

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SPB 7058

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Criminal History Checks for the Florida State Guard

DATE: February 7, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>McVaney</u>	_____	GO Submitted as Comm. Bill/Fav

I. Summary:

SPB 7058 sets forth the process for applicants to the Florida State Guard to undergo criminal history checks prior to joining the Florida State Guard. The bill requires each applicant to submit fingerprints to the Division of the State Guard (division). These fingerprints are forwarded to the Department of Law Enforcement (FDLE) to complete a state criminal history check. The fingerprints are forwarded by FDLE to the Federal Bureau of Investigation to conduct a national criminal history check. The Department of Military Affairs must, and the division may, review the results from the checks to determine whether the applicant meets the standards to be a member of the Florida State Guard.

The division is required to pay all applicable fees for these criminal history checks. The total costs incurred by the division is expected to be no more than \$100,000.

The bill takes effect upon becoming a law.

II. Present Situation:

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.¹ Membership in such an organized service does not exempt any individual from service in the armed forces of the United States,² but a member of the reserve component of the armed forces³ may not be a

¹ 32 U.S.C. s. 109(c).

² 32 U.S.C. s. 109(d).

³ 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.

member of a local defense force.⁴ Currently, 23 states and the Commonwealth of Puerto Rico have organized defense forces separate from their National Guard units.⁵

Florida State Guard

The Florida State Guard (FSG) was created in 2022⁶ as a component of the organized guard of the state, separate and apart from the Florida National Guard (FNG). The FSG is a state-funded volunteer force that partners with the FNG and other disaster response agencies to ensure communities are provided with humanitarian assistance and rapid response during manmade and natural disasters.⁷

The FSG is under the command and control of the governor and is authorized for exclusive use within the state when activated by the Governor⁸ or for use in other states for specific purposes.⁹ 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.¹⁰

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 who is appointed by and serves at the pleasure of the governor.¹¹ Subject approval by the Governor, the director determines the number of volunteer personnel within the FSG.¹² 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 FNG; 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.¹³

The director determines the minimum standards for the age, physical and health condition, and physical fitness of applicants¹⁴ and a program for training for members of the FSG.¹⁵ The standards and training program determined by the director may be no less than the standards and training requirements required by the FNG. Members of the FSG are reimbursed for per diem

⁴ 32 U.S.C. s. 109(e).

⁵ 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.

⁶ 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.

⁷ Florida State Guard, *History*, <https://www.floridastateguard.org/history> (last visited Jan. 19, 2024).

⁸ Section 251.001(2), F.S.

⁹ 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.

¹⁰ Section 251.001(2), F.S.

¹¹ Section 251.001(3), F.S.

¹² Section 251.001(5)(a), F.S.

¹³ Section 251.001(5)(c), F.S.

¹⁴ Section 251.001(5)(d), F.S.

¹⁵ Section 251.001(7), F.S.

and travel expenses incurred to attend required training or in the course of active service.¹⁶ 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., and are guaranteed the same protections as members of the FNG.¹⁷

The FSG may be activated by order of the governor:

- During any period when any part of the FNG 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 emergency¹⁸ 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 Emergency Management Assistance Compact.¹⁹

The FSG is deactivated at the expiration of the order or by a separate order by the governor deactivating the FSG.²⁰

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.²¹ Members of the specialized unit must meet the minimum qualifications for employment or appointment as a law enforcement officer defined in law²² and are certified as law enforcement officers.²³ 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.²⁴

Criminal History Checks

A criminal history record is any nonjudicial record maintained by a criminal justice agency containing criminal history information.²⁵ Criminal history information includes information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof.²⁶

¹⁶ Section 251.001(9), F.S.

¹⁷ Section 251.001(10), F.S.

¹⁸ 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.

¹⁹ Section 251.001(8)(a), F.S.

²⁰ Section 251.001(8)(b), F.S.

²¹ Section 251.001(6), F.S.

²² Such qualifications are provided in s. 943.13, F.S.

²³ Members must be certified as law enforcement officers as defined by s. 943.10(1), F.S.

²⁴ Section 251.001(6), F.S.

²⁵ Section 943.045(6), F.S.

²⁶ Section 943.045(5), F.S.

The Criminal Justice Information Program (CJIP), the state's central criminal justice information repository, is established within the FDLE.²⁷ The CJIP is directed, among other requirements, to:

- Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.²⁸
- Establish, implement, and maintain a statewide automated biometric identification system capable of, but not limited to, reading, classifying, matching, and storing fingerprints, rolled fingerprints, latent fingerprints, palm prints, and facial images.²⁹
- Retain fingerprints submitted by criminal and noncriminal justice agencies to the FDLE for a criminal history background screening as provided by rule and enter the fingerprints in the statewide automated biometric identification system previously described;³⁰ and
- For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required by law, search all arrest fingerprint submissions received under s. 943.051, F.S., against the fingerprints retained in the previously described statewide automated biometric identification system.³¹

The total fiscal impact to the private sector for each state and national criminal history record check is \$37.25.³² Of this total amount, the cost for the national portion of a criminal history record check is \$13.25 and the cost for the state portion is \$24.³³ The first year of state retention is included in the cost of the criminal history record check. The cost to retain fingerprints at the state level is \$6 annually, per set of applicant fingerprints. There are no fees required by the FBI for federal fingerprint retention.

III. Effect of Proposed Changes:

The bill requires each applicant for the Florida State Guard to 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 state criminal history processing. The 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 FSG may, review the results to determine whether an applicant meets the specific qualifications to join the FSG.

The bill requires fees for fingerprint processing are to be borne by the FSG.

Fingerprints submitted to the FDLE must be retained and enrolled in the FBI's national retained fingerprint arrest notification program. The bill requires any arrest record identified to the reported to the FSG.

²⁷ Section 943.05, F.S.

²⁸ Section 943.05(2)(a), F.S.

²⁹ Section 943.05(2)(b), F.S.

³⁰ Section 943.05(2)(g), F.S.

³¹ Section 943.05(2)(h), F.S.

³² https://www.fdle.state.fl.us/Criminal-History-Records/Documents/Criminal-History-Fee-Chart_January2019.aspx

³³ Section 943.053(3)(e), F.S.

The Department of Military Affairs and the division are granted rulemaking authority relating to the submission of fingerprints by applicants to the FSG.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact on the Division of the State Guard is indeterminate. However, if the division submits 150,000 (maximum number of FSG members) to the FDLE at the cost of \$37.25 per criminal history check, the division will incur roughly \$60,000 in costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 251.002 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
