

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill authorizes governmental seaport authorities and local governments operating seaports to require that certain private security forces working at the port receive additional training and certification in addition to what is currently required by law.

Safeguard Individual Liberty

The bill grants the authority to certified Seaport Security Officers to take certain trespass suspects into custody and detain them under specified circumstances. Security guards currently enjoy no such authority to detain trespass suspects.

Maintain Public Security

The bill authorizes governmental seaports to require private security forces to have additional training that is specific to the seaport security environment. The bill also authorizes certain private security forces to take trespass suspects into custody proactively and detain them until a law enforcement officer arrives. Currently, security guards are only authorized to react in a limited way when confronted.

B. EFFECT OF PROPOSED CHANGES:

Seaport Security Officer Training and Certification

Prior to 2000, seaport security in Florida was focused on supply chain theft prevention to protect the commercial interests of seaport tenants. Since 2001 considerable effort and resources have been devoted to improving physical security and security operations at Florida's commercial seaports to meet the ongoing concerns about drug trafficking and the emerging threat of terrorism. Florida pursued a successful strategy for seaport security improvements through grant funding now administered by the Transportation Security Administration of the Department of Homeland Security. However, these federal grants are restricted to pre-approved physical infrastructure improvements.

Improvements in security operations at Florida's seaports have been primarily funded through the Florida Seaport Transportation Economic Development Council (FSTED) and the commercial seaports individually. In order to accomplish these operational security improvements, the Council has voluntarily foregone needed economic development infrastructure projects. Concern for long-term funding of operational security costs prompted a review of operational structures at several public seaports by the Senate Domestic Security Committee.

The Florida Senate Interim Project Report 2005-144, Seaport Security, November 2004, describes and documents the above situation and identifies several possible methods to reduce or mitigate operational security costs including the training and certification of seaport security officers.

As a general rule, private security personnel working on Florida's public seaports are required to maintain at a minimum, a CLASS D private security officer license,¹ including at least 40 hours of professional education completed at a school or training facility licensed by the Florida Department of Agriculture and Consumer Services. At least one port employs CLASS G security officers as a part of

¹ Section 493.6303, F.S.

its private security force. These officers are permitted to carry firearms and must undergo additional training requirements prior to obtaining a state CLASS G license.²

With the exception of Port Manatee, the state's county-operated ports appear to have operational security costs which are substantially higher than other public ports. The extensive use of government law enforcement employees, with the inherent costs of salary and benefits associated with those personnel may be a driving factor in those higher costs. In fact, ports using a blend of sworn law enforcement, non-sworn law enforcement, and private security forces had security operating costs of less than half that of the county operated facilities. One factor making it difficult to determine the cost of security at seaports is the widely differing operational and geographic scope of each port. The two county-operated ports are the largest operationally, and thus have more activity requiring security presence on a daily basis. However, the extreme differences in security costs between Port Everglades and Port of Miami as compared to Jaxport and Port of Tampa point to the method of service delivery being the reason for higher costs.

The use of some form of blended security force, either through additional port security officers holding appropriate state licenses, or through contracted services provided by licensed personnel from private security firms might provide some reduction in costs for ports now using county personnel. For example, Port Everglades, through its contract with the Broward County Sheriff's Office, pays overtime costs to non-sworn personnel (CSAs) to stand guard post assignments in cruise terminals when ships are in port. A private security officer, under the direction of sworn law enforcement, could perform this same duty under an hourly contract, thus saving the port the overhead costs of salary, benefits, administration and supervision. A focused review of the use of sworn and non-sworn law enforcement personnel by each public seaport could result in cost savings through a different proportion of sworn and non-sworn government and private personnel without the loss of appropriate levels of security.

Proper training of private security personnel employed to protect Florida's public seaports is an ongoing concern. Prevention, protection and response procedures on seaports are quite unique and require specialized education and training. While CLASS D and CLASS G security officers must receive specialized patrol and firearms training, respectively, there is no required additional training, nor any additional specialized seaport security certification or separate class of security officers that have completed such training, recognized by the State of Florida.

The Power to Detain

The Florida Statutes authorize a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time.³ The subsection further provides that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. The subsection is also applicable to transit fare evasion with respect to detention. This statute provides that the taking of a person into custody does not, by itself, render the person taking the suspect into custody criminally or civilly liable for false arrest, false imprisonment or unlawful detention.

Additionally, Florida law currently authorizes the chief administrative officer of a school, who has probable cause to believe that a person is trespassing upon school grounds, to take the person into custody and detain him or her in a reasonable manner for a reasonable amount of time pending the arrival of a law enforcement officer. The taking of the person into custody does not, by itself, render the

² Section 493.6115, F.S.

³ Section 812.015(3)(a), F.S.

chief administrative officer criminally or civilly liable for false arrest, false imprisonment or unlawful detention.⁴

No similar authorization to detain exists in Florida law in the case of a trespass offender found in a restricted area on a seaport. No private seaport security officer may currently detain such a person pending the arrival of a law enforcement officer.

The Effects of HB 1799

Seaport Security Officer Certification

HB 1799 creates s. 311.121, F.S., allowing each seaport authority or governing board subject to statewide minimum seaport security standards to require security officers working on the seaport to undergo additional training and become certified as a Seaport Security Officer. The bill establishes eligibility criteria to undergo training or demonstrate equivalency qualifications for certification as a Seaport Security Officer. In addition, it grants the Department of Agriculture and Consumer Services Division of Licensing authority to evaluate and determine equivalency. The bill also requires certified Seaport Security Officers to undergo at least two hours of continuing education per Class D licensing cycle in order to maintain certification as a Seaport Security Officer. Failure to meet such requirement results in lapse of the certificate, and reexamination, at a minimum, is required to regain the certification.

The bill provides for a steering committee to establish and periodically review a training curriculum for Seaport Security Officers and for continuing education of those officers. The curriculum must conform to or exceed the requirements of the appropriate model courses for seaport personnel approved by the federal Maritime Administration. Additionally, the bill assigns the Department of Education the responsibility for implementing the steering committee curriculum recommendations and requires instructors conducting Seaport Security Officer training to hold a CLASS DI license pursuant to s. 493.6301, F.S. The bill provides that an organization applying for authorization to teach the curriculum may apply to become a licensed school pursuant to s. 493.6304, F.S.

The bill also requires a candidate for certification to pass a proficiency examination and establishes criteria for maintaining valid certification. In addition, the bill provides for the administration of the certification process and notification to the Division of Licensing of the Department of Agriculture and Consumer Services that a certificate has been issued.

Authority to Detain Trespassers

The bill authorizes a seaport security officer holding a CLASS D or CLASS G license and a Seaport Security Officer certificate, who is acting as an agent of the seaport's federally designated Facility Security Officer (FSO), to detain a person believed to be trespassing in a designated seaport restricted access area until a law enforcement officer arrives on scene. Such certified Seaport Security Officer is required to call immediately for the assistance of a law enforcement officer upon detaining a suspect, and he or she may only take into custody and detain such suspect in a reasonable manner for a reasonable length of time. In addition, the bill provides protection for the Seaport Security Officer from criminal or civil liability for false arrest, false imprisonment, and unlawful detention.

Under current Florida law, the Seaport Security Officer would be entitled to protection from liability only if the period of custodial detention lasts no longer than the period of time for which the officer has probable cause to take into custody and detain. Furthermore, if a judicial determination is made that the Seaport Security Officer detained a suspect in an unreasonable manner or for an unreasonable period of time, protection from liability may be extinguished.

⁴ Section 810.097, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 311.121, F.S., authorizing governmental seaports to require private security forces to be certified as Florida Seaport Security Officers; providing for their certification; providing their qualifications; providing for the development of a standard curriculum and training.

Section 2. Creating s. 311.122, F.S., authorizing a certified Seaport Security Officer, under certain circumstances, to take into custody and detain a person he or she has probable cause to believe is trespassing in a designated restricted access area of a seaport; providing that such detention must only be done in a reasonable manner and for a reasonable amount of time; requiring the Seaport Security Officer to immediately summon a sworn law enforcement officer; providing protection from liability.

Section 3. Provides that the provisions of the bill shall take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See the FISCAL COMMENTS Section, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See the FISCAL COMMENTS section, below.

D. FISCAL COMMENTS:

The bill is permissive to seaport authorities and governing boards with regard to requiring certified Seaport Security Officers. However, there may be potential cost savings to governmental seaports given the ability to design an optimum security force mix of sworn and non-sworn law enforcement officers and certified Seaport Security Officers.

At governmental seaports electing to require Seaport Security Officer Certification, there will be an undetermined cost associated with providing additional training for certification of. This cost will likely be borne by the individual applicant seeking upgraded skills and certification. The impact to private sector security agency employers seeking higher skill level security officers is also currently unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional grant of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES