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LAW/KR

P.L.2014, CHAPTER 53, *approved September 10, 2014*
Assembly, No. 2025 (*First Reprint*)

1 AN ACT concerning immunity from liability for certain professional
2 services rendered during an emergency and supplementing Title
3 59 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Notwithstanding any other provision of law to the contrary
9 ¹and except as provided in P.L. , c. (C.) (pending before
10 the Legislature as this bill)¹, an architect licensed pursuant to
11 R.S.45:3-1 et seq. or a professional engineer licensed pursuant to
12 P.L.1938, c.342 (C.45:8-27 et seq.) ¹【shall be considered a public
13 employee of a public entity pursuant to N.J.S. 59:1-1 et seq. and】¹
14 shall not be personally liable for any personal injury, wrongful
15 death, property damage, or other loss caused by an act, error, or
16 omission while practicing architecture or engineering, respectively,
17 if the practice of architecture or engineering was performed:

- 18 a. voluntarily and without compensation;
19 b. at the request of a public safety official, acting in an official
20 capacity; and
21 c. at the scene of a declared national, State, or local emergency
22 caused by a major earthquake, hurricane, tornado, fire, explosion,
23 collapse, or similar disaster or catastrophic event, during or within
24 90 days following the emergency, or for any extended period as
25 determined by executive order issued by the Governor under the
26 Governor’s emergency executive powers.

27 ¹For purposes of the New Jersey Tort Claims Act, N.J.S.59:1-1
28 et seq., an architect or engineer entitled to immunity under this
29 section shall be considered an employee of the public entity on
30 whose behalf the public safety official requested that the architect
31 or engineer perform the practice of architecture or engineering.
32 Nothing in P.L. , c. (C.) (pending before the Legislature as
33 this bill) shall be construed to provide such architect or engineer
34 with any right or entitlement to workers’ compensation from such
35 public entity.¹

36 As used in this section¹【,】¹

37 ¹【“public】 “Public¹ safety official” means any appointed or
38 elected federal, State, or local official with executive responsibility

EXPLANATION – Matter enclosed in bold-faced brackets 【thus】 in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 20, 2014.

1 to coordinate public safety or law enforcement in the jurisdiction in
2 which the emergency has occurred.

3 ¹“Employee” shall have the meaning ascribed to it in N.J.S.59:1-
4 3.¹

5
6 2. An architect or professional engineer shall not be considered
7 an employee of a public entity pursuant to N.J.S.59:1-1 et seq. and
8 shall not have the immunity protection provided by section 1 of this
9 act if:

10 a. the architect or professional engineer, or a private entity for
11 which the architect or engineer is employed, has any existing
12 contract for services with the public entity, other than the State of
13 New Jersey, whose public safety officer made the request for
14 architectural or engineering services provided under section 1 of
15 this act;

16 b. the architect or professional engineer, or a private entity for
17 which the architect or engineer is employed, enters into any
18 contract for services that involve the performance of any additional
19 architectural or engineering services related to the voluntary,
20 uncompensated services performed for the public entity whose
21 public safety officer made the request for architectural or
22 engineering services provided under section 1 of this act; or

23 c. the act or omission by the architect or engineer ¹**【**does not
24 require the public entity to defend and indemnify a public employee
25 pursuant to N.J.S.59:10-1 or N.J.S.59:10-2**】** involves actual fraud,
26 actual malice, willful misconduct or an intentional wrong¹.

27
28 3. This act shall take effect immediately.

29

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31

32

33 Grants immunity from liability for certain professional services
34 rendered during emergencies under certain circumstances.

ASSEMBLY, No. 2025

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Co-Sponsored by:

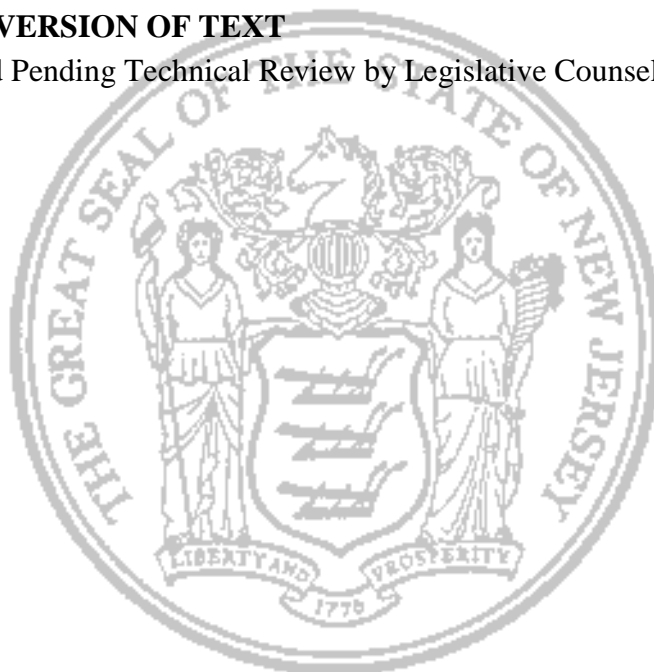
**Assemblywomen Handlin, Jasey, Assemblymen Diegnan, Schaer and
Wimberly**

SYNOPSIS

Grants immunity from liability for certain professional services rendered during emergencies under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/21/2014)

1 AN ACT concerning immunity from liability for certain professional
2 services rendered during an emergency and supplementing Title
3 59 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Notwithstanding any other provision of law to the contrary,
9 an architect licensed pursuant to R.S.45:3-1 et seq. or a professional
10 engineer licensed pursuant to P.L.1938, c.342 (C.45:8-27 et seq.)
11 shall be considered a public employee of a public entity pursuant to
12 N.J.S. 59:1-1 et seq. and shall not be personally liable for any
13 personal injury, wrongful death, property damage, or other loss
14 caused by an act, error, or omission while practicing architecture or
15 engineering, respectively, if the practice of architecture or
16 engineering was performed:

- 17 a. voluntarily and without compensation;
18 b. at the request of a public safety official, acting in an official
19 capacity; and
20 c. at the scene of a declared national, State, or local emergency
21 caused by a major earthquake, hurricane, tornado, fire, explosion,
22 collapse, or similar disaster or catastrophic event, during or within
23 90 days following the emergency, or for any extended period as
24 determined by executive order issued by the Governor under the
25 Governor's emergency executive powers.

26 As used in this section, "public safety official" means any
27 appointed or elected federal, State, or local official with executive
28 responsibility to coordinate public safety or law enforcement in the
29 jurisdiction in which the emergency has occurred.

30
31 2. An architect or professional engineer shall not be considered
32 an employee of a public entity pursuant to N.J.S.59:1-1 et seq. and
33 shall not have the immunity protection provided by section 1 of this
34 act if:

- 35 a. the architect or professional engineer, or a private entity for
36 which the architect or engineer is employed, has any existing
37 contract for services with the public entity, other than the State of
38 New Jersey, whose public safety officer made the request for
39 architectural or engineering services provided under section 1 of
40 this act;
41 b. the architect or professional engineer, or a private entity for
42 which the architect or engineer is employed, enters into any
43 contract for services that involve the performance of any additional
44 architectural or engineering services related to the voluntary,
45 uncompensated services performed for the public entity whose
46 public safety officer made the request for architectural or
47 engineering services provided under section 1 of this act; or

1 c. the act or omission by the architect or engineer does not
2 require the public entity to defend and indemnify a public employee
3 pursuant to N.J.S.59:10-1 or N.J.S.59:10-2.
4

5 3. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 This bill grants public employee status to licensed architects and
11 professional engineers for certain services rendered during and
12 following emergencies without compensation and at the request of
13 public officials. This “Good Samaritan” legislation provides
14 immunity in accordance with procedures established under the
15 “Tort Claims Act” for the licensed architects and professional
16 engineers who volunteer time, expertise, and services to help
17 rebuild communities that have been damaged by disasters, such as
18 hurricanes, fires, and, tornados.

19 The bill provides licensed architects and professional engineers
20 with public employee status pursuant to the Tort Claims Act and
21 they shall not be personally liable for any personal injury, wrongful
22 death, property damage, or other loss caused by an act, error, or
23 omission while practicing architecture or engineering following an
24 emergency. In order for the public employee status to apply, the
25 practice of architecture or engineering must be performed:

26 (1) voluntarily and without compensation;

27 (2) at the request of a public safety official, acting in an official
28 capacity; and

29 (3) at the scene of a declared national or State emergency
30 caused by a major earthquake, hurricane, tornado, fire, explosion,
31 collapse, or similar disaster or catastrophic event, during or within
32 90 days following the emergency, or for any extended period as
33 determined by executive order issued by the Governor under the
34 Governor’s emergency executive powers.

35 As used in the bill, “public safety official” means any appointed
36 or elected federal, State, or local official with executive
37 responsibility to coordinate public safety or law enforcement in the
38 jurisdiction in which the emergency has occurred.

39 In addition, for the public employee status and immunity to
40 apply, the architect or professional engineer, or a private entity for
41 which the architect or engineer is employed, cannot have any
42 existing contract for services with the public entity, other than the
43 State of New Jersey, whose public safety officer made the request
44 for architectural or engineering services; and the architect or
45 professional engineer, or a private entity for which the architect or
46 engineer is employed, cannot enter into any contract for services
47 that involves the performance of any additional architectural or

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1 engineering services related to the voluntary, uncompensated
2 services performed for with the public entity whose public safety
3 officer made a request for architectural or engineering services; and
4 the act or omission by the architect or engineer requires the public
5 entity to defend and indemnify a public employee pursuant to
6 N.J.S.59:10-1 or N.J.S.59:10-2.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2025

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 2014

The Assembly Judiciary Committee reports favorably Assembly Bill No. 2025.

This bill grants public employee status to licensed architects and professional engineers for certain unpaid services rendered during and following emergencies.

Under the bill, licensed architects and professional engineers would be considered public employees of a public entity pursuant to the “New Jersey Tort Claims Act,” set out in N.J.S.59:1-1 et seq. The bill provides that these professionals would not be personally liable for any personal injury, wrongful death, property damage, or other loss caused by an act, error, or omission while practicing architecture or engineering following an emergency. In order for the public employee status to apply, the practice of architecture or engineering must be performed:

(1) voluntarily and without compensation;

(2) at the request of a public safety official, acting in an official capacity; and

(3) at the scene of a declared national or State emergency caused by a major earthquake, hurricane, tornado, fire, explosion, collapse, or similar disaster or catastrophic event, during or within 90 days following the emergency, or for any extended period as determined by executive order issued by the Governor under the Governor’s emergency executive powers.

The bill defines “public safety official” as any appointed or elected federal, State, or local official with executive responsibility to coordinate public safety or law enforcement in the jurisdiction in which the emergency has occurred.

The provisions of the bill would not apply under certain circumstances. Under the bill, the architect or engineer would not be considered an employee of a public entity and would not have the immunity provided by the bill:

(1) if the architect or engineer, or a private entity for which that person is employed, has any existing contract for services with the public entity, other than the State of New Jersey, whose public safety officer made the request for architectural or engineering services; or

(2) if the architect or engineer, or a private entity for which the architect or engineer is employed, enters into any contract for services

that involves the performance of any additional architectural or engineering services related to the voluntary, uncompensated services performed for the public entity whose public safety officer made a request for architectural or engineering services; or

(3) if the act or omission by the architect or engineer does not require the public entity to defend and indemnify a public employee pursuant to N.J.S.59:10-1 or N.J.S.59:10-2.

Under current law, set out in sections 1 and 2 of P.L.1972, c.48 (C.59:10A-1 and 59:10A-2), upon request of a current or former State employee the Attorney General shall provide for the defense of any action brought against the person on account of an act or omission in the scope of his employment. The Attorney General may refuse to provide for the person's defense if he determines that the act or omission was not within the scope of employment, if the act or the failure to act was because of actual fraud, willful misconduct or actual malice, or if defense by the Attorney General would create a conflict of interest between the State and the employee or former employee.

Under N.J.S.59:10-1 and N.J.S.59:10-2, if the Attorney General provides for the defense of an employee or former employee, the State must provide indemnification for the State employee. If the Attorney General refuses to provide for the defense of a State employee, the employee or former employee is entitled to indemnification from the State if he establishes that the act or omission upon which the claim or judgment was based occurred within the scope of his employment as an employee of the State and the State fails to establish that he acted or failed to act because of actual fraud, actual malice or willful misconduct.

This bill was pre-filed for introduction in the 2014-2015 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
ASSEMBLY, No. 2025

with Assembly Floor Amendments
(Proposed by Assemblyman GREENWALD)

ADOPTED: MARCH 20, 2014

These floor amendments would clarify section 1 of the bill to provide that, for purposes of the New Jersey Tort Claims Act, N.J.S.59:1-1 et seq., an architect or engineer entitled to immunity under the bill would be considered an employee of the public entity on whose behalf the public safety official requested that the architect or engineer perform the practice of architecture or engineering.

The amendments specify that nothing in the bill shall be construed to provide such architect or engineer with any right or entitlement to workers' compensation from such public entity.

The amendments also clarify section 2 of the bill to provide that the architect or engineer would not be considered an employee pursuant to the Tort Claims Act or have the immunity protection provided by the bill if the act or omission by the architect or engineer involves actual fraud, actual malice, willful misconduct or an intentional wrong.

In addition, the amendments provide that the term "employee" would be defined as in N.J.S.59:1-3: "'Employee' includes an officer, employee, or servant, whether or not compensated or part-time, who is authorized to perform any act or service; provided, however, that the term does not include an independent contractor."

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2025

STATE OF NEW JERSEY

DATED: JUNE 23, 2014

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2025 (1R).

This bill provides licensed professional engineers and licensed architects immunity from personal liability under the New Jersey Tort Claims Act for certain volunteer and uncompensated professional services performed at the request of a public safety official of a jurisdiction during and for a period following a declared emergency. Immunity from personal liability, for any personal injury, wrongful death, property damage, or other loss caused by an act, error, or omission, is extended under the act by considering the professional performing the practice of architecture or engineering as an employee of the public entity for which the service is requested. But the bill clarifies that there is no grant to the professional of the right or entitlement to workers' compensation from the public entity.

In order for the personal liability immunity of public employee status to apply, the practice of architecture or engineering must be performed:

- (1) voluntarily and without compensation;
- (2) at the request of a public safety official, acting in an official capacity; and
- (3) at the scene of a declared national or State emergency caused by a major earthquake, hurricane, tornado, fire, explosion, collapse, or similar disaster or catastrophic event, during or within 90 days following the emergency, or for any extended period as determined by executive order issued by the Governor under the Governor's emergency executive powers.

The bill provides that the architect or engineer would not be considered an employee pursuant to the Tort Claims Act, or have the immunity protection provided by the bill, if the professional has certain contractual relationships with the public entity or if an act or omission by the architect or engineer involves actual fraud, actual malice, willful misconduct or an intentional wrong.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

ASSEMBLY, No. 3694

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 14, 2013

Sponsored by:

Assemblyman LOUIS D. GREENWALD
District 6 (Burlington and Camden)

Co-Sponsored by:

Assemblywomen Handlin and Jasey

SYNOPSIS

Grants immunity from liability for certain professional services rendered during emergencies under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/10/2013)

1 AN ACT concerning immunity from liability for certain professional
2 services rendered during an emergency and supplementing Title
3 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Notwithstanding any other provision of law to the contrary,
9 an architect licensed pursuant to R.S.45:3-1 et seq. or a professional
10 engineer licensed pursuant to P.L.1938, c.342 (C.45:8-27 et seq.)
11 shall not be liable for any personal injury, wrongful death, property
12 damage, or other loss caused by an act, error, or omission while
13 practicing architecture or engineering, respectively, if:

14 a. The act, error, or omission was not wanton, willful, or
15 grossly negligent; and

16 b. The practice of architecture or engineering was performed:

17 (1) Voluntarily and without compensation;

18 (2) At the request of a public safety official, acting in an official
19 capacity; and

20 (3) At the scene of a declared national, State, or local
21 emergency caused by a major earthquake, hurricane, tornado, fire,
22 explosion, collapse, or similar disaster or catastrophic event, during
23 or within 90 days following the emergency, or for any extended
24 period as determined by executive order issued by the Governor
25 under the Governor's emergency executive powers.

26 As used in this section, "public safety official" means any
27 appointed or elected federal, State, or local official with executive
28 responsibility to coordinate public safety or law enforcement in the
29 jurisdiction in which the emergency has occurred.

30
31 2. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 This bill grants licensed architects and professional engineers
37 immunity from liability for certain services rendered during and
38 following emergencies without compensation and at the request of
39 public officials. This "Good Samaritan" legislation provides
40 protection to licensed architects and professional engineers who
41 volunteer time, expertise, and services to help rebuild communities
42 that have been damaged by disasters, such as hurricanes, fires, and,
43 tornados. The need for this legislation became apparent in the
44 aftermath of Hurricane Sandy, when many communities were
45 devastated and in need of the services of licensed architects and
46 professional engineers.

47 The bill provides licensed architects and professional engineers
48 with immunity from liability for any personal injury, wrongful

1 death, property damage, or other loss caused by an act, error, or
2 omission while practicing architecture or engineering for certain
3 services following an emergency. In order for immunity to apply,
4 the act, error, or omission must not be wanton, willful, or grossly
5 negligent and the practice of architecture or engineering must be
6 performed:

- 7 (1) Voluntarily and without compensation;
- 8 (2) At the request of a public safety official, acting in an official
9 capacity; and
- 10 (3) At the scene of a declared national, State, or local
11 emergency caused by a major earthquake, hurricane, tornado, fire,
12 explosion, collapse, or similar disaster or catastrophic event, during
13 or within 90 days following the emergency, or for any extended
14 period as determined by executive order issued by the Governor
15 under the Governor's emergency executive powers.

16 As used in the bill, "public safety official" means any appointed
17 or elected federal, State, or local official with executive
18 responsibility to coordinate public safety or law enforcement in the
19 jurisdiction in which the emergency has occurred.

ASSEMBLY REGULATED PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3694

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 18, 2013

The Assembly Regulated Professions Committee reports favorably and with committee amendments Assembly Bill No. 3694.

As amended, this bill grants public employee status to licensed architects and professional engineers for certain services rendered during and following emergencies without compensation and at the request of public officials. This “Good Samaritan” legislation provides immunity in accordance with procedures established under the “Tort Claims Act” for the licensed architects and professional engineers who volunteer time, expertise, and services to help rebuild communities that have been damaged by disasters, such as hurricanes, fires, and, tornados.

The bill provides licensed architects and professional engineers with public employee status pursuant to the Tort Claims Act and they shall not be personally liable for any personal injury, wrongful death, property damage, or other loss caused by an act, error, or omission while practicing architecture or engineering following an emergency. In order for the public employee status to apply, the practice of architecture or engineering must be performed:

- (1) voluntarily and without compensation;
- (2) at the request of a public safety official, acting in an official capacity; and
- (3) at the scene of a declared national or State emergency caused by a major earthquake, hurricane, tornado, fire, explosion, collapse, or similar disaster or catastrophic event, during or within 90 days following the emergency, or for any extended period as determined by executive order issued by the Governor under the Governor’s emergency executive powers.

As used in the bill, “public safety official” means any appointed or elected federal, State, or local official with executive responsibility to coordinate public safety or law enforcement in the jurisdiction in which the emergency has occurred.

In addition, for the public employee status and immunity to apply, the architect or professional engineer, or a private entity for which the architect or engineer is employed, cannot have any existing contract for services with the public entity, other than the State of New Jersey,

whose public safety officer made the request for architectural or engineering services; and the architect or professional engineer, or a private entity for which the architect or engineer is employed, cannot enter into any contract for services that involves the performance of any additional architectural or engineering services related to the voluntary, uncompensated services performed for with the public entity whose public safety officer made a request for architectural or engineering services; and the act or omission by the architect or engineer requires the public entity to defend and indemnify a public employee pursuant to N.J.S.59:10-1 or N.J.S.59:10-2.

COMMITTEE AMENDMENTS:

The bill originally granted licensed architects and professional engineers immunity from liability for certain services rendered during and following emergencies without compensation and at the request of public officials, whereas the bill, as amended, grants public employee status to these architects and professional engineers for rendering architecture or engineering services during and following emergencies.

In addition, the amendments include a new section 2 to the bill, which enumerates conditions under which such public employee status and immunity do not apply. As specifically provided in section 2 of this bill, the architect or professional engineer shall not be considered an employee of a public entity pursuant to N.J.S.59:1-1 et seq. and shall not have the immunity protection provided by section 1 of this bill if:

a. the architect or professional engineer, or a private entity for which the architect or engineer is employed, has any existing contract for services with the public entity, other than the State of New Jersey, whose public safety officer made the request for architectural or engineering services provided under section 1 of this bill;

b. the architect or professional engineer, or a private entity for which the architect or engineer is employed, enters into any contract for services that involve the performance of any additional architectural or engineering services related to the voluntary, uncompensated services performed for the public entity whose public safety officer made the request for architectural or engineering services provided by section 1 of this bill; or

c. the act or omission by the architect or engineer does not require the public entity to defend and indemnify a public employee pursuant to N.J.S.59:10-1 or N.J.S.59:10-2.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3694

STATE OF NEW JERSEY

DATED: JANUARY 13, 2014

The Senate Budget and Appropriations committee reports favorably Assembly Bill No. 3694 (1R).

This bill grants public employee status to licensed architects and professional engineers for certain services rendered during and following emergencies without compensation and at the request of public officials. This “Good Samaritan” legislation provides immunity in accordance with procedures established under the “Tort Claims Act” for the licensed architects and professional engineers who volunteer time, expertise, and services to help rebuild communities that have been damaged by disasters, such as hurricanes, fires, and, tornados.

The bill provides licensed architects and professional engineers with public employee status pursuant to the Tort Claims Act and they shall not be personally liable for any personal injury, wrongful death, property damage, or other loss caused by an act, error, or omission while practicing architecture or engineering following an emergency. In order for the public employee status to apply, the practice of architecture or engineering must be performed:

- (1) voluntarily and without compensation;
- (2) at the request of a public safety official, acting in an official capacity; and
- (3) at the scene of a declared national or State emergency caused by a major earthquake, hurricane, tornado, fire, explosion, collapse, or similar disaster or catastrophic event, during or within 90 days following the emergency, or for any extended period as determined by executive order issued by the Governor under the Governor’s emergency executive powers.

As used in the bill, “public safety official” means any appointed or elected federal, State, or local official with executive responsibility to coordinate public safety or law enforcement in the jurisdiction in which the emergency has occurred.

In addition, the public employee status and immunity will not apply, if:

- (1) the architect or professional engineer, or a private entity for which the architect or engineer is employed, has an existing contract

for services with the public entity, other than the State of New Jersey, whose public safety officer made the request for architectural or engineering services;

(2) the architect or professional engineer, or a private entity for which the architect or engineer is employed, enters into any contract for services that involves the performance of any additional architectural or engineering services related to the voluntary, uncompensated services performed for the public entity whose public safety officer made the request for architectural or engineering services; and

(3) the act or omission by the architect or engineer does not require the public entity to defend and indemnify a public employee pursuant to N.J.S.59:10-1 or N.J.S.59:10-2.

As reported, this bill is identical to Senate Bill No. 3131, as also reported by the committee on this date.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.