

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 municipalities and to county fire districts, in proportion to their respective needs, for use in operation, maintenance and betterment of local fire departments, to the end that the hazard of loss by fire and fire insurance rates may be reduced and the public safety thereby promoted."

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

"DEFINITIONS.--As used in the Fire Protection Fund Law:

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

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

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

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

A. Annually, on or before the last day of May, the marshal shall consider and determine, in the marshal's reasonable discretion, the relative needs of municipalities and county fire districts for money in the fire protection fund, based upon the information available to the marshal, and shall certify to the state treasurer the names of the municipalities and county fire districts that the marshal determines need the assistance of a distribution from the money in the fire protection fund, and the amount required by each, in accordance with the provisions of Chapter 59A, Article 53 NMSA 1978. In making this determination and certification, the marshal shall consider the intent and purpose of that article that no municipality or county fire district shall receive money distributed from the fire protection fund merely for the purpose of accumulation when the money is not required to accomplish the purposes of that article.

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

SECTION 4. Section 59A-53-4 NMSA 1978 (being Laws 1984, HB 11
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Chapter 127, Section 975, as amended) is amended to read:

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

A. In making the determination of needs pursuant to Section 59A-53-3 NMSA 1978, the marshal shall first determine that each municipality to be certified has maintained an official fire department created by and regulated in accordance with a duly enacted ordinance for a period of at least one year prior to the date of certification and possesses fire equipment and apparatus in serviceable condition to respond to a fire incident. The marshal shall also determine the number of fire stations and substations to be certified and shall certify to the state treasurer the amount to be distributed to each municipality for the purpose of maintaining each fire station and each substation, if any, that meets the requirements of the marshal and the requirements of this section. Unless adjusted pursuant to Section 59A-53-5.1 NMSA 1978, the amounts distributed in a fiscal year for a class insurance rating shall equal the 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.

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

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

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

"59A-53-5. ESTABLISHMENT OF FIRE DISTRICTS.--

A. The county commissioners of any county may establish one or more fire districts. The marshal shall determine the number of fire stations and substations to be certified and shall certify to the state treasurer the amount to be distributed to each fire district for the purpose of maintaining each fire station and each substation, if any, that meets the requirements of the marshal and the requirements of this section. Unless adjusted pursuant to Section 59A-53-5.1 NMSA 1978, the amounts distributed in a fiscal year for a class insurance rating shall equal the 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.

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

(1) the fire district has maintained an official fire department for a period of at least one year, established and governed by appropriate resolution of the board of county commissioners and possesses fire apparatus and equipment in serviceable condition to respond to a fire incident;

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

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

C. The county commissioners of any county may permit a county fire district to service an area adjacent and contiguous to the district but within another county or municipality; provided that the county commissioners of the other county or the municipality consent by resolution or law duly adopted or enacted to the service and to the boundaries of the other area serviced. Before commencement of service, a plat showing the geographic limits and boundaries of the county fire district and of the additional area to be

serviced shall be filed with and approved by the marshal. Any county may apply for fire protection fund eligibility for any fire station located within the additional area to be serviced."

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

"FIRE STATION AND FIRE PROTECTION SERVICES ACROSS JURISDICTIONAL LINES.--

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

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

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

"59A-53-6. APPEAL AND REVIEW OF DETERMINATION.--The marshal shall promptly notify each municipality and county fire district affected of the marshal's determination of needs, and a municipality or county fire district may appeal from the determination of the marshal to the commission,

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

SECTION 8. Section 59A-53-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 978, as amended) is amended to read:

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

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

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in the amount the marshal or the commission, as the case may be, has certified to the state treasurer pursuant to an ordinance or a resolution passed by the municipality or county and a

written agreement of the municipality or county in which any county fire district is located and the New Mexico finance authority.

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

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

"59A-53-8. EXPENDITURE OF FIRE PROTECTION FUND MONEY.-- Any amount distributed from the fire protection fund to a municipality or to a county fire district shall be expended only for the maintenance of its fire department; the purchase, construction, maintenance, repair and operation of its fire stations, including substations; fire apparatus and equipment and the financing or refinancing thereof; the payment of insurance premiums on fire stations, substations, fire apparatus and equipment and insurance premiums for injuries or deaths of firefighters as otherwise provided by law; and fire department emergency medical services, except salaries. Provided, however, that no money shall be expended

from the fund for any purpose relating to the water supply systems of a municipality or county fire district or for the improvement or construction of the systems or for purchase, rental, installation or maintenance of fire hydrants or for any other appurtenances relating to the distribution or use of the water supply system. Funds distributed from the fire protection fund to an incorporated municipality or a county fire district may also be expended for the expense of firefighters for attending fire schools and conventions approved by the marshal."

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

"59A-53-9. LIMITATIONS ON EXPENDITURES.--No amount so distributed from the fire protection fund to a municipality or to any county fire district shall be expended in connection with the construction, purchase or equipment of any fire station or substation in addition to those existing upon the date of distribution by the state treasurer, during the year following such distribution, without the prior written approval of the marshal."

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

"59A-53-10. PURCHASE OF LAND OR BUILDINGS.--No amount

so distributed from the fire protection fund to a municipality or to any county fire district shall be expended or obligated for the purchase of land or the construction of buildings for fire stations or substations unless all obligations previously incurred for those purposes and to be paid from money distributed from the fire protection fund by the municipality or county fire district have been fully paid and satisfied; and no amount shall be expended or obligated for the construction of buildings for fire stations or substations unless the municipality or county fire district proposing to expend or obligate for that purpose money distributed from the fire protection fund holds fee simple title, not encumbered by any lien, to the land on which it proposes to construct any such building; provided, however, that this provision shall not prohibit construction or location of a fire station or substation on land donated in whole or in part to the municipality or county fire district for the purpose, and use of fire protection fund money for the construction or location, where the donor has reserved right of reversion of the land under stated conditions, if the use of money is approved by the marshal in advance and after full investigation and determination that the use would be appropriate and reasonable."

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

read:

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

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

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

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

"59A-53-12. PROMULGATION OF RULES.--The marshal has authority to promulgate, modify, amend and revoke from time to time rules, including those for mutual aid among and between fire departments; provided that no such rules shall allow any fire department to extend its service in any manner that would jeopardize the fire insurance rates within its municipality or county fire district, as the marshal may determine, in the marshal's discretion, to be necessary, advisable or proper to accomplish the objectives of the Fire Protection Fund Law. Among other things, these rules shall

include, but not be limited to, a list of firefighting equipment, apparatus and other items that may properly be purchased by a municipality or by any county fire district from funds distributed from the fire protection fund, and standards of quality, construction and performance to be met by major firefighting appliances, training requirements, firefighting protective clothing and equipment standards, and by fire stations and substations, proposed to be purchased or constructed by a municipality or district from money distributed from the fire protection fund. All rules shall be filed and published as required by law. Rules of this nature heretofore promulgated by the superintendent and now in effect shall continue in effect until hereafter revoked or modified. Nothing in this section shall be construed to grant regulatory authority over the Volunteer Firefighters Retirement Act to the marshal."

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

"59A-53-13. LIABILITY FOR UNAUTHORIZED EXPENDITURE.-- Any person who shall expend, or direct or permit the expenditure of, any money distributed from the fire protection fund for purposes not expressly authorized by Chapter 59A, Article 53 NMSA 1978 or by rules duly promulgated by the marshal pursuant to that article shall be

personally liable to the state of New Mexico for the full amount of the money wrongfully expended, together with interest thereon and costs. An action to recover the amount of any wrongful expenditure may be commenced by the attorney general or the district attorney in the county in which the wrongful expenditure was made, upon the filing with the officer of a verified statement describing the wrongful expenditure."

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

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

A. If any fire department operated by a municipality or county fire district should go out of existence or for any reason cease to operate and function for a period of ninety days, title to all firefighting equipment and apparatus paid for in whole with distributions from the fire protection fund and held by or for the benefit of the fire department shall vest in the marshal and all money distributed from the fire protection fund and held by or for the fire department shall revert to the fire protection fund. Any person having custody or control of any such firefighting equipment and apparatus shall forthwith deliver it as directed by the marshal, and any person having custody or control of the money shall forthwith remit it to the state

treasurer, who shall again deposit the money in the state treasury to the credit of the fire protection fund. An action to recover the possession and control of such firefighting equipment and apparatus, or the money, may be commenced by the attorney general or the district attorney in the county in which the equipment and apparatus or money are situate upon the filing with the officer of a verified statement of the circumstances.

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

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

"59A-53-16. NEW FIRE DEPARTMENTS.--Whenever the marshal, after the last day of May in any year, determines that a municipality or county fire district, operating a new fire department, has met the requirements of Chapter 59A, Article 53 NMSA 1978 for the first time, the marshal may

certify to the state treasurer the name of the municipality or county fire district and the amount required, on the same basis as provided in that article, but not to exceed an amount commensurate with the period of time for which such pro rata distribution is made; and distribution of the amount certified shall be made as otherwise provided in that article."

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

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

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

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

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

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

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

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

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

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

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

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

D. The council shall develop criteria for

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

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

response; and

- (6) stipends for volunteer firefighters in underserved areas.

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

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

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

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