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FISCAL IMPACT REPORT

ORIGINAL DATE 1-26-07

SPONSOR Gardner LAST UPDATED 2-24-07 HB 507/aHJC

SHORT TITLE Wildland Firefighter Criminal Liability SB _____

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Amendment to House Bill 507 adds the word “solely” after the word “liability” on line twenty-three of the bill. The amendment carried no appropriation language.

EMNRD advises that this amendment clarifies that employees or agents of governmental entities who authorize volunteer firefighters not certified to national standards to respond to wildland fires shall not be subject to criminal liability solely for allowing those volunteer firefighters to engage in firefighting activities. In the bill’s original form some thought could be interpreted that the employees or government agents are not subject to criminal liability for activities other than allowing volunteers to engage in firefighting activities.

Synopsis of Original Bill

House Bill 507 seeks to enact a new section of Chapter 68 NMSA 1978 to protect wild land firefighters responding to wild land fires from criminal liability. Specifically, the language states:

Employees or agents of governmental entities who authorize volunteer firefighters not certified according to national wild land firefighting standards to respond to wild land fires shall not be subject to criminal liability for allowing those volunteer firefighters to engage in firefighting activities.

SIGNIFICANT ISSUES

EMNRD indicates that the department's Forestry Division is in the process of updating all of the Municipal Cooperative Wild land Fire Joint Powers Agreements. These agreements identify the relationship between the EMNRD Forestry Division and New Mexico municipal fire departments, as it relates to wildfire suppression. The new agreements identify minimum training, qualification and equipment standards municipal fire departments must have in order to be reimbursed by EMNRD for wildfires outside their jurisdiction. Some of the fire departments have expressed concerns that their volunteer members will not be able to pass the physical fitness requirement. The physical fitness requirement consists of the firefighter walking three miles in 45 minutes while wearing a pack that weighs 45 pounds. This is called the "pack test" and is recognized as a national standard.

EMNRD notes that in the last few years, district attorneys in two western states have filed criminal charges against fire line supervisors because of fatalities that occurred on fires. If any fire line supervisor has knowledge that any individual on a wild land fire is not properly qualified or physically fit to the national standard and is killed, they can be held criminally liable. Qualified fire line commanders and supervisors are hesitant to respond to wildfires where non-certified firefighters are working due to the current risk of criminal prosecution.

The Forestry Division has an obligation to protect its employees who serve as fire line supervisors on wildfires within its jurisdiction from criminal liability. While EMNRD believes that many municipal fire department members will be able to meet these standards, some volunteer firefighters will not qualify. Timely initial attack responses to wildfires in rural New Mexico may be hampered if volunteer fire department members don't respond.

EMNRD would enter into agreements without requiring national standards for volunteer firefighters if the criminal liability regarding volunteers meeting national standards was removed. This bill would remove the criminal liability from Forestry Division employees or other agents of governmental entities who authorize volunteer firefighters, not certified according to national wild land firefighting standards, to respond to and work on wild land fires.

PERFORMANCE IMPLICATIONS

EMNRD indicates that the bill could benefit the Forestry Division's efforts to continue work with local government entities and to continue to quickly suppress wildfires in rural areas of New Mexico.

ADMINISTRATIVE IMPLICATIONS

If the bill is enacted, EMNRD will be revising its agreements.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD suggests that if this bill is not enacted, qualified federal, state and local government wild land firefighters could face criminal liability if an unqualified volunteer fire department member they oversee is injured or killed on a wild land fire. Qualified fire line commanders and supervisors will continue to be hesitant to respond to wildfires where unqualified firefighters are working, due to the current risk of criminal prosecution. This could cause delays in initial attack responses. Volunteers who do not meet national standards will not be dispatched or given assignments on state or federal fires and municipalities would not be reimbursed for volunteer's time spent on these wildfires if the volunteer responds.

BFW/mt