

(H. B. 1279)

(No. 118-2017)

(Approved November 24, 2017)

AN ACT

To amend Sections 231 and 232 of Act No. 62 of June 23, 1969, as amended, known as the “Military Code of Puerto Rico”; and paragraph (j) of subsection (7) of Section 2.04 of Act No. 26-2017, as amended, known as the “Fiscal Plan Compliance Act” in order to clarify the military leave to which the officials and employees of the Government of Puerto Rico and its political subdivisions, agencies, and public corporations, as well as private sector employees are entitled to when they are members of the Military Forces of Puerto Rico and are called to Commonwealth Active Military Duty by the Governor; and for other related purposes.

STATEMENT OF MOTIVES

On Wednesday, September 20, 2017, Puerto Rico was devastated by hurricane Maria which is the fifth strongest hurricane to ever hit the United States of America according to NASA. News media reports state that the eye of hurricane Maria made landfall at 6:15 am near Yabucoa with winds reaching 155 mph and it exited the Island at noon on Wednesday near Barrio Islote, between Arecibo and Barceloneta, with 144 mph winds. Hurricane Maria entered and exited Puerto Rico as a category 4 hurricane and dropped up to 40 inches of rain on the Island.

As a response to the destruction caused by Maria, hundreds of volunteers mobilized to help in shelters and take part in the efforts directed at achieving Puerto Rico’s speedy recovery. In addition, it has been reported that over 20,000 federal government officials and service members, including over 1,000 FEMA employees, are currently in Puerto Rico taking part in the response and recovery efforts after the

passage of the hurricane. Thirty-one (31) states are also supporting Puerto Rico's requests for mutual aid.

As a result of this event, and taking into account the powers conferred upon the Governor of Puerto Rico by virtue of the Military Code, the Governor may, as Commander-in-Chief, issue a written order to the Adjutant General of the National Guard directing him to mobilize the military forces of Puerto Rico, as necessary, in order to address any situations caused by natural disasters such as hurricanes, storms, floods, earthquakes, fires, or by *force majeure*, when the civil authorities do not have the capability to address such situations themselves.

Consistent with the foregoing, the Military Code of Puerto Rico establishes that all the officials and employees of the Government of Puerto Rico or its political subdivisions, agencies and public corporations, who are members of the Military Forces of Puerto Rico, shall be entitled to a military leave of absence of up to a maximum of thirty (30) days every year. Such leave shall enable them to be absent from their respective offices without the loss of pay, time or efficiency rating during any period in which they were rendering military services.

However, it has been more than thirty (30) days since the passage of hurricane Maria and Puerto Rico's electric power infrastructure has yet to show any significant signs of recovery. Issues with the distribution of water and supplies also persist and dozens of municipalities still are facing difficulties with their telecommunications.

Many of the service members who have been mobilized to address this emergency are public employees who shall have to stop performing their services in order to return to their job positions in the Government of Puerto Rico due to the limitations of the Military Code. In light of the foregoing and taking into account how imperative it is to extend the military licenses of these officials, we deem it appropriate to amend the aforementioned Military Code.

The purpose of the proposed amendment is to provide that those officials and employees of the Government of Puerto Rico, or its political subdivisions, agencies and public corporations, who are members of the Military Forces of Puerto Rico and are mobilized by the Governor of Puerto Rico to address any man-made situations or situations caused by natural disasters such as hurricanes, storms, floods, earthquakes, fires, or by *force majeure*, shall be entitled to an indefinite military license as long as it is necessary to address the situation caused by the disaster. Furthermore, such employees of the Government of Puerto Rico or its political subdivisions, agencies, and public corporations, shall be entitled to military license with pay during the first month of each period of active duty. In addition, Act No. 26-2017, as amended, known as the “Fiscal Plan Compliance Act” is hereby amended to conform its provisions to the provisions of Act No. 62 of June 23, 1969, as amended, known as the “Military Code of Puerto Rico.”

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 231 of Act No. 62 of June 23, 1969, as amended, is hereby amended to read as follows:

“Section 231.- Leaves of Absence for Government Employees.

All officials and employees of the Government of Puerto Rico or its political subdivisions, agencies, and public corporations, who are members of the Military Forces of Puerto Rico, shall be entitled to a military leave of absence of up to a maximum of thirty (30) days every year. Such leave shall enable them to be absent from their respective offices without the loss of pay, time or efficiency rating during any period in which they were rendering military services as part of their annual training or in a military school, when so ordered or authorized under the provisions of the laws of the United States of America or Puerto Rico. Provided, that when said Federal or Commonwealth Active Military Duty exceeds thirty (30) days, such member of the Military Forces of Puerto Rico may complete the period of annual

training or military school, but such time shall be chargeable to any accrued leave with pay or leave without pay to which he is entitled.

Likewise, all officials and employees of the Government of Puerto Rico, or its political subdivisions, agencies and public corporations, who are members of the Military Forces of Puerto Rico and are called to Commonwealth active military duty by the Governor of Puerto Rico, due to any emergency situation, natural disaster or any man-made situation, shall be entitled to a military leave of absence with pay during the first month of each period of active duty. If the period of active duty were to exceed thirty (30) days, a military leave of absence without pay shall be authorized for the remainder of such period of active duty. Furthermore, during the period of active duty, the official or employee shall keep any fringe benefits granted by the employer and which he was enjoying at the time of activation. The aforementioned benefits shall be kept under the same terms and conditions that were in effect prior to the activation.”

Section 2.- Section 232 of Act No. 62 of June 23, 1969, as amended, is hereby amended to read as follows:

“Section 232.- Leaves of Absence for Private Sector Employees.

All officials or employees of the private sector who are members of the Military Forces of Puerto Rico shall be entitled to a military leave of absence. Such leave shall enable them to be absent from their respective offices or employment without the loss of time or efficiency rating during any period in which they are rendering military service as part of their annual training or when the Military Forces of Puerto Rico are called to Commonwealth Active Military Duty.

Likewise, all private sector officials and employees who are members of the Military Forces of Puerto Rico and are called to Commonwealth Active Military Duty by the Governor of Puerto Rico, due to any emergency situation, natural disaster or any man-made situation, shall be entitled to a military leave without pay

if they have used up all of the paid leave to which they are entitled to. Private sector officials and employees shall have the right to be reinstated in their office or employment, or in one of an equal or higher classification, status, or compensation once their period of active duty has ended.

The financial compensation of these members of the Military Forces of Puerto Rico who are called to Commonwealth Active Military Duty by the Governor shall be governed by the Military Code of Puerto Rico while they are in Commonwealth Active Military Duty.

Section 3.- Paragraph (j) of subsection (7) of Section 2.04 of Act No. 26-2017, as amended, is hereby amended to read as follows:

“Section 2.04.- Fringe Benefits.

The Government of Puerto Rico shall be responsible for ensuring that employees are able to enjoy the fringe benefits granted to them, and overseeing that they do so in accordance with a plan that maintains a proper balance between the needs for service, the employees’ needs, and the responsible use of the available resources. In order to manage human resources uniformly, responsibly, reasonably, equitably, and fairly, the following fringe benefits shall be available to union or nonunion employees or officials of the Government of Puerto Rico, including public corporations, subject to the provisions of Section 2.03 of this Act.

The fringe benefits of the employees of the Executive Branch shall be:

1. ...
7. Special Leaves

A special leave for a justified cause shall be granted, with or without pay, as the case may be, to union or nonunion government employees or officials. Provided, that said leaves shall be governed by the special laws that provide therefor.

a. ...

...

j. Military leave – Every employee who is a member of the Puerto Rico National Guard or of the Reserve Components of the United States Armed Forces shall be entitled to a leave with pay for a maximum of thirty (30) days every year when on military service, as part of a training, or to attend drills or camp, as required.

All officials and employees of the Government of Puerto Rico or its political subdivisions, agencies, and public corporations, who are members of the Military Forces of Puerto Rico and are called to Commonwealth Active Military Duty by the Governor of Puerto Rico, due to any emergency situation, natural disaster or any man-made situation, shall be entitled to a military leave of absence with pay during the first month of each period of active duty. If the period of active duty were to exceed thirty (30) days, a military leave of absence without pay shall be authorized for the remainder of such period of active duty. Furthermore, during the period of active duty, the official or employee shall keep any fringe benefits granted by the employer and which he was enjoying at the time of activation. The aforementioned benefits shall be kept under the same terms and conditions that were in effect prior to activation.

...”

Section 4.- Any law or part thereof that is inconsistent with this Act is hereby repealed.

Section 5.- The provisions of this Act shall prevail over any other provision of law that is inconsistent with the provisions herein set forth.

Section 6.- If any part of this Act were held to be null or unconstitutional by a court of competent jurisdiction, said holding shall not affect or impair the remaining provisions of this Act. The effect of said holding shall be limited to the object thereof.

Section 7.- This Act shall take effect retroactively to September 11, 2017, the date on which the Governor of Puerto Rico activated the Military Forces through an Executive Order in order to deal with the emergency caused by the passage of hurricanes Irma and Maria.