

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL: CS/SB 1050

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Diaz

SUBJECT: Disaster Volunteer Leave for State Employees

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1050 substantially amends s. 110.120, F.S., the Florida Disaster Volunteer Leave Act (the Act). The CS broadens the definition of the term “disaster” to mean an event that results in a state of emergency as declared by the governor of this state or any other state or territory in the United States.

The CS adds two terms to the definition section of the Act: “disaster area” and “volunteer.”

The CS requires a request for disaster leave be made by the employee and specifies that an employing agency must verify the employee’s volunteer status before granting leave.

The CS provides that leave for disasters occurring outside the boundaries of this state but within the United States requires the approval of the head of the employee’s employing agency.

The CS provides that an employee receiving disaster leave must attest to his or her employing agency that he or she has completed his or her volunteer service and must specify the period of time served as a volunteer for that event and a description of the disaster response or recovery services provided.

The CS provides for an effective date of July 1, 2020.

II. Present Situation:

Executive Branch

Chapter 110, Florida Statutes, provides the employment policy of the state. The Legislature has declared that:

[i]t is the purpose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.¹

Chapter 110, F.S., is divided into five parts: Part I deals with general state employment provisions; Part II covers the Career Service System; Part III pertains to the Senior Management Service System; Part IV relates to volunteers; and Part V deals with the Selected Exempt Service System. The Department of Management Services is charged with adopting administrative rules to effectuate the provisions of this chapter.²

Section 110.120, F.S., is entitled the “Florida Disaster Volunteer Leave Act” (the Act). The Act provides that an employee³ of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross), a 501(c)(3)⁴ tax-exempt organization, 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.⁵ 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.”⁶ The Act specifies that a “disaster” comprises those “disasters designated at level II and above in the American National Red Cross regulations and procedures.”⁷

Leave may be granted upon the request of the Red Cross and the approval of the employee’s employing agency.⁸ An employee granted leave under the Act shall not be deemed an employee of the state for purposes of workers’ compensation.⁹ The Act provides that leave may be granted only for services related to a disaster occurring within the boundaries of the State of Florida,

¹ Section 110.105(1), F.S.

² Section 110.1055, F.S.

³ Other-personal-services employees (OPS), pursuant to s. 110.131(3), F.S., are not eligible for any form of paid leave. Thus, for an OPS employee who requests and is approved leave to provide disaster relief services, such leave of absence will be without pay.

⁴ 26 U.S.C. § 501(c)(3), provides tax exemption for corporations and foundations that are operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

⁵ Section 110.120(3), F.S.

⁶ Section 110.120(2)(a), F.S.

⁷ Section 110.120(2)(b), F.S.

⁸ *Id.*

⁹ *Id.*

except that, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the boundaries of the United States.¹⁰

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.”¹¹ In the years since the 9/11 terrorist attacks, there has been a sharp growth in the creation of tax-exempt nonprofits that receive donations and disburse assistance following a disaster. For example, Team Rubicon became an established nonprofit 501(c)(3) organization in 2010 with the mission of providing disaster relief and giving American veterans a vital sense of purpose.¹² Team Rubicon was one of the first nonprofits to reach Haiti just five days after the 7.0 magnitude earthquake that killed at least 160,000 people.¹³ World Vision, a registered 501(c)(4)¹⁴ nonprofit organization, is an international partnership of Christians that, among other things, provides emergency relief to assist people afflicted by conflict or disaster.¹⁵ During its Hurricane Katrina response, World Vision not only met emergency needs of the community but also participated in rebuilding efforts over a three year period.¹⁶

States of Emergency Declaration Process

As a state’s chief executive officer, the governor is typically charged via a state’s constitution and/or statutes, with protecting the public safety and welfare of the people of that state.¹⁷ Though the exact process may vary state to state, it is generally the governor who declares a state of emergency through the issuance of an executive order or proclamation to that effect.

In Florida, chapter 252, F.S., governs emergency management. The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.¹⁸ Section 252.36(1)(a), F.S., provides in pertinent part that “[i]n the event of an emergency beyond local control, the Governor . . . may assume” or delegate “direct operational control over all or any part of the emergency management functions within this state.” The Governor must declare a state of emergency by executive order or proclamation “if she or he finds an emergency has occurred or

¹⁰ *Id.*

¹¹ Publication 3833, *Disaster Relief, Providing Assistance through Charitable Organizations* <https://www.irs.gov/pub/irs-pdf/p3833.pdf> (last visited February 13, 2020).

¹² See <https://www.fema.gov/news-release/2017/11/12/4339/national-voad-and-other-voluntary-organizations-play-critical-role-housing> (Last visited February 13, 2020).

¹³ See Kyle Dickman, *The Future of Disaster Relief Isn’t the Red Cross*, Outside Magazine, August 25, 2016, <https://www.outsideonline.com/2106556/team-rubicon-takes-red-cross> (last visited February 13, 2020).

¹⁴ 26 U.S.C. § 501(c)(4), provides tax-exempt status to “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.”

¹⁵ See Our Mission Statement, <https://www.worldvision.org/about-us/mission-statement> (last visited February 13, 2020).

¹⁶ See 2005 Hurricane Katrina: Facts, FAQ, and how to help <https://www.worldvision.org/disaster-relief-news-stories/2005-hurricane-katrina-facts#world-vision> (last visited February 13, 2020).

¹⁷ See Patricia Sweeney & Ryan Joyce, *Gubernatorial Emergency Management Powers: Testing the Limits in Pennsylvania*, 6 PITT. J. ENVTL. PUB. HEALTH L. 149, 150 (2012).

¹⁸ Section 252.36, F.S.

that the occurrence or the threat thereof is imminent.”¹⁹ A state of emergency continues until terminated by the Governor by executive order or proclamation but may not continue “longer than 60 days unless renewed by the Governor.”²⁰ The Legislature may terminate a state of emergency at any time by a concurrent resolution.²¹ If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.²² Section 252.36, F.S., requires all executive orders or proclamations to “indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination.”²³

III. Effect of Proposed Changes:

Section 1 revises s. 110.120(2), F.S., to amend the definition of “disaster” 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.

The CS adds the terms “disaster area” and “volunteer” to the definitions section. “Disaster area” is defined to mean a location covered under 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. “Volunteer” is defined to mean an individual who has entered into an agreement with a tax-exempt nonprofit organization under s. 501(c)(3) or s. 501 (c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

This section amends s. 110.120(3), F.S., to provide that a leave of absence with pay to serve as a volunteer may be granted for no more than 120 working hours (equivalent to 15 8-hour days) in any 12-month period. The CS requires that the request for leave be made by the employee and that the employee’s employing agency must verify the employee’s volunteer status prior to granting such leave for services related to a disaster within Florida. The approval of the head of the employing agency is required for any leave where the employee is providing volunteer services related to disasters occurring outside the boundaries of this state but within the states or territories of the United States.

The CS requires an employee granted leave to attest to his or her employing agency that he or she has completed his or her volunteer service for a disaster, and to specify the period of time for which he or she served as a volunteer for that event and a description of the disaster response or recovery services that the employee provided.

Section 2 provides that the act will take effect on July 1, 2020.

¹⁹ Section 252.36(2), F.S.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The government sector will continue to experience an impact in processing applications for disaster volunteer leave. While the CS requires the request be made by the employee as opposed to the Red Cross and specifies the employing agency must verify the employee's volunteer status prior to approval, this change will likely not have a substantial or disruptive impact.

The CS may have a slight negative impact on the government sector as it allows employees to request disaster leave to volunteer with any tax-exempt nonprofit under 501(c)(3) or 501(c)(4) and not solely the Red Cross. Thus, there may be more requests being submitted that an agency will have to process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This CS substantially amends the following section of the Florida Statutes: 110.120

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute removes the legislative and judicial branches from the definition of “state agency” in s. 110.120(2), F.S., because those branches currently have broad discretionary authority to grant leave addressed by this bill.

- B. **Amendments:**

None.