

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 120

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO PUBLIC SAFETY; TRANSFERRING THE STATE FIRE MARSHAL
AND THE FIREFIGHTER'S TRAINING ACADEMY TO THE DEPARTMENT OF
PUBLIC SAFETY; CREATING A BOARD; ELIMINATING THE STATE FIRE
MARSHAL'S CONTROL OVER FLAMMABLE LIQUID REGULATION;
TRANSFERRING PERSONNEL, MONEY AND OTHER PROPERTY, CONTRACTUAL
OBLIGATIONS AND STATUTORY REFERENCES.

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.

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 bureau.~~
4 ~~The superintendent of insurance may organize the firefighter's~~
5 ~~training academy as part of the fire marshal bureau or may~~
6 ~~organize it as a separate bureau]. "~~

7 Section 2. Section 59A-52-1 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 947, as amended) is amended to read:

9 "59A-52-1. STATE FIRE MARSHAL CREATED. --The position of
10 "state fire marshal" is created as the bureau chief of the
11 [~~fire marshal bureau of the insurance division~~] fire protection
12 bureau of the technical and emergency support division of the
13 department of public safety. "

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

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

underscored material = new
[bracketed material] = delete

1 Section 4. Section 59A-52-15 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 961) is amended to read:

3 "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES

4 [~~REGULATIONS~~] RULES. --

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

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1 ~~hearing. A copy of the notice, along with a copy of the~~
2 ~~proposed regulations, shall be filed with the supreme court~~
3 ~~librarian at least twenty (20) days prior to the hearing. In~~
4 ~~addition, the board shall make available for inspection at its~~
5 ~~offices, a copy of the proposed regulations.~~

6 ~~B. The rules and regulations shall follow~~
7 ~~nationwide standards except in the area of life safety codes,~~
8 ~~which shall be compatible with the Uniform Building Code, as~~
9 ~~revised from time to time, issued by the international~~
10 ~~conference of building officials.~~

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

20 Section 5. A new section of Chapter 59A, Article 52 NMSA
21 1978 is enacted to read:

22 " [NEW MATERIAL] FIRE BOARD--CREATED. --

23 A. The "fire board" is created. The board shall be
24 appointed by the governor as follows:

1 (1) one member from the municipal fire chiefs
 2 association;

3 (2) one member from the New Mexico
 4 firefighters association;

5 (3) one member from the New Mexico fire
 6 marshals association;

7 (4) one member from the society of fire
 8 protection engineers;

9 (5) two members who represent the construction
 10 industries; and

11 (6) one member of the public.

12 B. The members shall serve four-year terms at the
 13 pleasure of the governor. Members may receive per diem and
 14 mileage as provided in the Per Diem and Mileage Act, but shall
 15 receive no other compensation, perquisite or allowance.

16 C. The fire board shall annually elect a chairman
 17 and vice chairman. The state fire marshal shall service as
 18 executive secretary of the board. The fire protection bureau
 19 of the technical and emergency support division of the
 20 department of public safety shall provide staff support to the
 21 board.

22 D. The fire board shall meet at least quarterly and
 23 at the request of the chairman, the state fire marshal or three
 24 members of the board.

underscored material = new
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1 E. The fire board shall:

2 (1) approve fire codes and standards to be
3 enforced by the fire protection bureau of the technical and
4 emergency support division of the department of public safety;
5 provided, however, that the board shall coordinate with the
6 construction industries division of the regulation and
7 licensing department to ensure that state building and fire
8 codes are compatible and consistent with each other; and

9 (2) take appeals and perform other duties as
10 provided by law. "

11 Section 6. Section 59A-52-18 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 964) is amended to read:

13 "59A-52-18. RULES [~~AND REGULATIONS~~]- - STATEWIDE EFFECT- -
14 RESERVED POWER OF MUNICIPALITIES. -- The rules [~~and regulations~~]
15 promulgated pursuant to [~~this article~~] Chapter 59A, Article 52
16 NMSA 1978 shall have uniform [~~force and~~] effect throughout the
17 state and no municipality or subdivision shall enact or enforce
18 any ordinances, rules or regulations inconsistent with the
19 statewide rules [~~and regulations~~] promulgated pursuant to
20 [~~this~~] that article. The rules promulgated pursuant to that
21 article are the minimum code for a municipality or county.
22 Nothing in [~~this~~] that article shall in any way impair the
23 power of [~~any~~] a municipality to regulate the use of its land
24 by zoning, building codes or restricted fire district

1 regulations. "

2 Section 7. Section 59A-52-19 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 965) is amended to read:

4 "59A-52-19. POLICE POWER OF ~~[MARSHAL]~~ FIRE PROTECTION
5 BUREAU-- COOPERATION OF STATE OFFICERS. --

6 A. The secretary of public safety may designate the
7 state fire marshal [his deputy or his authorized officer or
8 designated agent shall have full powers as peace officers] and
9 other employees or agents of the fire protection bureau of the
10 technical and emergency support division of the department of
11 public safety to enforce the provisions of [this article]
12 Chapter 59A, Article 52 NMSA 1978 and all rules [and
13 regulations] issued pursuant to [this] that article.

14 B. The revenue officers and law enforcement
15 officers of the state shall cooperate with the [~~marshal, his~~
16 ~~deputy or authorized officer or designated agent]~~ fire
17 protection bureau of the technical and emergency support
18 division of the department of public safety whenever called
19 upon by them for assistance in enforcing [this article] Chapter
20 59A, Article 52 NMSA 1978.

21 C. The secretary of public safety may commission
22 the state fire marshal and other employees of the fire
23 protection bureau of the technical and emergency support
24 division of the department of public safety as law enforcement
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1 officers if they have successfully completed the necessary law
2 enforcement training. "

3 Section 8. Section 59A-52-20 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 966) is amended to read:

5 "59A-52-20. CEASE AND DESIST ORDERS- - ~~[CERTAIN VIOLATIONS~~
6 ~~ARE MISDEMEANORS. -- A.]~~. -- When the ~~[marshal, his deputy or his~~
7 ~~authorized officer or designated agent]~~ fire protection bureau
8 of the technical and emergency support division of the
9 department of public safety finds ~~[any]~~ a violation of the
10 ~~[regulations]~~ rules issued in compliance with ~~[this article he~~
11 ~~or they]~~ Chapter 59A, Article 52 NMSA 1978, it shall issue an
12 order to the owner or his agent to cease and desist such
13 violations.

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

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

23 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND
24 MODIFICATIONS. -- ~~[Any]~~ A person aggrieved by ~~[any]~~ an order of
25

1 the ~~[state fire marshal, his deputy or authorized officer or~~
 2 ~~his designated agent]~~ fire protection bureau of the technical
 3 and emergency support division of the department of public
 4 safety may appeal to the ~~[commission]~~ fire board within ten
 5 days from the date of the service of ~~[such]~~ the order. The
 6 ~~[commission]~~ fire board shall hear ~~[such]~~ the party within
 7 twenty days after receipt of an appeal request and shall give
 8 not less than ten days' written notice of the hearing. Within
 9 fifteen days after ~~[such]~~ the hearing, the ~~[commission]~~ fire
 10 board shall file its decision and, unless by its authority the
 11 order is revoked or modified, it shall be complied with within
 12 the time fixed in the decision, with such time to be not less
 13 than thirty days. "

14 Section 10. Section 59A-52-22 NMSA 1978 (being Laws 1984,
 15 Chapter 127, Section 968, as amended) is amended to read:

16 "59A-52-22. JUDICIAL REVIEW OF ORDER. -- A person
 17 aggrieved by a decision of the ~~[state fire marshal]~~ fire board
 18 pursuant to Section 59A-52-21 NMSA 1978 may appeal to the
 19 district court pursuant to the provisions of Section 39-3-1.1
 20 NMSA 1978. "

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

23 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. -- The
 24 ~~[marshal]~~ fire protection bureau of the technical and emergency
 25

1 support division of the department of public safety shall
2 promptly notify each [~~incorporated city, town, village~~]
3 municipality and county fire district affected of [~~his~~] the
4 bureau's determination of needs, and [~~an incorporated city,~~
5 ~~town, village~~] a municipality or county fire district may
6 appeal from the determination of the [~~marshal~~] bureau to the
7 [~~commission~~] secretary of public safety within ten days after
8 the determination of needs. The [~~commission~~] secretary shall
9 review the determination of the [~~marshal~~] bureau in such
10 informal and summary proceedings as [~~it~~] he deems proper and
11 shall certify to the state treasurer annually, on or before the
12 last day of June, the results of all appeals from the
13 determinations of the [~~marshal~~] bureau. The certification by
14 the [~~commission~~] secretary, or by the [~~marshal~~] bureau if no
15 appeal is taken, shall be final and binding on all concerned
16 and not subject to any further review. "

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

19 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

20 A. Annually on or before the last day of July, the
21 state treasurer shall distribute from the money in the fire
22 protection fund, to each [~~incorporated~~] municipality and to
23 each county fire district, the amount the [~~marshal~~] fire
24 protection bureau of the technical and emergency support
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underscored material = new
[bracketed material] = delete

1 division of the department of public safety or the
 2 [~~commission~~] secretary of public safety, as the case may be,
 3 has certified to him. Payment shall be made to the treasurer
 4 of any [~~incorporated~~] municipality and to the county treasurer
 5 of the county in which any county fire district is located for
 6 credit to the county fire district.

7 B. The state treasurer is authorized to redirect a
 8 distribution to the New Mexico finance authority in the amount
 9 the [~~marshal~~] fire protection bureau of the technical and
 10 emergency support division of the department of public safety
 11 or the [~~commission~~] secretary of public safety, as the case may
 12 be, has certified to [~~him~~] the treasurer pursuant to an
 13 ordinance or [~~a~~] resolution passed by the municipality or
 14 county and a written agreement [~~of~~] between the municipality or
 15 county in which [~~any~~] a county fire district is located and the
 16 New Mexico finance authority. "

17 Section 13. Section 60-2C-3 NMSA 1978 (being Laws 1989,
 18 Chapter 346, Section 3, as amended) is amended to read:

19 "60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF
 20 FIREWORKS-- ADMINISTRATION-- PERMITS AND LICENSES. --

21 A. No person may sell, hold for sale, import,
 22 distribute or offer for sale, as manufacturer, distributor,
 23 wholesaler or retailer, any fireworks in this state unless such
 24 person has first obtained the appropriate license or permit.
 25

underscored material = new
 [bracketed material] = delete

1 B. The ~~[state fire marshal]~~ fire protection bureau
2 of the technical and emergency support division of the
3 department of public safety shall enforce the Fireworks
4 Licensing and Safety Act. All license applications shall be
5 submitted to the ~~[office of the state fire marshal]~~ bureau.
6 All retailers shall be required to purchase a retail fireworks
7 permit for each retail location. The retail permit may be
8 purchased from any licensed manufacturer, distributor or
9 wholesaler or from the ~~[state fire marshal's office]~~ bureau.
10 Retail permits may be purchased at any time by the licensed
11 manufacturer, distributor or wholesaler in books of twenty
12 permits per book from the ~~[state fire marshal]~~ bureau. Permits
13 shall be numbered, and it ~~[shall be]~~ is the responsibility of
14 the licensed manufacturer, distributor or wholesaler to keep
15 records of the purchases of these permits and to submit these
16 records to the ~~[state fire marshal]~~ bureau semi annually on
17 January 31 and July 31 of each year. Each semi annual report is
18 to cover the preceding six-month period. Retail permits that
19 are unsold may be exchanged for new permits.

20 C. ~~[The state fire marshal shall appoint the~~
21 ~~deputies and employees required to carry out the provisions of~~
22 ~~the Fireworks Licensing and Safety Act. The state fire marshal~~
23 ~~may also]~~ The secretary of public safety may appoint any
24 commissioned law enforcement officer or duly appointed fire
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underscored material = new
[bracketed material] = delete

1 chief or his designee [~~with~~] upon request and approval from the
2 local governing body required to carry out the provisions of
3 that act.

4 D. The [~~state~~] fire board shall formulate, adopt,
5 promulgate and amend or revise rules [~~and regulations~~] for the
6 safe handling of fireworks. "

7 Section 14. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
8 APPROPRIATIONS, MONEY, RECORDS, FURNITURE, EQUIPMENT, OTHER
9 PERSONAL AND REAL PROPERTY, CONTRACTUAL OBLIGATIONS AND
10 STATUTORY REFERENCES. --

11 A. On the effective date of this act, all
12 personnel, appropriations, money, records, furniture, equipment
13 and other personal and real property of the fire marshal bureau
14 and the firefighter's training academy of the insurance
15 division of the public regulation commission shall be
16 transferred to the fire protection bureau of the technical and
17 emergency support division of the department of public safety.
18 In addition, three hundred thousand dollars (\$300,000) from the
19 administrative services division of the public regulation
20 commission shall be transferred to the department of public
21 safety to support the transfer of the state fire marshal's
22 office and the firefighter training academy to the department
23 of public safety.

24 B. On the effective date of this act, all contracts
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underscoring material = new
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1 and other obligations binding on the state fire marshal, the
2 fire marshal bureau or the firefighter's training academy of
3 the insurance division of the public regulation commission
4 shall be binding on the fire protection bureau of the technical
5 and emergency support division of the department of public
6 safety.

7 C. On the effective date of this act, all
8 references in the law to the fire marshal bureau or the
9 firefighter's training academy of the insurance division of the
10 public regulation commission shall be deemed to be references
11 to the fire protection bureau of the technical and emergency
12 support division of the department of public safety. All
13 references in the law to the state fire board or the public
14 regulation commission in its capacity as the state fire board
15 shall be deemed to be references to the fire board or the
16 secretary of public safety as applicable.

17 Section 15. REPEAL. --Section 59A-52-16 NMSA 1978 (being
18 Laws 1984, Chapter 127, Section 962) is repealed.

19 Section 16. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2001.