

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. 23:893, R.S. 29:733(C)(Article 6), and R.S.
3 33:4712.18(A)(3), and to enact R.S. 29:735.4 and R.S. 42:1102(18)(b)(iii), relative
4 to emergency preparedness and disaster management; to provide relative to the
5 Emergency Management Assistance Compact; to provide for a registry of volunteers
6 for disaster or emergency response; to provide for credentials of volunteers; to
7 provide for definitions; to provide for background checks; to provide a limitation of
8 liability for volunteers; to provide relative to leave from employment; to provide for
9 applicability; to provide limitations; and to 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~~ Services rendered by National Voluntary
13 Organizations Active in Disaster and other volunteers; 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 volunteers who render any disaster relief or recovery services
6 following a declared state of emergency shall not be liable to any person for any
7 injury, death, loss, civil penalty, or damage as a result of any act or omission in
8 rendering assistance relief, or recovery services or as a result of any act or failure to
9 act or failure to provide or arrange for further services, unless the damage or injury
10 was caused by gross negligence or willful and wanton misconduct and in accordance
11 with R.S. 29:735.3.1.

12 Section 2. R.S. 23:893 is hereby amended and reenacted to read as follows:

13 §893. Volunteer firefighters; leave without loss of pay, benefits, or employment

14 A. No certified volunteer firefighter employed by the state of Louisiana shall
15 be denied leave, work-related benefits, or employment for absenting himself from
16 ~~said~~ his employment for the purpose of emergency response pursuant to such
17 certification. An emergency shall be an unexpected occurrence that threatens life or
18 property to which an established volunteer fire department or fire protection district
19 responds while the certified volunteer firefighter is engaged in the normal course of
20 state employment and to which the certified volunteer firefighter employed by the
21 state of Louisiana may timely respond to utilize skills which enhance the
22 preservation of life and property.

23 B. During a parish or state declared disaster, no volunteer firefighter shall
24 be denied leave, work-related benefits, or employment for absenting himself from
25 the volunteer fire department for the purpose of emergency response pursuant to such
26 declaration not to exceed five days per declared disaster.

27 Section 3. R.S. 29:733(C)(Article 6) is hereby amended and reenacted and R.S.
28 29:735.4 is hereby enacted to read as follows:

1 §733. Emergency Management Assistance Compact

2 * * *

3 C. The state of Louisiana hereby agrees:

4 * * *

5 Article 6. Officers or employees of a party state, to include political
6 subdivisions, ~~and~~ local governments, and registered and credentialed volunteer
7 organizations of that state, rendering aid in another state pursuant to this Compact
8 shall be considered agents of the requesting state for tort liability and immunity
9 purposes. No party state or its officers or employees, including local political
10 subdivisions, ~~and~~ local governments, and registered and credentialed volunteer
11 organizations rendering aid in another state pursuant to this Compact shall be liable
12 on account of any act or omission in good faith on the part of such forces while so
13 engaged or on account of the maintenance or use of any equipment or supplies in
14 connection therewith. Good faith in this Article shall not include willful misconduct,
15 gross negligence, or recklessness.

16 * * *

17 §735.4. Registry of disaster volunteers; credentialing; leave from employment

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

23 (2) The Governor's Office of Homeland Security and Emergency
24 Preparedness may provide credentials for volunteers including the issuance of an
25 identification card or badge identifying the person as a volunteer. The credentialing
26 requirements may differ depending upon the type of volunteer work being provided
27 and shall include, at a minimum, a check on the state sex offender and child predator
28 registry pursuant to R.S. 15:542.1.5 on the Dru Sjodin National Sex Offender public
29 website. Depending upon the mission of the volunteer, the volunteer may be

1 required to submit a federal and state background check. Whether or not a federal
2 and state background check is required will be expressly identified in the
3 memorandum of understanding between the volunteer agency and the deploying
4 office of homeland security and determined on the basis of public safety. If a federal
5 and state background check is required, the volunteer must be fingerprinted and
6 fingerprints shall be forwarded by the bureau to the Federal Bureau of Investigation
7 (FBI) for a national criminal history record check. The use of FBI records may be
8 used to screen the background of an applicant. All records in the state repository
9 shall be released to include arrests, convictions, and expunged information. The
10 costs of background checks shall be borne either by the volunteer or its affiliated
11 volunteer agency.

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).

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) Shall make every effort when deployed to coordinate with local officials.

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

27 C.(1) Any volunteer registered and credentialed by the Governor's Office of
28 Homeland Security and Emergency Preparedness or a parish office of homeland
29 security and emergency preparedness who is an officer or employee of the state, any

1 political subdivision, or any other public agency of the state, except a peace officer
2 as defined in R.S. 40:2402, and who is called into service by the Governor's Office
3 of Homeland Security and Emergency Preparedness or a parish office of homeland
4 security and emergency preparedness for a disaster, is entitled to a leave of absence
5 from his employment for the time when he is serving, without pay, seniority, status,
6 efficiency rating, vacation, sick leave, or other benefits. The leave without pay
7 provided pursuant to the provisions of this Subsection shall not exceed a total of
8 fifteen days in any calendar year and may be allowed only if the approved and
9 credentialed volunteer agency provides proof of the volunteer service.

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

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

20 (4) Upon returning from a leave of absence provided pursuant to the
21 provisions of this Subsection, an employee is entitled to return to the same position
22 and classification held before the leave of absence for the emergency volunteer
23 service or to the position, including the geographic location of the position, and
24 classification that the employee would have been entitled to if he did not take a leave
25 of absence for the emergency volunteer service.

26 (5) Notwithstanding the provisions of this Subsection, an employer shall not
27 be required to provide leave pursuant to the provisions of this Subsection to more
28 than twenty percent of the employer's employees on any given work day and shall
29 not be required to allow leave pursuant to this Subsection for any employee

1 designated as an essential employee. For the purposes of this Paragraph, "essential
2 employee" means an employee who the employer deems to be essential to the
3 operation of the employer's daily enterprise and whose absence would likely cause
4 the employer to suffer economic injury, or whose duties include assisting in disaster
5 recovery for the employer.

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

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

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

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

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

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

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

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

16 Section 4. R.S. 33:4712.18(A)(3) is hereby amended and reenacted to read as
 17 follows:

18 §4712.18. Sharing of equipment between public entities

19 A.

20 * * *

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

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

29 * * *

1 Section 5. R.S. 42:1102(18)(b)(iii) is hereby enacted to read as follows:

2 §1102. Definitions

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

5 * * *

6 (18)

7 * * *

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

10 * * *

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

12 * * *

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 Engrossed 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, except for acts involving gross negligence or willful and wanton misconduct.

Proposed law adds a similar limitation of liability applicable to other volunteers.

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.

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. Requires, at a minimum, a check of volunteers on the state sex offender and child predator registry. A federal and state background check may be required

in some circumstances, depending upon the mission of the volunteer. Requires the costs of the background check to be paid by the volunteer or his affiliated agency.

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. Further requires them to make every effort when deployed to coordinate with local officials.

Proposed law provides for a leave of absence from employment, both public and private, for volunteers serving, with an exception for peace officers. 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 5 days per calendar year for private sector employees. Provides for additional restrictions and criteria in this regard.

Present law provides that firefighters employed by this state shall not be denied leave, work-related benefits, or employment for absentsing himself from his employment for the purpose of emergency response.

Proposed law provides that no volunteer firefighter shall be denied leave, work-related benefits, or employment for absentsing himself from the volunteer fire department for the purpose of emergency response not to exceed five days per declared disaster.

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. 23:893, 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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Modify the proposed limitation of liability to apply to volunteers, instead of volunteer agencies gratuitously rendering disaster relief or recovery services.
2. Remove proposed law authorizing 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.
3. Require volunteers to make every effort to coordinate with local officials.
4. With respect to proposed law protections for volunteers who take leave from employment:
 - (a) Provide an exception from proposed law for peace officers.
 - (b) Change the proposed law protections applicable to public officers and employees to leave without pay.
 - (c) Change the proposed law protections applicable to private employees to authorize leave not to exceed five days, instead of fifteen days.
 - (d) Provide that no volunteer firefighter shall be denied leave, work-related benefits, or employment for absentsing himself from the volunteer fire department for the purpose of emergency response not to exceed five days per declared disaster.

5. Modify the definition of "volunteer" to include individuals who donate labor through a nonprofit organization registered and approved by the state as a private, nonprofit, tax-exempt organization pursuant to 26 U.S.C. 501(c), instead of 26 U.S.C. 501(c)(3).