

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/19

SPONSOR Burt LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Remove Fire Marshal from PRC SB 565

ANALYST Martinez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$1,138.9	\$1,138.9	\$1,138.9	\$3,416.7	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB 269.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

SB 565 amends Article 52 of the Insurance Code by removing the State Fire Marshal from under the Public Regulation Commission, replacing it with the State Fire Marshal Office, an “adjunct agency” as provided in NMSA 1978, § 9-1-6.

A recreated position of a State Fire Marshal would manage and oversee the State Fire Marshal Office and be appointed by a newly created Fire Services Council. SB 565 sets forth the composition, powers and duties of the Fire Services Council. The Fire Services Council shall consist of the presiding officer or designee of each of the following:

1. New Mexico Fire Chiefs Association;
2. Fire and emergency managers affiliate of New Mexico counties;
3. New Mexico State Firefighters Association;
4. New Mexico Emergency Medical Technicians Association;
5. New Mexico Fire Marshal’s Association;
6. Metro Chief’s Association; and the

7. New Mexico Professional Fire Fighters Association.
8. One person appointed by the Governor
9. One person appointed by the President Pro Tempore of the Senate
10. One person appointed by the Speaker of the House of Representatives

The Fire Services Council will hear appeals from orders of the State Fire Marshal, and will have the power to commence an action in District Court for Santa Fe County to enforce decisions on appeal from cease and desist orders of the State Fire Marshal.

The State Fire Marshal shall be appointed by the Fire Services Council, and shall serve as an “at will” employee and be exempt from the Fair Labor Standards Act. SB 565 does not establish a term of employment but instead states that the State Fire Marshal shall serve until such time as the State Fire Marshal retires, resigns, or is terminated by the Fire Services Council. Under SB 565, the State Fire Marshal is required to be well versed in fire services, including structural fires, training, investigations and code enforcement, as well as administrative duties, including personnel, operating budgets and capital planning and expenditures. In addition, the State Fire Marshal is required to have an understanding of insurance services office requirements, wild land firefighting, and legislative advocacy.

All staff positions, functions, personnel, appropriations, money, records equipment, supplies, other property and contractual obligations of the PRC’s Fire Marshal Division will be transferred to the State Fire Marshal’s office.

Additionally, the proposed legislation would remove any required concurrence by the chief of staff of the Public Regulation Commission in the appointment of a Deputy Fire Marshal and other employees of the State Fire Marshal Office and instead vest all employment decisions with the State Fire Marshal.

SB 565 revises the composition of the Fire Protection Grant Council to remove the appointment authority of two members by the Public Regulation Commission and instead require that those two members be appointed by the Fire Services Council.

The effective date of Sections 1 through 29 and 31 through 36 of SB 565 is July 1, 2020. The effective date of Section 30 of SB 565 is July 1, 2019. Section 30 of SB 565 is the section that establishes the composition and organization of the Fire Services Council.

SB 565 contains numerous amendments to clean up language, which focus on changing statutory references to official acts and responsibilities.

## FISCAL IMPLICATIONS

In the PRC's current operating budget, \$4.7 million of approximately \$90 million in Fire Protection Funds collected annually are used for administrative operational needs in all three programs of the agency. In FY19, the breakdown of Fire Protection Funds in the PRC's operating budget is as follows:

1. Policy and Regulation Program, \$488.1
2. Public Safety, \$3,637.4, and
3. Program Support, \$650.8.

If the Fire Protection funds are removed from PRC's operating budget this will result in a decrease in funding of \$1.1 million total for the Policy and Regulation Program and Program Support Program. This amount accounts for the decrease of \$3.6 million in fire protection funds that support the State Fire Marshal's office and will move with the State Fire Marshal's Office.

In order for PRC to continue to operate as normal, providing critical services, these fire protection funds will need to be supplemented with \$1.1 million in general fund revenue. This will be a recurring expense to the general fund of \$1.1 million beginning in FY21. Without backfilling these funds, the agency will not be able to continue operations as normal, creating staffing issues in critical areas that support multiple areas of the agency including, lawyers, engineers, and administrative services staff.

## SIGNIFICANT ISSUES

Fire protection fund distribution and insurance services inspection office ratings (ISO fire score) are both currently overseen by the State Fire Marshal's office. The rating and distribution for each fire district is statutorily prescribed, accounting for fund growth and even application across all fire districts. SB 565 does not affect these functions.

The Fire Protection grant fund is currently overseen by the grant fund council and distributed to local municipalities and counties by fire protection capital outlay requests. Grant funding is currently awarded quarterly as fire departments receive capital outlay specific need, rather than awarding a one-time award at the beginning of the fiscal year. This has been a recent fiscally responsible successful change within PRC Administrative Services Division to appropriately administer grant funding. This will be up to the newly created fire grant council to administer grants and continue with the current schedule, or create a new timeline.

The fire protection grant fund council members are currently as follows:

1. Chair – PRC staff
2. PRC staff
3. Governor Appointee - 1st Congressional District
4. Governor Appointee – 2nd Congressional District
5. Governor Appointee - 3rd Congressional District
6. Representative from Association of Counties
7. Representative from Municipal League
8. State Fire Marshal (non-voting)

SB565, Section 25 changes the grant fund council membership to the following:

1. Representative from Municipal League
2. Representative from New Mexico Counties
3. Two members appointed by the Fire Service Council
4. Governor Appointee - 1st Congressional District
5. Governor Appointee – 2nd Congressional District
6. Governor Appointee - 3rd Congressional District
7. State Fire Marshal (non-voting)

Section 15, removes that witnesses will be paid per diem “from the fire marshal’s fund.” However, this section now becomes unclear as to how those per diem vouchers will be paid.

Section 28, removes that penalties (\$500 each) collected from any person, firm or corporation that violates any final cease and desist order shall be credited to the fire protection fund. Section 28 does not state where these funds that are collected will be credited to if they are no longer being credited to the fire protection fund.

The Public Regulation Commission provided the following:

SB 565, Section 25 changes authority from the PRC to the newly created Fire Services Council to hear appeals of orders and modifications of the State Fire Marshal or the Marshal’s Deputy. The PRC is well situated to hear such appeals since it is, for the most part, a regulatory body staffed with attorneys, hearing examiners, legal assistants and paralegals, and advisory staff to the PRC Commissioners. The Fire Marshal Division of the PRC does not currently have such regulatory staffing. Without additional FTEs that have regulatory backgrounds, the State Fire Marshal will have difficulty in processing administrative appeals.

The same holds true for Section 26 of SB 565 which allows the Fire Services Council to enforce its decisions rendered on appeal from a cease and desist order of the State Fire Marshal by commencing an action the District Court for Santa Fe County. Also, reinforcing the concern that legal staff that will need to be hired for the State Fire Marshal.

In a similar vein, Sections 19 and 20 pertain to the promulgation of rules by the State Fire Marshal. However, as a stand-alone Division, the Fire Marshal Division of the PRC does not have FTEs to support the rulemaking process; attorneys, hearing examiners, legal assistants, paralegals, and advisory staff to see a rule through from promulgation to filing at the State Records Center and Archives.

Finally, FTE for management of the budget, payroll, personnel, and other required services for the newly created State Fire Marshal Office agency is not provided in SB 565, although the PRC notes that some of these administrative services tasks can and will be done by DFA and SPO.

**PERFORMANCE IMPLICATIONS**

The State Fire Marshal's Office currently has three performance measures within the Public Safety Bureau of the PRC. These measures are as follows, and will need to remain with the Fire Marshal's Office.

1. Percent of statewide fire districts with insurance service office ratings of eight or better.  
FY18 Actual: 78 percent
2. Number of training contact hours delivered by the State Fire Marshal's Office, state firefighter training academy and pipeline safety bureau in a fiscal year.  
FY18 Actual: 127,855
3. Pass rate for state certification exams administered by the state firefighter academy.  
FY18 Actual: 79 percent

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 565 is similar to HB 269, with significant differences noted in this FIR.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If SB 565 is not enacted, firefighter training, fire service support, fire investigations, and fire code enforcement would remain with the Fire Marshal Division of the PRC.

JM/gb