

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 635	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Florida Wing of the Civil Air Patrol	117	Y's 0	N's
<b>SPONSOR(S):</b>	Local, Federal & Veterans Affairs Subcommittee; Combee and others	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/SB 370			

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**SUMMARY ANALYSIS**

CS/HB 635 passed the House on May 3, 2017, as CS/CS/SB 370.

The bill provides employment protections for a member of the Florida Wing (FLWG) of the Civil Air Patrol (CAP) who is absent from his or her place of employment due to service or training with the CAP.

The Civil Air Patrol is a nonprofit, congressionally chartered corporation whose primary missions include search and rescue, disaster relief, humanitarian services, air force support, and counterdrug operations. The CAP serves as an auxiliary of the United States Air Force (USAF). In 2015, the USAF expanded its description of total force to include regular, Guard, Reserve, civilian, and auxiliary members. Despite its inclusion in the total force of the USAF, members of the CAP are considered civilians and do not have any obligation to any branch of the military. Subsequently, members of the CAP do not qualify for most federal programs created to provide benefits for or protect the rights of servicemembers.

The Florida Wing of the CAP is an organization composed of citizens who volunteer and contribute their time, skill, facilities, and equipment from time to time to public safety and defense, to promote the education, health, welfare, peace, and safety of the citizens of this state. In addition to the fundamental operations of the CAP, the FLWG also provides light transport services, aerial photography, and communications capabilities in the form of amateur radio operations.

Specifically, the bill:

- Requires employers to provide unpaid leave to an employee engaged in CAP service or training;
- Prohibits the termination of an employee who is absent from work due to CAP service or training, except for cause;
- Entitles an employee returning to work following a period of CAP service or training to certain seniority rights;
- Authorizes a cause of action for a member of the FLWG of the CAP who is affected by a violation of a provision in the bill; and
- Provides a legislative determination that the act fulfills an important state interest.

The bill also provides that an employer is not required to allow a CAP member to return to work upon completion of CAP leave if the employer can meet certain requirements.

The bill may have an indeterminate fiscal impact on the Department of Management Services for upgrading its personnel system to implement the additional time sheet accounting metric for CAP Leave. The bill does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on June 9, 2017, ch. 2017-73, L.O.F., and will become effective on July 1, 2017.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0635z1.LFV.docx

**DATE:** June 12, 2017

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Civil Air Patrol

The Civil Air Patrol (CAP) is a nonprofit, congressionally chartered corporation<sup>1</sup> created in 1946 with the purpose to:

- Encourage and aid citizens of the United States in contributing their efforts, services, and resources in developing aviation and in maintaining air supremacy;
- Encourage and develop by example the voluntary contribution of private citizens to the public welfare;
- Provide aviation education and training to its members;
- Encourage and foster civil aviation in local communities;
- Provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies; and
- Assist the Department of the Air Force in fulfilling its noncombat programs and missions.<sup>2</sup>

Pursuant to its charter, the CAP serves as an auxiliary of the U.S. Air Force (USAF). In 2015, the USAF expanded its description of total force<sup>3</sup> to include regular, Guard, Reserve, civilian, and auxiliary members.<sup>4</sup> Despite its inclusion in the total force of the USAF, members of the CAP are considered civilians and do not have any obligation to any branch of the military.<sup>5</sup> Subsequently, members of the CAP do not qualify for most federal programs created to provide benefits for or protect the rights of servicemembers.

Members of the CAP are either cadet or senior members. Cadets are generally under the age of 18 and participate in a 16-step program that includes aerospace education, leadership training, physical fitness, and moral leadership.<sup>6</sup> Cadets compete for academic scholarships to further their studies in fields such as engineering, science, aircraft mechanics, aerospace medicine, meteorology, as well as many others.<sup>7</sup>

Senior members of the CAP either perform tactical operations or provide support for the CAP's primary missions of search and rescue, disaster relief, humanitarian services, air force support, and counterdrug operations.<sup>8</sup> The CAP is the primary resource of the Air Force Rescue Coordination

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<sup>1</sup> Organizations chartered by Congress have a patriotic, charitable, historical, educational, or other purpose. Chartering does not make the organizations "agencies of the United States," confer any powers of a governmental character, or assign any benefits. The attraction for national organizations is that it tends to provide an "official" endorsement to their activities and, to that extent, it may provide them prestige and indirect financial benefit. See Congressional Research Service, *Congressionally Chartered Nonprofit Organizations ("Title 36 Corporations"): What They Are and How Congress Treats Them*, pg. 5 (April 8, 2004), [https://digital.library.unt.edu/ark:/67531/metacrs7367/m1/1/high\\_res\\_d/RL30340\\_2004Apr08.pdf](https://digital.library.unt.edu/ark:/67531/metacrs7367/m1/1/high_res_d/RL30340_2004Apr08.pdf) (last visited Feb. 21, 2017).

<sup>2</sup> 36 U.S.C. §40302 (2000).

<sup>3</sup> Total force is the summation of all resources and personnel available to the U.S. Air Force.

<sup>4</sup> U.S. AIR FORCE, *Civil Air Patrol joins total force 'Airmen'* (Aug. 28, 2015),

<http://www.af.mil/News/ArticleDisplay/tabid/223/Article/615251/civil-air-patrol-joins-total-force-airmen.aspx> (last visited Feb. 21 2017); see also [http://www.gocivilairpatrol.com/how\\_to\\_join/adults\\_faq/](http://www.gocivilairpatrol.com/how_to_join/adults_faq/) (last visited Feb. 21, 2017).

<sup>5</sup> CIVIL AIR PATROL, *FAQs for Adults, Am I considered a member of the military?*, [http://www.gocivilairpatrol.com/how\\_to\\_join/adults\\_faq/](http://www.gocivilairpatrol.com/how_to_join/adults_faq/) (last visited Feb. 21, 2017).

<sup>6</sup> CIVIL AIR PATROL, *Cadet Programs*, [http://www.gocivilairpatrol.com/about/civil\\_air\\_patrols\\_three\\_primary\\_missions/cadet-programs/](http://www.gocivilairpatrol.com/about/civil_air_patrols_three_primary_missions/cadet-programs/) (last visited Feb. 21, 2017).

<sup>7</sup> *Id.*

<sup>8</sup> Civil Air Patrol, *Emergency Services*, [http://www.gocivilairpatrol.com/about/civil\\_air\\_patrols\\_three\\_primary\\_missions/emergency-services/](http://www.gocivilairpatrol.com/about/civil_air_patrols_three_primary_missions/emergency-services/) (last visited February 21, 2017).

Center<sup>9</sup> and performs approximately 75 percent of all aerial search activity in the inland area of the 48 continental United States.<sup>10</sup>

The CAP is divided into 52 wings geographically defined by state lines, Puerto Rico, and the District of Columbia.<sup>11</sup> Each wing is housed within one of six regions as part of the national command structure.<sup>12</sup> Subordinate units of the CAP are divided into groups and further organized into squadrons and flights.<sup>13</sup>

### Florida Wing of the Civil Air Patrol

In 1974, the Florida Wing (FLWG) of the CAP was recognized in Florida Statutes as an organization composed of citizens who volunteer and contribute their time, skill, facilities, and equipment from time to time to public safety and defense, to promote the education, health, welfare, peace, and safety of the citizens of this state.<sup>14</sup> In addition to the fundamental operations of the CAP, the FLWG also provides light transport services, aerial photography, and communications capabilities in the form of amateur radio operations.<sup>15</sup>

There are approximately 3,306 members of the FLWG, including 1,460 cadets and 1,846 senior members active in seven groups statewide.<sup>16</sup> During federal fiscal year 2015-16, the FLWG executed 290 training and actual missions totaling 5,912 flying hours and completed 179,169 miles of driving in support of CAP missions and programs.<sup>17</sup>

Pursuant to s. 252.55, F.S., the FLWG is eligible to receive state appropriations administered by the Florida Division of Emergency Management (FDEM). The FLWG initially received \$50,000 per annum of general revenue beginning in 1974, and ending when the provision was repealed from the Florida Statutes in 1996.<sup>18</sup> The FDEM continued to issue payments to the FLWG each fiscal year following the repeal. Since fiscal year 2009-10, the FDEM has paid \$49,500 per annum to the FLWG. These funds are to be used for the purpose of acquisition, installation, conditioning, and maintenance of the FLWG.<sup>19</sup>

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<sup>9</sup> See CONR-1AF (AFNORTH), *Air Force Rescue Coordination Center*, available at <http://www.1af.acc.af.mil/Units/AFRCC.aspx> (last visited Feb. 21, 2017). The Air Force Rescue Coordination Center is the United States' inland search and rescue coordinator. It is the single agency responsible for coordinating on-land federal search and rescue activities in the 48 contiguous United States, Mexico, and Canada.

<sup>10</sup> AIR COMBAT COMMAND, *SAR Agencies*, <http://www.acc.af.mil/AboutUs/FactSheets/Display/tabid/5768/Article/199165/sar-agencies.aspx> (last visited Feb. 21, 2017).

<sup>11</sup> Florida Wing, *Information, Florida Wing*, <http://www.flwg.us/Information.aspx> (last visited Feb. 21, 2017).

<sup>12</sup> *Id.*

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

<sup>14</sup> Ch. 74-333, Laws of Fla. (Creating s. 252.33, F.S., effective July 1, 1974).

<sup>15</sup> FLWG, *Information, CAP's Missions*, <http://www.flwg.us/Information.aspx> (last visited Feb. 21, 2017).

<sup>16</sup> FLWG, *Memorandum for the Florida State Legislature*, provided on February 21, 2017 (on file with Local, Federal & Veteran Affairs Subcommittee staff).

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

<sup>18</sup> s. 13 of Ch. 96-423, Laws of Fla.

<sup>19</sup> s. 252.55(2), F.S.

## Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act<sup>20</sup> (USERRA) is a Federal law enacted in 1994 that intends to ensure that persons who serve or have served in the U.S. Armed Forces, U.S. Reserves, National Guard, or other uniformed services<sup>21</sup> are:

- Not disadvantaged in their civilian careers because of their service;
- Promptly reemployed in their civilian jobs upon their return from duty; and
- Not discriminated against in employment based on past, present, or future military service.<sup>22</sup>

The provisions of USERRA apply to all public, private, and government employers in the U.S., foreign employers doing business in the U.S., and U.S. companies operating in foreign countries.<sup>23</sup> Employers are prohibited from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her military service.<sup>24</sup> USERRA also protects individuals from retaliation by an employer in the event he or she takes action to enforce a protection afforded under the law.<sup>25</sup>

Any person whose absence from a position of employment due to service in the uniformed services is entitled to the protections under USERRA if:

- The person has given advance written or verbal notice of such service to his or her employer;
- The cumulative length of absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and
- The person reports to, or submits an application for reemployment to, such employer.<sup>26</sup>

An employer is not required to reemploy a person protected under USERRA if:

- The employer's circumstances have so changed as to make such reemployment impossible or unreasonable;
- In the case of a person entitled to reemployment, such employment would impose an undue hardship on the employer; or
- The employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.<sup>27</sup>

A member of the uniformed services who claims he or she was denied his or her rights may file a complaint, in writing, with the Secretary of the U.S. Department of Veterans Affairs.<sup>28</sup> If the Secretary determines that the action alleged in the complaint occurred, then the Secretary must initiate the

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<sup>20</sup> 38 U.S.C. §4301 et seq.

<sup>21</sup> See 38 U.S.C. §4303 (2016). The term "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 Service, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and any other category of persons designated by the President in time of war or national emergency.

<sup>22</sup> EMPLOYER SUPPORT OF THE GUARD AND RESERVE, *What is USERRA*, <http://www.esgr.mil/USERRA/What-is-USERRA.aspx> (last visited Feb. 21, 2017).

<sup>23</sup> EMPLOYER SUPPORT OF THE GUARD AND RESERVE, *Frequently Asked Questions: What employees are covered by USERRA?*, <http://www.esgr.mil/USERRA/Frequently-Asked-Questions.aspx> (last visited Feb. 21, 2017).

<sup>24</sup> EMPLOYER SUPPORT OF THE GUARD AND RESERVE, *Frequently Asked Questions: Can an employer discriminate based on past or present military service?*, <http://www.esgr.mil/USERRA/Frequently-Asked-Questions.aspx> (last visited Feb. 22, 2017).

<sup>25</sup> *Id.*

<sup>26</sup> 38 U.S.C. §4312 (2015).

<sup>27</sup> *Id.*

<sup>28</sup> 38 U.S.C. §4322 (2008).

statutory procedure for resolving the complaint.<sup>29</sup> It is then the burden of the employer to prove that the dismissal of the complainant was within the rights afforded to the employer by USERRA.<sup>30</sup>

### Employment Protections for National Guard Members on State Active Duty

Members of the National Guard who do not qualify for the protections offered by USERRA are provided similar rights when ordered into state active duty pursuant to ch. 250, F.S., or into active duty as defined by the law of any other state. Florida Statutes defines “state active duty” as:

Full-time duty in active military service of the State of Florida when ordered by the Governor or Adjutant General...to preserve the public peace, execute the laws of the state, suppress insurrection, repel invasion, enhance security and respond to terrorist threats or attacks, respond to an emergency...or to imminent danger of an emergency, enforce the law, carry out counter-drug operations, provide training, provide for the security of the rights or lives of the public, protect property, or conduct ceremonies.<sup>31</sup>

Section 250.482(1), F.S., provides that an employer<sup>32</sup> may not discharge, reprimand, or in any other way penalize such member because of his or her absence by reason of state active duty.<sup>33</sup> Furthermore, a member of the National Guard who returns to work after serving on state active duty may not be discharged from such employment for a period of one year after the date the member returns to work, except for cause.<sup>34</sup>

An employer may not require any National Guard member returning to employment following a period of state active duty to use vacation, annual, compensatory, or similar leave for the period during which the member was ordered into state active duty.<sup>35</sup> However, any returning member may request to use such leave as pay for the period in which he or she was ordered into state active duty.<sup>36</sup>

An employer is not required to allow a member of the National Guard to return to work if able to prove that:

- The employer’s circumstances have so changed as to make employment impossible or unreasonable;
- Employment would impose an undue hardship on the employer;
- The employment from which the member of the National Guard leaves to serve in state active duty is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
- The employer had legally sufficient cause to terminate the member of the National Guard at the time he or she left for state active duty.<sup>37</sup>

### **Effect of the Bill**

The bill defines the following terms:

- “Benefits” means 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 such benefits are provided by a policy or practice of the employer.

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<sup>29</sup> See 38 U.S.C. §4323-4325.

<sup>30</sup> See *supra* note 26.

<sup>31</sup> s. 250.01(21), F.S.

<sup>32</sup> s. 250.482(1), F.S., defines an employer as a public or private employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities.

<sup>33</sup> s. 250.482(1), F.S.

<sup>34</sup> s. 250.482(2)(d), F.S.

<sup>35</sup> s. 250.482(2)(e), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> s. 250.482(2)(b), F.S.

- “Civil Air Patrol leave” means leave requested by an employee who is a CAP member for the purpose of participating in a CAP training or mission.
- “Civil Air Patrol member” means a senior member of the FLWG of the CAP who holds, at a minimum, a General Emergency Services qualification.
- “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. The term does include an independent contractor.
- “Employer” means a private or public employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, Florida College System institutions, or state universities.

The bill requires an employer with 15 or more employees to provide up to 15 days of unpaid CAP leave annually to an employee who is also a CAP member, subject to certain conditions. An employer may not require a CAP member returning to employment following CAP leave to use vacation, annual, compensatory, or similar leave. However, such employee may, upon his or her request, apply any vacation, annual, compensatory, or similar leave accrued prior to the commencement of his or her CAP leave towards such leave.

The bill prohibits an employer from discharging, reprimanding, or otherwise penalizing a CAP member due to his or her CAP leave. Furthermore, the member may not be discharged from such employment for a period of one year after the date of his or her return to work, except for cause.

An employer is not required to allow a CAP member to return to work upon the completion of CAP leave if the employer can prove that:

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

A CAP member is required to notify the employer of his or her intent to return to work upon the completion of CAP leave. When the CAP member returns to work he or she is entitled to the following:

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

If the wing commander of the FLWG of the CAP certifies that there is probable cause to believe an employer has violated this section, the member may bring a civil action. A civil action against the employer may occur in a court in the county where the employer resides or has his or her principal place of business or in the county where the alleged violation occurred. Upon adverse adjudication, the defendant is liable for actual damages or \$500, whichever is greater. The prevailing party is entitled to recover reasonable attorney fees and court costs.

The certification of probable cause may not be issued until the wing commander, or his or her designee, has completed an investigation. All employers and other personnel involved with the subject of such an investigation must cooperate with the wing commander in the investigation.

Lastly, the bill provides a legislative determination that the act fulfills an important state interest.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Management Services, the bill may require the department to upgrade its personnel system to implement an additional timesheet accounting metric for CAP leave. However, the cost is indeterminate at this time.<sup>38</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

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<sup>38</sup> Florida Department of Management Services HB 635 agency analysis, March 2, 2017, at 5. On file with Local, Federal & Veteran Affairs Subcommittee staff.