

DONATED FIRE EQUIPMENT

Senate Bill 689 as passed by the Senate

Sponsor: Sen. Tony Stamas

House Committee: Tort Reform

Senate Committee: Local, Urban and State Affairs

First Analysis (5-30-06)

BRIEF SUMMARY: The bill would shift the liability for donated fire equipment from the donating fire department to the receiving fire department. A receiving department would be immune from liability if it met the bill's requirements for ensuring that the donated equipment was in compliance with federal and state standards.

FISCAL IMPACT: The bill will have no impact on revenues or expenditures, but could reduce local government costs by a minimal amount.

THE APPARENT PROBLEM:

When a fire department is able to upgrade its equipment, it often is left with older, but still usable and safe equipment. Many fire departments would like to be able to donate this equipment to other, perhaps smaller, fire departments in need of those objects. A disincentive to donate this used equipment has been the issue of who would be liable if a person was injured or property damaged as a result of the donated equipment's failure to work properly. Legislation has been offered to address this concern.

THE CONTENT OF THE BILL:

The bill would add a new section to the governmental immunity act, Public Act 170 of 1964, to specify that a municipal corporation, organized fire department, or agent of either entity that donated fire control or rescue equipment to another such entity would not be liable for damages for personal injury, death, or property damage that was proximately caused after the donation by a defect in the equipment. "Organized fire department" would mean that term as defined in Section 1 of the Fire Prevention Code (MCL 29.1).

Before using the donated equipment, the receiving entity would have to have the equipment tested, repaired, or maintained if required by state or federal law, rule, or regulation and could not use the equipment unless the use complied with state and federal laws, rules, and regulations. A municipal corporation or organized fire department that complied with this provision would not be liable for damages for personal injury, death, or property damage proximately caused by a defect in the donated equipment.

The immunity from liability provided above would not affect the rights of an employee or volunteer of the entity receiving the donated equipment to benefits under the Worker's Disability Compensation Act.

ARGUMENTS:

For:

At times, a fire department may find it has surplus equipment that is still serviceable. Fire departments have expressed a desire to donate this surplus equipment to other departments in need of equipment, but have been hesitant to do so because of liability issues. The bill would address this concern by alleviating the donating department of any liability for damages to persons or property caused by a defect in the equipment. Under the bill, it would be the responsibility for the entity receiving the donated equipment to have it inspected and recertified. If that was done, the receiving entity would also be protected from liability if the equipment later failed and a person or property suffered damages. And, according to committee testimony by a representative of the Michigan Association of Fire Chiefs, the bill conforms to MIOSHA needs.

Equipment used by fire departments for fighting fires and performing rescues is very expensive. For example, a self-contained breathing apparatus (SCBA) costs \$3,600 new, but costs only \$150 per unit to recertify. Fire departments are supposed to have a minimum of four SCBA units to operate safely inside a building, but not all departments can raise the money to buy four new units. The bill would allow fire departments who have been able to upgrade their equipment to donate their surplus equipment to less fortunate fire departments.

POSITIONS:

The Michigan Association of Fire Chiefs supports the bill. (5-23-06)

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