

1 HOUSE BILL 456

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Nate Gentry

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10 AN ACT

11 RELATING TO GOVERNMENT REORGANIZATION; ENACTING THE STATE FIRE
12 MARSHAL ACT; CREATING AN AGENCY AND BOARD; PROVIDING POWERS AND
13 DUTIES; MOVING THE STATE FIRE MARSHAL, THE STATE FIRE ACADEMY
14 AND THE FIRE PROTECTION FUND FROM THE PUBLIC REGULATION
15 COMMISSION AND FROM THE NEW MEXICO INSURANCE CODE; CHANGING THE
16 DUTIES OF THE STATE FIRE MARSHAL; REQUIRING CONTINUING
17 EDUCATION FOR CERTIFICATION AS A FIREFIGHTER; ALLOWING FOR THE
18 COLLECTION OF FEES FOR FIRE INSPECTION; TRANSFERRING FUNCTIONS,
19 APPROPRIATIONS, MONEY, PERSONNEL, PROPERTY, CONTRACTUAL
20 OBLIGATIONS AND STATUTORY REFERENCES; AMENDING, REPEALING AND
21 ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 8-8-6 NMSA 1978 (being Laws 1998,
25 Chapter 108, Section 6, as amended) is amended to read:

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1 "8-8-6. COMMISSION--DIVISIONS.--The commission shall
2 include the following organizational units:

- 3 A. the administrative services division;
- 4 B. the consumer relations division;
- 5 C. the legal division;
- 6 D. the transportation division; and
- 7 E. the utility division [~~and~~
- 8 F. ~~the fire marshal division~~]."

9 SECTION 2. [NEW MATERIAL] SHORT TITLE.--Sections 2
10 through 23 of this act may be cited as the "State Fire Marshal
11 Act".

12 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
13 State Fire Marshal Act:

- 14 A. "board" means the state fire board;
- 15 B. "combustible liquid" means any liquid having a
16 flash point at or above one hundred degrees Fahrenheit and
17 below two hundred degrees Fahrenheit;
- 18 C. "flammable liquid" means any liquid having a
19 flash point below one hundred degrees Fahrenheit; and
- 20 D. "office" means the state fire marshal's office.

21 SECTION 4. [NEW MATERIAL] STATE FIRE BOARD CREATED--
22 MEMBERS--APPOINTMENTS--VACANCIES.--

23 A. The "state fire board" is created. The board
24 consists of seven members appointed by the governor as follows:

- 25 (1) one fire chief;

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- 1 (2) one fire marshal;
- 2 (3) one sprinkler contractor;
- 3 (4) one fire alarm contractor;
- 4 (5) one firefighter;
- 5 (6) one fire chief; and
- 6 (7) one public member.

7 B. Members serve four-year terms and may be removed
8 during their term for misconduct, incompetence or neglect of
9 duty. A board member failing to attend three consecutive
10 regular meetings is automatically removed as a member of the
11 board.

12 C. The board shall annually elect a chair, vice
13 chair and secretary-treasurer from its membership.

14 D. The board shall meet at least once every three
15 months and at other times at the call of the chair or the state
16 fire marshal or on the written request of two or more members
17 of the board. A majority of the board constitutes a quorum.

18 E. Members of the board are entitled to be
19 reimbursed for per diem and mileage as provided in the Per Diem
20 and Mileage Act and shall receive no other compensation,
21 perquisite or allowance.

22 SECTION 5. [NEW MATERIAL] BOARD--POWERS AND DUTIES.--

23 A. The board may establish reasonable fees for fire
24 inspections, not to exceed the actual cost of the inspection.

25 B. The board shall:

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1 (1) hire the state fire marshal, who shall
2 hire employees of the office;

3 (2) oversee the operations of the office;

4 (3) approve fire codes and rules proposed by
5 the state fire marshal;

6 (4) hear administrative appeals of orders and
7 modifications of the state fire marshal pursuant to the State
8 Fire Marshal Act; and

9 (5) hear appeals from the state fire marshal's
10 determinations pursuant to the Fire Protection Fund Act.

11 SECTION 6. [NEW MATERIAL] OFFICE AND MARSHAL CREATED--
12 DIVISIONS--FUNDING.--

13 A. The "state fire marshal's office" is created as
14 an adjunct agency of the executive branch.

15 B. The office consists of the "state fire marshal",
16 "deputy state fire marshals" and other employees to carry out
17 the duties of the state fire marshal and the "firefighter
18 training academy" pursuant to law. The office is organized
19 into the following divisions:

20 (1) the firefighter training academy division;

21 (2) the fire service support division;

22 (3) the fire investigations division; and

23 (4) the fire code enforcement division.

24 C. An appropriation from the fire protection fund
25 to the office shall be included in the general appropriation

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1 act each year to carry out the purposes of the State Fire
2 Marshal Act and the state fire marshal's duties.

3 D. The office may cooperate with all other groups,
4 organizations and agencies in New Mexico or other states in the
5 collection, dissemination and evaluation of information,
6 statistics and suggestions for prevention or control of fires.

7 SECTION 7. [NEW MATERIAL] RULES--HEARING--NOTICE--
8 STATEWIDE EFFECT.--

9 A. The office may adopt or revise rules to carry
10 out the provisions of the State Fire Marshal Act and the Fire
11 Protection Fund Act. A rule shall not be adopted or revised or
12 made effective until after public hearing on the proposed rule,
13 of which at least twenty days' written notice shall be given by
14 electronic or traditional mail to each person who has
15 registered with the office that person's interest in rules of
16 the office. The notice of rulemaking shall contain a copy of
17 each rule proposed for adoption or revision. The notice of
18 rulemaking and the proposed rule shall be posted on the
19 office's web site. Any interested person may appear and
20 present testimony at the hearing on proposed rules.

21 B. The board shall approve rules before they are
22 promulgated.

23 C. The rules promulgated in accordance with the
24 State Fire Marshal Act shall have uniform effect throughout the
25 state, and no municipality or other political subdivision shall

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1 enact or enforce any ordinances or rules inconsistent with the
2 statewide rules of the state fire marshal. Nothing in that act
3 shall in any way impair the power of a municipality to regulate
4 the use of its land by zoning, building codes or restricted
5 fire district rules.

6 SECTION 8. [NEW MATERIAL] FIRE PROTECTION TRAINING
7 PROGRAMS.--The office shall establish and conduct training
8 programs throughout the state for demonstrating and teaching
9 firefighters proper methods of preventing and extinguishing
10 fires. The office shall have available, from funds included in
11 the general appropriation act of each year, money for
12 establishing and conducting such training programs.

13 SECTION 9. [NEW MATERIAL] FIRE PREVENTION AND CONTROL IN
14 PUBLIC SCHOOLS--RULES FOR SCHOOL BUILDING EVACUATIONS.--The
15 office shall prescribe reasonable rules and programs for the
16 teaching to all students in the state, whether in public or
17 private schools, the proper methods of fire prevention and
18 control. The rules and programs shall be submitted to the
19 public education department on or before August 1 of each year.
20 Among other things, the rules and programs shall prescribe
21 drills for evacuating school buildings.

22 SECTION 10. [NEW MATERIAL] INVESTIGATION OF FIRE
23 HAZARDS--ABATEMENT.--The office is authorized to make
24 investigations and reports of existing conditions in the state
25 that are fire hazards and to make reasonable orders for the

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1 alleviation of those situations as the state fire marshal deems
2 necessary. If the orders of the state fire marshal are not
3 carried out by persons to whom they are directed, the office
4 may institute proper proceedings under municipal ordinances or
5 state laws to require compliance with the orders.

6 SECTION 11. [NEW MATERIAL] ENTERING UPON PREMISES.--The
7 state fire marshal or a deputy state fire marshal or other
8 authorized officer or designated agent has authority at all
9 normal hours of operation to enter in and upon all buildings
10 and premises subject to the State Fire Marshal Act for the
11 purpose of examination and inspection.

12 SECTION 12. [NEW MATERIAL] INVESTIGATION OF FIRES AND
13 EXPLOSIONS--HEARINGS--USE OF STATE POLICE LABORATORY.--

14 A. The office may make investigations deemed
15 necessary of any fire or explosion or attempt to cause any fire
16 or explosion in the state. The state fire marshal may require
17 reports from deputy state fire marshals concerning all fires
18 and explosions in their districts.

19 B. For the purpose of investigating, the state fire
20 marshal and deputy fire marshals or other designated persons
21 may conduct hearings, subpoena witnesses, take testimony and
22 enter upon and examine any building or premises where a fire or
23 explosion or attempt to cause a fire or explosion has occurred,
24 or which at the time is burning. The state fire marshal and
25 deputy fire marshals or other designated persons may require

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1 the production of such papers, records and other documents as
2 needed in their investigations. In addition, the state fire
3 marshal and deputy fire marshals or other designated persons
4 may, in their discretion, take full control and custody of
5 buildings and premises described in this subsection, and place
6 someone in charge of the buildings and premises as they deem
7 proper until their examination and investigation is completed.
8 For evaluation of the evidence, the office shall have access to
9 the facilities and personnel of the state police laboratory,
10 and the executive head of the laboratory shall cooperate fully
11 with the state fire marshal and deputy fire marshals or other
12 designated persons.

13 SECTION 13. [NEW MATERIAL] WITNESSES--PER DIEM AND
14 MILEAGE.--Witnesses or persons subpoenaed pursuant to the State
15 Fire Marshal Act shall be paid as to time and expense from the
16 state fire marshal's budget at per diem and mileage rates on
17 the same bases and at the same rates as state employees.

18 SECTION 14. [NEW MATERIAL] TRANSMITTAL OF EVIDENCE
19 INDICATING CRIMINAL ACTS.--The state fire marshal shall furnish
20 to the proper law enforcement officers any evidence that the
21 state fire marshal may discover during an investigation that
22 indicates criminal acts.

23 SECTION 15. [NEW MATERIAL] RECORDS OF FIRES OPEN TO
24 PUBLIC.--The state fire marshal shall keep all records of fires
25 that have occurred in the state open for public inspection at

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1 times when the office is open.

2 SECTION 16. [NEW MATERIAL] FIRE PREVENTION--PUBLIC
3 OCCUPANCIES RULES.--

4 A. For prevention and control of fires, the state
5 fire marshal shall formulate, adopt and promulgate and amend or
6 revise rules for fire prevention and safe conduct or use of
7 public occupancies and rules concerning the sale, servicing or
8 use of fire safety, prevention, detection or suppression
9 equipment or materials. The rules shall be approved by the
10 board prior to adoption. For the purposes of this provision,
11 "public occupancies" consist of places of assembly, educational
12 occupancies, institutional occupancies, residential occupancies
13 consisting of four or more family units, mercantile
14 occupancies, office occupancies, industrial occupancies,
15 storage occupancies and miscellaneous structures consisting of
16 towers, underground structures and windowless buildings and all
17 buildings owned or occupied by the state government or any
18 political subdivision of the state.

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

24 C. The rules shall allow reasonable provision under
25 which facilities in service prior to the effective date of the

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

7 SECTION 17. [NEW MATERIAL] FLAMMABLE LIQUIDS RULES--
8 NATIONWIDE STANDARDS--SAVING CLAUSE.--

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

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

25 C. The rules shall include reasonable provisions

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

16 SECTION 18. [NEW MATERIAL] POLICE POWER OF FIRE MARSHAL--
17 COOPERATION OF STATE OFFICERS.--

18 A. The state fire marshal, a deputy state fire
19 marshal or an authorized officer or designated agent of the
20 state fire marshal shall have full powers as a peace officer to
21 enforce the provisions of the State Fire Marshal Act and all
22 rules promulgated in accordance with that act.

23 B. The revenue officers and law enforcement
24 officers of the state shall cooperate with the state fire
25 marshal, a deputy state fire marshal or an authorized officer

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1 or designated agent whenever called upon by any of them for
2 assistance in enforcing the provisions of the State Fire
3 Marshal Act.

4 SECTION 19. [NEW MATERIAL] CEASE AND DESIST ORDERS--
5 CERTAIN VIOLATIONS ARE MISDEMEANORS.--

6 A. When the state fire marshal, a deputy state fire
7 marshal or an authorized officer or designated agent of the
8 state fire marshal finds a violation of the State Fire Marshal
9 Act or rules promulgated in accordance with that act, the state
10 fire marshal, a deputy state fire marshal or an authorized
11 officer or designated agent shall issue an order to the owner
12 or the owner's agent to cease and desist such violation.

13 B. When a violation of a law or rule concerning
14 flammable liquids is found, a cease and desist order shall be
15 issued if the violation constitutes an immediate and distinct
16 hazard to life or property, and the violation constitutes a
17 misdemeanor punishable by a fine not to exceed five hundred
18 dollars (\$500). Each day the violation continues constitutes a
19 separate offense. Fines shall be deposited to the credit of
20 the current school fund pursuant to Article 12, Section 4 of
21 the constitution of New Mexico.

22 SECTION 20. [NEW MATERIAL] ADMINISTRATIVE APPEAL OF
23 ORDERS AND MODIFICATIONS--JUDICIAL APPEAL.--

24 A. A person aggrieved by an order of the state fire
25 marshal, a deputy state fire marshal or an authorized officer

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1 or designated agent of the state fire marshal may appeal to the
2 board within ten days from the date of the service of the
3 order. The board shall hear the party within twenty days after
4 receipt of an appeal request and shall give not less than ten
5 days' written notice of the hearing. Within fifteen days after
6 the hearing, the board shall file its decision and, unless by
7 its authority the order is revoked or modified, the order shall
8 be complied with within the time fixed in the decision, which
9 shall not be less than thirty days. The decision of the board
10 is a final administrative decision.

11 B. A person aggrieved by a decision of the board
12 may appeal to the district court as provided in Section
13 39-3-1.1 NMSA 1978.

14 SECTION 21. [NEW MATERIAL] ENFORCEMENT OF CEASE AND
15 DESIST ORDERS.--After expiration of time for an administrative
16 appeal, and if an appeal has not been taken, the state fire
17 marshal may commence an action in the district court for Santa
18 Fe county to enforce the cease and desist order by injunction
19 or other appropriate remedy as the district court may adjudge.
20 The board may likewise commence an action in the district court
21 for Santa Fe county to enforce its decision rendered on appeal
22 from the cease and desist order of the state fire marshal.

23 SECTION 22. [NEW MATERIAL] PENALTY FOR VIOLATION OF LAW
24 OR RULES.--Violation of any of the provisions of the State Fire
25 Marshal Act or a rule promulgated in accordance with that act
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1 shall constitute a misdemeanor for which the punishment shall
2 be a fine of not more than five hundred dollars (\$500). Each
3 day the violation continues constitutes a separate offense.
4 Fines shall be deposited to the credit of the current school
5 fund pursuant to Article 12, Section 4 of the constitution of
6 New Mexico.

7 SECTION 23. [NEW MATERIAL] PENALTY FOR VIOLATION OF CEASE
8 AND DESIST ORDER.--A person who violates a final cease and
9 desist order shall be subject to a fine of five hundred dollars
10 (\$500) for each day the violation continues. The attorney
11 general may bring a civil suit for the enforcement of this
12 section on the relation of the state fire marshal. Fines shall
13 be deposited to the credit of the current school fund pursuant
14 to Article 12, Section 4 of the constitution of New Mexico.

15 SECTION 24. [NEW MATERIAL] SHORT TITLE.--Sections 24
16 through 41 of this act may be cited as the "Fire Protection
17 Fund Act".

18 SECTION 25. [NEW MATERIAL] PURPOSE.--The purpose of the
19 Fire Protection Fund Act is to provide for distribution of
20 money from the fire protection fund to municipalities and
21 county fire districts in proportion to their respective needs;
22 and for use in operation, maintenance and betterment of local
23 fire departments to reduce the hazard of loss by fire, to
24 reduce fire insurance rates and to promote the public safety.

25 SECTION 26. [NEW MATERIAL] DEFINITION.--As used in the

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1 Fire Protection Fund Act, "board" means the state fire board.

2 SECTION 27. [NEW MATERIAL] DETERMINATION AND
3 CERTIFICATION OF NEEDS.--

4 A. Annually, on or before the last day of May, the
5 state fire marshal shall consider and determine, in the state
6 fire marshal's reasonable discretion, the relative needs of
7 municipalities and county fire districts for money in the fire
8 protection fund, based upon the information available to the
9 state fire marshal, and shall certify to the state treasurer
10 the names of the municipalities and county fire districts that
11 the state fire marshal determines need the assistance of a
12 distribution from the money in the fire protection fund, and
13 the amount required by each, in accordance with the provisions
14 of the Fire Protection Fund Act. In making this determination
15 and certification, the state fire marshal shall consider the
16 intent and purpose of that law that no municipality or county
17 fire district shall receive money distributed from the fire
18 protection fund merely for the purpose of accumulation when the
19 money is not required to accomplish the purposes of that act.

20 B. In making a determination and certification of
21 needs, the state fire marshal shall consider and provide for
22 any debt obligations of existing or previously existing fire
23 departments or fire districts.

24 SECTION 28. [NEW MATERIAL] CRITERIA FOR DETERMINATION OF
25 NEEDS--MUNICIPAL FIRE DEPARTMENT.--

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1 A. In making the determination of needs pursuant to
2 Section 27 of this 2015 act, the state fire marshal shall first
3 determine that each municipality to be certified has maintained
4 an official fire department created by and regulated in
5 accordance with a duly enacted ordinance for a period of at
6 least one year prior to the date of certification and possesses
7 fire equipment and apparatus in serviceable condition to
8 respond to a fire incident. The state fire marshal shall also
9 determine the number of fire stations and substations to be
10 certified and shall certify to the state treasurer the amount
11 to be distributed to each municipality for the purpose of
12 maintaining each fire station and each substation, if any, that
13 meets the requirements of the state fire marshal and the
14 requirements of this section. Unless adjusted pursuant to
15 Section 30 of this 2015 act, the amounts distributed in a
16 fiscal year for a class insurance rating shall equal the
17 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

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1 number 8 52,418 18,502
2 number 9 39,058 15,425
3 number 10 34,944 none.

4 B. A municipality may permit its fire department to
5 service an area adjacent and contiguous to its corporate limits
6 but within the corporate limits of another municipality or a
7 county; provided that the other municipality or county by
8 resolution or law duly adopted or enacted consents to the
9 service and to the boundaries of the other area serviced.
10 Before commencement of service, a plat showing the geographic
11 limits and boundaries of the additional area to be serviced
12 shall be filed with and approved by the state fire marshal. A
13 municipality may apply for fire protection fund eligibility for
14 any fire station located within the additional area to be
15 serviced.

16 C. Any municipality may apply for fire protection
17 fund eligibility for a fire station located at a municipally
18 owned airport, whether located outside or within its corporate
19 limits.

20 SECTION 29. [NEW MATERIAL] ESTABLISHMENT OF FIRE
21 DISTRICTS.--

22 A. The board of county commissioners of a county
23 may establish one or more fire districts. The state fire
24 marshal shall determine the number of fire stations and
25 substations to be certified and shall certify to the state

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1 treasurer the amount to be distributed to each fire district
2 for the purpose of maintaining each fire station and each
3 substation, if any, that meets the requirements of the state
4 fire marshal and the requirements of this section. Unless
5 adjusted pursuant to Section 30 of this 2015 act, the amounts
6 distributed in a fiscal year for a class insurance rating shall
7 equal the following:

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

19 B. Additionally, prior to the disbursement of any
20 funds, the following must be established to the satisfaction of
21 the state fire marshal:

22 (1) the fire district has maintained an
23 official fire department for a period of at least one year,
24 established and governed by appropriate resolution of the board
25 of county commissioners, and possesses fire apparatus and

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1 equipment in serviceable condition to respond to a fire
2 incident;

3 (2) the geographic limits and boundaries of
4 the fire district have been clearly defined and established in
5 a plat showing the geographic limits and boundaries accepted
6 and filed as part of the official record of proceedings of the
7 board of county commissioners and a certified copy thereof
8 filed with the state fire marshal; and

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

13 C. The board of county commissioners of a county
14 may allow a county fire district to service an area adjacent
15 and contiguous to the district but within another county or
16 municipality; provided that the other county or municipality by
17 resolution or law duly adopted or enacted consents to the
18 service and to the boundaries of the other area serviced.
19 Before commencement of service, a plat showing the geographic
20 limits and boundaries of the county fire district and of the
21 additional area to be serviced shall be filed with and approved
22 by the state fire marshal. A county may apply for fire
23 protection fund eligibility for any fire station located within
24 the additional area to be serviced.

25 SECTION 30. [NEW MATERIAL] MAXIMUM AMOUNTS TO BE

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1 CERTIFIED.--

2 A. For fiscal year 2016 and each fiscal year
3 thereafter, the state fire marshal shall certify a total amount
4 equal to the higher of the amount that would be certified
5 pursuant to Sections 28 and 29 of this 2015 act or an amount to
6 be determined by adding:

7 (1) the total increase in the fire protection
8 fund receipts in the previous fiscal year minus the
9 appropriations, from all sources, to the volunteer firefighters
10 retirement fund in the current fiscal year; and

11 (2) the total distribution pursuant to
12 Sections 28 and 29 of this 2015 act for the previous fiscal
13 year.

14 B. The state fire marshal shall adjust the
15 distributions for each class in proportion to the increase in
16 the total distribution.

17 SECTION 31. [NEW MATERIAL] FUND CREATED--DISTRIBUTIONS--
18 APPROPRIATIONS AND TRANSFERS FROM THE FIRE PROTECTION FUND.--

19 A. The "fire protection fund" is created in the
20 state treasury and includes distributions to the fund as
21 provided in Section 59A-6-5 NMSA 1978, other appropriations,
22 gifts, grants, donations and income from investment of the
23 fund. The fund shall be administered by the state fire marshal
24 and money in the fund is appropriated to the state fire marshal
25 to provide distributions to municipalities and county fire

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1 districts. Money in the fund for the operations of the state
2 fire marshal's office and the firefighter training academy is
3 subject to appropriation by the legislature.

4 B. For each fiscal year, the amount to be
5 distributed by the state fire marshal pursuant to Sections 28
6 through 30 of this 2015 act is appropriated from the fire
7 protection fund to the board to make the distributions.

8 C. For the purposes of Subsections D and E of this
9 section, the "remaining balance in the fire protection fund"
10 shall be calculated on June 30 of each year and shall equal the
11 balance of the fund on that date less the sum of:

12 (1) the total amount to be distributed during
13 the succeeding fiscal year pursuant to Sections 28 through 30
14 of this 2015 act; and

15 (2) the total amount of other appropriations
16 from the fire protection fund for the succeeding fiscal year.

17 D. On the following dates, the following
18 percentages of the remaining balance in the fire protection
19 fund shall be transferred from the fire protection fund to the
20 fire protection grant fund:

21 (1) on June 30, 2015, thirty-three and
22 five-tenths percent;

23 (2) on June 30, 2016, forty and two-tenths
24 percent;

25 (3) on June 30, 2017, forty-six and

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- 1 nine-tenths percent;
- 2 (4) on June 30, 2018, fifty-three and
- 3 six-tenths percent;
- 4 (5) on June 30, 2019, sixty and three-tenths
- 5 percent;
- 6 (6) on June 30, 2020, sixty-seven percent;
- 7 (7) on June 30, 2021, seventy-three and
- 8 seven-tenths percent;
- 9 (8) on June 30, 2022, eighty and four-tenths
- 10 percent;
- 11 (9) on June 30, 2023, eighty-seven and
- 12 one-tenth percent;
- 13 (10) on June 30, 2024, ninety-three and
- 14 eight-tenths percent; and
- 15 (11) on June 30, 2025, and on each subsequent
- 16 June 30, one hundred percent.

17 E. On June 30 of each year, the remaining balance
18 in the fire protection fund, less the amount to be transferred
19 on that date pursuant to Subsection D of this section to the
20 fire protection grant fund, shall be transferred to the general
21 fund; provided that no transfer shall be made to the general
22 fund after June 30, 2024.

23 SECTION 32. [NEW MATERIAL] FIRE STATION AND FIRE
24 PROTECTION SERVICES ACROSS JURISDICTIONAL LINES.--

25 A. Nothing in the Fire Protection Fund Act shall be

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1 construed to prohibit fire protection fund eligibility to a
2 municipal or county fire station or substation that otherwise
3 meets the requirements of the state fire marshal and the
4 requirements of the Fire Protection Fund Act but is not located
5 within the municipality or county.

6 B. Nothing in the Fire Protection Fund Act shall be
7 construed to prohibit mutual aid agreements between
8 municipalities or counties to provide fire protection services
9 across jurisdictional lines.

10 SECTION 33. [NEW MATERIAL] APPEAL AND REVIEW OF
11 DETERMINATION.--The state fire marshal shall promptly notify
12 each municipality and county fire district affected of the
13 state fire marshal's determination of needs, and a municipality
14 or county fire district may appeal from the determination of
15 the state fire marshal to the board within ten days after the
16 determination of needs. The board shall review the
17 determination of the state fire marshal in such informal and
18 summary proceedings as it deems proper and shall certify to the
19 state treasurer annually, on or before the last day of June,
20 the results of all appeals from the determinations of the state
21 fire marshal. The certification by the board, or by the state
22 fire marshal if no appeal is taken, shall be final and binding
23 on all concerned and not subject to any further review.

24 SECTION 34. [NEW MATERIAL] DISTRIBUTION OF FIRE
25 PROTECTION FUND.--

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1 A. Annually on or before the last day of July, the
2 state treasurer shall distribute from the money in the fire
3 protection fund, to each municipality and county fire district,
4 the amount that the state fire marshal or the board, as the
5 case may be, has certified to the state treasurer. Payment
6 shall be made to the treasurer of any municipality and to the
7 county treasurer of the county in which any county fire
8 district is located for credit to the county fire district.

9 B. The state treasurer is authorized to redirect a
10 distribution to the New Mexico finance authority in the amount
11 that the state fire marshal or the board, as the case may be,
12 has certified to the state treasurer pursuant to an ordinance
13 or a resolution passed by the municipality or county and a
14 written agreement of the municipality or county in which any
15 county fire district is located and the New Mexico finance
16 authority.

17 C. In addition to the distributions made pursuant
18 to Subsections A and B of this section, upon certification by
19 the state fire marshal that the balance of the firefighters'
20 survivors fund is less than fifty thousand dollars (\$50,000),
21 the state treasurer shall distribute an amount from the fire
22 protection fund to the firefighters' survivors fund so that the
23 balance of the firefighters' survivors fund equals fifty
24 thousand dollars (\$50,000).

25 **SECTION 35. [NEW MATERIAL] EXPENDITURE OF FIRE PROTECTION**

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1 FUND MONEY.--Any amount distributed from the fire protection
2 fund to a municipality or to a county fire district shall be
3 expended only for the maintenance of its fire department; the
4 purchase, construction, maintenance, repair and operation of
5 its fire stations, including substations; fire apparatus and
6 equipment and the financing or refinancing thereof; the payment
7 of insurance premiums on fire stations, substations, fire
8 apparatus and equipment and insurance premiums for injuries or
9 deaths of firefighters as otherwise provided by law; and fire
10 department emergency medical services, except salaries.

11 Provided, however, that no money shall be expended from the
12 fund for any purpose relating to the water supply systems of a
13 municipality or county fire district or for the improvement or
14 construction of the systems or for purchase, rental,
15 installation or maintenance of fire hydrants or for any other
16 appurtenances relating to the distribution or use of the water
17 supply system. Funds distributed from the fire protection fund
18 to a municipality or a county fire district may also be
19 expended for the expense of firefighters for attending fire
20 schools and conventions approved by the state fire marshal.

21 SECTION 36. [NEW MATERIAL] LIMITATIONS ON EXPENDITURES.--

22 No amount of money distributed from the fire protection fund to
23 a municipality or to any county fire district shall be expended
24 in connection with the construction, purchase or equipment of
25 any fire station or substation in addition to those existing

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1 upon the date of distribution by the state treasurer, during
2 the year following such distribution, without the prior written
3 approval of the state fire marshal.

4 SECTION 37. [NEW MATERIAL] PURCHASE OF LAND OR

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

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1 after full investigation and determination that the use would
2 be appropriate and reasonable.

3 SECTION 38. [NEW MATERIAL] VOUCHERS.--

4 A. Amounts distributed from the fire protection
5 fund to a municipality or a county fire district shall be
6 expended under the direction of the chief of the fire
7 department of the municipality or county fire district, upon
8 duly executed vouchers approved as required by law.

9 B. In no event is any amount to be expended for any
10 purpose that does not relate directly to the allowed purposes
11 specifically stated in the Fire Protection Fund Act.

12 SECTION 39. [NEW MATERIAL] PROMULGATION OF RULES.--The
13 state fire marshal has authority to promulgate, modify, amend
14 and revoke from time to time rules, including those for mutual
15 aid among and between fire departments; provided that the rules
16 are approved by the board and provided further that the rules
17 shall not allow a fire department to extend its service in any
18 manner that would jeopardize the fire insurance rates within
19 its municipality or county fire district, as the state fire
20 marshal may determine, in the state fire marshal's discretion,
21 to be necessary, advisable or proper to accomplish the
22 objectives of the Fire Protection Fund Act. Among other
23 things, these rules shall include a list of firefighting
24 equipment, apparatus and other items that may properly be
25 purchased by a municipality or by a county fire district from

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1 funds distributed from the fire protection fund, and standards
2 of quality, construction and performance to be met by major
3 firefighting appliances, training requirements, firefighting
4 protective clothing and equipment standards, and by fire
5 stations and substations, proposed to be purchased or
6 constructed by a municipality or county fire district from
7 money distributed from the fire protection fund. All rules
8 shall be filed and published as required by law. Rules of this
9 nature promulgated by the superintendent of insurance or the
10 state fire marshal under the authority of the public regulation
11 commission and now in effect shall continue in effect until
12 revoked or modified. Nothing in this section shall be
13 construed to grant regulatory authority over the Volunteer
14 Firefighters Retirement Act to the state fire marshal.

15 SECTION 40. [NEW MATERIAL] LIABILITY FOR UNAUTHORIZED
16 EXPENDITURE.--Any person who expends, directs or permits the
17 expenditure of any money distributed from the fire protection
18 fund for purposes not expressly authorized by the Fire
19 Protection Fund Act or by rules duly promulgated by the state
20 fire marshal pursuant to that law shall be personally liable to
21 the state for the full amount of the money wrongfully expended,
22 together with interest on the money and costs. An action to
23 recover the amount of a wrongful expenditure may be commenced
24 by the attorney general or the district attorney in the county
25 in which the wrongful expenditure was made, upon the filing

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1 with the officer of a verified statement describing the
2 wrongful expenditure.

3 SECTION 41. [NEW MATERIAL] FIRE PROTECTION GRANT
4 COUNCIL--DUTIES.--

5 A. The "fire protection grant council" is created.
6 Subject to the requirements of Subsection C of this section,
7 the council consists of:

8 (1) a representative of the New Mexico
9 municipal league;

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

12 (3) five members, one from each congressional
13 district and two at large, appointed by the governor, who serve
14 at the pleasure of the governor; and

15 (4) the state fire marshal, who serves as a
16 nonvoting advisory member.

17 B. The council shall elect a chair and vice chair
18 from its membership.

19 C. No appointee to the council shall be a member or
20 employee of the state fire marshal's office or the board.

21 D. The public members are entitled to receive per
22 diem and mileage as provided in the Per Diem and Mileage Act
23 for state employees and shall receive no other compensation,
24 perquisite or allowance.

25 E. The council shall develop criteria for assessing

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1 the critical needs of municipal fire departments and county
2 fire districts for:

- 3 (1) fire apparatus and equipment;
- 4 (2) communications equipment;
- 5 (3) equipment for wildfires;
- 6 (4) fire station construction or expansion;
- 7 (5) equipment for hazardous material response;

8 and

9 (6) stipends for volunteer firefighters in
10 underserved areas.

11 F. Applications for grant assistance from the fire
12 protection grant fund shall be made by fire districts to the
13 council in accordance with the requirements of the council.
14 Using criteria developed by the council, the council shall
15 evaluate applications and prioritize those applications most in
16 need of grant assistance from the fund. To the extent that
17 money in the fund is available, the council shall award grant
18 assistance for those prioritized applications.

19 G. In awarding grant assistance, the council may
20 require conditions and procedures necessary to ensure that the
21 money is expended in the most prudent manner.

22 H. When considering applications for grant
23 assistance to pay stipends to volunteer firefighters in
24 underserved areas, the council shall:

- 25 (1) define "underserved area";

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1 (2) ensure the proposed stipends will comply
2 with the federal Fair Labor Standards Act of 1938 and United
3 States department of labor requirements for maintaining
4 volunteer status;

5 (3) require a basic level of training before a
6 volunteer may receive a stipend;

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

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

12 SECTION 42. TEMPORARY PROVISION--TRANSFERS OF FUNCTIONS,
13 RULES, APPROPRIATIONS, MONEY, PERSONNEL, RECORDS, FILES,
14 EQUIPMENT, SUPPLIES AND OTHER PROPERTY--CONTRACTUAL
15 OBLIGATIONS--STATUTORY REFERENCES--ACTIVE APPEALS.--

16 A. On July 1, 2015, all functions, rules,
17 appropriations, money, personnel, records, files, equipment,
18 supplies and other property of the fire marshal division of the
19 public regulation commission are transferred to the state fire
20 marshal's office. Rules shall remain in effect for the office,
21 the fire protection fund and the fire protection grant fund
22 until amended or repealed.

23 B. On July 1, 2015, all contractual obligations of
24 the fire marshal division of the public regulation commission
25 shall be binding on the state fire marshal's office.

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1 C. On July 1, 2015, all references in the law to
2 the fire marshal division of the public regulation commission
3 or the fire marshal shall be references to the state fire
4 marshal's office or the state fire marshal. All references in
5 law to the state fire board or the public regulation commission
6 in its position as the state fire board shall be deemed to be
7 references to the state fire board.

8 D. Appeals to the public regulation commission in
9 its position as the state fire board as of July 1, 2015 that
10 have not been heard by the public regulation commission may be
11 completed by the public regulation commission unless the state
12 fire board has already been appointed and is ready to begin
13 serving by July 30, 2015. Until all appeals active between
14 July 1 and July 30, 2015 are completed, any time limits in the
15 State Fire Marshal Act or the Fire Protection Fund Act may be
16 suspended on the order of the state fire board.

17 **SECTION 43. REPEAL.--**

18 A. Sections 59A-52-1 through 59A-52-26 NMSA 1978
19 (being Laws 1984, Chapter 127, Sections 947 through 971 and
20 Laws 2013, Chapter 80, Section 1, as amended) are repealed.

21 B. Sections 59A-53-1 through 59A-53-19 NMSA 1978
22 (being Laws 1984, Chapter 127, Sections 972 and 973, Laws 2012,
23 Chapter 20, Section 2, Laws 1984, Chapter 127, Sections 974 and
24 975, Laws 1989, Chapter 312, Section 5, Laws 1998, Chapter 76,
25 Section 3, Laws 2007, Chapter 152, Section 1, Laws 2012,

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1 Chapter 20, Section 6, Laws 1984, Chapter 127, Sections 977
2 through 985, 987 and 988 and Laws 2006, Chapter 103, Sections 7
3 and 8, as amended) are repealed.

4 SECTION 44. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2015.