

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 13

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Military)

Education, Health, and Environmental Affairs

Health and Government Operations

Public Safety - State Militia

This departmental bill generally conforms State law to the existing practices and administration of the Maryland Defense Force (MDDF) by the Military Department. Specifically, the bill makes a series of changes, most of which are technical, clarifying, and conforming, to separate the authorizations, rights, responsibilities, and obligations of MDDF from those of the Maryland National Guard.

Fiscal Summary

State Effect: The bill conforms State law to the existing practices and administration of MDDF and is not expected to materially affect State operations or finances.

Local Effect: The bill does not affect local governmental operations or finances.

Small Business Effect: The Military Department has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law:

State Militia Designation

Under current law, the Public Safety Article lists two classes of State militia, the organized militia and the unorganized militia. The organized militia consists of the National Guard,

Inactive National Guard, and MDDF. *Under the bill*, MDDF is no longer considered part of the organized militia, and instead, is considered its own class of State militia.

Oath of Office

Under current law, individuals enlisting in the National Guard or MDDF must take the same specified oath of enlistment, and commissioned officers of MDDF must take a separate specified oath of office. *Under the bill*, the combined oath of enlistment is repealed, and instead, the National Guard and MDDF each have their own oath of enlistment that more clearly details each organization's responsibilities. The oath for commissioned officers of MDDF is repealed.

Commissions, Enlistment, and Resignations

Under current law, on the recommendation of the Adjutant General, the Governor (1) must appoint and commission each commissioned officer of the organized militia and (2) may grant an officer of the organized militia a brevet commission of the next higher grade than the regular commission. A commissioned officer of the organized militia may be vacated under specified circumstances, including resignation, and a resignation must lead to an honorable discharge unless specified conditions are met. If the Governor accepts the resignation of an officer who does not meet the requirements for an honorable discharge for specified reasons, the officer must cease to be an officer and receive a discharge chosen by the Governor. *Under the bill*, these commission and resignation procedures do not apply to MDDF and only apply to National Guard commissions and officers.

Under current law, the enlistment period of an individual in MDDF is determined by the commanding officer based on the specialty of the recruit and the needs of the militia. However, if a state of war exists between the United States and any other nation, or if there is a federal or State declaration of emergency in force in the State, all MDDF enlistments must continue until three months after the state of war or emergency ends, unless the enlisted individual is discharged sooner by proper authority. *Under the bill*, an enlistment period is still determined by the commanding officer, but the state of war and emergency three-month requirement is repealed.

Under current law, the Governor may accept the resignation of an officer or grant a discharge to an enlisted individual of MDDF at any time. *Under the bill*, the commanding general may also accept such a resignation. Furthermore, the bill specifies that (1) all members of MDDF serve voluntarily and may be dismissed with cause at any time and (2) on a request for resignation or retirement, a member is released from his or her voluntary service.

Retirement Rights

Under current law, the Governor is authorized to (1) adopt regulations related to the retirement of officers and enlisted individuals and (2) order a retired officer or enlisted individual to active duty. Furthermore, there is a list of retired officers or enlisted individuals of the organized militia. The list is divided into three parts for the National Guard, Inactive National Guard, and MDDF. *Under the bill*, this section no longer applies to MDDF.

General Responsibilities and Inspections

Under current law, an organization commander may require those under the command of the organization commander to perform any military duty and is responsible to the Governor for the general efficiency of the units of the organized militia under his or her command. Additionally, a unit of the organized militia must be inspected by an officer detailed for inspection duty, whenever the Governor considers it advisable and by an office of the U.S. Army or Air Force, as required by federal law or regulation. *Under the bill*, both of these provisions are repealed; however, other provisions related to unit command and the proper preservation and use of organization-owned property are still in effect.

Maryland Defense Force Governance and Other Procedures

Under current law, the Governor is authorized to (1) adopt regulations pertaining to enlistment, organization, administration, equipment, maintenance, training, and discipline of MDDF and (2) prescribe a uniform for MDDF. *Under the bill*, the Adjutant General is responsible for adopting the regulations and prescribing the uniform.

Under the bill, the regulations that govern MDDF must prohibit MDDF or a member of MDDF from accepting specified gifts in exchange for a service rendered by MDDF; however, this requirement does not prohibit gifts or transfers to MDDF or the establishment of any foundation established to support its activities.

Under current law, MDDF may not be required to serve outside the State unless (1) ordered into service by the President pursuant to the Constitution and laws of the United States; (2) the Governor directs MDDF to do so to assist the military or other public safety forces of a requesting state; or (3) in “fresh pursuit,” of insurrectionists, saboteurs, or enemies outside the State, in a specified manner. *Under the bill*, the provisions relating to being ordered into service by the President and being in “fresh pursuit,” are repealed. Additionally, instead of the Governor directing MDDF to assist in another state, the Governor may direct the Adjutant General to order MDDF to serve outside the State within similar parameters as it would render support within the State.

Background: The Military Department advises that the bill is needed to remove ambiguity from the current statutory language that authorizes MDDF and conform State law to the existing administration of MDDF. The bill adds clarity to the rights and processes for the volunteers of MDDF. Specifically, the bill properly separates the intertwined authorizations, requirements, and responsibilities of the National Guard and MDDF. According to the Military Department, as of December 2016, there were 229 members in MDDF and 6,061 soldiers in the Maryland National Guard.

MDDF was formally established by the General Assembly in 1917 and is a uniformed military agency of volunteers under the Adjutant General and the Military Department. MDDF has the primary mission of providing competent supplemental professional, technical, and military support to the Maryland Army National Guard, the Maryland Air National Guard, and the Maryland Emergency Management Agency. The Military Department advises that MDDF members are volunteers that can be activated under the Public Safety Article but are never ordered to active duty under either Title 10 or Title 32 of the U.S. Code.

The Adjutant General heads the Military Department, is responsible for the department's budget, and is custodian of all State and federal property used by the organized militia. The Adjutant General maintains all State-owned armories located in Maryland and all other properties that may be occupied, purchased, or leased by the Military Department. The Adjutant General also regulates the use of such facilities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management; Military Department; Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2017
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Militia – Authorizations and Responsibilities

BILL NUMBER: SB 13

PREPARED BY: Catherine Kelly

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS