

2018 Regular Session

HOUSE BILL NO. 388

BY REPRESENTATIVES HODGES AND FOIL

HOMELAND SECURITY: Provides relative to emergency management

1 AN ACT

2 To amend and reenact R.S. 9:2793.8, R.S. 29:733(C)(Article 6), and R.S. 33:4712.18(A)(3),
3 and to enact R.S. 29:735.4 and R.S. 42:1102(18)(b)(iii), relative to emergency
4 preparedness and disaster management; to provide relative to the Emergency
5 Management Assistance Compact; to provide for a registry of volunteers for disaster
6 or emergency response; to provide for credentials of volunteers; to provide for
7 definitions; to provide a limitation of liability for volunteers; to provide relative to
8 leave from employment; to provide for applicability; to provide limitations; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:2793.8 is hereby amended and reenacted to read as follows:

12 §2793.8. Gratuitous services rendered by National Voluntary Organizations Active
13 in Disaster and other volunteer agencies; limitation of liability

14 A. The National Voluntary Organizations Active in Disaster or its member
15 organizations or any officer, employee, or volunteer thereof, who gratuitously
16 renders any evacuation assistance or services of any kind to other persons in advance
17 of a hurricane or tropical storm declared by the United States National Oceanic and
18 Atmospheric Administration's National Weather Service or who gratuitously renders
19 any disaster relief or recovery services following a declared state of emergency, shall
20 not be liable to any person for any injury, death, loss, civil penalty, or damage as a

1 result of any act or omission in rendering assistance, relief, or recovery services or
2 as a result of any act or failure to act or failure to provide or arrange for further
3 services, unless the damage or injury was caused by gross negligence or willful and
4 wanton misconduct.

5 B. Other volunteer agencies who gratuitously render any disaster relief or
6 recovery services following a declared state of emergency shall not be liable to any
7 person for any injury, death, loss, civil penalty, or damage as a result of any act or
8 omission in rendering assistance relief, or recovery services or as a result of any act
9 or failure to act or failure to provide or arrange for further services, unless the
10 damage or injury was caused by gross negligence or willful and wanton misconduct
11 and in accordance with R.S. 29:735.3.1.

12 Section 2. R.S. 29:733(C)(Article 6) is hereby amended and reenacted and R.S.
13 29:735.4 is hereby enacted to read as follows:

14 §733. Emergency Management Assistance Compact

15 * * *

16 C. The state of Louisiana hereby agrees:

17 * * *

18 Article 6. Officers or employees of a party state, to include political
19 subdivisions, ~~and~~ local governments, and registered and credentialed volunteer
20 organizations of that state, rendering aid in another state pursuant to this Compact
21 shall be considered agents of the requesting state for tort liability and immunity
22 purposes. No party state or its officers or employees, including local political
23 subdivisions, ~~and~~ local governments, and registered and credentialed volunteer
24 organizations rendering aid in another state pursuant to this Compact shall be liable
25 on account of any act or omission in good faith on the part of such forces while so
26 engaged or on account of the maintenance or use of any equipment or supplies in
27 connection therewith. Good faith in this Article shall not include willful misconduct,
28 gross negligence, or recklessness.

29 * * *

1 §735.4. Registry of disaster volunteers; credentialing; leave from employment

2 A.(1) The Governor's Office of Homeland Security and Emergency
3 Preparedness may establish a registry of volunteers pursuant to the provisions of this
4 Section. Volunteers included in the registry may be deployed by either the
5 Governor's Office of Homeland Security and Preparedness or the parish office of
6 homeland security and emergency preparedness.

7 (2) The Governor's Office of Homeland Security and Emergency
8 Preparedness may provide credentials for volunteers including the issuance of an
9 identification card or badge identifying the person as a volunteer. The credentialing
10 requirements may differ depending upon the type of volunteer work being provided
11 and may include a background check of the volunteer.

12 (3) For purposes of this Section, the term "volunteer" shall mean an
13 individual who donates labor through a nonprofit organization that is registered and
14 approved by the state as a private, nonprofit, tax-exempt organization pursuant to 26
15 U.S.C. 501(c)(3).

16 B. Volunteers registered and credentialed by the Governor's Office of
17 Homeland Security and Emergency Preparedness or a parish office of homeland
18 security and emergency preparedness:

19 (1) Shall be treated as unpaid agents of the state or parish for purposes of
20 immunity from liability when they are in the course and scope of their deployment
21 by the Governor's Office of Homeland Security and Emergency Preparedness or a
22 parish office of homeland security and emergency preparedness.

23 (2) May make claims through the Governor's Office of Homeland Security
24 and Emergency Preparedness or the parish office of homeland security and
25 emergency preparedness as authorized by the mission and at the discretion of the
26 director of the Governor's Office of Homeland Security and Emergency Preparedness
27 if they suffer damage to their property or expend funds in order to accomplish an
28 assigned mission.

1 (3) May share and receive state and parish commodities at the discretion of
2 the director of the Governor's Office of Homeland Security and Emergency
3 Preparedness pursuant to R.S. 29:726 and R.S. 33:4712.18.

4 C.(1) Any volunteer registered and credentialed by the Governor's Office of
5 Homeland Security and Emergency Preparedness or a parish office of homeland
6 security and emergency preparedness who is an officer or employee of the state, any
7 political subdivision, or any other public agency of the state, and who is called into
8 service by the Governor's Office of Homeland Security and Emergency Preparedness
9 or a parish office of homeland security and emergency preparedness for a disaster,
10 is entitled to a leave of absence from his employment for the time when he is
11 serving, without loss of pay, seniority, status, efficiency rating, vacation, sick leave,
12 or other benefits. The leave without loss of pay provided pursuant to the provisions
13 of this Subsection shall not exceed a total of fifteen days in any calendar year and
14 may be allowed only if the approved and credentialed volunteer agency provides
15 proof of the volunteer service.

16 (2) The leave authorized pursuant to Paragraph (1) of this Subsection shall
17 be allowed only if the employee returns to his public position the next scheduled
18 work day after being relieved from emergency volunteer service, except that leave
19 shall be allowed pursuant to Paragraph (1) of this Subsection if the employee is
20 unable to return to work due to injury or circumstances beyond the employee's
21 control, and the employee notifies the employer as soon as practicable, but prior to
22 the next scheduled work day.

23 (3) A state agency or any political subdivision, or any other public agency
24 of the state may hire a temporary employee to fill the vacancy created by a leave of
25 absence allowed under Paragraph (1) of this Subsection.

26 (4) Upon returning from a leave of absence provided pursuant to the
27 provisions of this Subsection, an employee is entitled to return to the same position
28 and classification held before the leave of absence for the emergency volunteer
29 service or to the position, including the geographic location of the position, and

1 classification that the employee would have been entitled to if he did not take a leave
2 of absence for the emergency volunteer service.

3 (5) Notwithstanding the provisions of this Subsection, an employer shall not
4 be required to provide leave pursuant to the provisions of this Subsection to more
5 than twenty percent of the employer's employees on any given work day and shall
6 not be required to allow leave pursuant to this Subsection for any employee
7 designated as an essential employee. For the purposes of this Paragraph, "essential
8 employee" means an employee who the employer deems to be essential to the
9 operation of the employer's daily enterprise and whose absence would likely cause
10 the employer to suffer economic injury, or whose duties include assisting in disaster
11 recovery for the employer.

12 D.(1) Any volunteer registered and credentialed by the Governor's Office of
13 Homeland Security and Emergency Preparedness or a parish office of homeland
14 security and emergency preparedness who is employed by a private employer and
15 who is called into service by the Governor's Office of Homeland Security and
16 Emergency Preparedness or a parish office of homeland security and emergency
17 preparedness for a disaster is entitled to a leave of absence from his employment,
18 other than employment of a temporary nature, for the time when he is serving. The
19 leave allowed pursuant to this Section shall not exceed a total of fifteen days in any
20 calendar year and may be allowed only if the volunteer provides sufficient proof of
21 the volunteer service and is certified by the volunteer agency.

22 (2) The leave of absence allowed pursuant to this Section shall be construed
23 as an absence with leave and without pay and shall not affect the employee's rights
24 to vacation, sick leave, bonus, advancement, or other employment benefits or
25 advantages relating to and normally to be expected for the employee's particular
26 employment.

27 (3) The leave of absence pursuant to this Section shall be allowed only if the
28 employee returns to his employment as soon as practicable after being relieved from
29 emergency volunteer service.

1 (4) The employer of a credentialed volunteer who takes a leave of absence
2 from employment to engage in emergency volunteer service shall, upon the
3 employee's completion of the emergency volunteer service, restore the employee to
4 the position held by the employee prior to the leave of absence or to a similar
5 position.

6 (5) Notwithstanding this Section, an employer shall not be required to
7 provide leave pursuant to this Section to more than twenty percent of the employer's
8 employees on any given work day and shall not be required to allow leave pursuant
9 to this Section for any employee designated as an essential employee. For the
10 purposes of this Subsection, "essential employee" means an employee who the
11 employer deems to be essential to the operation of the employer's daily enterprise
12 and whose absence would likely cause the employer to suffer economic injury, or
13 whose duties include assisting in disaster recovery for the employer.

14 E. Volunteers shall be given these same benefits and immunities if they are
15 deployed pursuant to R.S. 29:733.

16 F. Volunteers in this Section shall not be considered public employees and
17 thus shall not be subject to the provisions of Title 42.

18 G. The Governor's Office of Homeland Security and Emergency
19 Preparedness may promulgate rules pursuant to the Administrative Procedure Act to
20 implement the provisions of this Section.

21 Section 3. R.S. 33:4712.18(A)(3) is hereby amended and reenacted to read as
22 follows:

23 §4712.18. Sharing of equipment between public entities

24 A.

25 * * *

26 (3)(a) When an emergency situation is declared and public entities need to
27 share equipment, the provisions of Paragraph (1) of this Subsection are not required,
28 provided the public entities share the equipment in good faith relative to the
29 emergency situation.

1 **(b) The Governor's Office of Homeland Security and Emergency**
 2 **Preparedness may coordinate the sharing of equipment between the public and**
 3 **private entities in order to meet the needs of an emergency or disaster pursuant to**
 4 **R.S. 29:724.**

5 * * *

6 Section 4. R.S. 42:1102(18)(b)(iii) is hereby enacted to read as follows:

7 §1102. Definitions

8 Unless the context clearly indicates otherwise, the following words and
 9 terms, when used in this Chapter, shall have the following meanings:

10 * * *

11 (18)

12 * * *

13 (b) However, "public employee" shall not mean a person whose public
 14 service is limited to the following:

15 * * *

16 **(iii) A volunteer as defined in R.S. 29:735.3.1.**

17 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 388 Original 2018 Regular Session Hodges

Abstract: Authorizes a registry and credentialing of volunteers in disaster or emergency response, provides limitations of liability for volunteers, and adds provisions governing leave from employment for volunteers deployed on a mission.

Present law provides a limitation of liability for the National Voluntary Organizations Active in Disaster or its member organizations who gratuitously render disaster relief or recovery services.

Proposed law extends present law to other volunteer agencies.

Present law provides for the Emergency Management Assistance Compact which, in part, provides that officers or employees of a state, political subdivisions, or local governments rendering aid to another state pursuant to the compact shall be considered agents of the requesting state for purpose of liability and immunity.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Proposed law extends the application of present law to registered and credentialed volunteer organizations.

Proposed law authorizes the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) to establish a registry of volunteers to be deployed either by GOHSEP or the parish office of homeland security and emergency preparedness. Defines "volunteer" and authorizes GOHSEP to provide credentials, including identification cards or badges for volunteers.

Proposed law provides that registered and credentialed volunteers shall be treated as unpaid agents of the state or parish for purposes of liability when in the course and scope of their deployment. Authorizes these volunteers to make claims if they suffer damage to their property or expend funds to accomplish an assigned mission, and to receive state or parish commodities.

Proposed law provides for a leave of absence from employment, both public and private, for volunteers serving. Proposed law provides for leave without loss of pay up to 15 days per calendar year for public sector employees, and provides for leave without pay up to 15 days per calendar year for private sector employees. Provides for additional restrictions and criteria in this regard.

Proposed law further provides that GOHSEP may coordinate the sharing of equipment between public and private entities.

(Amends R.S. 9:2793.8, R.S. 29:733(C)(Art. 6), and R.S. 33:4712.18(A)(3); Adds R.S. 29:735.4 and R.S. 42:1102(18)(b)(iii))