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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/09
LAST UPDATED 03/02/09 **HB** _____

SPONSOR Payne

SHORT TITLE Eliminate Military Code Fund Cap **SB** 120a/SF1#1

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Amendment Synopsis	Indeterminate See Amendment Synopsis I	Indeterminate See Amendment Synopsis	Non- recurring	General Fund Reserve

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AOG)

Department of Military Affairs (DMA)

Department of Homeland Security and Emergency Management (DHSEM)

SUMMARY

Synopsis of SFL# 1 to Senate Bill 120

1. On page 2, line 9, after "appropriated", insert a semicolon.
2. On page 2, lines 9 through 12, remove the brackets and line-through and on line 11, strike "two hundred fifty thousand dollars (\$250,000)" and insert in lieu thereof "one million dollars (\$1,000,000)".
3. On page 2, lines 14 through 17, remove the brackets and line-through and on lines 16 and 17, strike "two hundred fifty thousand dollars (\$250,000)" and insert in lieu thereof "one million dollars (\$1,000,000)".

The amendment changes the current annual limit of \$250 thousand to \$1 million on funding for compensation, expenses, supplies and materials of New Mexico Military Forces when called upon by the Governor for service to the state. Typically much or all of the expenses are reimbursed by FEMA, an executive order or other mechanism with only rescue missions left unpaid. However, these reimbursements often take weeks or months to receive and in many years the total cost is in excess of the current \$250 thousand. Over the past 10 years the average annual expenditure is \$565

thousand with some years almost nothing and others over \$1 million. In these high cost years the agency finds itself with a serious cash flow problem that may result in federal repayments leaving New Mexico rather than staying with local units. DMA notes the \$1 million and any reimbursement is in an account that reverts. DMA annually is awarded the funds through an executive order authorizing emergency funds. Each emergency executive order is limited to \$750 thousand. The additional award increases liabilities to the appropriation contingency fund and ultimately the reserve fund if the total exceeds the FY09 estimate of \$15 million.

Synopsis of Original Bill

Senate Bill 120 amends NMSA Section 20-1-6 of the New Mexico Military Code (Chapter 20 Articles 1-12) to eliminate language placing a limit of two hundred fifty thousand dollars (\$250,000) on funding for compensation, expenses, supplies and materials of New Mexico Military Forces when called upon by the Governor for service to the state.

FISCAL IMPLICATIONS

The \$250 thousand spending cap is eliminated and no other limit is recommended on included. This allows potentially for unlimited spending.

SIGNIFICANT ISSUES

DMA offers the following commentary.

Such a proposed statutory amendment would actually be in agreement with a 1999 amendment to Section 20-2-3 NMSA 1978, which added the following language:

D. When any portion of the militia is ordered into active service pursuant to this section in case of an emergency, the militia may provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local-support and control, including the provision, on a temporary, emergency basis, for lodging, sheltering, health care, food, any transportation or shipping necessary to protect lives or public property; or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare. (Laws 1999, Ch. 140, Section 3)

Therefore, as per Section 20-2-3 (D) NMSA 1978, the Mission of the New Mexico National Guard has already, statutorily, been expanded to include providing for provisions for the public during emergencies, plus transportation and even health care and food, if necessary. Obviously, in an emergency, such goods or services would have additional costs or expenses, which could overcome potentially the statutory limit of \$250,000 for the same, and as otherwise currently configured in Section 20-1-6 NMSA 1978, that SB 120 seeks to remedy.

The Department of Military Affairs (DMA) is authorized \$250,000 annually for the National Guard's Emergency Fund (NGEF). Pursuant to Executive Orders and Chapter 20-1-4 (A) NMSA 1978, the NGEF is used to support New Mexico State emergencies. DMA reimburses the federal government for the use of all equipment from ground equipment to helicopters utilized during state missions. The New Mexico National Guard responds to all state emergency missions, despite the impact on the NGEF. During the past fiscal year (FY), DMA was unable to reimburse the federal government on a timely basis as a result of two factors. First, the state and

federal fiscal years start and end at different time periods. In order for the federal government to execute the funds, they must receive the funds during the July/August time frame. Otherwise, the funds revert to the U.S. Treasury. Nevertheless, the majority of the state emergencies occur during the spring/summer timeframe. Consequently, the state's FY ends during this time period in which most state emergency expenses are incurred. Second, the NGEF lacks sufficient funding to adequately reimburse the federal government on a timely basis during the state's fire season leaving the helicopters and ground equipment maintenance fund extremely vulnerable. Consequently, the NGEF requires an Executive Order to reimburse the federal government.

The fund is used to support all state emergencies from Search and Rescue missions to supporting other agencies and other states with helicopter support. In FY-08, DMA supported Chama snow storm and the Lincoln County Floods. During the past year, the New Mexico National Guard provided helicopter support during the fires in California and during Hurricane Ike in Texas. Both national emergencies were supported under the Emergency Management Assistance Compact (EMAC).

Any unexpended appropriation in the National Guard's Emergency Fund (NGEF) reverts to the general fund at the end of each FY.

DHSEM adds.

With the cost of operations exponentially increasing over the years, the funding cap has been amended continuously since the statute's inception in 1925 from \$5,000 to its latest amendment in 1999 to \$250,000. Today, fuel costs and newer aircraft have driven the hourly cost to \$6,000. The capped \$250,000 annual operating budget to support these missions has not increased to match the actual cost. Currently, the \$250,000 annual funding cap restricts the emergency response efforts of the National Guard when called into service by the Governor for missions including but not limited to disasters both within and outside of New Mexico's boundaries.

OTHER SUBSTANTIVE ISSUES

Without any cap the Legislature defaults the appropriation power to the Executive branch. While \$250 thousand does seem unrealistically low in the face of a genuine emergency, no limit seems unrealistically high.

POSSIBLE QUESTIONS

Should a cap remain in place but be increased to \$1million or some other number?

MW/mt:mc