

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 1764

SPONSOR: Judiciary Committee, Governmental Oversight and Productivity Committee, Comprehensive Planning Committee, and Senators Lynn and Bullard

SUBJECT: A Limitation of Liability for Donated Firefighting Equipment

DATE: April 14, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
2.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the “Good Samaritan Volunteer Firefighters’ Assistance Act” to provide immunity from civil liability for a state agency or subdivision, including its officers, employees, and agents who are acting within the scope of their duties or functions, which donates qualified fire control or fire rescue equipment to a volunteer fire department. The immunity provided by the bill is from liability for personal injury, property damage, or death that is proximately caused, after the donation, by a defect in the equipment. This immunity, however, does not apply when: (a) the defect that proximately caused the injury, damage, or death is the result of malice, gross negligence, recklessness, or intentional misconduct or the result of alterations or modifications by the agency or subdivision after recertification of the donated equipment; or (b) the agency or subdivision is the manufacturer of the qualified equipment. The bill also clarifies that nothing in the section is to be construed as waiver of sovereign immunity.

The bill defines the terms “authorized technician,” “qualified fire control or fire rescue equipment,” and “state agency or subdivision.” The bill applies to any action that accrues on or after July 1, 2004.

This bill creates section 768.1315 of the Florida Statutes.

II. Present Situation:

Volunteer Fire Departments

Section 175.032(8)(b), F.S., defines a “volunteer firefighter” as “any person whose name is carried on the active membership roll of a constituted volunteer fire department or a combination of a paid and volunteer fire department of any municipality or special fire control district and

whose duty it is to extinguish fires, to protect life, and to protect property.” A person may not be disqualified as a volunteer firefighter solely because he or she receives compensation for services rendered or has other gainful employment. This definition does not include any person who volunteers assistance at a fire, but is not an active member of a department.

Section 175.041, F.S., creates the Firefighters’ Pension Trust Fund for each municipality and special fire control district of this state which now has or which may hereafter have a constituted fire department or an authorized volunteer fire department, or any combination thereof. To qualify as a volunteer fire department for this purpose, the department must own and use apparatus for the fighting of fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase.¹

In 2002, the Legislature created the “Florida Firefighters Occupational Safety and Health Act,” ss. 633.801-633.821, F.S. These provisions were substantially the same as the repealed provisions formerly in chapter 442, F.S., related to the Division of Safety within the Department of Labor and Employment Security, except that the provisions of the act are limited to firefighter safety and subject to the authority of the Division of State Fire Marshal (division) of the Department of Financial Services. Volunteer firefighters are required to comply with the safety and training standards of the act.² As a result, the division is in the process of promulgating rules to provide standards for those departments. Those rules will allow for the collection of information from volunteer fire departments. At this time, the division’s records show that there are 296 volunteer fire departments in the state.

Donations of Fire and Rescue Equipment

In 2001, the Legislature enacted s. 125.27(3), F.S. The first two sentences of this subsection provide civil immunity where the Department of Agriculture and Consumer Services (DACCS) makes fire protection equipment, vehicles, or supplies available for free or for de minimis cost to state, county, or local governmental entities having fire/rescue responsibilities. Under these circumstances, the department, and any public or private entity that provides equipment, vehicles, or supplies to the department, is immune from civil damages resulting from the use or possession of the equipment, vehicles, or supplies.

The third and final sentence of the subsection provides immunity from civil damages to public or private entities that donate fire/rescue equipment, vehicles, or supplies to state, county, or local governmental entities having fire/rescue responsibilities. The only substantive difference between the more specific immunity contained in the first two sentences of the subsection and the broader grant of immunity contained in the third sentence appears to be that the DACCS may provide the equipment for de minimis cost.

Volunteer fire departments are not typically considered to be state, county, or local government entities. Instead, these departments are often formed as non-profit corporations. Consequently, the immunity provisions of s. 125.27(3), F.S., do not appear to apply to donations made to volunteer fire departments.

¹ Section 175.041(2), F.S.

² Section 633.820, F.S.

As a result, representatives for volunteer fire departments have indicated that fire equipment no longer being used is often destroyed, sent out of the country, or returned to the manufacturer for refurbishment, rather than being donated to Florida's volunteer fire departments because of liability concerns. The types of equipment that might be donated to a volunteer fire department include vehicles, personal protective equipment (i.e., coats, pants, etc.), and self-contained breathing apparatus.

Sovereign Immunity

Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of general law. The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. Pursuant to s. 768.28(9)(a), F.S., an officer, employee, or agent of the state may not be held personally liable in tort or named as a party defendant for any injury that results from an act, event, or omission of action in the scope of her or his employment function unless the officer, employee, or agent acted in bad faith or with malicious purpose or exhibits wanton and willful disregard of human rights, safety, or property.

Section 768.28(5), F.S., provides that a claim or judgment by any one person may not exceed \$100,000, and may not exceed \$200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence. These limits do not preclude plaintiffs from obtaining judgments in excess of the recovery cap; such claims may be paid with approval of the Legislature. However, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Further, where the state is involved in a discretionary or planning-level function, no liability is imposed. Discretionary functions include areas such as licensing, legislating, judicial decision-making, permitting, inspecting, designing public improvements, and other types of high-level planning.³

III. Effect of Proposed Changes:

Equipment Immunity

The bill creates a new s. 768.1315, F.S., to provide immunity from civil liability for qualified firefighting equipment donated by the state or subdivision to a volunteer firefighting department. Specifically, it creates the "Good Samaritan Volunteer Firefighters' Assistance Act." The bill provides the following definitions:

- "Authorized technician" means a technician who is certified by the manufacturer of equipment as qualified to inspect that equipment, who may not be an employee of the state agency or subdivision administering the distribution of the equipment.
- "Qualified fire control or fire rescue equipment" means equipment used for fire control or fire rescue which has been recertified by an authorized technician as meeting the manufacturer's specifications and which has been distributed by or through a state agency

³ See *Trianon Park Condominium Ass'n v. City of Hialeah*, 468 So.2d 912 (Fla. 1985); *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010 (Fla. 1979).

or subdivision to a volunteer fire department. (Note: The equipment will be certified to the standards applicable at the time it was purchased.)

- “State agency or subdivision” has the meaning provided in s. 768.28(2), F.S., which states that:

. . . "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.

The bill provides immunity from civil damages for a state agency or subdivision, including its officers, employees or agents who are acting within the scope of their duties or functions, which donate recertified fire control or fire rescue equipment to a volunteer fire department. The immunity protects against liability for personal injury, property damage, or death that is proximately caused, after the donation, by a defect in the equipment. The bill, however, does not specify whether the recertified equipment must meet the manufacturers specifications when the equipment is donated to a volunteer fire department. The Legislature may wish to amend the bill to provide that the immunity applies to donations of recertified fire control or fire rescue equipment that meets the manufacturers specifications when donated to a volunteer fire department.

This immunity, however, does not apply to a state agency or subdivision, or its officers, employees, or agents, when: (a) the defect that proximately caused the injury, damage, or death is the result of malice, gross negligence, recklessness, or intentional misconduct or the result of alterations or modifications by the agency or subdivision after recertification of the donated equipment; or (b) the agency or subdivision is the manufacturer of the qualified equipment.

The bill also clarifies that nothing in the section shall be construed as a waiver of sovereign immunity.

Effective Date

The bill provides that the act shall take effect July 1, 2004, and applies to any cause of action that accrues on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, section 21 of the State Constitution provides that, “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” Thus, whenever a right of redress is limited or abolished by the Legislature, as occurs in this bill, the right to access courts provision should be considered.

The Florida Supreme Court established a test in *Kluger v. White*⁴ to be applied when the Legislature abolishes a right of redress available by statute prior to 1968 or available as part of the state’s common law. In either situation, the Legislature must: (1) provide a reasonable alternative to protect the right of redress; or (2) show an overpowering public necessity for abolition of the right and that no alternative method of meeting the public necessity can be shown.

This bill provides immunity from specified tortious lawsuits to state agencies and subdivisions, as well as officers, employees, and agents thereof who are acting within the scope of their employment or function. These entities were immune from tortious suits based upon sovereign immunity until 1969 when the Legislature enacted its first waiver of sovereign immunity in tort for the state and its agencies, and subdivisions.^{5 6} Accordingly, it appears that the Legislature may abolish the right to sue under the circumstances specified in this bill without satisfying the *Kluger* test.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector may benefit from volunteer fire departments receiving equipment that will better enable those departments to respond to emergencies.

Persons who are injured or whose property is damaged, or the beneficiaries of persons who are killed, as a result of defects in fire equipment will be unable to sue a state agency or subdivision that, or the officers, employees or agents thereof who, donated such equipment under specified circumstances.

⁴ *Kluger v. White*, 281 So.2d 1 (Fla.1973).

⁵ See 1969 Fla.Laws ch. 357, s. 1. This section was repealed in 1970. In 1973, the Legislature enacted s. 768.28, F.S., which contains Florida’s current waiver of sovereign immunity in tort. See Chapter 73-313, L.O.F.

⁶ See e.g., *Cauley v. City of Jacksonville*, 403 So.2d 379, 382 (Fla. 1981).

C. Government Sector Impact:

State agencies and subdivisions that donate equipment to a volunteer fire department will benefit from the bill's immunity provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
