council will continue to administer grants with the same timing schedule to fire departments around the state, or if the newly created fire services council will take over these duties.

If the newly created fire services council, with membership composed of New Mexico Fire Chiefs Association, New Mexico state firefighters Association, and the Metro Chiefs Association, will take on the duties of distributing grants, this may be a conflict of interest as only one independent oversight member is listed on the newly created council, the Superintendent of Insurance. LFC staff is concerned with oversight of state funding being distributed by members within the own organizations that are requesting funding. Also the new council, if taking on the grant fund council duties, has removed key figures in the fire safety oversight community such as the Association of Counties, and the Municipal League.

Section 7, removes oversight of the Chief of Staff of the PRC in hiring of a deputy state fire marshal. This section does not clearly define if the oversight in hiring a “deputy state fire marshals and other employees” will solely remain with the State Fire Marshal, or if the Superintendent of Insurance, or the created “Fire Services Council,” will be taking on this oversight.

Section 15, removes that witnesses will be paid per diem “from the fire marshal's fund.”

However, this section now becomes unclear as to how those per diem vouchers will be paid.

Section 20, changes authority of rulemaking related to flammable liquids and national standards from the Public Regulation Commission, to the sole responsibility of the State Fire Marshal. This should be considered to include the newly created, “Fire Services Council.”

Section 25, changes authority from the PRC commission to the newly created, “Fire Services Council,” to hear aggrieved persons within twenty days after receipt of an appeal request. HB269 will require that the Fire Services Council hold hearings. This is currently done at the office of the PRC. The OSI will need to ensure that hearing space will be available.

Section 28, removes that penalties (\$500 each) collected from any person, firm or corporation that violates any final cease and desist order shall be credited to the fire protection fund. Section 28 does not state where these funds that are collected will be credited to if they are no longer being credited to the fire protection fund.

LFC staff is concerned with the effective date of July 1, 2019. This will allow only three months to transfer an entire safety division from PRC to being administratively attached to OSI. HB269 will also only allow three months for the newly created, “Fire Services Council,” to establish rules. With a division such as the State Fire Marshal’s office, with great responsibilities pertaining to the public, more time to establish this move as well as to allow for a council to create rules is greatly recommended.

The Office of Superintendent of Insurance Submitted the Following:

Utilizing the Executive Reorganization Act (ERA), NMSA 1978, Chapter 9-1-1 et al. in order to administratively attach the newly created Fire Marshal’s Office to the OSI violates the ERA. The provisions of Section 9-1-7, which allow for the administrative attachment of an agency to a department, apply only to the executive branch (“the principal unit of the executive branch is a "department," headed by a "secretary," Section 9-1-4). Instead of being an executive level department. OSI is considered an adjunct agency, and therefore cannot have an agency statutorily attached. See NMSA 1978, Sections 9-1-6 and 9-1-7.

At least four members of the proposed Fire Services Council are not constitutionally or statutorily elected or appointed officers. Instead, these Council members represent various associations of fire and emergency service personnel. Amongst its many duties, the Council will be the sole entity with the authority to appoint and in some circumstances remove the Fire Marshal, receive and hear administrative appeals, and set the annual compensation for the Fire Marshal.

OSI also expresses concerns including; how many staff would be needed to fully support the Fire Marshal’s Office? and where will the Fire Marshal’s staff be housed?

PERFORMANCE IMPLICATIONS

The State Fire Marshal’s Office currently has three performance measures within the Public Safety Bureau of the PRC. These measures are as follows, and will need to remain with the Fire Marshal’s Office if they are administratively attached to OSI.

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1. Percent of statewide fire districts with insurance service office ratings of eight or better.
FY18 Actual: 78 percent
2. Number of training contact hours delivered by the State Fire Marshal's Office, state firefighter training academy and pipeline safety bureau in a fiscal year.
FY18 Actual: 127,855
3. Pass rate for state certification exams administered by the state firefighter academy.
FY18 Actual: 79 percent

ADMINISTRATIVE IMPLICATIONS

As stated above in significant issues, OSI is not fully confident in taking over an additional division within their organization. OSI is currently short staffed for current operations within the agency.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo, the State Fire Marshal Division will remain with the PRC.

JM/sb/gb