

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 Commerce and Tourism Committee

BILL: SB 1092

INTRODUCER: Senator Hays

SUBJECT: Civil Air Patrol

DATE: February 1, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1092 creates labor protections for members of the Florida Wing of the Civil Air Patrol who are absent from their place of employment as a result of their service or training on behalf of the Civil Air Patrol. Specifically, the bill creates the following protections: requires employers to provide unpaid leave to an employee performing a Civil Air Patrol mission or engaged in Civil Air Patrol training; prohibits the termination of employees who are absent from work due to a mission or training because of their Civil Air Patrol service, except for cause; establishes procedures with respect to the calculation of leave for a member of the Florida Wing of the Civil Air Patrol; and authorizes a cause of action for members of the Florida Wing of the Civil Air Patrol who are affected by a violation of any of the provisions found in this section.

This bill amends the following section of the Florida Statutes: s. 252.55, F.S.

II. Present Situation:

Civil Air Patrol

The Civil Air Patrol (CAP) was created under the administration of President Harry Truman, largely in response to the organization's admirable contributions during the Second World War.¹ Today, CAP is organized as a congressionally chartered non-profit corporation that serves as the official civilian auxiliary of the United States Air Force (U.S. Air Force).² CAP is a volunteer organization with its three primary missions centered on providing support in the following areas: emergency services, aerospace education, and cadet training.

With respect to Emergency Services, CAP provides support in air and ground search and rescue, disaster relief, counterdrug, and homeland security.³ In 2011, CAP performed 90 percent of the continental U.S. inland search and rescue missions and was credited with saving 53 lives.⁴

CAP also works in collaboration with Joint Task Force North, U.S. Customs and Border Protection (customs), the Drug Enforcement Administration (DEA), and the U.S. Forest Service in counterdrug efforts. In 2010, it was reported that CAP air crew members flew more than 10,500 hours leading to the confiscation of an estimated millions of dollars in illegal drugs. Moreover, CAP also flies noncombatant homeland security missions that, among other things, consist of the surveillance of the nation's critical infrastructures. Authorization and tasking for these missions comes directly from 1st Air Force, which is located at the Tyndall Air Force Base near Panama City.⁵

Additionally, CAP's aerospace and education programs promote aviation and space education nationwide through the publication of K-12 curriculum materials for use in CAP units, schools, and youth development organizations. CAP also organizes educational conferences for teachers and professional workshops that present an aerospace theme approach to presenting STEM⁶ subjects.⁷

Lastly, CAP's cadet programs offer aerospace and leadership training to youths from ages 12 to 20. This program is offered as an extracurricular activity for young adults and centers around activities that afford cadets with the opportunity to explore aerospace-related careers, as well as develop their leadership skills. The top 15 percent of cadets become eligible for the grade of Airman of the first class upon enlisting in the Air Force. Both the Air Force Reserve Officer

¹"In the late 1939s, more than 150,000 volunteers with a love for aviation argued for an organization to put their planes and flying skills to use in defense of their country. As a result, the Civil Air Patrol was born one week prior to the Japanese attack on Pearl Harbor. Thousands of volunteer members answered America's call to national service and sacrifice by accepting and performing critical wartime missions. Assigned to the War Department under the jurisdiction of the Army Air Corps, their contributions of Civil Air Patrol, including logging more than 500,000 flying hours, sinking two enemy submarines, and saving hundreds of crash victims during World War II, are well documented." Information available at: <http://www.gocivilairpatrol.com/about/> (last visited January 31, 2012).

² Information available at: <http://www.af.mil/information/factsheets/factsheet.asp?id=163> (last visited January 31, 2012).

³ *Id.*

⁴ Information available at: <http://www.1af.acc.af.mil/news/story.asp?id=123287077> (last visited January 31, 2012).

⁵ Information found in this paragraph is available at, *supra*, note 2

⁶ Note that the acronym STEM refers to science technology, engineering, and math.

⁷ Information found in this paragraph is available at, *supra*, note 2

Training Corps and U.S. Air Force look favorably upon a prospective candidate’s involvement with the CAP Cadet Program.⁸

Florida Wing of the Civil Air Patrol

CAP is organized at both the national and state level. Nationally, there is a headquarters followed by regional offices. At the local level, each state, including the U.S. territories of Puerto Rico and Guam, is classified as a “wing.” Within each “wing,” there exist smaller units, referred to as squadrons,” located throughout various cities. To date, Florida represents the country’s largest wing.⁹

Provided below is a summary of the 2011 statistics for the Florida Wing of the Civil Air Patrol.¹⁰

Civil Air Patrol’s Florida Wing 2011 Statistics	
Volunteer Members	
Adult Members	2,089
Cadets	2,138
Voting-Age Members	2,453
Aircrew Personnel	490
Emergency Responders	3011
Squadrons	
Statewide	93
Aircraft	
Single Engine	27
Glider	2
Vehicles	
Statewide	28
Interoperable Communications	
VHF-FM Repeaters	20
VHF-FM Fixed Stations	17
VHF-FM Mobile Stations	239
HF fixed stations	37
HF mobile stations	3

⁸ *Id.*

⁹ Conversation with Lieutenant Colonel (Ret.) Phillip Zedonek, Civil Air Patrol, Florida Wing Vice Commander and Governmental Relations Office (January 31, 2012).

¹⁰ Statistics are on file with the Senate Commerce and Tourism Committee (January 31, 2012).

Missions	
Search and Rescue Missions	112
Finds	7
Other State Supported Missions	70
Cadet Flying	
Cadets Flown	2,339
Hours Flown	1,390
Total Hours Flown	
Total	7,395
Finances	
State Funding	\$49,500 ¹¹
Value of Wing's Volunteer Hours	\$9.2M

The Deepwater Horizon Oil Spill

CAP provided extensive support to the nation’s Gulf coast following the Deepwater Horizon oil spill in the Gulf of Mexico. During the Deepwater response, CAP supported operations out of Alabama, Florida, Louisiana, and Mississippi. More than 600 CAP members from 10 wings volunteered over 18,000 man hours over the course of 120 days to provide airborne reconnaissance and transportation support throughout the Gulf Coast. In total, CAP flew over 2,100 hours in support of the U.S. Coast Guard and state counterparts.¹²

Specifically, Florida Wing’s contribution to the Gulf Oil spill response is described below:

[T]he wing’s aircrew and mission support personnel were tasked by the Florida Department of Environmental Protection, and later by the Federal Emergency Management Agency, to conduct repeated aerial photographic assessments along some 200 miles of the Panhandle’s coast. Using both off-the-shelf and specialized technology, aircrews captured nearly continuous images of the Florida shoreline and close-in coastal waters. Each imaged was geocoded for exact location and time to allow shore-based analysis by federal and state disaster planners.

The wing flew 710 flight hours in 14 aircraft while capturing more than 50,300 images . . . Staged from Tallahassee, personnel and aircraft came from bases in Naples, Sarasota, Ocala, Merritt Island, Jacksonville, Clearwater, and elsewhere, flying daily sorties during 105 continuous days of operation. Meanwhile, mission base personnel provided aircrew coordination, logistics, media relations, chaplain services, and volunteer professionalism

¹¹ Line no. 1504, s. 5, ch. 2011-69, L.O.F.

¹² Information found in this paragraph is available at, *supra*, note 2.

to the state and federal emergency efforts. In all, 97 aircrew members and 14 mission base personnel were involved, contributing 9,153 man-hours.

Col. Christian Moersch, Florida Wing Commander,¹³ remarked, ‘These are your next-door heroes. Many of those who participated exhausted all their year’s vacation just to serve.’¹⁴

Federal Uniformed Services Employment and Reemployment Rights Act

In 1994, Congress passed the Uniformed Services Employment and Reemployment Act.¹⁵ Specifically, the act provides that “a person who performs or has an obligation to perform in a uniformed service¹⁶ shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that service.

With a similar objective in mind, Florida 2 years later enacted s. 250.482, F.S., to extend employment protections and rights to members of the National Guard ordered into state activity duty.¹⁷ As a result, current law now provides a cause of action for National Guard members who receive a certification by the Adjutant General¹⁸ that a violation by an employer of one of the provisions enumerated in s. 250.482, F.S., has occurred.

Notably, while CAP is not considered to be part of the armed forces, several states have enacted laws offering similar employment protections for its members who are absent from work due to CAP related training or mission assignments. These states include California, Colorado, Illinois, Minnesota, and Wisconsin.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 252.55, F.S., to specify employment protections for members of the Civil Air Patrol, Florida Wing returning to employment following a period of CAP or training. It should be noted that many of the protections offered in SB 1092 pattern those offered to members of the National Guard found under s. 250.842, F.S.

¹³ Today, Colonel Michael N. Cook is the Florida Wing Commander.

¹⁴ Civil Air Patrol’s Florida Wing Newsletter (January 31, 2012) (on file with the Senate Committee on Commerce and Tourism).

¹⁵ *See*, 38 U.S.C. ss. 4301-4335 (2006).

¹⁶ Note that “uniformed services” means the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health, and other category of persons designated by the President in time of war or national emergency. 38 U.S.C. s. 4303(16).

¹⁷ According to the Department of Military Affairs, when the Guard is left on state status (meaning state active duty) its members are not protected under [42 U.S.C. ss. 4301-4335]. Hence, that was the impetus for the enactment of s. 250.842, F.S., which was to provide similar provisions to National Guard members on state status. *See* analysis for SB 2786 by Senate Committee on Commerce and Economic Opportunities (April 2, 1996) (analysis on file with Senate Committee on Commerce and Tourism).

¹⁸ The Adjutant General is the Chief of the Department of Military Affairs.

¹⁹ Cal. Lab. Code ss. 1500-1507 (West 2011); Col. Rev. Stat. s. 28-1 (2011); 820 ILCS 148/1-35 (2011); Minn. Stat. s. 181.946; Wis. Stat. s. 321.68.

Definitions

“Benefits” is defined as all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

“Civil Air Patrol leave” refers to leave requested by an employee who is a member of the Florida Wing of the Civil Air Patrol.

“Employee” means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment and who has been employed by the same employer for at least 90 days immediately preceding the commencement of Civil Air Patrol leave. Employee does include an independent contractor.

“Employer” refers to a private or public employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities.

Unpaid Leave

With respect to leave, an employer that employs 15 or more employees shall provide up to 15 days of unpaid CAP leave annually to an employee performing a CAP mission or engaged in CAP training, subject to certain conditions. As a general matter, CAP leave granted under this section may consist of unpaid leave.

An employer may not require any member of the Florida Wing of the Civil Air Patrol returning to employment following a period of CAP service or training to use vacation, annual, compensatory, or similar leave for the period during which the member was performing a CAP mission or engaged in CAP training. However, such employee may be able to apply any vacation, annual, compensatory or similar leave accrued prior to the commencement of his or her service training towards that period.

Reemployment

A member of the Florida Wing of the Civil Air Patrol may not be penalized because of his or her absence as a result of being ordered into service to perform a CAP mission or engage in training by a private or public employer, or any employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities.

Upon completion of a CAP mission or training, such member shall promptly notify the employer of his or her intent to return to work.

An employer is not required to allow a member of the CAP to return to work upon the completion of a CAP mission or training if one of the following applies:

- The employer's circumstances have changed as to make employment impossible or unreasonable.
- Employment would impose undue hardship on the employer.
- The employment from which the member of the CAP leaves to perform a mission or engage in training is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.
- The employer had legally sufficient cause to terminate the member of the CAP at the time he or she left to perform a CAP mission or engage in CAP training.

The employer has the burden of proving the following enumerated factors that served as the employer's basis for not allowing a member of the CAP to return to work upon completion of a CAP mission or training.

Additional Employment Protections

A member of the Florida Wing of the Civil Air Patrol who returns to work after completion of a CAP mission or training is entitled to the following:

- The seniority that the member had at his or her place of employment on the date of the commencement of his or her CAP mission or training and other rights and benefits that inure to the member as a result of such seniority.
- Any additional seniority that the member would have attained at his or her place of employment if he or she had remained continuously employed, as well as the rights and benefits that inure to the member as a result of such seniority.

A member of the Florida Wing of the Civil Air Patrol who returns to work after completion of a CAP mission or training may not be discharged from such employment for a period of 1 year after the date the member returns to work, except for cause.

Civil Lawsuit

If the wing commander of the Florida Wing of the Civil Air Patrol certifies that there is probable cause to believe that there has been a violation of any of these provisions, then the injured member may bring a civil action against the employer. Proper venue for such action will be in the county where the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred. If the employer is found liable, then the defendant will be responsible for either actual damages or \$500, whichever amount is greater. The prevailing party in any litigation proceeding is entitled to recover reasonable attorney fees and court costs.

The certification of probable cause may not be issued until the wing commander of the Florida Wing of the Civil Air Patrol, or his or her designee, has investigated the issue. All employers and other personnel involved with the issues of such investigation must cooperate with the wing commander of the Florida Wing of the Civil Air Patrol in the investigation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

According to the Office of the State Court Administrator's 2012 Judicial Impact Statement, the fiscal impact of SB 1092 cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial time and court workload resulting from this new cause of action in civil cases. However, the impact is likely to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
