

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1181 Florida Disaster Volunteer Leave Act

**SPONSOR(S):** State Affairs Committee, Oversight, Transparency & Public Management Subcommittee, Maggard

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Appropriations Committee	27 Y, 0 N	Keith	Pridgeon
3) State Affairs Committee	24 Y, 0 N, As CS	Villa	Williamson

### SUMMARY ANALYSIS

The Florida Disaster Volunteer Leave Act (the Act) provides that an employee of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross. Leave may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

The bill expands the type of organization through which a state agency employee may provide volunteer service and revises employee and employer requirements for disaster volunteer service. Specifically, the bill broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or 501(c)(4) organization that the employee has entered into an agreement with, not exclusively the Red Cross. The bill allows a volunteer to take a leave of absence with pay for not more than 120 working hours, rather than 15 working days during a 12-month period. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to attest to the employing agency that he or she completed the volunteer service, specify the period the employee provided volunteer service, and describe the disaster response or recovery services provided.

The bill may have a negative, yet indeterminate fiscal impact to state government expenditures relating to paid leave time for volunteer services granted under provisions in the bill. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Florida Disaster Volunteer Leave Act

The Florida Disaster Volunteer Leave Act<sup>1</sup> (the Act) provides that an employee of a state agency<sup>2</sup> who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross.<sup>3</sup> A “disaster” includes disasters designated at level II and above in the American National Red Cross regulations and procedures. Under the Act, a leave of absence may be granted upon the request of the Red Cross and upon the approval of the employee’s employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

An employee granted leave under the Act is not deemed to be an employee of the state for purposes of workers’ compensation during the leave of absence.

###### Tax-Exempt Nonprofit Organizations and Disaster Relief

Tax-exempt organizations, such as the Red Cross and the Salvation Army, play a critical role in disaster relief and recovery efforts. As recognized by the Internal Revenue Service, “[p]roviding aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form.”<sup>4</sup>

To be tax-exempt under s. 501(c)(3) of the Internal Revenue Code, an organization must be operated for an exempt purpose including religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.<sup>5</sup> No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual.<sup>6</sup>

Additionally, certain organizations may be tax-exempt under s. 501(c)(4) of the Internal Revenue Code, if the organization is not organized for profit but operated exclusively for the promotion of social welfare.<sup>7</sup> A local association of employees may also be granted tax-exempt status under s. 501(c)(4) if the membership is limited to the employees of a designated person or persons and the net earnings of the association are devoted exclusively to charitable, educational, or recreational purposes.<sup>8</sup>

###### State of Emergency Declaration Process

In Florida, the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.<sup>9</sup> In the event of an emergency<sup>10</sup> beyond local control, the Governor may assume or delegate direct operational control over all or any part of the emergency management functions within

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<sup>1</sup> Section 110.120, F.S., is cited as the Florida Disaster Volunteer Leave Act.

<sup>2</sup> The term “state agency” is defined by the Act to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. Section 110.120(2)(a), F.S.

<sup>3</sup> Section 110.120(3), F.S.

<sup>4</sup> Internal Revenue Service, *Publication 3833, Disaster Relief, Providing Assistance Through Charitable Organizations*, <https://www.irs.gov/pub/irs-pdf/p3833.pdf> (last visited January 23, 2020).

<sup>5</sup> 26 U.S.C. § 501(c)(3).

<sup>6</sup> *Id.*

<sup>7</sup> 26 U.S.C. § 501(c)(4).

<sup>8</sup> *Id.*

<sup>9</sup> Section 252.36(1)(a), F.S.

<sup>10</sup> “Emergency” is defined by the State Emergency Management Act to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

this state.<sup>11</sup> If the Governor finds that an emergency has occurred or that the occurrence or threat thereof is imminent, the Governor must declare a state of emergency through an executive order or proclamation.<sup>12</sup> The state of emergency will continue until the Governor finds that the emergency conditions no longer exist.<sup>13</sup> However, a state of emergency cannot continue for longer than 60 days unless renewed by the Governor.<sup>14</sup> The Legislature may terminate a state of emergency at any time by a concurrent resolution.<sup>15</sup> If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.<sup>16</sup> All executive orders or proclamations must indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make its termination possible.<sup>17</sup>

### **Effect of the Bill**

The bill expands the type of organization through which a state agency employee may provide volunteer service and revises employee and employer requirements for disaster volunteer service. Specifically, the bill broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or 501(c)(4) organization that the employee has entered into an agreement with, not exclusively the Red Cross.

The bill allows a volunteer to take a leave of absence with pay for not more than 120 working hours, rather than 15 working days during a 12-month period. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to attest to the employing agency that he or she completed the volunteer service, specify the period the employee provided volunteer service, and describe the disaster response or recovery services provided.

The bill revises the definition of disaster under the Act to no longer mean a disaster designated at certain levels by the Red Cross but to mean an event that results in a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 110.120, F.S., relating to administrative leave for disaster service volunteers.

Section 2 provides an effective date of July 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

See Fiscal Comments.

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<sup>11</sup> Section 252.36(1)(a), F.S.

<sup>12</sup> Section 252.36(2), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill provides that all state agency employees are eligible to request for paid administrative leave associated with disaster volunteer services provided to any tax-exempt nonprofit under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The number of employees who would request paid administrative leave for disaster volunteer services due to provisions of the bill is unknown at this time. There is the potential for increased leave payouts for employees who would have otherwise used annual leave or compensatory leave to volunteer under declared disasters.<sup>18</sup> Thus the government sector may experience a slight negative impact due to increased number of eligible volunteer opportunities. It is anticipated that any costs incurred by state agencies can be handled within existing resources.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to effect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language adding the legislative and judicial branches of government to the definition of “state agency” because those branches currently have broad discretionary authority to grant leave addressed by the bill.

On February 27, 2020, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment specified that an employee of a state agency may be granted a leave of absence with pay to provide volunteer service related to a disaster occurring within the states or territories of the United States, as declared by executive order or proclamation issued by the Governor of any state or territory of the United States. An employee granted leave for disaster volunteer service must attest to the employing agency that he or she completed the

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<sup>18</sup> Florida Department of Management Services, Agency Analysis of 2020 House Bill 1181, p.4 (Jan. 9, 2020).

volunteer service, specify the period served as a volunteer, and describe the disaster response or recovery services provided.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.