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HOUSE BILL 11

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO FIRE PROTECTION; AMENDING AND ENACTING SECTIONS OF THE FIRE PROTECTION FUND LAW TO PROVIDE ELIGIBILITY FOR FIRE STATIONS REGARDLESS OF JURISDICTIONAL LINES; PROVIDING FOR FIRE PROTECTION SERVICE ACROSS JURISDICTIONAL LINES; MAKING AN APPROPRIATION.

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

SECTION 1. Section 59A-53-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 973, as amended) is amended to read:

"59A-53-2. PURPOSE.--It is the purpose of the Fire Protection Fund Law to provide for distribution of funds from the fire protection fund referred to in Section 59A-6-5 NMSA 1978 to [~~incorporated cities, towns and villages~~] municipalities and to county fire districts, in proportion to their respective needs, for use in operation, maintenance and

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1 betterment of local fire departments, to the end that the
2 hazard of loss by fire and fire insurance rates may be reduced
3 and the public safety thereby promoted."

4 SECTION 2. A new section of the Fire Protection Fund Law
5 is enacted to read:

6 "[NEW MATERIAL] DEFINITIONS.--As used in the Fire
7 Protection Fund Law:

8 A. "marshal" means the state fire marshal as
9 further identified in Chapter 59A, Article 52 NMSA 1978; and

10 B. "municipality" means an incorporated city, town
11 or village."

12 SECTION 3. Section 59A-53-3 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 974, as amended) is amended to read:

14 "59A-53-3. DETERMINATION AND CERTIFICATION OF NEEDS.--

15 A. Annually, on or before the last day of May, the
16 marshal shall consider and determine, in [~~his~~] the marshal's
17 reasonable discretion, the relative needs of [~~incorporated~~
18 ~~cities, towns and villages~~] municipalities and county fire
19 districts for money in the fire protection fund, based upon the
20 information available to [~~him~~] the marshal, and shall certify
21 to the state treasurer the names of the [~~incorporated cities,~~
22 ~~towns, villages~~] municipalities and county fire districts that
23 [~~he~~] the marshal determines need the assistance of a
24 distribution from the money in the fire protection fund, and
25 the amount required by each, in accordance with the provisions

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1 of Chapter 59A, Article 53 NMSA 1978. In making this
2 determination and certification, the marshal ~~[will]~~ shall
3 consider the intent and purpose of that article that no
4 ~~[incorporated city, town or village]~~ municipality or county
5 fire district shall receive money distributed from the fire
6 protection fund merely for the purpose of accumulation when the
7 money is not required to accomplish the purposes of that
8 article.

9 B. In making a determination and certification of
10 needs, the marshal shall consider and provide for any debt
11 obligations of existing or previously existing fire departments
12 or fire districts.

13 ~~[G. For the purposes of Chapter 59A, Article 53~~
14 ~~NMSA 1978, "marshal" means the state fire marshal, as further~~
15 ~~identified in Chapter 59A, Article 52 NMSA 1978.]"~~

16 SECTION 4. Section 59A-53-4 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 975, as amended) is amended to read:

18 "59A-53-4. CRITERIA FOR DETERMINATION OF NEEDS--MUNICIPAL
19 FIRE DEPARTMENT.--

20 A. In making the determination of needs pursuant to
21 Section 59A-53-3 NMSA 1978, the marshal shall first determine
22 that each ~~[incorporated]~~ municipality to be certified has
23 maintained an official fire department created by and regulated
24 in accordance with a duly enacted ordinance for a period of at
25 least one year prior to the date of certification and possesses

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1 fire equipment and apparatus in serviceable condition to
2 respond to a fire incident. The marshal shall also determine
3 the number of fire stations and substations [~~located in each~~
4 ~~municipality~~] to be certified and shall certify to the state
5 treasurer the amount to be distributed to each municipality for
6 the purpose of maintaining each fire station and each
7 substation, if any, that meets the requirements of the marshal
8 and the requirements of this section. Unless adjusted pursuant
9 to Section 59A-53-5.1 NMSA 1978, the amounts distributed in a
10 fiscal year for a class insurance rating shall equal the
11 following:

class	main station	substation
number 1	\$ 82,592	\$ 30,606
number 2	77,086	28,780
number 3	70,919	26,724
number 4	64,751	24,667
number 5	61,667	22,612
number 6	58,584	20,555
number 7	55,501	19,530
number 8	52,418	18,502
number 9	39,058	15,425
number 10	34,944	none.

23 B. Any municipality may permit its fire department
24 to service an area adjacent and contiguous to its corporate
25 limits but within the corporate limits of another municipality

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1 or a county; provided that the other municipality or county by
2 resolution or law duly adopted or enacted consents to the
3 service and to the boundaries of the other area serviced.
4 Before commencement of service, a plat showing the geographic
5 limits and boundaries of the additional area to be serviced
6 shall be filed with and approved by the marshal. A
7 municipality may apply for fire protection fund eligibility for
8 any fire station located within the additional area to be
9 serviced.

10 C. Any municipality may apply for fire protection
11 fund eligibility for a fire station located at a municipally
12 owned airport, whether located outside or within its corporate
13 limits."

14 SECTION 5. Section 59A-53-5 NMSA 1978 (being Laws 1989,
15 Chapter 312, Section 5, as amended) is amended to read:

16 "59A-53-5. ESTABLISHMENT OF [COUNTY] FIRE DISTRICTS.--

17 A. The county commissioners of any county may
18 establish one or more [county] fire districts [~~within the~~
19 ~~county but outside the corporate limits of any municipality~~].
20 The marshal shall determine the number of fire stations and
21 substations [~~located in each county fire district~~] to be
22 certified and shall certify to the state treasurer the amount
23 to be distributed to each [county] fire district for the
24 purpose of maintaining each fire station and each substation,
25 if any, that meets the requirements of the marshal and the

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1 requirements of this section. Unless adjusted pursuant to
2 Section 59A-53-5.1 NMSA 1978, the amounts distributed in a
3 fiscal year for a class insurance rating shall equal the
4 following:

5	class	main station	substation
6	number 1	\$ 82,592	\$ 30,606
7	number 2	77,086	28,780
8	number 3	70,919	26,724
9	number 4	64,751	24,667
10	number 5	61,667	22,612
11	number 6	58,584	20,555
12	number 7	55,501	19,530
13	number 8	52,418	18,502
14	number 9	39,058	15,425
15	number 10	34,944	none.

16 B. Additionally, prior to the disbursement of any
17 funds, the following must be established to the satisfaction of
18 the marshal:

19 (1) the ~~[county]~~ fire district has maintained
20 an official fire department for a period of at least one year,
21 established and governed by appropriate resolution of the board
22 of county commissioners ~~[of the county in which the county fire~~
23 ~~district is located]~~ and possesses fire apparatus and equipment
24 in serviceable condition to respond to a fire incident;

25 (2) the geographic limits and boundaries of

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1 the [county] fire district have been clearly defined and
2 established [~~by the board of county commissioners of the county~~
3 ~~in which the county fire district is located, and~~] in a plat
4 showing the geographic limits and boundaries [~~has been~~]
5 accepted [~~by the board of county commissioners~~] and filed as
6 part of the official record of proceedings of the board of
7 county commissioners and a certified copy thereof filed with
8 the marshal; and

9 (3) there is available within the geographic
10 limits and boundaries of the [county] fire district an adequate
11 water supply to be used in connection with the firefighting
12 facilities of the [county] fire district.

13 C. The county commissioners of any county may
14 permit a county fire district [~~located in the county~~] to
15 service an area adjacent and contiguous to the district but
16 within another county or municipality; provided that the county
17 commissioners of the other county [~~shall~~] or the municipality
18 consent by resolution or law duly adopted or enacted to the
19 service and to the boundaries of the other area serviced.
20 Before commencement of service, a plat showing the geographic
21 limits and boundaries of the county fire district and of the
22 additional area to be serviced shall be filed with and approved
23 by the marshal. [~~The county commissioners of either the county~~
24 ~~in which the county fire district is located or of the county~~
25 ~~in which the area being serviced is located may terminate the~~

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1 ~~service but only with the approval of the marshal.]~~ Any county
2 may apply for fire protection fund eligibility for any fire
3 station located within the additional area to be serviced."

4 SECTION 6. A new section of the Fire Protection Fund Law
5 is enacted to read:

6 "[NEW MATERIAL] FIRE STATION AND FIRE PROTECTION SERVICES
7 ACROSS JURISDICTIONAL LINES.--

8 A. Nothing in the Fire Protection Fund Law shall be
9 construed to prohibit fire protection fund eligibility to a
10 municipal or county fire station or substation that otherwise
11 meets the requirements of the marshal and the requirements of
12 the Fire Protection Fund Law but is not located within the
13 municipality or county.

14 B. Nothing in the Fire Protection Fund Law shall be
15 construed to prohibit mutual aid agreements between
16 municipalities or counties to provide fire protection services
17 across jurisdictional lines."

18 SECTION 7. Section 59A-53-6 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 977, as amended) is amended to read:

20 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION.--The
21 marshal shall promptly notify each [~~incorporated city, town,~~
22 ~~village~~] municipality and county fire district affected of
23 [~~his~~] the marshal's determination of needs, and [~~an~~
24 ~~incorporated city, town, village~~] a municipality or county fire
25 district may appeal from the determination of the marshal to

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

10 SECTION 8. 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~~
16 ~~each~~] county fire district, the amount the marshal or the
17 commission, as the case may be, has certified to the state
18 treasurer. Payment shall be made to the treasurer of any
19 [~~incorporated~~] municipality and to the county treasurer of the
20 county in which any county fire district is located for credit
21 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, as the case may be, has
25 certified to the state treasurer pursuant to an ordinance or a

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

4 C. In addition to the distributions made pursuant
5 to Subsections A and B of this section, upon certification by
6 the marshal that the balance of the firefighters' survivors
7 fund is less than fifty thousand dollars (\$50,000), the state
8 treasurer shall distribute an amount from the fire protection
9 fund to the firefighters' survivors fund so that the balance of
10 the firefighters' survivors fund equals fifty thousand dollars
11 (\$50,000)."

12 SECTION 9. Section 59A-53-8 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 979, as amended) is amended to read:

14 "59A-53-8. EXPENDITURE OF FIRE PROTECTION FUND MONEY.--
15 Any amount distributed from the fire protection fund to [~~an~~
16 ~~incorporated~~] a municipality or to a county fire district shall
17 be expended only for the maintenance of its fire department;
18 the purchase, construction, maintenance, repair and operation
19 of its fire stations, including substations; fire apparatus and
20 equipment and the financing or refinancing thereof; the payment
21 of insurance premiums on fire stations, substations, fire
22 apparatus and equipment and insurance premiums for injuries or
23 deaths of firefighters as otherwise provided by law; and fire
24 department emergency medical services, except salaries.

25 Provided, however, that no money shall be expended from the

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1 fund for any purpose relating to the water supply systems of
2 [~~any incorporated~~] a municipality or county fire district or
3 for the improvement or construction of the systems or for
4 purchase, rental, installation or maintenance of fire hydrants
5 or for any other appurtenances relating to the distribution or
6 use of the water supply system. Funds distributed from the
7 fire protection fund to an incorporated municipality or a
8 county fire district may also be expended for the expense of
9 firefighters for attending fire schools and conventions
10 approved by the marshal."

11 SECTION 10. Section 59A-53-9 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 980, as amended) is amended to read:

13 "59A-53-9. LIMITATIONS ON EXPENDITURES.--No amount so
14 distributed from the fire protection fund to [~~any incorporated~~
15 ~~city, town or village~~] a municipality or to any county fire
16 district shall be expended in connection with the construction,
17 purchase or equipment of any fire station or substation in
18 addition to those existing upon the date of distribution by the
19 state treasurer, during the year following such distribution,
20 without the prior written approval of the marshal."

21 SECTION 11. Section 59A-53-10 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 981, as amended) is amended to read:

23 "59A-53-10. PURCHASE OF LAND OR BUILDINGS.--No amount so
24 distributed from the fire protection fund to [~~any incorporated~~
25 ~~city, town or village~~] a municipality or to any county fire

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1 district shall be expended or obligated for the purchase of
2 land or the construction of buildings for fire stations or
3 substations unless all obligations previously incurred for
4 those purposes and to be paid from money distributed from the
5 fire protection fund by the [~~city, town, village~~] municipality
6 or county fire district [~~shall~~] have been fully paid and
7 satisfied; and no amount shall be expended or obligated for the
8 construction of buildings for fire stations or substations
9 unless the [~~city, town, village~~] municipality or county fire
10 district proposing to expend or obligate for that purpose money
11 distributed from the fire protection fund holds fee simple
12 title, not encumbered by any lien, to the land on which it
13 proposes to construct any such building; provided, however,
14 that this provision shall not prohibit construction or location
15 of a fire station or substation on land donated in whole or in
16 part to the [~~city, town, village~~] municipality or county fire
17 district for the purpose, and use of fire protection fund money
18 for the construction or location, where the donor has reserved
19 right of reversion of the land under stated conditions, if the
20 use of money is approved by the marshal in advance and after
21 full investigation and determination that the use would be
22 appropriate and reasonable."

23 SECTION 12. Section 59A-53-11 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 982, as amended) is amended to read:

25 "59A-53-11. VOUCHERS.--

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1 A. Amounts so distributed from the fire protection
2 fund to [~~any incorporated city, town or village~~] a municipality
3 or to any county fire district shall be expended under the
4 direction of the chief of the fire department of the [~~city,~~
5 ~~town, village~~] municipality or county fire district, upon duly
6 executed vouchers approved as required by law. [~~and~~]

7 B. In no event is any amount to be expended for any
8 purpose [~~which~~] that does not relate directly to the permitted
9 purposes specifically stated in Sections 59A-53-8 and 59A-53-9
10 NMSA 1978."

11 **SECTION 13.** Section 59A-53-12 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 983, as amended) is amended to read:

13 "59A-53-12. PROMULGATION OF RULES [~~AND REGULATIONS~~].--The
14 marshal has authority to promulgate, modify, amend and revoke
15 from time to time rules [~~and regulations~~], including those for
16 mutual aid among and between fire departments; provided that no
17 such rules [~~and regulations~~] shall allow any fire department to
18 extend its service in any manner that would jeopardize the fire
19 insurance rates within its [~~city, town, village and~~]
20 municipality or county fire district, as [~~he~~] the marshal may
21 determine, in [~~his~~] the marshal's discretion, to be necessary,
22 advisable or proper to accomplish the objectives of the Fire
23 Protection Fund Law. Among other things, these rules [~~and~~
24 ~~regulations~~] shall include, but not be limited to, a list of
25 firefighting equipment, apparatus and other items [~~which~~] that

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1 may properly be purchased by [~~any incorporated city, town or~~
2 ~~village~~] a municipality or by any county fire district from
3 funds distributed from the fire protection fund, and standards
4 of quality, construction and performance to be met by major
5 firefighting appliances, training requirements, firefighting
6 protective clothing and equipment standards, and by fire
7 stations and substations, proposed to be purchased or
8 constructed by [~~any city, town, village~~] a municipality or
9 district from money distributed from the fire protection fund.
10 All rules [~~and regulations~~] shall be filed and published as
11 required by law. [~~Regulations~~] Rules of this nature heretofore
12 promulgated by the superintendent and now in effect shall
13 continue in effect until hereafter revoked or modified.
14 Nothing in this section shall be construed to grant regulatory
15 authority over the Volunteer Firefighters Retirement Act to the
16 marshal."

17 **SECTION 14.** Section 59A-53-13 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 984, as amended) is amended to read:

19 "59A-53-13. LIABILITY FOR UNAUTHORIZED EXPENDITURE.--Any
20 person who shall expend, or direct or permit the expenditure
21 of, any money distributed from the fire protection fund for
22 purposes not expressly authorized by Chapter 59A, Article 53
23 NMSA 1978 or by rules [~~and regulations~~] duly promulgated by the
24 marshal pursuant to that article shall be personally liable to
25 the state of New Mexico for the full amount of the money

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1 wrongfully expended, together with interest thereon and costs.
2 An action to recover the amount of any wrongful expenditure may
3 be commenced by the attorney general or the district attorney
4 in the county in which the wrongful expenditure was made, upon
5 the filing with the officer of a verified statement describing
6 the wrongful expenditure."

7 SECTION 15. Section 59A-53-14 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 985, as amended) is amended to read:

9 "59A-53-14. CLOSURE OF FIRE DEPARTMENT.--

10 A. If any fire department operated by [~~any~~
11 ~~incorporated city, town or village~~] a municipality or [~~by any~~]
12 county fire district should go out of existence or for any
13 reason cease to operate and function for a period of ninety
14 days, title to all firefighting equipment and apparatus paid
15 for in whole with distributions from the fire protection fund
16 and held by or for the benefit of the fire department shall
17 vest in the marshal and all money distributed from the fire
18 protection fund and held by or for the fire department shall
19 revert to the fire protection fund. Any person having custody
20 or control of any such firefighting equipment and apparatus
21 shall forthwith deliver it as directed by the marshal, and any
22 person having custody or control of the money shall forthwith
23 remit it to the state treasurer, who shall again deposit the
24 money in the state treasury to the credit of the fire
25 protection fund. An action to recover the possession and

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1 control of such firefighting equipment and apparatus, or the
2 money, may be commenced by the attorney general or the district
3 attorney in the county in which the equipment and apparatus or
4 money are situate upon the filing with the officer of a
5 verified statement of the circumstances.

6 B. Notwithstanding the provisions of Subsection A
7 of this section, money distributed from the fire protection
8 fund needed to pay debt service on bonds or other obligations
9 issued by or on behalf of a fire department or fire district
10 may be used to pay such debt service, and the marshal and the
11 state treasurer shall continue to make distributions from the
12 fire protection fund for and on behalf of the fire department
13 or fire district until the bonds or other obligations are paid
14 in full."

15 SECTION 16. Section 59A-53-16 NMSA 1978 (being Laws 1984,
16 Chapter 127, Section 987, as amended) is amended to read:

17 "59A-53-16. NEW FIRE DEPARTMENTS.--Whenever the marshal,
18 after the last day of May in any year, determines that [~~any~~
19 ~~incorporated city, town or village~~] a municipality or county
20 fire district, operating a new fire department, has met the
21 requirements of Chapter 59A, Article 53 NMSA 1978 for the first
22 time, [~~he~~] the marshal may certify to the state treasurer the
23 name of the [~~city, town, village~~] municipality or county fire
24 district and the amount required, on the same basis as provided
25 in that article, but not to exceed an amount commensurate with

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1 the period of time for which such pro rata distribution is
2 made; and distribution of the amount certified shall be made as
3 otherwise provided in that article."

4 SECTION 17. Section 59A-53-18 NMSA 1978 (being Laws 2006,
5 Chapter 103, Section 7) is amended to read:

6 "59A-53-18. FIRE PROTECTION GRANT FUND--CREATED--USES.--
7 The "fire protection grant fund" is created in the state
8 treasury. The fund shall consist of transfers, distributions,
9 appropriations, gifts, grants, donations and bequests made to
10 the fund. Income from the fund shall be credited to the fund,
11 and money in the fund shall not revert or be transferred to any
12 other fund at the end of a fiscal year. Money in the fund is
13 appropriated to the fire protection grant council for the
14 purposes of making distributions approved by the council for
15 the critical needs of municipal fire departments and county
16 fire districts. Expenditures from the fund shall be made on
17 warrant of the secretary of finance and administration pursuant
18 to vouchers signed by the marshal."

19 SECTION 18. Section 59A-53-19 NMSA 1978 (being Laws 2006,
20 Chapter 103, Section 8, as amended) is amended to read:

21 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

22 A. The "fire protection grant council" is created.
23 Subject to the requirements of Subsection B of this section,
24 the council shall consist of:

25 (1) a representative of the New Mexico

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1 municipal league;

2 (2) a representative of the New Mexico
3 association of counties;

4 (3) two members appointed by the public
5 regulation commission who shall serve at the pleasure of the
6 commission;

7 (4) three members, one from each congressional
8 district, appointed by the governor who shall serve at the
9 pleasure of the governor; and

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

13 B. No appointee to the council shall be a member of
14 the public regulation commission, the superintendent of
15 insurance or any other employee of the commission.

16 C. The public members are entitled to receive per
17 diem and mileage as provided in the Per Diem and Mileage Act
18 and shall receive no other compensation, perquisite or
19 allowance.

20 D. The council shall develop criteria for assessing
21 the critical needs of municipal fire departments and county
22 fire districts for:

23 (1) fire apparatus and equipment;

24 (2) communications equipment;

25 (3) equipment for wildfires;

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- 1 (4) fire station construction or expansion;
2 (5) equipment for hazardous material response;
3 and
4 (6) stipends for volunteer firefighters in
5 underserved areas.

6 E. Applications for grant assistance from the fire
7 protection grant fund shall be made by fire districts to the
8 council in accordance with the requirements of the council.
9 Using criteria developed by the council, the council shall
10 evaluate applications and prioritize those applications most in
11 need of grant assistance from the fund. To the extent that
12 money in the fund is available, the council shall award grant
13 assistance for those prioritized applications.

14 F. In awarding grant assistance, the council may
15 require conditions and procedures necessary to ensure that the
16 money is expended in the most prudent manner.

17 G. When considering applications for grant
18 assistance to pay stipends to volunteer firefighters in
19 underserved areas, the council shall:

- 20 (1) define "underserved area";
21 (2) ensure the proposed stipends will comply
22 with the federal Fair Labor Standards Act of 1938 and United
23 States department of labor requirements for maintaining
24 volunteer status;
25 (3) require a basic level of training before a

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volunteer may receive a stipend;

(4) consider whether the fire district requires a service commitment from its volunteer firefighters in exchange for stipends; and

(5) weight the applications against other criteria or requirements determined by the council."