

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 386

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
SFC→AMENDING SECTIONS OF THE ELECTION CODE TO REMOVE PUBLIC
REGULATION COMMISSIONERS AS ELECTED OFFICIALS; REPEALING THE
PUBLIC REGULATION COMMISSION APPORTIONMENT ACT; RECOMPILING THE
PUBLIC REGULATION COMMISSION ACT AND AMENDING PROVISIONS OF
THAT ACT; CREATING THE PUBLIC REGULATION COMMISSION NOMINATING
COMMITTEE; PROVIDING PROCEDURES FOR THE PUBLIC REGULATION
COMMISSION NOMINATING COMMITTEE; PROVIDING AGE AND SERVICE
REQUIREMENTS FOR NORMAL RETIREMENT OF APPOINTED PUBLIC
REGULATION COMMISSION COMMISSIONERS; ←SFC SEPARATING THE FIRE

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MARSHAL DIVISION FROM THE PUBLIC REGULATION COMMISSION;
CREATING THE STATE FIRE MARSHAL'S OFFICE IN THE HOMELAND
SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT; CREATING THE FIRE
SERVICES COUNCIL; AMENDING STATUTORY REFERENCES; TRANSFERRING
PERSONNEL, FUNCTIONS, MONEY, APPROPRIATIONS, OTHER PROPERTY AND
CONTRACTUAL OBLIGATIONS; CHANGING REFERENCES IN LAW.

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

SFC→SECTION 1. Section 1-3-12 NMSA 1978 (being Laws 1984
(1st S.S.), Chapter 3, Section 4, as amended) is amended to
read:

"1-3-12. ADJUSTING PRECINCT BOUNDARIES.--

A. Before each federal decennial census, every
precinct shall comply with the requirements of Section 1-3-1
NMSA 1978, and if necessary its boundary shall be adjusted to
coincide with a feature or a boundary that is:

(1) shown on the standard base maps developed
pursuant to Subsection B of this section;

(2) a designated census block boundary on the
proposed federal PL 94-171 2020 census block maps; or

(3) approved by the secretary of state and the
United States [bureau of the] census bureau.

B. Prior to commencement of the federal decennial
census, the secretary of state shall have prepared and shall
furnish to each county clerk standard base maps of the county.

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The standard base map for urban and nonurban areas of the county shall, as nearly as practical, show:

- (1) all state and federal highways;
- (2) all numbered and named county roads that have been certified to the department of transportation;
- (3) all military installation boundaries and federal and state prison boundaries;
- (4) all major railroad lines;
- (5) federal, state and county political boundaries, municipal boundaries and school district boundaries;
- (6) all streets within urban areas; and
- (7) other major terrain features, such as flowing rivers and streams, arroyos, power lines, pipelines, roads, trails and ridgelines and other acceptable census block boundaries.

C. The board of county commissioners, upon receipt of the standard base maps from the secretary of state and upon the recommendation of the county clerk, shall:

- (1) adjust all precinct boundaries to coincide with numbered or named street boundaries or suitable visible terrain features shown on the standard base map; provided that the precincts shall be composed of contiguous and compact areas, and state, county, municipal, school district and other special district or political boundary lines shall serve as

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precinct boundaries whenever possible; and

(2) upon the completion of the precinct boundary adjustments as required in this section, indicate on the standard base maps the boundaries for both urban and nonurban precincts and, together with a written description of the precincts, shall send an electronic copy to the secretary of state for approval.

D. The precincts shown upon the standard base maps submitted pursuant to the provisions of this section and as revised and approved by the secretary of state pursuant to the Precinct Boundary Adjustment Act shall become the official precincts of each county for the 2021 redistricting. For the 2022 and subsequent statewide elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

E. In the same calendar year in which the state receives the results of a federal decennial census, the state legislature shall redistrict federal representative districts, each chamber of the legislature, [public regulation commission districts] public education commission districts and any other state districts requiring redistricting.

F. In the calendar year following the receipt of the results of a federal decennial census, each local public body subject to districting shall create or redraw districts for the local public body. A local public body, when creating

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or redrawing districts, shall not split a precinct into two or more districts for any elected office unless necessary to comply with federal law or to preserve communities of interest."

SECTION 2. Section 1-8-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 152, as amended) is amended to read:

"1-8-2. NOMINATION BY MINOR POLITICAL PARTY--CONVENTION--DESIGNATED NOMINEES.--

A. If the rules of a minor political party require nomination by political convention:

(1) the chair and secretary of the state political convention shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multicounty districts, [the public regulation commission] all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chair and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the twenty-third day following the primary

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election in the year of the general election and shall be accompanied by nominating petitions containing the signatures of voters totaling not less than one percent of the total number of votes cast for governor at the last preceding general election at which a governor was elected:

(1) in the state for statewide offices; and

(2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the area to be represented by the office for which the person being nominated is a candidate.

C. The names certified to the county clerk shall be filed on the twenty-third day following the primary election in the year of the general election and shall be accompanied by a nominating petition containing the signatures of voters totaling not less than one percent of the total number of votes cast for governor at the last preceding general election at which a governor was elected:

(1) in the county for countywide offices; and

(2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the area to be represented by the office for which the person being nominated

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is a candidate.

D. Except in the case of a political party certified in the year of the election, persons certified as candidates shall be members of that party on the day the secretary of state issues the general election proclamation.

E. When a political party is certified in the year of the general election, and after the day the secretary of state issues the general election proclamation, a person certified as a candidate shall be:

(1) a member of that party not later than the date the political party filed its rules and qualifying petitions pursuant to Sections 1-7-2 and 1-7-4 NMSA 1978; and

(2) a resident in the district of the office for which the person is a candidate on the date of the secretary of state's proclamation for the general election or in the case of a person seeking the office of United States senator or United States representative, a resident within New Mexico on the date of the secretary of state's proclamation for the general election. No person who is a candidate for a party in a primary election may be certified as a candidate for a different party in the general election in the same election cycle.

F. No voter shall sign a petition prescribed by this section for more persons than the number of candidates necessary to fill the office at the next ensuing general

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election."

SECTION 3. Section 1-8-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 153, as amended) is amended to read:

"1-8-3. NOMINATION BY MINOR POLITICAL PARTY--OTHER METHODS.--If the rules and regulations of a minor political party require nomination by a method other than a political convention:

A. the state [chairman] chair and the governing board of the state party shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multicounty districts, [public regulation commission] all elective judicial officers in the judicial department and all offices representing a district composed of more than one county;

B. the county [chairman] chair and the governing board of the county party shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county; and

C. the names of such nominees shall be filed in the same time and manner prescribed by the Election Code for convention-designated nominees of minor political parties, and each list of names certified shall be accompanied by the petition containing a list of signatures and addresses of

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voters as prescribed for convention-designated nominees."

SECTION 4. Section 1-8-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 162, as amended) is amended to read:

"1-8-13. PRIMARY ELECTION LAW--CONTENTS OF PROCLAMATION.-

-The general election proclamation calling a primary and general election shall contain:

A. the names of the major political parties participating in the primary election;

B. the offices to be elected at the general election and for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and the law does not take effect until after the date to amend the proclamation but prior to the date to fill vacancies pursuant to Section 1-8-7 or 1-8-8 NMSA 1978, the secretary of state shall conform the proclamation to the intent of the law with respect to the offices for which each political party shall nominate candidates;

C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, public education commission [public regulation commission] or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the

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official ballot of their party at the primary election or in order to have the candidates' names printed on the official ballot at the general election, as applicable;

D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;

E. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;

F. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates;

G. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state;

H. the date on which declarations of candidacy for minor party candidates shall be filed and the places where the declarations of candidacy shall be filed in order to have the minor party candidate names printed on the official ballot of the general election;

I. the date on which declarations of candidacy for

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unaffiliated candidates shall be filed and the places where the declarations of candidacy shall be filed in order to have the unaffiliated candidate names printed on the official ballot of the general election;

J. the date on which declarations of candidacy for nonpartisan judicial retention shall be filed and the places where the declarations of candidacy shall be filed in order to have the judicial retention names printed on the official ballot of the general election; and

K. the date on which declarations to be a write-in candidate are to be filed and the places where the declarations of candidacy shall be filed in order to have write-in votes counted and canvassed at the political party primary or general election."

SECTION 5. Section 1-8-33 NMSA 1978 (being Laws 1973, Chapter 228, Section 7, as amended) is amended to read:

"1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--
NUMBER OF SIGNATURES REQUIRED.--

A. As used in this section, "total vote" means the sum of all votes cast for all of the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Candidates who seek preprimary convention designation shall file nominating petitions at the time of filing declarations of candidacy. Nominating petitions for

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those candidates shall be signed by a number of voters equal to at least two percent of the total vote of the candidate's party in the state or congressional district, or the following number of voters, whichever is greater: for statewide offices, two hundred thirty voters; and for congressional candidates, seventy-seven voters.

C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, or the following number of voters, whichever is greater: for metropolitan court and magistrate courts, ten voters; [for the public regulation commission, fifty voters] for the public education commission, twenty-five voters; for state representative, ten voters; for state senator, seventeen voters; and for district attorney and district judge, fifteen voters.

D. A candidate who fails to receive the preprimary convention designation that the candidate sought may collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office the candidate seeks, and file a new declaration of candidacy and nominating petitions for the office for which the candidate

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failed to receive a preprimary designation. The declaration of candidacy and nominating petitions shall be filed with the secretary of state either ten days following the date of the preprimary convention at which the candidate failed to receive the designation or on the date all declarations of candidacy and nominating petitions are due pursuant to the provisions of the Primary Election Law, whichever is later."

SECTION 6. Section 1-8-36.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 1, as amended) is amended to read:

"1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges, district attorneys, [public regulation commission] public education commission, magistrates and any office voted upon by all voters of the state.

B. A person may be a write-in candidate only for nomination by the major political party with which the person is affiliated as shown by the certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which the person is a write-in candidate.

C. A person desiring to be a write-in candidate for one of the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer

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a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the third Tuesday in March.

D. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligations to report pursuant to the Campaign Reporting Act, except that the write-in candidate's name shall not be printed on the ballot."

SECTION 7. Section 1-8-51 NMSA 1978 (being Laws 1977, Chapter 322, Section 7, as amended) is amended to read:

"1-8-51. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE ELECTIONS--NOMINATING PETITIONS--REQUIRED NUMBER OF SIGNATURES.--

A. The basis of percentage for the total number of votes cast in each instance referred to in this section shall be the total vote cast for governor at the last preceding general election at which a governor was elected.

B. Nominating petitions for an independent candidate for president of the United States shall be signed by a number of voters equal to the number of signatures required to form a new political party.

C. Nominating petitions for an independent candidate for United States senator or any other statewide

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elective office shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the state.

D. Nominating petitions for an independent candidate for United States representative shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the district.

E. Nominating petitions for an independent candidate for a member of the legislature, [public regulation commission] district judge, district attorney, member of the public education commission, magistrate or county office shall be signed by a number of voters equal to at least two percent of the total number of votes cast in the district, division or county, as the case may be.

F. When a vacancy for any office occurs on the general election ballot pursuant to Section 1-8-7 or 1-8-8 NMSA 1978 in which all political parties may name a general election candidate or when a vacancy occurs in the office of United States representative pursuant to Section 1-15-18.1 NMSA 1978, an independent candidate may file a declaration of candidacy on or by the same deadline applicable to the political parties. The nominating petitions for an independent candidate in such circumstances shall be signed by the number of voters provided in this section, unless there are fewer than:

(1) sixty days from the announcement of the

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vacancy to the last day to file a declaration of candidacy, in which case an independent candidate shall submit nominating petitions signed by a number of voters equal to two-thirds the number of voters otherwise required by this section for an independent candidate; or

(2) thirty days from the announcement of the vacancy to the last day to file a declaration of candidacy, in which case an independent candidate shall submit nominating petitions signed by a number of voters equal to one-third the number of voters otherwise required by this section for an independent candidate.

G. A voter shall not sign a petition for an independent candidate as provided in this section if the voter has signed a petition for another independent candidate for the same office."

SECTION 8. Section 1-10-8 NMSA 1978 (being Laws 2019, Chapter 212, Section 103) is amended to read:

"1-10-8. BALLOTS--ORDER OF OFFICES AND BALLOT QUESTIONS.--

A. In the year in which the president of the United States is elected, the ballot in a primary election and general election shall contain, when applicable, partisan offices to be voted on in the following order:

- (1) in a presidential primary, president;
- (2) in a general election, president and vice

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president as a ticket;

(3) United States senator;

(4) United States representative;

(5) state senator;

(6) state representative;

(7) supreme court;

(8) court of appeals;

[(9) public regulation commission districts

with odd-numbered designations;

(10)] (9) public education commission

districts with odd-numbered designations;

[(11)] (10) district court;

[(12)] (11) metropolitan court;

[(13)] (12) county clerk;

[(14)] (13) county treasurer; and

[(15)] (14) county commission districts and

positions with odd-numbered designations.

B. In the year in which the governor is elected, the ballot in a primary election and general election shall contain, when applicable, partisan offices to be voted on in the following order:

(1) United States senator;

(2) United States representative;

(3) in a major political party primary,

governor;

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(4) in a major political party primary,
lieutenant governor;

(5) in a general election, governor and
lieutenant governor as a ticket;

(6) secretary of state;

(7) attorney general;

(8) state auditor;

(9) state treasurer;

(10) commissioner of public lands;

(11) state representative;

(12) supreme court;

(13) court of appeals;

[(14) public regulation commission districts
with even-numbered designations;

(15)] (14) public education commission
districts with even-numbered designations;

[(16)] (15) district court;

[(17)] (16) district attorney;

[(18)] (17) metropolitan court;

[(19)] (18) magistrate court;

[(20)] (19) county sheriff;

[(21)] (20) county assessor;

[(22)] (21) county commission districts and
positions with even-numbered designations; and

[(23)] (22) probate judge.

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C. The ballot in a regular local election shall contain, when applicable, nonpartisan offices to be voted on in the following order:

(1) municipal, with elective executive officers listed first, governing board members listed second and judicial officers listed third;

(2) board of education of a school district;

(3) community college, branch community college, technical and vocational institute district or learning center district; and

(4) special districts listed in order by voting population of each special district, with the most populous listed first and the least populous listed last.

D. The ballot in a statewide election shall contain, when applicable, nonpartisan judicial retention and in a statewide or special election, when applicable, ballot questions to be voted on in the following order, unless a different order is prescribed by the secretary of state:

(1) judicial retention;

(2) proposed state constitutional amendments;

(3) other state ballot questions;

(4) county ballot questions; and

(5) local government ballot questions listed in the same order as the list of local governments in Subsection C of this section.

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E. When multiple positions for the same nonjudicial office are listed on the same ballot and each position is to be elected individually:

(1) offices designated by district number shall appear on the ballot in ascending numerical order of the districts;

(2) offices not designated by district number shall appear on the ballot in ascending numerical order of the position; provided that the secretary of state shall numerically designate the positions on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, and only one member shall be elected for each position; and

(3) whenever two or more positions for the same office are to be elected to represent the same area with terms of different lengths of time, the secretary of state shall first group the offices with the shorter length of time and shall designate each position with "for a term expiring ___", specifying the date the term expires.

F. When multiple positions for the same judicial office are listed on the same ballot and each position is to be elected or voted on individually:

(1) district, metropolitan and magistrate court positions, either for partisan election or for nonpartisan judicial retention, shall appear on the ballot in

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ascending numerical order of the division number assigned to each position;

(2) supreme court and court of appeals for partisan election shall appear on the ballot in ascending numerical order of the position number designated by the secretary of state for that election, based on the date of the vacancy causing the position to be listed on the ballot; provided that if multiple vacancies occurred on the same day, the positions shall appear on the ballot based on the order of seniority of the justice or judge who vacated the position, with the highest seniority listed first; and

(3) supreme court and court of appeals for nonpartisan judicial retention shall appear on the ballot in ascending numerical order of the position number designated by the secretary of state for that election, based on the seniority of the justice or judge seeking retention, with the highest seniority listed first."

SECTION 9. Section 1-14-24 NMSA 1978 (being Laws 2008, Chapter 41, Section 1, as amended) is amended to read:

"1-14-24. AUTOMATIC RECOUNTS--ELECTIONS FOR STATE AND FEDERAL OFFICES--PROCEDURES.--

A. An automatic recount of the vote is required when the canvass of returns indicates that the margin between the two candidates receiving the greatest number of votes for an office, the margin between those supporting and those

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opposing a ballot question or the margin affecting the outcome of a nonpartisan judicial retention election is less than:

(1) one-fourth percent of the total votes cast in that election:

(a) for that office in the case of a federal or statewide office;

(b) on a ballot question in the case of a state ballot question; or

(c) on a nonpartisan judicial retention election in the case of the supreme court or the court of appeals;

(2) one-half percent of the total votes cast in that election:

(a) for that office in the case of a [public regulation commissioner] public education commissioner, district attorney or any office elected countywide in a county with more than one hundred fifty thousand registered voters;

(b) on a ballot question in the case of a local ballot question; or

(c) on a nonpartisan judicial retention election in the case of a district court or the metropolitan court; or

(3) one percent of the total votes cast in that election for that office in the case of any other office.

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B. For an office for which ballots were cast in more than one county, the secretary of state shall file notice with the state canvassing board upon the completion of the state canvass that an automatic recount is required, and the state canvassing board shall order a recount of the ballots for the specified office. For an office in which ballots were cast solely within one county, the secretary of state shall file notice with the state canvassing board within seven days after receiving notice from the county clerk following the completion of the county canvass that an automatic recount is required, and the state canvassing board shall order a recount of the ballots for the specified office.

C. Automatic recounts shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978."

SECTION 10. Section 1-19A-2 NMSA 1978 (being Laws 2003, Chapter 14, Section 2, as amended) is amended to read:

"1-19A-2. DEFINITIONS.--As used in the Voter Action Act:

A. "applicant candidate" means a candidate who is running for a covered office and who is seeking to be a certified candidate in a primary or general election;

B. "certified candidate" means a candidate running for a covered office who chooses to obtain financing pursuant to the Voter Action Act and is certified as a Voter Action Act

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candidate;

C. "contested" means there are more candidates for a position than the number to be elected to that position;

D. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of supporting or opposing the nomination for election or election of a candidate for public office, including payment of a debt incurred in an election campaign and also including a coordinated expenditure, but "contribution" does not include:

(1) a qualifying contribution;

(2) the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate; or

(3) the value of the incidental use of the candidate's personal property, home or business office for campaign purposes;

E. "coordinated expenditure" means an expenditure that is made:

(1) by a person other than a candidate or campaign committee;

(2) at the request or suggestion of, or in cooperation, consultation or concert with, a candidate,

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campaign committee or political party or any agent or representative of such a candidate, campaign committee or political party; and

(3) for the purpose of:

(a) supporting or opposing the nomination or election of a candidate; or

(b) paying for an advertisement that refers to a clearly identified candidate and that is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot;

F. "covered office" means any office of the judicial department subject to statewide elections [and the office of public regulation commissioner];

G. "expenditure" means a payment, transfer or distribution of, or a promise to pay, transfer or distribute, any money or other thing of value for the purpose of supporting or opposing the nomination or election of a candidate;

H. "fund" means the public election fund;

I. "qualifying contribution" means a donation of five dollars (\$5.00) in the form of cash, a check, a money order or an electronic form of payment, as prescribed by the secretary, and payable to the fund in support of an applicant candidate that is:

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(1) made by a voter who is eligible to vote for the covered office that the applicant candidate is seeking;

(2) made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the applicant candidate; and

(3) acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the bureau of elections and that is signed by the contributor, one copy of which is attached to the list of contributors and sent to the bureau of elections;

J. "qualifying period" means:

(1) for candidates who are seeking public financing for a primary election or for both a primary and a general election, the period beginning October 1 immediately preceding the election year and ending at 5:00 p.m. on the third Tuesday of March of the election year; and

(2) for candidates who are seeking public financing only for a general election, the period beginning January 1 of the election year and ending that year at 5:00 p.m. on the twenty-third day following the primary election for the office for which the candidate is running; and

K. "secretary" means the secretary of state or the office of the secretary of state."

SECTION 11. Section 1-19A-4 NMSA 1978 (being Laws 2003, Chapter 14, Section 4, as amended) is amended to read:

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"1-19A-4. QUALIFYING CONTRIBUTIONS.--

A. Applicant candidates for all statewide judicial elective offices shall obtain qualifying contributions [as follows:

(1) for all statewide judicial elective offices, the number of qualifying contributions] equal to one-tenth of one percent of the number of voters in the state [and

(2) for the office of public regulation commissioner, the number of qualifying contributions equal to one-tenth of one-percent of the number of voters in the district of the office for which the candidate is running].

B. Applicant candidates may accept qualifying contributions from persons who become registered within the statutory time frame that would enable [that person] those persons to vote in the primary election.

C. Voters registered as independent are not excluded from making qualifying contributions but shall be registered within the statutory time frame as independent.

D. No payment, gift or anything of value shall be given in exchange for a qualifying contribution."

SECTION 12. Section 1-19A-10 NMSA 1978 (being Laws 2003, Chapter 14, Section 10, as amended) is amended to read:

"1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

A. There is created in the state treasury the "public election fund" solely for the purposes of:

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(1) financing the election campaigns of certified candidates for covered offices;

(2) paying administrative and enforcement costs of the Voter Action Act; and

(3) carrying out all other specified provisions of the Voter Action Act.

B. The state treasurer shall invest the funds as other state funds are invested, and all income derived from the fund shall be credited directly to the fund. Remaining balances at the end of a fiscal year shall remain in the fund and not revert to the general fund.

C. Money received from the following sources shall be deposited directly into the fund:

(1) qualifying contributions that have been submitted to the secretary;

(2) any recurring balance of unspent fund money distributed to a certified candidate who does not remain a candidate through the primary or general election period for which the money was distributed;

(3) money that remains unspent or unencumbered by a certified candidate following the date of the primary election;

(4) money that remains unspent or unencumbered by a certified candidate following the date of the general election;

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(5) unspent contributions to a candidate;

(6) money distributed to the fund from funds received pursuant to the Uniform Unclaimed Property Act (1995); and

(7) money appropriated by the legislature or as otherwise provided by law.

[D. A subaccount shall be established in the fund, and money in the subaccount shall only be used to pay the costs of carrying out the provisions of the Voter Action Act related to public regulation commission elections.

E. Two hundred thousand dollars (\$200,000) per year shall be collected and deposited in the subaccount for public regulation commission elections as follows:

(1) one hundred thousand dollars (\$100,000) from inspection and supervision fees collected pursuant to Section 62-8-8 NMSA 1978; and

(2) one hundred thousand dollars (\$100,000) from utility and carrier inspection fees collected pursuant to Section 63-7-20 NMSA 1978.]"

SECTION 13. Section 1-19A-13 NMSA 1978 (being Laws 2003, Chapter 14, Section 13, as amended) is amended to read:

"1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

A. By September 1 of each odd-numbered year, the secretary shall determine the amount of money to be distributed to each certified candidate for the election cycle ending with

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the next general election, based on the type of election and the provisions of Subsections B through G of this section.

B. For contested primary elections, the amount of money to be distributed to a certified candidate is equal to [the following:

(1) for the office of public regulation commissioner, twenty-five cents (\$.25) for each voter of the candidate's party in the district of the office for which the candidate is running; and

(2) for the office of justice of the supreme court and judge of the court of appeals] fifteen cents (\$.15) for each voter of the candidate's party in the state.

C. For uncontested primary elections in which another candidate has filed a declaration of candidacy for nomination in another party's primary for the same office and that candidate's primary is contested, the amount of money to be distributed to a certified candidate is equal to twenty percent of the amount specified in Subsection B of this section.

D. For uncontested primary elections in which another candidate has filed a declaration of candidacy for nomination in another party's primary for the same office, but no primary for the office is contested, the amount of money to be distributed to a certified candidate is equal to the average of the amount each candidate would receive pursuant to

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Subsection B of this section.

E. For contested general elections, the amount of money to be distributed to a certified candidate is equal to [the following:

(1) for the office of public regulation commissioner, twenty-five cents (\$.25) for each voter in the district of the office for which the candidate is running; and

(2) for the office of justice of the supreme court and judge of the court of appeals] fifteen cents (\$.15) for each voter in the state.

F. If a general election race that is initially uncontested later becomes contested because of the qualification of a candidate for that race, an amount of money shall be distributed to the certified candidate to make that candidate's distribution amount equal to the amount distributed pursuant to Subsection E of this section.

G. Once the certification for candidates for the primary election has been completed, the secretary shall calculate the total amount of money to be distributed in the primary election cycle, based on the number of certified candidates and the allocations specified in this section. The secretary shall also prepare an estimate of the total amount of money that might be distributed in the general election cycle. If the total amount to be distributed in the primary election cycle and the estimated total amount to be distributed in the

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general election cycle taken together exceed the amount expected to be available in the fund, the secretary shall allocate the amount available between the primary and general election cycles. This allocation shall be based on the ratio of the two total amounts.

H. If the allocation specified in Subsection G of this section is greater than the total amount available for distribution, then the amounts to be distributed to individual candidates, specified in Subsections B through F of this section, shall each be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.

I. At least every two years after January 1, 2007, the secretary shall evaluate and modify as necessary the dollar values originally determined by Subsections B through F of this section and shall increase the amounts by the percentage of the preceding two calendar years' increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor.

J. No money shall be distributed to candidates in judicial retention elections, and except as provided in Subsections C, D and F of this section, no money shall be distributed to a candidate in an uncontested election."

SECTION 14. Section 8-1-1 NMSA 1978 (being Laws 1971, Chapter 260, Section 1, as amended) is amended to read:

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"8-1-1. COMPENSATION OF ELECTIVE STATE OFFICERS.--

A. Annual compensation of elective state officers

shall be paid as follows:

| | |
|---|-----------|
| governor | \$110,000 |
| secretary of state | 85,000 |
| state auditor | 85,000 |
| state treasurer | 85,000 |
| attorney general | 95,000 |
| commissioner of public lands | 90,000 |
| [public regulation commissioner | 90,000]. |

B. Any person succeeding to the office of governor

as provided in Article 5, Section 7 of the constitution of New Mexico shall receive the salary of the office. Every person serving as acting governor during the incapacity or absence of the governor from the state, other than the secretary of state, shall receive two hundred fifty dollars (\$250) as compensation for each day's service as acting governor.

C. All compensation under this section shall be

paid from the general fund, except that the amount paid to the commissioner of public lands shall be paid from the state lands maintenance fund."

SECTION 15. Section 8-8-1 NMSA 1978 (being Laws 1998, Chapter 108, Section 1, as amended) is recompiled as part of Chapter 62, Article 19 NMSA 1978 and is amended to read:

"SHORT TITLE.--[Chapter 8, Article 8] Chapter 62, Article

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19 NMSA 1978 may be cited as the "Public Regulation Commission Act".

SECTION 16. Section 8-8-2 NMSA 1978 (being Laws 1998, Chapter 108, Section 2) is recompiled as part of the Public Regulation Commission Act and is amended to read:

"DEFINITIONS.--As used in the Public Regulation Commission Act:

A. "commission" means the public regulation commission;

B. "commissioner" means a person [elected or] appointed to the public regulation commission; and

C. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity."

SECTION 17. Section 8-8-3 NMSA 1978 (being Laws 1998, Chapter 108, Section 3) is recompiled as part of the Public Regulation Commission Act and is amended to read:

"PUBLIC REGULATION COMMISSION.--

A. The "public regulation commission", created in Article 11, Section 1 of the constitution of New Mexico, is composed of [five] three commissioners [elected from districts] appointed by the governor with the consent of the senate as provided in that article [and the Public Regulation Commission Apportionment Act].

B. The commission shall annually elect one of its

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members [chairman] chair, who shall preside at hearings. In the absence of the [chairman] chair, the commission may appoint any other member to preside."

SECTION 18. A new section of the Public Regulation Commission Act is enacted to read:

"[NEW MATERIAL] PUBLIC REGULATION COMMISSION NOMINATING COMMITTEE.--

A. The "public regulation commission nominating committee" is created and consists of seven members who are:

- (1) knowledgeable about public utility regulation;
- (2) not employed by or on behalf of or have a contract with a public utility that is regulated by the commission;
- (3) not applicants or nominees for a position on the commission; and
- (4) appointed as follows:
 - (a) four members appointed one each by the speaker of the house of representatives, the minority floor leader of the house of representatives, the president pro tempore of the senate and the minority floor leader of the senate, with no more than two members being from the same political party;
 - (b) two members appointed one each by the secretary of energy, minerals and natural resources and the

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secretary of economic development; and

(c) one member who is a member of an Indian nation, tribe or pueblo appointed by the governor.

B. A committee member shall:

(1) be a resident of New Mexico;

(2) serve a four-year term; and

(3) serve without compensation, but shall be reimbursed for expenses incurred in pursuit of the member's duties on the committee pursuant to the Per Diem and Mileage Act.

C. The committee and individual members shall be subject to the Governmental Conduct Act, the Inspection of Public Records Act, the Financial Disclosure Act and the Open Meetings Act.

D. Administrative support shall be provided to the committee by the staff of the commission.

E. Initial appointments to the committee shall be made by the appointing authorities prior to July 1, 2022. Subsequent appointments shall be made no later than thirty days before the end of a term.

F. The first meeting of the appointed members of the committee shall be held prior to September 1, 2022. The committee shall select one member to be chair and one member to be secretary. Following the first meeting, the committee shall meet as often as necessary in order to submit a list to the

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governor of no fewer than five qualified nominees for appointment to the commission for the terms beginning January 1, 2023. The list shall be developed to provide geographical diversity, and nominees on the list shall be from at least three different counties of the state.

G. Subsequent to January 1, 2023, the committee shall meet at least ninety days prior to the date on which the term of a commissioner ends and as often as necessary thereafter in order to submit a list to the governor, at least thirty days prior to the beginning of the new term, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission for each commissioner position term that is ending.

H. Upon the occurrence of a vacancy in a commissioner position, the committee shall meet within thirty days of the date of the beginning of the vacancy and as often as necessary thereafter in order to submit a list to the governor, within sixty days of the first meeting after the vacancy occurs, of no fewer than two qualified nominees from diverse geographical areas of the state for appointment to the commission to fill the remainder of the term of each commissioner position that is vacant.

I. If a position on the committee becomes vacant during a term, a successor shall be selected in the same manner as the original appointment for that position and shall serve

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for the remainder of the term of the position vacated.

J. The committee shall actively solicit, accept and evaluate applications from qualified individuals for a position on the commission and may require an applicant to submit any information it deems relevant to the consideration of the individual's application.

K. The committee shall select nominees for submission to the governor who, in the committee's judgment, are best qualified to serve as a member of the commission.

L. A majority vote of all members of the committee in favor of a person is required for that person to be included on the list of qualified nominees submitted to the governor."

SECTION 19. Section 8-8-3.1 NMSA 1978 (being Laws 2013, Chapter 64, Section 1, as amended) is recompiled as part of the Public Regulation Commission Act and is amended to read:

"QUALIFICATIONS OF COMMISSIONERS.--

A. [In addition to other requirements imposed by law] Commissioners shall be persons who are independent of the industries regulated by the commission and shall possess demonstrated competence.

B. In order to be [elected or] appointed as a commissioner, a person must be qualified for office by:

(1) having a baccalaureate degree from an institution of higher education that has been accredited by a regional or national accrediting body and at least ten years of

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professional experience in an area regulated by the commission or in the energy sector and involving a scope of work that includes accounting, public or business administration, economics, finance, statistics, policy, engineering or law; or

(2) having [a total of ten years of combined professional experience as described in Paragraph (1) of this subsection and] higher education resulting in at least a professional license or a [baccalaureate] post-graduate degree from an institution of higher education that has been accredited by a regional or national accrediting body in a field related to an area regulated by the commission, including accounting, public or business administration, economics, finance, statistics, policy, engineering or law, and at least ten years of professional experience within the person's field.

C. A commissioner shall not have a financial interest in a public utility in this state or elsewhere and shall not have been employed by a commission-regulated entity at any time during the two years prior to appointment to the commission.

D. Commissioners shall give their entire time to the business of the commission and shall not pursue any other business or vocation or hold any other office for profit.

[B.] E. As used in this section, "professional experience" means employment in which the [candidate or] prospective appointee for commissioner regularly made decisions

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requiring discretion and independent judgment and:

(1) engaged in policy analysis, research, consumer advocacy or implementation in an area regulated by the commission or in the energy sector;

(2) managed, as the head, deputy head or division director, a federal, state, tribal or local government department or division responsible for utilities, energy policy, transportation or construction; or

(3) managed a business or organization regulated by the commission or in the energy sector that had five or more employees during the time it was managed by the [candidate or] prospective appointee.

[C. A candidate for election to the office of commissioner shall certify by notarized affidavit that the candidate meets the requirements of Subsection A of this section to be filed with the declaration of candidacy. The affidavit shall be on a form provided by the secretary of state that shall permit a candidate to list with particularity the candidate's specific professional experience or higher education that meets the requirements of Subsection A of this section.

D. A voter may challenge the candidacy for election to the office of commissioner of any person seeking nomination for the reason that the person seeking nomination does not meet the requirements of Subsection A of this section or that the

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affidavit of the person seeking nomination does not contain sufficient information to determine if the person meets the requirements of Subsection A of this section. The challenge shall be made by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy or a statement of candidacy for convention designation, which petition shall be heard in the same manner as provided in Subsection E of Section 1-8-26 NMSA 1978.]"

SECTION 20. Section 8-8-3.2 NMSA 1978 (being Laws 2013, Chapter 64, Section 2) is recompiled as part of the Public Regulation Commission Act and is amended to read:

"CONTINUING EDUCATION REQUIREMENTS FOR COMMISSIONERS.--

A. Beginning July 1, 2013, a commissioner shall complete:

(1) an ethics certificate course provided in person or online by a New Mexico public post-secondary educational institution in the first twelve-month period after taking office and at least one two-hour ethics course in each subsequent twelve-month period that the commissioner serves in office; and

(2) at least thirty-two hours of continuing education relevant to the work of the commission in each twelve-month period that the commissioner serves in office. Continuing education courses shall be endorsed by the national association of regulatory utility commissioners or by the

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relevant licensing or professional association for a qualifying area of study for degree holders pursuant to this section.

B. A commissioner shall be responsible for having the endorsing organization submit certification of completion of the hours of education required pursuant to Subsection A of this section to the commission's chief of staff.

C. [As an exception to Section 8-1-1 NMSA 1978] If a commissioner fails to comply with the education requirements in Subsection A of this section by the last day of a twelve-month period, the commissioner's compensation for performing the duties of the office shall be withheld by the commission until the requirements for the preceding twelve-month period or periods have been met."←SFC

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

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

- A. the administrative services division;
- B. the consumer relations division;
- C. the legal division;
- D. the transportation division; and
- E. the utility division [~~and~~
- F. ~~the fire marshal division~~]."

SFC→SECTION 22. Section 8-8-18 NMSA 1978 (being Laws

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1998, Chapter 108, Section 18) is recompiled as part of the Public Regulation Commission Act and is amended to read:

"RECUSAL OF COMMISSIONER OR HEARING EXAMINER.--

A. A commissioner or hearing examiner shall self recuse [himself] in any adjudicatory proceeding in which [he] the commissioner or hearing examiner is unable to make a fair and impartial decision or in which there is reasonable doubt about whether [he] the commissioner or hearing examiner can make a fair and impartial decision, including:

(1) when [he] the commissioner or hearing examiner has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact involved in a proceeding prior to hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the commissioner or hearing examiner unable to exercise [his] the commissioner's or hearing examiner's functions impartially;

(2) when [he] the commissioner or hearing examiner has a pecuniary interest in the outcome of the proceeding other than as a customer of a party;

(3) when in previous employment [he] the commissioner or hearing examiner served as an attorney, adviser, consultant or witness in the matter in controversy; or

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(4) when, as a [candidate for] nominee for appointment to the office of public regulation commissioner, [he] the nominee announced how [he] the nominee would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

B. If a commissioner or hearing examiner fails to self recuse [himself] when it appears that grounds exist, a party shall promptly notify the commissioner or hearing examiner of the apparent grounds for recusal. If the commissioner or hearing examiner declines to self recuse [himself] upon request of a party, [he] the commissioner or hearing examiner shall provide a full explanation in support of [his] the refusal [to recuse himself]."

SECTION 23. Section 8-8-19 NMSA 1978 (being Laws 1998, Chapter 108, Section 19) is recompiled as part of the Public Regulation Commission Act and is amended to read:

"PROHIBITED ACTS--[CANDIDATES] NOMINEES--COMMISSIONERS AND EMPLOYEES.--

A. As used in this section, in addition to the definitions provided in Section [2 of the Public Regulation Commission Act] 16 of this 2020 act:

(1) "affiliated interest" means a person who directly controls or is controlled by or is under common control with a regulated entity, including an agent, representative, attorney, employee, officer, owner, director or

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partner of an affiliated interest. For the purposes of this definition, "control" includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote of ten percent or more of the person's voting securities;

(2) "intervenor" means a person who is intervening as a party in an adjudicatory matter or commenting in a rulemaking pending before the commission or has intervened in an adjudicatory or rulemaking matter before the commission within the preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director, partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship. "Pecuniary interest" does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

(4) "regulated entity" means a person whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a

regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

B. In addition to the requirements of the Financial Disclosure Act and the Governmental Conduct Act, [candidates for] nominees for appointment to the commission, commissioners and employees of the commission shall comply with the requirements of [this section and Sections 17 and 18 of] the Public Regulation Commission Act, as applicable.

C. A [candidate for election] nominee for appointment to the [public regulation] commission shall not solicit or accept

[(1)] anything of value, either directly or indirectly, from a person whose charges for services to the public are regulated by the commission. For the purposes of this [paragraph] subsection, "anything of value" includes money, in-kind contributions and volunteer services to the [candidate or his campaign] nominee or the nominee's organization, but does not include pension or disability benefits [or

(2) more than five hundred dollars (\$500) per election from any other person].

D. A commissioner or employee of the commission shall not:

(1) accept anything of value from a regulated

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entity, affiliated interest or intervenor. [For the purposes of this paragraph, a commissioner may accept allowable campaign contributions when campaigning for reelection.] For the purposes of this paragraph, "anything of value" does not include:

(a) the cost of refreshments totaling no more than five dollars (\$5.00) a day or refreshments at a public reception or other public social function that are available to all guests equally;

(b) inexpensive promotional items that are available to all customers of the regulated entity, affiliated interest or intervenor; or

(c) pension or disability benefits received from a regulated entity, affiliated interest or intervenor;

(2) have a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary interest in an intervenor develops, the commissioner or employee shall divest [himself of] that interest or self recuse [himself] from the proceeding with the intervenor interest; or

(3) solicit any regulated entity, affiliated interest or intervenor to appoint a person to a position or employment in any capacity.

E. After leaving the commission:

(1) a former commissioner shall not be

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employed or retained in a position that requires appearances before the commission by a regulated entity, affiliated interest or intervenor within two years of [his] the former commissioner's separation from the commission;

(2) a former employee shall not appear before the commission representing a party to an adjudication or a participant in a rulemaking within one year of ceasing to be an employee; and

(3) a former commissioner or employee shall not represent a party before the commission or a court in a matter that was pending before the commission while the commissioner or employee was associated with the commission and in which [he] the former commissioner or employee was personally and substantially involved in the matter.

F. The attorney general or a district attorney may institute a civil action in the district court for Santa Fe county or, in [his] the attorney general's or a district attorney's discretion, the district court for the county in which a defendant resides if a violation of this section has occurred or to prevent a violation of this section. A civil penalty may be assessed in the amount of two hundred fifty dollars (\$250) for each violation, not to exceed five thousand dollars (\$5,000)."

SECTION 24. Section 10-11-26.2 NMSA 1978 (being Laws 1994, Chapter 128, Section 3, as amended) is amended to read:

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"10-11-26.2. STATE GENERAL MEMBER COVERAGE PLAN 3--AGE
AND SERVICE CREDIT REQUIREMENTS FOR NORMAL RETIREMENT.--

A. Under state general member coverage plan 3:

(1) for a member who on or before June 30, 2013 was a peace officer and for a member who is not a peace officer but was a retired member or a member on June 30, 2013, the age and service credit requirements for normal retirement are:

(a) age sixty-five years or older and five or more years of service credit;

(b) age sixty-four years and eight or more years of service credit;

(c) age sixty-three years and eleven or more years of service credit;

(d) age sixty-two years and fourteen or more years of service credit;

(e) age sixty-one years and seventeen or more years of service credit;

(f) age sixty years and twenty or more years of service credit; or

(g) any age and twenty-five or more years of service credit;

(2) for a member who is not a peace officer and was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

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(a) age sixty-five years or older and eight or more years of service credit; or

(b) any age if the member has eight or more years of service credit and the sum of the member's age and years of service credit equals at least eighty-five; [and]

(3) for a member who on or after July 1, 2013 becomes a peace officer and who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

(a) age sixty years or older and six or more years of service credit; or

(b) any age and twenty-five or more years of service credit; and

(4) for a member who on or after January 1, 2023 becomes a public regulation commission commissioner, who was not a retired member or a member prior to January 1, 2023 and whose service credit is limited to service as a commissioner, the age and service requirement for normal retirement is age sixty-five years or older and six or more years of service credit.

B. As used in this section, "peace officer" means any employee of the state with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes, and who is not specifically covered by another coverage plan."←SFC

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SECTION SFC→2.←SFC SFC→25.←SFC Section 10-11A-2 NMSA 1978 (being Laws 1983, Chapter 263, Section 2, as amended) is amended to read:

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

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

SECTION SFC→3.←SFC SFC→26.←SFC Section 10-11A-6 NMSA 1978 (being Laws 1983, Chapter 263, Section 6, as amended) is amended to read:

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

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

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

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

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

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

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

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

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the county commission, if distributions from the

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fire protection fund for the fire department are made to a county fire district.

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

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

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

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

D. Prior to April 1, 2020, for service credit that has been earned, but not credited pursuant to Subsection B of this section, a member may post or adjust service credit earned for one or more years beginning on or after January 1, 1984; provided that the member shall:

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

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

(3) have the notarized forms signed by the mayor or city manager, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the board of county commissioners, if distributions from the fire protection fund for the fire department are made to a county fire district.

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

SECTION SFC→4.←SFC SFC→27.←SFC Section 10-11B-5 NMSA 1978 (being Laws 2007, Chapter 149, Section 5, as amended) is amended to read:

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

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

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

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

SECTION SFC→.←SFC SFC→28.←SFC Section 24-22-2 NMSA 1978 (being Laws 2001, Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as amended) is amended to read:

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

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

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

C. "Indian child" means an Indian child as defined

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by the federal Indian Child Welfare Act of 1978;

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

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

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

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

SECTION SFC→6.←SFC SFC→29.←SFC Section 59A-52-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 947, as amended) is amended to read:

"59A-52-1. STATE FIRE MARSHAL'S OFFICE CREATED--STATE FIRE MARSHAL CREATED.--

A. The "state fire marshal's office" is created as a division under the homeland security and emergency management department.

B. The position of "state fire marshal" is created as the director of the [fire marshal division under the public regulation commission] state fire marshal's office.

C. The office consists of the:

(1) firefighter training academy program;

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- (2) fire service support program;
- (3) fire investigations program; and
- (4) fire code enforcement program."

SECTION SFC→7.←SFC SFC→30.←SFC Section 59A-52-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 949, as amended) is amended to read:

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

SECTION SFC→8.←SFC SFC→31.←SFC Section 59A-52-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 950) is amended to read:

"59A-52-4. BONDING OF EMPLOYEES.--The state fire marshal shall require the bonding of those employees whose duties in [~~his~~] the marshal's opinion require such bonds and in an amount determined by [~~him. The premiums of such bonds shall be paid out of the appropriation hereinafter made to~~] the marshal."

SECTION SFC→9.←SFC SFC→32.←SFC Section 59A-52-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 951) is amended to read:

"59A-52-5. COOPERATION WITH OTHER AGENCIES FOR PREVENTION AND CONTROL OF FIRES.--The state fire marshal is authorized to

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cooperate with all other groups, organizations and agencies in this state or in other states in the collection, dissemination and evaluation of information, statistics and suggestions for prevention or control of fires."

SECTION SFC→10.←SFC SFC→33.←SFC Section 59A-52-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 952) is amended to read:

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

SECTION SFC→11.←SFC SFC→34.←SFC Section 59A-52-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 953) is amended to read:

"59A-52-7. TEACHING FIRE PREVENTION AND CONTROL IN PUBLIC SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATION.--The state fire marshal shall prescribe reasonable rules [~~and regulations~~] and programs for the teaching to all [~~school children~~] schoolchildren in the state, whether in public or private schools, the proper methods of fire prevention and control. Such rules [~~regulations~~] and programs shall be submitted to the

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[~~department of~~] public education department on or before August [~~first~~] 1 of each year. Among other things, such rules [~~regulations~~] and programs shall prescribe drills for evacuating school buildings."

SECTION SFC→~~12.~~←SFC SFC→~~35.~~←SFC Section 59A-52-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 954) is amended to read:

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

SECTION SFC→~~13.~~←SFC SFC→~~36.~~←SFC Section 59A-52-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 955) is amended to read:

"59A-52-9. MAY ENTER UPON PREMISES.--The state fire marshal [~~his~~] or the marshal's deputy, [~~his~~] authorized officer or designated agent shall have authority at all normal hours of operation to enter in and upon all buildings and premises

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subject to ~~[this article]~~ Chapter 59A, Article 52 NMSA 1978 for the purpose of examination and inspection."

SECTION ~~SFC~~→14.←~~SFC~~ SFC→37.←SFC Section 59A-52-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 956) is amended to read:

"59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS-- HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire marshal or ~~[his]~~ the marshal's deputies or employees are authorized to make investigations deemed necessary of any fire or explosion or attempt to cause any fire or explosion in the state ~~[and]~~. The marshal is authorized to require reports from ~~[his]~~ the marshal's deputies concerning all fires and explosions in their districts. For the purpose of such investigations, the marshal and ~~[his]~~ the marshal's deputies or designated persons are authorized to conduct ~~[hearing]~~ hearings, subpoena witnesses, take testimony and enter upon and examine any building or premises where any fire or explosion or attempt to cause a fire or explosion shall have occurred, or which at the time may be burning. The marshal or ~~[his]~~ the marshal's deputies or designated persons shall also have the power to cause to be produced before them such papers as they may require in making such examination. In addition, the marshal or ~~[his]~~ the marshal's deputies or designated persons may, in their discretion, take full control and custody of such buildings and premises, and place ~~[such person]~~ someone in

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charge [~~thereof~~] of the building and premises as they may deem proper, until their examination and investigation is completed. For evaluation of the evidence, the marshal shall have access to the facilities and personnel of the [~~state police laboratory~~] department of public safety forensic laboratories bureau, and the executive head of [~~such laboratory~~] the bureau shall cooperate fully with the marshal."

SECTION SFC→15.←SFC SFC→38.←SFC Section 59A-52-11 NMSA 1978 (being Laws 1984, Chapter 127, Section 957) is amended to read:

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

SECTION SFC→16.←SFC SFC→39.←SFC Section 59A-52-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 958) is amended to read:

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

SECTION SFC→17.←SFC SFC→40.←SFC Section 59A-52-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 959) is amended to

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read:

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

SECTION SFC→18.←SFC SFC→41.←SFC Section 59A-52-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 960) is amended to read:

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

SECTION SFC→19.←SFC SFC→42.←SFC Section 59A-52-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 961) is amended to read:

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

A. For prevention and control of fires, pursuant to the State Rules Act, the state fire [~~board~~] marshal shall

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formulate, adopt and promulgate, and amend or revise
~~[regulations]~~ rules for fire prevention and safe conduct or use
of public occupancies and rules concerning the sale, servicing
or use of fire safety, prevention, detection or suppression
equipment or materials. For the purposes of this provision,
"public occupancies" consist of places of assembly, educational
occupancies, institutional occupancies, residential occupancies
consisting of four ~~[(4)]~~ or more family units, mercantile
occupancies, office occupancies, industrial occupancies,
storage occupancies and miscellaneous structures consisting of
towers, underground structures and windowless buildings and all
buildings owned or occupied by the state government or any
political subdivision thereof or by municipal governments.
~~[and regulations concerning the sale, servicing or use of fire
safety, prevention, detection or suppression equipment or
materials. The regulations shall be adopted after notice and
public hearing. The notice shall be entitled "notice of
proposed rule making" and it shall contain the date of the
hearing and shall state the subject of the hearing. A copy of
the notice, along with a copy of the proposed regulations,
shall be filed with the supreme court librarian at least twenty
(20) days prior to the hearing. In addition, the board shall
make available for inspection at its offices, a copy of the
proposed regulations.]~~

B. The rules ~~[and regulations]~~ shall follow

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nationwide standards except in the area of life safety codes, which shall be compatible with the Uniform Building Code, as revised from time to time, issued by the international conference of building officials.

C. The rules [~~and regulations~~] shall allow reasonable provision under which facilities in service prior to the effective date of the rules [~~and regulations~~] and not in strict conformity therewith may be continued in service. [~~Nonconforming~~] Nonconforming facilities in service prior to the adoption of [~~regulations which~~] rules that are found by the state fire marshal to constitute a distinct hazard to life or property shall not be exempt from [~~regulations~~] rules nor permitted to continue in service."

SECTION SFC→20.←SFC SFC→43.←SFC Section 59A-52-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 962, as amended) is amended to read:

"59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE STANDARDS [~~SAVINGS CLAUSE~~]-DEFINITION.--

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

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B. The rules shall be in keeping with the latest generally recognized safety standards for flammable and combustible liquids. Rules in substantial conformity with the published standards of the national fire protection association for vehicular transportation, storage, handling and use of flammable and combustible liquids shall be deemed to be in substantial conformity with the generally accepted and recognized standards of safety concerning the same subject matter.

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

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thereon.

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

SECTION SFC→21.←SFC SFC→44.←SFC Section 59A-52-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 963) is amended to read:

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

SECTION SFC→22.←SFC SFC→45.←SFC Section 59A-52-18 NMSA 1978 (being Laws 1984, Chapter 127, Section 964) is amended to read:

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"59A-52-18. RULES [~~AND REGULATIONS~~]~~--STATEWIDE EFFECT--~~
RESERVED POWER OF MUNICIPALITIES~~--TRAINING.--~~

A. The rules [~~and regulations~~] promulgated pursuant to [~~this article~~] Chapter 59A, Article 52 NMSA 1978 shall have uniform force and effect throughout the state and no municipality or subdivision shall enact or enforce any ordinances or rules [~~or regulations~~] inconsistent with the statewide rules [~~and regulations~~] promulgated pursuant to [~~this~~] that article. Nothing in [~~this~~] that article shall in any way impair the power of any municipality to regulate the use of its land by zoning, building codes or restricted fire district [~~regulations~~] rules.

B. The state fire marshal shall ~~Hf1~~ ~~→~~ train at least ~~one~~ ~~←~~ ~~Hf1~~ ~~Hf1~~ ~~→~~ offer training to ~~←~~ ~~Hf1~~ certified ~~Hf1~~ ~~→~~ firefighter ~~per county to perform all required~~ ~~←~~ ~~Hf1~~ ~~Hf1~~ ~~→~~ firefighters to assist with ~~←~~ ~~Hf1~~ fire and fire safety inspections."

SECTION SFC ~~→~~ 23. ~~←~~ SFC SFC ~~→~~ 46. ~~←~~ SFC Section 59A-52-19 NMSA 1978 (being Laws 1984, Chapter 127, Section 965) is amended to read:

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

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

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[~~and regulations~~] issued pursuant to [~~this~~] that article.

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

SECTION SFC→~~24.~~←SFC SFC→~~47.~~←SFC Section 59A-52-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 966) is amended to read:

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

A. When the state fire marshal [~~his~~] or the marshal's deputy, [~~or his~~] authorized officer or designated agent finds any violation of the [~~regulations~~] rules issued in compliance with [~~this article, he or they~~] Chapter 59A, Article 52 NMSA 1978, the marshal or the marshal's deputy, authorized officer or designated agent shall issue an order to the owner or [~~his~~] the owner's agent to cease and desist such violations.

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

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a separate offense."

SECTION SFC→25.←SFC SFC→48.←SFC Section 59A-52-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 967, as amended) is amended to read:

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

SECTION SFC→26.←SFC SFC→49.←SFC Section 59A-52-23 NMSA 1978 (being Laws 1984, Chapter 127, Section 969, as amended) is amended to read:

"59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS.-- After expiration of time for an administrative appeal, and if no such appeal has been taken, the state fire marshal may commence an action in the district court for Santa Fe county to enforce the cease and desist order by injunction or other

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appropriate remedy as the district court may adjudge. The ~~[commission]~~ fire services council may likewise commence an action in the district court for Santa Fe county to enforce its decision rendered on appeal from the cease and desist order of the state fire marshal."

SECTION SFC→27.←SFC SFC→50.←SFC Section 59A-52-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 970) is amended to read:

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

SECTION SFC→28.←SFC SFC→51.←SFC Section 59A-52-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 971) is amended to read:

"59A-52-25. PENALTY FOR VIOLATION OF CEASE AND DESIST ORDER.--Any person, firm or corporation that violates any final cease and desist order shall be subject to a penalty in the sum of five hundred dollars (\$500) for each day such violation continues. The attorney general is empowered to bring a civil suit for the enforcement of this section on the relation of the

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~~state fire marshal. [Any penalty collected under the provisions of this section shall be credited to the fire protection fund.]"~~

SECTION ~~SFC~~**29.**~~SFC~~ ~~SFC~~**52.**~~SFC~~ A new section of Chapter 59A, Article 52 NMSA 1978 is enacted to read:

"[NEW MATERIAL] STATE FIRE MARSHAL--APPOINTMENT--POWERS AND DUTIES.--

A. The state fire marshal shall be appointed by the secretary of homeland security and emergency management. The state fire marshal shall be appointed solely on the basis of fitness to perform the duties of state fire marshal and without reference to political party affiliation. The state fire marshal shall be well versed in fire services, including structural fires, training, investigations and code enforcement, as well as administrative duties, including personnel, operating budgets and capital planning and expenditures. The state fire marshal shall have an understanding of insurance services office requirements, wildland firefighting and legislative advocacy.

B. The state fire marshal shall be an at-will employee and is exempt from the federal Fair Labor Standards Act of 1938.

C. The state fire marshal shall:

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

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(2) promulgate rules pursuant to the State Rules Act relating to the state fire marshal's office and the fire services council; and

(3) consider advice from the fire services council concerning the adoption of fire safety management policies of the state fire marshal's office."

SECTION SFC→30.←SFC SFC→53.←SFC A new section of Chapter 59A, Article 52 NMSA 1978 is enacted to read:

"[NEW MATERIAL] FIRE SERVICES COUNCIL CREATED--
MEMBERSHIP.--

A. The "fire services council" is created to advise the state fire marshal's office on fire and emergency services policy. The council consists of ten members as follows:

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

- (a) New Mexico fire chiefs association;
- (b) fire and emergency managers affiliate of New Mexico counties;
- (c) New Mexico state firefighters association;
- (d) New Mexico emergency medical technician association;
- (e) New Mexico fire marshals association;
- (f) Hfl→the←Hfl metro fire chiefs

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association; and

(g) New Mexico professional fire fighters association;

(2) one person appointed by the governor;

(3) one person appointed by the president pro tempore of the senate; and

(4) one person appointed by the speaker of the house of representatives.

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

C. The fire services council shall meet as frequently as necessary to conduct business or hold hearings but no less than four times per year. A majority of members of the council constitutes a quorum.

D. Council members shall be reimbursed for their per diem and mileage expenses in accordance with the Per Diem and Mileage Act. Council members shall otherwise serve without compensation.

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

F. An employee of the state fire marshal's office

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who serves as staff for the fire services council shall not reveal to any person, except another council staff person, any requests or statements disclosed in confidence by a council member, except that this restriction shall not apply to any disclosure that is:

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

(2) required by law."

SECTION SFC→31.←SFC SFC→54.←SFC A new section of Chapter 59A, Article 52 NMSA 1978 is enacted to read:

"[NEW MATERIAL] FIRE SERVICES COUNCIL--DUTIES.--The fire services council shall:

A. review and comment on proposed changes in fire codes and the proposed budget of the state fire marshal's office;

B. consider complaints regarding the performance of the state fire marshal's office and make recommendations to the state fire marshal;

C. provide to the secretary of homeland security and emergency management a recommendation on the appointment of the state fire marshal; and

D. hear administrative appeals of state fire marshal or deputy state fire marshal orders and modifications."

SECTION SFC→32.←SFC SFC→55.←SFC Section 59A-53-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 978, as amended) is

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amended to read:

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

A. Based on periodic allotments approved by the marshal, the state treasurer shall distribute from the money in the fire protection fund, to each municipality and county fire district, the amount that the marshal or the ~~[public regulation commission, as the case may be]~~ secretary of homeland security and emergency management has certified to the state treasurer. Payment shall be made to the treasurer of any municipality and to the county treasurer of the county in which any county fire district is located for credit to the county fire district.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in the amount that the marshal or the ~~[public regulation commission]~~ secretary of homeland security and emergency management, as the case may be, has certified to the state treasurer pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county in which any county fire district is located and the New Mexico finance authority.

C. In addition to the distributions made pursuant to Subsections A and B of this section, upon certification by the marshal that the balance of the firefighters' survivors fund is less than two hundred fifty thousand dollars (\$250,000), the state treasurer shall distribute an amount from

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the fire protection fund to the firefighters' survivors fund so that the balance of the firefighters' survivors fund equals two hundred fifty thousand dollars (\$250,000)."

SECTION SFC→33.←SFC SFC→56.←SFC Section 59A-53-19 NMSA 1978 (being Laws 2006, Chapter 103, Section 8, as amended) is amended to read:

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

A. The "fire protection grant council" is created.

~~[Subject to the requirements of Subsection B of this section]~~

The council ~~[shall consist]~~ consists of:

- (1) a representative of the New Mexico municipal league;
- (2) a representative of ~~[the]~~ New Mexico ~~[association of]~~ counties;
- (3) two members appointed by the ~~[public regulation commission who shall serve at the pleasure of the commission]~~ fire services council, who shall serve at the pleasure of the council;
- (4) three members, one from each congressional district, appointed by the governor who shall serve at the pleasure of the governor; and
- (5) the marshal, who shall serve as a nonvoting advisory member. The council shall elect a chair and vice chair from its membership.

~~[B. No appointee to the council shall be a member~~

~~or employee of the public regulation commission or the office of superintendent of insurance.~~

~~G.]~~ B. The public members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

~~[D.]~~ C. The council shall develop criteria for assessing the critical needs of municipal fire departments and county fire districts for:

- (1) fire apparatus and equipment;
- (2) communications equipment;
- (3) equipment for wildfires;
- (4) fire station construction or expansion;
- (5) equipment for hazardous material response;

and

(6) stipends for volunteer firefighters in underserved areas.

~~[E.]~~ D. Applications for grant assistance from the fire protection grant fund shall be made by fire districts to the council in accordance with the requirements of the council. Using criteria developed by the council, the council shall evaluate applications and prioritize those applications most in need of grant assistance from the fund. To the extent that money in the fund is available, the council shall award grant assistance for those prioritized applications.

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[F-] E. In awarding grant assistance, the council may require conditions and procedures necessary to ensure that the money is expended in the most prudent manner.

[G-] F. When considering applications for grant assistance to pay stipends to volunteer firefighters in underserved areas, the council shall:

- (1) define "underserved area";
- (2) ensure the proposed stipends will comply with the federal Fair Labor Standards Act of 1938 and United States department of labor requirements for maintaining volunteer status;
- (3) require a basic level of training before a volunteer may receive a stipend;
- (4) consider whether the fire district requires a service commitment from its volunteer firefighters in exchange for stipends; and
- (5) weight the applications against other criteria or requirements determined by the council."

SECTION SFC→34.←SFC SFC→57.←SFC TEMPORARY

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

SECTION SFC→35.←SFC SFC→58.←SFC TEMPORARY

PROVISION--TRANSFER OF FUNCTIONS, PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND REFERENCES IN LAW.--

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A. On July 1, 2021, all staff positions, functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the fire marshal division of the public regulation commission are transferred to the state fire marshal's office of the homeland security and emergency management department.

B. Beginning on July 1, 2021, all references in law, rules, orders and other official acts to the fire marshal division of the public regulation commission shall be deemed references to the state fire marshal's office of the homeland security and emergency management department.

C. Beginning on July 1, 2021, all contractual obligations of the fire marshal division of the public regulation commission are binding on the state fire marshal's office of the homeland security and emergency management department.

~~SFC~~→**SECTION 59. TEMPORARY PROVISION--RECOMPILATION.--**

Sections 8-8-4 through 8-8-8, 8-8-10 through 8-8-17 and 8-8-20 NMSA 1978 (being Laws 1998, Chapter 108, Section 4; Laws 2009, Chapter 216, Section 1; Laws 1998, Chapter 108, Sections 5 through 8 and 10 through 12; Laws 2000, Chapter 100, Section 1 and Laws 2000, Chapter 102, Section 1; and Laws 1998, Chapter 108, Sections 13 through 17 and 20, as amended) are recompiled as part of the Public Regulation Commission Act.

SECTION 60. REPEAL.--Sections 8-7-1 through 8-7-11 NMSA

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1978 (being Laws 1997, Chapter 262, Sections 1 through 5 and Laws 2001 (1st S.S.), Chapter 3, Section 8, as amended) are repealed.←SFC

SECTION SFC→36.←SFC SFC→61.←SFC REPEAL.--Section 8-8-9.3 (being Laws 2007, Chapter 161, Section 4) is repealed.

SECTION SFC→37.←SFC SFC→62.←SFC EFFECTIVE DATE.--The effective date of the provisions of SFC→the provisions of Sections 21, 25 through 58 and 61 of←SFC this act is July 1, 2021.

SFC→SECTION 63. CONTINGENT EFFECTIVE DATE.--The provisions of Sections 1 through 20, 22 through 24, 59 and 60 of this act shall become effective on the following dates upon certification by the secretary of state that the constitution of New Mexico has been amended as proposed by a joint resolution of the first session of the fifty-fourth legislature, entitled "A JOINT RESOLUTION PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT THE PUBLIC REGULATION COMMISSION CONSIST OF THREE MEMBERS APPOINTED BY THE GOVERNOR FROM A LIST OF PROFESSIONALLY QUALIFIED NOMINEES SUBMITTED TO THE GOVERNOR BY A NOMINATING COMMITTEE AS PROVIDED BY LAW AND THAT THE COMMISSION IS REQUIRED TO REGULATE PUBLIC UTILITIES AND MAY BE REQUIRED TO REGULATE OTHER PUBLIC SERVICE COMPANIES". If the certification occurs, the effective date of the provisions of:

A. Sections 1 through 17, 19, 20, 22 through 24, 59

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and 60 of this act is January 1, 2023; and

B. Section 18 of this act is January 1, 2022. ←SFC

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