

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7145 CS PCB DS 06-01 Seaport Security and Access Control/Credentialing
SPONSOR(S): Domestic Security Committee and Adams
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	8 Y, 0 N	Newton	Newton
1) Criminal Justice Committee	5 Y, 0 N, w/CS	Cunningham	Kramer
2) Transportation Committee	11 Y, 0 N	Pugh	Miller
3) State Administration Council		Newton	Bussey
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 7145 CS 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 devices and initiatives. It amends the waiver process and establishes an alternative means of compliance to the statewide minimum standards for seaport security. The bill also creates a prohibition on concealed weapons inside a seaport's restricted areas.

HB 7145 CS establishes an 11-member 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.

Additionally, the bill provides authority to create a Seaport Law Enforcement Agency at the discretion of the seaport director. A seaport director is not required 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. It also establishes a maritime domain awareness training program for security awareness training of all seaport workers.

HB 7145 CS 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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

- HB 7145 CS 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.
- But the bill also gives 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. The bill allows seaport directors flexibility in security plan design and security force composition.
- Additionally, the bill 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 Situation

Security Area Designations

Currently, a seaport director may 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 to 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 seaport directors 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 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 14 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 seaports have 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

The state's two county-operated ports -- Port Everglades and Port of Miami -- 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 which are operated by independent special districts, 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

¹ s. 493.6303, F.S.

² s. 493.6115, F.S.

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 a seaport and local law enforcement agencies is a very popular approach to solving the security needs of seaports. 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 to, 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 State law 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, and a law enforcement officer shall be called to the scene immediately. The law also is 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

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

Effect of Proposed Changes

Security Area Designation

HB 7145 CS 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 must 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.

³ s. 812.015(3)(a), F.S.

⁴ s. 810.097, F.S.

Seaport Security Standards and Waivers

HB 7145 CS 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 U.S. 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 the seaports and, within 30 days of that inspection, report its findings to the U.S. 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. HB 7145 CS creates a procedure for seaports to request the Domestic Security Oversight Council to 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

HB 7145 CS creates an 11-member 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. The Advisory Council's members are:

- Two seaport directors appointed by the Governor.
- Two seaport security directors appointed by the Governor.
- One designee from FDLE.
- The director of the Office of Motor Carrier Compliance within the state Department of Transportation.
- One designee from the Florida Attorney General's Office.
- One designee from the state Department of Agriculture and Consumer Services.
- One designee from the Office of Tourism, Trade, and Economic Development.
- A designee from the Office of Drug Control, who shall serve as the chair.
- A representative of the U.S. Coast Guard as an ex officio member.

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.

The Power to Detain

HB 7145 CS 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., making the use of false information to attempt to or obtain a seaport security identification card a third-degree felony, punishable by a maximum 5 years in prison and a \$5,000 fine. This provides a penalty not included under previous statutes.

C. SECTION DIRECTORY:

Section 1. Creates s. 311.111, F.S., requiring certain seaports to designate and identify security area designations, access requirements, and security enforcement authorizations on seaport premises.

Section 2. Amends s. 311.12, F.S., revising the purpose of seaport security plans; requiring periodic plan revisions; requiring plans to be inspected by the Office of Drug Control and the Department of Law Enforcement; providing requirements with respect to protection standards in specified restricted areas; requiring delivery of the plan to specified entities; requiring the Department of Law Enforcement to inspect seaports to determine if all security measures are in compliance with the seaport security standards; requiring a report; providing procedures and requirements with respect to waiver of any physical facility requirement; providing a penalty for possession of a concealed weapon on seaport property; requiring periodic review of statewide minimum standards for seaport security; requiring the Office of Drug Control to convene a Seaport Security Standards Advisory Council to review the statewide minimum standards.

Section 3. Creates s. 311.121, F.S., requiring certain seaports to impose specified requirements for certification as a seaport security officer; creating the Seaport Security Officer Qualification, Training, and Standards Coordinating Council under the Department of Law Enforcement; requiring the Department of Education to develop initial and continuing education and training programs for seaport security officer certification; providing requirements and procedures with respect to such training programs; providing requirements for renewal of inactive or revoked certification.

Section 4. Creates s. 311.122, F.S., authorizing each seaport to create a seaport law enforcement agency; providing requirements of such an agency; providing requirements with respect to the composition of agency personnel; providing powers of seaport law enforcement agency officers and seaport security officers.

Section 5. Creates s. 311.123, F.S., providing for the creation of a maritime domain security awareness training program; providing purpose of the program; providing program training curriculum requirements.

Section 6. Creates s. 311.124, F.S., providing authority of seaport security officers to detain persons suspected of trespassing; providing immunity from specified criminal and civil liability.

Section 7. Creates s. 817.021, F.S., providing a criminal penalty for willfully and knowingly providing false information in obtaining or attempting to obtain a seaport security identification card.

Section 8. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

HB 7145 CS 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 costs 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.

For governmental seaports 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 HB 7145 CS 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

An amendment adopted March 8, 2006, by the Domestic Security Committee to the original PCB DS 06-01 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.

On March 28, 2006, the Criminal Justice Committee adopted a strike-all amendment that made technical changes to the bill and reported the bill favorably with committee substitute.