

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7141 PCB CCJP 09-03 Seaport Security
SPONSOR(S): Full Appropriations Council on General Government & Health Care; Criminal & Civil Justice Policy Council; Adams
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 2684

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council	11 Y, 0 N	Padgett	Havlicak
1)	Full Appropriations Council on General Government & Health Care	32 Y, 0 N, As CS	Davis	Leznoff
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill makes several changes to statutes relating to Florida seaport security. The changes include the following:

- expands the membership of the Seaport Security Standards Advisory Council,
- allows the Florida Department of Law Enforcement (FDLE) to exempt part of a seaport from state minimum seaport security standards,
- eliminates the requirement for a seaport director to perform quarterly risk assessments, but maintains a requirement the seaport director perform a continuous, ongoing risk assessment,
- aligns terminology for restricted areas of the seaport with federal definitions,
- eliminates the Florida Uniform Port Access Credential,
- requires FDLE to implement a statewide port access database,
- creates a pilot project for developing the FDLE database,
- prohibits seaports from issuing individual seaport access cards,
- creates a streamlined affidavit process by which a valid TWIC cardholder can gain restricted area port access,
- eliminates the requirement for a duplicative national criminal history background check in most circumstances; retains the state-specific Florida background check,
- aligns the expiration period for Florida port access to five years, to conform with TWIC expiration date,
- more closely aligns criminal offenses which disqualify a person from gaining port access in Florida with federal TWIC disqualifying offenses,
- requires a person who has committed a disqualifying criminal offense but wants to access a Florida port be seven years from conviction, or five years from release from incarceration, and
- directs the Office of Drug Control to commission an updated seaport security assessment.

Revenues generated by provisions in this bill related to criminal history checks, fingerprint submission retention and database implementation, will be deposited in FDLE's Operating Trust Fund and should offset anticipated expenditures associated with implementing the required port access database. An indeterminate amount of revenues from penalties stemming from unmet contractual obligations could also accrue to the State Transportation Trust Fund.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's public seaports represent an important component of the state's economic infrastructure. The Florida Ports Council estimated that by 2008, the annual economic impact of Florida's seaports would have approached approximately 350,000 jobs, \$43 billion in gross economic output, and \$1.3 billion in annual state and local tax revenues.¹ Staff reviews of major ports' annual reports, audits, and "State of the Port" presentations confirmed growth of commercial activity in difficult economic environments for all but one port. The Port of Miami reported declines in cargo activity, but increased cruise activities for the period.²

Concern over the impact of illicit drugs and drug trafficking came to the forefront in Florida during the mid to late 1990s. According to a Senate Interim Project Summary report at the time, in 1997 there were more cocaine-related deaths in Florida than murders. During 1996, more than 32 tons of cocaine and more than 42 tons of marijuana were seized in Florida.³

In the 1999-2000 timeframe, three events contributed to the development of a seaport security framework for Florida:

First, the presiding officers of the Legislature formed a task force that examined, among other things, the issue of money laundering related to illicit drug trafficking.⁴ The task force found that Florida was attractive to drug traffickers due to a number of factors including Florida's strategic position near drug source countries and numerous international airports and deep water seaports.⁵ The task force provided a number of recommendations including designating a state agency responsible for seaport and airport security and described the then current seaport security situation by saying:

¹ Florida Ports Council, "Florida Seaports' Statewide and Regional Strategic Visioning Process," July-September 2006, Presentation on Results of Strategic Visioning, September 27, 2006.

² Jaxport 2008 Annual Report, 2008 Port Canaveral Annual Report, Port Everglades 2007 Annual Report, 2007 Port of Miami Comprehensive Financial Report, and Port of Tampa "State of the Port" report.

³ Florida Senate, Interim Project Summary 98-13, "Developing a Comprehensive Drug Control Strategy for Florida," November, 1998, p. 2.

⁴ Legislative Task Force on Illicit Money Laundering, "Money Laundering in Florida: Report of the Legislative Task Force", November 1999.

⁵ Ibid, p. 18.

“Customs considers poor seaport security a major reason for drug smuggling. Unlike airports, there is no viable system of federal regulations mandating specific security standards for seaports and marine terminals. Fairly new regulations govern security for large passenger vessels and cruise ship terminals. There are however, no corresponding federal regulations for sea cargo vessels and seaport and marine terminals.”⁶

Second, the Governor’s Office of Drug Control commissioned a Statewide Security Assessment of Florida Seaports. The report, which came to be known as the Camber Report,⁷ concluded that there was no supervisory agency with oversight of the seaports of the state, no federal or state security standards that governed the seaports’ operation, and only limited background checks were conducted on employees at the docks, thus allowing convicted felons, some with arrests for drug-related charges, to work at the seaports.

The report recommended the creation of a State Seaport Authority to regulate all seaports in the state, creation of minimum security standards for all seaports, and the creation and implementation of a security plan by the operators of each seaport.

Third, the Fifteenth Statewide Grand Jury conducted an analysis of Florida’s drug control efforts. The Statewide Grand Jury supported the conclusions and recommendations of the Camber Report and highlighted the need for background screening due to testimony they received that “some dock workers carry firearms and that intimidation by dock workers is used as a method of avoiding detection of illegal drug activity.”⁸ The report cited efforts to impede law enforcement officers at the Miami seaport including simple harassment, blocking law enforcement vehicles with cargo containers, and even dropping a cargo container on a law enforcement vehicle occupied by police canine. Testimony revealed that as many as 60 percent of the Port of Miami dock workers had felony arrests, half of which were drug related charges.⁹

The 2000 Legislature passed CS/CS/CS/SB 1258.¹⁰ This legislation provided additional regulations for money laundering and created s. 311.12, F.S., relating to seaport security. In creating s. 311.12, F.S., the Legislature introduced regulation of seaports that benefited from public financing and provided for:

- Development and implementation of a statewide seaport security plan including minimum standards for seaport security that address the prevention of criminal activity and money laundering;
- Development of individual seaport security plans at each of the ports listed in s. 311.09 (1), F.S. ¹¹;
- Establishment of a fingerprint-based criminal history check of current employees and future applicants for employment at Florida’s seaports; and
- A requirement directing the Florida Department of Law Enforcement (FDLE) to annually conduct no less than one unannounced inspection at each of the public ports and report its findings to the Governor, the President of the Senate, the Speaker of the House, and the chief administrator of each seaport inspected.

⁶ Ibid, p. 46.

⁷ Camber Corporation for the Office of Drug Control, Executive Office of the Governor, “Statewide Security Assessment of Florida Seaports,” September 2000.

⁸ Fifteenth Statewide Grand Jury Report, “An Analysis of Florida’s Drug Control Efforts,” December 14, 2000.

⁹ Ibid.

¹⁰ 2000-360, Laws of Florida (L.O.F.).

¹¹ The seaports listed in s. 311.09(1), F.S., include the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina. The ports of Fort Pierce and Port St. Joe are currently exempted from annual inspection under the provisions of s. 311.12, F.S., based on a finding that these seaports are considered inactive for purposes of the statute.

Section 311.12, F.S., was amended during the 2001 Legislative Session to incorporate seaport security standards.¹² The section has been further amended to disqualify persons who have been convicted of certain offenses within the previous seven years from gaining initial employment within or regular access to a seaport or port restricted access area. Current disqualifying offenses relate to terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use of weapons or firearms.

Attacks on America Changed the Seaport Security Environment

The terrorist attacks on America brought security issues into sharper focus. Florida adapted its existing seaport security structure to accommodate anti-terrorism measures in addition to its previous efforts against illicit drug trafficking, cargo theft, and money laundering.

Since September 11, 2001, the U.S. Congress has produced multiple pieces of legislation that affect seaport security. This effort included passage of the Homeland Security Act of 2002 which resulted in a major governmental reorganization that created the Department of Homeland Security (DHS).¹³ The U.S. Customs and Border Protection agency (CBP) was transferred to DHS with the mission to prevent terrorists and terrorist weapons from entering the U.S.¹⁴ The Transportation Security Administration (TSA) was transferred to DHS with the mission of overseeing security for highways, railroads, buses, mass transit systems, ports, and the nation's 450 commercial airports.¹⁵ The U.S. Coast Guard (USCG) was also transferred to DHS and given the mission of lead federal agency for maritime homeland security including ports, waterways, and coastal security as well as drug interdiction.¹⁶

Congress passed the Maritime Transportation Security Act of 2002 (MTSA) in November of 2002, thereby laying out the federal structure for defending U.S. ports against acts of terrorism. In passing MTSA, Congress primarily set forth direction for anti-terrorism activities but also recognized in its findings that crime on ports in the late 1990's including, drug smuggling, illegal car smuggling, fraud, and cargo theft had been a problem. In laying out a maritime security framework, MTSA established a requirement for development and implementation of national and area maritime transportation security plans, vessel and facility security plans, and a transportation security card¹⁷ along with requirements to conduct vulnerability assessments for port facilities and vessels and establishment of a process to assess foreign ports, from which vessels depart on voyages to the United States.¹⁸

The MTSA is implemented by Title 33 Code of Federal Regulations (CFR).¹⁹ Title 33 CFR provides for review and approval of Facility Security Plans²⁰ by the Captain of the Port (COTP) responsible for each

¹² Note: Camber Report standards were incorporated in s. 311.12, F.S., by 2001-112, L.O.F. These standards form the basis for FDLE's current seaport security inspection program.

¹³ The Homeland Security Act of 2002, P.L. 107-296 (2002).

¹⁴ Department of Homeland Security Fact Sheet @ www.dhs.gov/dhspublic/display?theme=43&content=5437&print=true.

¹⁵ Transportation Security Administration, What is TSA? @ www.TSA.gov.

¹⁶ Congressional Research Service, "Homeland Security: Coast Guard Operations – Background and Issues for Congress," October 25, 2006. Note: According to this report, under the Ports and Waterways Safety Act of 1972 (P.L. 92-340) and the Maritime Transportation Security ACT of 2002 (P.L. 107-295 of November 25, 2002), the Coast Guard has responsibility to protect vessels and harbors from subversive acts. With regard to port security, the Coast Guard is responsible for evaluating, boarding, and inspecting commercial ships approaching U. S. waters, countering terrorist threats in U.S. ports, and helping protect U.S. Navy ships in U.S. ports. A Coast Guard officer in each port area is designated the Captain of the Port (COPT) to serve as the lead federal official for security and safety of vessels and waterways in that area.

¹⁷ The Maritime Transportation Security Act of 2002 (P.L. 107-295 of November 25, 2002).

¹⁸ Government Accountability Office, "Maritime Security, One Year Later: A Progress Report on the SAFE Port Act," GAO-18-171T, October 16, 2007, p. 1.

¹⁹ Title 33 CFR, Parts 101 through 106 which are administered by the USCG.

seaport area.²¹ The USCG also acknowledged Presidential Executive Order 13132 regarding the principle of Federalism and preemption of state law in drafting MTSA rules.²² Under this provision, Florida has the right to exercise authority over its public seaports that are also regulated by federal authority when there is no conflict between state and federal regulations. Executive Order 13132 states in Section 4:

- (a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.
- (b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.²³

The Florida Legislature has continued to introduce improvements to Florida's seaport security policy. The Legislature addressed the issue of a uniform port access credential during the 2003 session. The transportation industry expressed a desire for a single access credential that could be used statewide to facilitate seaport access. As a result, a Florida Uniform Port Access Credential (FUPAC) was provided for in s. 311.125, F.S. Section 311.125, F.S., requires that each port subject to statewide minimum security standards in Chapter 311, F.S., use FUPAC by July 1, 2004. To date, no FUPAC cards have been issued.

At the same time, the federal government attempted to develop its own credential known as the Transportation Worker Identification Credential (TWIC). FUPAC cards have not been issued because state officials have been working with TSA to consolidate the FUPAC and TWIC into one port access card. In lieu of a FUPAC, individual ports are conducting national and state criminal background checks on each applicant who requires access to port facilities. The same disqualifying offenses that would prevent an applicant from being issued a FUPAC also disqualify the applicant from receiving a port specific credential; creating a de facto FUPAC.

The federal TWIC is being deployed in two phases. Phase I, the current deployment, provides for the issuance of credentials to be used as photo identification cards only. Phase II, which has been delayed indefinitely due to contract issues with federal vendors, would provide for fully interactive, biometric reader capability use of the card. There is no known target date for full implementation of the biometric capability. On March 27, 2009, the U.S. Coast Guard, Department of Homeland Security, released an Advanced Notice of Proposed Rulemaking to discuss "... preliminary thoughts on potential

²⁰ Title 33 CFR, Subpart 101.105 defines a facility as any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. A seaport may be considered a facility by itself or in the case of large seaports may include multiple facilities within the port boundaries.

²¹ Note: This is significant in Florida in that port tenants individually bear security plan responsibility under USCG administration of Title 33 CFR, while ch. 311, F.S., holds each seaport's port authority responsible for security plan development and implementation.

²² Federal Register, Vol. 68, No. 204, Wednesday, October 22, 2003, p. 60468.

²³ Presidential Executive Order 13132, "Federalism," August 4, 1999.

requirements for owners and operators of certain vessels and facilities...for use of electronic readers designed to work with [TWIC] as an access control measure.”²⁴

In 2006, the Legislature further developed a system of seaport security area designations that are provided for in s. 311.111, F.S. These designations do not coincide with federal security area definitions found in the CFR. This disparity has presented difficulties when attempting to align state and federal seaport security efforts.

Overall, the seaport security environment has changed significantly since 2001. The federal government has introduced numerous programs and initiatives to address the threat of terrorism against the nation’s seaports. Florida recognizes the threat of terrorism and has adapted its seaport security policy to include the threat of terrorism in addition to its original efforts to combat drug trafficking, money laundering, and cargo theft on its seaports.

Proposed Changes

Seaport Security Standards Advisory Council

Section 311.12(8), F.S., creates the Seaport Security Standards Advisory Council (Council). The members of the Council are appointed by the governor and serve terms of four years.²⁵ The members consist of the following: two seaport directors, two seaport security directors, one member from FDLE, one member from the Office of Motor Carrier Compliance, one member from the Attorney General’s Office, one member from the Department of Agriculture and Consumer Services, one member from the Office of Tourism, Trade, and Economic Development, and one member from the Office of Drug Control.²⁶ The Council is chaired by the designee from the Office of Drug Control and is required to meet at least once every five years.²⁷ The Council is provided authority to review the statewide minimum standards for seaport security.

The bill expands council membership to include a representative of seaport tenants, a representative of seaport workers, a member from the Fish and Wildlife Conservation Commission, and the Director of the Division of Emergency Management or his or her designee.

Exemption from Minimum Standards

Currently, s. 311.12(1)(b), F.S., provides that FDLE may exempt an entire seaport from statewide minimum security standards if the seaport is not active.

The bill allows FDLE to exempt all, or part, of a seaport from minimum standards if FDLE determines that a section of the seaport is not vulnerable to criminal activity or terrorism.

The bill provides that the seaport security standards do not supersede, preempt or modify the provisions of s. 790.251, F.S., relating to one’s right to keep and bear arms in their motor vehicle.

²⁴ Federal Register, Vol. 74, No. 58, March 27, 2009, at page 13360.

²⁵ Section 311.12(8), F.S.

²⁶ Id.

²⁷ Id.

Quarterly Risk Assessments

Current law requires each seaport director, in conjunction with the United States Coast Guard, to revise the seaport security plan every five years.²⁸ The revision of the plan must be based on continual, quarterly assessments of the seaport's security risks.²⁹

The bill removes the requirement that the seaport director must perform quarterly risk assessments. The bill allows for greater flexibility in revising seaport security plans by basing such revisions on the director's ongoing assessment of security risks, the risk of terrorist activities, and the specific and identifiable needs of the seaport.

Secure and Restricted Access Areas

Section 311.111, F.S., requires seaports to classify different areas of the port by access restrictiveness levels. In order from least restrictive to most restrictive, these areas include the following: unrestricted public access areas, restricted public access areas, restricted access areas, and a secured restricted access area.³⁰ The federal seaport security requirements use only two terms: secure area and restricted area.

The bill reduces the number of restricted area categories from four to two; a secure area and a restrictive area. This aligns Florida law with the federal definition of restrictive access areas.

Florida Port Access Requirements

The bill repeals s. 311.125, F.S., and deletes all references to the Florida Uniform Port Access Credential and related references to the Department of Highway Safety and Motor Vehicles. This bill removes the requirement in current law to develop a physical statewide port access credential. Instead, it provides for an access eligibility reporting system for gaining access eligibility at each public seaport and reliance on the federal Transportation Worker Identification Credential (TWIC) coupled with a state criminal history check.

Each seaport is responsible for granting, modifying, restricting, or denying access to workers, visitors, and other persons regularly appearing at the seaport and for verifying a person's eligibility for access at its location. Subject to Legislative appropriations, FDLE is directed to administer a statewide access eligibility reporting system which at a minimum must include:

- A centralized secure database;
- A methodology for transmitting and receiving data between the department and each seaport; and
- The means to communicate that a person's authorization to enter a secure or restricted area has been suspended or revoked.

Any suspension or revocation of port access must be reported by the seaport to FDLE within 24 hours. In addition to access permissions granted or denied by seaports, FDLE may restrict or revoke access permissions if there is a reasonable suspicion that the person is involved in terrorism or criminal violations that could affect the security of a port.

²⁸ Section 311.12(2)(a), F.S.

²⁹ Id.

³⁰ Section 311.111, F.S.

The submission of information to FDLE for entry into the system that is known to be false or misleading is punishable as a third degree felony.³¹

The bill provides that all seaport employees or other persons working at the seaport who have regular access to secure or restricted areas must comply with federal regulations and state criminal history checks as prescribed in this act.

This bill retains the current law requirement that a fingerprint-based criminal history check serve as the basis for determining a person's eligibility to regularly enter seaport secure or restricted areas. A provision is added that requires seaports to notify FDLE, within three business days, that a determination has been made regarding a person's access eligibility. The department is authorized to retain information regarding a person's access eligibility and may use that information to ensure continued eligibility through database monitoring.

The bill requires that a person seeking unescorted access to seaport secure or restricted areas must possess a TWIC. The bill deletes the provision in current law that requires a person accessing a seaport more than five times in any 90-day period must obtain a port access credential. Under this bill, persons seeking access to seaport secure or restricted areas must either possess a TWIC and have successfully undergone a state criminal history check or be escorted. Provisions of the access process include:

- A requirement that the person execute an affidavit under oath providing TWIC identification information and indicating:
 - The TWIC is currently valid and in full force;
 - He or she did not receive the TWIC through a waiver of federal disqualifying criminal history; and
 - He or she has not been involved in any manner whatsoever with a disqualifying felony or crime involving use or possession of a firearm;
- A requirement to successfully complete a state criminal history check;
- Authorization for a seaport to grant secure or restricted area access upon submission of a completed affidavit, completion of a required state criminal history check, and payment of all required fees. This provision saves the cost of a duplicate federal criminal history check;
- A provision making submission of false information on the affidavit a third degree felony;
- A conspicuously displayed statement on the affidavit form declaring submission of false information is a felony and will result, upon conviction, in disqualification for access to seaport restricted access areas; and
- Submission of a new affidavit upon the occasion of the five year renewal of a person's TWIC. This will eliminate the current requirement that a person undergo a national criminal history check in addition to the one required to obtain a TWIC.

The bill expands the waiver process currently in law to include persons who obtained a TWIC through a federal waiver process. A person who obtained a TWIC by federal waiver must still receive a state waiver to be granted access to a port.

Provisions are included in this bill to allow FDLE to create a pilot project with a minimum of three seaports to reduce costs and impacts while implementing TWIC, plus the state criminal history check, as the access credential in use at Florida seaports. Existing equipment purchased for this purpose is transferred from the Department of Highway Safety and Motor Vehicles to FDLE.

³¹ A third degree felony is punishable by up to five years imprisonment and a maximum \$5,000 fine. Sections 775.082, 775.083, 775.084, F.S.

The bill provides for the payment of fees to cover the costs of access determination and system maintenance. Such fees may not be charged by more than one seaport. These fees include:

- The cost of a state finger-print based criminal history check, payable to FDLE;
- A \$50 fee that covers all costs for entering or maintaining the person in the access eligibility reporting system for a period of five years, payable to FDLE. The fee is chargeable every five years thereafter to coincide with the issuance of a TWIC; and
- Administrative costs to the initial seaport that enters a person into the system which covers, but do not exceed, the seaport's system participation costs.

Current law provides that a person who has been convicted of certain offenses, regardless of adjudication, shall be disqualified from employment within or unescorted access to restricted access areas of a seaport for a period of seven years after completion of incarceration or required supervision. The bill adopts the federal requirement and applies a seven year provision to convictions and pleas of guilty or nolo contendere regardless of adjudication or five years after release from incarceration or any supervision imposed as a result of committing any of the disqualifying crimes.

The bill adds certain criminal offenses to the list of those state offenses that currently disqualify a person for employment or unescorted access on a seaport. This change brings Florida's list of disqualifying offenses into better alignment with federal regulations, since these crimes are disqualifying at the federal level. The added offenses include:

- Criminal anarchy or inciting insurrection;
- Use of commercial transportation in the commission of a felony;
- Racketeering activity;
- Money laundering;
- Criminal use of personal identification;
- Bribery; and
- A violation of s. 316.302, F.S., relating to the transport of hazardous materials.

The bill requires that a report of findings from FDLE inspections be made available to the Domestic Security Oversight Council. The affected seaport may request the council to review the department's findings as they relate to s. 311.12, F.S. The council may only review those findings that are in dispute and may concur in the findings of the department or the seaport, or may make its own corrective action recommendations to the seaport.

The bill directs the Office of Drug Control to commission an update of the Florida Seaport Security Assessment 2000 referenced in s. 311.12 (1) (a), F.S., to be presented to the Legislature by January 1, 2010. The office is directed to consult with the Seaport Security Standards Advisory Council in formulating update parameters.

B. SECTION DIRECTORY:

Section 1: Creates s. 311.115, F.S., relating to seaport security standards advisory council.

Section 2: Amends s. 311.12, F.S., relating to seaport security.

Section 3: Repeals ss. 311.111 and 311.125, F.S.

Section 4: Amends s. 311.121, F.S., relating to qualifications, training, and certification of licensed security officers at Florida seaports.

Section 5: Amends s. 311.123, F.S., relating to maritime domain security awareness training program.

Section 6: Amends s. 311.124, F.S., relating to trespassing; detention by a certified seaport security officer.

Section 7: Amends s. 311.13, F.S., relating to certain information exempt from disclosure.

Section 8: Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 9: Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 10: Provides for an updated seaport security assessment.

Section 11: Provides for a pilot project for seaports.

Section 12: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FDLE reports approximately \$6.3 million of nonrecurring funds would be collected in the department's Operating Trust Fund, covering the costs associated with the estimated 85,000 criminal history checks, fingerprint submission retention and database implementation and maintenance requirements.

If state funds are made available for security projects within specific circumstances, and contractual obligations are not met, an indeterminate amount of revenues from penalties could accrue to the State Transportation Trust Fund.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Repeal of s. 311.125, F.S., relating to the Uniform Port Access Credential and the other provisions of this bill will result in an estimated cost savings of 90 percent to seaport employers and workers, those persons whose business purposes require regular seaport access, and to transportation industry workers who frequently access Florida's seaports. Such persons will incur the costs of obtaining a federal TWIC card, a state criminal history background check, a \$50 fee that covers all costs for entering or maintaining the person in the access eligibility reporting the system for a period of five years, and an allowable charge by the entering seaport not to exceed the actual cost of system administration.

Changes provided in this act will reduce the cost to seaport and transportation industry workers who currently must obtain multiple seaport access credentials and by reducing the fees for persons holding federal credentials through the use of an affidavit process.

D. FISCAL COMMENTS:

FDLE reports that estimated costs associated with implementing and operating the access eligibility reporting system, while subject to legislative appropriation, equates to approximately \$1.2 million over three years. However, the \$50 fee designated in the bill is estimated to generate the necessary revenue to cover the costs associated with these expenditures.

The bill further provides for an unranked, third degree felony for supplying false information on one's affidavit to gain access to secure and restricted areas of seaports. On April 13, 2009, the Criminal Justice Impact Conference determined this provision would have an insignificant impact on prison beds due to low volume.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 6, 2009, the Criminal & Civil Justice Policy Council adopted one amendment to the bill. The amendment provides that the bill does not supersede, preempt, or modify s. 790.251, F.S., relating to the right to keep and bear arms in motor vehicles.

On April 20, 2009, the Full Appropriations Council on General Government & Health Care adopted three amendments to the bill. The first amendment authorizes FDLE to forward copies of an applicant's fingerprints to the FBI. The remaining two amendments narrow the scope of disqualifying offenses to offenses involving a firearm.