

# 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/SB 1764

SPONSOR: Comprehensive Planning Committee and Senator Lynn

SUBJECT: A Limitation of Liability for Donated Firefighting Equipment

DATE: March 8, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute (CS) creates the “Good Samaritan Volunteer Firefighters’ Assistance Act” to provide immunity from civil liability for a state agency or political subdivision, or its employee or agent, which acts reasonably in donating qualified fire control or fire rescue equipment to a volunteer fire department. This limitation on liability includes damages for personal injury, property damage, or death proximately caused, after the donation, by a defect in the equipment. However, this limitation on liability does not apply to a state agency or political subdivision if the defect that proximately caused the injury, damage, or death is the result of malice, gross negligence, recklessness, or intentional misconduct; or the state agency or political subdivision is the manufacturer of the qualified equipment; the equipment is modified or altered by the donor after it has been recertified by an authorized technician. The CS clarifies that this does not waive the limits of sovereign immunity set forth in s. 768.28, F.S.

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

This CS 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.<sup>1</sup>

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.<sup>2</sup> 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.

Equipment that is no longer being used by a large fire department is currently destroyed, sent out of country, or returned to the manufacturer for refurbishment. The equipment has typically not been donated to volunteer fire departments because of concerns over liability. The types of equipment that could potentially be donated by a large fire department to a volunteer 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

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<sup>1</sup> S. 175.041(2), F.S.

<sup>2</sup> S. 633.820, F.S.

of the Legislature. However, plaintiffs cannot force the government to pay damages which 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.<sup>3</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 768.1315, F.S., to provide immunity from civil liability for qualified firefighting equipment donated by the state or political subdivision to a volunteer firefighting department. Specifically, it creates the “Good Samaritan Volunteer Firefighters’ Assistance Act.” It defines an “authorized technician” as a technician who is certified by the manufacturer of equipment as qualified to inspect that equipment. The term “qualified fire control or fire rescue equipment” is defined as 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 or political subdivision to a volunteer fire department. (Note: The equipment will be certified to the standards applicable at the time it was purchased.)

This CS limits liability for civil damages for a state agency or political subdivision, or its employee or agent, which acts reasonably in donating qualified fire control or fire rescue equipment to a volunteer fire department. Specifically, this limitation on liability includes damages for personal injury, property damage, or death proximately caused, after the donation, by a defect in the equipment. However, this limitation on liability does not apply to a state agency or political subdivision if:

- The defect that proximately caused the injury, damage, or death resulted from an act or omission of an employee or agent of the state agency or political subdivision which constitutes malice, gross negligence, recklessness, or intentional misconduct.
- The state agency or political subdivision is the manufacturer of the qualified fire control or fire rescue equipment.
- The state agency or political subdivision modifies or alters the equipment after it has been recertified by an authorized technician.

The CS clarifies that this does not waive the limits of sovereign immunity set forth in s. 768.28, F.S.

**Section 2** 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.

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<sup>3</sup> 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).

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

None.

**C. Trust Funds Restrictions:**

None.

**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.

**C. Government Sector Impact:**

The fire departments will benefit from the limitations on liability from civil damages for any qualified fire equipment donated to a volunteer fire department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.