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DATE: April 24, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: HB 1663
RELATING TO: Seaport Security
SPONSOR(S): Representative Harrell

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE YEAS 9 NAYS 1
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 10 NAYS 2
 - (4)
 - (5)
-

I. SUMMARY:

This bill adopts minimum statewide security standards for Florida's 14 deepwater seaports. The standards were developed by the Governor's Office of Drug Control, in conjunction with the Florida Department of Law Enforcement (FDLE), and in consultation with the Florida Seaport Transportation and Economic Development Council (FSTED). The standards are based on recommendations by the 1999 Legislative Task Force on Illicit Money Laundering and a subsequent security assessment commissioned by the Office of Drug Control. Recommendations for improved security include requiring photo identification cards for employees in restricted areas, building fencing and lighting to security-level specifications, and mandating minimum training levels for security personnel.

The bill takes effect upon becoming a law.

The Revenue Impact Conference has not addressed this bill.

At its April 4, 2001 meeting, the Committee on Economic Development and International Trade adopted a strike-all amendment that is traveling with the bill. Some of its provisions establish, in law, minimum seaport security standards; instruct the Florida Department of Law Enforcement to adopt certain rules; and require criminal background checks on certain persons.

On April 12, 2001, the Committee on Crime Prevention, Corrections, and Safety adopted three amendments; they are traveling with the bill. They expand the rule making guidelines and require each port to adopt a security plan by July 1, 2001.

On April 23, 2001, the Council for Competitive Commerce adopted a substitute strike-all amendment that is traveling with the bill. Refine the previously adopted amendments.

Please see Section VI of the analysis, Amendments or Committee Substitute Changes, for details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

During the 1999 legislative interim, the Senate President and House Speaker created the Legislative Task Force on Illicit Money Laundering to study and recommend ways to enhance the state's strategy in combating this problem. The Task Force discovered that Florida's large, diverse, and mobile population provides drug traffickers with an opportunity to avoid detection while transporting their illicit drugs and proceeds. Florida's drug interdiction efforts are daunting because of the state's highly populated roadways, seaports, and airports. The Task Force members were concerned that significant security gaps exist at Florida's seaports and airports.

United States Customs officials asserted that poor seaport security is a major reason for smuggling of illicit drugs and proceeds. Unlike airports, there is no system of federal regulations mandating specific security standards for seaports and marine terminals. The Port of Miami, Port Everglades, and the Jacksonville Port Authority have instituted seaport security measures to reduce criminal activities including drug smuggling. While the measures taken at these seaports are identical, each reduces access to the seaports by unauthorized personnel. Representatives from each of these seaports recommended to the Task Force the establishment of minimum security standards for all seaports in Florida and oversight by the state to ensure compliance.

Recommendations of the task force relating to seaport security were passed during the 2000 session. The Office of Drug Control (ODC), in consultation with the Florida Seaport Transportation and Economic Development Council (FSTED), and in conjunction with the Florida Department of Law Enforcement (FDLE) and local law enforcement agencies having primary authority over the affected seaports, were required to develop a statewide security plan by January 1, 2001.

The seaports, in conjunction with and pending review and approval of the ODC and FDLE, and in consultation with the FSTED, were directed to develop and draft individual seaport security plans by January 31, 2001. These plans were to meet uniform statewide minimum security standards and incorporate the security recommendations of the Florida Seaport Security Assessment 2000. The seaports were required to implement their seaport security plans by December 31, 2001. The FDLE (or other entity selected by FDLE) is required to conduct at least one annual unannounced inspection of each seaport to determine whether those seaports comply with the minimum statewide standards. FDLE has unimpeded access to the seaports for this purpose.

The Florida Ports Council advises that all fourteen Florida seaports have delivered their initial plans to FDLE and the ODC. The plans were reviewed and a number of seaports were directed to revise their plans to ensure that they met statutory requirements and standards developed by the ODC. All plans must be finalized and submitted by the end of April 2001.

To ensure that funding was available to meet the mandates of the minimum security standards, the seaports prepared and submitted an application for grant funds from the Transportation Outreach Program (TOP). The seaports submitted a request to the TOP Advisory Council for approximately \$40 million over a four-year period. The TOP Advisory Council recommended \$17 million for Fiscal Year 2001-2002 to finance the various security projects at Florida's seaports.

C. EFFECT OF PROPOSED CHANGES:

This bill adopts the statewide seaport security plan provided for in s. 311.12, F.S.

(Please see Section II.D., Section-By-Section Analysis, for details.)

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section amends s. 311.12, F.S., to adopt minimum seaport security standards developed by the Office of Drug Control in the Executive Office of the Governor in conjunction with the Florida Department of Law Enforcement (FDLE) and local law enforcement agencies having primary authority over the affected seaports, and in consultation with the Florida Seaport Transportation and Economic Development Council (FSTED). Deletes obsolete language directing those entities to develop a statewide seaport security plan by January 1, 2001.

This section requires all personnel permanently employed at the seaport to display a picture identification badge or card at all times when working in restricted areas as designated by port management. Permanently employed personnel includes, but is not limited to, port management staff, tenant activity staff, truck drivers, stevedores, and longshoremen. The picture I.D. requirement also applies to day workers and casual laborers who work at the port more than 5 days in any given 90-day period. This section specifies minimum information to be contained on the picture I.D., as well as the processes for issuance of cards to employees. Issuance will be contingent on the successful completion of a fingerprint-based background check. Cards cannot be issued to personnel who have a felony conviction for a serious or violent crime during the previous 5 years.

This section establishes security measures governing port access by transient laborers or itinerant visitors and business people. Security measures include requirements for the location, number and type of gates and gatehouses, and staffing for gates and gatehouses; parking security measures, including "severely restricted and authorized by a strictly enforced gate pass or decal system;" and fencing and security lighting.

Specifications for perimeter and interior security fences require that fences be:

- 8-feet high, 9-gauge galvanized steel, of 2-inch-wide chain link construction, topped with 2-foot barbed wire outrigger consisting of 3 strands of 9-gauge galvanized steel barbed wire at a 45-degree outward angle above the fence;
- No more than 2 inches from hard surface of concrete or asphalt at the bottom; and

- Cleared and uncluttered for at least 5 feet at the sides.

Specifications for security lighting must conform to federal regulations and must comply with voluntary agreements such as the United States Customs Sea Carrier or Super Carrier Initiatives. In addition, port lighting must not interfere with safe vessel navigation (33 C.F.R. 154.570(d)), must be provided sunrise to sunset, must be high mast, must be properly spaced, must be provide at least 1-foot candle illumination in container and cargo yards and eliminate dark or blind spots in those areas, and must provide at least 5-foot candle illumination for dock work areas, including container loading and unloading areas.

This section also states that certain signs must be posted strategically throughout the port and wherever access is restricted. At main access points, vessel gangways, and all restricted areas, there must be signs that convey United States Customs Service authority and indicate that persons, effects, and vehicles are subject to search under federal law.

This section establishes minimum standards for locks, locking devices, and key control systems, and inspection schedules for such equipment.

This section directs each port to create a standing security committee. At least once a quarter, the committee is required to sponsor or conduct a forum for the discussion of security issues by affected parties. Port management is also directed to:

- Include security-related initiatives in the port's strategic or master plan;
- Provide a current security manual for security personnel;
- Develop written operating procedures and an emergency response plan for security contingencies such as bomb threats;
- Periodically review security procedures; and
- Ensure the routine, scheduled presence of patrols by sworn law enforcement personnel.

This section establishes parameters for training curricula for both in-house and contracted security force personnel. It addresses computer security issues (INFOSEC) as well.

This section specifies how cargo is to be released to an authorized truck driver or other carrier and how palletized or stacked cargo is to be stored, whether in open areas or in warehouses. High-value commodities are to be stored in cribs or security cages and must be tracked through separate logs and procedures for release and receipt. Similarly, special procedures are required for the storage and release of high-value merchandise in mounted containers. This section also states that access to cargo handling equipment must be monitored.

Port management must prevent or deter the introduction of prohibited weapons, incendiaries, and explosives into the terminal and its restricted areas, onto any moored passenger vessel, in personal articles or baggage, or in stowed baggage, cargo, or stores.

This section outlines port responsibilities regarding passenger terminals and vessels. Specifically, port management must:

- Provide standard operating procedures for all armed and unarmed security personnel used at passenger terminals;

- Provide and maintain physical security such as barriers, alarms, and lighting;
- Ensure that vehicular access to cruise ships is strictly enforced and that only authorized vendors are permitted access to cruise ships;
- Provide communications between all security personnel involved with the security of passenger terminals and vessels;
- Establish a system of identification and control for all personnel authorized access to the terminal;
- Designate restricted areas for the embarking and disembarking of passengers and baggage;
- Ensure that carriers provide timely, accurate, and complete passenger and crew departure and arrival manifest information;
- Restrict access to passenger terminal facilities and cruise ships through a designated screening point that, at a minimum, includes a metal detector and an X-ray system; and
- Ensure that cruise terminal operators train security guards in situations in which the port does not provide security guards.

The bill requires all seaports to develop and draft individual seaport security plans particular to the needs of their respective seaport and in adherence to the minimum standards established in this section. The Office of Drug Control and FDLE are authorized to require additional security measures for high-risk ports. It deletes language relating to the existing fingerprint-based, criminal history check for employment applicants and current port employees to conform to previous changes made by the bill.

Subsection (19) deletes language referring to legislative approval of the statewide seaport security plan.

Section 2. This section requires the implementation on or before April 30, 2002, of the minimum seaport standards required by s. 311.12, F.S., as amended by the bill.

Section 3. This section amends s. 790.06(12), F.S., to include any seaport facility among the places where a concealed weapon is prohibited.

Section 4. Provide that the bill would take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

There will be an indeterminate fiscal impact on local governments depending on the level of funding that the state provides for implementing the security plans.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The bill does not contain a specific appropriation. However, the security assessment study conducted by the Office of Drug Control identified funding needs relating to infrastructure, fingerprint equipment, and inspections. The Office of Drug Control and FDLE recommended that \$17 million be expended this fiscal year (FY 01-02), \$15 million in FY 02-03, and \$2 million in FY 03-04.¹

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill will require expenditures on the part of the state, counties, and municipalities. To the extent that this bill specifically requires expenditures by counties and municipalities to implement the security standards, it could trigger the mandates provision of Article VII, Section 18 of the Florida Constitution. Because the bill is clearly designed to reduce criminal activity at Florida's seaports, it may fall under the exemption for criminal laws.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

¹ Letter dated February 23, 2001, to Governor Jeb Bush from James R. McDonough, Director, Office of Drug Control, and James T. Moore, Commissioner, Florida Department of Law Enforcement.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its April 4, 2001 meeting, the **Committee on Economic Development and International Trade** adopted a strike-all amendment that is traveling with the bill. The amendment makes the following significant changes to the bill:

- Provides that the minimum standards for seaport security as developed by the Office of Drug Control, FSTED and FDLE are adopted by the legislature.
- Instructs FDLE, in consultation with the Office of Drug Control, to adopt rules that implement specific security standards and enumerates criteria that FDLE must incorporate in the rules (security standards were statutorily addressed in the original bill). The required criteria include such security standards as lighting, fencing, access to the port and training of security personnel.
- Adds criminal background criteria to be considered by port management in screening prospective employees. The amendment requires that the criteria include a list of convictions occurring in the prior five years, regardless of whether adjudication was withheld, which disqualify a person from employment at a seaport, including but not limited to, any felony conviction for theft, robbery, burglary, possession, sale or trafficking in drugs, fraud, perjury, use or possession of a firearm during the commission of a crime and any felony offense involving the actual physical injury of another.
- Establishes a method for FDLE, in consultation with the Office of Drug Control, to grant petitions for variance or waiver of security standards in addition to the remedies available through rule challenges under chapter 120, F.S.;
- Authorizes the Office of Drug Control and the Florida Seaport Transportation and Economic Development Council (FSTED) to mutually determine the allocation of any funds appropriated for seaport security and requires seaports to enter into joint-participation agreements with the appropriate state entities when state funds are received for security projects;
- Delineates a schedule for initial and subsequent inspections of seaports by FDLE or any entity selected by the department;
- Requires affected seaports to comply with physical infrastructure improvements and minimum security standards by June 30, 2004;
- Expresses legislative intent that failure to comply with minimum seaport security standards will result in a reduction of state funding as a sanction for not meeting security expectations;

- Authorizes FDLE, in consultation with the Office of Drug Control, to develop by rule additional security measures for the ports of Jacksonville, Miami, Tampa, and Port Everglades; and
- Establishes a system for FDLE to determine compliance with security measures, a system for seaports to respond and take corrective action, and a schedule of fines (up to \$1,000 per day) for noncompliance.

On April 12, 2001, the **Committee on Crime Prevention, Corrections, and Safety** adopted three amendments; they are traveling with the bill. They expand the rule making guidelines and require each port to adopt a security plan by July 1, 2001.

On April 24, 2001, the **Council for Competitive Commerce** adopted one strike-all, substitute amendment that is traveling with the bill. It:

- Requires the Governor's Office of Drug Control (ODC) and the Florida Department of Law Enforcement (FDLE) to approve seaport security plans.
- Requires seaports to maintain individual security plans that assure each port is in substantial compliance with statewide standards.
- Provides for criminal history checks for current & prospective employees. Authorizes plans to provide waivers under certain conditions. Requires each seaport to provide copies of policies, procedures, or criteria for criminal background checks to FDLE. Requires each seaport to annually report disqualifications to FDLE.
- Requires compliance with employment & access standards by January 1, 2002, and substantial compliance with all security standards & physical facility requirements by January 30, 2004. Provides a mechanism for ODC & FDLE to modify or waive applicability of a security standard or physical facility requirement upon funding of good cause or determination that the underlying security expectation of a standard has been met.
- Requires FDLE to at least annually conduct annual seaport inspections and identify any necessary security changes or improvements.
- Requires FDLE, in consultation with ODC, to report observations and finding to the Governor, the Senate President, and the House Speaker.
- Requires the Legislature to annually consider the report in making seaport funding decisions.
- Provides that seaport security funds are allocated upon mutual consideration of ODC, FDLE, and the Florida Seaport Transportation & Economic Development Council (FSTED). Requires seaports to enter into joint-participation agreements for funding which include time-frames for project completion and contractual penalties for failure to meet the time-frames.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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