

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 18, 1998 Revised: 03/24/98 \_\_\_\_\_

Subject: Volunteers/Nepotism Law

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill exempts persons providing volunteer emergency medical, firefighting, and police services from existing restrictions on the employment of relatives.

This bill substantially amends section 112.3135, Florida Statutes.

**II. Present Situation:**

The Code of Conduct for Public Officers and Employees, Part III of Chapter 112, F.S., provides, through the operation of s. 112.3135, F.S., a restriction upon the employment of relatives by a public officer or employee except during the occurrence of emergency situations.<sup>1</sup> The section provides an exemption for appointments to municipal boards exercising powers other than those in land planning or zoning.

Section 768.1355, F.S., *The Florida Volunteer Protection Act*, provides sovereign immunity protection for volunteers performing services by both non-profit organizations acting as governmental agents and governmental agencies.

**III. Effect of Proposed Changes:**

Section 112.3135, F.S., is amended to provide that the restriction on the employment of relatives shall not extend to persons serving in volunteer capacities in the provision of emergency medical, firefighting, or police services. Such persons would also be permitted to receive reimbursement

<sup>1</sup>Section 252.34(2), F.S., defines the term "emergency" to be inclusive of manmade, technological, or natural occurrences inflicting substantial harm to persons or property.

for training and expense costs associated with the completion of necessary training and the services provided.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill makes reimbursement permissive with the volunteer agency and, as a result, this would not be considered an unfunded mandate affecting a unit of local government.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Section 768.1355, F.S., provides sovereign immunity protection for volunteers provided there is no compensation paid. Excluded from the definition of compensation is a stipend provided under the auspices of Public Law 93-113, the *Domestic Service Volunteer Act of 1973*, and any other financial assistance valued at less than two-thirds of the federal hourly minimum wage. In *Op.Atty.Gen.* 93-88, Dec 10, 1993, the Attorney General concluded that the operation of the act permitted a stipend which could not exceed the reimbursement for expenses incurred. *Op.Atty.Gen.* 94-16, issued March 2, 1994, concluded that attorneys performing *pro bono* services for a non-profit corporation would receive limited protection under s. 768.1355, F.S.

In *Galbut v. City of Miami Beach*, App. 3 Dist., 605 So.2d 466 (1992), the antinepotism statute was determined to apply to a board even when its members served without compensation. And in *Kinzer v. State Commission on Ethics*, App. 3 Dist., 654 So.2d 1007 (1995) there was no impropriety found in a town commissioner's voting on his wife's appointment to an unpaid advisory board.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill would permit affected volunteers to be held financially harmless for out-of-pocket expenses associated with the performance of their service.

**C. Government Sector Impact:**

Individual governmental entities would be permitted to reimburse individuals for related out-of-pocket expenses reasonably incurred with the performance of volunteer services. The magnitude of this impact is unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A unit of government providing training equivalent to that provided its own personnel in an occupational area in which there is a statutory certification requirement may give that volunteer eligibility for receiving equivalency credit should that volunteer later become an employee subject to that training standard.

**VIII. Amendments:**

None.