

ARTICLE 53

Fire Protection Fund

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59A-53-1. Short title. (1989)

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

History

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

59A-53-2. Purpose. (2012)

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.

History

History: Laws 1984, ch. 127, § 973; 1989, ch. 312, § 2; 2012, ch. 20, § 1.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined term "municipality" and after "Section 59A-6-5 NMSA 1978 to", deleted "incorporated cities, towns and villages" and added "municipalities".

ANNOTATION

Legislature intended to specifically delineate areas within which the distributed moneys of the fire protection fund could be used. 1964 Op. Att'y Gen. No. 64-30.

59A-53-2.1. Definitions. (2012)

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.

History

History: Laws 2012, ch. 20, § 2.

Annotations

Effective dates. — Laws 2012, ch. 20 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

59A-53-3. Determination and certification of needs. (2012)

- 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.

History

History: Laws 1984, ch. 127, § 974; 1989, ch. 312, § 3; 1995, ch. 141, § 24; 2012, ch. 20, § 3.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined terms "municipality" and "marshal"; substituted "municipality" for "incorporated cities, towns and villages", and "marshal" for the personal pronouns "he", "his", and "him" throughout the section; and deleted former Subsection C, which defined the term "marshal" as the state fire marshal.

The 1995 amendment, effective April 5, 1995, added Subsection B, redesignated former Subsection B as Subsection C, and made a minor stylistic change in Subsection A.

59A-53-4. Criteria for determination of needs; municipal fire department. (2012)

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.

History

History: Laws 1984, ch. 127, § 975; 1989, ch. 312, § 4; 1996, ch. 40, § 1; 1998, ch. 76, § 1; 2006, ch. 103, § 1; 2012, ch. 20, § 4.

Annotations

The 1996 amendment, effective April 30, 1996, substituted "determination of needs pursuant to Section 59A-53-3 NMSA" for "foregoing determination of needs" in the first sentence and substituted new amounts for the main station and substation allocations in the table.

The 1998 amendment rewrote this section. Laws 1998, ch. 76 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature.

The 2006 amendment, effective May 17, 2006, added "unless adjusted pursuant to 59A-53-5.1 NMSA 1978" and increased the amount to be distributed to each main station and substation.

The 2012 amendment, effective May 16, 2012, provided for municipal fire protection service across jurisdictional lines; in the title, added "municipal fire department"; in Subsection A, in the first sentence, after "shall first determine that each", deleted "incorporated", and in the second sentence, after "stations and substations", deleted "located in each municipality"; and added Subsections B and C.

59A-53-5. Establishment of fire districts. (2012)

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.

History

History: 1978 Comp., § 59A-53-5, enacted by Laws 1989, ch. 312, § 5; 1996, ch. 40, § 2; 1998, ch. 76, § 2; 2006, ch. 103, § 2; 2012, ch. 20, § 5.

Annotations

Repeals and reenactments. — Laws 1989, ch. 312, repeals 59A-53-5 NMSA 1978, as enacted by Laws 1984, ch. 127, § 976, relating to determination of needs and allocations, and establishment of independent fire districts, and enacts the above section, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

The 1996 amendment, effective April 30, 1996, in Subsection A, inserted "fire district" following "county" in two locations and substituted new amounts for main station and substation fire districts in the table; and, in Subsection B, inserted "fire" preceding "district" in the second and third sentences.

The 1998 amendment rewrote Subsection A; redesignated former Paragraphs A(1) to A(3) as Paragraphs B(1) to B(3), and redesignated the remaining subsections accordingly; and added the introductory language in Subsection B. Laws 1998, ch. 76 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature.

The 2006 amendment, effective May 17, 2006, provided the amounts to be distributed in each fiscal year for a class insurance rating unless adjusted pursuant to 59A-53-5.1 NMSA 1978 and increased the amount to be distributed for each main station and substation.

The 2012 amendment, effective May 16, 2012, provided for county fire protection service across jurisdictional lines; in the title, after "establishment of" deleted "county"; in Subsection A, in the first sentence, after "establish one or more", deleted "county" and after "fire districts", deleted "within the county but outside the corporate limits of any municipality"; in the second sentence, after "stations and substations", deleted "located in each county fire district"; and after "distributed to each", deleted "county"; in Subsection B, in Paragraph (1), at the beginning of the sentence, deleted "county"; and after "board of county commissioners", deleted "of the county in which the county fire district is located"; in Paragraph (2), at the beginning of the sentence, after "the geographic limits and boundaries of the", deleted "county"; after "defined and established", deleted "by the board of county commissioners of the county in which the county fire district is located and" and added "in"; after "geographic limits and boundaries", deleted "has been"; after "boundaries accepted", deleted "by the board of county commissioners"; and after "proceedings of the board", added "of county commissioners"; and in Paragraph (3), after "boundaries of the",

deleted "county", and after "facilities of the", deleted "county"; and in Subsection C, in the first sentence, after "county fire district", deleted "located in the county"; after "within another county", added "or municipality"; after "other county", deleted "shall" and added "or the municipality"; after "consent by resolution", added "or law"; and after "duly adopted", added "or enacted"; deleted the former third sentence, which provided that the county commissioners of either county could terminate service with the approval of the marshal; and added the current third sentence.

59A-53-5.1. Maximum amounts to be certified. (2006)

A. For fiscal year 2007 and each fiscal year thereafter, the marshal shall certify a total amount equal to the higher of the amount that would be certified pursuant to Sections 59A-53-4 and 59A-53-5 NMSA 1978 or an amount to be determined by adding:

(1) the total increase in the fire protection fund receipts in the previous fiscal year minus 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

History: 1978 Comp., § 59A-53-5.1, enacted by Laws 1998, ch. 76, § 3; 2006, ch. 103, § 3.

Annotations

Compiler's notes. — The House Appropriations and Finance Committee amendments to House Bill 279 (Laws 1998, ch. 76) inserted a new Section 59A-53-5.1 NMSA 1978 into the bill, with the caption, "Section 3. A new Section 59A-53-5.1 NMSA 1978 is enacted to read:". The enrolled and engrossed version of ch. 76 omitted this caption, making it appear that this section was enacted as part of Section 2 of the Act, which amended Section 59A-53-5 NMSA 1978. Section 59A-53-5.1 NMSA 1978 has been compiled as a separate section rather than as part of the amendments to Section 59A-53-5.

The 2006 amendment, effective May 17, 2006, in Subsection A, changed the fiscal year from 2000 to 2007; deleted the provision that the amount shall not exceed the greater of the total distribution pursuant to 59A-53-4 and 59A-53-5 NMSA 1978 for the previous fiscal year and deleted "one-half of" at the beginning of the sentence.

59A-53-5.2. Appropriations and transfers from the fire protection fund. (2011)

A. For each fiscal year, the amount to be distributed by the marshal pursuant to Sections 59A-53-4, 59A-53-5 and 59A-53-5.1 NMSA 1978 is appropriated from the fire protection fund to the commission for the purpose of making the distributions.

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

(1) the total amount to be distributed during the succeeding fiscal year pursuant to Sections 59A-53-4, 59A-53-5 and 59A-53-5.1 NMSA 1978; and

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

C. On the following dates, the following percentages of the remaining balance in the fire protection fund shall be transferred from the fire protection fund to the fire protection grant fund:

(1) on June 30, 2007, six and seven-tenths percent;

(2) on June 30, 2008, thirteen and four-tenths percent;

(3) on June 30, 2009, thirteen and four-tenths percent;

(4) on June 30, 2010, thirteen and four-tenths percent;

(5) on June 30, 2011, thirteen and four-tenths percent;

(6) on June 30, 2012, thirteen and four-tenths percent;

(7) on June 30, 2013, twenty and one-tenth percent;

(8) on June 30, 2014, twenty-six and eight-tenths percent;

(9) on June 30, 2015, thirty-three and five-tenths percent;

(10) on June 30, 2016, forty and two-tenths percent;

(11) on June 30, 2017, forty-six and nine-tenths percent;

(12) on June 30, 2018, fifty-three and six-tenths percent;

(13) on June 30, 2019, sixty and three-tenths percent;

(14) on June 30, 2020, sixty-seven percent;

(15) on June 30, 2021, seventy-three and seven-tenths percent;

(16) on June 30, 2022, eighty and four-tenths percent;

- (17) on June 30, 2023, eighty-seven and one-tenth percent;
- (18) on June 30, 2024, ninety-three and eight-tenths percent; and
- (19) on June 30, 2025, and on each subsequent June 30, one hundred percent.

D. On June 30 of each year, the remaining balance in the fire protection fund, less the amount to be transferred on that date pursuant to Subsection C of this section, shall be transferred to the general fund; provided that no transfer shall be made pursuant to this subsection after June 30, 2024.

History

History: Laws 2007, ch. 152, § 1; 2009, ch. 3, § 6; 2010, ch. 52, § 1; 2011, ch. 164, § 1.

Annotations

The 2009 amendment, effective February 6, 2009, added Paragraphs (3) and (4) of Subsection C; advanced the transfer dates in Paragraphs (5) through (17) by two years each; and advanced the date in Subsection D from June 30, 2020 to June 30, 2022.

The 2010 amendment, effective May 19, 2010, added Paragraph (5) of Subsection C; in Subsection C(6), changed "2011" to "2012"; in Subsection C(7), changed "2012" to "2013"; in Subsection C(8), changed "2013" to "2014"; in Subsection C(9), changed "2014" to "2015"; in Subsection C(10), changed "2015" to "2016"; in Subsection C(11), changed "2016" to "2017"; in Subsection C(12), changed "2017" to "2018"; in Subsection C(13), changed "2018" to "2019"; in Subsection C(14), changed "2019" to "2020"; in Subsection C(15), changed "2020" to "2021"; in Subsection C(16), changed "2021" to "2022"; in Subsection C(17), changed "2022" to "2023"; in Subsection C(18), changed "2023" to "2024"; and in Subsection D, changed "2022" to "2023".

The 2011 amendment, effective June 17, 2011, delayed increases in distributions from the fire protection fund by adding a distribution of thirteen and four-tenths percent of the remaining balance on June 30, 2012 and delaying each of the remaining distributions by one year.

59A-53-5.3. Fire station and fire protection services across jurisdictional lines. (2012)

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."

History

History: Laws 2012, ch. 20, § 6.

Annotations

Effective dates. — Laws 2012, ch. 20 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

Annotations

59A-53-6. Appeal and review of determination. (2012)

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.

History

History: Laws 1984, ch. 127, § 977; 1989, ch. 312, § 6; 1998, ch. 108, § 43; 2012, ch. 20, § 7.

Annotations

The 1998 amendment, effective January 1, 1999, substituted "an incorporated" for "any" in the first sentence, substituted "commission" for "state fire board" in two places, and, in the second sentence, substituted "commission" for "state insurance board" and "it deems" for "it may deem".

The 2012 amendment, effective May 16, 2012, incorporated the defined terms "municipality" and "marshal"; substituted "municipality" for "incorporated cities, towns and villages" and "marshal" for the personal pronoun "his" throughout the section.

59A-53-7. Distribution of fire protection fund. (2012)

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).

History

History: Laws 1984, ch. 127, § 978; 1989, ch. 312, § 7; 1994, ch. 54, § 3; 1996, ch. 28, § 5; 1998, ch. 108, § 44; 2007, ch. 149, § 6; 2012, ch. 20, § 8.

Annotations

The 1994 amendment, effective May 18, 1994, designated the previously undesignated language as Subsection A, and substituted "of the county" for "or the county" in the second sentence thereof; and added Subsection B.

The 1996 amendment, effective March 4, 1996, inserted "an ordinance or a resolution passed by the municipality or county and" in Subsection B.

The 1998 amendment, effective January 1, 1999, in Subsection A, deleted "as" preceding "the marshal", substituted "commission" for "state fire board" and substituted "has" for "shall have"; and in Subsection B, substituted "commission" for "state fire board" near the beginning and substituted "has" for "shall have" near the end.

The 2007 amendment, effective June 15, 2007, added Subsection C.

The 2012 amendment, effective May 16, 2012, in Subsection A, in the first sentence, after "fire protection fund, to each", deleted "incorporated", and after "municipality and", deleted "to each"; and in the second sentence, after "treasurer of any", deleted "incorporated".

59A-53-8. Expenditure of fire protection fund money. (2012)

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.

History

History: Laws 1984, ch. 127, § 979; 1989, ch. 312, § 8; 1994, ch. 53, § 3; 2011, ch. 162, § 1; 2012, ch. 20, § 9.

Annotations

The 1994 amendment, effective May 18, 1994, in the first sentence, inserted "and the financing or refinancing thereof", and substituted "stations, substations" for "station, substation" and substituted "deaths" for "death".

The 2011 amendment, effective July 1, 2011, authorized the use of the fire protection fund for emergency medical services.

The 2012 amendment, effective May 16, 2012, prohibited the expenditure of funds for water supply systems of county fire districts; in the first sentence, after "fire protection fund to", deleted "an incorporated" and added "a"; in the second sentence, after "water supply systems of", deleted "any incorporated" and added "a"; and after "water supply systems of a municipality or", added "county fire".

ANNOTATIONS

Fire protection funds cannot be used for salaries for "firemen" as such. 1964 Op. Att'y Gen. No. 64-30.

Payment of employees. — Where a person is employed to maintain, repair or operate fire department or its equipment, his payment from moneys distributed from the fire protection fund is within the purview of this section. 1964 Op. Att'y Gen. No. 64-30.

Repair of leased property. — Under former 59-15-9 NMSA 1978 it was permissible to "repair" leased property, but to "reconstruct" it would do violence to the authority given by the statute. 1964 Op. Att'y Gen. No. 64-30.

Rental payments. — In view of the strict language used by the legislature, recipients of fire protection fund money cannot legally expend such money for rental payments on leased property. 1964 Op. Att'y Gen. No. 64-30.

Fire protection funds may not be expended for drilling water well to supplement the village water supply if the well is connected to such system only for the purpose of assuring sufficient water for fighting fires. 1961-62 Op. Att'y Gen. No. 62-95.

Funds available for drilling water wells. — Under the provisions of former 59-15-9 NMSA 1978 a village was not precluded from drilling water wells or in otherwise obtaining water essential for fire protection purposes where the funds utilized for such expenditures were obtained from other sources; limitation contained in former 59-15-9 NMSA 1978 had application only insofar as it restricted the use of fire protection funds for such purposes. 1961-62 Op. Att'y Gen. No. 62-95.

59A-53-9. Limitations on expenditures. (2012)

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.

History

History: Laws 1984, ch. 127, § 980; 1989, ch. 312, § 9; 2012, ch. 20, § 10.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined term "municipality"; after "fire protection fund to", deleted "any incorporated city, town or village" and added "a municipality".

59A-53-10. Purchase of land or buildings. (2012)

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.

History

History: Laws 1984, ch. 127, § 981; 1989, ch. 312, § 10; 2012, ch. 20, § 11.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined term "municipality" and corrected an error regarding the payment of obligations by county fire districts; substituted the defined term "municipality" for "incorporated cities, towns and villages" throughout the section; and after "fire protection fund by the municipality or", added "county fire".

ANNOTATION

Fee simple title. — Recipient of fire protection fund moneys must have fee simple title, unencumbered, before the moneys can be used to construct buildings. 1964 Op. Att'y Gen. No. 64-30.

County to hold title to land for fire stations. — It is the county, and not the independent fire district, which must hold clear title to the land on which fire stations are to be constructed. 1980 Op. Att'y Gen. No. 80-35.

59A-53-11. Vouchers. (2012)

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.

History

History: Laws 1984, ch. 127, § 982; 1989, ch. 312, § 11; 2012, ch. 20, § 12.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined term "municipality" and corrected an error regarding the expenditure of funds by county fire districts; in Subsection A, after "fire protection fund to" changed "incorporated city, town or village" to "municipality"; after "fire department of the", changed "city, town, village" to "a municipality"; and after "chief of the fire department of the municipality or", added "county fire".

59A-53-12. Promulgation of rules. (2012)

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.

History

History: Laws 1984, ch. 127, § 983; 1989, ch. 312, § 12; 2012, ch. 20, § 13.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined terms "municipality" and "marshal"; substituted "municipality" for "incorporated cities, towns and villages" and "marshal" for the personal pronouns "he" and "his" throughout the section; after "rules", deleted "and regulations" throughout the section; and in the third sentence, at the beginning of the sentence, substituted "Rules" for "Regulations".

59A-53-13. Liability for unauthorized expenditure. (2012)

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.

History

History: Laws 1984, ch. 127, § 984; 1989, ch. 312, § 13; 2012, ch. 20, § 14.

Annotations

The 2012 amendment, effective May 16, 2012, deleted the reference to regulations and in the first sentence, after "or by rules", deleted "and regulations".

59A-53-14. Closure of fire department. (2012)

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.

History

History: Laws 1984, ch. 127, § 985; 1989, ch. 312, § 14; 1995, ch. 141, § 25; 2006, ch. 103, § 4; 2012, ch. 20, § 15.

Annotations

The 1995 amendment, effective April 5, 1995, designated the existing provisions as Subsection A and added Subsection B.

The 2006 amendment, effective May 17, 2006, provided in Subsection A that title to equipment and apparatus paid for in whole with distributions from the fire protection fund shall vest in the marshal if the district ceases to operate.

The 2012 amendment, effective May 16, 2012, incorporated the defined term "municipality"; in the first sentence, after "fire department operated by", deleted "any incorporated city, town or village" and added "a municipality"; and after "a municipality or", deleted "by any".

59A-53-15. Repealed. (2007)

History §§§

Annotations

Repeals. — Laws 2007, ch. 152, § 2 repealed 59A-53-15 NMSA 1978, as enacted by Laws 1984, ch. 127, § 986, relating to appropriation of fire protection funds from the state treasury, effective June 15, 2007. For provisions of former section, see 2006 NMSA 1978 on New Mexico One Source of Law.

59A-53-16. New fire departments. (2012)

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.

History

History: Laws 1984, ch. 127, § 987; 1989, ch. 312, § 16; 2012, ch. 20, § 16.

Annotations

The 2012 amendment, effective May 16, 2012, incorporated the defined terms "municipality" and "marshal"; substituted "municipality" for "incorporated city, town or village" and "city, town or village"; and substituted "the marshal" for the personal pronoun "he".

59A-53-17. Mutual assistance. (2006)

Notwithstanding the provisions of Sections 59A-53-5 and 59A-53-12 NMSA 1978, or any other provision of law to the contrary, fire districts may render assistance to other fire districts, and equipment of fire districts may be used outside the district, if the use is authorized by the county fire marshal, and the county fire marshal before he authorizes the 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

History: Laws 1984, ch. 127, § 988; 2006, ch. 103, § 6.

Annotations

The 2006 amendment, effective May 17, 2006, changed "Sections 976 and 983 of this article" to "Sections 59A-53-5 and 59A-53-12 NMSA 1978", and changed "independent fire districts" to "fire districts".

59A-53-18. Fire protection grant fund; created; uses. (2012)

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.

History

History: Laws 2006, ch. 103, § 7; 2012, ch. 20, § 17.

Annotations

The 2012 amendment, effective May 16, 2012, corrected the reference to municipal fire departments, and in the third sentence, after "critical needs of municipal", added "fire departments".

59A-53-19. Fire protection grant council; duties. (2012)

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.

History

History: Laws 2006, ch. 103, § 8; 2009, ch. 266, § 1; 2010, ch. 69, § 1; 2012, ch. 20, § 18.

Annotations

Cross references. — For the federal Fair Labor Standards Act of 1938, see 29 U.S.C. § 201 et seq.

The 2009 amendment, effective June 19, 2009, in Subsection B, after "employee of the commission", deleted "or an active member of a municipal fire department or a county fire district".

The 2010 amendment, effective May 19, 2010, in Subsection C, after "The public members", deleted "shall" and added "are entitled to"; in Subsection D, added the paragraph designations; in Subsection D(5), changed "or" to "and"; added Subsection D(6); and added Subsection G.

The 2012 amendment, effective May 16, 2012, corrected the reference to municipal fire departments, and in Subparagraph D, in the introductory sentence, after "critical needs of municipal", added "fire departments".
