

**Good The Florida Senate**  
**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 Communications, Energy, and Public Utilities Committee

BILL: SB 450

INTRODUCER: Senator Bennett

SUBJECT: Emergency Management

DATE: March 8, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	CU	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill provides immunity from civil liability for individuals, corporation, or other business entities that, in good faith, provide housing, food, water, or electricity to emergency first responders or their family members in response to a declared state of emergency or a declared public health emergency. The bill provides specific requirements with regard to when the immunity applies and when it does not.

This bill creates section 252.515 of the Florida Statutes.

**II. Present Situation:**

Presently, s. 252.36(2), F.S., empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency is imminent. Also, s. 381.00315, F.S., empowers the State Health Officer to declare public health emergencies.<sup>1</sup> State of emergencies and public health emergencies may only last for 60 days unless the Governor renews the declarations.<sup>2</sup>

Chapter 768, F.S., deals with the tort of negligence and provides several sections where certain individuals or groups are immune from civil liability if the individuals or groups meet the statutory requirements. For example, the Good Samaritan Act, under s. 768.13, F.S., provides that any health care providers, including a hospital licensed under chapter 395, that provide emergency services pursuant to certain statutes are immune from civil liability unless the health

<sup>1</sup> 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.

<sup>2</sup> See ss. 252.36(2) and 381.00315, F.S.

care provider acted with reckless disregard. “Reckless disregard” is defined as “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.”<sup>3</sup> Also, s. 768.1315, F.S., provides that 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 which occurs after the donation.

### III. Effect of Proposed Changes:

This bill creates the “Postdisaster Relief Assistance Act.” Within this bill, there are two categories of providers that may be immune from civil liability. First, the bill provides that any individual, corporation, or other business entity within the state who, in good faith, provides temporary housing, food, water, or electricity to emergency first responders or the immediate family members<sup>4</sup> of emergency first responders may not be held liable for any civil damages if their actions are like that of an ordinary reasonably prudent person under the same or similar 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., for a period of 6 months following the declared public health emergency or the declared a state of emergency.

Second, the bill also provides that any entity, employee thereof, or any individual that annually registers prior to a declared emergency with a county emergency management agency as a housing provider and, in good faith, provides housing, food, water and electricity to emergency first responders or their immediate family members may not be held liable for any civil damages unless their actions demonstrate a reckless disregard for the consequences of another.

The immunity from civil liability for this category of providers applies when a sudden or unexpected post-emergency situation or occurrence arises as a result of a declared emergency pursuant to s. 252.36, F.S. The period of time in which the immunity applies is also for 6 months following a declared state of emergency.

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.

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

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<sup>3</sup> s. 768.13(2)(b)3., F.S.

<sup>4</sup> The bill defines immediate family member as a parent, spouse, child or sibling.

the life or health of another, taking into account the extent or serious nature of the prevailing circumstances.

This has an effective date of July 1, 2011.

**Other Potential Implications:**

This bill provides two categories of individuals or groups that may be immune from civil liability. The first category (Category 1) of individuals or groups may be immune from civil liability without registering with a local emergency management agency, while the second group (Category 2) may receive immunity if registered. There are some potential implications or concerns that may arise as a result of having these two different categories.

- First, the two categories have different standards of conduct which triggers or bars the granting of their immunity. The concern is that these two standards of conduct may overlap one another thus creating an ambiguity of when the immunity applies and to whom.
- Secondly, the bill provides immunity for those in Category 1 when two situations arise, namely, a declared state of emergency or a declared state of public health emergency. However, Category 2's immunity is triggered only when "necessitated by a sudden or unexpected post-emergency situation or occurrence arising as a result of a declared emergency." The concern is that this distinction may lead to confusion as to when and who is immune from civil liability.
- Third, the bill provides that Category 1's immunity is applicable for the "temporary" provision of housing, food, water, and electricity, however, the word "temporary" is not used for those in Category 2. This distinction may be significant because, to add temporal language within this bill that is already temporary in its application may lead to ambiguity and confusion. Moreover, not including the word "temporary" to Category 2 may lead to the incorrect conclusion that they may provide housing, food, water, and electricity to first responders indefinitely and thus receive immunity for that indefinite period of time which is not the intent of the bill.

**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:**

None.

**C. Government Sector Impact:**

This bill grants immunity from civil liability to specific entities that annually register with a county emergency management agency. As a result, counties may incur minimal expenditures relating to such registration.

**VI. Technical Deficiencies:**

The bill provides that,

“Any individual, corporation, or other business entity within the state, including an individual, corporation, or business entity listed in subparagraph 2, who in good faith provides housing, food, water, or electricity to emergency first responders or the immediate family members of the emergency first responders...” may not be held liable for civil damages.

However, physicians, dentists, registered nurses, or emergency medical technicians, do not generally provide housing, food, water, or electricity to first responders and typically serve in a first responders capacity. Therefore, an ambiguity is created as to who are the first responders and who are the providers of housing, food, water, and electricity. First responders are not defined in the bill.

Also, the bill provides that immunity from civil liability does not apply in situations that are “unrelated to the original declared emergency or any extension thereof.” However, the overall purpose of the bill is to shield those that provide housing, food, water, and electricity from civil liability but the language stated above may create an ambiguity as to what is regarded as “relating to the original declared emergency.” Ultimately, this language may be interpreted to undermine the intent or the bill.

**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.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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