

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1759 (PCB LGV 03-01) Department of Military Affairs/Florida National Guard  
**SPONSOR(S):** Committee on Local Government & Veterans' Affairs  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** None.

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government &amp; Veterans' Affairs</u>	<u>18 Y, 0 N w/CS</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

This bill proposes a number of changes to Part 1 of chapter 250, Florida Statutes. Generally, this bill:

- Clarifies and potentially expands the authority of the Governor and the Adjutant General;
- Modifies or clarifies provisions related to courts-martial;
- Increases penalties for numerous misdemeanors;
- Expands workers' compensation coverage by the Department of Insurance to state-activated troops with long-term injuries or disabilities;
- Strengthens health benefits, job protection, and property rights of guard members activated for state duty;
- Clarifies or modifies provisions related to the Armory Board, education programs, and accounting procedures;
- Provides statutory reference to trust funds currently in use by the Department;
- Adds or modifies definitions;
- Resolves internal inconsistencies; and
- Deletes obsolete and redundant provisions.

The economic impact of the proposed committee bill may require the Department to spend funds not currently allowed in two areas:

- 1) Department reimbursement costs for meals will increase during emergency state active duty operations.
- 2) Costs associated with the Department of Insurance providing workers' compensation insurance coverage to certain severely injured or disabled troops (troops with claims past one year from the date of injury or disability) and associated legal assistance.

However, the actual costs are indeterminate.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1759.lgv.doc  
**DATE:** March 26, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

This bill contains a number of substantive changes recommended by the Department of Military Affairs, and stylistic changes recommended by staff. In order to understand the changes being sought, a background explaining the issues is necessary.

### BACKGROUND

#### The National Guard’s Origins

The National Guard is the oldest component of the Armed Forces of the United States and one of the nation's longest-enduring institutions, traces its history back to the earliest English colonies in North America. Responsible for their own defense, the colonists drew on English military tradition and organized their able-bodied male citizens into militias.<sup>1</sup> Following independence, the authors of the U.S. Constitution empowered Congress to "provide for organizing, arming, and disciplining the militia." However, recognizing the militia's state role, the Founding Fathers reserved the appointment of officers and training of the militia to the states.

#### The 20th and 21st Century National Guard

In 1903, national defense legislation increased the role of the National Guard as a Reserve force for the U.S. Army.<sup>2</sup> In World War I, the National Guard made up 40% of the U.S. combat divisions in France; in World War II, National Guard units were among the first to deploy and fight overseas.

As a result, the National Guard has seen the nature of its Federal mission change, with more frequent call ups in response to crises in Haiti, Bosnia, Kosovo, and Iraq. Most recently, following the attacks of September 11, 2001, more than 50,000 Guardsmen were called up by both their states and Federal government to provide security at home and combat terrorism abroad. Today, the various state National Guards constitute the “organized” militia.

---

<sup>1</sup> The term militia “refers to a short-term military obligation of all able-bodied male citizens of a particular society. They were not conceived as full-time, long-term, professional soldiers; merely a great reserve of manpower that could be used to expand the society’s regular military establishment in the shortest possible time.” Robert Hawk, Florida’s Army Militia/State Troops/National Guard 1565 – 1985, (Englewood, Florida: Pineapple Press, Inc., 1986), p. 5. <http://www.armg.army.mil/history>.

<sup>2</sup> In World War I, the National Guard made up 40% of the U.S. combat divisions in France; in World War II, National Guard units were among the first to deploy and fight overseas. During the Cold War, the Guard sent soldiers and airmen to fight in Korea and to reinforce NATO during the Berlin crisis of 1961-1962. During the Vietnam War, almost 23,000 Army and Air Guardsmen were called up for a year of active duty; some 8,700 were deployed to Vietnam. Over 75,000 Army and Air Guardsmen were called upon to help bring and end to Desert Storm in 1991.

Today's National Guard continues its dual mission by providing to the states units trained and equipped to protect life and property, and to preserve peace, order, and public safety, while providing to the nation military units that are trained, equipped, and ready to defend the United States and its interests.

## **LEGAL AUTHORITY UNDER WHICH THE NATIONAL GUARD PERFORMS ITS DUTIES**

### **United States Constitution**

The National Guard's charter is the Constitution of the United States. Article I, Section 8 of the U.S. Constitution grants Congress the authority:

- To provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel invasions; and
- To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States, respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

The Second Amendment to the U.S. Constitution states that “a well regulated Militia, being necessary to the security of a free State, the Right of the people to keep and bear Arms, shall not be infringed.” While the intent of this provision is disputed by modern interpreters, the Supreme Court noted in 1939 that this provision was designed to prohibit Congress from interfering with the ability of the states to appoint officers and to train the militia.

Article I, section 10(3) of the U.S. Constitution prohibits states from keeping a standing army without the consent of Congress.<sup>3</sup> Congress first delegated to the President the authority to call the militia in 1795.<sup>4</sup>

### **Federal Law**

The Federal Militia Act of 1791 (Act), clarified the role of the militia and required all able men to serve, to be armed, and to be equipped at their own expense. The Act also standardized unit structure. In response to the military presence in the southern states during the Reconstruction Era, Congress passed the Posse Comitatus Act (1878) to prohibit the use of the army in civilian law enforcement.<sup>5</sup> In 1903, the Dick Act, affirmed the National Guard as the primary organized reserve force. In 1916, the National Defense Act guaranteed the state militias as the primary reserve force and gave the President the authority to mobilize the Guard during war or national emergency. The National Defense Act also made use of the term “National Guard” mandatory and authorized drill pay for the first time. In 1920, the National Defense Act was amended. The amendments placed the National Guard on the general staff and reorganized the divisions. The National Guard Mobilization Act (1933), made the National

---

<sup>3</sup> “No state shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace”. Article I, section 10(3), U.S. Constitution.

<sup>4</sup> *Martin v. Mott*, 25 US 19 (1827).

<sup>5</sup> The “Posse Comitatus Act” (18 USC 1385) is a Reconstruction Era criminal law proscribing use of the Army (later Air Force) to “execute the laws” except where expressly authorized by the Constitution or Congress. The Act placed limits on use of the military for civilian law enforcement (also applies to the Navy by regulation). In December 1981, additional laws were enacted (codified 10 USC 371-78) that clarified permissible military assistance to civilian law enforcement agencies—including the Coast Guard—especially in combating drug smuggling into the United States. Posse Comitatus clarifications emphasized supportive and technical assistance (*e.g.*, use of facilities, vessels, aircraft, intelligence, tech aid, and surveillance.) while generally prohibiting direct participation of Department of Defense personnel in law enforcement (*e.g.*, search, seizure, and arrests). For example, Coast Guard Law Enforcement Detachments (LEDETS) serve aboard Navy vessels and perform the actual boarding of interdicted suspect drug smuggling vessels and, if needed, arrest their crews. <http://www.uscg.mil/hq/g-cp/comrel>.

Guard a component of the Army. Finally, in 1973, the Total Force Policy required that all active and reserve military organizations be treated as a single integrated force and reinforced the original intent of the founding fathers (a small standing army complemented by citizen soldiers).

The U.S. Code governs the organization and regulation of the state National Guards and establishes two classes of militia:

- The organized militia, which consists of the National Guard and the Naval Militia; and
- The unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.<sup>6</sup>

Furthermore, Federal law specifies that the militia of the United States consists of all able-bodied males, at least 17 years of age and under 45 years of age, who are or who have made a declaration of intention to become a citizen of the United States. The militia also consists of female citizens of the United States who are members of the National Guard.<sup>7</sup>

The U.S. Code also authorizes the President of the United States to “call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws.”<sup>8</sup>

## **THE TWO BRANCHES OF THE NATIONAL GUARD**

### **The Army National Guard**

The Army National Guard (ARNG) is the oldest component of the United States armed forces. The ARNG is one branch of The Army (which consists of the Active Army, the Army National Guard and the Army Reserves). The ARNG is composed primarily of traditional Guardsmen.<sup>9</sup> Each state, territory, and the District of Columbia has its own National Guard, as provided for by the U.S. Constitution.

During national emergencies, the President reserves the right to mobilize the National Guard, including the ARNG; putting them in Federal duty status. While federalized, the units answer to the Commander-in-Chief of the theatre in which they are operating and, ultimately, to the President.

Even when not federalized, the ARNG has a Federal mission. That mission is to maintain properly trained and equipped units, available for prompt mobilization for war, national emergency, or as otherwise needed.

The ARNG state mission is perhaps the most visible and well known. Guard units respond to battle fires and help communities in flood, tornado, hurricane, snowstorm or other emergency situations.<sup>10</sup>

---

<sup>6</sup> Title 10, U.S.C., Chapter 13, Section 311.

<sup>7</sup> *Id.*

<sup>8</sup> Title 10, U.S.C., Chapter 1211, Section 12406.

<sup>9</sup> Traditional Guardsmen are civilians who serve their country, state, and community on a part-time basis (usually one weekend each month and two weeks during the summer).

<sup>10</sup> During 2001, 34,855 Guardsmen were called to duty in response to the needs of their community or state.

## **The Air National Guard**

The Air National Guard (ANG) was not established as a separate component of the U.S. Air Force until 1947. National Guard aviators have played significant roles in all of America's wars and most of its major contingencies since the First World War era. They have also aided their states in coping with natural disasters and civil unrest.<sup>11</sup>

The ANG is one of the seven Reserve components of the United States Armed Forces that augments the Active components in the performance of their missions.

Administered by the National Guard Bureau, the ANG has both a Federal and state mission. The dual mission, a provision of the U.S. Constitution and the U.S. Code, results in each Guardsman holding membership in the National Guard of his or her state and in the National Guard of the United States.

The ANG Federal mission is to maintain well-trained, well-equipped units available for prompt mobilization during war and provide assistance during national emergencies (such as natural disasters or civil disturbances). During peacetime, the combat-ready units and support units are assigned to most Air Force major commands in order to carry out missions compatible with training, mobilization readiness, and contingency operations.

The ANG provides almost half of the Air Force's tactical airlift support, combat communications functions, aeromedical evacuations, and aerial refueling. In addition, the ANG has total responsibility for air defense for the entire United States.

When ANG units are not mobilized or under Federal control, they report to the governor of their respective state or territory (Puerto Rico, Guam, Virgin Islands) or the commanding general of the District of Columbia National Guard. Each of the 54 National Guard organizations is supervised by the Adjutant General of the state or territory. Under state law, the ANG provides protection of life, and property and preserves peace, order and public safety. These missions are accomplished through emergency relief support during natural disasters such as floods, earthquakes and forest fires; search and rescue operations; support to civil defense authorities; maintenance of vital public services; and counterdrug operations.<sup>12</sup>

## **THE UNITED STATES NATIONAL GUARD STRUCTURE**

### **The National Guard Bureau**

The National Guard Bureau (NGB), both a staff and operating agency, administers the Federal functions of the Army and the Air National Guard. As a staff agency, the NGB participates with the Army and Air staffs in developing and coordinating programs that directly affect the National Guard. As an operating agency, the NGB formulates and administers the programs for training, development and maintenance of the ARNG and ANG, and acts as the channel of communication between the Army, Air Force, and the 54 states and territories where National Guard units are located.

### **Command Structure**

The National Guard exists in all 50 states, the Commonwealth of Puerto Rico, the territories of Guam and the Virgin Islands, and the District of Columbia. The structure of the National Guard allows for command and control of units by individual Governors or the President of the United States, depending upon the nature of the call to duty. When National Guard units are not mobilized for Federal duty or under Federal control, they report to the Governor of their respective state or territory. The President serves as commander-in-chief for units mobilized for Federal active duty.

---

<sup>11</sup> <http://www.ang.af.mil/history>.

<sup>12</sup> <http://www.ngb.dtic.mil>.

Each state governor serves as the commander in chief while the Adjutant General of the state is responsible for training and readiness. At the state level, the governors reserve the ability, under the U.S. Constitution, to call up members of the National Guard in times of domestic emergency. For example, members of the National Guard aiding their community during a flood will most likely be in a state active-duty status, reporting to their governor.

## **Force Structure**

The ARNG structures its forces to provide for a compatible and inter-operable force that is fully capable of accomplishing state, national, and international missions in war and peace. To meet these requirements, the ARNG maintains a balanced mix of combat, combat support (CS), and combat service support (CSS) units.<sup>13</sup> The ANG maintains a balanced mix of Air Combat Command (ACC), Air Mobility Command (AMC) and other Major Command (MAJCOM) Units. These units are structured to integrate seamlessly with active component units as needed.<sup>14</sup>

## **THE ORGANIZED AND UNORGANIZED MILITIA AND FLORIDA LAW**

### **The Organized Militia**

The State Constitution provides for a state militia:

- (a) The militia shall be composed of all able-bodied inhabitants of the state who are or have declared their intention to become citizens of the United States; and no person because of religious creed or opinion shall be exempted from military duty except upon conditions provided by law.
- (b) The organizing, equipping, housing, maintaining, and disciplining of the militia, and the safekeeping of public arms may be provided for by law.
- (c) The governor shall appoint all commissioned officers of the militia, including an adjutant general who shall be chief of staff. The appointment of all general officers shall be subject to confirmation by the senate.
- (d) The qualifications of personnel and officers of the federally recognized national guard, including the adjutant general, and the grounds and proceedings for their discipline and removal shall conform to the appropriate United States army or air force regulations and usages.<sup>15</sup>

The militia is segregated into two general categories:

- The organized militia, which is composed of the National Guard and such other organized military forces as are now or may be authorized by law; and
- The unorganized militia, which is composed of all persons subject to military duty but who are not members of units of the organized militia.

The “organized militia” consists of the Florida National Guard (FNG) and the Florida State Defense Force (FSDF),<sup>16</sup> which was active between 1941 - 1946. State law stipulates that the FSDF be

---

<sup>13</sup> The ARNG structure is as follows: 15 enhanced Separate Brigades, eight divisions, and three strategic brigades (31st SAB, 92nd SIB, and the 207th Scout Group). The ARNG also maintains two Special Forces groups (19th and 20th). The force composition of the ARNG is 52 percent combat, 17 percent CS, 22 percent CSS, and 9 percent table of distribution and allowances (TDA) units, typically state headquarters units.

<sup>14</sup> The ANG structure is as follows: 88 Flying Wings, 4 CRTCs, 1st Air Force and over 300 Geographically Separated Units (GSUs). The force composition of the ANG is 48 percent ACC, 37 percent AMC, 13 percent other various MAJCOMs, and 2 percent state headquarters units. E-mail from Christopher P. Gillis, MSgt, Multimedia Specialist, NGB/CFX.

<sup>15</sup> Article X, section 2 of the State Constitution. *See also* s. 250.02, F.S.

<sup>16</sup> The Florida State Defense Force was created in 1941 and was initially named the Florida Defense Force and renamed the Florida State Guard.

composed of “officers commissioned or assigned, and such able-bodied citizens of the state as shall volunteer for service therein”.<sup>17</sup> By January, 1941, all Florida National Guard units had been federalized. In response, the Legislature established the Florida Defense Force, under the State’s Adjutant General, to assume the function and status of the National Guard within the state.

The Governor of Florida is “commander-in-chief of all military forces of the state not in active service of the United States”.<sup>18</sup> Article IV, section 1.(d) of the State Constitution grants the Governor the “power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion.”<sup>19</sup> Article IV, section 7(a) of the State Constitution grants the Governor authority to suspend “any officer of the militia not in the active service of the United States...”

## **Unorganized Militia**

From its early history, Florida had an “unorganized” militia or “enrolled militia”, a total or mass militia, consisting of an unorganized and untrained ‘pool’ of able-bodied men of the state. Under Spain and Britain, the militia “played important roles” in the defense of life and property.<sup>20</sup> However, the enrolled militia system under Florida territorial and state governments did not function well. From the early 19th century, “repeated attempts to render the enrolled militia a viable instrument of state policy failed miserably.”<sup>21</sup> Likewise, in other states such militias were primarily used locally and before the development of either volunteer militias or organized state guard units. Finally, the role of the unorganized militia “is as ill defined today as it was in the 19th century. The most that can be said of this great body of armed citizenry is that it constitutes a reservoir of manpower for the regular army and for the National Guard.”<sup>22</sup>

## **FLORIDA DEPARTMENT OF MILITARY AFFAIRS**

### **The Role of the Department of Military Affairs**

The Florida Department of Military Affairs<sup>23</sup> (DMA) is a state agency created under the Office of the Governor. DMA provides management oversight and administrative support to the Florida National Guard (FNG). DMA operates with the policy guidance and fiscal framework of both Federal and state authorities. In accordance with chapters 250, 251, and 252, F.S., the Adjutant General, the agency head of DMA as well as the Commanding General of the Florida Army and Air National Guard, are specifically tasked with:

- 1) Readiness of the FNG;
- 2) Response in times of natural disaster;
- 3) Reductions in the importation of controlled substances; and
- 4) Assistance to Floridians at risk.

The Department is staffed with both state and Federal employees, many of whom serve in the FNG as a condition of their employment.<sup>24</sup>

---

<sup>17</sup> Section 250.01, F.S.

<sup>18</sup> Article IV, s. 1.(a), Florida Constitution.

<sup>19</sup> *See also* ss. 14.02, 14.021(3), and 14.022, F.S.

<sup>20</sup> Robert Hawk, Florida’s Army Militia/State Troops/National Guard 1565 – 1985, (Englewood, Florida: Pineapple Press, Inc., 1986), p. 49.

<sup>21</sup> *Id* at 51.

<sup>22</sup> James B. Whisker, The Rise and Decline of the American Militia System, (355 .370973, Whi), p. 370.

<sup>23</sup> Chapter 250, F.S.

<sup>24</sup> OPPAGA Justification Review, report No. 01-59.

## **The Role of the Florida National Guard**

The Florida National Guard<sup>25</sup> (FNG) is a highly-trained force of more than 13,000 soldiers and airmen, possessing modern equipment and weapons systems. The FNG is a reserve component force of the Department of Defense (DOD), and the National Guard Bureau (NGB). State law recognizes the FNG as part of the state organized militia.<sup>26</sup> However, the number of authorized positions in the FNG is dependent upon the units assigned to the state by NGB and the respective manning models. The number and type of units depend upon force structure requirements developed as part of the national military strategy. The state is not involved in this process and is only the beneficiary of force structure decisions made in Washington. Depending upon the requirements of the national military strategy, force structure and actual units in the state may fluctuate.<sup>27</sup>

## **Organizational Structure of the Department of Military Affairs and the Florida National Guard**

DMA and its guard units have an organizational structure similar to typical military headquarters and active units, rather than other state agencies.<sup>28</sup>

The Florida Army National Guard is made up of the following:

- Detachment 1, 32<sup>nd</sup> Army Air & Missile Defense Command,
- 83rd Troop Command,
- 53rd Infantry Brigade (Separate), and
- 50th Area Support Group.<sup>29</sup>

The Florida Air National Guard is made up of the following:

- 125<sup>th</sup> Fighter Wing,
- Southeast Air Defense Sector (SEADS),
- Detachment 1, SEADS-Florida (ANG Associate Instructor Pilot Unit),
- 202<sup>nd</sup> Red Horse Squadron, 159<sup>th</sup> Weather Flight,
- 290<sup>th</sup> Joint Combat Communication Support Squadron, and
- 114<sup>th</sup> Combat Communication Squadron.<sup>30</sup>

## **AUTHORITY TO ACTIVATE THE FLORIDA NATIONAL GUARD**

### **The President's Authority/The Governor's Authority**

Either the President or the Governor can activate guard units and personnel to support national security objectives, protect the public safety of citizens and their property, or defend the State of Florida. Activation occurs under one of three authorities, depending upon the need and intent:

1. *Title 10, US Code* activation/mobilization – ordered by the Federal government only for military missions such as to Korea, Kuwait, or Bosnia. If ordered by the President for missions within the US

---

<sup>25</sup> DMA provides oversight to FNG.

<sup>26</sup> The FNG is composed of “members of the militia, therein and of commissioned officers and warrant officers who are citizens of the United States, organized, armed, equipped, and federally recognized, in accordance with the laws of the state and the laws and regulations of the Department of the Army and the Department of the Air Force.” Section 250.07, F.S.

<sup>27</sup> Letter from Douglas Burnett, Brigadier General, Florida Air National Guard, The Adjutant General. (11/15/2001).

<sup>28</sup> See Appendix B for the organizational chart of key DMA positions, many of which are filled with federal employees. See Appendix C for the lists of the major units and federally authorized positions of the Air and Army National Guard. Also shown is the number of guard members who serve within the Department. See Appendix D for the functional organizational chart for DMA.

<sup>29</sup> <http://www.ngb.dtic.mil>.

<sup>30</sup> Adjutant General's Report Fiscal Year 2001.



and martial law is declared, the guardsman can carry weapons and maintain authority over local and state authorities. Without declaration of martial law, guardsmen are restricted by the principle of posse comitatus and cannot carry weapons or conduct security missions. During a Title 10 activation, the Federal military leadership structure has authority over the unit's mission and the participating individuals.

2. *Title 32, US Code* activation – ordered by the Federal government and consented to by the individual Guard members and the Governor for training purposes or counter drug missions. Although performed under Federal law during such activation, FNG leadership retains authority over the unit's mission and individuals. (The use of the National Guard for state airport security post- September 11, 2001, fell under this provision.)

3. *State activation* – any activation ordered by the Governor, usually for a natural disaster or civil disturbance. The guardsmen become the militia of the state, can carry loaded weapons, and become an extension of the state legal authority. During such activation, the Governor and Florida National Guard leadership have authority over the unit's mission and individuals.

### **Activation Costs**

Although the Guard's ultimate purpose is to serve and protect when activated, those activations are not part of the state's budget process. Activation costs, when ordered by the Federal government, are directly paid by the Federal government. DMA usually seeks and eventually obtains full reimbursement from the Federal Emergency Management Agency (FEMA). Rare non-reimbursed activations are either absorbed within DMA's annual budget or by state budget amendments.

### **Drug Interdiction Operations**

The FNG performs drug interdiction operations in cooperation with the Federal government.<sup>31</sup> Drug interdiction operations include assisting U.S. Customs search of incoming vessel cargo and aerial electronic detection of drug smugglers. The Governor, the state Attorney General, and the Adjutant General annually negotiate and sign a counter drug plan in support of this mission.

### **COMMUNITY BASED INITIATIVES**

The FNG operates programs at the community level to educate Florida's youth about the threat of illegal drug use and to assist citizens at risk with life skills development. The training is provided by contractors and occurs in National Guard armories. The programs include those described below.

#### **Drug Demand Reduction Program**

Drug Demand Reduction Program supports community and state organizations in efforts to reduce the use of alcohol, tobacco, and illegal drugs. The program focuses on drug abuse education, prevention, and awareness.

#### **The About Face Program**

The About Face Program is held at local National Guard armories in pre-selected areas throughout the State of Florida. Students participate in an activity-based curriculum designed to focus on functional life skills and the improvement of basic skills. All activities are reality-based, allowing the students to see the relevance of the skills they are learning. Students receive both traditional instruction and Computer Assisted Instruction.

---

<sup>31</sup> Title 32, U.S. Code.

## **Forward March Program**

The DMA and the FNG are working in conjunction with the Florida Department of Children and Family Services and the State of Florida to provide job readiness services through Forward March. Forward March teaches functional life skills and job readiness training to unemployed and underemployed adults. Activities are reality-based, allowing the clients to see the relevance of the skills they are learning as well as giving them an opportunity to practice those skills in a real life setting. This program is a community support division of the FNG and is held at local National Guard Armories throughout the state of Florida.

## **Youth Challenge**

Youth Challenge teaches values, life skills, and self-discipline to 16 to 18 year-old non-adjudicated high school dropouts.

## **STARBASE**

STARBASE, a program for youths ages six through 18, is aimed at improving math and science skills.

## **FUNDING**

### **Funding for the Department of Military Affairs/Florida National Guard**

The state and Federal governments share in the funding and staffing of DMA, with the Federal government providing the predominant share of resources. The most recent funding data from DMA reflects an estimated \$350 million was appropriated for fiscal year 2002-03. An estimated \$300 million is paid directly by the Federal government and \$50.2 million is appropriated from state funds. Of the state appropriation, \$33.2 million comes from Federal sources, \$14.9 million from state general revenue, and \$2.1 million from revenue generated from operations at Camp Blanding.

### **Funding for Community Based Initiatives**

Each year, proviso language in the state appropriations act authorizes DMA to expend Temporary Assistance to Needy Families (TANF) block grant funds for About Face and Forward March programs. Florida and the Federal government jointly fund the Youth Challenge and Drug Demand Reduction Programs.<sup>32</sup>

Proposed Changes:

**Section 1** amends s. 250.01, F.S., to provide additional definitions for the chapter, consistent with federal law.

The definition for "national defense act" in subsection (1) is deleted, as it is unnecessary. While this term is used in many places throughout the chapter, the term may be replaced with a general reference to federal law. Subsection (2), which is a requirement that designations of military units be consistent with federal law, is deleted as it is not a definition and is unnecessary. This requirement is implicit in s. 250.06(2) and (3), F.S., s. 250.07(1), F.S., s. 250.08, F.S., and is explicit in federal law.<sup>33</sup>

One major change proposed by this section includes distinguishing between active duty and state active duty. The term 'active duty' applies only to those periods when the Florida National Guard is activated by the federal government. This includes "federal duty such as full-time training duty, annual

---

<sup>32</sup> OPPAGA Justification Review, report No. 01-59.

<sup>33</sup> 32 USC Sec. 104.

training, and attendance while a person is in the active military service or attending a school designated as a service school by law or by the secretary of the military concerned.”

This definition is almost identical to the definition in federal law.<sup>34</sup> The term ‘state active duty’ applies only to those periods when the Governor orders the Florida National Guard into service, typically in response to natural disasters or civil disorders. This definition incorporates the definition in s. 250.27, F.S., which is repealed by this act. (For consistency the term “state active duty” replaces similar terms used throughout the chapter.)

The term “military judge” is defined as the presiding officer of a general or special court-martial. It also includes a summary court-martial officer, unless otherwise expressly provided.<sup>35</sup> By state and federal law, a military judge for general and special courts-martial must be qualified as a Judge Advocate General (JAG) and be “certified as qualified by the Adjutant General.”<sup>36</sup> Summary courts-martial may be presided over by other officers, such as a base commander or other officer, who may not be qualified as a JAG. All three types of courts-martial are granted specific authority in ch. 250, F.S. However, federal law provides some authority to JAGs presiding over general or special courts-martial that “judges” for summary courts-martial are not provided. When the term “military judge” is used in ss. 250.35, 250.36, and 250.39, F.S., any limitation of authority of summary courts-martial officers stipulated in federal law is made clear in those sections, as proposed in this bill.

The definition for ‘National Guard Bureau’ is almost identical to the federal definition.<sup>37</sup>

The definition for ‘armory’ is almost identical to the definition in s. 250.41(1), F.S., which is deleted in this bill.

The definitions in the proposed bill for convening authority, military post, offense, post commander, and troops were requested by the Department.

The remaining definitions are almost identical to those in federal law.<sup>38</sup>

**Section 2** amends s. 250.02, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of ‘national defense act’ is deleted in section 1.

**Section 3** amends s. 250.03, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of ‘national defense act’ is deleted in section 1. This section is also amended to make changes in style.

**Section 4** amends s. 250.04, F.S., to make changes in style.

**Section 5** amends s. 250.05, F.S., to designate the Adjutant General as the head of the Department of Military Affairs. This provision is consistent with s. 250.7(2), F.S., which is amended in this bill, and 250.10(2), F.S.

**Section 6** amends s. 250.06, F.S., to specify that the Governor may order troops into active duty to “enhance domestic security” or to “respond to terrorist threats or attacks.” While this authority is implicit in this section and Art. IV, s. 1(d), of the State Constitution, the Department requested this authority be specifically provided. This section also specifies additional activities the Governor may authorize the Florida National Guard to participate in, to include ceremonies and inspections, and troop training.

---

<sup>34</sup> 32 USC Sec 101(12).

<sup>35</sup> The Rules for Court-Martial include the summary court-martial officer within the definition of military judge.

<sup>36</sup> Section 250.35(3), F.S.; Section 816, Art. 16 of the UCMJ; Section 826, Art. 26 of the UCMJ sets the qualifications for a military judge.

<sup>37</sup> 10 USC Sec. 10501 (a) & (b).

<sup>38</sup> 32 USC Sec. 101.

Again, authority for these activities is implicit in existing law however the Department requested this specific authority.

Section 250.06(6) is created to state the Governor may convene general courts-martial and may authorize the Governor to delegate to the Adjutant General the authority to convene general courts-martial. Art. X, s. 2(d) of the State Constitution requires that “the grounds and proceedings” for the “discipline and removal” of personnel and officers of the federally recognized national guard “conform to the appropriate United States army or air force regulations and usages.” Federal law authorizes the states to designate who may convene general, special, or summary courts-martial for the National Guard when not in federal service.<sup>39</sup>

Throughout this section, the term ‘organized militia’ is replaced with “National Guard” (when referring to federal law) or “Florida National Guard”. These changes recognize that the Florida National Guard is the only organized militia in this state. For consistency, the term “state active duty”, which is defined in section 1 of the bill, replaces similar terms.

**Section 7** amends s. 250.07, F.S., to specify that persons who have declared their intention to become citizens may be members of the Florida National Guard. This is consistent with Art. X, s. 2(a), of the State Constitution. This section also deletes a provision implicitly designating the Adjutant General as the head of the Department of Military Affairs, which has been transferred to s. 250.03(3), F.S. It also deletes a requirement that the Adjutant General hold the rank of major general. In most cases a newly appointed Adjutant General does not possess this rank when appointed, but is promoted to the rank after appointment. The service requirements for appointment to Adjutant General are specified in s. 250.10(1), F.S.

The rank requirements for the Assistant Adjutant Generals are deleted for the same reason. The service requirements for the Assistant Adjutant Generals are deleted as they are, in part, inconsistent with s. 250.10(4) and (5), F.S., respectively. Section 250.07, F.S., requires the assistants be a major at the time of appointment, while sections 250.10(4) and (6), F.S., require they be a colonel.

Subsection (2) requires all general officers be federally recognized and appointed by the Governor, subject to confirmation by the Senate. This provision is consistent with the requirement that officers be “federally recognized” in subsection (1), from subsections 250.10(1), (4), and (6), F.S., and s. 250.13, F.S., which is deleted by this act.

**Section 8** amends s. 250.08, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of ‘national defense act’ is deleted in section 1. This section is also amended to make changes in style.

**Section 9** amends s. 250.09, F.S., to clarify a reference to the Florida National Guard.

**Section 10** amends s. 250.10, F.S., which pertains to the appointment and duties of the Adjutant General. Specifically, this section:

- Includes a reference to ranks authorized by the Department of the Air Force to recognize that the Adjutant General may be an Air Force officer;
- Provides all military personnel, rather than only officers, are paid according to their respective military grades;
- Specifies an exception to the requirement that military personnel employed by the Department be paid the same wage as their military grade requires; current law allows this exemption in the annual budget enacted by the Legislature, pursuant to subsection (1);
- Deletes a provision declaring the Adjutant General is the Chief of the Department of Military Affairs, this declaration is transferred to s. 250.05(3), F.S.;

---

<sup>39</sup> 32 USC Sec. 327, as amended by the Homeland Defense Act of 2002, H.R. 4546 (January, 2003).

- Replaces the terms ‘militia’ and ‘organized militia’ with ‘Florida National Guard’, recognizing that the Florida National Guard is the only organized militia in this state;
- Clarifies that only “military” personnel of DMA, rather than “state active duty” personnel may participate in DMA’s physical fitness program; this program was designed for full-time employees of the Department, not part-time troops;
- Deletes obsolete language relating to the Camp Blanding post exchange store;
- Expands the Adjutant General’s authority to hire staff by replacing the term “clerical help” with the more general “personnel”;
- Deletes paragraph (2)(g), which provided specific authority to hire military police or security guard for Department property; this provision is made obsolete by the above proposed change authorizing the Adjutant General to hire “personnel”;
- Replaces a number of terms or phrases pertaining to the Department’s About Face and Forward March programs made obsolete by previous changes in the law; and
- Authorizes the Adjutant General to order troops to state active duty for training when the Legislature has made funding available for such purpose;
- Clarifies and reorganizes provisions relating to qualifications for the Assistant Adjutant Generals; and
- Makes a number of changes in style.

Sections 250.10(7) and (8), F.S., provide for educational benefits to troops in the Florida National Guard, in the form of a tuition exemption program and a tuition assistance program. The exemption program (The State Tuition Exemption Program or STEP) provides troops with an exemption of ½ of tuition and fees on a ‘space available basis’. The assistance program (The Educational Dollars for Duty Program or EDD) provides, subject to appropriations, payment of the full cost of tuition and fees for troops who enlist after June 30, 1997. In the proposed committee bill, troops using either program must “agree in writing to serve in the active Florida National Guard for 3 years after completion of the studies for which an exemption is granted.”

Subsections (7) and (8) are amended to replace or delete obsolete terms (replace “agree in writing” with “complete a memorandum of Agreement”; delete “Board of Regents” and the State Board of Community Colleges”), and to clarify that the Department, through the STEP program, may provide ½ the tuition and fees, rather than the full cost of tuition and fees, under certain conditions. Historically, the Department has provided ½ the tuition and fees when the school or university could not provide a waiver. This section is also changed to customize the current general penalty provision to fit both STEP and EDD programs, and clearly distinguish between the two programs. In addition, a new provision is added to require that when a member defaults on repayments of tuition and fees, the institution or the state may charge him or her the maximum interest rate authorized by law.

**Section 11** amends s. 250.115, F.S. Currently, this section authorizes the Department to participate in the operation of a “direct support organization” for the FNG. The non-profit Florida National Guard Foundation, Inc., provides support and financial assistance to the members of the Guard and their families, supports various projects that ‘advance the Guard,’ and recognizes individual achievement and support for the Guard. Over the past 20 years, the foundation has awarded more than \$180,000 in scholarships to FNG members and \$55,000 to museums, memorial, and historical projects that recognize the contributions of the FNG. The foundation is supported by individual and corporate contributions. All administrative support is provided by DMA.<sup>40</sup>

Federal Joint Ethics Regulations govern the standards of ethical conduct of FNG members. The Department interprets these regulations to restrict, to some extent, the Adjutant General’s direct individual participation in this direct support organization. To comply with federal regulations, s. 250.115, F.S., is amended to require the Adjutant General to appoint, rather than serve as, President of the Department’s direct support organization. In addition, the authority over the Department’s direct

<sup>40</sup> Pamphlet for the Florida National Guard Foundation, Inc.

support organization is transferred from the Adjutant General to either the Department or the President of the Board of Directors.

**Section 12** amends s. 250.12, F.S., to clarify a reference to the Florida National Guard.

**Section 13** amends s. 250.16, F.S., to clarify a reference to the Florida National Guard.

**Section 14** amends s. 250.175, F.S., to clarify provisions relating to trust funds.

Currently, s. 250.175, F.S., establishes the Federal Law Enforcement Trust Fund to account for funds received from the drug asset seizures resulting from Department counter-drug enforcement activities.<sup>41</sup> Section 250.601, F.S., establishes the Emergency Response Trust Fund,<sup>42</sup> which accounts for reimbursements from the Federal Emergency Management Agency for the costs of activating the Florida National Guard and transfers of state funds approved by budget amendments. These are the only trust funds specifically listed in the statutes. Other trust funds include the Camp Blanding Management Trust Fund,<sup>43</sup> which accounts for funds generated from activities at Camp Blanding; and the Armory Board Trust Fund,<sup>44</sup> which accounts for funds received from the federal governments. The first three trust funds are exempt from the 7% service charge imposed by s. 215.20, F.S. Federal law prohibits imposing the service charge on federal funds in the Armory Board Trust Fund. In addition, all trust fund balances remaining at the end of the fiscal year remain in the trust fund – such balances are not transferred to general revenue.

This bill amends s. 250.175, F.S., to:

- Specify that proceeds from seized property deposited in the Federal Law Enforcement Trust Fund must be used to support related programs of the FNG;
- Transfer the “Emergency Response Trust Fund” from s. 250.601, F.S., to this section;
- Include the Camp Blanding Management Trust Fund in this section;
- Rename the Armory Board Trust Fund as the Cooperative Agreement Trust Fund, and include the fund in this section; and
- Include provisions that maintain current policies relating to services charges imposed by s. 215.20, F.S., and trust fund balances remaining at the end of the fiscal year.

**Section 15** contains an expression of Legislative Intent to clarify the changes proposed in section 14 of the bill.

**Section 16** amends s. 250.18, F.S., to delete the obligation of officers to provide their own military equipment. Currently, the Florida National Guard provides all personnel the necessary equipment necessary to fulfill their responsibilities.

Currently, s. 250.18, F.S., requires the Department to provide a uniform allowance to officers. However, because the federal government provides a \$400 allowance to officers upon appointment, this requirement is not necessary. This section is amended to delete the obligation of the Florida National Guard to provide a uniform allowance to officers.

**Section 17** amends s. 250.19, F.S., to make changes in style.

**Section 18** amends s. 250.20, F.S., which addresses the distribution and accounting of armory maintenance allowances, to clarify military post accounting practices. In response to issues identified

---

<sup>41</sup> Created by ch. 98-394, L.O.F., and re-authorized in ch. 2002-142, L.O.F.

<sup>42</sup> Created by ch. 2002-167, L.O.F.

<sup>43</sup> Re-authorized in ch. 2002-141, L.O.F.

<sup>44</sup> Re-authorized in ch. 2002-140, L.O.F.

in a recent Operational Audit by the Florida Auditor General,<sup>45</sup> the Department requested this section be amended to require that armory maintenance allowances only be deposited into an approved federal depository. "Federal depositories" are federally insured (FDIC) financial institutions.

In addition, the Department requested a new provision be added to this section to clarify that each post commander is responsible for the proper receipt and distribution of the post maintenance allowance. While this responsibility appears to be clear in current law and Department rules, including this requirement in this section clarifies the Department's expectations of armory post commanders.

**Section 19** amends s. 250.23, F.S., to allow officers and enlisted personnel, rather than only enlisted personnel, be provided meals or payment for meals during emergency state active duty operations. Consequently, Department reimbursement costs will increase for meals provided during emergency state active duty operations. This section is also amended to clarify terms relating to state active duty.

**Section 20** amends s. 250.24, F.S., to clarify terms relating to state active duty and to specify that pay for activated troops must be deposited in the Emergency Response Trust Fund, consistent with current practice.

**Section 21** amends s. 250.25, F.S., to clarify terms relating to state active duty.

**Section 22** amends s. 250.26, F.S., to provide stylistic changes.

**Section 23** amends s. 250.28, F.S., to authorize the Adjutant General to activate troops, when the Governor is unable to do so, to respond to a threat to security, a terrorist threat or terrorist attack. While this authority is implicit in this section, the Department requested this authority be specifically provided.

**Section 24** amends s. 250.29, F.S., to increase the penalty from second to first degree misdemeanor for violations related to failure to provide assistance to civil authorities. In addition, such violations may also be punished as a court-martial directs, rather than only by dismissal or dishonorable discharge.

**Section 25** amends s. 250.30, F.S., to replace the term 'active militia' with 'Florida National Guard'.

**Section 26** amends s. 250.31, F.S., to replace the term 'organized militia' with 'Florida National Guard' and to clarify terms relating to state active duty. It also specifies that "full-time National Guard duty" personnel, like members on state active duty, are "not liable, civilly or criminally, for any lawful act or acts done by them in the performance of their duty, while acting in good faith and while acting in the scope of either state or federal duty."<sup>46</sup>

**Section 27** amends s. 250.32, F.S., to clarify a term relating to state active duty.

**Section 28** amends s. 250.33, F.S., to clarify terms relating to state active duty.

**Section 29** addresses workers' compensation for troops injured while on state active duty. Chapter 440, F.S., governs Workers' Compensation in Florida. The Division of Risk Management of the Department of Insurance (DOI) manages the state's workers' compensation program. To a significant degree, the state is 'self-insured'. State agencies are assessed an annual fee to cover their employees, which is paid for in an annual appropriation from the Legislature. The Department participates in the state's workers' compensation program only for its 279 full-time employees. State-activated troops are not insured under this program.

---

<sup>45</sup> Auditor General Report 02-021.

<sup>46</sup> This is similar to the civil liability provision for state and local government employees in s. 768.28(9)(a), F.S.

Section 250.34, F.S., provides for “medical attention and necessary hospitalization” and pay for troops who become injured or disabled while in active military service of the state. While the FNG does not participate in the state’s workers’ compensation program for state activated guards, it does use the compensation guidelines provided in ch. 440, F.S. Furthermore, the Division of Risk Management provides assistance in processing and, in some cases, litigating claims against the FNG.

Historically, compensation for state activated troops injured in the line of duty has been funded through a variety of sources available to the Department. While such sources are sufficient to pay routine claims and associated legal costs, the Department must petition the Governor for additional fund to cover major claims and associated legal costs.

Section 250.34 F.S., is amended to specify that the Department of Insurance will process workers’ compensation insurance benefits to certain severely injured or disabled troops (troops with claims past one year from the date of injury or disability) and will also provide associated legal assistance to the Department. Procedures are specified for annually reimbursement to DOI when benefits and associated legal assistance are provided.

This section is also amended to clarify terms relating to state active duty, to replace the term ‘organized militia’ with ‘Florida National Guard’, and to clarify that injuries are not compensable if it is a pre-existing condition.

**Section 30** Section 250.341(4), F.S., requires FNG members to notify their employer that they want to continue insurance coverage while activated into guard duty. The Department reports that some employees fail to provide this notification, sometimes because of the short notice of activation or because of the nature of their military mission. In addition, some employers request Department officials verify this notification. To address this issue, the Department requested that the “appropriate military authority” be authorized to provide this notification. In addition, the Department requested that a new provision be included in this section, consistent with federal law, stating that:

“Prior notice to the employer is not required if such notice is precluded by military necessity or if such notice is impossible or unreasonable.”

This section is amended to make the changes recommended by the Department, to delete obsolete provisions, and to clarify terms related to state active duty.

**Section 31** amends a number of provisions in s. 250.35, F.S., primarily to conform our state military laws to federal law.

The state National Guards are governed by the concurrent laws of the federal and respective state governments. All provisions of federal law which relate to the Florida National Guard, and which are not inconsistent with the state constitution, are part of the military laws of Florida.<sup>47</sup> The Florida Constitution specifies that the qualifications of members of the Florida National Guard, and “the grounds and proceedings for their discipline and removal” must conform to the appropriate regulations of the United States Army or Air Force.<sup>48</sup> The federal Uniform Code of Military Justice (UCMJ)<sup>49</sup> contains “the substantive and procedural laws governing the military justice system.”<sup>50</sup> The UCMJ defines the same crimes as those in civilian courts, but also includes violations of order and discipline, such as disobedience to a superior officer, drunkenness on duty, misconduct as a prisoner of war, even adultery.<sup>51</sup> The Manual for Courts-Martial (MCM) prescribes procedural rules and punishments for violations of crimes.

---

<sup>47</sup> Section 250.03, F.S.; 32 U.S.C.A. is the primary federal law addressing the organization of the state National Guards.

<sup>48</sup> Article X, section 2(d) of the State Constitution.

<sup>49</sup> 10 U.S.C.A, s. 801.

<sup>50</sup> <http://www.ojp.usdoj.gov/ovc/assist/nvaa99/chap3-3.htm>.

<sup>51</sup> [http://www.usconstitution.net/consttop\\_milj.html](http://www.usconstitution.net/consttop_milj.html).



Members of the Florida National Guard are subject to the same laws as the civilian population. However, absent any agreement between the civilian authorities and the base commander, the military commander has concurrent jurisdiction over the troops in criminal matters.<sup>52</sup> For practical reasons, the generally defers to civilian authorities for prosecution of such crimes.

However, action by civilian authorities does not preclude the Department from taking additional disciplinary action against the Guard member. Such discipline can take many forms.<sup>53</sup> First, the commanding officer may take administrative action, absent a court-martial, against the Guard member. Such actions include measures ranging from counseling or a reprimand to involuntary separation. Second, the commander may initiate a court-martial, which is a military court for trying and punishing offenses committed by members of the armed forces. There are three levels of court-martial: summary, special, or general.

A summary court-martial is designed to dispose of minor offenses. Only enlisted service members may be tried by a summary court-martial. A single officer presides over the hearing. The accused has no right to counsel but may hire an attorney to represent him or her. The officer is not likely to be qualified as a Judge Advocate General (JAG).

A special court-martial is an intermediate level composed of either a military judge alone, or at least three members and a judge. An enlisted service member may ask that at least one-third of the court members be enlisted. There is both a prosecutor, commonly referred to as the trial counsel, and a defense counsel. In addition, the accused may be represented by civilian counsel, at no expense to the government, or by an individually requested military counsel. A judge presiding in a special court-martial must be a qualified JAG.

A general court-martial is the military's highest level trial court. This court tries service members for the most serious crimes. The punishment authority of the general court-martial is limited by the maximum authorized punishment for each offense in the Manual for Courts-Martial. A judge presiding in a general court-martial must be a qualified JAG.

Subsection 250.35 (1), F.S., adopts the UCMJ and the Manual for Courts-Martial for use by the FNG. Subsections (1) and (2) are amended to adopt the latest versions of these laws. In addition, subsection (1) is amended to delete the term 'organized militia', which is redundant in this context.

Subsection (2) specifies that commissioned officers may not be tried by summary courts-martial. However, federal rules prohibit trying of warrant officers and cadets by summary courts-martial.<sup>54</sup> This section is amended to be consistent with federal law. In addition, the term 'organized militia' is deleted, as the Florida National Guard is the only organized militia in this state.

Subsection (3) allows defendants to waive trial by panel and request trial by a judge. This provision is amended allow defendants to waive trial by panel and request trial by 'military' judge, which is consistent with the context. In addition, a provision that authorizes 'noncommissioned officers' to serve on general and special courts-martial is deleted, and is replaced with a clause allowing enlisted members serve on the panel at the request of the enlisted defendant, consistent with the UCMJ.<sup>55</sup>

Subsection (4) specifies that a general courts-martial in the FNG may only be convened by the Governor. This provision is amended to allow the U.S. President, who possesses this authority as

---

<sup>52</sup> Section 814, Art. 14(a), of the UCMJ provides that "Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial."

<sup>53</sup> Much of the information on levels of court-martial is taken from the following website:  
<http://www.ojp.usdoj.gov/ovc/assist/nvaa99/chap3-3.htm>.

<sup>54</sup> Rules of Court-Martial, Rule 1301(c).

<sup>55</sup> UCMJ Sec. 825, Art. 25 (c)(1).

commander-in-chief, and the Adjutant General, as delegated by the Governor, to convene general courts-martial. Art. X, s. 2(d) of the State Constitution requires that “the grounds and proceedings” for the “discipline and removal” of personnel and officers of the federally recognized national guard “conform to the appropriate United States army or air force regulations and usages.” Federal law authorizes the states to designate who may convene general, special, or summary courts-martial for the National Guard when not in federal service.<sup>56</sup> This change is consistent with the proposed authority in s. 250.06(6), F.S., which authorizes the Governor to delegate to the Adjutant General the authority to convene general courts-martial.

This section also authorizes as punishment the reduction of rank to the lowest enlisted grade. This provision is amended to clarify that only ‘enlisted’ personnel may have their rank reduced to the lowest enlisted grade. Officers are commissioned and may only lose such commission – federal law does not allow officers to have their rank reduced to the enlisted grades.

Subsections (4)-(8), establishes fine thresholds for punishments imposed in court-martial proceedings. The report (Review and Study of Chapter 250, F.S., Department of Military Affairs/Florida National Guard) states that these thresholds are greater than the amounts allowed in federal law; consequently, the report indicates that the Department may amend these sections to be consistent with federal law.<sup>57</sup> However, additional information provided by the Department states that PL 107-314, Title 32, Section 326 permits states to determine the proper amount of a fine. Therefore the Department requests that the fine amounts remain the same.

Subsection (8) specifies that any combination of punishments listed therein may be imposed and allows up to 28 days of extra duty for such and restriction to be imposed. However, the federal Rules of Court-Martial limit to 14 the number of days that restriction and extra duty may be imposed.<sup>58</sup> This provision is amended to be consistent with the limitation imposed by federal law.

Subsection (9) provides that findings of guilt and sentences imposed by a court-martial may be appealed to the District Court of Appeal (DCA) for the district in which the court-martial was held. However, the State Constitution requires such appeal be made to the 1<sup>st</sup> DCA.<sup>59</sup> This provision is renumbered as subsection (10) and is amended to clarify that appeals may be appealed to the 1<sup>st</sup> DCA.

Subsection (10) allows for appeal of a sentence by a summary court-martial. This subsection is renumbered as subsection (9), and includes a provision recognizing that the Adjutant General must approve a sentence of imprisonment.

**Section 32** creates s. 250.351, F.S., to clarify that members of the Florida National Guard are subject to the UCMJ at all times during their enlistment or appointment, and that ch. 250, F.S., applies to such members whether serving in-state or in another state. While this is implicit by the adoption of the UCMJ and the Manual for Courts-Martial in s. 250.35(1) & (2), F.S., the Department requested this provision be created to preclude any challenges.

**Section 33** amends s. 250.36, F.S., to re-organize this section. Substantive changes include granting the Adjutant General’s designee authority to issue pre-trial confinement warrants and subpoenas. Because the proposed definition of “military judge” in s. 250.01(11), F.S., is expanded to include summary court-martial officers, a provision is included to specifically deny non-JAG officers the authority to issue pre-trial confinement warrants, consistent with current law.<sup>60</sup>

---

<sup>56</sup> 32 USC Sec. 327, as amended by the Homeland Defense Act of 2002, H.R. 4546 (January, 2003).

<sup>57</sup> Title 32 U.S.C.A., sections 327(a)(1), 328(c), 329(b).

<sup>58</sup> Rules of Court-Martial, Rule 1301(c).

<sup>59</sup> Article V, s. 1 of the State Constitution.

<sup>60</sup> While a summary court-martial officer may sentence a troop to confinement [s. 250.35(7), F.S.], he or she may not issue a pretrial confinement warrant.

**Section 34** amends s. 250.37, F.S., to make changes in style. In addition, a reference to a summary court officer is deleted, as the proposed definition for military judge in s. 250.01, F.S., includes summary court-martial officers.

**Section 35** amends s. 250.375, F.S., to allow physicians in the Florida National Guard, when on active duty, to provide services during an emergency to troops and civilians outside the state of Florida. Current law restricts the physicians to service only in Florida.

**Section 36** amends s. 250.38, F.S., to make changes in style, and to replace the word “oust” with “divest”.

**Section 37** amends s. 250.39, F.S., to limit penalties for contempt to 30 days incarceration and a fine of \$100 per offense, consistent with federal law.<sup>61</sup> In addition, this section includes the restriction against non-JAG summary court-martial officers issuing a warrant for confinement. This is consistent with proposed s. 250.36(2), F.S., and current law.

**Section 38** amends s. 250.40, F.S., to re-organize and consolidate s. 250.41 and 42, F.S., into this section, and make changes in style. Substantive changes to the authority and functional responsibilities of the Armory Board and support staff include:

- Specifically designating the Governor as the chair of the board, which is current practice;
- Designating the Adjutant General as vice-chair;
- Specifying that only the major command commanders are included on the board;
- Authorizing board members to designate their deputy commander as an alternative member to serve when “exigencies of military duty” make it necessary;
- Including a Governor’s representative as a non-voting member and liaison to the board;
- Designating the State Quartermaster as the recorder and secretary of the board, and the person responsible for the daily operation of the board; and
- Specifying that the State Quartermaster and staff have civil immunity while carrying out their duties.<sup>62</sup>

Section 250.40(6)(a)1., F.S., contains a general list of revenue sources armory post commanders must deposit into a bank in the county where the respective facilities are located. Included in this list is “money derived from the rental of billeting operations at Camp Blanding Training site.” Because this revenue source relates only one facility, it is inappropriate to include in this general list.

Currently, s. 250.40(6)(a)2., F.S., authorizes a military “post council” to disburse funds received from rental of armories, maintenance allowances from the Department, and fine proceeds, pursuant to rules established by the Armory Board. However, Department staff report that such post councils are advisory, and that the post commander is responsible for the proper disbursement of funds and operation of the armory. In order to conform to federal regulations,<sup>63</sup> this section is amended to transfer armory operation authority to the post commander, and deletes the provision that establishes the post council.

**Section 39** amends s. 250.43, F.S., to increase the penalty from second to first-degree misdemeanor for violations related to unauthorized wearing of uniform and insignia of rank. Subsection (1) is amended to include a reference to punishment “as provided in s. 775.082”, which relates to penalties for various levels of crimes. Section 775.084(4)(a), F.S., limits imprisonments for first degree misdemeanors to one year. The inclusion of this reference is consistent with s. 250.43(2), s. 250.29, s. 250.51, and s. 250.52, F.S.

---

<sup>61</sup> 10 U.S.C.A. Sec. 848, and Section 848, Art. 48 of the UCMJ.

<sup>62</sup> The proposed language is identical to the civil liability in s. 250.31, F.S., for members of the FNG in state active duty. It is also similar to the civil liability provision for state and local government employees in s. 768.28(9)(a), F.S.

<sup>63</sup> FNG Pamphlet 210-4, s. 2-6 b.

In addition, subsection (2) is amended to clarify a reference to the Florida National Guard, and references to military personnel of Puerto Rico and the District of Columbia are included, consistent with the definitions proposed in s. 250.01, F.S.

**Section 40** amends s. 250.44, F.S., to increase the penalty from second-degree misdemeanor to theft pursuant to ch. 812, F.S., for violations related to theft of military equipment. In addition, the term “accouterments” is replaced with “property” and other stylistic changes are made.

**Section 41** amends s. 250.45, F.S., to increase the penalty from second to first degree misdemeanor for violations related to discrimination against military personnel. This section is also amended to include a reference to punishment “as provided in s. 775.082”, which relates to penalties for various levels of crimes. Section 775.084(4)(a), F.S., limits imprisonments for first degree misdemeanors to one year. The inclusion of this reference is consistent with s. 250.43(2), s. 250.29, s. 250.51, and s. 250.52, F.S.

**Section 42** amends s. 250.46, F.S., to replace the term ‘militia’ with ‘Florida National Guard’. This is in recognition that the Florida National Guard is the only organized militia in this state.

**Section 43** amends s. 250.47, F.S., to make changes in style and to clarify a reference to the Florida National Guard.

**Section 44** currently, s. 250.48, F.S., allows activated troops who are employees of “political subdivisions of the state” to take a leave of absence, without a loss of pay, for up to 30 days at a time. While school districts are generally considered “subdivisions of the state,” the Department requested this provision be modified to specifically reference school districts. The Department also requested this section be amended to limit the duration such leaves of absence to 30 days for each emergency or disaster, as established by executive order (as opposed to “at any one time”). This may limit the number of paid leave of absences for members of the Florida National Guard.

**Section 45** amends s. 250.481 F.S., to make changes in style.

**Section 46** Section 250.482 F.S., prohibits “public and private” employers from discharging, reprimanding or penalizing employees activated for state duty. This section is amended to clarify that activated employees of school districts, vocational and technical schools, are protected against such action for taking a leave of absence when activated for service by the Florida National Guard. This section is also amended to clarify terms relating to state active duty.

**Section 47** amends s. 250.49, F.S., to substitute a reference to “national defense act” with a general reference to federal law. The definition of ‘national defense act’ is deleted in section 1. This section is also amended to clarify terms relating to state active duty.

**Section 48** amends s. 250.51, F.S., to replace the phrase ‘organized militia of the state’ with “Florida National Guard”. This change recognizes that the only organized militia in this state is the Florida National Guard. For consistency, the term “state active duty” replaces similar terms. In addition, this section is amended to increase the penalty from second to first degree misdemeanor for violations related to insulting troops.

**Section 49** amends s. 250.52, F.S., to delete a reference to “active militia of the state.” This change recognizes that the only organized militia in this state is the Florida National Guard. For consistency, the term “state active duty” replaces similar terms. In addition, this section is amended to increase the penalty from second to first degree misdemeanor for violations related to persuading a person against enlistment.

**Section 50** amends s. 250.5201, F.S., to clarify terms relating to state active duty and make changes in style.

**Section 51** amends s. 250.5202, F.S., to clarify terms relating to state active duty, and to delete a redundant provision related to the federal Soldiers' and Sailors' Act.<sup>64</sup>

**Section 52** amends s. 250.5204, F.S., to clarify terms relating to state active duty.

**Section 53** amends s. 250.5205, F.S., to clarify terms relating to state active duty.

**Section 54** creates a new section of law to require the Florida National Guard to provide training and support related to drug interdiction.

**Section 55** repeals a number of sections in ch. 250, F.S.

- s. 250.13, F.S., which requires all general officers be appointed by the Governor; this requirement is included in s. 250.05(3), F.S., of this bill.
- s. 250.21, F.S., which requires the Department to maintain a 'retired list' of the Florida National Guard. While decades ago this section was used as a 'recall' list, most recently it has been used for social purposes and to maintain a mailing list for newsletters. The Department states that it is no longer necessary, for either military or social purposes.
- s. 250.27, F.S., which defines 'active service.' The substance of this section is included in the definition of 'state active duty' in s. 250.01, F.S., as proposed in this bill.
- sections 250.41 & 250.42, F.S., which relate to armories and the Armory Board. Provisions in this section are consolidated with s. 250.40, F.S., as proposed in this bill.
- s. 250.601, F.S., which establishes the Department's Emergency Response Trust Fund. This provision is included in s. 250.175, F.S., a section that proposes to consolidate all of the Department's trust funds into one section of law.

**Section 56** provides an effective date.

C. SECTION DIRECTORY: See Effect of Proposed Changes Section.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

---

<sup>64</sup> Initially, the Department requested the standard of "substantive prejudice" be amended to "material effect", consistent with the Federal Soldiers and Sailors Civil Relief Act [50 USC Appendix, Sec. 501]. However, this recommended change would make the provision operationally identical to the subsequent provision in subsection (2). In addition, deleting this provision makes s. 250.5202, F.S., consistent with related provisions in s. 250.5204 & 250.5205, F.S.

D. FISCAL COMMENTS:

**Section 19** amends s. 250.23, F.S., to allow officers and enlisted personnel, rather than only enlisted personnel, be provided meals or payment for meals during emergency state active duty operations. Consequently, Department reimbursement costs for meals will increase during emergency state active duty operations.

**Section 29** amends s. 250.34 F.S., to specify that the Department of Insurance provide workers compensation insurance coverage to certain severely injured or disabled troops (troops with claims past one year from the date of injury or disability) and also provide associated legal assistance to the Department.

Over the past decade, only two soldiers would have qualified as "severely injured or disabled." Should any soldier be classified as such in the future, DOI would incur costs in providing benefits to the soldier and associated medical and legal costs. In turn, DOI would 'assess' DMA for such costs, which would be paid through a request of an annual appropriation from the Legislature.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other: Not applicable.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Local Government & Veterans' Affairs adopted one amendment at it's meeting on March 6, 2003. The amendment removes a reference to Federal law that is unnecessary.