

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 684
SPONSOR: Military and Veterans' Affairs, Base Protection, and Spaceports and Senator Fasano
SUBJECT: Military Affairs
DATE: April 15, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Krasovsky</u>	<u>MS</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>ATD</u>	<u>Withdrawn</u>
3.	<u>DeLoach</u>	<u>Hayes</u>	<u>AGG</u>	<u>Favorable</u>
4.	<u>_____</u>	<u>_____</u>	<u>AP</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
6.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

This CS addresses a number of issues relating to the Florida National Guard and its supporting state agency, the Department of Military Affairs. The CS incorporates the recommendations contained in *Interim Project Report 2003-116: Review of Chapter 250, F.S., Military Affairs and Related Matters*. Most significantly, the CS implements the following provisions:

- Clarifies the authority of the Governor and the Adjutant General;
- Modifies various provisions related to court-martials to conform with federal law;
- Expands workers' compensation coverage by the Department of Insurance to state-activated troops with long-term injuries or disabilities;
- Strengthens health benefits, job protection, and property rights of guard members activated for state duty;
- Clarifies certain provisions related to the Armory Board, education programs, courts-martial, and accounting procedures;
- Revises numerous definitions to insure their consistent use throughout the chapter;
- Resolves internal inconsistencies in ch. 250, F.S., modifies provisions to conform with federal law, and clarifies vague provisions; and
- Replaces or deletes obsolete and redundant provisions.

The CS amends the following sections of the Florida Statutes: 250.01; 250.02; 250.03; 250.04; 250.05; 250.06; 250.07; 250.08; 250.09; 250.10; 250.115; 250.12; 250.16; 250.175; 250.18; 250.19; 250.20; 250.23; 250.24; 250.25; 250.26; 250.28; 250.29; 250.30; 250.31; 250.32; 250.33; 250.34; 250.341; 250.35; 250.36; 250.37; 250.375; 250.38; 250.39; 250.40; 250.43; 250.44; 250.45; 250.46; 250.47; 250.48; 250.481; 250.482; 250.49; 250.51; 250.52; 250.5201; 250.5202; 250.5204; and 250.5205.

The CS creates section 250.351 of the Florida Statutes.

The CS repeals the following sections of the Florida Statutes: 250.13; 250.21; 250.27; 250.41; 250.42; and 250.601.

II. Present Situation:

The Florida National Guard - The Florida National Guard (FNG) is the state's modern "organized" militia and is an essential reserve component of the national defense force.¹ Its organization, arms, and training correspond to that of the federal military. The National Guard Bureau of the Department of Defense (DOD) determines the number of units and positions for the FNG, consistent with the force structure requirements of DOD's overall national military strategy.

The FNG is also the Governor's primary military force to "preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion."² Over its history, the Governor has mobilized the FNG in response to a variety of natural and manmade disasters. In 2001, more than 300 troops from various FNG units were activated to assist the Florida Division of Forestry with fire suppression missions. During that same year, the FNG was also activated to prepare for potential relief missions during Hurricane Michelle and Tropical Storm Gabrielle.

In response to recent national security threats, the FNG was activated to provide security for Florida's seaports, airports, and nuclear energy facilities. Members of the 44th Weapons of Mass Destruction-Civil Support Team mobilized to support of local emergency operations at the anthrax-tainted American Media building in Boca Raton. A number of FNG units were deployed to overseas in connection with "Operation Enduring Freedom". In addition, the FNG joined with state law enforcement agencies on the Florida Anti-Terrorism Task Force and several different Regional Anti-Terrorism Task Forces.

There are currently more than 13,000 troops serving in more than 100 Air Force and Army units of the FNG. The FNG is headquartered in St. Augustine, Florida. The FNG's primary training facility is Camp Blanding in Clay County. The FNG also maintains 60 armories throughout the state.

The Florida Department of Military Affairs - The Florida Department of Military Affairs (DMA, or department) is the state agency responsible for management, oversight, and administrative support to the FNG. While the Governor is the Commander-in-Chief of the FNG, the Adjutant General is the agency head of DMA, as well as the Commanding General of the Florida Army and Air National Guard. The department is staffed with both state and federal employees.

In addition to functioning as the "state militia" and operating as a component of the national defense force, DMA also performs drug interdiction operations with the U.S. Customs Service. Troops assist in searching incoming vessel cargo and provide aerial electronic detection of drug

¹ 10 U.S.C.A., s. 261.

² Art. IV, s. 1 of the State Constitution.

smugglers. DMA also provides military support to drug law enforcement agencies and community based organizations to help reduce the availability and demand for illegal drugs within the state. In 2000, DMA personnel were directly involved with the seizure of more than \$818 million in illegal narcotics, property and weapons. DMA also provides counter-drug training for law enforcement agencies.

Through state and federal grants, DMA also operates a number of social service programs at Camp Blanding and in its armories throughout the state. These programs include:

- *The Drug Demand Reduction Program*, which supports other organizations' efforts to reduce the use of drugs, alcohol, and tobacco by youths; annually, this program reaches over 46,000 students in more than 262 schools throughout the state.
- *About Face*, a program in partnership with the Florida Department of Children and Families, teaches life skills to economically disadvantaged youths; since 1997, 6,415 participants have successfully completed the program.
- *Forward March*, a program in partnership with the Florida Department of Children and Families, teaches life skills and job readiness to unemployed and underemployed adults; in 2001, there were 615 graduates, with a 63 percent job placement rate.
- *Youth Challenge*, a five-and-a-half month military-based residential program that teaches values, life skills, and self-discipline to targeted youths; there are two classes per year with approximately 100 students in each class.

Funding for DMA is provided through the federal and state governments. Funding for the program is an estimated \$350 million for fiscal year 2002-03. An estimated \$300 million is paid directly by the federal government and \$50.2 million is appropriated by the state. Of the state appropriation, \$33.2 million comes from federal sources, \$14.9 million from state general revenue, and \$2.1 million from revenue generated from operations at Camp Blanding.

III. Effect of Proposed Changes:

Section 1 amends s. 250.01, F.S., to provide additional definitions for the chapter, consistent with federal law. First, the definition for "national defense act" in subsection (1) is deleted, as it is unnecessary. While this term is used in many places throughout the chapter, the term may be replaced with a general reference to federal law. Subsection (2), which is a requirement that designations of military units be consistent with federal law, is deleted as it is not a definition and is unnecessary. This requirement is implicit elsewhere in Florida law, and is explicit in federal law.

One major change proposed by this section includes distinguishing between active duty and state active duty. The term "active duty" applies only to those periods when the Florida National Guard is activated by the federal government. Specifically, this section is amended to provide:

"Active duty" means full-time duty in the active military service of the United States. The term includes federal duty such as full-time training duty, annual training, and attendance while a person is in the active military service or attending a school designated as a service school by law or by the secretary of the military department concerned...

This definition is substantially identical to the definition in federal law. The term “state active duty” applies only to those periods when the Governor orders the Florida National Guard into service, typically in response to natural disasters or civil disorders. This definition incorporates the definition in s. 250.27, F.S., which is repealed by this act. For consistency the term “state active duty” replaces similar terms used throughout the chapter.

The term “military judge” is defined as the presiding officer of a general or special court-martial. It also includes a summary court-martial officer, unless otherwise expressly provided. By state and federal law, a military judge for general and special courts-martial must be qualified as a Judge Advocate General (JAG) and be “certified as qualified by the Adjutant General.”³ Summary courts-martial may be presided over by other officers, such as a base commander or other officer, who may not be qualified as a JAG. All three types of courts-martial are granted specific authority in ch. 250, F.S. However, federal law provides some authority to JAGs presiding over general or special courts-martial that “judges” for summary courts-martial are not provided. When the term “military judge” is used in ss. 250.35, 250.36, and 250.39, F.S., any limitation of authority of summary courts-martial officers stipulated in federal law is made clear in those sections, as proposed in this CS.

The definition for “National Guard Bureau” is nearly identical to the federal definition. The definition for “armory” is nearly identical to the definition in s. 250.41(1), F.S., which is deleted in this act. The remaining definitions are substantially identical to those in federal law.⁴

Section 2 amends s. 250.02, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of ‘national defense act’ is deleted in section 1.

Section 3 amends s. 250.03, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of “national defense act” is deleted in section 1.

Section 4 amends s. 250.04, F.S., to make changes in style.

Section 5 amends s. 250.05, F.S., to designate the Adjutant General as the head of the Department of Military Affairs. This provision is consistent with s. 250.7(2), F.S., which is amended in this CS, and s. 250.10(2), F.S.

Section 6 amends s. 250.06, F.S., to specify that the Governor may order troops into active duty to “enhance domestic security” or to “respond to terrorist threats or attacks.” While this authority is implicit in this section and Art. IV, s. 1(d), of the State Constitution, the department requested this authority be specifically provided. This section also specifies additional activities the Governor may authorize the Florida National Guard to participate in, to include ceremonies and inspections, and troop training.

³ Section 250.35(3), F.S.; Section 816, Art. 16 of the UCMJ; Section 826, Art. 26 of the UCMJ sets the qualifications for a military judge.

⁴ 32 USC Sec. 101

Section 250.06(6) is created to authorize the Governor to delegate to the Adjutant General the authority to convene general courts-martial. Art. X, s. 2(d) of the State Constitution requires that “the grounds and proceedings” for the “discipline and removal” of personnel and officers of the federally recognized national guard “conform to the appropriate United States army or air force regulations and usages.” Federal law authorizes the states to designate who may convene general, special, or summary courts-martial for the National Guard when not in federal service.

Throughout this section, the term “organized militia” is replaced with National Guard (when referring to federal law) or Florida National Guard. These changes recognize that the Florida National Guard is the only organized militia in this state. For consistency, the term “state active duty”, which is defined in section 1 of the CS, replaces similar terms.

Section 7 amends s. 250.07, F.S., to specify that persons who have declared their intention to become citizens may be members of the Florida National Guard. This is consistent with Art. X, s. 2(a), of the State Constitution. This section also deletes a provision implicitly designating the Adjutant General as the head of the Department of Military Affairs, which has been transferred to s. 250.03(3), F.S. It also deletes a requirement that the Adjutant General hold the rank of major general. In most cases a newly appointed Adjutant General does not possess this rank when appointed, but is promoted to the rank after appointment. The service requirements for appointment to Adjutant General are specified in s. 250.10(1), F.S.

The rank requirements for the Assistant Adjutant Generals are deleted for the same reason. The service requirements for the Assistant Adjutant Generals are deleted as they are, in part, inconsistent with s. 250.10(4) and (5), F.S., respectively. Section 250.07, F.S., requires the assistants be a major at the time of appointment, while s. 250.10(4) and (6), F.S., require they be a colonel.

Subsection (2) requires all general officers be federally recognized and appointed by the Governor, subject to conformation by the Senate. This provision is consistent with the requirement that officers be “federally recognized” in subsection (1), from subsections 250.10(1), (4), and (6), F.S., and s. 250.13, F.S., which is deleted by this act.

Section 8 amends s. 250.08, F.S., to substitute a reference to “national defense act” with a general reference to federal law. This section is also amended to make changes in style.

Section 9 amends s. 250.09, F.S., to clarify a reference to the Florida National Guard.

Section 10 amends s. 250.10, F.S., which pertains to the appointment and duties of the Adjutant General. Specifically, this section incorporates the following revisions:

- Includes a reference to ranks authorized by the Department of the Air Force to recognize that the Adjutant General may an Air Force officer;
- References all military personnel, rather than only officers, are paid according to their respective military grades;
- Specifies an exception to the requirement that military personnel employed by the department be paid the same wage as their military grade requires; current law allows this exemption in the annual budget enacted by the Legislature, pursuant to subsection (1);

- Deletes a provision declaring the Adjutant General the Chief of the Department of Military Affairs; this declaration is transferred to s. 250.05(3), F.S.;
- Replaces the terms ‘militia’ and ‘organized militia’ with ‘Florida National Guard’, recognizing that the Florida National Guard is the only organized militia in this state;
- Clarifies that only “military” personnel of DMA, rather than “state active duty” personnel may participate in DMA’s physical fitness program; this program was designed for full-time employees of the department, not part-time troops;
- Deletes obsolete language relating to the Camp Blanding post exchange store;
- Expands the Adjutant General’s authority to hire staff by replacing the term “clerical help” with the more general “personnel”;
- Deletes paragraph (2)(g), which provided specific authority to hire military police or security guard for department property; this provision is made obsolete by the above proposed change authorizing the Adjutant General to hire “personnel”;
- Replaces a number of terms or phrases pertaining to the department’s About Face and Forward March programs made obsolete by previous changes in the law;
- Authorizes the Adjutant General to order troops to state active duty for training when the Legislature has made funding available for such purpose;
- Clarifies and reorganizes provisions relating to qualifications for the Assistant Adjutant Generals; and
- Makes a number of changes in style.

Subsections (7) and (8) of s. 250.10, F.S., provide for educational benefits to troops in the Florida National Guard, in the form of a tuition exemption program and a tuition assistance program. The exemption program (the State Tuition Exemption Program, or STEP) provides troops with an exemption of one-half of tuition and fees on a “space available basis”. The assistance program (the Educational Dollars for Duty Program, or EDD) provides, subject to appropriations, payment of the full cost of tuition and fees for troops who enlist after June 30, 1997. Troops using either program must “agree in writing to serve in the active Florida National Guard for 3 years after completion of the studies for which an exemption is granted.”

These subsections are amended to replace or delete obsolete terms and to clarify that the department, through the STEP program, may provide one-half the tuition and fees, rather than the full cost of tuition and fees, under certain conditions. Historically, the department has provided one-half the tuition and fees when the school or university could not provide a waiver. This section is also changed to customize the current general penalty provision to fit both STEP and EDD programs, and clearly distinguish between the two programs. In addition, a new provision is added to require that when a member defaults on repayments of tuition and fees, the institution or the state may charge him or her the maximum interest rate authorized by law.

Section 11 amends s. 250.115, F.S. Currently, this section authorizes the department to participate in the operation of a “direct support organization” for the FNG. The non-profit Florida National Guard Foundation, Inc., provides support and financial assistance to the members of the Guard and their families. Over the past 20 years, the foundation has awarded more than \$180,000 in scholarships to FNG members and \$55,000 to museums, memorial, and historical projects that recognize the contributions of the FNG. The foundation is supported by individual and corporate contributions. All administrative support is provided by DMA.

Federal Joint Ethics Regulations govern the standards of ethical conduct of FNG members. The department interprets these regulations to restrict, to some extent, the Adjutant General's direct individual participation in this direct support organization. To comply with federal regulations, s. 250.115, F.S., is amended to require the Adjutant General to appoint, rather than serve as, President of the department's direct support organization. In addition, the authority over the department's direct support organization is transferred from the Adjutant General to either the department or the President of the Board of Directors.

Section 12 amends s. 250.12, F.S., to clarify a reference to the Florida National Guard.

Section 13 amends s. 250.16, F.S., to clarify a reference to the Florida National Guard.

Section 14 amends s. 250.175, F.S., to clarify provisions relating to department trust funds. Currently, s. 250.175, F.S., establishes the Federal Law Enforcement Trust Fund to account for funds received from the drug asset seizures resulting from department counter-drug enforcement activities. Section 250.601, F.S., establishes the Emergency Response Trust Fund, which accounts for reimbursements from the Federal Emergency Management Agency for the costs of activating the Florida National Guard and transfers of state funds approved by budget amendments. These are the only department trust funds specifically listed in the statutes. Other department trust funds include the Camp Blanding Management Trust Fund, which accounts for funds generated from activities at Camp Blanding; and the Armory Board Trust Fund, which accounts for funds received from the federal governments. The first three trust funds are exempt from the 7 percent service charge imposed by s. 215.20, F.S. Federal law prohibits imposing the service charge on federal funds in the Armory Board Trust Fund. In addition, all trust fund balances remaining at the end of the fiscal year remain in the trust fund – such balances are not transferred to general revenue.

This CS amends s. 250.175, F.S., to provide for the following:

- Specify proceeds from seized property deposited in the Federal Law Enforcement Trust Fund must be used to support related programs of the FNG;
- Transfer the “Emergency Response Trust Fund” from s. 250.601, F.S., to this section;
- Include the Camp Blanding Management Trust Fund in this section;
- Rename the Armory Board Trust Fund as the Cooperative Agreement Trust Fund, and include the fund in this section; and
- Include provisions that maintain current policies relating to services charges imposed by s. 215.20, F.S., and trust fund balances remaining at the end of the fiscal year.

Section 15 contains an expression of Legislative Intent to clarify the changes proposed in section 14 of the CS.

Section 16 amends s. 250.18, F.S., to delete the obligation of officers to provide their own military equipment. Currently, the Florida National Guard provides all personnel the necessary equipment necessary to fulfill their responsibilities. Currently, s. 250.18, F.S., requires the department to provide a uniform allowance to officers. However, because the federal government provides a \$400 allowance to officers upon appointment, the department states this requirement

is not necessary. This section is amended to delete the obligation of the Florida National Guard to provide a uniform allowance to officers.

Section 17 amends s. 250.19, F.S., to make changes in style.

Section 18 amends s. 250.20, F.S., which addresses the distribution and accounting of armory maintenance allowances, to clarify military post accounting practices. In response to issues identified in a recent Operational Audit by the Florida Auditor General, the department requested this section be amended to require that armory maintenance allowances only be deposited into a department-approved, federally insured (FDIC) financial institution.

In addition, this section is amended to clarify that each post commander is responsible for the proper receipt and distribution of the post maintenance allowance. While this responsibility appears to be clear in current law and department rules, including this requirement in this section will specify the department's expectations of armory post commanders.

Section 19 amends s. 250.23, F.S., to allow officers and enlisted personnel, rather than only enlisted personnel, be provided meals or payment for meals during emergency state active duty operations. Consequently, department reimbursement costs will increase for meals provided during emergency state active duty operations. This section is also amended to clarify terms relating to state active duty.

Section 20 amends s. 250.24, F.S., to clarifying terms relating to state active duty and to specify that pay for activated troops must be deposited in the Emergency Response Trust Fund, consistent with current practice.

Section 21 amends s. 250.25, F.S., to clarify terms relating to state active duty.

Section 22 amends s. 250.26, F.S., to make changes in style.

Section 23 amends s. 250.28, F.S., relating to the mobilization of troops to assist civil authorities. Currently, this section provides that in response to certain emergencies where local authorities are unable to maintain or restore order, the Governor, or in case the Governor cannot be reached and the emergency will not permit awaiting his or her orders, the Adjutant General, shall issue orders directing the appropriate military personnel to assist local authorities.

This section is amended to provide that if the Governor cannot be reached and the emergency will not permit awaiting his or her orders, the Governor's successor as established in s. 14.055, F.S., is authorized to issue orders mobilizing troops. If the appropriate successor cannot be reached and the emergency will not permit awaiting his or her orders, the Adjutant General is authorized to mobilize the necessary troops. This section is also amended to authorize the appropriate entity to respond to a threat to security, a terrorist threat, or terrorist attack. While the authority to respond to these contingencies is implicit in this section, the department requested this authority be specifically provided.

Section 24 amends s. 250.29, F.S., to increase the penalty from second to first degree misdemeanor for violations related to failure to provide assistance to civil authorities. In

addition, such violations may also be punished as a court-martial directs, rather than only by dismissal or dishonorable discharge.

Section 25 amends s. 250.30, F.S., to replace the term ‘active militia’ with ‘Florida National Guard’.

Section 26 amends s. 250.31, F.S., to replace the term ‘organized militia’ with ‘Florida National Guard’ and to clarify terms relating to state active duty. It also specifies that “full-time National Guard duty” personnel, like members on state active duty, are not liable for any lawful acts committed in the performance of their duty, while acting in good faith and while acting in the scope of either state or federal duty.

Section 27 amends s. 250.32, F.S., to clarify a term relating to state active duty.

Section 28 amends s. 250.33, F.S., to clarify terms relating to state active duty.

Section 29 addresses workers’ compensation for troops injured while on state active duty. Chapter 440, F.S., governs Workers’ Compensation in Florida. The Division of Risk Management of the Department of Insurance (DOI) manages the state’s workers’ compensation program. To a significant degree, the state is self-insured. State agencies are assessed an annual fee to cover their employees, which is paid for in an annual appropriation from the Legislature. DMA participates in the state’s workers compensation program only for its 279 full-time employees. State-activated troops are not insured under this program.

Section 250.34, F.S., provides for “medical attention and necessary hospitalization” and pay for troops who become injured or disabled while in active military service of the state. While the FNG does not participate in the state’s workers’ compensation program for state activated guards, it does use the compensation guidelines provided in ch. 440, F.S. Furthermore, the Division of Risk Management provides assistance in processing and, in some cases, litigating claims against the FNG. Historically, compensation for state activated troops injured in the line of duty has been funded through a variety of sources available to the department. While such sources are sufficient to pay routine claims and associated legal costs, the department must petition the Governor for additional funds to cover major claims and associated legal costs.

Section 250.34 F.S., is amended to specify that the Department of Insurance will process workers compensation insurance benefits to certain severely injured or disabled troops (troops with claims past one year from the date of injury or disability) and will also provide associated legal assistance to the department. Procedures are specified for annually reimbursement to DOI when benefits and associated legal assistance are provided. This section is also amended to clarify terms relating to state active duty, and to provide that injuries are not compensable if it is a pre-existing condition.

Section 30 amends s. 250.341, F.S., which governs the cancellation of health insurance. Currently, this section requires FNG members to notify their employer that they want to continue insurance coverage while activated into guard duty. The department reports that some employees fail to provide this notification, sometimes because of the short notice of activation or because of the nature of their military mission. In addition, some employers request department officials

verify this notification. To address this problem, the department requested that the “appropriate military authority” be authorized to provide this notification. In addition, the department requested that a new provision be included in this section, consistent with federal law, stating that prior notice to the employer is not required if such notice is precluded by military necessity or if such notice is impossible or unreasonable.

Section 31 amends a number of provisions in s. 250.35, F.S., primarily to conform state military laws to federal law. The state National Guards are governed by the concurrent laws of the federal and respective state governments. All provisions of federal law which relate to the Florida National Guard, and which are not inconsistent with the state constitution, are part of the military laws of Florida.⁵ The Florida Constitution specifies that the qualifications of member of the Florida National Guard, and “the grounds and proceedings for their discipline and removal” must conform to the appropriate regulations of United States Army or Air Force.⁶ The federal Uniform Code of Military Justice (UCMJ) contains the substantive and procedural laws governing the military justice system. The UCMJ defines the same crimes as those in civilian courts, but also includes violations of order and discipline, such as disobedience to a superior officer, drunkenness on duty, misconduct as a prisoner of war, even adultery. The Manual for Courts-Martial (MCM) prescribes procedural rules and punishments for violations of crimes.

Members of the Florida National Guard are subject to the same laws as the civilian population. However, absent any agreement between the civilian authorities and the base commander, the military commander has concurrent jurisdiction over the troops in criminal matters.⁷ For practical reasons, the department generally defers to civilian authorities for prosecution of such crimes.

However, action by civilian authorities does not preclude the department from taking additional disciplinary action against the Guard member. Such discipline can take many forms. First, the commanding officer may take administrative action, absent a court-martial, against the Guard member. Such actions include measures ranging from counseling or a reprimand to involuntary separation. Second, the commander may initiate a court-martial, which is a military court for trying and punishing offenses committed by members of the armed forces. There are three levels of court-martial: summary, special, or general.

- A summary court-martial is designed to dispose of minor offenses. Only enlisted service members may be tried by summary court-martial. A single officer presides over the hearing.
- A special court-martial is an intermediate level composed of either a military judge alone, or at least three members and a judge. An enlisted service member may ask that at least one-third of the court members be enlisted. There is both a prosecutor, commonly referred to as the trial counsel, and a defense counsel. In addition, the accused may be represented by civilian counsel, at no expense to the government, or by an individually

⁵ Section 250.03, F.S.; 32 U.S.C.A. is the primary federal law addressing the organization of the state National Guards.

⁶ Article X, section 2(d) of the State Constitution.

⁷ Section 814, Art. 14(a), of the UCMJ provides that “Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.”

- requested military counsel. A judge presiding in a special court-martial must be a qualified JAG.
- A general court-martial is the military's highest level trial court. This court tries service members for the most serious crimes. The punishment authority of the general court-martial is limited by the maximum authorized punishment for each offense in the Manual for Courts-Martial. A judge presiding in a general court-martial must be a qualified JAG.

Subsection 250.35 (1), F.S., adopts the UCMJ and the Manual for Courts-Martial for use by the FNG. Subsections (1) and (2) are amended to adopt the latest versions of these laws. In addition, subsection (1) is amended to delete the term 'organized militia', which is redundant in this context.

Subsection (2) specifies commissioned officers may not be tried by summary courts-martial. However, federal rules prohibit trying of warrant officers and cadets by summary courts-martial. This section is amended to be consistent with federal law. In addition, the term 'organized militia' is deleted, as the Florida National Guard is the only organized militia in this state.

Subsection (3) allows defendants to waive trial by panel and request trial by a judge. This provision is amended to allow defendants to waive trial by panel and request trial by military judge, which is consistent with the context. In addition, a provision that authorizes 'noncommissioned officers' to serve on general and special courts-martial is deleted, and is replaced with a clause allowing enlisted members serve on the panel at the request of the enlisted defendant, consistent with the UCMJ.

Subsection (4) specifies a general courts-martial in the FNG may only be convened by the Governor. This provision is amended to allow the United States President, who possesses this authority as commander-in-chief, and the Adjutant General, as delegated by the Governor, to convene a general courts-martial. Art. X, s. 2(d) of the State Constitution requires that "the grounds and proceedings" for the "discipline and removal" of personnel and officers of the federally recognized national guard "conform to the appropriate United States army or air force regulations and usages." Federal law authorizes the states to designate who may convene general, special, or summary courts-martial for the National Guard when not in federal service. This change is consistent with the proposed authority in s. 250.06(6), F.S., which authorizes the Governor to delegate to the Adjutant General the authority to convene general courts-martial.

This section also authorizes as punishment the reduction of rank to the lowest enlisted grade. This provision is amended to clarify that only enlisted personnel may have their rank reduced to the lowest enlisted grade. Officers are commissioned and may only lose such commission – federal law does not allow officers to have their rank reduced to the enlisted grades.

Subsection (8) specifies that any combination of punishments listed therein may be imposed. This allows up to 28 days of extra duty and restriction be imposed. However, the federal Rules of Court-Martial limit to 14 the number of days that restriction and extra duty may be imposed. This provision is amended to be consistent with the limitation imposed by federal law.

Subsection (9) provides that findings of guilt and sentences imposed by a court-martial may be appealed to the District Court of Appeal (DCA) for the district in which the court-martial was

held. However, the State Constitution requires such appeal be made to the 1st DCA.⁸ This provision is renumbered as subsection (10) and is amended to clarify that appeals may be appealed to the 1st DCA.

Subsection (10) allows for appeal of a sentence by a summary court-martial. This subsection is renumbered as subsection (9), and includes a provision recognizing the Adjutant General must approve a sentence of imprisonment.

Section 32 creates s. 250.351, F.S., to clarify that members of the Florida National Guard are subject to the UCMJ at all times during their enlistment or appointment, and that ch. 250, F.S., applies to such members whether serving in-state or in another state. While this is implicit by the adoption of the UCMJ and the Manual for Courts-Martial in s. 250.35, F.S., the department requested this provision be created to preclude any challenges.

Section 33 amends s. 250.36, F.S., to re-organize this section. Substantive changes include granting the Adjutant General's designee authority to issue pre-trial confinement warrants and subpoenas. Because the proposed definition of "military judge" in s. 250.01(11), F.S., is expanded to include summary court-martial officers, a provision is included to specifically deny non-JAG officers the authority to issue pre-trial confinement warrants, consistent with current law.

Section 34 amends s. 250.37, F.S., to make changes in style. In addition, a reference to a summary court officer is deleted, as the proposed definition for military judge s. 250.01, F.S., includes summary court-martial officers.

Section 35 amends s. 250.375, F.S., to allow physicians in the Florida National Guard, when on active duty, to provide services during an emergency to troops and civilians outside the state of Florida. Current law restricts the physicians to service only in Florida.

Section 36 amends s. 250.38, F.S., to make changes in style, and to replace the word "oust" with "divest".

Section 37 amends s. 250.39, F.S., to limit penalties for contempt to 30 days incarceration and a fine of \$100 per offense, consistent with federal law.⁹ In addition, this section includes the restriction against non-JAG summary court-martial officers issuing a warrant for confinement. This is consistent with proposed s. 250.36(2), F.S., and current law.

Section 38 amends s. 250.40, F.S., to re-organize and consolidate ss. 250.41 and 42, F.S., into this section, and make changes in style. Substantive changes to the authority and functional responsibilities of the Armory Board and support staff include:

- Specifically designating the Governor as the chair of the board, which is current practice;
- Designating the Adjutant General as vice-chair;
- Specifying that only the major command commanders are included on the board;

⁸ Article V, s. 1 of the State Constitution.

⁹ 10 U.S.C.A. Sec. 848, and Section 848, Art. 48 of the UCMJ.

- Authorizing board members to designate their deputy commander as an alternative member to serve when “exigencies of military duty” make it necessary;
- Including a Governor’s representative as a non-voting member and liaison to the board;
- Designating the State Quartermaster as the recorder and secretary of the board, and the person responsible for the daily operation of the board; and
- Specifying that the State Quartermaster and staff have civil immunity while carrying out their duties.¹⁰

Section 250.40(6)(a)1., F.S., contains a general list of revenue sources armory post commanders must deposit into a bank in the county where the respective facilities are located. Included in this list is “money derived from the rental of billeting operations at Camp Blanding Training site.” Because this revenue source relates only one facility, it is inappropriate to include in this general list.

Currently, s. 250.40(6)(a)2., F.S., authorizes a military “post council” to disburse funds received from rental of armories, maintenance allowances from the department, and fine proceeds, pursuant to rules established by the Armory Board. However, department staff report that such post councils are advisory, and that the post commander is responsible for the proper disbursement of funds and operation of the armory. In order to conform to federal regulations, this section is amended to transfer armory operation authority to the post commander, and deletes the provision that establishes the post council.

Section 39 amends s. 250.43, F.S., to increase the penalty from second to first-degree misdemeanor for violations related to unauthorized wearing of uniform and insignia of rank. Subsection (1) is amended to include a reference to punishment “as provided in s. 775.082”, which relates to penalties for various levels of crimes. Section 775.084(4)(a), F.S., limits imprisonments for first degree misdemeanors to one year. The inclusion of this reference is consistent with other provisions of law. In addition, subsection (2) is amended to clarify a reference to the Florida National Guard, and references to military personnel of Puerto Rico and the District of Columbia are included, consistent with the definitions proposed in s. 250.01, F.S.

Section 40 amends s. 250.44, F.S., to increase the penalty from second-degree misdemeanor to theft pursuant to ch. 812, F.S., for violations related to theft of military equipment. In addition, the term “accouterments” is replaced with “property” and other stylistic changes are made.

Section 41 amends s. 250.45, F.S., to increase the penalty from second to first degree misdemeanor for violations related to discrimination against military personnel. This section is also amended to include a reference to punishment “as provided in s. 775.082”, which relates to penalties for various levels of crimes. Section 775.084(4)(a), F.S., limits imprisonments for first degree misdemeanors to one year. The inclusion of this reference is consistent with s. 250.43(2), s. 250.29, s. 250.51, and s. 250.52, F.S.

Section 42 amends s. 250.46, F.S., to replace the term “militia” with “Florida National Guard”. This is in recognition that the Florida National Guard is the only organized militia in this state.

¹⁰ The proposed language is identical to the civil liability in s. 250.31, F.S., for members of the FNG in state active duty. It is also similar to the civil liability provision for state and local government employees in s. 768.28(9)(a), F.S.

Section 43 amends s. 250.47, F.S., to make changes in style and to clarify a reference to the Florida National Guard.

Section 44 clarifies several provisions relating to leaves of absence. Currently, s. 250.48, F.S., allows activated troops who are employees of “political subdivisions of the state” to take a leave of absence, without a loss of pay, for up to 30 days at a time. While school districts are generally considered “subdivisions of the state,” the department requested this provision be modified to specifically reference school districts. The department also requested this section be amended to limit the duration such leaves of absence to 30 days for each emergency or disaster, as established by executive order (as opposed to “at any one time”). This may limit the number of paid leave of absences for members of the Florida National Guard.

Section 45 amends s. 250.481, F.S., to make changes in style.

Section 46 amends s. 250.482, F.S., which provides certain safeguards for FNG members ordered to state duty. This section currently prohibits “public and private” employers from discharging, reprimanding, or penalizing employees activated for state duty. This section is amended to clarify that activated employees of school districts, and vocational and technical schools, are protected against such action for taking a leave of absence when activated for service by the Florida National Guard. This section is also amended to clarify terms relating to state active duty.

Section 47 amends s. 250.49, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of ‘national defense act’ is deleted in section 1. This section is also amended to clarify terms relating to state active duty.

Section 48 amends s. 250.51, F.S., to replace the phrase ‘organized militia of the state’ with “Florida National Guard”. This change recognizes that the only organized militia in this state is the Florida National Guard. For consistency, the term “state active duty” replaces similar terms. In addition, this section is amended to increase the penalty from second to first degree misdemeanor for violations related to insulting troops.

Section 49 amends s. 250.52, F.S., to delete a reference to “active militia of the state.” This change recognizes that the only organized militia in this state is the Florida National Guard. For consistency, the term “state active duty” replaces similar terms. In addition, this section is amended to increase the penalty from second to first degree misdemeanor for violations related persuading a person against enlistment.

Section 50 amends s. 250.5201, F.S., to clarify terms relating to state active duty and make changes in style.

Section 51 amends s. 250.5202, F.S., to clarify terms relating to state active duty, and to delete a redundant provision related to the federal Soldiers and Sailors Civil Relief Act.

Section 52 amends s. 250.5204, F.S., to clarify terms relating to state active duty.

Section 53 amends s. 250.5205, F.S., to clarify terms relating to state active duty.

Section 54 creates a new section of law to require the Florida National Guard to provide training and support related to drug interdiction.

Section 55 repeals a number of sections in ch. 250, F.S. Specifically, the following sections are deleted:

- s. 250.13, F.S., which requires all general officers be appointed by the Governor; this requirement is included in s. 250.05(3), F.S., of this CS.
- s. 250.21, F.S., which requires the department to maintain a “retired list” of the Florida National Guard. While decades ago this section was used as a recall list, most recently it has been used for social purposes and to maintain a mailing list for newsletters. The department states that it is no longer necessary, for either military or social purposes.
- s. 250.27, F.S., which defines “active service”. The substance of this section is included in the definition of ‘state active duty’ in s. 250.01, F.S., as proposed in this CS.
- sections 250.41 and 250.42, F.S., which relate to armories and the Armory Board. Provisions in this section are consolidated with s. 250.40, F.S., as proposed in this CS.
- s. 250.601, F.S., which establishes the department’s Emergency Response Trust Fund. This provision is included in s. 250.175, F.S., a section that proposes to consolidate all of the department’s trust funds into one section of law.

Section 56 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS clarifies certain responsibilities of employers and insurance providers with regard to members of the Florida National Guard. The fiscal impact of these provisions is indeterminate.

C. Government Sector Impact:

The CS allows officers and enlisted personnel, rather than only enlisted personnel, be provided meals or payment for meals during emergency state active duty operations. Consequently, department reimbursement costs will increase for meals provided during emergency state active duty operations.

The CS specifies that the Department of Insurance will provide workers compensation insurance coverage to certain severely injured or disabled troops (troops with claims past one year from the date of injury or disability) and will also provide associated legal assistance to the department. According to the department, during the past decade only two soldiers would have qualified as “severely injured or disabled.” Should any soldier be classified as such in the future, DOI would incur costs in providing benefits to the soldier and associated medical and legal costs. In turn, DOI would “assess” DMA for such costs, which would be paid in an annual appropriation from the Legislature.

Under the provisions of this bills, the fiscal impact is indeterminate. Where the state is responsible for workers compensation insurance coverage to certain severely injured or disabled troops specified in the bill, General Revenue funds or other designated state resources, such as the Working Capital Fund, could be impacted. The Department of Military Affairs is state funded primarily from General Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The CS incorporates the recommendations contained in *Interim Project Report 2003-116: Review of Chapter 250, Military Affairs and Related Matters*.

VIII. Amendments:

None.