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SENATE BILL 658

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. L. Stockard

AN ACT

RELATING TO PUBLIC SAFETY; TRANSFERRING THE STATE FIRE MARSHAL AND THE FIREFIGHTER TRAINING ACADEMY TO THE DEPARTMENT OF PUBLIC SAFETY; INCREASING DISTRIBUTIONS TO THE FIRE PROTECTION FUND; PROVIDING FOR SUPPLEMENTAL DISTRIBUTIONS TO FIRE DEPARTMENTS AND DISTRICTS; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. Section 8-8-9 NMSA 1978 (being Laws 1998, Chapter 108, Section 9) is amended to read:

"8-8-9. INSURANCE DIVISION. --

A. The director of the insurance division is the "superintendent of insurance" and shall have all the powers and duties prescribed to him in the New Mexico Insurance Code.

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[bracketed material] = del ete

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1 B. The insurance division shall consist of such
2 bureaus as the superintendent of insurance determines for the
3 orderly conduct of business [~~including the fire marshal~~
4 ~~bureau. The superintendent of insurance may organize the~~
5 ~~firefighter's training academy as part of the fire marshal~~
6 ~~bureau or may organize it as a separate bureau~~]. "

7 Section 2. Section 9-19-4 NMSA 1978 (being Laws 1987,
8 Chapter 254, Section 4, as amended) is amended to read:

9 "9-19-4. DEPARTMENT ESTABLISHED. -- There is created in
10 the executive branch the "department of public safety". The
11 department shall be a cabinet department and shall consist of,
12 but not be limited to, [~~five~~] seven program divisions and one
13 administrative division, as follows:

- 14 A. the New Mexico state police division;
- 15 B. the special investigations division;
- 16 C. the training and recruiting division;
- 17 D. the technical and emergency support division;
- 18 E. the administrative services division; [~~and~~]
- 19 F. the motor transportation division; and
- 20 G. the state fire marshal division, which may
21 include the firefighter training academy. "

22 Section 3. Section 59A-6-5 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 105, as amended) is amended to read:

24 "59A-6-5. DISTRIBUTION OF INSURANCE DEPARTMENT
25 COLLECTIONS. --

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1 A. All money received by the insurance department
2 ~~[or insurance board]~~ for fees, licenses, penalties and taxes
3 shall be paid daily by the superintendent to the state
4 treasurer and by him credited to the "insurance department
5 suspense fund" ~~[heretofore created and now existing]~~ except as
6 provided by:

- 7 (1) the Law Enforcement Protection Fund Act;
- 8 ~~[and]~~
- 9 (2) Section 59A-6-1.1 NMSA 1978; and
- 10 (3) the distribution to Carrie Tingley
- 11 crippled children's hospital pursuant to Section 59A-44-37
- 12 NMSA 1978.

13 B. The superintendent, with approval of the
14 ~~[corporation]~~ public regulation commission ~~[or insurance~~
15 ~~board, as the case may be related to the money involved]~~, may
16 authorize refund of money erroneously paid as fees, licenses,
17 penalties or taxes from the insurance department suspense fund
18 under request for refund made within three years after the
19 erroneous payment.

20 C. At the end of every month, the treasurer shall
21 transfer to the "fire protection fund" fifty percent of the
22 balance remaining in the insurance department suspense fund,
23 after applicable refunds, ~~[made therefrom under Subsection B~~
24 ~~of this section and]~~ that is derived from property and vehicle
25 insurance business, and transfer to the general fund the

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1 balance remaining in the insurance department suspense fund
2 derived from property and vehicle and all other kinds of
3 insurance business. "

4 Section 4. Section 59A-52-1 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 947) is amended to read:

6 "59A-52-1. STATE FIRE MARSHAL CREATED. --The position of
7 "state fire marshal" is created as the [~~bureau chief of the~~
8 ~~fire marshal bureau of the insurance division~~] director of the
9 state fire marshal division of the department of public
10 safety. "

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

13 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER
14 EMPLOYEES--QUALIFICATIONS OF DEPUTY. --The state fire marshal
15 may, with the approval of the [~~superintendent~~] secretary of
16 public safety, appoint or remove a deputy state fire marshal
17 and other employees to assist in the execution of the state
18 fire marshal's duties; provided, however, that the state fire
19 marshal and any deputy state fire marshal [~~appointed by the~~
20 ~~state fire marshal~~] shall be experienced in fire prevention
21 and fire fighting and have completed a course of training by
22 actual attendance at a fire-training school. "

23 Section 6. Section 59A-52-15 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 961) is amended to read:

25 "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES

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1 ~~[REGULATIONS]~~ RULES. --

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

underscored material = new
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1 [regulations] rules.

2 B. The rules [~~and regulations~~] shall follow
3 nationwide standards except in the area of life safety codes
4 [~~which~~] that shall be compatible with the Uniform Building
5 Code, as revised from time to time, issued by the
6 international conference of building officials.

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

16 Section 7. Section 59A-52-16 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 962) is amended to read:

18 "59A-52-16. FLAMMABLE LIQUIDS [REGULATIONS] RULES--
19 NATIONWIDE STANDARDS--SAVINGS CLAUSE--DEFINITION..--

20 A. The state fire [~~board~~] marshal shall formulate,
21 adopt and promulgate and amend or revise rules [~~and~~
22 ~~regulations~~] for the safe vehicular transportation, storage,
23 handling and use of flammable and combustible liquids.

24 B. The rules [~~and regulations~~] shall be in keeping
25 with the latest generally recognized safety standards for

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1 flammable and combustible liquids. Rules [~~and regulations~~] in
2 substantial conformity with the published standards of the
3 national fire protection association for vehicular
4 transportation, storage, handling and use of flammable and
5 combustible liquids shall be deemed to be in substantial
6 conformity with the generally accepted and recognized
7 standards of safety concerning the same subject matter.

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

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1 D. As used in this article the term "flammable
2 liquid" shall mean any liquid having a flash point below one
3 hundred [~~(100)~~] degrees fahrenheit, and "combustible liquid"
4 shall mean any liquid having a flash point at or above one
5 hundred [~~(100)~~] degrees fahrenheit and below two hundred
6 [~~(200)~~] degrees fahrenheit. "

7 Section 8. Section 59A-52-21 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 967, as amended) is amended to read:

9 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND
10 MODIFICATIONS. --Any person aggrieved by any order of the state
11 fire marshal, his deputy or authorized officer or his
12 designated agent may appeal to the [~~commission~~] secretary of
13 public safety within ten days from the date of the service of
14 such order. The [~~commission~~] secretary shall hear such party
15 within twenty days after receipt of an appeal request and
16 shall give not less than ten days' written notice of the
17 hearing. Within fifteen days after such hearing, the
18 [~~commission~~] secretary shall file [~~its~~] his decision and,
19 unless by [~~its~~] his authority the order is revoked or
20 modified, [~~it~~] the order shall be complied with within the
21 time fixed in the decision, with such time to be not less than
22 thirty days. "

23 Section 9. Section 59A-52-22 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 968, as amended) is amended to read:

25 "59A-52-22. JUDICIAL REVIEW OF ORDER. --A person

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1 aggrrieved by a decision of the [~~state fire board~~] secretary of
2 public safety may appeal to the district court pursuant to the
3 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

4 Section 10. Section 59A-52-23 NMSA 1978 (being Laws
5 1984, Chapter 127, Section 969, as amended) is amended to
6 read:

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

17 Section 11. Section 59A-53-6 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 977, as amended) is amended to read:

19 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. -- The
20 state fire marshal shall promptly notify each incorporated
21 city, town and village and county fire district affected of
22 his determination of needs, and an incorporated city, town or
23 village or county fire district may appeal from the
24 determination of the state fire marshal to the [~~commission~~]
25 secretary of public safety, within ten days after the

underscored material = new
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1 determination of needs. The [~~commission~~] secretary shall
2 review the determination of the state fire marshal in such
3 informal and summary proceedings as [~~it~~] he deems proper and
4 shall certify to the state treasurer annually, on or before
5 the last day of June, the results of all appeals from the
6 determinations of the state fire marshal. The certification
7 by the [~~commission~~] secretary, or by the state fire marshal if
8 no appeal is taken, shall be final and binding on all
9 concerned and not subject to any further review. "

10 Section 12. Section 59A-53-7 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 978, as amended) is amended to read:

12 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

13 A. Annually on or before the last day of July, the
14 state treasurer shall distribute from the money in the fire
15 protection fund, to each incorporated municipality and to each
16 county fire district, the amount the marshal or the
17 [~~commission~~] secretary of public safety, as the case may be,
18 has certified to him. Payment shall be made to the treasurer
19 of any incorporated municipality and to the county treasurer
20 of the county in which any county fire district is located for
21 credit to the county fire district.

22 B. The state treasurer is authorized to redirect a
23 distribution to the New Mexico finance authority in the amount
24 the marshal or the [~~commission~~] secretary, as the case may be,
25 has certified to him pursuant to an ordinance or a resolution

underscored material = new
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1 passed by the municipality or county and a written agreement
2 of the municipality or county in which any county fire
3 district is located and the New Mexico finance authority. "

4 Section 13. Section 59A-53-15 NMSA 1978 (being Laws
5 1984, Chapter 127, Section 986, as amended) is amended to
6 read:

7 "59A-53-15. APPROPRIATION FROM STATE TREASURY. -- All money
8 [~~which~~] that from time to time is deposited in the state treasury
9 and credited to the fire protection fund is appropriated to the
10 [~~corporation commission for the use of the~~] state fire marshal
11 [~~for the purposes set out in Chapter 59A, Article 53 NMSA 1978 and~~
12 ~~shall be distributed by the state treasurer and expended as~~
13 ~~provided in that article. Hereafter, all sums in excess of one~~
14 ~~hundred thousand dollars (\$100,000) for pro rata distribution plus~~
15 ~~seventy-five percent of the approved state fire marshal budget for~~
16 ~~the succeeding fiscal year plus the amount certified to be~~
17 ~~distributed as provided in that article shall be credited to the~~
18 ~~general fund on or before June 30 of each fiscal year] to carry
19 out the provisions of the Fire Protection Fund Law. "~~

20 Section 14. A new section of the Fire Protection Fund Law
21 is enacted to read:

22 "[NEW MATERIAL] SUPPLEMENTAL DISTRIBUTION. --

23 A. The state fire marshal shall adopt and promulgate
24 rules to govern the distribution of money in the fire protection
25 fund in excess of:

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1 (1) the annual amount pursuant to Sections
2 59A-53-4 and 59A-53-5 NMSA 1978;

3 (2) the amount required for administration of
4 the state fire marshal division and the firefighter training
5 academy; and

6 (3) the amount required for volunteer
7 firefighter retirement.

8 B. The supplemental distribution provided for in
9 Subsection A of this section may be used:

10 (1) to improve fire department and fire district
11 insurance ratings;

12 (2) to foster long-range planning goals;

13 (3) to augment the annual distribution; or

14 (4) for any other purpose allowed by to the Fire
15 Protection Fund Law.

16 C. The state fire marshal may amend the rules annually
17 to change the purpose of the year's supplemental distribution.

18 D. The supplemental distribution shall be distributed
19 with the annual distribution provided for in Sections 59A-53-4 and
20 59A-53-5 NMSA 1978. "

21 Section 15. TEMPORARY PROVISION-- TRANSFERS OF PERSONNEL,
22 PROPERTY, CONTRACTS AND REFERENCES IN LAW. --

23 A. On July 1, 1999, all personnel and all money,
24 appropriations, records, equipment, furniture, supplies and
25 other property belonging to the state fire marshal bureau and

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1 the firefighter training academy of the public regulation
2 commission are transferred to the state fire marshal division
3 and the firefighter training academy of the department of
4 public safety.

5 B. On July 1, 1999, all existing contracts and
6 other obligations of the state fire marshal bureau and the
7 firefighter training academy of the public regulation
8 commission are transferred to the state fire marshal division
9 and the firefighter training academy of the department of
10 public safety. All rules promulgated for the state fire
11 marshal's office or the state fire marshal bureau and the
12 firefighter training academy of the public regulation
13 commission shall be binding on the state fire marshal division
14 or the firefighter training academy of the department of public
15 safety.

16 C. On July 1, 1999, references in law to the state
17 fire marshal or the state fire marshal bureau of the public
18 regulation commission shall be deemed to be references to the
19 state fire marshal division of the department of public safety.
20 All references in law to the state fire board shall be deemed
21 to be references to the secretary of public safety. All
22 references in law to the firefighter training academy of the
23 public regulation commission shall be deemed to be references
24 to the firefighter training academy of the department of public
25 safety.

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March 3, 1999

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 658

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 1, line 13, after the semicolon, strike the remainder of the line, strike all of line 14 and strike line 15 through the semicolon.

2. On page 2, line 20, strike "may" and insert in lieu thereof "shall".

3. On pages 2, 3 and 4, strike Section 3 in its entirety.

4. On pages 10, 11 and 12, strike Sections 12 through 14 in their entirety.

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5. Renumber sections to correspond with these amendments.,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Ingle, Smith, Robinson

Absent: None

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FORTY- FOURTH LEGISLATURE
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FORTY- FOURTH LEGISLATURE
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March 11, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 658, as amended,

AMENDMENT sponsored by SENATOR STOCKARD

1. On page 2, line 12, strike "seven" and insert "six".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Senator R. L. Stockard

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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