

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 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~~ 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 his public employment for the purpose of emergency response pursuant to such
26 declaration not to exceed five days per declared disaster.

1 Section 3. R.S. 29:733(C)(Article 6) is hereby amended and reenacted and R.S.
2 29:735.4 is hereby enacted to read as follows:

3 §733. Emergency Management Assistance Compact

4 * * *

5 C. The state of Louisiana hereby agrees:

6 * * *

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

18 * * *

19 §735.4. Registry of disaster volunteers; credentialing

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

25 (2) The Governor's Office of Homeland Security and Emergency
26 Preparedness may provide credentials for volunteers including the issuance of an
27 identification card or badge identifying the person as a volunteer. The credentialing
28 requirements may differ depending upon the type of volunteer work being provided
29 and shall include, at a minimum, a check on the state sex offender and child predator

1 registry pursuant to R.S. 15:542.1.5 on the Dru Sjodin National Sex Offender public
2 website. Depending upon the mission of the volunteer, the volunteer may be
3 required to submit a copy of the results of a federal and state background check.
4 Whether or not a federal and state background check is required will be expressly
5 identified in the memorandum of understanding between the volunteer agency and
6 the deploying office of homeland security and determined on the basis of public
7 safety. If a federal and state background check is required, the volunteer must be
8 fingerprinted and fingerprints shall be forwarded by the bureau to the Federal Bureau
9 of Investigation (FBI) for a national criminal history record check. The use of FBI
10 records may be used to screen the background of an applicant. All records in the
11 state repository shall be released to include arrests, convictions, and expunged
12 information. The costs of background checks shall be borne either by the volunteer
13 or its affiliated volunteer agency.

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

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

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

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

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

1 C. Volunteers in this Section shall not be considered public employees and
2 thus shall not be subject to the provisions of Title 42.

3 D. The Governor's Office of Homeland Security and Emergency
4 Preparedness may promulgate rules pursuant to the Administrative Procedure Act to
5 implement the provisions of this Section.

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

8 §4712.18. Sharing of equipment between public entities

9 A.

10 * * *

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

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

19 * * *

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

21 §1102. Definitions

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

24 * * *

25 (18)

26 * * *

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

29 * * *

1 (iii) Volunteering as described in R.S. 29:735.3.1(A).

2 * * *

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 Reengrossed

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 volunteer firefighters.

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 that a firefighter employed by this state shall not be denied leave, work-related benefits, or employment for absenting 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 absenting himself from his public employment for the purpose of emergency response not to exceed five days per declared disaster.

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 when acting in the course and scope of their deployment. Further requires them to make every effort when deployed to coordinate with local officials, and allows them to receive certain commodities at the discretion of the director of GOHSEP.

Proposed law further provides that GOHSEP may coordinate the sharing of equipment between public and private entities to meet the needs of an emergency or disaster.

(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 absencing 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).

The House Floor Amendments to the engrossed bill:

1. Remove proposed law provisions applicable to volunteers who take leave from their public or private employment, except with respect to firefighters who take leave from public employment.
2. Clarify that a volunteer may be required to submit a copy of the results of a federal or state background check.
3. Provide that volunteers registered and credentialed pursuant to proposed law shall be treated as unpaid agents of the state or parish when in the course and scope of their deployment, and remove the qualification that they are to be treated as unpaid agents for purposes of liability only.
4. Make technical amendments.