

CHAPTER 2023-167

Committee Substitute for Committee Substitute for House Bill No. 1285

An act relating to the Florida State Guard; amending s. 120.80, F.S.; providing that certain functions of the Florida State Guard are not rules as defined by ch. 120, F.S.; amending s. 250.44, F.S.; prohibiting certain actions regarding clothing, arms, military outfits, and property of the Florida State Guard; requiring certain information to be reported to the director of the Division of the State Guard within the Department of Military Affairs; providing a penalty; amending s. 251.001, F.S.; providing a short title; providing the scope of chapter 251, F.S.; revising provisions relating to the creation and authorization of the Florida State Guard; providing the authorized maximum number of volunteer personnel of the Florida State Guard; creating the Division of the State Guard within the Department of Military Affairs; providing that the head of the division is a director appointed by and serving at the pleasure of the Governor; providing eligibility requirements for the director; providing that the division is a separate budget entity; requiring the department to provide administrative support to the division; providing division responsibilities; authorizing the director to establish a services structure for certain purposes; revising and providing definitions; removing provisions establishing authority of the department and the Adjutant General with respect to the Florida State Guard; providing additional duties of the division and director; revising qualifications for applicants to the Florida State Guard; requiring the director to organize and establish a specialized unit within the Florida State Guard; providing criteria and authority for members of the specialized unit; revising the criteria for activation of the Florida State Guard; requiring the division to reimburse members for per diem and travel expenses; authorizing other compensation subject to appropriation; requiring the director to adopt rules; conforming provisions to changes made by the act; repealing ss. 251.01, 251.02, 251.03, 251.04, 251.05, 251.06, 251.07, 251.08, 251.09, 251.10, 251.11, 251.12, 251.13, 251.14, 251.15, 251.16, and 251.17, F.S., relating to the Florida State Defense Force; amending s. 790.25, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (20) is added to section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(20) FLORIDA STATE GUARD.—Notwithstanding s. 120.52(16), the enlistment, organization, administration, equipment, maintenance, training, and discipline of the Florida State Guard are not rules as defined by this chapter.

Section 2. Subsection (3) of section 250.44, Florida Statutes, is amended to read:

250.44 Military equipment regulations; penalties.—

(3) The clothing, arms, military outfits, and property furnished by or through the state to any member of the militia or the Florida State Guard, may not be sold, bartered, loaned, exchanged, pledged, or given away. A person who is not a member of the military forces of this state or the United States, or an authorized agent of this state or the United States, who possesses clothing, arms, military outfits, or property that is unlawfully disposed of has no right, title, or interest therein, and the clothing, arms, military outfits, or property shall be seized and taken wherever found by any civil or military officer of the state and delivered to any commanding officer or other authorized officer, who must:

(a) If such clothing, arms, military outfits, or property were issued by or are property of the militia, make an immediate report to the Adjutant General.

(b) If such clothing, arms, military outfits, or property were issued by or are property of the Florida State Guard, make an immediate report to the director of the Division of the State Guard within the Department of Military Affairs.

The possession of any such clothing, arms, military outfits, or property by any person not a member of the military forces of this state, or any other state, or of the United States, is presumptive evidence of such sale, barter, loan, exchange, pledge, or gift and is punishable as provided in chapter 812.

Section 3. Section 251.001, Florida Statutes, is amended to read:

251.001 Florida State Guard Act.—

(1) SHORT TITLE AND SCOPE.—This chapter may be cited as the “Florida State Guard Act.” This chapter shall be supplemental to provisions relating to the organized militia in chapter 250 other than the Florida National Guard.

(2)(4) CREATION AND AUTHORIZATION.—The Florida State Guard is created to protect and defend the people of Florida from all threats to public safety and to augment all existing state and local agencies. The Florida State Guard is created as authorized under federal law for use exclusively within the state, activated only by the Governor under the specific limitations created by this section, and is at all times under the final command and control of the Governor as commander in chief of all military and guard forces of the state. The Florida State Guard is created and authorized as a component of the organized guard separate and apart from the Florida National Guard and shall be used exclusively within the state, or to provide support to other states, for the purposes stated in this section and may not be called, ordered, or drafted into the armed forces of the United

States. The authorized maximum number of volunteer personnel that may be commissioned, enrolled, or employed as members of the Florida State Guard is 1,500 400.

(3) DIVISION OF THE STATE GUARD.—The Division of the State Guard is created within the Department of Military Affairs and shall be headed by a director who shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director must have served at least 5 years as a servicemember of the United States Armed Forces, United States Reserve Forces, or Florida National Guard. The division shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Military Affairs shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Military Affairs in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The division is responsible for the organization, recruitment, training, equipping, management, and functions of the Florida State Guard. The director may establish a command, operational, and administrative services structure to assist, manage, and support the Florida State Guard in operating the program and delivering services.

(4)(2) DEFINITIONS.—As used in this section:

(a) The terms “active duty,” “armed forces,” and “enlisted personnel,” “National Guard,” and “rank” have the same meanings as in s. 250.01.

(b) The term “department” means the Department of Military Affairs.

(c) The term “director” means the director of the Division of the State Guard.

(d) The term “division” means the Division of the State Guard within the Department of Military Affairs.

~~(e) The term “officer” means an officer commissioned by the Governor.~~

~~(d) The term “organized guard” means an organized military force that is authorized by law.~~

~~(e) The term “warrant officer” means a technical specialist commissioned as a warrant officer by the Governor.~~

~~(3) ADJUTANT GENERAL.—The Adjutant General is the commanding general of the Florida State Guard subject at all times to the Governor as commander in chief. The Adjutant General is responsible for organizing, recruiting, training, equipping, managing, and disciplining the Florida State Guard, including selecting units for activation by the Governor, selecting candidates for commissioning by the Governor, and approving applicants as enlisted personnel.~~

(5)(4) PERSONNEL.—

(a) Subject to approval by the Governor, the ~~director Adjutant General~~ shall determine the number of volunteer officers, warrant officers, and enlisted personnel necessary to meet the staffing and operational requirements of the Florida State Guard, and determine the volunteer structure specific ranks and number of volunteer personnel within each component unit of such structure rank.

(b) The Governor shall commission all volunteer personnel officers and warrant officers of the Florida State Guard.

(c) Each applicant for the Florida State Guard shall meet the following qualifications:

1. The applicant must ~~shall~~ be a citizen of the United States and a resident of the state.

2. The applicant may not ~~cannot~~ have a felony conviction. Each applicant shall submit a complete set of fingerprints and all information required by state and federal law to process fingerprints for purposes of conducting a criminal background check.

3. The applicant may not be an active duty servicemember, a member of the armed forces reserves, or a member of the Florida National Guard.

4. If the applicant is a former member of the armed forces or of any military or naval organization of this state or another state, the applicant must have been separated under terms no less than a general discharge under honorable conditions.

(d) The ~~director Adjutant General~~ shall establish minimum standards for the age, physical and health condition, and physical fitness of applicants based upon the component unit of the Florida State Guard structure in which the applicant is being considered for placement. However, an applicant being considered for placement in a component unit that serves in an active duty capacity within the Florida State Guard must be subject to standards that ~~which~~ are no less than the standards required for recruitment, enrollment, and retention in the Florida National Guard.

(e) The ~~director Adjutant General~~ shall develop and implement a code of regulations for the administration and discipline of members of the Florida State Guard that shall provide no less protection and impose no more severe sanctions than as provided in s. 250.35, except that the ~~director Adjutant General~~ shall not ~~have no~~ authority to impose any term of incarceration.

(6) SPECIALIZED UNIT.—The director shall organize a specialized unit within the Florida State Guard. All members of the specialized unit are vested with the authority to bear arms, detect, and apprehend while activated. In addition to the requirements set forth in paragraph (5)(c), only those members of the specialized unit who meet the requirements in s.

943.13 and are certified as law enforcement officers as defined in s. 943.10(1) are authorized to have the same law enforcement authority as the law enforcement agency in conjunction with which they are working when activated.

~~(7)(5) TRAINING AND EQUIPMENT.—The director Adjutant General shall develop and implement a program for training for members of the Florida State Guard.~~

(a) All training programs for the Florida State Guard shall be at least equivalent to the training requirements for members of the Florida National Guard under applicable federal law at the time the training is conducted. As required by the director Adjutant General, all members of the Florida State Guard shall complete initial training within 180 days after their appointment or enrollment and periodic ongoing training.

(b) The director Adjutant General may provide for staff to prepare and conduct training required in this section. The staff may include members of the Florida National Guard whose duty assignments may include conducting training under this section but who may not be considered members of the Florida State Guard.

(c) The division Adjutant General shall provide all equipment necessary for the training and service of members of the Florida State Guard and shall arrange and contract for the use of sufficient and adequate facilities for training, organizing, and all other purposes of the Florida State Guard. Section 250.44 applies The provisions of s. 250.44 apply to the allocation, delegation, use of, and accounting for all equipment furnished under this section.

~~(d) The Adjutant General may make available for training and other purposes under this section the facilities controlled and operated by the department.~~

(8)(6) ACTIVATION AND DEACTIVATION OF THE FLORIDA STATE GUARD.—

(a) The Florida State Guard, by component units or in total, may be activated by order of the Governor:

1. During any period when any part of the Florida National Guard is in active federal service and the Governor has declared a state of emergency, ~~The Florida State Guard may be activated as part of an emergency order issued by the Governor or in a separate executive order issued during a declared state of emergency.~~

~~2.(b) The Florida State Guard may be activated only~~ To preserve the public peace, execute the laws of the state, enhance domestic security, respond to terrorist threats or attacks, protect and defend the people of Florida from threats to public safety, respond to an emergency as defined in

s. 252.34 or imminent danger thereof, or respond to any need for emergency aid to civil authorities as specified in s. 252.38;

3. To augment any existing state or local agency; or

4. To provide support to other states under the Emergency Management Assistance Compact as provided for in part III of chapter 252.

(b)(e) The Florida State Guard shall be deactivated by the expiration of the order of activation or by a separate order by the Governor deactivating the Florida State Guard.

~~(9)(7) REIMBURSEMENT AND COMPENSATION.—~~

(a) The division shall ~~department may~~ reimburse members of the Florida State Guard for per diem and travel expenses incurred to attend required training or in the course of active service as provided in s. 112.061.

(b) Members of the Florida State Guard may be compensated for time spent training or in the course of active service at rates established by the director, subject to appropriation ~~Adjutant General.~~

(c) ~~A~~ No member of the Florida State Guard may not make any purchase or enter into any contract or agreement for purchases or services as a charge against the state without the authority of the director ~~Adjutant General.~~

~~(10)(8) EMPLOYMENT PROTECTION, SUSPENSION OF PROCEEDINGS, LIABILITY, AND WORKERS' COMPENSATION.—~~

(a) The protections for members of the Florida National Guard provided in ss. 250.48-250.483 and 250.5201-250.5205 ~~shall~~ apply to each member of the Florida State Guard engaged in required training or active service.

(b) Members of the Florida State Guard ordered into active service or engaged in required training are not liable for any lawful act done in performance of their duties under this section while acting in good faith within the scope of those duties.

(c) While activated or in training, members of the Florida State Guard are considered volunteers for the state, as defined in s. 440.02(15)(d)6., and are entitled to workers' compensation protections pursuant to chapter 440.

~~(11)(9) RULEMAKING AUTHORITY.—~~The director ~~Adjutant General,~~ as head of the division ~~department,~~ shall adopt rules to implement the ~~provisions of~~ this section.

~~(10) APPROPRIATION.—~~This section is subject to an appropriation in the ~~General Appropriations Act.~~

~~(11) EXPIRATION.—~~This section expires July 1, 2023.

Section 4. Sections 251.01, 251.02, 251.03, 251.04, 251.05, 251.06, 251.07, 251.08, 251.09, 251.10, 251.11, 251.12, 251.13, 251.14, 251.15, 251.16, and 251.17, Florida Statutes, are repealed.

Section 5. Paragraph (a) of subsection (3) of section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.—

(3) **LAWFUL USES.**—The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Guard ~~Defense Force~~, Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;

Section 6. This act shall take effect July 1, 2023.

Approved by the Governor May 26, 2023.

Filed in Office Secretary of State May 26, 2023.