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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/13

SPONSOR R. Martinez LAST UPDATED _____ HB 615

SHORT TITLE Volunteer Firefighter Stipends SB _____

ANALYST Clark

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Public Regulation Commission (PRC)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Workforce Solutions Department (WSD)

No Responses Received From

Association of Counties
 New Mexico Municipal League

SUMMARY

Synopsis of Bill

House Bill 615 enacts a new section of law that enables volunteer firefighters to be paid a stipend by a public agency to the extent consistent with the federal Fair Labor Standards Act (FLSA) in order to maintain volunteer status. The bill requires the stipend to represent only actual expenses, reasonable benefits, or a nominal fee. Additionally, the services for which the stipend is paid must not be the same type of services that the volunteer is employed to perform for the same public agency paying the stipend.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

This bill closely tracks language contained in the rules implementing the FLSA. The Code of Federal Regulations at 29 CFR Part 553.106(a) states, “[v]olunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.”

Tracking the FLSA rules, the bill clarifies that a salaried employee of a governmental entity may qualify as a volunteer firefighter and paid a stipend if the position of firefighter is not a similar or identical service to that for which the employee is paid a salary. For example, a salaried police officer may also qualify as a volunteer firefighter for the same governmental entity.

Additionally, the bill mirrors the FLSA rules to allow a public agency to pay a person a stipend to perform the same or similar volunteer firefighting services that person also performs for another, separate governmental entity as long the stipend represents actual expenses, reasonable benefits, or a nominal fee. For example, a volunteer or salaried firefighter performing these services for one governmental entity may qualify as a volunteer firefighter for a second governmental entity and be paid a stipend by the second governmental entity for those services.

The federal Department of Labor (DOL) provides a guideline that in order to maintain volunteer status, the nominal fee paid to a volunteer firefighter should generally not exceed 20 percent of the total compensation that the employer would pay to employ a full-time firefighter. The DOL stated that to determine a maximum nominal fee fire departments should make a good faith determination based on their own payroll information or that of neighboring jurisdictions, the state, or the country.

Under the FLSA, public employers are obligated to pay employees at least the minimum wage and overtime compensation. The FLSA, however, exempts public employers from paying minimum wage and overtime to individuals who qualify as “volunteers” motivated to contribute services for civic, charitable, or humanitarian reasons. An individual who performs services for a public agency qualifies as a volunteer, if:

- the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- such services are not the same type of services which the individual is employed to perform for the same public agency.

If an individual meets the above criteria for volunteer status, he or she will not be considered an employee covered by FLSA minimum wage and overtime provisions, and the public employer is not obligated to compensate the individual for hours of volunteer services performed. A bona fide volunteer may perform, without compensation other than the aforementioned stipend:

- different work for the same agency;
- same or similar work for a separate and independent agency; and
- different work for a separate and independent agency.

The AGO analysis provides the following information.

By expanding the scope of compensation available to volunteer firefighters, HB 615 may conflict with the Volunteer Firefighters Retirement Act, NMSA 1978, Sections 10-11A-1 to -8 (the “Act”). Under the Act, only “nonsalaried” volunteer firefighters who meet certain criteria are eligible to receive retirement benefits. NMSA 1978, §§ 10-11A-2, 5. For the purposes of the Act, a volunteer firefighter who receives reimbursement for personal out of pocket costs is still considered “nonsalaried” and eligible for benefits. NMSA 1978, § 10-11A-2. However, the Act makes no mention of whether a stipend (such as those proposed in HB 615) impacts the “nonsalaried” status of a volunteer firefighter with respect to eligibility for retirement benefits.

TECHNICAL ISSUES

The AGO reports clarification may be needed as to whether the receipt of a stipend pursuant to HB 615 impacts eligibility under the Volunteer Firefighters Retirement Act, NMSA 1978, Sections 10-11A-1 to -8.

JC/blm