

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 215 Emergency Management
SPONSOR(S): Civil Justice Subcommittee; Abruzzo and Bernard
TIED BILLS: None **IDEN./SIM. BILLS:** SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Billmeier	Bond
2) Community & Military Affairs Subcommittee	15 Y, 0 N	Duncan	Hoagland
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. The state's response to public health emergencies is also provided by law and empowers the State Health Officer to declare a public health emergency.

This bill provides immunity from civil damages relating to the provision of temporary housing, food, water, or electricity for persons who, gratuitously and in good faith, provide such housing, food, water, or electricity to emergency first responders or their immediate family members in response to a declared emergency or public health emergency. The immunity does not apply if the person acts in a manner that demonstrates a reckless disregard for the consequences of another. The immunity does not apply to an act or omission that occurs more than 6 months after the declaration or extension of the state of emergency or an act or omission unrelated to the original emergency.

The bill provides that a person may register with a county emergency management agency as a provider of housing for emergency first responders if the county provides for such registration. A person who registers is presumed to have acted in good faith when providing temporary housing, food, water, or electricity.

This bill may have a minimal fiscal impact on counties. This bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Declarations of Emergency

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent.¹ The state's response to public health emergencies is also provided by law² and empowers the State Health Officer to declare public health emergencies.³ States of emergency and public health emergencies may only last for 60 days unless renewed by the Governor.⁴ States of emergency are sometimes declared due to weather events, such as hurricanes, and in response to technological emergencies,⁵ such as the Deepwater Horizon incident, which was declared a state of emergency in 2010.

Negligence

"Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances."⁶ A person injured by another's negligence may recover damages against the negligent party if the negligence was the legal cause of the injury.⁷ Negligence actions are governed by common law and by state law pursuant to ch. 768, F.S.

Florida law contains immunity provisions that may limit the civil liability of persons if they act in a specified manner. For example, a state agency or subdivision which donates fire control or fire rescue equipment to a volunteer fire department is not liable for civil damages caused by a defect in the equipment and that occurs after the donation.⁸

Florida law also contains provisions that provide immunity from negligence but not from reckless behavior. For example, Florida's Good Samaritan Act provides that certain health care providers performing certain emergency services are not liable for civil damages unless the damages result from providing or failing to provide care under circumstances that demonstrate "a reckless disregard" for the consequences.⁹ Reckless disregard is "such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which was necessary to make the conduct negligent."¹⁰

Effect of the Bill

This bill creates the "Postdisaster Relief Assistance Act." The bill provides that any person¹¹ who gratuitously and in good faith provides temporary housing, food, water, or electricity to an emergency first responder or the immediate family member¹² of an emergency first responder may not be held

¹ Section 252.36(2), F.S.

² Section 381.00315, F.S.

³ Section 381.00315(1)(b), F.S., provides in part: "Public health emergency" means any occurrence, or threat thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.

⁴ See ss. 252.36(2) and 381.00315, F.S.

⁵ A "technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident. Section 252.34(9), F.S.

⁶ See Florida Standard Jury Instructions in Civil Cases, 401.4 at

http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

⁷ See Florida Standard Jury Instructions in Civil Cases, 401.12, 401.18 at

http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

⁸ Section 768.1315, F.S.

⁹ Section 768.13(1)(b)1., F.S.

¹⁰ Section 768.13(1)(b)3., F.S.

liable for any civil damages as a result of providing the temporary housing, food, water, or electricity unless the person acts in a manner that demonstrates reckless disregard for the consequences of another. The provision of such temporary housing, food, water, or electricity must be related to or in response to an emergency situation arising out of a state of emergency declared pursuant to ss. 252.36 or 381.00315, F.S.

The bill defines “emergency first responder,” which includes, but is not limited to:

- A physician.¹³
- An advanced nurse practitioner.¹⁴
- A physician assistant.¹⁵
- A paramedic.¹⁶
- An emergency medical technician.¹⁷
- A law enforcement officer.¹⁸
- A firefighter.¹⁹
- A member of the National Guard.

The immunity provided to persons under this bill does not apply to damages as a result of any act or omission:

- That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity continues to apply for the duration of the extension; or
- That is unrelated to the original declared emergency or any extension.

The bill defines “reckless disregard” as “conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances.”

The bill provides that a person may register with a county emergency management agency as a provider of housing for emergency first responders if the county provides for such registration. A person who registers is presumed to have acted in good faith when providing temporary housing, food, water, or electricity.

B. SECTION DIRECTORY:

Section 1 creates s. 252.515, F.S., relating to the “Postdisaster Relief Assistance Act” and immunity from civil liability.

Section 2 provides that the bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹¹ “Person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

¹² The bill defines immediate family member as a parent, spouse, child, or sibling.

¹³ The physician must be licensed under ch. 458, F.S.

¹⁴ The advanced registered nurse practitioner must be certified under s. 464.012, F.S.

¹⁵ The physician assistant must be licensed under s. 458.347, F.S., or s. 459.022, F.S.

¹⁶ A paramedic defined pursuant to s. 401.23(17), F.S.

¹⁷ An emergency medical technician defined pursuant to s. 401.23(11), F.S.

¹⁸ A law enforcement officer defined pursuant to s. 943.10, F.S.

¹⁹ A firefighter defined pursuant to s. 633.30, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A county emergency management agency may incur costs associated with registering persons providing housing, food, water, or electricity for emergency first responders or the immediate family members of emergency first responders.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provision in the bill that provides that the immunity does not apply to any damages as a result of "any act or omission... that is unrelated to the original declared emergency" might be interpreted as limiting the situations to which immunity applies to a small number of cases.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2011, the Civil Justice Subcommittee adopted an amendment relating to the immunity provided by the bill and the situations in which the immunity applied. The amendment eliminated an immunity provision that various court cases had held was unworkable and provided that the immunity granted by the bill only applied if the housing, food, water, or electricity was provided without charge. The bill was reported favorably as a committee substitute.