

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: CS/CS/CS/SB 2684

INTRODUCER: Criminal and Civil Justice Appropriations Committee; Criminal Justice Committee;
 Military Affairs and Domestic Security Committee

SUBJECT: Seaport Security

DATE: April 20, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pardue</u>	<u>Skelton</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	<u>Hendon</u>	<u>Sadberry</u>	<u>JA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill responds to several of the recommendations made in Interim Project Report 2009-122 by the Senate Military Affairs and Domestic Security Committee. Major features of the bill do the following:

- Expand the membership of the Seaport Security Standards Advisory Council.
- Allow the Florida Department of Law Enforcement (FDLE) to exempt part of a seaport from state minimum seaport security standards.
- Eliminate the requirement for a seaport director to perform quarterly risk assessments, but maintain a requirement that the seaport director perform a continuous, ongoing risk assessment.
- Align terminology for restricted areas of the seaport with federal definitions.
- Eliminate the Florida Uniform Port Access Credential.
- Require the FDLE to implement a statewide port access database.
- Create a pilot project for developing the FDLE database.
- Prohibit seaports from issuing individual seaport access cards.

- Create a streamlined affidavit process by which a valid federal Transportation Worker Identification Credential (TWIC) cardholder can gain restricted area port access.
- Eliminate the requirement for a duplicative national criminal history background check in most circumstances, but retain the state-specific Florida background check.
- Align the expiration period for Florida port access to five years, to conform with the TWIC expiration date.
- Align more closely the criminal offenses which disqualify a person from gaining port access in Florida with federal TWIC disqualifying offenses.
- Require a person who has committed a disqualifying criminal offense but wants to access a Florida port to be seven years from conviction, or five years from release from incarceration.
- Direct the Office of Drug Control to commission an updated seaport security assessment.
- Create third degree felonies for submission of information known to be false or misleading to the FDLE for entry into the access eligibility reporting system and for submission of false information on an affidavit relevant to access to secure and restricted areas.

The bill creates a fiscal impact on FDLE but authorizes a \$50 fee that is expected to cover the costs to the department.

This bill substantially amends s. 311.12, F.S.; amends ss. 311.121, 311.123, 311.124, 311.13, 943.0585, and 943.059, F.S., creates s. 311.115, F.S.; and repeals ss. 311.111 and 311.125, F.S.

II. Present Situation:

Interim Project 2009-122 by the Senate Military Affairs and Domestic Security Committee (committee)¹ reviewed the current state of Florida's seaport security environment. In receiving the report, the committee accepted several staff recommendations for immediate action, including those recommendations regarding the need to review and modernize state law and better align state law to federal regulations.²

The purpose of s. 311.12, F.S., is to protect the residents, visitors, and the economic assets of the state while maintaining a free flow of commerce in Florida's public seaports. This section originally targeted problems associated with illicit drug trafficking, associated money laundering, and cargo theft on the state's public seaports. After 2001, the law expanded to also address acts of terrorism.

Florida's public seaports represent an important component of the state's economic infrastructure. In 2006, the Florida Ports Council estimated that by 2008, the annual economic impact of Florida's seaports would approach approximately 350,000 jobs, \$43 billion in gross economic output, and \$1.3 billion in annual state and local tax revenues.³ Staff reviews of major ports' annual reports, audits, and "State of the Port" presentations confirmed growth of

¹ *Florida Seaport Security*, Interim Report 2009-122 (October 2008), Senate Military Affairs and Domestic Security Committee.

² The bill does not incorporate all of the staff recommendations in the interim report due to time and funding limitations.

³ *Florida Seaports' Statewide and Regional Strategic Visioning Process* (July-September 2006), Florida Ports Council; Presentation on Results of Strategic Visioning (September 27, 2006).

commercial activity in difficult economic environments for all but one port. The Port of Miami reported declines in cargo activity, but increased cruise activities for the period.⁴

Because of the ports' importance to the economy of Florida, a level of security that protects against acts of terrorism, trafficking in illicit drugs, cargo theft, and money laundering operations has been deemed essential by the Legislature.

Security requirements for Florida's fourteen deepwater public ports are provided under ch. 311, F.S. For purposes of protection against acts of terrorism, these ports are also regulated by federal law under the Maritime Transportation Security Act of 2002 (MTSA),⁵ the Security and Accountability for Every Port Act (SAFE Port Act),⁶ and the Code of Federal Regulations (CFR).⁷ In addition, provisions of international treaties such as the Safety of Life at Sea (SOLAS), which protect the safety of merchant ships, have been incorporated within the CFR in fulfillment of treaty obligations that affect seaport security at United States and foreign ports.

Concern over the impact of illicit drugs and drug trafficking came to the forefront in Florida during the mid to late 1990s. According to a 1998 Interim Project Summary report by the Senate Criminal Justice Committee, in 1997, there were more cocaine-related deaths in Florida than murders. During 1996, more than 32 tons of cocaine and more than 42 tons of marijuana were seized in Florida.⁸

In the 1999-2000 timeframe, three events contributed to the development of a seaport security framework for Florida:

First, the presiding officers of the Legislature formed a task force that examined, among other things, the issue of money laundering related to illicit drug trafficking.⁹ The task force found that Florida was attractive to drug traffickers due to a number of factors including Florida's strategic position near drug source countries and numerous international airports and deep water seaports.¹⁰ The task force provided a number of recommendations including designating a state agency responsible for seaport and airport security and described the then current seaport security situation as follows:

Customs considers poor seaport security a major reason for drug smuggling. Unlike airports, there is no viable system of federal regulations mandating specific security standards for seaports and marine terminals. Fairly new regulations govern security for large passenger vessels and cruise ship terminals. There are however, no corresponding federal regulations for sea cargo vessels and seaport and marine terminals.¹¹

⁴ Jaxport 2008 Annual Report, 2008 Port Canaveral Annual Report, Port Everglades 2007 Annual Report, 2007 Port of Miami Comprehensive Financial Report, and Port of Tampa "State of the Port" report.

⁵ P.L. 107-295, 116 Stat. 2064 (2002).

⁶ P.L. 109-347, 120 Stat. 1884 (2006).

⁷ Principally 33 CFR, Parts 101 – 106 as they relate to various aspects of vessel and port security.

⁸ *Developing a Comprehensive Drug Control Strategy for Florida*, Interim Project Summary 98-13 (November 1998), p. 2, Senate Criminal Justice Committee.

⁹ *Money Laundering in Florida: Report of the Legislative Task Force* (November 1999), Legislative Task Force on Illicit Money Laundering.

¹⁰ *Ibid*, p. 18.

¹¹ *Ibid*, p. 46.

Second, the Governor's Office of Drug Control commissioned a Statewide Security Assessment of Florida Seaports. The report, which came to be known as the Camber Report,¹² concluded that there was no supervisory agency with oversight of the seaports of the state, no federal or state security standards that governed the seaports' operation, and only limited background checks were conducted on employees at the docks, thus allowing convicted felons, some with arrests for drug-related charges, to work at the seaports.

The report recommended the creation of a State Seaport Authority to regulate all seaports in the state, creation of minimum security standards for all seaports, and the creation and implementation of a security plan by the operators of each seaport.

Third, the Fifteenth Statewide Grand Jury conducted an analysis of Florida's drug control efforts. The Statewide Grand Jury supported the conclusions and recommendations of the Camber Report and highlighted the need for background screening due to testimony they received that "some dock workers carry firearms and that intimidation by dock workers is used as a method of avoiding detection of illegal drug activity."¹³ The grand jury's report cited efforts to impede law enforcement officers at the Miami seaport including simple harassment, blocking law enforcement vehicles with cargo containers, and even dropping a cargo container on a law enforcement vehicle occupied by police canine. Testimony revealed that as many as 60 percent of the Port of Miami dock workers had felony arrests, half of which were drug related charges.¹⁴

The 2000 Legislature passed CS/CS/CS/SB 1258.¹⁵ This legislation provided additional regulations for money laundering and created s. 311.12, F.S., relating to seaport security. In creating s. 311.12, F.S., the Legislature introduced regulation of seaports that benefited from public financing and provided for:

- Development and implementation of a statewide seaport security plan, including minimum standards for seaport security that address the prevention of criminal activity and money laundering;
- Development of individual seaport security plans at each of the ports listed in s. 311.09(1), F.S.;¹⁶
- Establishment of a fingerprint-based criminal history check of current employees and future applicants for employment at Florida's seaports; and
- A requirement directing the FDLE to annually conduct no less than one unannounced inspection at each of the public ports and report its findings to the Governor, the President of the Senate, the Speaker of the House, and the chief administrator of each seaport inspected.

¹² *Statewide Security Assessment of Florida Seaports* (September 2000), Camber Corporation.

¹³ *An Analysis of Florida's Drug Control Efforts*, Third Interim Report (December 14, 2000), Fifteenth Statewide Grand Jury.

¹⁴ *Ibid.*

¹⁵ ch. 2000-360, L.O.F.

¹⁶ The seaports listed in s. 311.09(1), F.S., include the ports of 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. The ports of Fort Pierce and Port St. Joe are currently exempted from annual inspection under the provisions of s. 311.12, F.S., based on a finding that these seaports are considered inactive for purposes of the statute.

Section 311.12, F.S., was amended during the 2001 Legislative Session to incorporate seaport security standards.¹⁷ This section has been further amended to disqualify persons who have been convicted of certain offenses within the previous seven years from gaining initial employment within or regular access to a seaport or port restricted access area. Current disqualifying offenses relate to forcible felonies, terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use or possession of firearms.

Attacks on America Changed the Seaport Security Environment

The terrorist attacks on America brought security issues into sharper focus. Florida adapted its existing seaport security structure to accommodate anti-terrorism measures in addition to its previous efforts against illicit drug trafficking, cargo theft, and money laundering.

Since September 11, 2001, the U.S. Congress has produced multiple pieces of legislation that affect seaport security. This effort included passage of the Homeland Security Act of 2002, which resulted in a major governmental reorganization that created the Department of Homeland Security (DHS).¹⁸ The U.S. Customs and Border Protection agency (CBP) was transferred to the DHS with the mission to prevent terrorists and terrorist weapons from entering the U.S.¹⁹ The Transportation Security Administration (TSA) was transferred to the DHS with the mission of overseeing security for highways, railroads, buses, mass transit systems, ports, and the nation's 450 commercial airports.²⁰ The U.S. Coast Guard (USCG) was also transferred to the DHS and given the mission of lead federal agency for maritime homeland security including ports, waterways, and coastal security as well as drug interdiction.²¹

Congress passed the MTSA in November of 2002, which provided the federal structure for defending U.S. ports against acts of terrorism. In passing the MTSA, Congress primarily set forth direction for anti-terrorism activities but also recognized in its findings that crime on ports in the late 1990s, including drug smuggling, illegal car smuggling, fraud, and cargo theft, had been a problem. In providing a maritime security framework, the MTSA established a requirement for development and implementation of national and area maritime transportation security plans, vessel and facility security plans, and a transportation security card²² along with requirements to conduct vulnerability assessments for port facilities and vessels and the establishment of a process to assess foreign ports from which vessels depart on voyages to the United States.²³

¹⁷ The Camber Report standards were incorporated in s. 311.12, F.S., by ch. 2001-112, L.O.F. These standards form the basis for the FDLE's current seaport security inspection program.

¹⁸ The Homeland Security Act of 2002, P.L. 107-296 (2002).

¹⁹ *Department of Homeland Security Fact Sheet* (www.dhs.gov/dhspublic/display?theme=43&content=5437&print=true).

²⁰ *Transportation Security Administration, What is TSA?* (www.TSA.gov).

²¹ *Homeland Security: Coast Guard Operations – Background and Issues for Congress* (October 25, 2006), Congressional Research Service. According to this report, under the Ports and Waterways Safety Act of 1972 (P.L. 92-340) and the Maritime Transportation Security Act of 2002 (P.L. 107-295) (November 25, 2002), the Coast Guard has responsibility to protect vessels and harbors from subversive acts. With regard to port security, the Coast Guard is responsible for evaluating, boarding, and inspecting commercial ships approaching U.S. waters, countering terrorist threats in U.S. ports, and helping to protect U.S. Navy ships in U.S. ports. A Coast Guard officer in each port area is designated the Captain of the Port (COTP) and serves as the lead federal official for security and safety of vessels and waterways in that area.

²² The Maritime Transportation Security Act of 2002 (P.L. 107-295) (November 25, 2002).

²³ *Maritime Security, One Year Later: A Progress Report on the SAFE Port Act*, GAO-18-171T (October 16, 2007), p. 1, Government Accountability Office, Congressional Research Service.

The MTSA is implemented by Title 33 Code of Federal Regulations (CFR).²⁴ Title 33 CFR provides for review and approval of Facility Security Plans²⁵ by the Captain of the Port (COTP) responsible for each seaport area.²⁶ The USCG also acknowledged Presidential Executive Order 13132 regarding the principle of federalism and preemption of state law in drafting the MTSA rules.²⁷ Under this provision, Florida has the right to exercise authority over its public seaports, which are also regulated by federal authority when there is no conflict between state and federal regulations. Executive Order 13132 states in Section 4:

- (a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.
- (b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.²⁸

The SAFE Port Act, enacted in October 2006, created some new maritime security programs and amended some of the original provisions of the MTSA. The act:

- Codified the Container Security Initiative and the Customs-Trade Partnership Against Terrorism (C-TPAT), which are two programs administered by CBP to help reduce threats associated with cargo shipped in containers;
- Established the Domestic Nuclear Detection Office, which is responsible for conducting research, development, testing, and evaluation of radiation detection equipment; and
- Required that all containers entering high volume U.S. ports be scanned for radiation sources by December 31, 2007.²⁹

The Legislature has continued to introduce improvements to Florida's seaport security policy. The Legislature addressed the issue of a uniform port access credential during the 2003 session. The transportation industry expressed a desire for a single access credential that could be used statewide to facilitate seaport access. As a result, a Florida Uniform Port Access Credential (FUPAC) was provided for in s. 311.125, F.S. This credential, as developed in accordance with

²⁴ Title 33 CFR, Parts 101 through 106, which are administered by the USCG.

²⁵ Title 33 CFR, Subpart 101.105 defines a facility as any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. A seaport may be considered a facility by itself or in the case of large seaports may include multiple facilities within the port boundaries.

²⁶ This is significant in Florida because port tenants individually bear security plan responsibility under USCG administration of Title 33 CFR, while ch. 311, F.S., holds each seaport's port authority responsible for security plan development and implementation.

²⁷ Federal Register, Vol. 68, No. 204 (October 22, 2003), p. 60468.

²⁸ *Federalism*, Presidential Executive Order 13132 (August 4, 1999).

²⁹ The Security and Accountability for Every Port Act of 2006 (P.L. 109-347).

the statute, included deployment of requisite hardware infrastructure. At the same time, the federal government attempted to develop its own credential known as the Transportation Worker Identification Credential (TWIC). A concerted effort was made to develop system compatibility between the FUPAC and the TWIC. As the systems were developed, it became increasingly clear that dually compatible hardware systems were unnecessary. It was determined that the solution to meeting both state and federal goals in providing adequate seaport security could be achieved through systems process alignments and adequate data sharing. In 2008, the federal government began a final effort to field the TWIC as a nationwide identification credential that can be used in conjunction with other access control procedures to grant seaport access permission. Florida's seaports are authorized to develop specific procedures for granting and controlling seaport access pursuant to s. 311.12, F.S., and individual seaport permissions. All of the active seaports listed in ch. 311, F.S., with one exception, use a local issue credential for such permission and control in addition to the TWIC which is used for identification purposes. In addition, individual terminals and facilities within the ports may require separate credentials. One seaport has adopted the TWIC as its sole access credential.

The federal TWIC is being deployed in at least two phases. Phase I, the current deployment, provides for the issuance of credentials to be used as photo identification cards only. Phase II, which has been delayed indefinitely due to contract issues with federal vendors, would provide fully interactive, biometric reader capability use of the card. There is no known target date for full implementation of the biometric capability. On March 27, 2009, the USCG released an Advanced Notice of Proposed Rulemaking (ANPRM) to discuss "... preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities ... for use of electronic readers designed to work with ... [the TWIC] as an access control measure."³⁰

In 2006, the Legislature further developed a system of seaport security area designations that are provided for in s. 311.111, F.S. These designations do not coincide with federal security area definitions found in the CFR. This disparity has presented difficulties when attempting to align state and federal seaport security efforts.

Overall, the seaport security environment has changed significantly since 2001. The federal government has introduced numerous programs and initiatives to address the threat of terrorism against the nation's seaport. Florida recognizes the threat of terrorism and has adapted its seaport security policy to include the threat of terrorism in addition to its original efforts to combat drug trafficking, money laundering, and cargo theft on its seaports.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 311.115, F.S., to clarify the relationship of the currently established Seaport Security Standards Advisory Council to seaport security. The council's mission is tangential to the operational seaport security requirements found in s. 311.12, F.S. In addition, council membership is expanded to include a seaport tenants representative, a seaport workers representative, a representative from the Fish and Wildlife Conservation Commission, and the Director of the Division of Emergency Management.

³⁰ Federal Register, Vol. 74, No. 58 (March 27, 2009), p. 13360.

Section 2 of the bill substantially rewords s. 311.12, F.S. The bill retains certain portions of Florida's current seaport security law while realigning other portions to present an overall program that better coincides with federal seaport security regulations and reduces duplication of effort and confusion between state law and federal regulations. Current law remains unchanged with respect to minimum seaport security standards and the listing of Florida seaports that are subject to those standards, a requirement that subject seaports adopt a seaport security plan and the Office of Drug Control and FDLE review and approve those plans, an annual seaport security inspection program, regular legislative review of ongoing security operational costs to seaports, and the establishment of the Seaport Security Standards Advisory Council.

Specifically, section 2 does the following:

- Authorizes the FDLE to exempt all *or part* of a seaport from minimum standards if they are determined not to be vulnerable to criminal activity or terrorism, which provides flexibility in application of standards. In comparison, currently, s. 311.12, F.S., provides that a seaport may be determined to be inactive for purposes of meeting minimum security standards.
- Deletes a requirement for quarterly threat assessments by the seaport director. Instead, the bill allows for greater flexibility in revising seaport security plans by basing such revisions on the director's *ongoing* assessment of security risks, the risk of terrorist activities, and the specific and identifiable needs of the seaport.
- Introduces use of the term "secure and restricted areas," and directly aligns Florida seaport security definitions with federal definitions. (Section 3 of the bill repeals s. 311.111, F.S., relating to security area designations.) Each seaport listed in s. 311.09, F.S., must clearly designate in seaport security plans, and clearly identify with appropriate signs and markers on the premises of a seaport, all secure and restricted areas as defined by a specified circular from the Department of Homeland Security. The seaport's security plan must also address access eligibility requirements and corresponding security enforcement authorizations, and set forth conditions and restrictions to be imposed on persons employed at, doing business at, or visiting the seaport who access these areas that are sufficient to provide substantial compliance with federal access control regulations and state criminal history checks as prescribed in s. 311.12, F.S.
- Deletes references to certain Federal Emergency Management Agency circulars relating to terrorist risk assessments. Current requirements for the seaport director's risk assessment remain unchanged.
- Provides that each listed seaport is responsible for granting, modifying, restricting, or denying access to workers, visitors who have business with the seaport, and other persons regularly appearing at the seaport, and for verifying a person's eligibility for access at its location.
- Subject to legislative appropriations, directs the FDLE to administer a statewide access eligibility reporting system which at a minimum must include:
 - A centralized secure database;
 - A methodology for transmitting and receiving data between the department and each seaport; and
 - The means to communicate that a person's authorization to enter a secure or restricted area has been suspended or revoked.
- Makes it a third degree felony to submit information known to be false or misleading to the FDLE for entry into the access eligibility reporting system.

- Requires that any suspension or revocation of port access be reported by the seaport to the FDLE within 24 hours. In addition to access permissions granted or denied by seaports, the FDLE may restrict or revoke access permissions if there is a reasonable suspicion that the person is involved in terrorism or criminal violations that could affect the security of a port.
- Requires that all seaport employees or other persons working at the seaport who have regular access to secure or restricted areas comply with federal regulations and state criminal history checks as prescribed in the act.
- Retains the current law requirement that a fingerprint-based criminal history check serve as the basis for determining a person's eligibility to regularly enter seaport secure or restricted areas.
- Requires seaports to notify within three business days the FDLE that a determination has been made regarding a person's access eligibility.
- Authorizes the FDLE to retain information regarding a person's access eligibility and authorizes the FDLE to use that information to ensure continued eligibility through database monitoring.
- Requires that a person seeking unescorted access to seaport secure or restricted areas possess a TWIC.
- Deletes a current law requirement that a person accessing a seaport more than five times in any 90-day period obtain a port access credential, and provides that a person seeking access to seaport secure or restricted areas must either possess a TWIC and have successfully undergone a state criminal history check or be escorted.
- Provides that a person in possession of a TWIC by waiver may apply for a state waiver. Provisions of the access process include:
 - A requirement that a person execute an affidavit under oath providing TWIC identification information and indicating that the TWIC is currently valid and in full force, the person did not receive the TWIC through a waiver of federal disqualifying criminal history, and the person has not been involved in any manner whatsoever with a disqualifying felony or crime involving use or possession of a firearm;
 - A requirement to successfully complete a state criminal history check;
 - Authorization for a seaport to grant secure or restricted area access upon submission of a completed affidavit, completion of a required state criminal history check, and payment of all required fees, which saves the cost of a duplicate federal criminal history check;
 - A provision making submission of false information on the affidavit a third degree felony;
 - A conspicuously displayed statement on the affidavit form declaring submission of false information is a felony and will result, upon conviction, in disqualification for access to seaport restricted access areas; and
 - Submission of a new affidavit upon the occasion of the five-year renewal of a person's TWIC.
- Expands the waiver process currently in law to include persons who obtained a TWIC through a federal waiver process.
- Provides for the payment of fees to cover the costs of access determination and system maintenance. Such fees may not be charged by more than one seaport. These fees include the cost of a state finger-print based criminal history check, payable to the FDLE, and a \$50 fee that covers all costs for entering or maintaining the person in the access eligibility reporting

system for a period of five years, payable to the FDLE. The fee is chargeable every five years thereafter to coincide with the issuance of a TWIC.

- Permits the initial seaport entering a person into the system to charge an additional administrative fee to cover, but not exceed, the seaport's system participation costs.
- Adopts the federal requirement and applies a seven-year provision to convictions and pleas of guilty or nolo contendere regardless of adjudication or five years after release from incarceration or any supervision imposed as a result of committing any of the disqualifying crimes. In comparison, current law provides that a person who has been convicted of certain offenses, regardless of adjudication, shall be disqualified from employment within or unescorted access to restricted access areas of a seaport for a period of seven years after completion of incarceration or required supervision.
- Adds certain criminal offenses to the list of those state offenses that currently disqualify a person from employment or unescorted access on a seaport. This change brings Florida's list of disqualifying offenses into better alignment with federal regulations, since these crimes are disqualifying at the federal level. The added offenses include:
 - Criminal anarchy or inciting insurrection;
 - Use of commercial transportation in the commission of a felony;
 - Racketeering activity;
 - Money laundering;
 - Criminal use of personal identification;
 - Bribery; and
 - A violation of s. 316.302, F.S., relating to the transport of hazardous materials.
- Requires that a report of findings from the FDLE inspections be made available to the Domestic Security Oversight Council. The affected seaport may request the council to review the department's findings as they relate to s. 311.12, F.S. The council may only review those findings that are in dispute and may concur in the findings of the department or the seaport, or may make its own corrective action recommendations to the seaport.
- Adds the governing body of each seaport or seaport authority to the list of persons who receive a copy of the FDLE's required annual seaport security report.
- Adds a requirement that the FDLE provide an assessment briefing to the board members of the governing authority of the seaport and the co-chairs of the regional domestic security task force after it completes its annual seaport inspection. The briefing must address inspection findings, areas of concern, and recommendations for improvement. Board members are required to attend these briefings and attendance records shall be published and announced at the board's next regular meeting. The board must make transcripts and audio recordings of all proceedings during the briefings.
- Provides that s. 790.251, F.S., relating to possession of a legally owned firearm in a private motor vehicle in a parking lot, is not superseded, preempted, or otherwise modified in any way by the provisions of s. 311.12, F.S.

Section 3 of the bill repeals s. 311.111, F.S., relating to seaport security area designations. It also repeals s. 311.125, F.S., and deletes all references to the Florida Uniform Port Access Credential and related references to the Department of Highway Safety and Motor Vehicles. The bill removes the requirement in current law to develop a statewide port access credential. Instead, it provides for an access eligibility reporting system for ascertaining access eligibility at each

public seaport and reliance on the federal TWIC coupled with a state criminal history check. Residual language from ss. 311.111 and 311.125 is placed in s. 311.12, F.S.

Section 4 of the bill amends s. 311.121, F.S., to replace the chancellor of the Community College System with the Commissioner of Education or designee on the Seaports Security Officer Qualification, Training, and Standards Coordinating Council.

Section 5 of the bill amends s. 311.123, F.S., to reflect reference changes resulting from the reorganization of s. 311.12, F.S., and the repeal of s. 311.125, F.S.

Section 6 of the bill amends s. 133.124, F.S., to conform terms and references resulting from the reorganization of s. 311.12, F.S.

Section 7 of the bill amends s. 311.13, F.S., to delete unnecessary references to “a seaport authority created by an act of the Legislature.”

Section 8 amends s. 943.0585, F.S., to reflect reference changes resulting from the reorganization of s. 311.12, F.S., and the repeal of s. 311.125, F.S.

Section 9 of the bill amends s. 943.059, F.S., to reflect reference changes resulting from the reorganization of s. 311.12, F.S., and the repeal of s. 311.125, F.S.

Section 10 of the bill creates new language, which may appear in chapter law if the bill passes. This language directs the Office of Drug Control to commission an update of the Florida Seaport Security Assessment 2000 referenced in s. 311.12(1)(a), F.S., to be presented to the Legislature by January 1, 2010. The office is directed to consult with the Seaport Security Standards Advisory Council in formulating update parameters.

Section 11 of the bill creates new language, which may appear in chapter law if the bill passes. This language allows for the creation of a pilot project at a minimum of three seaports to reduce costs and impacts while implementing TWIC, plus the state criminal history check, as the access credential in use at Florida seaports. Existing equipment purchased for this purpose is transferred from the Department of Highway Safety and Motor Vehicles to the FDLE.

Section 12 of the bill provides that s. 311.12(10)(b), F.S., as amended by the act, shall only take effect if SB 2162 or similar legislation is enacted in the same legislative session. Paragraph (10)(b) provides that after the FDLE completes its annual inspection report it must provide an assessment briefing to the board members of the governing authority of each seaport and to the local regional domestic security task force co-chairs.

SB 2162 exempts from public disclosure that portion of a meeting of the governing board at which the board will hear or discuss active criminal investigative or criminal intelligence information as defined in s. 119.011, F.S., or security plan briefings from the FDLE. The bill also exempts audio and video recordings, minutes, and any notes generated during a closed meeting to discuss exempt information. The bill provides for an expiration of the exemption when the criminal investigative and criminal intelligence information is no longer active or the

security plan is no longer in effect. Pursuant to the Open Government Sunset Review Act, the act stands repealed on October 2, 2014, unless reviewed and reenacted.

Section 13 of the bill provides that, except as otherwise expressly provided in the act, the act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Repeal of s. 311.125, F.S., relating to the Uniform Port Access Credential and the other provisions of the bill will result in an estimated cost savings of 90 percent to seaport employers and workers, those persons whose business purposes require regular seaport access, and transportation industry workers who frequently access Florida's seaports. Such persons will incur the costs of obtaining a federal TWIC card, a state criminal history background check, a \$50 fee that covers all costs for entering or maintaining the person in the access eligibility reporting system for a period of five years, and an allowable charge by the entering seaport not to exceed the actual cost of system administration.

Changes provided in the act will reduce the cost to seaport and transportation industry workers who currently must obtain multiple seaport access credentials and by reducing the fees for persons holding federal credentials through the use of an affidavit process.

C. Government Sector Impact:

Current law requires those seaports which receive state funding and are listed in ch. 311, F.S., to provide for adequate seaport security. The Congressional Research Service estimates that a terrorist detonation of a 10- to 20-kiloton nuclear device at a major seaport (a low probability but high consequence event) would kill 50,000 to 1 million people, would result in direct property damage of \$50 to \$500 billion, incur trade

disruption losses of \$100 to \$200 billion, and incur indirect costs of \$300 billion to \$1.2 trillion.³¹ A Florida Ports Council commissioned study reports that the seaports covered under ch. 311, F.S., spent approximately \$57 million in 2007 for operational security.³²

The bill does not change current requirements for seaport security expenditures with the exception stated above in the Private Sector Impact section.

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any of legislation, has not met to consider the impact of the bill. However, a preliminary estimate by the Office of Economic and Demographic Research (EDR) is that the bill will have an insignificant impact.³³

The FDLE has indicated in its analysis of the bill³⁴ the following impact to the department of the access eligibility reporting system:

	FY 09-10	FY 10-11	FY 11-12
Recurring	\$59,969	\$71,709	\$71,709
Non-recurring	\$744,121	\$201,430	\$61,400
Total	\$804,090	\$273,139	\$133,109

Recurring costs include salary, benefits, expense and human resource services for FTE, license fees and on-going support and maintenance. Non-recurring costs include hardware, software, contract salary and expense, and OCO for contractors and FTE. The bill provides for a \$50 fee to be paid to FDLE that is expected to cover the costs associated with the bill.

The federal American Recovery and Reinvestment Act of 2009³⁵ provides an opportunity for port security grants that have been identified by the Governor’s Office as possible funding sources for any associated costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDLE has indicated that it cannot complete necessary computer programming for the access eligibility reporting system by the July 1, 2009, effective date and recommends a November 1, 2009, effective date.³⁶

³¹ *Terrorist Nuclear Attacks on Seaport: Threat and Response* (January 24, 2005), Congressional Research Service.

³² *The Capacity of Florida’s Seaports to Fund Their Five-Year Capital Improvement Programs and the Cost of Mandated Seaport Security* (February 13, 2008), First Southwest Company.

³³ E-mail to legislative staff from Kathy McCharen, Office of Economic and Demographic Research, dated April 9, 2009.

³⁴ Analysis of SB 2684, Florida Department of Law Enforcement, dated March 17, 2009.

³⁵ P.L. 111-5, 123 Stat. 115 (Feb. 17, 2009).

³⁶ Analysis of SB 2684, Florida Department of Law Enforcement, dated March 17, 2009.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal and Civil Justice Appropriations on April 20, 2009:

- Clarifies that FDLE may forward fingerprints to the Federal Bureau of Investigation for a national criminal history check. The cost of the national check must be paid by the seaport. The seaport may collect the cost from the individual.

CS by Criminal Justice on April 15, 2009:

- Provides that s. 790.251, F.S., relating to possession of a legally owned firearm in a private motor vehicle in a parking lot, is not superseded, preempted, or otherwise modified in any way by the provisions of s. 311.12, F.S., relating to seaport security.
- Requires a person seeking authorization for unescorted access to secure and restricted areas of a seaport to attest in an affidavit that the person has not been charged or convicted of any crime which includes the use or possession of a firearm (deleting the word “weapon” in a previous reference to “use or possession of a weapon or firearm”).
- Provides as a disqualifying offense for employment or unescorted access at a seaport any crime which includes the use or possession of a firearm (deleting the word “weapon” in a previous reference to “use or possession of a weapon or firearm”).

CS by Military Affairs and Domestic Security on March 31, 2009:

This CS deletes:

- The provision in current law known as the “five in 90-day rule,” relating to a requirement to obtain a seaport access credential if accessing a port more than five times in a 90-day period;
- A provision in the original proposed committee bill relating to definitions of and required procedures for “visitors” and “cruise ship passengers”;
- A provision in the original proposed committee bill relating to an expedited access process; and
- References in the original proposed committee bill to a required federal criminal history check for persons not in possession of a TWIC.

This CS also adds provisions for:

- Defining seaport secure or restricted areas in consonance with federal regulations;
- Requiring persons seeking unescorted access to seaport secure or restricted areas to possess a TWIC and a state criminal history check unless granted a waiver as provided for in the act; and
- Fees to be paid for seaport access determination. Such fees may not be charged by more than one seaport.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
