STATE OF NEW YORK

4135--A

2017-2018 Regular Sessions

IN SENATE

February 3, 2017

Introduced by Sens. SAVINO, AKSHAR, AVELLA, BONACIC, BOYLE, CARLUCCI, FUNKE, GALLIVAN, ORTT, PERALTA, SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to enacting the New York emergency responder act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York emergency responder act".

§ 2. The executive law is amended by adding a new section 29-f to read as follows:

§ 29-f. The New York emergency responder act. 1. As used in this section, the following terms shall have the following meanings:

(a) "Public official" shall mean any appointed or elected federal, state or local official with executive responsibility in the jurisdiction in which the emergency or event has occurred, and acting in his or her official capacity.

(b) "Public safety official" shall mean any appointed or elected federal, state or local official with executive responsibility to coordinate public safety in the jurisdiction in which the emergency or event has occurred, and acting in his or her official capacity.

(c) "Law enforcement official" shall mean any appointed or elected federal, state or local official with executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or event has occurred, and acting in his or her official capacity.

(d) "Code enforcement official" shall mean any appointed or elected federal, state or local official with executive responsibility to coor-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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dinate building inspection in the jurisdiction in which the emergency or event has occurred, and acting in his or her official capacity.

(e) "Declared emergency" shall mean any state disaster emergency declaration or local emergency order proclamation, by a public official, of the occurrence or imminent threat of a disaster or rioting, catastrophe or similar public emergency, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the public official that the public safety is imperiled thereby.

(f) "Municipal corporation" shall mean a county, town, city or village.

(g) "State department" shall mean those state government departments, divisions or commissions empowered by the state to enter into contractual agreements on behalf of the state.

(h) "State authority" shall mean a public authority or public benefit corporation created by or existing under this chapter or any other law of the state, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation.

(i) "Local authority" shall mean: (1) a public authority or public benefit corporation created by or existing under this chapter or any other law of the state whose members do not hold a civil office of the state, are not appointed by the governor or are appointed by the governor specifically upon the recommendation of the local government or governments; (2) a not-for-profit corporation affiliated with, sponsored by or created by a county, city, town or village government; (3) a local industrial development agency or authority of another local public benefit corporation; (4) an affiliate of such local authority; or (5) a land bank corporation created pursuant to article sixteen of the not-for-profit corporation law.

(j) "School district" shall mean any common school district, union free school district, central school district, city school district, or central high school district.

(k) "Special district" shall mean a town or county improvement district, district corporation or other district established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such district or to benefit the real property within such district, and in which real property is subject to special ad valorem levies or special assessments for the purposes for which such district was established.

(l) "Emergency assistance" shall mean (1) any assistance or advice, furnishing of construction, supplies, materials, equipment or labor; (2) provision of structural, electrical, mechanical or other engineering services rendered pursuant to article one hundred forty-five of the education law; (3) architectural services rendered pursuant to article one hundred forty-seven of the education law; (4) landscape architectural services rendered pursuant to article one hundred forty-eight of the education law; (5) land surveying services rendered pursuant to article one hundred forty-five of the education law; or (6) geological services rendered pursuant to article one hundred forty-five of the education law arising from or in connection with an actual or impending declared emergency, or national, state or local disaster, as defined in paragraph a of subdivision two of section twenty of this article.

2. Subject to paragraphs (a) through (g) of this subdivision, any person, corporation or other entity, and the employees and agents of such person, corporation or other entity, which provides emergency assistance either on a voluntary basis at the request of a public official, law enforcement official, public safety official or code enforcement official, municipal corporation, state department, state authority, local authority, school district or special district; or pursuant to a contract with a public official, law enforcement official, public safety official or code enforcement official, municipal corporation, state department, state authority, local authority, school district or special district; shall not be liable for any civil damages for injuries resulting from any act of commission or omission on his or her part in the course of his or her rendering such assistance unless it is established that such injuries were caused by gross negligence, or reckless, wanton or intentional misconduct, on the part of such person arising from, directly or indirectly, the person, corporation or entity, or the employees or agents of such person, corporation or entity, relating to the rendering or furnishing of the voluntary or contractual emergency assistance in connection with the disaster or emergency, provided that the emergency assistance consists of acts, advice, service, work, labor, materials, supplies, equipment or other activities that are consistent with the nature of and rendered pursuant to the request for, consent to, approval of, or contract for such emergency assistance.

(a) The rights and benefits provided in this subdivision shall apply with respect to all emergency assistance furnished within the period ending on the later of (1) sixty days after the emergency is declared terminated by the authorized public official, or (2) thirty days after the applicable official, municipal corporation, department or authority advises the private person, corporation or other entity that is providing the emergency assistance in writing that the emergency assistance is completed.

(b) The rights and benefits provided in this section shall apply in all cases except upon a showing that assistance or advice rendered, or a service furnished for or in connection with an impending or actual declared national, state or local disaster or emergency was performed pursuant to a separate written agreement for work to be performed or services to be rendered after the conclusion of the emergency assistance where the primary purpose of such agreement is the design or construction of a permanent repair, restoration, correction or other remedy of the conditions that caused or were damaged by the declared emergency, or national, state or local disaster, as defined in paragraph a of subdivision two of section twenty of this article.

(c) Where a person, corporation or other entity, or the employees or agents of any person, corporation or other entity renders advice or services at the request of a state or local employee or official and where such advice or services fall within the ambit of the rights and benefits provided in this section, the liability of the state or locality, if any, which requested the services shall not be affected by the provisions of this section.

(d) The rights and benefits provided in this section shall not apply to persons, corporations or other entities (1) whose primary business or occupation, at the time of the occurrence of the disaster or circumstances that gave rise to the declared emergency for which emergency assistance was provided, is one of providing emergency first responder services in response to declared emergencies, and national, state or local disasters, as defined in paragraph a of subdivision two of section

twenty of this article; or (2) is regularly engaged in the business of manufacturing equipment that is intended for general use in emergency response operations.

(e) The rights and benefits provided in this section shall not apply to persons, corporations or other entities whose negligence or willful misconduct caused, in whole or in material part, the disaster or declared emergency.

(f) Nothing in this section shall affect the rights and benefits of individuals expressly authorized to participate in volunteer emergency response activities under the direction of or in connection with a community emergency response team, county emergency management agency, state emergency management agency, state-sponsored volunteer program or federal emergency management agency.

(g) The rights and benefits provided in this section shall not affect the rights of individuals to seek workers' compensation insurance compensation and other benefits thereunder.

§ 3. This act shall take effect immediately.