

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1285 Florida State Guard

SPONSOR(S): Appropriations Committee and State Affairs Committee, Giallombardo and others

TIED BILLS: IDEN./SIM. BILLS:

FINAL HOUSE FLOOR ACTION: 91 Y's 20 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1285 passed the Senate on May 5, 2023, as amended by the conference committee, and subsequently passed the House on May 5, 2023.

Federal law authorizes each state, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands to create and maintain organized units other than their respective National Guard units. These separate units, called "defense forces," are for use exclusively within the jurisdiction as considered necessary by the Governor or chief executive of such jurisdiction but may not be called, ordered, or drafted into federal service.

Led by the Governor as commander-in-chief, the Florida National Guard consists of organized, armed, equipped, and federally recognized commissioned officers, warrant officers, and enlisted personnel who are citizens of the United States or who have declared their intention to become citizens of the United States.

The Florida State Defense Force was created in 1941 in order to supplement the state's National Guard, which had been federalized into service during World War II. The Florida State Defense Force was deactivated and disbanded in 1947 after the return of the state's National Guard.

The Florida State Guard (FSG) was created in 2022 as a component of the organized guard of the state separate and apart from the Florida National Guard, and is a volunteer force that assists federal, state, and local government agencies and civil relief organizations during impending or actual emergencies in Florida. The FSG will sunset on July 1, 2023.

The bill repeals the FSG's expiration date, making it a permanent component of the state militia. The bill revises the structure of the FSG by creating a Division of the State Guard (Division) within the Department of Military Affairs as a separate budget entity, headed by a director who is appointed by the Governor and confirmed by the Senate. The bill also transfers administrative duties and powers from the Adjutant General to the director.

The bill requires the director to organize a specialized unit within the FSG and requires specified members of the unit to meet certain minimum requirements.

The bill repeals sections of law pertaining to the Florida State Defense Force and makes other conforming changes.

The General Appropriations Act for Fiscal Year 2023-24 provides \$107.6 million in appropriations from the General Revenue Fund for the State Guard.

The bill was approved by the Governor on May 26, 2023, ch. 2023-167, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

National Guard

The National Defense Act of 1916¹ established the National Guard Bureau as a separate unit of the militia division of the federal government.² In 1948, the Secretary of Defense of the United States Department of Defense issued an order designating the National Guard Bureau as a joint bureau of the Departments of the Army and Air Force.³ Under current federal law, the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff and the Secretaries of the Army and the Air Force, allocates the unit structure and strength authorizations for the National Guard in each state.⁴

The National Guard is unique among militia in that it serves the country in both the local community and overseas. The dual mission of a Guard member means that each member serves through both the National Guard of the state and through the United States Army or the United States Air Force.⁵

Defense Forces

Federal law authorizes each state, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands to create and maintain organized units other than their respective National Guard units. These separate units, called “defense forces,” are for use exclusively within the jurisdiction as considered necessary by the Governor or chief executive of such jurisdiction but may not be called, ordered, or drafted into federal service.⁶ Membership in such an organized service does not exempt any individual from service in the armed forces of the United States⁷ but a member of the reserve component of the armed forces⁸ may not be a member of a local defense force.⁹ Currently, 23 states and the Commonwealth of Puerto Rico have organized defense forces separate from their National Guard units.¹⁰

Florida National Guard

The Florida National Guard (FLNG) consists of organized, armed, equipped, and federally recognized commissioned officers, warrant officers, and enlisted personnel who are citizens of the United States or who have declared their intention to become citizens of the United States. The FLNG has separate Army and Air Force components that are subject to the Departments of the Army and the Air Force, respectively.¹¹ The Governor is the commander in chief of all militia of the state¹² and is responsible for

¹ National Defense Act of 1916, H.R. 12766 (Public, No. 85) (June 3, 1916).

² National Archives, *Guide to Federal Records, Records of the National Guard Bureau (NGB)*, available at <https://www.archives.gov/research/guide-fed-records/groups/168.html> (last visited March 10, 2023).

³ *Id.*

⁴ 10 U.S.C. s. 10503.

⁵ National Guard, *National Guard Fact Sheet, Army National Guard (FY2005)*, May 3, 2006, available at <https://www.nationalguard.mil/About-the-Guard/Army-National-Guard/Resources/News/ARNG-Media/FileId/137011/> (last visited March 10, 2023).

⁶ 32 U.S.C. s. 109(c).

⁷ 32 U.S.C. s. 109(d).

⁸ The reserve component of the armed forces includes the Army National Guard and the Air National Guard in addition to the Army, Navy, Marine Corps, Air Force, and Coast Guard Reserves. See 10 U.S.C. s. 10101.

⁹ 32 U.S.C. s. 109(e).

¹⁰ Alaska, California, Connecticut, Florida, Georgia, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Mexico, New York, Ohio, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Washington.

¹¹ S. 250.07, F.S.

¹² Art. IV, s. 1(a), Fla. Const.

appointing a federally recognized officer of the FLNG to be the Adjutant General, who serves as the Commanding General of the state's organized militia.¹³

As of September 2022, the FLNG was composed of 10,314 personnel in the Army National Guard and 2,165 personnel in the Air National Guard, for total authorized personnel of 12,479.¹⁴

Florida State Defense Force

All able-bodied inhabitants of Florida who are or who have declared their intention to become citizens of the United States comprise the militia,¹⁵ but not all are part of the organized militia, which is comprised of the FLNG and the Florida State Guard.¹⁶ The Governor is commander-in-chief of all military forces of the state not in active federal service.¹⁷ Subject to Senate confirmation, the Governor appoints the Adjutant General and other general officers of the FLNG.¹⁸ The Adjutant General (AG) is the head of the Department of Military Affairs (DMA).¹⁹

If any part of the FLNG is called into active federal service, the Governor is authorized to organize and maintain such uniformed military forces as the Governor deems necessary to assist civil authorities with maintaining law and order known as the Florida State Defense Force (FSDF).²⁰ When active, the FSDF is composed of commissioned officers and enlisted personnel who serve as volunteer citizens.²¹ The FSDF may be called out to aid civil authorities in the same manner as calling out the FLNG²² but may not be called, ordered, or drafted into federal service.²³

The FSDF was created in 1941 in order to supplement the state's National Guard, which was in federal service during World War II. FSDF was deactivated and disbanded in 1947 after the return of the state's National Guard.²⁴

Florida State Guard

The Florida State Guard (FSG) was created in 2022²⁵ as a component of the organized guard of the state, separate and apart from the FLNG. With the Governor having final control and command, the FSG operates exclusively within the state of Florida and cannot be called, ordered, or drafted into the armed forces of the United States.²⁶ The FSG is a volunteer force that assists federal, state, and local

¹³ S. 250.10, F.S. 32 U.S.C. S. 314(a) requires an adjutant general in each state and requires the adjutant general to perform the duties prescribed by the laws of the state of appointment.

¹⁴ Department of Defense, Defense Manpower Data Center, Military and Civilian Personnel by Service/Agency by State/Country (Updated Quarterly), *September 2022*, available at <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports> (last visited Mar. 7, 2023). Troop numbers are unavailable for December 2022 due to the Army's conversion of its Integrated Personnel and Pay System. Due to this conversion, the Army did not provide military personnel for end-of-December 2022. See Military and Civilian Personnel by Service/Agency by State/Country (Updated Quarterly) *December 2022*, available at <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports> (last visited Mar. 7, 2023).

¹⁵ Art. X, s. 2(a), Fla. Const.

¹⁶ S. 250.02(2), F.S. Organized militia is defined as being composed of the National Guard and any other organized military forces that are authorized by law. The Florida State Guard is authorized by Ch. 2022-157, s. 80, Laws of Fla.

¹⁷ Art. IV, s. 1(a), Fla. Const.

¹⁸ Art. X, s. 2(c), Fla. Const.

¹⁹ S. 250.05(3), F.S.

²⁰ S. 251.01(1), F.S.

²¹ *Id.*

²² S. 251.05, F.S. See s. 250.06(4), F.S.: "The Governor may, in order to preserve the public peace, execute the laws of the state, enhance domestic security, respond to terrorist threats or attacks, respond to an emergency as defined in s. 252.34 or imminent danger thereof, or respond to any need for emergency aid to civil authorities as specified in s. 250.28, order into state active duty all or any part of the militia which he or she deems proper."

²³ S. 251.08, F.S. This prohibition applies only to the FSDF as a whole and does not exempt any individual member of the FSDF from required federal military service.

²⁴ Palm Beach County History Online, *Civil Defense: Florida Defense Force*, available at <http://www.pbchistoryonline.org/page/florida-defense-force> (last visited Mar. 7, 2023).

²⁵ The FSG was created via the Implementing Act of the General Appropriations Act for the 2022-23 fiscal year, Ch. 2022-157, s. 80, Laws of Fla., and is codified in statutes as s. 251.001, F.S.

²⁶ S. 251.001(1), F.S.

government agencies and civil relief organizations during impending or actual emergencies in the state of Florida.²⁷

The AG serves as the commanding general of the FSG, subject at all times to the Governor. The AG is responsible for organizing, recruiting, training, equipping, managing, and disciplining the FSG. The AG selects units for activation, candidates for commissioning, and approves applicants for enlisted personnel.²⁸ The AG is responsible for setting the minimum standards for the age, physical and health condition, and physical fitness of applicants. These standards cannot be lower than the standards required for recruitment, enrollment, and retention in the FLNG.²⁹ The AG develops and implements a code of regulations for the administration and discipline of members of the FSG.³⁰

Each applicant for the FSG must be a citizen of the United States, a resident of Florida, and cannot have a felony conviction.³¹ Additionally, applicants may not be an active duty servicemember or a member of the armed forces reserves or the FLNG.³² If the applicant is a former member of the armed forces, the applicant must have been separated under terms no less than a general discharge under honorable conditions.³³

The AG develops and implements a training program for the FSG and provides all equipment necessary for the training and service of members of the FSG.³⁴ Training programs within the FSG must be at least equivalent to the training requirements for the FLNG.³⁵ The AG is permitted to provide staff, including members of the FLNG, to prepare and conduct training. However, members of the FLNG are not considered members of the FSG while they are preparing and conducting authorized FSG training.³⁶ The AG is authorized to make available to the FSG facilities controlled and operated by DMA.³⁷

The FSG may be activated:

- During any period when any part of the FLNG is in active federal service and the Governor has declared a state of emergency; or³⁸
- To preserve the public peace, execute the laws of the state, enhance domestic security, respond to terrorist threats or attacks, respond to an emergency³⁹ or imminent danger thereof, or respond to any need for emergency aid to civil authorities.⁴⁰

The FSG must be deactivated upon the expiration of the order of activation or by a separate order by the Governor.⁴¹

Members of the FSG are reimbursed for per diem and travel expenses incurred to attend required training or in the course of active service.⁴² FSG members may be compensated for time spent training or in the course of active service. Compensation rates are determined by the AG.⁴³ While engaged in

²⁷ Florida State Guard, *Home*, available at <https://floridastateguard.my.site.com/s/> (last visited Mar. 6, 2023).

²⁸ S. 251.001(3), F.S.

²⁹ S. 251.001(4)(d), F.S.

³⁰ S. 251.001(4)(e), F.S.

³¹ S. 251.001(4)(c)1.-2., F.S.

³² S. 251.001(4)(c)3., F.S.

³³ S. 251.001(4)(c)4., F.S.

³⁴ S. 251.001(5), F.S.

³⁵ S. 251.001(5)(a), F.S.

³⁶ S. 251.001(5)(b), F.S.

³⁷ S. 251.001(5)(d), F.S.

³⁸ S. 251.001(6)(a), F.S.

³⁹ Section 252.34(4), F.S., defines the term "emergency" to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

⁴⁰ S. 251.001(6)(b), F.S.

⁴¹ S. 251.001(6)(c), F.S.

⁴² S. 251.001(7)(a), F.S.

⁴³ S. 251.001(7)(b)

required training or during active service, FSG members have the same protections FLNG members enjoy regarding:⁴⁴

- Leaves of absence.⁴⁵
- Employment discrimination.⁴⁶
- Professional licensure protection.⁴⁷
- Protection from employment discrimination during active duty service by private or public employers and postsecondary institutions.⁴⁸
- Licensure and qualification protections.⁴⁹
- Stays of civil actions or proceedings involving individuals called into active duty service.⁵⁰
- Actions of rent or possession by landlord involving individuals called into active duty service.⁵¹
- Installment contracts for purchase of property involving individuals called into active duty service.⁵²
- Mortgages, trust deeds, or other securities upon property owned prior to the commencement of the period an individual is called into active duty service.⁵³

While activated or in training, FSG members are not liable for any lawful act done in the performance of his or her FSG duties while acting in good faith within the scope of such duties. In addition, while activated or in training, FSG members are considered volunteers for the state and are entitled to workers' compensation protections pursuant to chapter 440, F.S.⁵⁴

The FSG was created subject to an appropriation in the General Appropriations Act of 2022.⁵⁵ The General Appropriations Act appropriated \$10 million from the General Revenue Fund for the FSG.⁵⁶

Current law provides that s. 251.001, F.S., which is the Florida State Guard Act, will sunset on July 1, 2023.⁵⁷

Law Enforcement Officers

Current law requires a person employed or appointed as full-time, part-time, or auxiliary law enforcement to:⁵⁸

- Be at least 19 years of age.
- Be a citizen of the United States, notwithstanding any other law to the contrary.
- Be a high school graduate or its equivalent.
- Not have been convicted of a felony or of certain misdemeanors.
- Have documentation of his or her fingerprints on file with the employing agency.
- Have passed a physical examination.
- Have a good moral character as determined by a background investigation.
- Execute and submit to the employing agency an affidavit-of-applicant form attesting to his or her compliance with the aforementioned requirements.
- Complete a commission-approved basic recruit training program, unless exempted from the requirement.

⁴⁴ S. 251.001(8)(a), F.S.

⁴⁵ S. 250.48, F.S.

⁴⁶ S. 250.481, F.S.

⁴⁷ S. 250.4815, F.S.

⁴⁸ S. 250.482, F.S.

⁴⁹ S. 250.483, F.S.

⁵⁰ S. 250.5201, F.S.

⁵¹ S. 250.5202, F.S.

⁵² S. 250.5204, F.S.

⁵³ S. 250.5205, F.S.

⁵⁴ S. 251.001(8)(c), F.S.

⁵⁵ S. 251.001(10), F.S.

⁵⁶ Ch. 2022-156, s. 6, Laws of Fla., pg. 436.

⁵⁷ S. 251.001(11), F.S.

⁵⁸ S. 943.13, F.S.

- Achieve an acceptable score on the officer certification examination.
- Comply with the continuing training and education requirements.

State Emergency Management Act

The State Emergency Management Act (SEMA), ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.⁵⁹ SEMA delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency⁶⁰ has occurred or is imminent, he or she must declare a state of emergency.⁶¹ In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. During the continuance of a state of emergency, the Governor is commander in chief of the Florida National Guard and all forces available for emergency duty.⁶²

Emergency Management Assistance Compact

The Division of Emergency Management coordinates Florida's emergency assistance to other states, including managing Florida's participation in the Emergency Management Assistance Compact (EMAC).⁶³ EMAC is an agreement between all 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions to provide each other mutual assistance in managing an emergency or disaster declared by the governor of the affected state.⁶⁴ The emergency may arise from a natural or manmade disaster, technological hazard, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.⁶⁵ The EMAC allows participating states to request personnel, equipment, materials, and supplies needed by the state during a declared emergency.⁶⁶ The United States Congress passed a joint resolution that granted consent for the creation of EMAC in 1996.⁶⁷ The Florida Legislature authorized Florida's participation in EMAC that same year.⁶⁸

Effect of the Bill

The bill repeals the expiration date for s. 251.001, F.S., thereby, making the FSG a permanent component of the state militia.

The bill provides that ch. 251, F.S., may be cited as the "Florida State Guard Act" and that the chapter is supplemental to provisions relating to the organized militia other than the FLNG. It also provides that the FSG is created to protect and defend the people of Florida from all threats to public safety and to augment all existing state and local agencies.

The bill increases the authorized maximum number of personnel that may be commissioned, enrolled, or employed as members of the FSG from 400 to 1,500.

The bill creates the Division of the State Guard (Division) within DMA as a separate budget entity. The bill provides that the Division is not subject to control, supervision, or direction by DMA, but requires DMA to provide administrative support or service to the Division. The bill also provides that the Division

⁵⁹ S. 252.311(1), F.S.

⁶⁰ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. See s. 252.34(4), F.S.

⁶¹ S. 252.36(2), F.S.

⁶² S. 252.36(4), F.S.

⁶³ See ss. 252.921-252.933, F.S.

⁶⁴ S. 252.922(1), F.S.

⁶⁵ S. 252.922(2), F.S.

⁶⁶ S. 252.924(2)(b), F.S.

⁶⁷ Public Law 104-321 – Oct. 19, 1996.

⁶⁸ Chapter 96-244, L.O.F.

is responsible for the organization, recruitment, training, equipping, management, and function of the FSG.

The bill provides that the Division is headed by a director who is appointed by and serves at the pleasure of the Governor. The director is subject to Senate confirmation and must have served at least five years as a servicemember of the United States Armed Forces, United States Reserve Forces, or FLNG. The bill repeals provisions granting duties and powers to the AG in regard to the FSG and instead, provides that the director will have those duties and powers. The bill also provides that the director may establish a command, operational, and administrative services structure to assist, manage, and support the FSG in operating the program and delivering services.

The bill revises current law to remove military vernacular when referring to FSG participants and instead reiterates that such participants are volunteers.

The bill maintains the current requirements applicants must meet for FSG consideration, but also provides that if an applicant to the FSG was previously a member of a military or naval organization of this state or another state, then the applicant must have been separated under terms no less than a general discharge under honorable conditions.

The bill requires the director to organize a specialized unit within the FSG. All members of the specialized unit are vested with authority to bear arms, detect, and apprehend while activated. The bill also provides that only those members of the specialized unit who meet the requirements in s. 943.13, F.S., and are certified as a law enforcement officer⁶⁹ have the same law enforcement authority as the law enforcement agency in which the member is working in conjunction with when activated.

The bill maintains the current provisions regarding training, but requires the Division to provide all equipment necessary and to arrange and contract for the use of facilities for training, organizing, and all other purposes of the FSG.

The bill provides that in addition to the present conditions for activation, the FSG may be activated by order of the Governor in order to protect and defend the state from threats to public safety, augment any existing state or local agency, or provide support to other states under EMAC.

The bill maintains the current provisions regarding per diem expenses but specifies that any additional compensation for time spent training or in the course of active service is subject to appropriation. The bill also maintains the provisions providing the same protections for members of the FSG as is provided for members of the FLNG, as well as the workers' compensation provisions.

The bill grants rulemaking authority to the director, but provides that the enlistment, organization, administration, equipment, maintenance, training, and discipline of the FSG are not "rules" as defined by the Administrative Procedure Act.⁷⁰

Finally, the bill amends the military equipment regulations in order to reflect the permanent inclusion of the FSG into the state's recognized militia, repeals sections of law pertaining to the FSDF, and makes conforming changes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁶⁹ Section 943.10(1), F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁷⁰ The APA is ch. 120, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The General Appropriations Act for Fiscal Year 2023-24 provides \$107.6 million in appropriations from the General Revenue Fund for the State Guard in the following manner:

1	Category	Total	Description
2	Personnel	\$ 1,438,903	Establishes 11 new positions with associated salaries and benefits and expenses for administering the FSG.
3	Training/Recruitment Resources	\$ 17,129,208	Includes funding for training courses, travel, lodging, and compensation for up to 1,500 members.
4	Personnel Equipment	\$ 1,959,100	Includes radios, uniforms, laptops, personal protection etc.
5	Motor Vehicles	\$ 1,210,000	Includes 4 pick up trucks, towing vehicles, fuel and maintenance costs.
6	Maritime Equipment	\$ 2,725,862	Includes 6 boats and tow vehicles, crew, fuel, and maintenance costs.
7	Aviation Equipment	\$ 49,482,594	Includes 1 large fixed wing and 4 rotary wing aircraft, crew, avionics equipment, fuel and maintenance.
8	Fixed Capital Outlay - Buildings	\$ 32,700,000	Includes \$20.7m for aviation hangars; \$2m for maritime storage; \$10m for a State Guard Building.
9	State Activation Contingency	\$ 1,000,000	Contingency costs necessary when preparing the FSG for activation.
		\$ 107,645,667	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who volunteer for the FSG will receive reimbursement for per diem and travel expenses incurred to attend required training or in the course of active service.

D. FISCAL COMMENTS:

None.