

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 386

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
SEPARATING THE FIRE 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:

**SECTION 1.** 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;

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

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

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

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

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1 considered a salaried firefighter."

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

4 "10-11A-6. DETERMINATION OF SERVICE CREDIT.--

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

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

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

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

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

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

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

25 (3) have the notarized forms signed by the

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

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

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

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

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

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

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

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

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

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

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

18 "10-11B-5. FIREFIGHTERS' SURVIVORS SUPPLEMENTAL  
 19 BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

20 A. There is created the "firefighters' survivors  
 21 supplemental death benefits review committee". The committee  
 22 shall consist of the attorney general [~~the president of the New~~  
 23 ~~Mexico fire chiefs association, the state president of the New~~  
 24 ~~Mexico professional fire fighters association and the president~~  
 25 ~~of the New Mexico state fire fighters' association or their~~

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1 ~~designees]~~ or the attorney general's designee and the fire  
2 services council.

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

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

17 SECTION 5. Section 24-22-2 NMSA 1978 (being Laws 2001,  
18 Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as  
19 amended) is amended to read:

20 "24-22-2. DEFINITIONS.--As used in the Safe Haven for  
21 Infants Act:

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

25 B. "hospital" means an acute care general hospital

1 or health care clinic licensed by the state;

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

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

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

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

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

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

17 "59A-52-1. STATE FIRE MARSHAL'S OFFICE CREATED--STATE  
18 FIRE MARSHAL CREATED.--

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

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

25 C. The office consists of the:

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

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

7           "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER  
8 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal  
9 may employ with the consent of the [~~chief of staff of the~~  
10 ~~public regulation commission~~] secretary of homeland security  
11 and emergency management deputy state fire marshals and other  
12 employees to assist in the execution of the marshal's duties."

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

15          "59A-52-4. BONDING OF EMPLOYEES.--The state fire marshal  
16 shall require the bonding of those employees whose duties in  
17 [~~his~~] the marshal's opinion require such bonds and in an amount  
18 determined by [~~him. The premiums of such bonds shall be paid~~  
19 ~~out of the appropriation hereinafter made to~~] the marshal."

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

22          "59A-52-5. COOPERATION WITH OTHER AGENCIES FOR PREVENTION  
23 AND CONTROL OF FIRES.--The state fire marshal is authorized to  
24 cooperate with all other groups, organizations and agencies in  
25 this state or in other states in the collection, dissemination



1 and evaluation of information, statistics and suggestions for  
2 prevention or control of fires."

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

5 "59A-52-6. FIRE PROTECTION TRAINING PROGRAMS.--The state  
6 fire marshal shall establish and conduct training programs  
7 throughout the state for demonstrating and teaching [~~firemen~~]  
8 firefighters proper methods of preventing and extinguishing  
9 fires. [~~The marshal shall have available, from funds included~~  
10 ~~in the general appropriation act of each legislature, money for~~  
11 ~~use by him in establishing and conducting such training~~  
12 ~~programs.]"~~

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

15 "59A-52-7. TEACHING FIRE PREVENTION AND CONTROL IN PUBLIC  
16 SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATION.--The state fire  
17 marshal shall prescribe reasonable rules [~~and regulations~~] and  
18 programs for the teaching to all [~~school children~~]  
19 schoolchildren in the state, whether in public or private  
20 schools, the proper methods of fire prevention and control.  
21 Such rules [~~regulations~~] and programs shall be submitted to the  
22 [~~department of~~] public education department on or before August  
23 [~~first~~] 1 of each year. Among other things, such rules  
24 [~~regulations~~] and programs shall prescribe drills for  
25 evacuating school buildings."

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

3           "59A-52-8. INVESTIGATION OF FIRE HAZARDS--ABATEMENT.--The  
4 state fire marshal is authorized to make investigations, or  
5 require [~~his~~] the marshal's deputy to make investigations, and  
6 reports of existing conditions in the state [~~which~~] that are  
7 fire hazards and to make reasonable orders for the alleviation  
8 of such situations as [~~he~~] the marshal may deem necessary. If  
9 the orders of the marshal are not carried out by persons to  
10 whom they are directed, [~~he~~] the marshal shall institute proper  
11 proceedings under municipal ordinances or state laws to require  
12 compliance with [~~his~~] the orders, as [~~he~~] the marshal may deem  
13 necessary."

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

16           "59A-52-9. MAY ENTER UPON PREMISES.--The state fire  
17 marshal [~~his~~] or the marshal's deputy, [~~his~~] authorized officer  
18 or designated agent shall have authority at all normal hours of  
19 operation to enter in and upon all buildings and premises  
20 subject to [~~this article~~] Chapter 59A, Article 52 NMSA 1978 for  
21 the purpose of examination and inspection."

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

24           "59A-52-10. INVESTIGATION OF FIRES AND EXPLOSIONS--  
25 HEARINGS--USE OF STATE POLICE LABORATORY.--The state fire

1 marshal or [~~his~~] the marshal's deputies or employees are  
2 authorized to make investigations deemed necessary of any fire  
3 or explosion or attempt to cause any fire or explosion in the  
4 state [~~and~~]. The marshal is authorized to require reports from  
5 [~~his~~] the marshal's deputies concerning all fires and  
6 explosions in their districts. For the purpose of such  
7 investigations, the marshal and [~~his~~] the marshal's deputies or  
8 designated persons are authorized to conduct [~~hearing~~]  
9 hearings, subpoena witnesses, take testimony and enter upon and  
10 examine any building or premises where any fire or explosion or  
11 attempt to cause a fire or explosion shall have occurred, or  
12 which at the time may be burning. The marshal or [~~his~~] the  
13 marshal's deputies or designated persons shall also have the  
14 power to cause to be produced before them such papers as they  
15 may require in making such examination. In addition, the  
16 marshal or [~~his~~] the marshal's deputies or designated persons  
17 may, in their discretion, take full control and custody of such  
18 buildings and premises, and place [~~such person~~] someone in  
19 charge [~~thereof~~] of the building and premises as they may deem  
20 proper, until their examination and investigation is completed.  
21 For evaluation of the evidence, the marshal shall have access  
22 to the facilities and personnel of the [~~state police~~  
23 laboratory] department of public safety forensic laboratories  
24 bureau, and the executive head of [~~such laboratory~~] the bureau  
25 shall cooperate fully with the marshal."

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

3           "59A-52-11. WITNESSES--PER DIEM AND MILEAGE.--Witnesses  
4 or persons subpoenaed [~~under this article~~] pursuant to Chapter  
5 59A, Article 52 NMSA 1978 shall be paid [~~as to time and expense~~  
6 ~~from the fire marshal's fund~~] at per diem and mileage rates on  
7 the same bases and at the same rates as currently apply as to  
8 state employees in general."

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

11           "59A-52-12. RECORDS OF FIRES OPEN TO PUBLIC.--The state  
12 fire marshal shall keep open to public inspection, at  
13 reasonable hours, all records of fires occurring within the  
14 state."

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

17           "59A-52-13. TRANSMITTAL OF EVIDENCE INDICATING CRIMINAL  
18 ACTS.--The state fire marshal shall furnish to the proper law  
19 enforcement officers any evidence [~~he~~] that the marshal may  
20 discover in [~~his~~] the marshal's investigations [~~which~~] that  
21 indicates criminal acts."

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

24           "59A-52-14. APPROPRIATIONS.--For the purposes of [~~this~~  
25 ~~article~~] Chapter 59A, Article 52 NMSA 1978, an appropriation to

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1 the homeland security and emergency management department shall  
 2 be included in the general appropriation act of each  
 3 legislature, the appropriation to be made from the fire  
 4 protection fund, which funds are to be paid out by the  
 5 secretary of finance and administration on vouchers signed by  
 6 the [~~marshal~~] secretary of homeland security and emergency  
 7 management."

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

10 "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES  
 11 REGULATIONS.--

12 A. For prevention and control of fires, pursuant to  
 13 the State Rules Act, the state fire [~~board~~] marshal shall  
 14 formulate, adopt and promulgate, and amend or revise  
 15 [~~regulations~~] rules for fire prevention and safe conduct or use  
 16 of public occupancies and rules concerning the sale, servicing  
 17 or use of fire safety, prevention, detection or suppression  
 18 equipment or materials. For the purposes of this provision,  
 19 "public occupancies" consist of places of assembly, educational  
 20 occupancies, institutional occupancies, residential occupancies  
 21 consisting of four [~~(4)~~] or more family units, mercantile  
 22 occupancies, office occupancies, industrial occupancies,  
 23 storage occupancies and miscellaneous structures consisting of  
 24 towers, underground structures and windowless buildings and all  
 25 buildings owned or occupied by the state government or any

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1 political subdivision thereof or by municipal governments.  
2 ~~[and regulations concerning the sale, servicing or use of fire~~  
3 ~~safety, prevention, detection or suppression equipment or~~  
4 ~~materials. The regulations shall be adopted after notice and~~  
5 ~~public hearing. The notice shall be entitled "notice of~~  
6 ~~proposed rule making" and it shall contain the date of the~~  
7 ~~hearing and shall state the subject of the hearing. A copy of~~  
8 ~~the notice, along with a copy of the proposed regulations,~~  
9 ~~shall be filed with the supreme court librarian at least twenty~~  
10 ~~(20) days prior to the hearing. In addition, the board shall~~  
11 ~~make available for inspection at its offices, a copy of the~~  
12 ~~proposed regulations.]~~

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

18 C. The rules ~~[and regulations]~~ shall allow  
19 reasonable provision under which facilities in service prior to  
20 the effective date of the rules ~~[and regulations]~~ and not in  
21 strict conformity therewith may be continued in service.

22 ~~[Noneonforming]~~ Nonconforming facilities in service prior to  
23 the adoption of ~~[regulations which]~~ rules that are found by the  
24 state fire marshal to constitute a distinct hazard to life or  
25 property shall not be exempt from ~~[regulations]~~ rules nor

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1 permitted to continue in service."

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

4 "59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE STANDARDS  
5 [~~SAVINGS CLAUSE~~]--DEFINITION.--

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

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

22 C. The rules shall include reasonable provisions  
23 under which facilities in service prior to the effective date  
24 of the rules and not in strict conformity therewith may be  
25 continued in service. Nonconforming facilities in service

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1 prior to the adoption of the rules that are found by the state  
2 fire marshal to constitute a distinct hazard to life or  
3 property may not be excepted from the rules or permitted to  
4 continue in service. For guidance in enforcement, the rules  
5 may delineate those types of nonconformities that should be  
6 considered distinctly hazardous and those nonconformities that  
7 should be evaluated in [~~the~~] light of local conditions. If the  
8 need for compliance with any rule is conditioned on local  
9 factors, the rules shall provide that reasonable notice be  
10 given to the proprietor of the facility affected of intention  
11 to evaluate the need for compliance and of the time and place  
12 at which [~~he~~] the proprietor may appear and offer evidence  
13 thereon.

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

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

22 "59A-52-17. [~~REGULATIONS~~] RULES--PUBLIC HEARING.--No rule  
23 [~~or regulation~~] shall be adopted or revised under Section [~~962~~  
24 ~~of this article~~] 59A-52-16 NMSA 1978 or made effective until  
25 after public hearing thereon, of which at least twenty [~~(+20)~~]

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1 days' written notice shall be given by certified mail to each  
 2 motor carrier, producer, refiner, distributor or other person  
 3 [~~who or which~~] that shall have registered [~~his or~~] its name and  
 4 mailing address with the state fire marshal as a party  
 5 interested in such proceedings, and at which any such  
 6 interested party may appear and present testimony. Every such  
 7 notice shall contain a copy of each rule [~~and regulation~~]  
 8 proposed for adoption or revision pursuant to such hearing."

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

11 "59A-52-18. RULES [~~AND REGULATIONS~~]~~--STATEWIDE EFFECT--~~  
 12 RESERVED POWER OF MUNICIPALITIES~~--TRAINING.--~~

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

23 B. The state fire marshal shall train at least one  
 24 certified firefighter per county to perform all required fire  
 25 and fire safety inspections."

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

3           "59A-52-19. POLICE POWER OF STATE FIRE MARSHAL--  
4 COOPERATION OF STATE OFFICERS.--

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

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

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

17           "59A-52-20. CEASE AND DESIST ORDERS--CERTAIN VIOLATIONS  
18 ARE MISDEMEANORS.--

19           A. When the state fire marshal [~~his~~] or the  
20 marshal's deputy, [~~or his~~] authorized officer or designated  
21 agent finds any violation of the [~~regulations~~] rules issued in  
22 compliance with [~~this article, he or they~~] Chapter 59A, Article  
23 52 NMSA 1978, the marshal or the marshal's deputy, authorized  
24 officer or designated agent shall issue an order to the owner  
25 or [~~his~~] the owner's agent to cease and desist such violations.

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

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

11           "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND  
 12 MODIFICATIONS.--Any person aggrieved by any order of the state  
 13 fire marshal [~~his~~] or the marshal's deputy, [~~or~~] authorized  
 14 officer or [~~his~~] designated agent may appeal to the  
 15 [~~commission~~] fire services council within ten days from the  
 16 date of the service of such order. The [~~commission~~] council  
 17 shall hear such party within twenty days after receipt of an  
 18 appeal request and shall give not less than ten days' written  
 19 notice of the hearing. Within fifteen days after such hearing,  
 20 the [~~commission~~] council shall file its decision and, unless by  
 21 its authority the order is revoked or modified, [~~it~~] the order  
 22 shall be complied with within the time fixed in the decision,  
 23 with such time to be not less than thirty days."

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

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1           "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS.--  
2 After expiration of time for an administrative appeal, and if  
3 no such appeal has been taken, the state fire marshal may  
4 commence an action in the district court for Santa Fe county to  
5 enforce the cease and desist order by injunction or other  
6 appropriate remedy as the district court may adjudge. The  
7 [~~commission~~] fire services council may likewise commence an  
8 action in the district court for Santa Fe county to enforce its  
9 decision rendered on appeal from the cease and desist order of  
10 the state fire marshal."

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

13           "59A-52-24. PENALTY FOR VIOLATION OF LAW OR [~~REGULATIONS~~]  
14 RULES.--Violation of any of the provisions of [~~this article~~]  
15 Chapter 59A, Article 52 NMSA 1978 or of any of the  
16 [~~regulations~~] rules lawfully enacted pursuant [~~thereto~~] to that  
17 article shall constitute a misdemeanor for which the punishment  
18 shall be a fine of not more than five hundred dollars (\$500).  
19 Each day any such violation continues shall constitute a  
20 separate offense."

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

23           "59A-52-25. PENALTY FOR VIOLATION OF CEASE AND DESIST  
24 ORDER.--Any person, firm or corporation that violates any final  
25 cease and desist order shall be subject to a penalty in the sum

1 of five hundred dollars (\$500) for each day such violation  
 2 continues. The attorney general is empowered to bring a civil  
 3 suit for the enforcement of this section on the relation of the  
 4 state fire marshal. [~~Any penalty collected under the~~  
 5 ~~provisions of this section shall be credited to the fire~~  
 6 ~~protection fund.]"~~

7 SECTION 29. A new section of Chapter 59A, Article 52 NMSA  
 8 1978 is enacted to read:

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

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

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

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1 C. The state fire marshal shall:

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

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

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

10 SECTION 30. A new section of Chapter 59A, Article 52 NMSA  
11 1978 is enacted to read:

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

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

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

19 (a) New Mexico fire chiefs association;

20 (b) fire and emergency managers  
21 affiliate of New Mexico counties;

22 (c) New Mexico state firefighters  
23 association;

24 (d) New Mexico emergency medical  
25 technician association;

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1 (e) New Mexico fire marshals  
2 association;

3 (f) the metro fire chiefs association;  
4 and

5 (g) New Mexico professional fire  
6 fighters association;

7 (2) one person appointed by the governor;

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

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

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

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

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

24 E. The fire services council is subject to the  
25 Inspection of Public Records Act and the Open Meetings Act.

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1 Individual members of the fire services council are subject to  
2 the Governmental Conduct Act and the Financial Disclosure Act.

3 F. An employee of the state fire marshal's office  
4 who serves as staff for the fire services council shall not  
5 reveal to any person, except another council staff person, any  
6 requests or statements disclosed in confidence by a council  
7 member, except that this restriction shall not apply to any  
8 disclosure that is:

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

11 (2) required by law."

12 SECTION 31. A new section of Chapter 59A, Article 52 NMSA  
13 1978 is enacted to read:

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

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

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

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

25 D. hear administrative appeals of state fire

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1 marshal or deputy state fire marshal orders and modifications."

2 SECTION 32. Section 59A-53-7 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 978, as amended) is amended to read:

4 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND.--

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

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

23 C. In addition to the distributions made pursuant  
24 to Subsections A and B of this section, upon certification by  
25 the marshal that the balance of the firefighters' survivors

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1 fund is less than two hundred fifty thousand dollars  
2 (\$250,000), the state treasurer shall distribute an amount from  
3 the fire protection fund to the firefighters' survivors fund so  
4 that the balance of the firefighters' survivors fund equals two  
5 hundred fifty thousand dollars (\$250,000)."

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

8 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

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

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

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

12 (1) a representative of the New Mexico  
13 municipal league;

14 (2) a representative of [~~the~~] New Mexico  
15 [~~association of~~] counties;

16 (3) two members appointed by the [~~public~~  
17 ~~regulation commission who shall serve at the pleasure of the~~  
18 ~~commission~~] fire services council, who shall serve at the  
19 pleasure of the council;

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

23 (5) the marshal, who shall serve as a  
24 nonvoting advisory member. The council shall elect a chair and  
25 vice chair from its membership.

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1           ~~[B. No appointee to the council shall be a member~~  
2 ~~or employee of the public regulation commission or the office~~  
3 ~~of superintendent of insurance.~~

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

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

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

16 and

17                   (6) stipends for volunteer firefighters in  
18 underserved areas.

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

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1 assistance for those prioritized applications.

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

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

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

20 **SECTION 34. TEMPORARY PROVISION--RECOMPILATION**  
21 **INSTRUCTION.--**The compiler shall recompile Section 8-8-9.1 NMSA  
22 1978 (being Laws 2001, Chapter 80, Section 1) in Chapter 59A,  
23 Article 52 NMSA 1978.

24 **SECTION 35. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,**  
25 **PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND**

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underscored material = new  
[bracketed material] = delete

## 1 REFERENCES IN LAW.--

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

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

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

18 SECTION 36. REPEAL.--Section 8-8-9.3 (being Laws 2007,  
19 Chapter 161, Section 4) is repealed.

20 SECTION 37. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2021.