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PROVIDING FOR THE PARTICIPATION OF
EMPLOYEES IN THE JUDICIAL BRANCH
IN THE FEDERAL LEAVE TRANSFER PRO-
GRAM FOR DISASTERS AND EMERGENCIES

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

to accompany

S. 1736

PROVIDING FOR THE PARTICIPATION OF EMPLOYEES IN THE JU-
DICIAL BRANCH IN THE FEDERAL LEAVE TRANSFER PROGRAM
FOR DISASTERS AND EMERGENCIES



OCTOBER 20, 2005.—Ordered to be printed

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PROVIDING FOR THE PARTICIPATION OF EMPLOYEES IN THE JUDICIAL
BRANCH IN THE FEDERAL LEAVE TRANSFER PROGRAM FOR DISASTERS
AND EMERGENCIES

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Ms. COLLINS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1736]

The Committee on Homeland Security and Governmental Affairs,
to which was referred the bill (S. 1736) to provide for the participa-
tion of employees in the judicial branch in the Federal leave trans-
fer program for disasters and emergencies, having considered the
same, reports favorably thereon without amendments and rec-
ommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1736 is to provide for the participation of judi-
cial branch employees in the emergency leave transfer program for
major disasters and emergencies, including natural disasters and
emergency situations such as those caused by Hurricanes Katrina
and Rita.

II. BACKGROUND

ESTABLISHMENT OF THE EMERGENCY LEAVE TRANSFER PROGRAM

In 1988, Congress authorized a five-year test of voluntary leave transfer and leave bank programs within federal agencies.¹ The voluntary leave programs were designed to help employees faced with a medical or family emergency who had already exhausted all available leave. The leave transfer pilot program allowed employees to donate their leave directly to other federal employees and the leave bank pilot program allowed employees to donate their annual leave to a leave bank, for use by any member of the bank stricken by a medical emergency. The five-year demonstration projects were deemed successful and were subsequently made permanent in 1994.²

In 1991, Congress created a special leave bank under which federal employees could donate leave for use by their fellow employees who, as members of the Armed Forces reserves, had been called to active duty and would benefit from donated leave upon their return.³

In 1997, legislation was enacted to create a permanent emergency leave transfer program for federal employees.⁴ Under this legislation, the new program applied generally to executive branch agencies and to the Government Accountability Office. The legislation built upon special procedures that were developed to assist federal employees in the wake of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, on April 19, 1995. The special procedures that were developed as part of the emergency leave transfer program after the Oklahoma City bombing did not require employees to exhaust all available existing leave before receiving donations of annual leave for their fellow employees.

ADMINISTRATION OF THE EMERGENCY LEAVE TRANSFER PROGRAM

In the event of major disasters or emergencies declared by the President that result in adverse effects for a substantial number of federal employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program. Once an emergency leave transfer program is in place, employees in executive branch agencies (and the Government Accountability Office) may voluntarily donate annual leave for transfer to employees of his or her agency. Leave may be donated to approved recipients who, as a result of the major disaster or emergency, have been adversely affected to such a degree that the employee's absence from work is required. In addition, an employee who has a family member who has been adversely affected by a disaster or emergency and who does not have reasonable access to other forms of assistance may receive donated leave under the emergency leave transfer program. An employee is not required to exhaust other available leave before receiving donated leave under the emergency leave transfer program. Employees may not receive

¹Public Law No. 100-566.

²Public Law No. 103-103.

³Public Law No.102-25.

⁴Public Law No. 105-18.

more than 240 hours of donated annual leave at any one time from an emergency leave transfer program.

When a federal agency notifies OPM that the amount of annual leave donated by its employees is not sufficient to meet the needs of its approved emergency leave recipients, OPM has the authority to coordinate an inter-agency transfer of annual leave from donating agencies to affected agencies. Since the creation of the program, inter-agency transfers have not been necessary as agencies have met their need for emergency leave transfers internally.

NEED FOR THE LEGISLATION

On September 2, 2005, the President authorized OPM to establish an emergency leave transfer program for employees affected by Hurricane Katrina.⁵ The Judicial Conference of the United States subsequently requested legislative authority in order to provide the judicial branch with the same flexibility and authority available to the executive branch. The judicial branch has an existing voluntary leave bank program and has donated leave to the executive branch.

Most judicial branch employees affected by Hurricane Katrina have been granted excused absences to cope with the immediate aftermath of the emergency. The weather-related administrative absences will be curtailed as the circuits and districts affected by Hurricane Katrina slowly resume operations. S. 1736 will ensure an emergency leave transfer program is in place to assist approved judicial branch leave recipients as their need for donated leave increases when the affected courts resume operations and many of the employees who evacuated in response to Hurricane Katrina remain unable to return to work.

The Judicial Conference of the United States estimates several hundred judicial branch employees could potentially benefit immediately from the emergency leave transfer program. The Committee is hopeful that Congress will enact the requisite authority so that the Judicial Conference can work with OPM to implement the necessary procedures immediately before the judiciary's existing leave policies are no longer sufficient to meet the needs of the employees in the circuits and districts affected by Hurricane Katrina.

III. LEGISLATIVE HISTORY

S. 1736 was introduced on September 20, 2005, and was referred to the Committee on Homeland Security and Governmental Affairs. The legislation is sponsored by Senators Collins, Lieberman, Voinovich, Akaka, Landrieu, and Vitter. On September 22, 2005, the Committee considered S. 1736 and ordered the bill favorably reported without amendment by voice vote. Members present were Senators Collins, Voinovich, Coleman, Chafee, Lieberman, Levin, Akaka, Lautenberg, and Pryor.

IV. SECTION-BY-SECTION ANALYSIS

Section 1 amends section 6391 of title 5, United States Code, to require that the Office of Personnel Management provide for the participation of judicial branch employees in any emergency leave

⁵U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies: Emergency Leave Transfer for Federal Employees Affected by Hurricane Katrina, from Linda M. Springer, Director, Sept. 2, 2005.

transfer program established after a Presidential declaration of a major disaster or emergency. The section requires the Office of Personnel Management to consult with the Administrative Office of the Courts in establishing procedures to facilitate participation of judicial branch employees.

V. ESTIMATED COST OF LEGISLATION

S. 1736—A bill to provide for the participation of employees in the judicial branch in the federal leave program for disasters and emergencies

S. 1736 would provide for the participation of employees of the judicial branch in the federal emergency leave transfer program. CBO estimates that the legislation would have no significant budgetary impact. Enacting the bill would not affect direct spending or revenues. S. 1736 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under current law, judicial branch employees are allowed to donate annual leave through a leave bank to co-workers who have exhausted their annual and sick leave as a result of a personal or family medical emergency. Any unused donated annual leave is returned to the leave bank. Emergency leave transfer programs within the executive branch also allow employees to donate annual leave to be transferred to employees of their own agency or other agencies in the event of a major disaster or emergency declared by the President. However, unlike the leave bank program, any unused annual leave donated to the emergency leave transfer program is returned to the donor.

S. 1736 would provide the judicial branch with the same emergency leave transfer authority as the executive branch. The cost of expanding this authority to the judicial branch would depend upon the number of times a major disaster or emergency occurs that results in a Presidential request for a special leave program and whether the leave donated would have been donated under current law.

Since 1997, emergency leave transfer authority has been used for the executive branch three times. It was used after the African Embassy bombings in 1998, the terrorist attacks of September 11, 2001, and in the aftermath of Hurricane Katrina in 2005. Most of the leave donations after the first two events were returned to their donors.

According to the Administrative Office of the United States Courts, about 400 displaced judicial branch employees have been on paid administrative leave for an indeterminate amount of time since hurricane Katrina struck. CBO expects that any annual leave donations made under S. 1736 would largely be annual leave that would otherwise be donated for medical emergencies. Thus, we expect that enacting S. 1736 would not have a significant cost.

The CBO staff contacts for this estimate are Matthew Pickford and Gregory Waring. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local or tribal governments. The legislation contains no other regulatory impact.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

TITLE 5, UNITED STATES CODE**GOVERNMENT ORGANIZATION AND
EMPLOYEES****PART III—EMPLOYEES****Subpart E—Attendance and Leave****CHAPTER 63—LEAVE****Subchapter VI—Leave Transfer in Disasters and
Emergencies****SEC. 6391. AUTHORITY FOR LEAVE TRANSFER PROGRAM IN DISAS-
TERS AND EMERGENCIES.**

* * * * *

(e) Except to the extent that the Office may prescribe by regulation, nothing in section 7351 shall apply to any solicitation, donation, or acceptance of leave under this section.

(f) After consultation with the Administrative Office of the United States Courts, the Office of Personnel Management shall provide for the participation of employees in the judicial branch in any emergency leave transfer program under this section.

[(f)] (g) The Office shall prescribe regulations necessary for the administration of this section.