

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1551 Florida State Guard

SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee, Local Administration, Federal Affairs & Special Districts Subcommittee, Giallombardo

TIED BILLS: **IDEN./SIM. BILLS:** SB 1694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	11 Y, 3 N	Mwakyanjala	Darden
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N, As CS	Davis	Davis
3) State Affairs Committee			

SUMMARY ANALYSIS

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 bill revises FSG fingerprinting requirements by requiring that applicants must submit a complete set of fingerprints to the division or to the vendor, entity, or agency authorized by the Department of Law Enforcement (FDLE) to accept electronic fingerprint submissions. The bill provides the entity receiving the fingerprints must forward the fingerprints to FDLE for processing. After processing, FDLE must submit the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The Department of Military Affairs shall, and the division may, review the results of the state and national record checks and determine whether the applicant meets the specified qualifications to serve. The bill clarifies fees for fingerprint processing are to be borne by the FSG and fingerprints submitted must be retained by FDLE along with the enrollment in the FBI's national retained fingerprint arrest notification program. The bill also requires any arrest record identified to be reported to the FSG.

The bill may have an indeterminate negative fiscal impact on state government expenditures related to background checks.

The bill has an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida State Guard

The Florida State Guard (FSG) was created in 2022¹ as a component of the organized guard of the state, separate and apart from the FLNG. The FSG is a state-funded volunteer force that partners with the Florida National Guard (FLNG) and other disaster response agencies to ensure communities are provided with humanitarian assistance and rapid response during manmade and natural disasters.²

The FSG is under the command and control of the Governor and is authorized for exclusive use within the state when activated by the Governor³ or for use in other states for specific purposes.⁴ The FSG may not be called, ordered, or drafted into the armed forces of the United States and is authorized to have a maximum number of 1,500 volunteer personnel.⁵

The Division of the State Guard (division) within the Department of Military Affairs is responsible for the organization, recruitment, training, equipping, management, and functions of the FSG. The division is led by a director (director) who is appointed by and serves at the pleasure of the Governor.⁶ Subject to approval by the Governor, the director determines the number of volunteer personnel within the FSG.⁷ Members of the FSG must:

- Be citizens of the United States and residents of Florida;
- Have no felony conviction and submit fingerprints as required by state and federal law for purposes of conducting a criminal background check;
- Not be an active duty servicemember, a member of the armed forces reserves, or a member of the FLNG; and
- Have been separated under terms no less than a general discharge under honorable conditions if the applicant is a former member of the armed forces or of any military or naval organization of a state.⁸

The director determines the minimum standards for the age, physical and health condition, and physical fitness of applicants⁹ and a program for training members of the FSG.¹⁰ The standards and training program determined by the director may be no less than the standards and training requirements required by the FLNG. Members of the FSG are reimbursed for per diem and travel expenses incurred to attend required training or in the course of active service.¹¹ 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, are considered volunteers for the state and are entitled to workers' compensation protections pursuant to chapter 440, F.S., and are guaranteed the same protections as members of the FLNG.¹²

¹ 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., the Florida State Guard Act.

² Florida State Guard, *History*, <https://www.floridastateguard.org/history> (last visited Jan. 19, 2024).

³ S. 251.001(2), F.S.

⁴ The FSG is authorized to support other states under the Emergency Management Assistance Compact (EMAC) as provided for in part III of ch. 252, F.S. S. 251.001(8)(a)4., F.S.

⁵ S. 251.001(2), F.S.

⁶ S. 251.001(3), F.S.

⁷ S. 251.001(5)(a), F.S.

⁸ S. 251.001(5)(c), F.S.

⁹ S. 251.001(5)(d), F.S.

¹⁰ S. 251.001(7), F.S.

¹¹ S. 251.001(9), F.S.

¹² S. 251.001(10), F.S.

The FSG may be activated by order of the governor:

- During any period when any part of the FLNG is in active federal service and the governor has declared a state of emergency;
- To preserve the public peace, execute the laws of the state, enhance domestic security, respond to terrorist threats or attacks, protect and defend the people of the state from threats to public safety, respond to an emergency¹³ or imminent danger thereof, or respond to any need for emergency aid to civil authorities;
- To augment any existing state or local agency; or
- To provide support to other states under EMAC.¹⁴

The FSG is deactivated at the expiration of the order or by a separate order by the governor deactivating the FSG.¹⁵

The director is also responsible for organizing a specialized unit within the FSG in which members are vested with authority to bear arms, detect, and apprehend while activated.¹⁶ Members of the specialized unit must meet the minimum qualifications for employment or appointment as a law enforcement officer defined in law¹⁷ and are certified as law enforcement officers.¹⁸ The specialized unit is authorized to have the same law enforcement authority as the law enforcement agency the specialized group is working with when activated.¹⁹

Criminal Record Checks

There are two levels of background screening:²⁰

- Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and may include criminal records checks through local law enforcement agencies. A Level 1 screening may be paid for and conducted through the FDLE's website.
- Level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.

Effect of Proposed Changes

The bill revises fingerprinting requirements by requiring that applicants must submit a complete set of fingerprints to the division or to the vendor, entity, or agency authorized by the FDLE to accept electronic fingerprint submissions. The bill provides the entity receiving the fingerprints must forward the fingerprints to FDLE for processing. After processing, FDLE must submit the fingerprints to the FBI for a national criminal history record check. The Department of Military Affairs shall, and the division may, review the results of the state and national record checks and determine whether the applicant meets the specified qualifications to serve. The bill clarifies fees for fingerprint processing are to be borne by the FSG and fingerprints submitted must be retained by FDLE along with the enrollment in the FBI's national retained fingerprint arrest notification program. The bill also requires any arrest record identified to be reported to the FSG.

B. SECTION DIRECTORY:

¹³ 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.

¹⁴ S. 251.001(8)(a), F.S.

¹⁵ S. 251.001(8)(b), F.S.

¹⁶ S. 251.001(6), F.S.

¹⁷ Such qualifications are provided in s. 943.13, F.S.

¹⁸ Members must be certified as law enforcement officers as defined by s. 943.10(1), F.S.

¹⁹ S. 251.001(6), F.S.

²⁰ See Chapter 435, F.S.

Section 1: Amends s. 251.002, F.S., relating to criminal history checks for Florida State Guard applicants.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

According to the bill analysis conducted by FDLE,²¹ the private sector charges \$37.25 per each state and national criminal history check. Of this amount, \$13.25 is for the national portion and \$24 is for the state portion. The first year of state retention of fingerprints is included in the cost and then becomes \$6 annually per set of fingerprints. There are no fees required for federal fingerprint retention thus no revenue will be generated by federal fingerprint retention. Fees received will be deposited into FDLE's Operating Trust Fund, but will result in no net increase in state revenues since the background checks are paid for by the FSG. Total costs of criminal history checks borne by the FSG will come from division appropriations. However, the total amount of FSG expenditures associated with the costs of these checks is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to directly affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

²¹ Fla. Dept. of Law Enforcement, 2024 FDLE Legislative Bill Analysis SB 1694, Jan. 11, 2024, (on file with the Local Administration, Federal Affairs, & Special Districts Subcommittee).

This bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 5, 2024, the Infrastructure & Tourism Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised specific requirements related to criminal background checks of volunteers, and removed all provisions relating to:

- Authorized use of the FSG exclusively within the state.
- Equivalency requirements for applicant standards and training.
- Providing legal counsel in certain situations.
- Expanding the ability of Governor activations.

The analysis is drawn to the committee substitute as approved by the Infrastructure & Tourism Appropriations Subcommittee.