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HOUSE BILL 652

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ted Hobbs

AN ACT

RELATING TO PUBLIC SAFETY; TRANSFERRING THE STATE FIRE MARSHAL AND THE FIREFIGHTER'S 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.

B. The insurance division shall consist of such

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

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

8 "9-19-4. DEPARTMENT ESTABLISHED. -- There is created in the
9 executive branch the "department of public safety". The
10 department shall be a cabinet department and shall consist of,
11 but not be limited to, [~~five~~] six program divisions and one
12 administrative division, as follows:

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

21 Section 3. Section 59A-52-1 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 947, as amended) is amended to read:

23 "59A-52-1. STATE FIRE MARSHAL CREATED. -- The position of
24 "state fire marshal" is created as the [~~bureau chief~~] director
25 of the fire marshal [~~bureau~~] division of the [~~insurance~~

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1 ~~division~~ department of public safety. "

2 Section 4. Section 59A-52-3 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 949, as amended) is amended to read:

4 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER
5 EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal
6 may, with the approval of the [~~superintendent~~] secretary of
7 public safety, appoint or remove a deputy state fire marshal
8 and other employees to assist in the execution of the state
9 fire marshal's duties; provided, however, that the state fire
10 marshal and any deputy state fire marshal [~~appointed by the~~
11 ~~state fire marshal~~] shall be experienced in fire prevention and
12 fire fighting and have completed a course of training by actual
13 attendance at a fire-training school. "

14 Section 5. Section 59A-52-15 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 961) is amended to read:

16 "59A-52-15. FIRE PREVENTION--PUBLIC OCCUPANCIES
17 REGULATIONS.--

18 A. For prevention and control of fires the state
19 fire [~~board~~] marshal shall formulate, adopt and promulgate and
20 amend or revise [~~regulations~~] rules for fire prevention and
21 safe conduct or use of public occupancies and rules concerning
22 the sale, servicing or use of fire safety, prevention,
23 detection or suppression equipment or materials. For the
24 purposes of this provision, "public occupancies" consist of
25 places of assembly, educational occupancies, institutional

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

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

24 C. The rules [~~and regulations~~] shall allow
25 reasonable provision under which facilities in service prior to

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1 the effective date of the rules [~~and regulations~~] and not in
2 strict conformity therewith may be continued in service.
3 [~~Nonconforming~~] Nonconforming facilities in service prior to
4 the adoption of [~~regulations which~~] rules that are found by the
5 state fire marshal to constitute a distinct hazard to life or
6 property shall not be exempt from [~~regulations~~] rules nor
7 permitted to continue in service. "

8 Section 6. Section 59A-52-16 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 962, as amended) is amended to read:

10 "59A-52-16. FLAMMABLE LIQUIDS RULES--NATIONWIDE
11 STANDARDS--SAVINGS CLAUSE--DEFINITION. --

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

19 B. The rules shall be in keeping with the latest
20 generally recognized safety standards for flammable and
21 combustible liquids. Rules in substantial conformity with the
22 published standards of the national fire protection association
23 for vehicular transportation, storage, handling and use of
24 flammable and combustible liquids shall be deemed to be in
25 substantial conformity with the generally accepted and

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1 recognized standards of safety concerning the same subject
2 matter.

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

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

25 Section 7. Section 59A-52-21 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 967, as amended) is amended to read:

2 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND
3 MODIFICATIONS. -- Any person aggrieved by ~~[any]~~ an order of the
4 state fire marshal, his deputy or authorized officer or his
5 designated agent may appeal to the ~~[commission]~~ secretary of
6 public safety within ten days from the date of the service of
7 such order. The ~~[commission]~~ secretary shall hear such party
8 within twenty days after receipt of an appeal request and shall
9 give not less than ten days' written notice of the hearing.
10 Within fifteen days after such hearing, the ~~[commission]~~
11 secretary shall file its decision and, unless by its authority
12 the order is revoked or modified, it shall be complied with
13 within the time fixed in the decision, with such time to be not
14 less than thirty days. "

15 Section 8. Section 59A-52-22 NMSA 1978 (being Laws 1984,
16 Chapter 127, Section 968, as amended) is amended to read:

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

21 Section 9. Section 59A-52-23 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 969, as amended) is amended to read:

23 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS. --
24 After expiration of time for an administrative appeal, and if
25 no such appeal has been taken, the state fire marshal may

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1 commence an action in the district court for Santa Fe county to
2 enforce the cease and desist order by injunction or other
3 appropriate remedy as the district court may adjudge. The
4 [~~commission~~] secretary of public safety may likewise commence
5 an action in the district court for Santa Fe county to enforce
6 [~~its~~] his decision rendered on appeal from the cease and desist
7 order of the state fire marshal. "

8 Section 10. Section 59A-53-6 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 977, as amended) is amended to read:

10 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. --The
11 marshal shall promptly notify each incorporated city, town and
12 village and county fire district affected of his determination
13 of needs, and an incorporated city, town or village or county
14 fire district may appeal from the determination of the marshal
15 to the [~~commission~~] secretary of public safety within ten days
16 after the determination of needs. The [~~commission~~] secretary
17 shall review the determination of the marshal in such informal
18 and summary proceedings as [~~it~~] the secretary deems proper and
19 shall certify to the state treasurer annually, on or before the
20 last day of June, the results of all appeals from the
21 determinations of the marshal. The certification by the
22 [~~commission~~] secretary, or by the marshal if no appeal is
23 taken, shall be final and binding on all concerned and not
24 subject to any further review. "

25 Section 11. Section 59A-53-7 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 978, as amended) is amended to read:

2 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

3 A. Annually on or before the last day of July, the
4 state treasurer shall distribute from the money in the fire
5 protection fund, to each incorporated municipality and to each
6 county fire district, the amount the marshal or the
7 ~~[commission]~~ secretary of public safety, as the case may be,
8 has certified to him. Payment shall be made to the treasurer
9 of any incorporated municipality and to the county treasurer of
10 the county in which any county fire district is located for
11 credit to the county fire district.

12 B. The state treasurer is authorized to redirect a
13 distribution to the New Mexico finance authority in the amount
14 the marshal or the ~~[commission]~~ secretary, as the case may be,
15 has certified to him pursuant to an ordinance or a resolution
16 passed by the municipality or county and a written agreement of
17 the municipality or county in which any county fire district is
18 located and the New Mexico finance authority."

19 Section 12. Section 59A-53-15 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 986, as amended) is amended to read:

21 "59A-53-15. APPROPRIATION FROM STATE TREASURY. -- All money
22 ~~[which]~~ that from time to time is deposited in the state
23 treasury and credited to the fire protection fund is
24 appropriated to the ~~[corporation commission for the use of the~~
25 ~~marshal for the purposes set out in Chapter 59A, Article 53~~

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1 ~~NMSA 1978 and shall be distributed by the state treasurer and~~
2 ~~expended as provided in that article. Hereafter, all sums in~~
3 ~~excess of one hundred thousand dollars (\$100,000) for pro rata~~
4 ~~distribution plus seventy-five percent of the approved state~~
5 ~~fire marshal budget for the succeeding fiscal year plus the~~
6 ~~amount certified to be distributed as provided in that article~~
7 ~~shall be credited to the general fund on or before June 30 of~~
8 ~~each fiscal year] marshal to carry out the provisions of the~~
9 ~~Fire Protection Fund Law.~~ "

10 Section 13. A new section of the Fire Protection Fund Law
11 is enacted to read:

12 "[NEW MATERIAL] SUPPLEMENTAL DISTRIBUTION. --

13 A. The marshal shall adopt and promulgate rules to
14 govern the distribution of money in the fire protection fund in
15 excess of:

16 (1) the annual amount pursuant to Sections
17 59A-53-4 and 59A-53-5 NMSA 1978;

18 (2) the amount required for administration of
19 the fire marshal division of the department of public safety
20 and the firefighter's training academy; and

21 (3) the amount required for volunteer
22 firefighter retirement.

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

25 (1) to improve fire department and fire

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1 district insurance ratings;

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

3 (3) to augment the annual distribution; or

4 (4) for any other purpose allowed by the Fire

5 Protection Fund Law.

6 C. The marshal may amend the rules annually to
7 change the purpose of the year's supplemental distribution.

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

11 Section 14. TEMPORARY PROVISION--TRANSFERS OF PERSONNEL,
12 PROPERTY, CONTRACTS AND REFERENCES IN LAW.--

13 A. On July 1, 2003, all personnel and all money,
14 appropriations, records, equipment, furniture, supplies and
15 other property belonging to the fire marshal bureau and the
16 firefighter's training academy of the public regulation
17 commission are transferred to the fire marshal division and the
18 firefighter training academy of the department of public
19 safety.

20 B. On July 1, 2003, all existing contracts and
21 other obligations of the fire marshal bureau and the
22 firefighter's training academy of the public regulation
23 commission are transferred to the fire marshal division and the
24 firefighter's training academy of the department of public
25 safety. All rules promulgated for the state fire marshal's

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1 office or the fire marshal bureau and the firefighter's
2 training academy of the public regulation commission shall be
3 binding on the state fire marshal division or the firefighter's
4 training academy of the department of public safety.

5 C. On July 1, 2003, references in law to the state
6 fire marshal or the fire marshal bureau of the public
7 regulation commission shall be deemed to be references to the
8 fire marshal division of the department of public safety. All
9 references in law to the fire marshal bureau shall be deemed to
10 be references to the secretary of public safety. All
11 references in law to the firefighter's training academy of the
12 public regulation commission shall be deemed to be references
13 to the firefighter's training academy of the department of
14 public safety.

15 Section 15. TEMPORARY PROVISION--COMPILER'S
16 INSTRUCTIONS.--The compiler is instructed to recompile Chapter
17 59A, Articles 52 and 53 NMSA 1978 relating to the state fire
18 marshal and the fire protection fund to the appropriate chapter
19 of the New Mexico statutes annotated that conforms with the
20 provisions of this act.

21 Section 16. REPEAL.--Sections 59A-52-2, 59A-52-4 and
22 59A-52-17 NMSA 1978 (being Laws 1984, Chapter 127, Sections
23 948, 950 and 963, as amended) are repealed.

24 Section 17. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2003.