

HOUSE BILL REPORT

ESB 5768

As Reported By House Committee On:
State Government

Title: An act relating to architectural and engineering inspection services at an emergency scene.

Brief Description: Providing for inspection services at an emergency scene upon the request of a public official.

Sponsors: Senators Haugen, Oke, Loveland, Nelson, Owen, Cantu and Moyer.

Brief History:

Reported by House Committee on:
State Government, April 1, 1993, DPA.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 8 members: Representatives Anderson, Chair; Veloria, Vice Chair; Reams, Ranking Minority Member; Vance, Assistant Ranking Minority Member; Campbell; Conway; Dyer; and Pruitt.

Staff: Kenneth Hirst (786-7105).

Background: The Washington Emergency Management Act (EMA) establishes special rules which apply to state or local government's preparations for or response to an emergency or a disaster. These rules apply to events or circumstances which demand immediate action to preserve public health, protect life, or protect public property or which warrant a gubernatorial declaration of a state of emergency. They also apply to providing relief to a community overtaken by such events or circumstances.

Liability for Damages Assumed by State. All legal liability for damage to property caused by acts done or attempted under the EMA in a bona fide attempt to comply with the act is the obligation of the state. Suits may be instituted and maintained against the state for the enforcement of such liability or for the indemnification of persons appointed and regularly enrolled as emergency workers. The indemnification applies to judgements against emergency workers for acts done in good faith in compliance with the EMA and for damage done to their private property while actually engaged in emergency management duties or as

members of any agency of the state or local government engaged in emergency management activity. State liability does not apply in a case of wilful misconduct, gross negligence or bad faith on the part of any agent of emergency management nor does it apply if the United States provides for the payment of such damages.

Liability of an Emergency Worker. A person performing services as an emergency worker is not liable under various provisions of the EMA for the death of or injury to persons or damage to property resulting in his or her activities performed within the duties of an emergency worker if: the person is assisting an approved organization for emergency management; and the injury, loss, or damage is not caused by the worker's wilful misconduct or gross negligence. This waiver of liability applies if the injury, loss, or damage is caused by service with or without negligence as an emergency worker, but does not apply if it is caused by the intoxication of the worker. It is unclear whether such a worker's immunity from liability for damage to property includes damage in the form of economic loss.

Summary of Amended Bill: Architects and engineers licensed and registered by the state are expressly added to the persons who may qualify to be emergency workers under the EMA.

The exemption from liability provided by the EMA to emergency workers who are architects and engineers extends to all damages, not just to property damage or damage resulting from death or personal injury. With this exception, this waiver of liability applies under the same circumstances as those that apply currently to a waiver of liability for the actions of other emergency workers.

Amended Bill Compared to Engrossed Bill: The amendment permits architects and engineers to be emergency workers under the same conditions that apply to other persons; the engrossed Senate bill declares all architects and engineers to be "emergency workers" by virtue of their licensure as architects or engineers. The "damage to property" governed by the provisions of the EMA expressly includes, in the engrossed Senate bill, economic losses; this provision is replaced, in the amendment, by an expansion of the waiver of liability provided to architects and engineers when performing actions as emergency workers.

Fiscal Note: Requested March 26, 1993.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (1) It is not clear that current law permits architects and engineers to be treated as emergency workers or that they are protected from liability for economic losses resulting from their actions as emergency workers. The engrossed Senate bill provides the protection needed.

(2) Decisions regarding damage assessment and whether buildings can be occupied are major issues that must be addressed following a major earthquake. Local building departments cannot handle the demand for such decisions in emergency situations. Volunteer assistance from architects and engineers, working as emergency workers, is needed. They should have the same kind of protection from liability as is provided to persons in mine rescues and incidents involving spills of toxic substances.

Testimony Against: Architects and engineers should have to register with the Department of Community Development or local government for this type of emergency work, as other workers do.

Witnesses: (In favor of engrossed Senate bill): Nancee Wildermuth, Architects and Engineers Legislative Council; James E. Carpenter, Structural Engineers Association of Washington; Tom Kinsman, Washington Association of Building Officials; Bill Lokey, Washington Emergency Management Association; Christopher F. Long, Department of Community Development; and Dennis Martin, Trial Lawyers Association.