

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1551 Florida State Guard

**SPONSOR(S):** 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			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

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 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 provisions relating to the FSG by:

- Removing provisions authorizing FSG for use exclusively within the state;
- Adding definitions to differentiate enlisted personnel from officers;
- Revising fingerprinting requirements for applicants;
- Removes FLNG equivalency requirements for applicant standards and training programs for members;
- Allowing the Governor to activate the FSG in additional situations; and
- Providing an attorney for members of the FSG subject to civil or criminal action or proceeding for any act occurring in that volunteer's scope of duty.

The bill may have a fiscal impact on state government, but does not appear to have an impact on local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### National Guard

The National Defense Act of 1916<sup>1</sup> established the National Guard Bureau as a separate unit of the militia division of the federal government.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

##### *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.<sup>6</sup> The Governor is the commander in chief of all militia of the state<sup>7</sup> and is responsible for 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.<sup>8</sup>

##### 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.<sup>9</sup> Membership in such an organized service does not exempt any individual from service in the armed forces of the United States<sup>10</sup> but a member of the reserve component of the armed forces<sup>11</sup> may not be a member of a local defense force.<sup>12</sup> Currently, 23 states and the Commonwealth of Puerto Rico have organized defense forces separate from their National Guard units.<sup>13</sup>

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

<sup>2</sup> National Archives, *Guide to Federal Records, Records of the National Guard Bureau (NGB)*, <https://www.archives.gov/research/guide-fed-records/groups/168.html> (last visited Jan. 19, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> 10 U.S.C. s. 10503.

<sup>5</sup> National Guard, *National Guard Fact Sheet, Army National Guard (FY2005)*, May 3, 2006, <https://www.nationalguard.mil/About-the-Guard/Army-National-Guard/Resources/News/ARNG-Media/FileId/137011/> (last visited Jan. 19, 2024).

<sup>6</sup> S. 250.07, F.S.

<sup>7</sup> Art. IV, s. 1(a), Fla. Const.

<sup>8</sup> 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.

<sup>9</sup> 32 U.S.C. s. 109(c).

<sup>10</sup> 32 U.S.C. s. 109(d).

<sup>11</sup> 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.

<sup>12</sup> 32 U.S.C. s. 109(e).

<sup>13</sup> 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.

## Florida State Guard

The Florida State Guard (FSG) was created in 2022<sup>14</sup> 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.<sup>15</sup>

The FSG is under the command and control of the governor and is authorized for exclusive use within the state when activated by the Governor<sup>16</sup> or for use in other states for specific purposes.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> Subject approval by the Governor, the director determines the number of volunteer personnel within the FSG.<sup>20</sup> 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.<sup>21</sup>

The director determines the minimum standards for the age, physical and health condition, and physical fitness of applicants<sup>22</sup> and a program for training for members of the FSG.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

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<sup>14</sup> 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.

<sup>15</sup> Florida State Guard, *History*, <https://www.floridastateguard.org/history> (last visited Jan. 19, 2024).

<sup>16</sup> S. 251.001(2), F.S.

<sup>17</sup> 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.

<sup>18</sup> S. 251.001(2), F.S.

<sup>19</sup> S. 251.001(3), F.S.

<sup>20</sup> S. 251.001(5)(a), F.S.

<sup>21</sup> S. 251.001(5)(c), F.S.

<sup>22</sup> S. 251.001(5)(d), F.S.

<sup>23</sup> S. 251.001(7), F.S.

<sup>24</sup> S. 251.001(9), F.S.

<sup>25</sup> 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 emergency<sup>26</sup> 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.<sup>27</sup>

The FSG is deactivated at the expiration of the order or by a separate order by the governor deactivating the FSG.<sup>28</sup>

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.<sup>29</sup> Members of the specialized unit must meet the minimum qualifications for employment or appointment as a law enforcement officer defined in law<sup>30</sup> and are certified as law enforcement officers.<sup>31</sup> 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.<sup>32</sup>

### **Effect of Proposed Changes**

The bill removes language from the creation section of the Florida State Guard Act that provides the FSG may only be used exclusively within the state, clarifying the ability of FSG to provide support to other states under the Emergency Management Assistance Compact.

The bill adds and defines the terms, “enlisted volunteer,” “officer,” and “volunteer” in order to differentiate enlisted personnel from officers and makes conforming changes throughout the act.

The bill revises fingerprinting requirements by requiring 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 bill requires 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 requires any arrest record identified to be reported to the FSG.

The bill removes the requirement that FSG standards and the training program for members must be equivalent to the standards and training programs of the FLNG.

The bill expands the ability of the Governor to activate the FSG by allowing activation:

- During a declared state of emergency when the FLNG is not in active federal service;
- During periods of civil unrest; and
- At any other time deemed necessary and appropriate.

Activation in the above circumstances must be given in a written communication from the Governor to the director.

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<sup>26</sup> 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.

<sup>27</sup> S. 251.001(8)(a), F.S.

<sup>28</sup> S. 251.001(8)(b), F.S.

<sup>29</sup> S. 251.001(6), F.S.

<sup>30</sup> Such qualifications are provided in s. 943.13, F.S.

<sup>31</sup> Members must be certified as law enforcement officers as defined by s. 943.10(1), F.S.

<sup>32</sup> S. 251.001(6), F.S.

The bill authorizes the director to call volunteers to duty for training and administrative tasks, subject to annual appropriation, when not activated by order of the Governor.

The bill allows for discretionary reimbursement of per diem and travel expenses, instead of requiring the FSG to do so.

The bill provides that members of the FSG employed by state and local governments are eligible for a leave of absence of up to 240 hours per year without loss of vacation leave, pay, time, or efficiency rating for training purposes.

The bill provides that in any action or proceeding brought in any court by any person or by the state against a volunteer for an act occurring within the scope of the volunteer's duty, such volunteer may request to be defended at the expense of the state by a qualified attorney designated by the Department of Legal Affairs. The volunteer retains the right to employ his or her own private counsel. The bill provides that a volunteer engaged in such a defense may still be ordered to state active duty with full active duty compensation. If the plaintiff dismisses his or her suit, or a verdict or judgment in favor of the defendant is entered, the bill provides that the court must award costs and reasonable attorney fees incurred by the state and the defendant in the defense of such action or proceeding.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 251.001, F.S., relating to the Florida State Guard Act.

Section 2: Provides an effective date of July 1, 2024.

**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:**

According to the bill analysis conducted by FDLE,<sup>33</sup> 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 is included in the cost and then becomes \$6 annually per set of fingerprints. There are no fees required by the Federal Bureau of Investigation for federal finger print retention.

**D. FISCAL COMMENTS:**

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<sup>33</sup> *Id.*

According to the bill analysis conducted by FDLE,<sup>34</sup> the bill will generate \$24 in revenue per each state and national criminal history record check. The first year of state retention of fingerprints is included in the cost of the background check 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 the FSG.

The bill may also increase expenditures by the Department of Legal Affairs to the extent the department is required to provide qualified attorneys for FSG volunteers facing civil or criminal proceedings arising out of their scope of duty.

### 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:

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

None.

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<sup>34</sup> 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).