

## **ARTICLE 53 FIRE PROTECTION FUND**

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### **59A-53-1. Short title.**

Chapter 59A, Article 53 NMSA 1978 may be cited as the "Fire Protection Fund Law".

**History:** Laws 1984, ch. 127, § 972; 1989, ch. 312, § 1.

**59A-53-2. Purpose.**

It is the purpose of the Fire Protection Fund Law [Chapter 59A, Article 53 NMSA 1978] 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, 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.

**History:** Laws 1984, ch. 127, § 973; 1989, ch. 312, § 2.

**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 his reasonable discretion, the relative needs of incorporated cities, towns and villages and county fire districts for money in the fire protection fund, based upon the information available to him, and shall certify to the state treasurer the names of the incorporated cities, towns, villages and county fire districts that he 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 will consider the intent and purpose of that article that no incorporated city, town or village 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.
- C. For the purposes of Chapter 59A, Article 53 NMSA 1978, "marshal" means the state fire marshal, as further identified in Chapter 59A, Article 52 NMSA 1978.

**History:** Laws 1984, ch. 127, § 974; 1989, ch. 312, § 3; 1995, ch. 141, § 24.

**59A-53-4. Criteria for determination of needs.**

In making the determination of needs pursuant to Section 59A-53-3 NMSA 1978, the marshal shall first determine that each incorporated 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 located in each municipality to be certified and shall certify to the state treasurer for 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, and in accordance with the class insurance rating it maintains, amounts for fiscal year 1999 not to exceed the following:

class	main station	substation
number 1	\$58,245	\$21,584
number 2	53,957	20,145

number 3	49,641	18,705
number 4	45,323	17,266
number 5	43,164	15,827
number 6	41,007	14,388
number 7	38,848	13,670
number 8	36,691	12,950
number 9	27,339	10,797
number 10	24,460	none.

**History:** Laws 1984, ch. 127, § 975; 1989, ch. 312, § 4; 1996, ch. 40, § 1; 1998, ch. 76, § 1.

**59A-53-5. Establishment of county fire districts.**

A. The county commissioners of any county may establish one or more county fire districts within the county but outside the corporate limits of any municipality. The marshal shall determine the number of fire stations and substations located in each county fire district to be certified and shall certify to the state treasurer for each county 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, and in accordance with the class insurance rating it maintains, for fiscal year 1999, amounts not to exceed the following:

class	main station	substation
number 1	\$58,245	\$21,584
number 2	53,957	20,145
number 3	49,641	18,705
number 4	45,323	17,266
number 5	43,164	15,827
number 6	41,007	14,388
number 7	38,848	13,670
number 8	36,691	12,950
number 9	27,339	10,797
number 10	24,460	none.

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

(1) the county 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 of the county in which the county fire district is located, and possesses fire apparatus and equipment in serviceable condition to respond to a fire incident;

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

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

C. The county commissioners of any county may permit a county fire district located in the county to service an area adjacent and contiguous to the district but within another county; provided that the county commissioners of the other county shall consent by resolution duly adopted 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. The county commissioners of either the county in which the county fire district is located or of the county in which the area being serviced is located may terminate the service but only with the approval of the marshal.

**History:** 1978 Comp., § 59A-53-5, enacted by Laws 1989, ch. 312, § 5; 1996, ch. 40, § 2; 1998, ch. 76, § 2.

#### **59A-53-5.1. Maximum amounts to be certified.**

A. For fiscal year 2000 and each fiscal year thereafter, the marshal shall certify a total amount pursuant to Sections 59A-53-4 and 59A-53-5 NMSA 1978 not to exceed the greater of the total distribution pursuant to those sections for the previous fiscal year or an amount to be determined by adding:

(1) one-half of the total increase in the fire protection fund receipts in the previous fiscal year minus one-half of the appropriations, from all sources, to the volunteer firefighters retirement fund in the current fiscal year; and

(2) the total distribution pursuant to Sections 59A-53-4 and 59A-53-5 NMSA 1978 for the previous fiscal year.

B. The marshal shall adjust the distributions for each class in proportion to the increase in the total distribution.

**History:** 1978 Comp., § 59A-53-5.1, enacted by Laws 1998, ch. 76, § 3.

#### **59A-53-6. Appeal and review of determination.**

The marshal shall promptly notify each incorporated city, town, village and county fire district affected of his determination of needs, and an incorporated city, town, village 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.

**History:** Laws 1984, ch. 127, § 977; 1989, ch. 312, § 6; 1998, ch. 108, § 43.

### **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 incorporated municipality and to each county fire district, the amount the marshal or the commission, as the case may be, has certified to him. Payment shall be made to the treasurer of any incorporated 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 him 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.

**History:** Laws 1984, ch. 127, § 978; 1989, ch. 312, § 7; 1994, ch. 54, § 3; 1996, ch. 28, § 5; 1998, ch. 108, § 44.

### **59A-53-8. Expenditure of fire protection fund money.**

Any amount so distributed from the fire protection fund to any incorporated municipality or to any 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. Provided, however, that no money shall be expended from the fund for any purpose relating to the water supply systems of any incorporated municipality or district nor for the improvement or construction of the systems nor for purchase, rental, installation or maintenance of fire hydrants nor for any other appurtenances relating to the distribution or use of the water supply system. Funds so distributed from the fire protection fund to any incorporated municipality or any county fire district may also be expended for the expense of any firefighters for attending any fire schools and conventions approved by the marshal.

**History:** Laws 1984, ch. 127, § 979; 1989, ch. 312, § 8; 1994, ch. 53, § 3.

### **59A-53-9. Limitations on expenditures.**

No amount so distributed from the fire protection fund to any incorporated city, town or village, 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.

**History:** Laws 1984, ch. 127, § 980; 1989, ch. 312, § 9.

### **59A-53-10. Purchase of land or buildings.**

No amount so distributed from the fire protection fund to any incorporated city, town or village, 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 city, town, village or district shall 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 city, town, village 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 city, town, village 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.

**History:** Laws 1984, ch. 127, § 981; 1989, ch. 312, § 10.

### **59A-53-11. Vouchers.**

Amounts so distributed from the fire protection fund to any incorporated city, town or village or to any county fire district shall be expended under the direction of the chief of the fire department of the city, town, village or district, upon duly executed vouchers approved as required by law; and in no event is any amount to be expended for any purpose which does not relate directly to the permitted purposes specifically stated in Sections 59A-53-8 and 59A-53-9 NMSA 1978.

**History:** Laws 1984, ch. 127, § 982; 1989, ch. 312, § 11.

### **59A-53-12. Promulgation of rules and regulations.**

The marshal has authority to promulgate, modify, amend and revoke from time to time rules and regulations, including those for mutual aid among and between fire departments; provided, that no such rules and regulations shall allow any fire department to extend its service in any manner that would jeopardize the fire insurance rates within its city, town, village and county fire district, as he may determine, in his discretion, to be necessary, advisable or proper to accomplish the objectives of the Fire Protection Fund Law [this article]. Among other things, these rules and regulations shall include, but not be limited to, a list of fire-fighting equipment, apparatus and other items which may properly be purchased by any incorporated city, town or village 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 fire-fighting appliances, training requirements, fire fighting protective clothing and equipment standards, and by fire stations and substations, proposed to be purchased or constructed by any city, town, village or district from money distributed from the fire protection fund. All rules and regulations shall be

filed and published as required by law. Regulations 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 [10-11A-1 to 10-11A-7 NMSA 1978] to the marshal.

**History:** Laws 1984, ch. 127, § 983; 1989, ch. 312, § 12.

#### **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 and regulations 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.

**History:** Laws 1984, ch. 127, § 984; 1989, ch. 312, § 13.

#### **59A-53-14. Closure of fire department.**

A. If any fire department operated by any incorporated city, town or village or by any 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 fire-fighting equipment and apparatus held by or for the benefit of the fire department shall vest in the marshal and all funds 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 fire-fighting equipment and apparatus shall forthwith deliver same as directed by the marshal, and any person having custody or control of the funds shall forthwith remit the same to the state treasurer, who shall again deposit the funds in the state treasury to the credit of the fire protection fund. An action to recover the possession and control of such fire-fighting equipment and apparatus, or the amount of the funds, may be commenced by the attorney general or the district attorney in the county in which the equipment and apparatus or funds 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, funds 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 are authorized and shall continue to make distributions from the fire protection fund for and on behalf of the fire department or fire district until such bonds or other obligations are paid in full.

**History:** Laws 1984, ch. 127, § 985; 1989, ch. 312, § 14; 1995, ch. 141, § 25.

### **59A-53-15. Appropriation from state treasury.**

All money which from time to time is deposited in the state treasury and credited to the fire protection fund is appropriated to the corporation commission [public regulation commission] for the use of the marshal for the purposes set out in Chapter 59A, Article 53 NMSA 1978, and shall be distributed by the state treasurer, and expended as provided in that article. Hereafter all sums in excess of one hundred thousand dollars (\$100,000) for pro rata distribution plus seventy-five percent of the approved state fire marshal budget for the succeeding fiscal year plus the amount certified to be distributed as provided in that article shall be credited to the general fund on or before June 30 of each fiscal year.

**History:** Laws 1984, ch. 127, § 986; 1989, ch. 312, § 15.

### **59A-53-16. New fire departments.**

Whenever the marshal, after the last day of May in any year, determines that any incorporated city, town or village or county fire district, operating a new fire department, has met the requirements of Chapter 59A, Article 53 NMSA 1978 for the first time, he may certify to the state treasurer the name of the city, town, village 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.

**History:** Laws 1984, ch. 127, § 987; 1989, ch. 312, § 16.

### **59A-53-17. Mutual assistance.**

Notwithstanding the provisions of Sections 976 and 983 [59A-53-5 and 59A-53-12 NMSA 1978] of this article, or any other provision of law to the contrary, independent fire districts may render assistance to other independent fire districts, and equipment of independent fire districts may be used outside the district, if such use is authorized by the county fire marshal, and the county fire marshal before he authorizes such use, provides for standby equipment or move-up equipment, so that the assisting district which goes to the aid of another district has equipment available from an adjacent district for use in the assisting district in the event of a fire in the assisting district.

**History:** Laws 1984, ch. 127, § 988.