

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 450

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Bennett

SUBJECT: Emergency Management

DATE: March 25, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	MS	Fav/CS
2.	O'Connor	Maclure	JU	Pre-meeting
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill provides immunity from civil liability to any person who gratuitously and in good faith provides temporary housing, food, water, or electricity to emergency first responders or the immediate family members of emergency first responders, during certain declared emergencies, unless the person acts in a manner that demonstrates a reckless disregard for the consequences of another. This bill provides specific requirements with regard to when the immunity applies and when it does not.

This bill creates section 252.515, Florida Statutes.

II. Present Situation:

Declarations of Emergency

Presently, s. 252.36(2), F.S., empowers the Governor to declare a state of emergency by executive order or proclamation if he or she finds that an emergency has occurred or that the threat of an emergency is imminent. An emergency is “any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial

injury or harm to the population or substantial damage to or loss of property.”¹ The state of emergency continues until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, at which point he or she terminates the state of emergency by executive order or proclamation.² The state of emergency may only continue for up to 60 days, unless renewed by the Governor.³ Additionally, s. 381.00315, F.S., empowers the State Health Officer to declare public health emergencies. A public health emergency is “any occurrence, or threat thereof, whether natural or manmade, 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 A public health emergency may only last for up to 60 days, unless the Governor concurs in the renewal of the declaration.⁵

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 ch. 768, F.S.

Chapter 768, F.S., which governs negligence actions, provides several sections where a certain individual or group is immune from civil liability if the individual or group meets the statutory requirements. In these sections, Florida law provides immunity from negligence, but not reckless behavior. For example, the Good Samaritan Act provides that a health care provider that provides emergency services pursuant to certain statutes is immune from civil liability unless he or she acted with reckless disregard.⁸ 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 is necessary to make the conduct negligent.”⁹ Also, s. 768.1315, F.S., provides that a state agency or subdivision that 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 which occurs after the donation. There is an exception to immunity under that section for actions that constitute “malice, gross negligence, recklessness, or intentional misconduct.”¹⁰

¹ Section 252.34(3), F.S.

² Section 252.36(2), F.S.

³ *Id.*

⁴ Section 381.00315(1)(b), F.S.

⁵ *Id.*

⁶ Florida Standard Jury Instructions in Civil Cases, 401.4, *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last visited Mar. 21, 2011).

⁷ *See* Florida Standard Jury Instructions in Civil Cases, 401.12, 401.18, *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last visited Mar. 21, 2011).

⁸ Section 768.13(2)(b)1., F.S.

⁹ Section 768.13(2)(b)3., F.S.

¹⁰ Section 768.1315(4)(a)1., F.S.

III. Effect of Proposed Changes:

This bill creates the “Postdisaster Relief Assistance Act.” The bill provides that any person who gratuitously and in good faith provides temporary housing, food, water, or electricity to emergency first responders or the immediate family members of emergency first responders may not be held liable for any civil damages unless the person acts in a manner that demonstrates a reckless disregard for the consequences of another. The bill defines immediate family member as a parent, spouse, child, or sibling

This 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 immunity from civil liability applies in emergency situations that are related to and that arise out of a public health emergency pursuant to s. 381.00315, F.S., or a state of emergency pursuant to s. 252.36, F.S.

This bill also provides that a person may register with a county emergency management agency as a temporary provider of housing, food, water, and electricity, if the county provides for such registration. If a person who provides the services registers with a county emergency management agency, he or she is presumed to have acted in good faith in providing such services.

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 thereof.

The bill refers solely to the declaration of emergencies by the Governor. Because the liability provisions of the bill also apply to public health emergencies declared by the State Health Officer, the Legislature may wish to amend the 6-month timeframe provision to include reference to this type of emergency as well.

This bill has an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent persons who comply with the requirements of the bill enjoy immunity from liability, they may benefit economically by not incurring civil judgments.

C. Government Sector Impact:

The bill provides that a person who registers with the county as a provider of services to first responders is presumed to have acted in good faith. The bill does not require county emergency management agencies to establish such a registration function. To the extent counties choose to do so, they may experience costs related to registration.

The Division of Emergency Management (DEM) has provided that there is no fiscal impact to DEM.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military Affairs, Space, and Domestic Security on March 10, 2011:

The committee substitute:

- Provides that any person, rather than an individual, corporation, business entity, or employee thereof, who provides temporary housing, food, water, or electricity to

¹¹ Division of Emergency Management, *Senate Bill 450 Fiscal Analysis* (Feb. 7, 2011) (on file with the Senate Committee on Judiciary).

emergency first responders or the immediate family members of emergency first responders may not be held liable for any civil damages;

- Provides that the services must be provided “gratuitously and in good faith”;
- Defines an “emergency first responder”;
- Applies a uniform “reckless disregard” standard of conduct that will either permit or bar a provider of housing, food, water, or electricity from receiving immunity from civil damages and eliminates the “ordinary reasonably prudent person” standard of conduct; and
- Grants those providers who register with a county emergency management agency as a temporary provider of housing, food, water, or electricity the presumption that their actions are done in good faith.

B. Amendments:

None.