

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7145 PCB DSC 06-01 Seaport Security and Access Control/Credentialing
SPONSOR(S): Domestic Security Committee
TIED BILLS: _____ **IDEN./SIM. BILLS:** _____

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	8 Y, 0 N	Newton	Newton
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
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SUMMARY ANALYSIS

The bill establishes security area designations and access requirements for seaports. These designations allow seaport directors to utilize specific restrictive area and non-restrictive area designations in the seaport's security plan and credentialing program.

The bill establishes a five year recurring review of seaport security plans by the seaport director with the assistance of the Regional Domestic Security Task Force and the United States Coast Guard. Additionally, the bill provides for the use of a risk assessment by seaport directors in creating a security plan and determining the use of counter terrorism devises and initiatives. The bill amends the waiver process and establishes an alternative means of compliance to the statewide minimum standards for seaport security. The bill creates a prohibition on concealed weapons inside a seaport's restricted areas.

The bill establishes a Seaport Security Standards Advisory Council under the Office of Drug Control for the purposes of reviewing the statewide seaport security standards for applicability to current narcotics and terrorist threats.

The bill establishes a certification program for Seaport Security Officers and allows seaport authorities and governing boards to require security officers working on a seaport to receive additional training and designation as a certified Seaport Security Officer.

The bill provides authority to create a Seaport Law Enforcement Agency at the discretion of the seaport director. This authority in no way mandates a seaport director to create such a force, if the seaport's security requirements are being met by other means. This provision allows the seaport director the choice of creating the seaports own internal law enforcement agency. The bill establishes a maritime domain awareness training program for security awareness training of all seaport workers.

The bill also authorizes certified Seaport Security Officers to detain, based on probable cause, persons believed to be trespassing in designated seaport restricted access areas pending the immediate arrival of a law enforcement officer, and provides to those officers limited protection from liability for false arrest, false imprisonment, and unlawful detention. The bill makes it a felony to willingly and knowingly attempt to or obtain a seaport security identification card using false information.

The bill takes effect July 1, 2006.

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.

The bill provides greater latitude to the seaport directors in the establishment of security plans and the creation and use of seaport security forces.

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 provides for more comprehensive seaport security planning through the use of risk analysis, review and inspection. By allowing seaport directors flexibility in security plan design and security force composition, each individual seaport can better meet the needs of that particular facility.

Additionally, authorizes governmental seaports to require private and other security forces to have additional training that is specific to the seaport security environment. Authorizes certain private and other seaport 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:

Current Conditions

Security Area Designations

A seaport director shall designate any or all of his or her seaport as a restricted area. This designation has a direct effect on the seaport access credentialing process. The law requires all persons working on a port and having access to a restricted area must submit to a detailed background check. These security checks are often costly and time consuming. Currently, there are no provisions in the law to allow a seaport director latitude in designating areas as unrestricted. Area designations have long been tools for enforcement of restricted or off limits zones on a seaport. The ambiguity that exists in area designation protocols lends itself to increased cost to ports in worker credentialing and places limitations on seaport directors in security planning.

Seaport Security Standards and Waivers

Seaports subject to this BILL are required to review their security plan once every four years and are subject to inspection by the Department of Law Enforcement on a random and annual basis. Security plans developed by the seaports must conform to the standards as set forth in the Office of Drug Control, Minimum Security Standards for Florida Seaports.

In general the Office of Drug Control and the Department of Law Enforcement may modify or waive the standards as contained in the statewide minimum standards for seaport security.

Review of the Statewide Minimum Standards for Seaport Security

There are no provisions for review or modification of the statewide minimum standards for seaport security contained in s. 311.12, F.S.

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 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

¹ Section 493.6303, F.S.

² Section 493.6115, F.S.

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.

Seaport Security Forces

Seaports in Florida utilize a combination of force structures to meet their human capital security needs. A contract between the seaport and local law enforcement agencies is a very popular approach to solving the Security needs of the seaport. Another is to contract with a private firm for security services. Still other seaports use a variation of employed labor and contracts to fulfill this requirement. Although seaports have the authority to contract for security service they are not authorized by statute to establish and maintain a seaport law enforcement agency under the sole control of the seaport director.

The Power to Detain

Florida law authorizes 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 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.

Security Identification Card

³ Section 812.015(3)(a), F.S.

⁴ Section 810.097, F.S.

State or federal law does not provide any penalty for the use of false information to obtain a seaport security identification card.

The Effects of the bill

Security Area Designation

The bill creates s. 311.111, F.S., detailing unrestricted and restricted access areas on seaports. Area designations are as follows: unrestricted, public access areas; restricted, public access areas; restricted access areas and secured, restricted access areas. By creating these categories of access areas, seaport directors shall incorporate these defined areas into the seaport's security plan. When designating areas as unrestricted, seaport directors may not require the full security background checks currently mandated of persons working on seaport property. Persons working solely in unrestricted, public access areas will be required to have identification as required by the seaport director. This allows for the reduction in credentialing costs to the seaports.

Seaport Security Standards and Waivers

The bill aligns the requirements of the seaport to submit a security plan to the Department Law Enforcement for review with the federal requirement to submit a seaport security plan to the United States Coast Guard on a five year schedule. Seaport directors are required to perform risk assessments and incorporate the findings of the assessment into the seaports security plan. This will provide the seaport with current review of the security risks to the seaport on a continual basis. The Department of Law Enforcement is required to annually inspect and within thirty days of that inspection report its findings to the United States Coast Guard and others. The inspection of the seaports by the Department of Law Enforcement shall be based solely on the criteria established in Florida's statewide minimum seaport security standards and the standards as set forth in the federal Maritime Transportation Security Act. Other comments included in the annual inspection report are considered as recommendations and should be incorporated in the seaport's security plans.

Any findings disputed by the seaport related to the statewide minimum seaport security standards contained in the Department of law Enforcement report will be submitted to the Florida Domestic Oversight Council for review and mediation. The Decision of the Council is considered final. This appeals process provides the seaports with a redress procedure not previously granted.

A waiver process was previously in place for the modification of the statewide minimum seaport security standards. This process was underutilized and provides the seaports with no mediation should the Office of Drug Control and the Department of Law Enforcement not grant a waiver to the ports on the standards as written. The bill creates a procedure for seaports to request the Domestic Security Oversight Council review the waiver request should the prior agencies fail to approve the waiver request. The decision of the Council is considered final.

Review of the Statewide Minimum Standards for Seaport Security

The bill creates the Seaport Security Standards Advisory Council under the Office of Drug Control for the purpose of reviewing and recommending modifications to the statewide minimum seaport security standards. The Advisory Council shall meet at least once every five years and report its findings and recommendations to the Governor, the Speaker of the Florida House of Representatives and the President of the Florida Senate.

Seaport Security Officer Training and Certification

The bill 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 authority to evaluate and determine equivalency to the Department of Agriculture and Consumer Services Division of Licensing. The bill also requires certified Seaport Security Officers to undergo at least eight hours of continuing education per Class D licensing cycle in order to maintain certification as a Seaport Security Officer. Failure to meet such requirements 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 D 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.

Seaport Security Forces

The bill creates s. 311.122, F.S., authorizing the creation of a Seaport Law Enforcement Agency by the seaport director to satisfy the seaport's security force requirements. By allowing seaport directors to establish an in-house law enforcement agency, the seaports have an opportunity to moderate costs and provide a flexible layered force for optimum protection and security.

The Power to Detain

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 the suspect 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 lost.

Security Identification Card

The bill creates s. 817.021, F.S., causing the use of false information to attempt to or obtain a seaport security identification card to be a felony. This provides a penalty not included under previous statutes.

C. SECTION DIRECTORY:

Section 1. Creates s. 311.111, F.S., authorizes the use of restrictive and non-restricted designations by seaport directors on seaport property and in seaport security plans.

Section 2. Amends s. 311.12, F.S., subsections 2 and 4, providing for the use of risk assessments in the formulation of seaport security plans;; requiring the department of Law Enforcement to provide a report with 30 days of inspection; defining the appeals process for disputed findings in the seaport inspection report.

Section 3. Creates s. 311.12, F.S., subsection 7, provides a misdemeanor penalty for carrying concealed weapons inside a seaport's restricted areas.

Section 4. Creates s. 311.12, F.S., subsection 8, provides for the establishment of the Seaport Security Standards Advisory Council under the Office of Drug Control.

Section 5. 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 6. Creates s. 311.122, F.S., authorizing seaport director to create a Seaport Law Enforcement Agency.

Section 7. Creates s. 311.123, F.S., establishing a Maritime domain security awareness training program.

Section 8. Creates s. 311.124, 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 9. Creates s. 817.021, F.S., provides a felony penalty for using false information to obtain or attempt to obtain a seaport security identification card.

Section 10. Provides that the provisions of the bill shall take effect July 1, 2006.

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:

See the Fiscal Comments section below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See the Fiscal Comments section below.

D. FISCAL COMMENTS:

The bill does not incur any additional costs to Florida's seaports. The seaport operators are given additional tools to reduce expenditures by designating unrestricted areas lowering credentialing cost to tenants and basing the seaport security inspection process solely on the standards as set forth in the statewide minimum seaport security standards and the Maritime Transportation Security Act. Any additional cost to seaports may come in the form of non-mandatory security recommendations by the Department of Law Enforcement that should be incorporated by the seaports.

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.

A governmental seaport electing to require Seaport Security Officer Certification, there will be an undetermined cost associated with providing additional training for certification. 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:

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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

An amendment adopted by committee promotes the “safety and security of residents and visitors of the state and promotes the flow of legitimate trade and travel” in regard to a seaport’s security plan.