



“Emergency Preparedness” Bill Affects Volunteer Liability and Workers’ Compensation

By Mark Rauch, General Counsel, City County Insurance Services

Recent events such as Hurricane Katrina and the December 2007 storms, as well as the prospect of a pandemic flu outbreak, have sharpened everyone’s focus on emergency preparedness. Governments are expected to respond to these situations, but the infrequency and unpredictability of such occurrences requires a heavy reliance on volunteers and other service providers who are not regular public employees. During the 2009 legislative session, two concerns raised by emergency service providers provided the impetus for legislation related to emergency preparedness: the potential liability of such emergency service providers; and covering the cost of injuries to such providers in the course of their emergency services.

ORS Chapter 401 addresses “Emergency Services and Communications.” Specifically, HB 3021 revises ORS Chapter 401 primarily in response to the above concerns. The approach is to address the relevant concerns in three separate areas: “Qualified Emergency Service Volunteers,” “Emergency Health Care Services,” and “Search and Rescue.”

The revisions can be summarized as follows:

“Qualified Emergency Service Volunteers”

1. Adds new definitions of “emergency service activities” and “qualified emergency service volunteer” that establish clear criteria for eligibility for the liability and workers compensation provisions. (Section 2)
2. Addresses the liability concern by clarifying that such volunteers are “agents” of the public body. The new language provides that a *qualified emergency service volunteer* “is an *agent* of a public body under ORS 30.260 to 30.300 [the Oregon Tort Claims Act (OTCA)].” It further clarifies that acts and omissions of the volunteer are within the course and scope of the volunteer’s duties if the acts or omissions occur “(a) While the volunteer is performing *emergency service activities* under the direction of the public body during a state of emergency declared under ORS 401.015 to 401.039, or during a state of public health emergency proclaimed under ORS 433.441; or (b) While the volunteer is engaged in training being conducted or approved by a public body for the purpose of preparing the volunteer to perform emergency services.” The public body shall defend and indemnify such volunteers for any tort claims arising out of such service. (Section 4)
3. Addresses workers’ compensation concern by providing “The Office of Emergency Management shall provide workers’ compensation coverage for qualified emergency service volunteers who are injured in the course and

scope of performing emergency service activities under the direction of a public body if the injury occurs: (a) While the volunteer is performing emergency service activities under the direction of the public body during a state of emergency declared under ORS 401.015 to 401.039, or during a state of public health emergency proclaimed under ORS 433.441; or (b) While the volunteer is engaged in training being conducted or approved by a public body for the purpose of preparing the volunteer to perform emergency services.” (Section 5)

“Emergency Health Care Services”

This part (Sections 7 through 9) provides that during a governor-declared emergency or public health emergency, emergency health care providers registered under ORS 401.654, and other health care providers who perform health care services under ORS 401.651 to 401.670, are “agents” covered by the OTCA regardless of whether they receive compensation. Previously such indemnification was afforded only when the services were provided without compensation.

“Search and Rescue”

1. Adds new definitions of “qualified search and rescue volunteer” and “search and rescue activities.”
2. Provides that a “qualified search and rescue volunteer is an *agent* of the county under ORS 30.260 to 30.300 for the purpose of acts and omissions of the volunteer that are within the course and scope of the volunteer’s duties and that occur while the volunteer is performing search and rescue activities under the direction of the sheriff of the county or the designee of the sheriff, and the county shall defend, save harmless and indemnify the volunteer for any tort claim arising out of an alleged act or omission occurring in the performance of those activities as required by ORS 30.285”.
3. As to workers’ compensation, coverage provides that the county must provide workers’ compensation coverage on these volunteers. More specifically, “(1) Any county in which a qualified search and rescue volunteer performs search and rescue activities under the direction of the sheriff of the county or the designee of the sheriff is conclusively deemed to have filed an election under ORS 656.031 to provide workers’ compensation coverage for the qualified search and rescue volunteer. (2) An insurer or self-insured employer may fix assumed wage rates for qualified search and rescue volunteers, which may be used only for purposes of computations under ORS Chapter 656, and shall require the

(continued on next page)

regular payment of premiums or assessments based on the hours of service by qualified search and rescue volunteers. A self-insured employer shall submit the assumed wage rates to the director of the Department of Consumer and Business Services. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section. (3) A county that is a self-insured employer under ORS Chapter 656 may apply to an insurer for workers' compensation coverage for qualified search and rescue volunteers only, while continuing to self-insure the other subject workers of the county. If an insurer decides not to provide workers' compensation coverage for qualified search and rescue volunteers of the county, coverage shall be provided through the assigned risk pool. (4) Qualified search and rescue volunteers and their beneficiaries are not eligible for workers' compensation benefits under this section if the volunteer is performing search and rescue activities during an emergency and is provided with workers' compensation coverage under section 5 of this 2009 Act.

Finally, Section 17 adds a new and more detailed definition of "emergency" as follows:

"Emergency" means a human created or natural event or circumstance that causes or threatens widespread loss of life, injury to person or property, human suffering or financial loss, including but not limited to:

(a) Fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism and war; and

(b) A rapid influx of individuals from outside this state, a rapid migration of individuals from one part of this state to another or a rapid displacement of individuals if the influx, migration or displacement results from the type of event or circumstance described in paragraph (a) of this subsection.

On the Web: The full bill, as passed, can be found at www.leg.state.or.us/O9reg/measpdf/hb3000.dir/hb3021.en.pdf. ■

CIS grants the city of Oakland's wish

City leaders are better able to address zoning and other planning issues thanks to training funded with a CIS Risk Management grant. Oakland City Recorder, Barbara Mock applied for the grant. ***The city would not have been able to pay for the training without the grant, she says.***



Price. Coverage. Service. Ownership.



www.cciservices.com

503-763-3800

800-922-2684

CIS is a service program of the League of Oregon Cities and Association of Oregon Counties