

HJR 743 - Joint Subcommittee studying Incentives for Fire and Rescue Squad Volunteers

(<http://dls.state.va.us/volunteers.htm>)

September 24, 2007

Third Meeting

The third meeting of the joint subcommittee studying incentives for fire and rescue squad volunteers was called to order by the chairman who then proceeded to explain what would be going on during the meeting. After hearing from an attorney, Mr. Scott Kezman, concerning *Benshoff v. City of Virginia Beach*, the joint subcommittee would then proceed to discuss possible legislation that they could propose during the 2008 General Assembly Session.

Benshoff v. City of Virginia Beach

Mr. Scott Kezman, an attorney with Kaufman & Canoles, discussed the Fair Labor Standards Act (FLSA) case [*Benshoff v. City of Virginia Beach*, 180 F.3d 186 (1999)] involving the City of Virginia Beach and several of its career firefighters who also volunteered to do the same jobs for volunteer rescue squads within the city. The firefighters argued they should be paid overtime in accordance with FLSA for the hours they served as volunteers. The court at every level, all of the way up to the 4th Circuit Court of Appeals, found in favor of the city and denied the overtime pay to the firefighters. The courts determined that because the firefighters were not required to volunteer with the rescue squads and the city did not control the rescue squads, their schedules, and who their volunteers were, the FLSA overtime pay regulations were inapplicable.

The problem, however, is that each locality and volunteer situation in the Commonwealth is different so that in order to decide whether the FLSA is applicable in situations similar to Virginia Beach, the locality needs to apply for an opinion letter from the Department of Labor or be subject to a case-by-case court analysis. Neither of these options are inexpensive. The only other real way to fix any perceived problem would require action at the federal level.

Subcommittee Discussion Regarding Legislation

Next, the Chairman led the joint subcommittee in a discussion about whether they want to make recommendations for legislation to be introduced in the 2008 General Assembly Session and if so, what would it be? He gave a thorough review of the legislative proposals which had been mentioned in their first two meetings and asked the members which if any they could support. He also asked them for any other proposals they might have.

In the end, a majority of the joint subcommittee agreed on four proposals, for purposes of an initial draft to be taken up at its final meeting. The proposals are:

1. A \$3,000 income tax credit for volunteer firefighters and rescue squad members in good standing based on a sliding scale related to specific criteria;
2. Financial assistance for EMS training at state higher education facilities as well as advanced life support training at accredited sites around the Commonwealth;
3. An appropriation in the amount of \$250,000 for the biennium for the Commonwealth's share of the VOLSAP Fund; and
4. A \$2 increase in the \$4-for-Life fee to \$6-for-Life with the money raised applied to cover some of the costs resulting from the proposals in this package.

Staff was directed to prepare draft legislation as well as an executive summary draft of the joint subcommittee's work. In doing so, they are to work with the interested parties in order to develop the appropriate language. Once the drafts are complete, they will be mailed to the subcommittee members for their review prior to the final meeting.

Final Meeting

The fourth and final meeting of the joint subcommittee will be held in Richmond some time after the election on November 6. At that time, they will examine the draft legislation and executive summary of the study, make any changes they deem necessary, and decide which, if any, of the legislation they can support as a recommendation of the joint subcommittee during the upcoming General Assembly. They must complete their work no later than November 30.

Once the meeting date is set, it will be posted on the study's website, as well as the House of Delegates' and Senate's websites.