

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 891 Limitation of Liability for Voluntary Engineering or Architectural Services  
**SPONSOR(S):** Judiciary Committee, Civil Justice & Property Rights Subcommittee, Tuck and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	13 Y, 0 N, As CS	Mathews	Jones
2) Judiciary Committee	21 Y, 0 N, As CS	Mathews	Kramer

### SUMMARY ANALYSIS

Under s. 252.36, F.S., the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.” To this end, the Governor may declare a state of emergency by executive order or proclamation if he or she finds an emergency has occurred or is imminently going to occur. A state of emergency may ultimately cause the need for significant repair or rescue operations. Such efforts may require the services of trained professionals like engineers, architects, and structures specialists. However, volunteering during a declared emergency or following a natural disaster can be a dangerous undertaking. A volunteer assisting in rescue, repair, or recovery may act at his or her own risk.

Current law offers some immunity from tort liability for an engineer, architect, or structures specialist providing services. A licensed professional providing professional services during a declared emergency, where such services are related to the emergency, is not liable for professional malpractice as long as the professional acted as an ordinarily reasonably prudent member of that profession would have acted under the same or similar circumstances. However, immunity does not extend to the voluntary provision of services and only covers immunity from liability for professional malpractice. Accordingly, under current law, an engineer, architect, or structures specialist may be liable for personal injury, wrongful death, property damage, or other loss that occurs while he or she is voluntarily providing services and assisting citizens during an emergency.

CS/CS/HB 891 grants civil liability immunity to an engineer, architect, or structures specialist who voluntarily provides engineering services under certain direction or supervision during a declared federal, state, or local emergency. The immunity applies only to services provided within 90 days of the first declaration of a specific emergency. The immunity includes immunity from liability for any personal injury, wrongful death, property damage, or other economic loss related to his or her acts or omissions as long as the act or omission did not involve gross negligence or willful misconduct. The bill also extends this immunity to an out-of-state engineer or architect who voluntarily renders aid in Florida as a member of another state’s mobile support unit.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Under to s. 252.36, F.S., the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.” The Governor may declare a state of emergency by executive order or proclamation if he or she finds an emergency has occurred or imminently going to occur. The state of emergency remains in place until the Governor finds that the threat or danger has been dealt with to the extent that emergency conditions no longer exist. No state of emergency may last longer than 60 days unless it is renewed by the Governor, although a state of emergency is commonly renewed multiple times.<sup>1</sup> An executive order or proclamation declaring a state of emergency activates the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans. The declaration also serves as authority for the deployment and use of any forces necessary, such as the Florida National Guard, for the use or distribution of supplies, equipment, and materials. In some cases, a state of emergency can last for months or even years.

In response to a request by the Governor, the President of the United States may issue a major disaster declaration or an emergency declaration, if needed. Such declaration authorizes the use of federal resources, including Department of Defense resources, to assist the state in managing and recovering from the disaster.<sup>2</sup> Further, counties and political subdivisions within the state are authorized to respond to local emergencies.<sup>3</sup> Each county and municipality may establish a local emergency management agency.<sup>4</sup>

Significant repair and rescue may be necessary after a destructive event such as a hurricane or wildfire. Trained professionals like engineers, architects, and structures specialists may volunteer their services and expertise after a disaster or emergency. Volunteering in this way, however, may expose the volunteer to civil liability, as some of these situations involve dangerous, high-risk activities.

Current law provides some limited immunity from tort liability for an engineer, architect, or structural specialist providing services. A licensed professional providing professional services during a declared emergency, where such services are related to the emergency, is not liable for professional malpractice as long as the professional acted as an ordinarily reasonably prudent member of that profession would have acted under the same or similar circumstances.<sup>5</sup> However, outside the professional malpractice context, an engineer, architect, or structures specialist may be liable for personal injury, wrongful death, property damage, or other loss that occurs while he or she is voluntarily providing services and assisting citizens during an emergency.

#### *Engineers*

An engineer is a professional practicing engineering. S. 471.005, F.S. defines engineering as:

any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences...and includes such other professional

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<sup>1</sup> On October 7, 2018, Governor DeSantis declared a state of emergency for 26 counties in Northwest Florida in anticipation of Hurricane Michael. The Governor extended the state of emergency by Executive Orders 18-360, 19-33, 19-134, 19-176, 19-207, 19-261, 20-23, 20-81, 20-130, and 20-171. On September 18, 2020, 712 days after the state of emergency was initially declared, it was again extended for 60 days. See Fla. Exec. Order No. 20-226 (Sep. 18, 2020).

<sup>2</sup> See generally 44 C.F.R. § 206(b); see also Federal Emergency Management Agency (FEMA), *How a Disaster Gets Declared*, <https://www.fema.gov/disasters/how-declared> (last visited on Apr. 19, 2021).

<sup>3</sup> S. 252.38, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 768.1345, F.S.

services as may be necessary to the planning, progress, and completion of any engineering services.<sup>6</sup>

The state regulates engineers through the Department of Business and Professional Regulation.<sup>7</sup> Engineers are authorized to practice within a qualified business entity, such as a corporation.<sup>8</sup>

### *Architects*

An architect is a professional practicing architecture. S. 481.203, F.S., defines architecture as the provision of “services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures.” These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.<sup>9</sup>

Florida regulates architects through the Department of Business and Professional Regulation.<sup>10</sup> Architects are authorized to practice within a qualified business entity, such as a corporation.<sup>11</sup>

### *Structures Specialists*

Structures specialists are engineers specially trained by the United States Army Corps of Engineers. Engineers trained as structures specialists can evaluate a damaged building or hazard to reduce the risks to rescue personnel and victims. Structures specialists design shoring systems to stabilize structures for rescuers to gain safe access to victims. Structures specialists are trained in a basic rescue skills course and also receive instruction in structural collapse patterns, hazard identification and building monitoring, rapid assessment of buildings, building triage and marking systems, advance shoring, and shoring calculations.<sup>12</sup>

## **Effect of Proposed Changes**

CS/CS/HB 891 creates s. 768.38, F.S., to provide civil liability immunity from liability for certain engineers, architects, and structures specialists who volunteer during and after a declared state of emergency. The bill defines “structures specialist” as a person who has been trained by and holds a current certificate from the United States Army Corps of Engineers as a structures specialist.

The bill provides that an engineer, architect, structures specialist, or qualified business organization of such person, who voluntarily provides engineering services within 90 days after the first declaration of a state of emergency is not liable for personal injury, wrongful death, property damages, or economic loss resulting from acts or omissions related to engineering or architectural services. Such immunity only applies to voluntary services rendered within 90 days of the first declaration of a particular federal, state, or local emergency. For such immunity to apply, the person must be acting under the direction or supervision of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency in response to the declared state of emergency. Such immunity only applies if the professional engineer, registered architect, or certified structures specialist’s act did not involve gross negligence or willful misconduct.

The bill extends such immunity to a person who is licensed, registered, or certified in another state as an engineer or architect and who participates as a member of another state’s mobile support unit rendering aid in Florida within 90 days of the first declaration of the federal, state, or local emergency.

The effective date of the bill is July 1, 2021.

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<sup>6</sup> S. 471.005(7), F.S.

<sup>7</sup> See generally ch. 471, F.S.

<sup>8</sup> S. 471.023, F.S.

<sup>9</sup> S. 481.203(2), F.S.

<sup>10</sup> See generally ch. 481, F.S.

<sup>11</sup> S. 481.219, F.S.

<sup>12</sup> US Army Corps of Engineers, *Urban Search and Rescue Program Fact Sheet*, February 2009.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 768.38, F.S., relating to limitation of liability for certain voluntary engineering or architectural services.

**Section 2:** Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill protects specified volunteers from civil liability, which may incentivize such volunteer work during and after an emergency.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2021, the Civil Justice and Property rights Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it:

- Created s. 768.38, F.S., relating to limitation of liability for certain voluntary engineering or architectural services. The original bill created a new section under ch. 471, F.S., relating to engineering services during state of emergency.
- Provided civil immunity to engineers, architects, and structures specialists volunteering engineering or architectural services in conjunction with a specified emergency response team or agency in response to a declared federal, state, or local emergency, absent gross negligence or willful misconduct.
- Provided civil immunity to an engineer or architect from another state who is rendering aid in this state as a member of a mobile support unit of another state.
- Extended civil immunity to a qualified business organization of such engineer, architect, or structures specialist voluntarily providing engineering services in response to a declared emergency.

On April 19, 2021, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the immunity provided by the bill only applies to services provided within 90 days of the first declaration of a federal, state, or local emergency.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.