

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Domestic Security Committee

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BILL: SB 2554

SPONSOR: Senators Klein and Campbell

SUBJECT: Seaport Security

DATE: March 31, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<b>Favorable</b>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>TA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill provides legislative findings suggesting the need for increased inspection of cargo shipping containers coming into U.S. ports, additional port security personnel, improved security personnel training, and increased funding for the seaport security mission.

The bill authorizes:

- Full access for seaport security personnel to various vehicles and vessels departing Florida ports for the purposes of examination and inspection. Failure to comply with a request for examination or inspection may be considered a violation and commission of a third degree felony. Such refusal may subject the vehicle, container, or trailer to seizure and forcible entry
- Local seaport security authorities to request assistance from state law enforcement agencies in improving seaport security
- The Department of Transportation to formalize cargo security task forces for the purpose of performing unannounced inspections
- Local law enforcement officers to assist seaport security personnel in enforcing the section. Such officers may stop and detain any vehicle, trailer, or container and its driver pending the arrival of seaport security personnel to conduct the inspection required or authorized by law

The bill provides:

- For immunity from civil or criminal liability for any authorized person who is lawfully engaged in enforcement of the section

- That each seaport must set performance measures for inspecting outbound vehicles that ensure a reasonable balance between cargo security and commerce. Provisions are made for funding the cost of increased security and equipment purchases
- For a minimum of \$10 million per year from the General Revenue Fund for additional seaport security

This bill creates section 311.126 of the Florida Statutes.

## II. Present Situation:

The Government Accountability Office (GAO) in recent testimony before Congress highlighted the concern that terrorists might try to smuggle weapons of mass destruction into a U.S. port using one of the millions of containers that arrive at the ports each year.<sup>1</sup>

Homeland Security Secretary Michael Chertoff later spoke to the American Chamber of Commerce in Singapore about the improvements that have been made in inspecting arriving containers. Secretary Chertoff opined that to inspect 100% of the containers would result in the shut down of our ports. He outlined instead, a strategy that places U.S. Customs and Border Protection officials into foreign ports to work with foreign customs officials. A risk assessment screening is conducted and high risk containers are inspected before they are loaded onto U.S. bound ships. The Secretary stated that by the end of 2006, 82% of the containers coming to the U.S. through maritime commerce will be coming through a Container Security Initiative country.<sup>2</sup>

However, gaps in the system exist. There is concern over control of containers while at sea between overseas port inspection and loading and final arrival in U.S. ports. Further, the GAO reported that their investigators were recently able to fictitiously purchase and smuggle common medical radioactive material across both the U.S. northern and southern borders. The material was enough to make two small “dirty bombs.” The northern and southern borders were simultaneously penetrated by GAO investigators in rental cars on December 14, 2005. U.S. customs agents permitted the investigators to enter the United States after being tricked with counterfeit documents.”<sup>3</sup>

The Government Accountability Office further testified before Congress that the Customs and Border Protection’s (CBP) Automated Targeting System (ATS) does not yet have key controls in place to provide reasonable assurance that high risk oceangoing containers are being effectively targeted.<sup>4</sup> ATS is a computerized model that CBP officers use as a decision support tool to help target oceangoing cargo containers for inspection.<sup>5</sup>

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<sup>1</sup> Government Accounting Office, GAO-04-557T, March 31, 2004, page 1.

<sup>2</sup> Dept. of Homeland Security, *Remarks by Homeland Security Secretary Michael Chertoff at the American Chamber of Commerce Singapore*, March 29, 2006.

<sup>3</sup> Government Accountability Office, GAO-06-583T, March 28, 2006, pages 2-6.

<sup>4</sup> Government Accountability Office, GAO-06-591T, March 30, 2006, page 3.

<sup>5</sup> *Ibid.*, page 1.

Florida has fourteen statutorily designated public deepwater seaports<sup>6</sup>: 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. Two ports, Port of Fort Pierce and Port St. Joe, have been designated inactive under Florida's seaport security law and are not required to comply with that law as long as they are deemed inactive.<sup>7</sup> Of the remaining twelve active ports, the Florida Ports Council reported almost 2.7 million container movements in FY 2003-2004.<sup>8</sup> The council projects 3.4 million container movements by FY 2008-2009.

Prior to 2000, Florida seaport security was focused on supply chain theft prevention to protect the commercial interests of seaport tenants.

Florida adopted statewide minimum security standards for public seaports in 2000 for the purpose of slowing the traffic of illegal drugs and cargo through the ports.<sup>9</sup> In the fall of 2001, the Florida Department of Law Enforcement (FDLE) began annual unannounced inspections of each of the state's active public seaports. Those inspections continue today and provide information to the ports, law enforcement and the Legislature regarding the relative security of the ports, conformance with state standards and actions that may be taken to increase that level of security. The inspections have incorporated reviews of issues directly related to the threat of terrorist activities with a strong focus on cruise line security and passenger protection. FDLE works closely with the public seaports to assist them in reaching the designation of "substantially compliant" with statewide standards. By December 2005, all public seaports were reported to have achieved the "substantially compliant" rating.

However, inspection of inbound cargo containers has remained substantially a federal government function. Once a container arrives at a port and clears customs, any threat posed by cargo therein becomes a threat that directly impacts the state.

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

The bill provides legislative findings that:

- Less than 2% of shipping containers coming into U.S. ports from overseas are inspected
- Inspection of outbound vehicles transporting these containers must be increased in order to protect the residents of this state and detect possible illegal activity
- Additional security personnel and more comprehensive security personnel training in cargo security methods and operations will increase the effectiveness of seaport security for the state
- Increasing the number of security personnel and providing appropriate training requires additional funding for the seaport security mission.

The bill provides that any authorized seaport security personnel employed by seaports identified in section 311.09, F.S., has full access at all reasonable hours to inspect:

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<sup>6</sup>S. 311.09, F.S.

<sup>7</sup> S. 311.12, F.S.

<sup>8</sup> Florida Ports Council, [www.flaports.org/statistics.htm](http://www.flaports.org/statistics.htm).

<sup>9</sup> S. 311.12, F.S.

- All railroad cars, trucks, cargo containers, motor vehicles, truck and motor vehicle trailers, and vessels that are used or could be used in the intrastate transportation of any article or product that might endanger the safety or security of state residents
- All records or documents pertaining to an inspection of such transportation modes

Any seaport security personnel or law enforcement officer as defined in s. 943.10, F.S., may examine any vehicle, container, or trailer that is leaving or preparing to leave the seaport. Such persons are authorized to open any package, article, or container. Such inspection may be conducted after the vehicle, container, or trailer has been cleared for entry into the country by federal officials.

Seaport security personnel or law enforcement officers may seize and forcibly open the vehicle, container, or trailer if refused access by the owner, driver, operator, or other person in charge of the vehicle, container, or trailer.

The bill authorizes each law enforcement officer to assist seaport security personnel in enforcing the section. Such law enforcement officers may stop and detain any vehicle, trailer, or container and its driver pending the arrival of seaport security personnel to conduct the inspection required or authorized by law. The law enforcement officer may require the driver to accompany the vehicle to the seaport for such inspection.

Any person who is authorized and lawfully engaged in enforcing or assisting in the enforcement of the section is given immunity from civil or criminal liability.

An owner, driver, operator, or other person in charge of a vehicle, container, or trailer may not refuse access to the same. Failure to do so is a violation of the section constituting commission of a felony of the third degree.

Local seaport security personnel and law enforcement personnel may request assistance from state law enforcement agencies such as the Departments of Transportation and Law Enforcement for the purpose of:

- Designing efficient and effective inspection methods
- Providing specialized training in cargo security
- Enhancing the presence of local security personnel on a seaport as needed

The Department of Transportation may formalize cargo security task forces within the regional domestic security task forces to perform unannounced inspections on seaports in the state or at other intermodal inspection stations across the state.

Each seaport must set performance measures for inspecting outbound vehicles that ensure a reasonable balance between cargo security and commerce. Ports that have specific performance goals and plans to reach those goals are eligible for additional funding to pay for increased security costs and equipment. Activities and equipment that are eligible for additional funding include:

- Additional security personnel

- Specialized cargo security training for seaport security and law enforcement personnel
- The purchase and installation of monitoring equipment including the purchase of non-intrusive inspection technology that is capable of inspecting and monitoring outbound vehicles, containers, and trailers
- Specially trained animals that are capable of performing inspection and monitoring activities

All services and equipment purchased must conform to the approved seaport security plan and the area maritime security plan and be approved by the Department of Law Enforcement and the Office of Drug Control.

The bill provides for a minimum of \$10 million per year from the General Revenue Fund for additional seaport security. A minimum of \$100,000 is provided for each seaport annually with a maximum cap of \$2 million during any fiscal year for this purpose. Funds must be distributed according to need as determined by the Department of Transportation as well as each port's demonstration of improvement in the inspection of outbound vehicles.

This bill provides for an effective date of July 1, 2006.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires additional seaport security measures while recognizing there will be additional costs associated with these measures. Funds are provided from the General Revenue Fund for such purpose thus minimizing additional costs to the private sector.

C. Government Sector Impact:

The bill provides for a minimum annual appropriation of \$10 million from the General Revenue Fund for seaport security.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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