

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill provides need-based financial assistance to families of Florida National Guardsmen and Reservists for up to 120 days after the service members are released from active duty and return to their home of record. Assistance may be provided in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Family Readiness Program Generally

In 2005, the Legislature established the Family Readiness Program (“program”) within the Department of Military Affairs (DMA) and appropriated \$5 million to fund the program.¹ The purpose of the program is to provide need-based financial assistance to beneficiaries and dependents of service members of the Florida National Guard (FNG) and United States Reserve Forces, including the Coast Guard Reserves, who are on active duty serving in the Global War on Terrorism and who are federally deployed or participating in state operations for homeland defense.² Currently, approximately 1,200 members of the Florida National Guard and reservists are deployed abroad in the Global War on Terrorism.

Pursuant to s. 250.5206, F.S., Florida residents designated as beneficiaries of an eligible service member on the United States Department of Defense (DOD) Form 93³, or who are otherwise dependents of eligible service members, are eligible for financial assistance under the program.⁴ Assistance may be provided in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.⁵ Service members who are unmarried and do not have dependents are not eligible for financial assistance under the program.

Requests for assistance are reviewed and validated at the local level by a federal Family Center Support Specialist stationed at a state armory or a reserve facility. Recommendations from the Support Specialist are forwarded to the DMA’s Program Director for review and validation of documents. The Adjutant General or a designee receives the recommendations and is authorized by statute grant requests for assistance.⁶ Assistance may not be approved unless the applicant satisfies the statutory requirements.

Currently, the inspector general of DMA is required to conduct a monthly audit of the program and the DMA must maintain sufficient data to provide an annual report to the Governor and the Legislature on the families served under the program, the types of services provided, and the allocation of funds spent.⁷

¹ Ch. 2005-51, L.O.F.

² s. 250.5206(1), F.S.

³ Beneficiaries are listed on the form by the service member as a record of emergency data. Beneficiaries listed on form 93 include anyone the service member may designate, including persons who are not family members.

⁴ s. 250.5206(4), F.S.

⁵ s. 250.5206(3), F.S.

⁶ s. 250.5206(5), F.S.

⁷ s. 250.5206(6) & (7), F.S.

Florida National Guard Pamphlet 930-4 – Guidelines for Program Implementation

On July 1, 2006, the DMA issued Florida National Guard Pamphlet 930-4 (the “Pamphlet”), which establishes guidelines for implementing the Florida Family Readiness Program. According to the Pamphlet, the Adjutant General designated the Deputy Chief of Staff for Personnel to review recommendations regarding applications for assistance. The Deputy Chief of Staff for Personnel is authorized to determine approval of applications for assistance up to \$5,000; the Chief of Staff of the FNG must review and approve applications for assistance that exceed \$5,000.⁸

The Pamphlet requires the Office of the Staff Judge Advocate to review all applications for assistance prior to the payment of funds, and requires the FNG State Quartermaster to process applications for payment.⁹

The Pamphlet provides application forms for use by persons seeking assistance through the program. The application for assistance requires the following information¹⁰: contact information for the service member; applicant information; the military point of contact for verification; a listing of services needed and the service provider; and the amount of funds being requested. Applicants are also required to provide a financial affidavit listing assets and liabilities, proof of Florida residency, military orders, and proof of dependency on a service member.¹¹

The Pamphlet also requires applicants who have been awarded funds to provide final invoices when work has been completed.¹²

Eligible Services as Defined in FNG Pamphlet 930-40

Section 250.5206(3), F.S., specifically authorizes the use of program funds “in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.” The Pamphlet provides the following definitions of the categories of “eligible services” listed in statute¹³:

- Reasonable living expenses – where critically needed to prevent termination of utilities, to provide food, or furnish similar basic necessities.
- Housing – includes emergency repairs to the Servicemember’s primary residence that are critically needed to address health or safety issues, and assistance with mortgage and rent expenses where need-based and determined to be appropriate after review by the Area Family Center Support Specialist.
- Vehicles – repairs essential to maintain one vehicle per family in safe operating condition.
- Disability – equipment or renovations necessary to meet disability needs [medical documentation required].
- Health care – documented by medical authority as essential for the health and welfare of the individual, not elective, and not covered by other medical/dental insurance.

Inspector General Review of the Family Readiness Program

From July 1, 2005 through June 30, 2006, the DMA’s Inspector General reviewed application files on a monthly basis to determine whether transactions were conducted in accordance with policy and

⁸ FLNG Pamphlet 930-4, 1-3.

⁹ FLNG Pamphlet 930-4, p.2.

¹⁰ FLNG Pamphlet 930-4, Appendix 2.

¹¹ FLNG Pamphlet 930-4, Appendix 2.

¹² FLNG Pamphlet 930-4, p. 6.

¹³ FLNG Pamphlet 930-4, p. 5.

procedures. At the end of the review period, the Inspector General issued a report that raised several points regarding implementation of the program:¹⁴

- The report noted that s. 295.5206, F.S., requires funds to be used for “need-based assistance”; however, the review found that 59 applicants did not provide adequate documentation regarding financial need. The report recommended that the DMA establish guidelines to request the necessary financial information from the applicant.
- The report also noted that 30 applicant files did not include receipts or invoices to determine that funds were used as intended. The report recommended that applicant files remain open after a disbursement of funds and that DMA personnel follow-up with applicants within an appropriate time frame to ensure that funds are spent as intended.
- In addition, the report noted that s. 250.5206(4), F.S., states that eligible recipients include Florida residents who are designated as beneficiaries on the United States Department of Defense Form 93 or who are otherwise dependents of eligible service members. A review of DoD Form 93 disclosed that any individual residing in Florida who is listed on DoD form 93 is eligible for financial assistance through the program. The report recommended revision of the statutes so that only family members who are dependents of the deployed service member are eligible for financial assistance.

EFFECT OF PROPOSED CHANGES

Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, *while the service members are on active duty* serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. This bill allows the DMA to provide emergency financial assistance to those eligible dependents for up to 120 days after service members are released from active duty.

Pursuant to s. 250.5206(6), F.S., the inspector general of the department must conduct a monthly audit review of the program. This bill removes the requirement for a monthly audit review but requires a semiannual review and an annual audit.

C. SECTION DIRECTORY:

Section 1. Amends s. 250.5206, F.S., relating to Family Readiness Program.
Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: This bill has an insignificant impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

¹⁴ Inspector General’s Review of the Family Readiness Program, July 1, 2005 through June 30, 2006.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, while the service members are on active duty serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. This bill allows the DMA to provide emergency financial assistance to those eligible dependents for up to 120 days after service members are released from active duty.

D. FISCAL COMMENTS: This bill appears to have an insignificant impact on state government. The extension of the eligibility period for assistance may result in an increase in dispersal of funds; however, the funds are in amounts that do not rise to the level of significant impact on state government.

Chapter 2005-51, L.O.F., appropriated \$5 million for FY2005-06 from the General Revenue Fund to the Department of Military Affairs for the Family Readiness Program to provide need-based assistance to family members eligible under s. 250.5206, F.S. From July 1, 2005 through June 30, 2006, \$305,406 was disbursed to eligible members.¹⁵

Chapter 2006-25, Section 48, L.O.F., the General Appropriations Act for FY2006-07, reverted and appropriated to the program the unexpended balance of the non-recurring funds appropriated in ch. 2005-51, L.O.F. The re-appropriated balance was \$4,564,585. From July 1, 2006 through March 6, 2007, \$211,462 was disbursed to eligible members.¹⁶

For FY2007-08, the Governor recommended a reappropriation of \$1 million for the Family Readiness Program. The remaining balance of approximately \$3.35 million will revert back to General Revenue.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not appear to affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: By letter dated February 13, 2007, staff of the Joint Administrative Procedures Committee (JAPC) asked the DMA to advise whether statements in the pamphlet meet the statutory definition of a rule and whether the statements are exempt from the rulemaking requirements in ch. 120, F.S., the Florida Administrative Procedure Act.¹⁸ The JAPC letter explained that:

The Department has promulgated a document entitled Florida National Guard Pamphlet 930-4, July 1, 2006, which implements s. 250.5206, Florida Statutes, the Family Readiness Program. Upon initial review, statements contained in this pamphlet appear to meet the definition of a rule pursuant to section 120.52(15), Florida Statutes. Each agency statement defined as a rule must be adopted by

¹⁵ 2005-2006 Appropriation Ledger, Detail Report by Fund Category, Legislative Appropriation System/Planning and Budgeting Subsystem (LAS/PBS), Special Category "Military Family Readiness Program."

¹⁶ 2006-2007 Appropriation Ledger, Detail Report by Fund Category, Legislative Appropriation System/Planning and Budgeting Subsystem (LAS/PBS), Special Category "Military Family Readiness Program."

¹⁷ Fiscal year 2007-2008 Governor's Recommended General Appropriations Act, page 330, Section 15.

¹⁸ Letter to General Burnett regarding unadopted policy from Susan Stafford with the Joint Administrative Procedures Committee, dated February 13, 2007.

the rulemaking procedure set forth in section 120.54, Florida Statutes, unless expressly exempted. Although s. 120.80(11), Florida Statutes, exempts specific subject areas under the National Guard from rulemaking, the exemptions do not appear to include the subject covered by this pamphlet.”¹⁹

On March 2, 2007, the DMA responded to the JAPC staff inquiry, explaining that two considerations led the DMA to conclude that adoption of the Pamphlet by the DMA did not circumvent rulemaking requirements in the Florida Administrative Procedure Act.²⁰ First, the DMA asserts that administration of the program is exempt from rulemaking by s. 120.80(11), F.S., which provides a broad rulemaking exemption for the DMA. Secondly, the DMA asserts that the pamphlet established federal procedures for federal employees, not DMA procedures for state employees; therefore, the DMA concluded that rulemaking requirements were not triggered.

On March 7, 2007, staff of the JAPC replied to the DMA letter of March 2, 2007, asserting that, “[a]lthough not determinative, the rulemaking authority conferred on the Department in subsection (8) of the statute suggests that the Legislature did not consider this program exempt under s. 120.80(11), Florida Statutes. That provision authorizes the Department to adopt rules ‘necessary to implement this program, including procedures for applying for assistance, qualifying services, and criteria for eligibility.’”

In response to the DMA’s argument that the program policies affect only federal employees, the JAPC staff asserts that although the initial review is conducted by a federal employee, the ultimate decision on dispersal of funds is made by the Adjutant General, or his or her designee, both of whom are state employees. Therefore, “[t]he power conferred on the program director to determine ‘appropriateness’ together with the discretion in subsection (3) of the statute to define an ‘emergency situation’ and ‘critically needed services,’ which may be exercised by either the program director or the Adjutant General, appears to foreclose a conclusion that the pamphlet used by the Department only establishes federal procedures for federal employees.”²¹

The DMA has not yet provided a response.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: No statement was provided by the sponsor.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

¹⁹ Letter to General Burnett regarding unadopted policy from Susan Stafford with the Joint Administrative Procedures Committee; dated February 13, 2007.

²⁰ Letter to Susan Stafford with the Joint Administrative Procedures Committee with DMA response, dated March 2, 2007.

²¹ Letter to Lieutenant Colonel Masters with DMA in response to JAPC letter dated, March 7, 2007.