

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 873 Military Affairs

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee; Giallombardo and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 770

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 873 passed the House on April 15, 2021, and subsequently passed the Senate on April 21, 2021.

The bill makes numerous changes relating to military affairs including:

- Removing requirements for military police chiefs, military police officers, firefighter trainers, firefighter rescuers, and electronic security system technicians from having the same salary and benefits as career service employees;
- Revising certain military positions required to participate in the Senior Management Service Class;
- Specifying that the Adjutant General must serve as the Commanding General of the state's organized militia;
- Revising the requirements for appointment as Adjutant General and Assistant Adjutant General for the Army, second Assistant Adjutant General for the Army, and Assistant Adjutant General for Air;
- Updating the outdated version of the Manual for Courts-Martial to the 2019 edition and establishing the Florida Code of Military Justice (FCMJ);
- Authorizing courts-martial to try a member of the Florida National Guard (FLNG) for offenses punishable by the FCMJ;
- Specifying that a courts-martial is an administrative proceeding in the executive branch;
- Revising procedures and personnel qualifications for convening a trial of general, special, and summary courts-martial as well as punishments that may be adjudged by these courts;
- Revising provisions relating to the imposition of nonjudicial punishment and specifying the types of nonjudicial punishment;
- Authorizing certain commanders to reduce personnel pay grades;
- Authorizing the appeal of a specific charge and appeal requirements;
- Authorizing any military judge, not just those of the FLNG, to issue pretrial confinement warrants, subpoenas, and subpoenas duces tecum;
- Providing that the Adjutant General or a military judge may issue and execute search authorizations if the FLNG or the Department of Military Affairs has control over the location where the property or person to be searched is situated or, if the location is not under military control, when the commander has control over persons subject to military law or law of war;
- Revises membership, terms, and meeting requirements of the Armory Board;
- Providing that members of the FLNG are subject to the FCMJ whether in civilian or military status; and
- Providing that a physician who holds a license to practice medicine in all United States territories and the District of Columbia while serving as a medical officer with or in support of the FLNG may practice medicine on military personnel or civilians during an emergency, declared disaster, or federal military training.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill was approved by the Governor on June 21, 2021, ch. 2021-148, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Career Service

The Florida Constitution requires the Legislature to create a civil service system for state employees.¹ The Department of Management Services (DMS) is responsible for developing uniform personnel rules, guidelines, records, and reports relating to employees and positions in the career service.² All state employees generally fall into one of four categories:

- Career service system;³
- Senior management system;⁴
- Volunteers;⁵ or
- Selected exempt service system.⁶

All non-exempt employees belong to the career service system.⁷ Military police chiefs, military police officers, firefighter trainers, firefighter rescuers, and electronic security system technicians in the Department of Military Affairs (DMA) are exempt from the career service system.⁸

Senior Management Service Class

The Florida Retirement System (FRS) covers any officer or employee who is elected, appointed, or employed by the state.⁹ The FRS is administered by DMS and participation is compulsory unless the law exempts the position held.¹⁰

The Senior Management Service Class (SMSC) is a separate class of membership within the FRS and is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible Senior Management Service designation.¹¹ Participation in the SMSC is mandated by statute.¹² The Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Military Personnel, Director of Administration, and additional directors in DMA are required to participate in the SMSC.¹³

Adjutant General

The Adjutant General is the Governor's senior military advisor and serves as the director of the Department of Military Affairs (DMA). The Adjutant General is also responsible for the training and operations of the Florida National Guard (FLNG), which is comprised of the Florida Army National Guard and the Florida Air National Guard.¹⁴ The Adjutant General has many duties including

¹ Art. III, s. 14, Fla. Const.

² S. 110.201(1)(a), F.S.

³ Ch. 110, Part II, F.S.

⁴ Ch. 110, Part III, F.S.

⁵ Ch. 110, Part IV, F.S.

⁶ Ch. 110, Part V, F.S.

⁷ S. 110.205, F.S.

⁸ S. 110.205(2)(p), F.S.

⁹ S. 121.011(2)(a), F.S.

¹⁰ S. 121.051, F.S.

¹¹ S. 121.055, F.S.

¹² S. 121.055(1)(a), F.S.

¹³ S. 121.055(1)(g), F.S.

¹⁴ Department of Military Affairs, <https://dma.myflorida.com/> (last visited Feb. 15, 2021).

supervising the receipt, preservation, repair, distribution, issue, and collection of all arms and military equipment in the state.¹⁵

In case of a vacancy, the Governor must, subject to Senate confirmation, appoint a federally recognized officer of the FLNG, who has served in the FLNG for the preceding five years.¹⁶

The Adjutant General must, subject to Senate confirmation, appoint an Assistant Adjutant General for the Army, a second Assistant Adjutant General for the Army, and an Assistant Adjutant General for Air. The candidates must have served for the preceding five years and attained the rank of colonel or higher at the time of appointment.¹⁷

Federal Uniform Code of Military Justice and Manual for Courts-Martial

The United States Constitution¹⁸ grants Congress the power to raise and support armies, provide and maintain a navy, and provide for organizing and disciplining their members. Pursuant to its constitutional authority, Congress enacted the federal Uniform Code of Military Justice¹⁹ (UCMJ), which contains the substantive and procedural laws governing the military justice system. Jurisdiction under the UCMJ does not depend on where the offense was committed but only on the status of the accused, including an active duty servicemember of the Armed Forces or a National Guard member when in federal service.²⁰ Presidents have implemented the UCMJ through the Manual for Courts-Martial (MCM).²¹ The MCM outlines procedural rules and punishments for violations of crimes and contains the Rules for Courts-Martial, the Military Rules of Evidence, and the punitive articles of the UCMJ.²²

There are three types of courts-martial: summary courts-martial, special courts-martial, and general courts-martial.

Summary courts-martial is designed to dispose of minor offenses. Only enlisted servicemembers may be tried by summary courts-martial. A single officer presides over the hearing.²³

Special courts-martial is an intermediate level composed of either a military judge alone, or at least three members and a judge. An enlisted servicemember 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 special courts-martial must be a qualified military judge.²⁴

General courts-martial is the military's highest-level trial court. This court tries servicemembers for the most serious crimes. The punishment authority of the general court-martial is limited by the maximum

¹⁵ S. 250.10(2)(a), F.S.

¹⁶ S. 250.10(1), F.S.

¹⁷ Ss. 250.10(4)(a), 250.10(4)(b), and 250.10(5), F.S.

¹⁸ U.S. Const. art. I, s. XIII

¹⁹ 10 U.S.C. s. 801 et seq.

²⁰ 10 U.S.C. s. 802. The Armed Forces includes the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard. See 10 U.S.C. §101(a).

²¹ Executive Order 12473 (July 13, 1984).

²² 10 U.S.C. s. 816 et seq. See also Congressional Research Service, *Defense Primer: The Uniform Code of Military Justice*, p. 1 (Nov. 16, 2016), file:///S:/Local%20Administration%20&%20Veterans%20Affairs%20Subcommittee/Staff/Staff%20-%20Jen%20Renner/2021%20session/HB%20873%20Military%20Affairs/Defense%20Primer%20on%20Uniform%20Code%20of%20Military%20Justice.pdf (last visited Feb. 15, 2021).

²³ 10 U.S.C. s. 816(d) See also Congressional Research Service, *Military Courts-Martial Under the Military Justice Act of 2016*, p. 6 (Aug. 28, 2020), <https://fas.org/sgp/crs/natsec/R46503.pdf> (last visited Feb. 16, 2021).

²⁴ 10 U.S.C. s. 816(c) See also Congressional Research Service, *Military Courts-Martial Under the Military Justice Act of 2016*, p. 6 (Aug. 28, 2020), <https://fas.org/sgp/crs/natsec/R46503.pdf> (last visited Feb. 16, 2021).

authorized punishment for each offense in the MCM. A judge presiding in general courts-martial must be a qualified military judge.²⁵

Florida Courts-Martial

The Florida Constitution specifies that the qualifications of members of the FLNG, and “the grounds and proceedings for their discipline and removal,” must conform to the appropriate regulations of the United States Army or Air Force.²⁶ All provisions of federal law that relate to the FLNG and that are not inconsistent with the state constitution are part of the military laws of Florida.²⁷ Members of the FLNG are subject to the UCMJ at all times during their enlistment or appointment, and ch. 250, F.S., applies to such members whether serving in the state or in another state.²⁸ Only the DMA, in an appropriately convened courts-martial action provided by law, may impose a sentence of imprisonment.²⁹ A courts-martial or court of inquiry may be held in a unit of the FLNG serving outside the state, and such court has the same jurisdiction and powers as if the courts-martial or court of inquiry was held in Florida.³⁰

The MCM is updated periodically. Current law references the 2012 edition.³¹

Courts-martial are authorized to try a servicemember of the FLNG for any crime or offense made punishable by the UCMJ. However, a commissioned officer, warrant officer, or cadet may not be tried by summary courts-martial.³²

Similar to federal law, Florida has general, special, and summary courts-martial.³³ General courts-martial and special courts-martial must be tried by a military judge³⁴ and a panel of officers as designated in National Guard regulations. However, a panel may include enlisted members, at the request of an enlisted defendant. The military judge must be qualified by attendance at appropriate Judge Advocate General schools and must be certified as qualified by the Adjutant General of Florida. In a general and special courts-martial, the defendant may waive trial by panel and request trial by military judge alone. The granting of the waiver is in the military judge’s discretion.³⁵

General courts-martial in the FLNG may be convened by order of the President of the United States, the Governor, or the Adjutant General as delegated by the Governor.³⁶ Punishment may include:³⁷

- A fine not exceeding \$500 and confinement for not more than 200 days;
- Forfeiture of all pay and allowances;
- Being reprimanded, dismissed, or dishonorably discharged from the service; and
- Reduce to the lowest enlisted grade or any intermediate grade for enlisted personnel.

Any two or more of the punishments may be combined.

Special courts-martial may be convened by a commanding officer of the FLNG, or a superior commander, when not in active federal service. Special courts-martial with bad conduct discharge authority have the same powers of punishment as general courts-martial, except that fines may not

²⁵ 10 U.S.C. s. 816(b) See also Congressional Research Service, *Military Courts-Martial Under the Military Justice Act of 2016*, p. 7 (Aug. 28, 2020), <https://fas.org/sgp/crs/natsec/R46503.pdf> (last visited Feb. 16, 2021).

²⁶ Art. X, s. 2(d), Fla. Const.

²⁷ S.250.03, F.S.; 32 U.S.C. is the primary federal law addressing the organization of the state National Guards.

²⁸ S. 250.351(1), F.S.

²⁹ Art. I, s. 18, Fla. Const.

³⁰ S. 250.351(2), F.S.

³¹ S. 250.35(1), F.S.

³² S. 250.35(2), F.S.

³³ S. 250.35(3), F.S.

³⁴ S. 250.01(11), F.S., defines a “military judge” as the presiding officer of a general or special court-martial. Except as otherwise expressly provided, in the context of a summary court-martial, “military judge” includes the summary court-martial officer.

³⁵ S. 250.35(3), F.S.

³⁶ S. 250.35(4), F.S.

³⁷ *Id.*

exceed \$300 and confinement may not exceed 100 days. Additionally, special courts-martial with bad conduct discharge authority may adjudicate a bad conduct discharge from the service, but cannot adjudicate a dismissal or dishonorable discharge from the service.³⁸ Commanding officers of a garrison, fort, post, camp, air base, auxiliary air base, or any other place where troops are on duty, may also convene special courts-martial for his or her command. A superior commander, when advisable, may convene these special courts-martial.³⁹

Summary courts-martial may be convened by a commanding officer of each battalion, higher headquarters, or similar type unit when not in active federal service.⁴⁰ Punishment may include:⁴¹

- A fine not in excess of \$200 per offense;
- Confinement of no more than 25 days;
- Forfeiture of pay and allowances; and
- Reduction by one grade.

Any two or more punishments may be combined; however, confinement may not be combined with a fine.⁴²

For more minor offenses, a commander may impose nonjudicial punishment pursuant to federal law.⁴³ This provision does not specify who may receive the nonjudicial punishment. The punishment cannot exceed:⁴⁴

- Oral or written reprimand;
- Extra duty for 14 days;
- Restriction for 14 days;
- Fines of \$200;
- Reduction by one grade of a servicemember whom the commander had the authority to promote; or
- Any combination of the above, except that a combination of extra duty for 14 days and restriction for 14 days cannot exceed a total of 14 days.

A finding of guilt and the sentence may be appealed in the following instances:

- To the convening authority for a summary court-martial or to the Adjutant General if the punishment is imprisonment;⁴⁵ or
- To the First District Court of Appeal if the punishment is imprisonment and the sentence was approved by the convening authority and the Adjutant General.⁴⁶

Additionally, a dismissal of a general or special courts-martial by a military judge that does not violate the defendant's constitutional rights may be appealed by the FLNG to the First District Court of Appeal.⁴⁷

When the FLNG is not on active federal service, a sentence of dismissal from the service or dishonorable discharge from the service, imposed by courts-martial, cannot be executed until approved by the Governor.⁴⁸

Mandates and Process for Military Courts

³⁸ S. 250.35(5), F.S.

³⁹ S. 250.35(6), F.S.

⁴⁰ S. 250.35(7), F.S.

⁴¹ *Id.*

⁴² *Id.*

⁴³ 10 U.S.C. §815

⁴⁴ S. 250.35(8), F.S.

⁴⁵ S. 250.35(9), F.S.

⁴⁶ S. 250.35(10)(a), F.S.

⁴⁷ S. 250.35(10)(b), F.S.

⁴⁸ S. 250.35(11), F.S.

Military courts may issue all process and mandates, including writs, warrants, and subpoenas, necessary to carry out the powers vested in the courts.⁴⁹ The mandates and process may be directed to a sheriff and must be in a form prescribed by the Adjutant General.⁵⁰

When not in active federal service, the Adjutant General, or his or her designee, or a military judge of the FLNG, may issue a pretrial confinement warrant to secure the presence of an accused at trial⁵¹ as well as subpoenas and subpoenas duces tecum to require witnesses to produce documents.⁵²

When a servicemember is sentenced to confinement by court-martial, the sheriff or jailer must provide the same care as provided to other prisoners properly committed for custody under the sentence of any civil court.⁵³

Armory Board

The Armory Board (Board) is responsible for the supervision and control of all FLNG armories,⁵⁴ facilities, and real property within the state used for military purposes.⁵⁵ Voting members of the Board include the Governor as Commander in Chief and chair of the Board, Adjutant General as vice chair, Assistant Adjutants General, and major command commanders reporting directly to the Adjutant General, in the active FLNG.⁵⁶ Any member of the Board may delegate his or her deputy commander to attend the meeting as an alternate member with voting privileges in the Board member's absence.⁵⁷

Board member terms are for the period during which the member possesses the qualifications for the membership.⁵⁸

Medical Officer Authorization

Current law provides that physicians holding an active license to practice medicine in any other state or Puerto Rico, while serving as medical officers in the FLNG pursuant to federal or state orders, be expressly authorized to practice medicine on military personnel or civilians during an emergency, declared disaster, or during federal military training.⁵⁹

Effect of the Bill

Career Service

The bill removes the requirement for military police chiefs, military police officers, firefighter trainers, firefighter rescuers, and electronic security system technicians in the DMA from having the same salary and benefits as career service employees.

Senior Management Service Class

The Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Military Personnel, Director of Administration, and additional directors in

⁴⁹ S. 250.36(1), F.S.

⁵⁰ *Id.*

⁵¹ S. 250.36(2), F.S.

⁵² S. 250.36(3), F.S.

⁵³ S. 250.36(4), F.S.

⁵⁴ S. 250.01(5), F.S., defines an "armory" as a building or group of buildings, used primarily for housing and training troops or for storing military property, supplies, or records.

⁵⁵ S. 250.40(1), F.S.

⁵⁶ S. 250.40(2), F.S.

⁵⁷ *Id.*

⁵⁸ S. 250.40(3), F.S.

⁵⁹ S. 250.375, F.S.

DMA are required to participate in the Senior Management Service Class within the Florida Retirement System.⁶⁰

The bill revises certain military positions required to participate in the Senior Management Service Class. The bill adds the DMA Inspector General and Executive Officer to the class position and renames the Director of Military Personnel to Director of Human Resources and the Director of Administration to the Director of Legislative Affairs.

Adjutant General

The bill specifies that the Adjutant General must serve as the Commanding General of the state's organized militia. The bill revises the requirements for appointment as Adjutant General, Assistant Adjutant General for the Army, second Assistant Adjutant General for the Army, and Assistant Adjutant General for Air to provide that:

- The Adjutant General must have served in the FLNG for at least five of the last 10 years, rather than the preceding five years in current law; and
- The Assistant Adjutant General for the Army, second Assistant Adjutant General for the Army, and Assistant Adjutant General for Air must have served for at least three years in the FLNG, rather than the preceding five years in current law.

Florida Courts-Martial

The bill updates the outdated version of the MCM to the 2019 edition and establishes the Florida Code of Military Justice (FCMJ).⁶¹ The bill authorizes courts-martial to try a member of the FLNG for offenses punishable by the FCMJ. The bill specifies that a courts-martial is an administrative proceeding in the executive branch and is not a court under Art. V of the State Constitution.

The bill revises the procedures for convening general and special courts-martial by providing they must be tried pursuant to the MCM, except as otherwise provided by regulations adopted by the FLNG. The bill clarifies that a military judge in summary courts-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Convening Authority or a higher authority. The bill also changes the term "defendant" to "accused" to conform to the UCMJ.

Current law allows the Governor to delegate to the Adjutant General the authority to convene general courts-martial. The bill authorizes the President, the Governor, or the Adjutant General to convene general courts-martial and prohibits the delegation of that duty. The bill also revises provisions relating to the imposition of nonjudicial punishment by providing that courts, upon a finding of guilt, may adjudge no punishment or adjudge one or more of the following punishments:

- Confinement in an appropriate penal institution for up to 367 days;
- Dismissal or discharge from the FLNG with the characterization of service deemed appropriate by the military judge or panel members, including a dishonorable or bad conduct discharge;
- A fine of up to \$500 per specification;
- Forfeiture of all or just a portion of pay and allowances;
- Reduction to the lowest enlisted pay grade or any intermediate pay grade for enlisted personnel (current law does not specify pay grade); or
- A written reprimand, which must be included in the accused's official military personnel file.

For special courts-martial authorized to adjudicate a bad conduct discharge in the FLNG, the court may be convened by a colonel or a superior commander authorized to convene general courts-martial. The bill prohibits the delegation of this duty. Punishment is the same as general courts-martial except that fines may not exceed \$300 and confinement may not exceed 100 days.

⁶⁰ S. 121.055(1)(g), F.S.

⁶¹ The FCMJ will be comprised of the MCM and ch. 250, F.S.

The bill provides that special courts-martial not authorized to adjudicate a bad conduct discharge in the FLNG may be convened by a lieutenant colonel or by superior commander authorized to adjudicate a bad conduct discharge. The bill prohibits the delegation of this duty. Punishment is the same as special courts-martial authorized to adjudicate a bad conduct discharge.

The bill authorizes a lieutenant colonel or a superior commander to convene summary courts-martial in the FLNG. The bill prohibits the delegation of the duty. Punishment may include confinement for up to 25 days, a fine up to \$200, forfeiture of pay for up to 60 days, reduction by no more than two pay grades, or a reprimand.

The following command officers are authorized to impose a nonjudicial punishment under regulations adopted by the FLNG:

- A unit commander or superior commander may punish enlisted personnel;
- Field grade commanders or general officers may punish company grade and warrant officers; and
- General officers may punish field grade officers.

Nonjudicial punishment includes:

- Oral or written reprimand;
- Extra duty of up to 14 days of state active duty, annual training, or similar duty, or up to 14 unit training assemblies;
- Restriction to the armory, training site, or other specified limits, with or without suspension from duty; up to 14 days of state active duty, annual training, or similar duty; or up to 14 unit training assemblies;
- A fine of up to \$200 per specification;
- Reduction by one pay grade for enlisted personnel in pay grades above E-4;
- Reduction by two pay grades for enlisted personnel in pay grades E-4 and below;
- Forfeiture of base pay for up to 14 days of state active duty, annual training, or similar duty, or up to 14 unit training assemblies; or
- Any combination of the above, except that a combination of extra duty or restrictions may not exceed 14 days or 14 unit training assemblies.

The bill provides that a commander, or a successor in command over the person punished, at any time, may suspend any part or amount of the punishment subject to the following conditions:

- Any unexecuted punishment may be suspended at any time;
- The reduction in punishment or fine, or forfeiture of pay, may be suspended only within eight months after the date of execution; and
- The suspension may not be for longer than 12 months from the date of suspension, and the expiration of the current enlistment or term of service of the servicemember involved automatically terminates the period of suspension.

The bill specifies that the regulations adopted by the FLNG may provide for plenary and summarized nonjudicial punishment.

The bill specifies which commanders have the authority to reduce certain enlisted servicemember pay grades.

The bill provides that in addition to a dismissal of a general or special courts-martial case, a specific charge or specification may be appealed by the FLNG to the First District Court of Appeal. Additionally, a finding of guilt and the sentence of a nonjudicial punishment may be appealed to the next higher commander in the chain; however, the appeal will be the only and final appeal.

Mandates and Process for Military Courts

The bill authorizes any military judge, not just those of the FLNG, to issue pretrial confinement warrants, subpoenas, and subpoenas duces tecum. The bill also authorizes the Adjutant General or a military judge to issue and execute search authorizations if the FLNG or DMA has control over the location where the property or person to be searched is situated or, if the location is not under military control, when the commander has control over persons subject to military law or law of war.

Armory Board

The bill revises the Board membership to specify that the Assistant Adjutants General must be from the Florida Army National Guard and that major command commanders are subordinate commanders. A Board member may request excusal from a Board meeting by the Adjutant General or his or her designee. The excused member may delegate the authority to a deputy commander or executive officer to attend the meeting. Board member terms are for the period during which the member possesses not only the qualifications but also the title for the membership.

Medical Officer Authorization

The bill provides that in addition to any state or Puerto Rico, a physician who holds a license to practice medicine in all United States territories and the District of Columbia while serving as a medical officer with or in support of the FLNG, may practice medicine on military personnel or civilians during an emergency, declared disaster, or federal military training.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.