

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 770

INTRODUCER: Senator Burgess

SUBJECT: Military Affairs

DATE: March 23, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 770 revises several provisions relating ch. 250, F.S., 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 to provide that the Adjutant General must have served in the Florida National Guard (FLNG) for at least five years, rather than the preceding five years in current law;
- Revising the requirements for the Assistant Adjutant General for the Army, second Assistant Adjutant General for the Army, and Assistant Adjutant General for Air to provide that each person must have served for at least three years, rather than the preceding five years in current law;
- Updating the outdated version of the Manual for Courts-Martial (MCM) to the 2019 edition and establishes the Florida Code of Military Justice (FCMJ);
- Specifying that a court-martial in this state is an administrative procedure of the executive branch and not a court under the control of the judicial branch;
- Revising the procedures for convening general and special courts-martial to provide they must be tried pursuant to the MCM, except as otherwise provided by FLNG regulations;
- Revising procedures and personnel qualifications for convening and 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;

- Providing that the Adjutant General or a military judge may issue and execute search authorizations under certain conditions;
- Revising the provisions regarding medical officer authorization;
- Revising the membership and excusal requirements of the Armory Board; and
- Providing that members of the FLNG are subject to the FCMJ whether in civilian or military status.

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

The bill takes effect July 1, 2021.

## II. Present Situation:

### Career Service

The Florida Constitution requires the Legislature to create a civil service system for state employees.<sup>1</sup> 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.<sup>2</sup> All state employees generally fall into one of four categories:

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

All non-exempt employees belong to the career service system.<sup>7</sup> 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.<sup>8</sup>

### Senior Management Service Class

Any officer or employee who is elected, appointed, or employed by the state is covered by the Florida Retirement System (FRS).<sup>9</sup> The FRS is administered by DMS and participation is compulsory unless the position held is exempted by law.<sup>10</sup>

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

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<sup>1</sup> Article III, s. 14, Fla. Const.

<sup>2</sup> Section 110.201(1)(a), F.S.

<sup>3</sup> Ch. 110, Part II, F.S.

<sup>4</sup> Ch. 110, Part III, F.S.

<sup>5</sup> Ch. 110, Part IV, F.S.

<sup>6</sup> Ch. 110, Part V, F.S.

<sup>7</sup> Section 110.205, F.S.

<sup>8</sup> Section 110.205(2)(p), F.S.

<sup>9</sup> Section 121.011(2)(a), F.S.

<sup>10</sup> Section 121.051, F.S.

designation.<sup>11</sup> Participation in the SMSC is mandated by statute.<sup>12</sup> 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.<sup>13</sup>

### **The Florida National Guard**

The Florida National Guard (FLNG) is the organized militia of the state.<sup>14</sup> Its mission includes maintaining readiness to support national and state security efforts, as well as leading or assisting in humanitarian and logistical operations. These operations include hurricane preparation and recovery, as well as the pandemic response. The Governor is the commander in chief of the FLNG and the Adjutant General is its chief of staff.<sup>15</sup> The FLNG has an Army component and an Air component, each of which has an Assistant Adjutant General who is also its Commander.<sup>16</sup>

A servicemember of the FLNG who violates the Uniform Code of Military Justice (UCMJ) is subject to discipline in a military court called a court-martial.<sup>17</sup> There are three main types of court-martial: general, special, and summary.<sup>18</sup> The first two hear the more serious cases, and a servicemember who is found guilty and is sentenced in a general or special court-martial may appeal his or her case to the First District Court of Appeal.<sup>19</sup>

### **Adjutant General**

The Adjutant General is the head of the Department of Military Affairs (DMA)<sup>20</sup> and the chief of staff of the Florida National Guard. The Adjutant General is appointed by the Governor, subject to Senate confirmation.<sup>21</sup> The Adjutant General may, upon delegation of authority by the Governor, convene a general court-martial.<sup>22</sup>

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<sup>11</sup> Section 121.055, F.S.

<sup>12</sup> Section 121.055(1)(a), F.S.

<sup>13</sup> Section 121.055(1)(g), F.S.

<sup>14</sup> Section 250.02(2), F.S. The nonorganized militia is composed of all ablebodied inhabitants of the state are or have declared their intention to become citizens of the United States. FLA. CONST. art. X, sec. 2(a).

<sup>15</sup> Section 250.06(1), F.S.

<sup>16</sup> Florida National Guard, *Assistant Adjutant General—Army and Commander*, <https://fl.ng.mil/leadership/Pages/Assistant-Adjutant-General-Army.aspx> (last visited March 3, 2021); Florida National Guard, *Assistant Adjutant General—Air and Commander*, <https://fl.ng.mil/leadership/Pages/Assistant-Adjutant-General-Air.aspx> (last visited March 3, 2021).

<sup>17</sup> Section 250.35, F.S.

<sup>18</sup> Section 250.35, F.S.

<sup>19</sup> Section 250.35(10)(b), F.S.

<sup>20</sup> Section 250.05(3), F.S. The Department of Military Affairs provides management oversight and administrative support to the FLNG. Florida National Guard, *Florida Department of Military Affairs*, <https://fl.ng.mil/about/Pages/Florida-Department-of-Military-Affairs.aspx>, (last visited Feb. 18, 2021).

<sup>21</sup> Section 250.10(1), F.S.

<sup>22</sup> Section 250.06(6), F.S.

The Florida Statutes provide the minimum qualifications for a candidate to be Adjutant General.<sup>23</sup> He or she must be a federally recognized officer of the Florida National Guard who has served for the preceding 5 years.<sup>24</sup>

### **Federal Uniform Code of Military Justice & Manual for Courts-Martial**

The United States Constitution<sup>25</sup> 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 Justice<sup>26</sup> (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.<sup>27</sup> Presidents have implemented the UCMJ through the Manual for Courts-Martial (MCM).<sup>28</sup> 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.<sup>29</sup>

There are three types of courts-martial: summary courts-martial, special courts-martial, and general courts-martial. A 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.<sup>30</sup>

A 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 a special courts-martial must be a qualified military judge.<sup>31</sup>

A 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-

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<sup>23</sup> See s. 250.10(1), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Const. art. I, s. XIII

<sup>26</sup> 10 U.S.C. s. 801 et seq.

<sup>27</sup> 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).

<sup>28</sup> Executive Order 12473 (July 13, 1984).

<sup>29</sup> 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).

<sup>30</sup> 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)

<sup>31</sup> 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).

martial is limited by the maximum authorized punishment for each offense in the MCM. A judge presiding in a general courts-martial must be a qualified military judge.<sup>32</sup>

### Florida Courts-Martial

Article I, s. 18, of the Florida Constitution specifies that the qualifications of members of the Florida National Guard (FLNG), and “the grounds and proceedings for their discipline and removal.” All provisions of federal law which relate to the FLNG and which are not inconsistent with the state constitution, are part of the military laws of Florida.<sup>33</sup> 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-state or in another state.<sup>34</sup> Only the DMA, in an appropriately convened courts-martial action provided by law, may impose a sentence of imprisonment.<sup>35</sup> 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 were held in Florida.<sup>36</sup> However, a service member may not be tried for offenses committed while in civilian status.<sup>37</sup>

The MCM is updated periodically. Current law, s. 250.35, F.S., references the 2012 edition.

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.<sup>38</sup>

Similar to federal law, Florida has general, special, and summary, courts-martial.<sup>39</sup> General courts-martial and special courts-martial must be tried by a military judge<sup>40</sup> and a panel of officers as designated in regulations of the FLNG. However, a panel may include enlisted members, at the request of an enlisted defendant.<sup>41</sup> The military judge must be qualified by attendance at appropriate Judge Advocate General (JAG) schools and must be certified as qualified by the Adjutant General of Florida.<sup>42</sup> 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.<sup>43</sup>

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<sup>32</sup> 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).

<sup>33</sup> Section 250.03, F.S.; 32 U.S.C is the primary federal law addressing the organization of the state National Guards.

<sup>34</sup> Section 250.351(2), F.S.

<sup>35</sup> Art. I, s. 18, Fla. Const.

<sup>36</sup> Section 250.351(2), F.S.

<sup>37</sup> *See Id.*; *see generally*, *U.S. v. Wolpert* 75 M.J. 777, 781 (U.S. Army Ct. of Mil. App. 2016).

<sup>38</sup> Section 250.35(2), F.S.

<sup>39</sup> Section 250.35(3), F.S.

<sup>40</sup> Section 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.

<sup>41</sup> Section 250.35(3), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

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.<sup>44</sup> Punishment may include:

- A fine of \$500 or less.
- Confinement of 200 days or less.
- Forfeiture of all pay and allowances.
- Reprimand, dismissal, or dishonorable discharge from the service.
- Reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel.<sup>45</sup>

Any two or more of the punishments may be combined.

A 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 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.<sup>46</sup> 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. These special courts-martial may be convened by a superior commander when advisable.<sup>47</sup>

A summary court-martial may be convened by a he commanding officer of each battalion, higher headquarters, or similar type unit when not in active federal service.<sup>48</sup> Punishment may include:

- A fine of \$200 or less per offense.
- Confinement of 25 days or less.
- Forfeiture of pay and allowances.
- Reduction by one grade.<sup>49</sup>

Any two or more punishments may be combined; however, confinement may not be combined with a fine.<sup>50</sup>

### *Appeals*

Article V, s. 1, of the Florida Constitution provides that the “legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District.”

Accordingly, s. 250.35(1)(a), F.S., provides that a servicemember who is found guilty and is sentenced to imprisonment under a general or special court-martial may appeal the decision to the First District Court of Appeal. Any “dismissal of a general or special court-martial by the

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<sup>44</sup> Section 250.35(3), F.S.

<sup>45</sup> Section 250.35(4), F.S.

<sup>46</sup> Section 250.35(5), F.S.

<sup>47</sup> Section 250.35(5), F.S.

<sup>48</sup> Section 250.35(7), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

military judge which does not violate the defendant's constitutional rights may be appealed by the Florida National Guard to the First District Court of Appeal."<sup>51</sup>

In a summary court-martial, a servicemember may appeal a finding of guilt or sentence to the convening authority. And a servicemember who is sentenced to imprisonment may appeal the finding of guilt or the sentence to the Adjutant General.<sup>52</sup>

### ***Nonjudicial Punishment***

As an alternative to a court-martial, a commander may impose nonjudicial punishment. This punishment may not exceed:

- Oral or written reprimand.
- Extra duty for 14 days.
- Restriction for 14 days.
- Fines of \$200.
- Reduction by one grade of a member whom the commander had the authority to promote.<sup>53</sup>

These punishments may be combined, however a combination of extra duty and restriction may not exceed 14 days.<sup>54</sup>

### **Mandates & Process for Military Courts - Searches**

Military courts may issue all process and mandates, including writs, warrants, and subpoenas, necessary to carry out the powers vested in the courts.<sup>55</sup> The mandates and process may be directed to a sheriff and must be in a form prescribed by the Adjutant General.<sup>56</sup>

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 trial<sup>57</sup> as well as subpoenas and subpoenas duces tecum to require witnesses to produce documents.<sup>58</sup>

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.<sup>59</sup>

Neither the Florida Statutes nor the UCMJ specify who may authorize a search or which areas may be searched. However, the Military Rules of Evidence authorize a commander or military judge to issue a search authorization, which is the military law equivalent of a search warrant.<sup>60</sup>

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<sup>51</sup> Section 250.35(1)(b), F.S.

<sup>52</sup> Section 250.35(9), F.S.

<sup>53</sup> Section 250.35(8), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> Section 250.36, F.S.

<sup>56</sup> *Id.*

<sup>57</sup> Section 250.36(2), F.S.

<sup>58</sup> Section 250.36(3), F.S.

<sup>59</sup> Section 250.36(4), F.S.

<sup>60</sup> Mil. R. Evid. 316.

Under the Fourth Amendment to the Constitution, a search generally must be conducted pursuant to a search warrant that is supported by probable cause.<sup>61</sup>

### **Medical Officer Authorization**

Section 250.375, F.S., 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, are expressly authorized to practice medicine on military personnel or civilians during an emergency, declared disaster, or during federal military training.

### **Armory Board**

Section 250.01(5), F.S., defines the term “armory” as a building or group of buildings, used primarily for housing and training troops or for storing military property, supplies, or records. Section 255.40(1), F.S., creates the Armory Board which is charged with the supervision and control of all FLNG armories, facilities, and real property within the state used for military purposes. Voting members of the Armory Board include the Governor as Commander in Chief and chair of the Armory Board, Adjutant General as vice chair, Assistant Adjutants General, and major command commanders reporting directly to the Adjutant General, in the active FLNG.<sup>62</sup> Any member of the Armory Board may delegate his or her deputy commander to attend the meeting as an alternate member with voting privileges in the Armory Board member’s absence.<sup>63</sup> Board member terms are for the period during which the member possesses the qualifications for the membership.<sup>64</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 110.205, F.S., to remove obsolete job titles. Specifically, this section removes the requirements 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 services employees.

**Section 2** amends s. 121.055, F.S., to revise certain military positions required to participate in the SMSC. This section adds the DMA Inspector General and Executive Officer to the class positions and renames the Director of Military Personnel to Director of Human Resources and the Director of Administration to the Director of Legislative Affairs.

**Section 3** amends s. 250.10, F.S., to revise the requirements for appointment as Adjutant General to require the Adjutant General to have served in the FLNG for at least 5 years, rather than the “preceding five years” as provided under current law. This section specifies that the Adjunct General must serve as the commanding general of Florida’s organized militia. This section also provides that the Assistant Adjutant General for the Army and the Second Assistant Adjutant General for the Army must have served for at least three years in the FLNG, rather than the “preceding five year” in current law.

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<sup>61</sup> See *California v. Carney*, 471 U.S. 386, 390-91 (1985).

<sup>62</sup> Section 250.40(2)(a), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> Section 250.40(3), F.S.



**Section 4** amends 250.35, F.S., to update the outdated version of the MCM to the 2019 edition and provides that the Uniform Code of Military Justice (UCMJ), together with chapter 250, F.S., is to be referred to as the Florida Code of Military Justice (FCMJ). This section specifies that a court-martial in this state is an administrative procedure of the executive branch and not a court under the control of the judicial branch. This section revises the procedures for convening general and special courts-martial to provide servicemembers must be tried pursuant to the MCM, except as otherwise provided by FLNG regulations.

Current law provides that a panel of officers may include enlisted members, at the request of an enlisted defendant. The bill strikes the word defendant (this conforms to the UCMJ's replacement of the term defendant with accused) and provides that such a panel may include enlisted members, at the request of an enlisted person who is accused of a crime or an offense. This section clarifies the qualifications of a military judge in a general or special court-martial and requires that a military judge in a summary court-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Convening Authority or any higher authority.

Current law allows for the Governor to delegate to convene a general courts-martial to the Adjutant General. The bill authorizes the President, the Governor, or the Adjutant General to convene a 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 the 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).
- A written reprimand, which must be included in the accused's official military personnel file.

This section provides that special courts-martial authorized to adjudicate a bad conduct discharge in the FLNG, may be convened by order of commanding officers of the FLNG who are in the accused's chain of command and hold the rank of colonel, or any person who is authorized to convene a general court-martial. The bill prohibits the delegation of this duty. This section provides that a court-martial may, upon the finding of guilt, adjudge no punishment or adjudge one or more of the following punishments:

- Confinement in an appropriate penal institution for a period not to exceed 100 days.
- Discharge from the Florida National Guard with a bad conduct discharge.
- A fine not to exceed \$400 per violation.
- Forfeiture of all pay and allowances, or a portion thereof, for a period not to exceed 1 year.
- Reduction to the lowest or any intermediate pay grade of enlisted persons.
- A written reprimand filed in the official military personnel file of the person found guilty.

The bill provides that special courts-martial not authorized to adjudicate a bad conduct discharge in the FLNG may be convened by order of the commanding officers of the FLNG who are in the accused's chain of command and hold the rank of a lieutenant colonel, or any person who is authorized to convene a general court-martial or special court-martial that is 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 *except* that (i) no punishment by discharge is provided; (ii) the fine may not exceed \$300; and (iii) forfeiture of pay may not exceed 60 days.

This section specifies that summary court-martial in the FLNG may be convened by order of commanding officers of the FLNG who are in the accused's chain of command and hold the rank of lieutenant colonel, or any person authorized to convene a general court-martial or special court-martial. The bill prohibits the delegation of this duty. Punishment includes 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.

This section clarifies that commanding officers may impose nonjudicial punishment in accordance with FLNG regulations. It also provides greater specificity as to which commanders are authorized to impose a nonjudicial punishment as follows:

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

The bill revises the nonjudicial punishment provisions to:

- Clarify extra duty may not exceed a period of 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.
- Provide that restriction to the armory, training site, or any other specified limitations, with or without suspension from duty, may not exceed a period of 14 days of active duty, whether state active duty, annual training or any similar duty, or 14 unit training assemblies.
- Provide a fine cap of \$200 per violation.
- Provide for reduction by no more than two pay grades for enlisted personnel in the E-4 pay grade or below and reduction of one grade of enlisted personnel in the E-5 pay grade or above.
- Forfeiture of base pay for a period not to exceed 14 days of active duty, whether state active duty, annual training, or any similar duty, or 14 unit training assemblies.

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

- Any unexecuted punishment may be suspended at any time;
- Any executed punishment of any grade reduction, fine, or forfeiture of pay, may only be suspended within eight months after the date of execution; and
- The suspension cannot be longer than 12 months from the date of suspension, but 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 provides 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 dismissal of any specific charge or offense may be appealed by the FLNG to the First District Court of Appeal.

The bill specifies that a finding of guilt and the sentence of a nonjudicial punishment may be appealed only to the next highest commander in the accused's chain of command and any such appeal is final.

**Section 5** amends s. 250.351, F.S., regarding court-martial jurisdiction, to provide that members of the FLNG are subject to ch. 250, F.S., regardless of whether in civilian or military status. Jurisdiction is based exclusively on membership in the FLNG and is not subject to additional requirements.

This section provides that subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force. The bill specifies that courts-martial under the FCMJ have primary jurisdiction of military offenses committed when the member is not in the active service. If a nonmilitary offense violates both the FCMJ and local criminal law (foreign or domestic), a proper civilian court has primary jurisdiction. In such cases, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

This section also provides that jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense. Courts-martial under the FCMJ may be initiated for offenses committed by a FLNG member while in the active service only after the commander with authority over the offense under the UCMJ has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

**Section 6** amends s. 250.36, F.S., to provide for the issuance and execution of search authorizations by the Adjutant General, when not in active service, or his or her designee, or a military judge, when the FLNG or the Department of Military Affairs has control over the location where property or the person to be searched is situated or found. If the location is not under military control, the commander has control over such property of persons subject to military law or law of war.

**Section 7** amends s. 250.375, F.S., to provide that in addition to any state, a physician who holds a license to practice medicine in any territory of the United State or 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 during federal military training.

**Section 8** amends s. 250.40, F.S., to revise the Armory Board membership to specify that the Assistant Adjutant General must be from the Army. The bill provides that a member of the Armory Board 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 as an alternate member with voting privileges.

**Section 9** provides that the bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

Lines 253 to 255 state “[a] court-martial in this state is an administrative *procedure* of the executive branch and not a court under the control of the judicial branch.” The constitution and ch. 255, F.S., expressly provides for judicial review in the First District Court of Appeal. The current language is a bit confusing as worded and may be read to be in conflict with the authority for judicial review. It is suggested that amendment be considered to expressly state that courts-martial are a *proceeding* within the executive branch and not a court as established under article V of the state constitution.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 110.205, 121.055, 250.10, 250.35, 250.351, 250.36, 250.375, and 250.40.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.