

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

1 A bill to be entitled
2 An act relating to seaport security; creating s. 311.115,
3 F.S.; establishing the Seaport Security Standards Advisory
4 Council; providing for membership and terms of office;
5 providing duties; providing for per diem and travel
6 expenses; requiring reports to the Governor and
7 Legislature; amending s. 311.12, F.S.; revising provisions
8 relating to seaport security; authorizing the Department
9 of Law Enforcement to exempt all or part of a port from
10 certain security requirements; providing criteria for
11 determining eligibility to enter secure or restricted
12 areas; establishing a statewide access eligibility
13 reporting system within the department; requiring all
14 access eligibility to be submitted to the department and
15 retained within the system; deleting the requirement that
16 seaports promptly notify the department of any changes in
17 access levels; requiring changes in access eligibility
18 status to be reported within a certain time; providing for
19 fees; providing a procedure for obtaining access to secure
20 and restricted areas using federal credentialing;
21 specifying the process for conducting criminal history
22 checks and for the retention of fingerprint information;
23 providing a criminal penalty for providing false
24 information related to obtaining access to restricted
25 seaport areas; providing additional criminal offenses that
26 disqualify a person from employment by or access to a
27 seaport; deleting the requirement that the department
28 notify the port authority that denied employment of the

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

29 final disposition of a waiver request from background
30 screening requirements; allowing, rather than requiring,
31 certain applications for a waiver from security
32 requirements to be submitted to the Domestic Security
33 Oversight Council for review; requiring a copy of the
34 department's legislative report to be provided to each
35 seaport governing body or authority; adding the department
36 to those entities responsible for allocating funds for
37 security projects; deleting provisions relating to the
38 Seaport Security Standards Advisory Council; repealing s.
39 311.111, F.S., relating to unrestricted and restricted
40 public access areas and secured restricted access areas;
41 repealing s. 311.125, F.S., relating to the Uniform Port
42 Access Credential System and the Uniform Port Access
43 Credential Card; amending s. 311.121, F.S.; revising the
44 membership of the Seaport Security Officer Qualification,
45 Training, and Standards Coordinating Council; amending ss.
46 311.123, 311.124, 311.13, 943.0585, and 943.059, F.S.;
47 conforming terms and cross-references; directing the
48 Office of Drug Control to commission an update of the
49 Florida Seaport Security Assessment 2000, which shall be
50 presented to the Legislature by a certain date;
51 authorizing the Department of Law Enforcement to create a
52 pilot project to implement the seaport employee access
53 system; transferring certain equipment from the Department
54 of Highway Safety and Motor Vehicles to the Department of
55 Law Enforcement for use in the project; providing an
56 effective date.

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 311.115, Florida Statutes, is created to read:

311.115 Seaport Security Standards Advisory Council.--The Seaport Security Standards Advisory Council is created under the Office of Drug Control. The council shall serve as an advisory council as provided in s. 20.03(7).

(1) The members of the council shall be appointed by the Governor and consist of the following:

(a) Two seaport directors.

(b) Two seaport security directors.

(c) One representative of seaport tenants.

(d) One representative of seaport workers.

(e) One member from the Department of Law Enforcement.

(f) One member from the Office of Motor Carrier Compliance of the Department of Transportation.

(g) One member from the Office of the Attorney General.

(h) One member from the Department of Agriculture and Consumer Services.

(i) One member from the Office of Tourism, Trade, and Economic Development.

(j) One member from the Office of Drug Control.

(k) One member from the Fish and Wildlife Conservation Commission.

(l) The Director of the Division of Emergency Management, or his or her designee.

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

85 (2) In addition to the members designated in subsection
 86 (1), the council may invite a representative of the United
 87 States Coast Guard to attend and participate in council meetings
 88 as an ex officio, nonvoting member of the council.

89 (3) Members of the council shall be appointed to 4-year
 90 terms. A vacancy shall be filled by the Governor for the balance
 91 of the unexpired term.

92 (4) The council shall be chaired by the member from the
 93 Office of Drug Control.

94 (5) At least every 4 years after January 15, 2007, the
 95 Office of Drug Control shall convene the council to review the
 96 minimum security standards referenced in s. 311.12(1) for
 97 applicability to and effectiveness in combating current
 98 narcotics and terrorism threats to the state's seaports. All
 99 sources of information allowed by law shall be used in assessing
 100 the applicability and effectiveness of the standards.

101 (6) Council members shall serve without pay, but shall be
 102 entitled to per diem and travel expenses for attendance at
 103 officially called meetings as provided in s. 112.061.

104 (7) The council shall consult with the appropriate area
 105 maritime security committees to assess possible impacts to
 106 commerce and trade contained in the council's nonclassified
 107 recommendations and findings.

108 (8) The recommendations and findings of the council shall
 109 be transmitted to the Governor, the President of the Senate, and
 110 the Speaker of the House of Representatives.

111 Section 2. Section 311.12, Florida Statutes, is amended to
 112 read:

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

113 (Substantial rewording of section. See
 114 s. 311.12, F.S., for present text.)
 115 311.12 Seaport security.--
 116 (1) SECURITY STANDARDS.--
 117 (a) The statewide minimum standards for seaport security
 118 applicable to seaports listed in s. 311.09 shall be those based
 119 on the Florida Seaport Security Assessment 2000 and set forth in
 120 the Port Security Standards Compliance Plan delivered to the
 121 Speaker of the House of Representatives and the President of the
 122 Senate on December 11, 2000. The Office of Drug Control within
 123 the Executive Office of the Governor shall maintain a sufficient
 124 number of copies of the standards at its offices for
 125 distribution to the public and provide copies to each affected
 126 seaport upon request.
 127 (b) A seaport may implement security measures that are
 128 more stringent, more extensive, or supplemental to the minimum
 129 security standards established by this subsection.
 130 (c) The provisions of s. 790.251 are not superseded,
 131 preempted, or otherwise modified in any way by the provisions of
 132 this section.
 133 (2) EXEMPTION.--The Department of Law Enforcement may
 134 exempt all or part of a seaport listed in s. 311.09 from the
 135 requirements of this section if the department determines that
 136 activity associated with the use of the seaport or part of the
 137 seaport is not vulnerable to criminal activity or terrorism. The
 138 department shall periodically review such exemptions to
 139 determine if there is a change in use. Such change may warrant
 140 removal of all or part of the exemption.

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

141 (3) SECURITY PLAN.--Each seaport listed in s. 311.09 shall
142 adopt and maintain a security plan specific to that seaport
143 which provides for a secure seaport infrastructure that promotes
144 the safety and security of state residents and visitors and the
145 flow of legitimate trade and travel.

146 (a) Every 5 years after January 1, 2007, each seaport
147 director, with the assistance of the Regional Domestic Security
148 Task Force and in conjunction with the United States Coast
149 Guard, shall revise the seaport's security plan based on the
150 director's ongoing assessment of security risks, the risks of
151 terrorist activities, and the specific and identifiable needs of
152 the seaport for ensuring that the seaport is in substantial
153 compliance with the minimum security standards established under
154 subsection (1).

155 (b) Each adopted or revised security plan must be reviewed
156 and approved by the Office of Drug Control and the Department of
157 Law Enforcement for compliance with federal facility security
158 assessment requirements under 33 C.F.R. s. 105.305 and the
159 minimum security standards established under subsection (1).
160 Within 30 days after completion, a copy of the written review
161 shall be delivered to the United States Coast Guard, the
162 Regional Domestic Security Task Force, and the Domestic Security
163 Oversight Council.

164 (4) SECURE AND RESTRICTED AREAS.--Each seaport listed in
165 s. 311.09 must clearly designate in seaport security plans, and
166 clearly identify with appropriate signs and markers on the
167 premises of a seaport, all secure and restricted areas as
168 defined by the United States Department of Homeland Security--

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

169 United States Coast Guard Navigation and Vessel Inspection
 170 Circular No. 03-07 and 49 C.F.R. part 1572. The plans must also
 171 address access eligibility requirements and corresponding
 172 security enforcement authorizations.

173 (a) The seaport's security plan must set forth the
 174 conditions and restrictions to be imposed on persons employed
 175 at, doing business at, or visiting the seaport who have access
 176 to secure and restricted areas which are sufficient to provide
 177 substantial compliance with the minimum security standards
 178 established in subsection (1) and federal regulations.

179 1. All seaport employees and other persons working at the
 180 seaport who have regular access to secure or restricted areas
 181 must comply with federal access control regulations and state
 182 criminal history checks as prescribed in this section.

183 2. All persons and objects in secure and restricted areas
 184 are subject to search by a sworn state-certified law enforcement
 185 officer, a Class D seaport security officer certified under
 186 Maritime Transportation Security Act guidelines and s. 311.121,
 187 or an employee of the seaport security force certified under the
 188 Maritime Transportation Security Act guidelines and s. 311.121.

189 3. Persons found in these areas without the proper
 190 permission are subject to the trespass provisions of ss. 810.08
 191 and 810.09.

192 (b) As determined by the seaport director's most current
 193 risk assessment under paragraph (3) (a), any secure or restricted
 194 area that has a potential human occupancy of 50 persons or more,
 195 any cruise terminal, or any business operation that is adjacent
 196 to a public access area must be protected from the most probable

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

197 and credible terrorist threat to human life.

198 (c) The seaport must provide clear notice of the
 199 prohibition against possession of concealed weapons and other
 200 contraband material on the premises of the seaport. Any person
 201 in a restricted area who has in his or her possession a
 202 concealed weapon, or who operates or has possession or control
 203 of a vehicle in or upon which a concealed weapon is placed or
 204 stored, commits a misdemeanor of the first degree, punishable as
 205 provided in s. 775.082 or s. 775.083. This paragraph does not
 206 apply to active-duty certified federal or state law enforcement
 207 personnel or persons so designated by the seaport director in
 208 writing.

209 (d) During a period of high terrorist threat level, as
 210 designated by the United States Department of Homeland Security
 211 or the Department of Law Enforcement, or during an emergency
 212 declared at a port by the seaport security director due to
 213 events applicable to that particular seaport, the management or
 214 controlling authority of the port may temporarily designate any
 215 part of the seaport property as a secure or restricted area. The
 216 duration of such designation is limited to the period in which
 217 the high terrorist threat level is in effect or a port emergency
 218 exists.

219 (5) ACCESS ELIGIBILITY REPORTING SYSTEM.--Subject to
 220 legislative appropriations, the Department of Law Enforcement
 221 shall administer a statewide seaport access eligibility
 222 reporting system.

223 (a) The system must include, at a minimum, the following:
 224 1. A centralized, secure method of collecting and

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

225 maintaining fingerprints, other biometric data, or other means
226 of confirming the identity of persons authorized to enter a
227 secure or restricted area of a seaport.

228 2. A methodology for receiving from and transmitting
229 information to each seaport regarding a person's authority to
230 enter a secure or restricted area of the seaport.

231 3. A means for receiving prompt notification from a
232 seaport when a person's authorization to enter a secure or
233 restricted area of a seaport has been suspended or revoked.

234 4. A means to communicate to seaports when a person's
235 authorization to enter a secure or restricted area of a seaport
236 has been suspended or revoked.

237 (b) Each seaport listed in s. 311.09 is responsible for
238 granting, modifying, restricting, or denying access to secure
239 and restricted areas to seaport employees, other persons working
240 at the seaport, visitors who have business with the seaport, or
241 other persons regularly appearing at the seaport. Based upon the
242 person's criminal history check, each seaport may determine the
243 specific access eligibility to be granted to that person. Each
244 seaport is responsible for access eligibility verification at
245 its location.

246 (c) Upon determining that a person is eligible to enter a
247 secure or restricted area of a port pursuant to subsections (6)
248 and (7), the seaport shall, within 3 business days, report the
249 determination to the department for inclusion in the system.

250 (d) All information submitted to the department regarding
251 a person's access eligibility screening may be retained by the
252 department for subsequent use in promoting seaport security,

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

253 including, but not limited to, the review of the person's
254 criminal history status to ensure that the person has not become
255 disqualified for such access.

256 (e) The following fees may not be charged by more than one
257 seaport and shall be paid by the seaport, another employing
258 entity, or the person being entered into the system to the
259 department or to the seaport if the seaport is acting as an
260 agent of the department for the purpose of collecting the fees:

261 1. The cost of the state criminal history check under
262 subsection (7).

263 2. A \$50 fee to cover the initial cost of entering the
264 person into the system and an additional \$50 fee every 5 years
265 thereafter to coincide with the issuance of the federal
266 Transportation Worker Identification Credential described in
267 subsection (6). The fee covers all costs for entering or
268 maintaining the person in the system including the retention and
269 use of the person's fingerprint, other biometric data, or other
270 identifying information.

271 3. The seaport entering the person into the system may
272 charge an administrative fee to cover, but not exceed, the
273 seaport's actual administrative costs for processing the results
274 of the state criminal history check and entering the person into
275 the system.

276 (f) All fees identified in paragraph (e) must be paid
277 before the person may be granted access to a secure or
278 restricted area. Failure to comply with the criminal history
279 check and failure to pay the fees are grounds for immediate
280 denial of access.

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

281 (g) Persons, corporations, or other business entities that
 282 employ persons to work or do business at seaports shall notify
 283 the seaport of the termination, resignation, work-related
 284 incapacitation, or death of an employee who has access
 285 permission.

286 1. If the seaport determines that the person has been
 287 employed by another appropriate entity or is self-employed for
 288 purposes of performing work at the seaport, the seaport may
 289 reinstate the person's access eligibility.

290 2. A business entity's failure to report a change in an
 291 employee's work status within 7 days after the change may result
 292 in revocation of the business entity's access to the seaport.

293 (h) In addition to access permissions granted or denied by
 294 seaports, access eligibility may be restricted or revoked by the
 295 department if there is a reasonable suspicion that the person is
 296 involved in terrorism or criminal violations that could affect
 297 the security of a port or otherwise render the person ineligible
 298 for seaport access.

299 (i) Any suspension or revocation of port access must be
 300 reported by the seaport to the department within 24 hours after
 301 such suspension or revocation.

302 (j) The submission of information known to be false or
 303 misleading to the department for entry into the system is a
 304 felony of the third degree, punishable as provided in s.
 305 775.082, s. 775.083, or s. 775.084.

306 (6) ACCESS TO SECURE AND RESTRICTED AREAS.--

307 (a) Any person seeking authorization for unescorted access
 308 to secure and restricted areas of a seaport must possess, unless

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

309 waived under paragraph (7)(e), a valid federal Transportation
310 Worker Identification Credential (TWIC) and execute an affidavit
311 under oath which provides TWIC identification information and
312 indicates the following:

313 1. The TWIC is currently valid and in full force and
314 effect.

315 2. The TWIC was not received through the waiver process
316 for disqualifying criminal history allowed by federal law.

317 3. He or she has not, in any jurisdiction, civilian or
318 military, been convicted of, entered a plea of guilty or nolo
319 contendere to, regardless of adjudication, or been found not
320 guilty by reason of insanity, of any disqualifying felony under
321 subsection (7) or any crime that includes the use or possession
322 of a firearm.

323 (b) Upon submission of a completed affidavit as provided
324 in paragraph (a), the completion of the state criminal history
325 check as provided in subsection (7), and payment of all required
326 fees under subsection (5), a seaport may grant the person access
327 to secure or restricted areas of the port.

328 (c) Any port granting a person access to secure or
329 restricted areas shall report the grant of access to the
330 Department of Law Enforcement for inclusion in the access
331 eligibility reporting system under subsection (5) within 3
332 business days.

333 (d) The submission of false information on the affidavit
334 required by this section is a felony of the third degree,
335 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
336 Upon conviction for a violation of this provision, the person

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

337 convicted forfeits all privilege of access to secure or
 338 restricted areas of a seaport and is disqualified from future
 339 approval for access to such areas.

340 (e) Any affidavit form created for use under this
 341 subsection must contain the following statement in conspicuous
 342 type: "SUBMISSION OF FALSE INFORMATION ON THIS AFFIDAVIT IS A
 343 FELONY UNDER FLORIDA LAW AND WILL, UPON CONVICTION, RESULT IN
 344 DISQUALIFICATION FOR ACCESS TO A SECURE OR RESTRICTED AREA OF A
 345 SEAPORT."

346 (f) Upon each 5-year renewal of a person's TWIC, the
 347 person must submit another affidavit as required by this
 348 subsection.

349 (7) CRIMINAL HISTORY SCREENING.--A fingerprint-based
 350 criminal history check must be performed on employee applicants,
 351 current employees, and other persons authorized to regularly
 352 enter a secure or restricted area, or the entire seaport if the
 353 seaport security plan does not designate one or more secure or
 354 restricted areas.

355 (a) A person is disqualified from employment or unescorted
 356 access if the person:

357 1. Was convicted of, or entered a plea of guilty or nolo
 358 contendere to, regardless of adjudication, any of the offenses
 359 listed in paragraph (b) in any jurisdiction, civilian or
 360 military, including courts-martial conducted by the Armed Forces
 361 of the United States, during the 7 years before the date of the
 362 person's application for access; or

363 2. Was released from incarceration, or any supervision
 364 imposed as a result of sentencing, for committing any of the

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

365 disqualifying crimes listed in paragraph (b) in any
 366 jurisdiction, civilian or military, during the 5 years before
 367 the date of the person's application for access.

368 (b) Disqualifying offenses include:

- 369 1. An act of terrorism as defined in s. 775.30.
- 370 2. A violation involving a weapon of mass destruction or a
 371 hoax weapon of mass destruction as provided in s. 790.166.
- 372 3. Planting of a hoax bomb as provided in s. 790.165.
- 373 4. A violation of s. 876.02 or s. 876.36.
- 374 5. A violation of s. 860.065.
- 375 6. Trafficking as provided in s. 893.135.
- 376 7. Racketeering activity as provided in s. 895.03.
- 377 8. Dealing in stolen property as provided in s. 812.019.
- 378 9. Money laundering as provided in s. 896.101.
- 379 10. Criminal use of personal identification as provided in
 380 s. 817.568.
- 381 11. Bribery as provided in s. 838.015.
- 382 12. A violation of s. 316.302, relating to the transport
 383 of hazardous materials.
- 384 13. A forcible felony as defined in s. 776.08.
- 385 14. A violation of s. 790.07.
- 386 15. Any crime that includes the use or possession of a
 387 firearm.
- 388 16. A felony violation for theft as provided in s.
 389 812.014.
- 390 17. Robbery as provided in s. 812.13.
- 391 18. Burglary as provided in s. 810.02.
- 392 19. Any violation involving the sale, manufacture,

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

393 delivery, or possession with intent to sell, manufacture, or
 394 deliver a controlled substance.

395 20. Any offense under the laws of another jurisdiction
 396 that is similar to an offense listed in this paragraph.

397 21. Conspiracy or attempt to commit any of the offenses
 398 listed in this paragraph.

399 (c) Each individual who is subject to a criminal history
 400 check shall file a complete set of fingerprints taken in a
 401 manner acceptable to the Department of Law Enforcement for state
 402 processing. The results of the criminal history check must be
 403 reported to the requesting seaport and may be shared among
 404 seaports.

405 (d) All fingerprints submitted to the Department of Law
 406 Enforcement shall be retained by the department and entered into
 407 the statewide automated fingerprint identification system
 408 established in s. 943.05(2) (b) and available for use in
 409 accordance with s. 943.05(2) (g) and (h). An arrest record that
 410 is identified with the retained fingerprints of a person subject
 411 to the screening shall be reported to the seaport where the
 412 person has been granted access to a secure or restricted area.
 413 If the fingerprints of a person who has been granted access were
 414 not retained, or are otherwise not suitable for use by the
 415 department, the person must be refingerprinted in a manner that
 416 allows the department to perform its functions as provided in
 417 this section.

418 (e) The Department of Law Enforcement shall establish a
 419 waiver process for a person who does not have a TWIC, obtained a
 420 TWIC through a federal waiver process, or is found to be

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

421 unqualified under paragraph (a) and denied employment by a
 422 seaport or unescorted access to secure or restricted areas. If
 423 the person does not have a TWIC and a federal criminal history
 424 record check is required, the Department of Law Enforcement may
 425 forward the person's fingerprints to the Federal Bureau of
 426 Investigation for a national criminal history record check. The
 427 cost of the national check must be paid by the seaport, which
 428 may collect it as reimbursement from the person.

429 1. Consideration for a waiver shall be based on the
 430 circumstances of any disqualifying act or offense, restitution
 431 made by the individual, and other factors from which it may be
 432 determined that the individual does not pose a risk of engaging
 433 in any act within the public seaports regulated under this
 434 chapter that would pose a risk to or threaten the security of
 435 the seaport and the public's health, safety, or welfare.

436 2. The waiver process begins when an individual who has
 437 been denied initial employment within or denied unescorted
 438 access to secure or restricted areas of a public seaport submits
 439 an application for a waiver and a notarized letter or affidavit
 440 from the individual's employer or union representative which
 441 states the mitigating reasons for initiating the waiver process.

442 3. Within 90 days after receipt of the application, the
 443 administrative staff of the Parole Commission shall conduct a
 444 factual review of the waiver application. Findings of fact shall
 445 be transmitted to the department for review. The department
 446 shall make a copy of those findings available to the applicant
 447 before final disposition of the waiver request.

448 4. The department shall make a final disposition of the

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

449 waiver request based on the factual findings of the
 450 investigation by the Parole Commission. The department shall
 451 notify the waiver applicant of the final disposition of the
 452 waiver.

453 5. The review process under this paragraph is exempt from
 454 chapter 120.

455 6. By October 1 of each year, each seaport shall report to
 456 the department each instance of denial of employment within, or
 457 access to, secure or restricted areas, and each instance waiving
 458 a denial occurring during the last 12 months. The report must
 459 include the identity of the individual affected, the factors
 460 supporting the denial or waiver, and any other material factors
 461 used to make the determination.

462 (f) In addition to the waiver procedure established by the
 463 Department of Law Enforcement under paragraph (e), each seaport
 464 security plan may establish a procedure to appeal a denial of
 465 employment or access based upon procedural inaccuracies or
 466 discrepancies regarding criminal history factors established
 467 pursuant to this subsection.

468 (g) Each seaport may allow immediate waivers on a
 469 temporary basis to meet special or emergency needs of the
 470 seaport or its users. Policies, procedures, and criteria for
 471 implementation of this paragraph must be included in the seaport
 472 security plan. All waivers granted by the seaports pursuant to
 473 this paragraph must be reported to the department within 30 days
 474 after issuance.

475 (8) WAIVER FROM SECURITY REQUIREMENTS.--The Office of Drug
 476 Control and the Department of Law Enforcement may modify or

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

477 waive any physical facility requirement or other requirement
 478 contained in the minimum security standards upon a determination
 479 that the purposes of the standards have been reasonably met or
 480 exceeded by the seaport requesting the modification or waiver.
 481 An alternate means of compliance must not diminish the safety or
 482 security of the seaport and must be verified through an
 483 extensive risk analysis conducted by the seaport director.

484 (a) Waiver requests shall be submitted in writing, along
 485 with supporting documentation, to the Office of Drug Control and
 486 the Department of Law Enforcement. The office and the department
 487 have 90 days to jointly grant or reject the waiver, in whole or
 488 in part.

489 (b) The seaport may submit any waivers that are not
 490 granted or are jointly rejected to the Domestic Security
 491 Oversight Council for review within 90 days. The council shall
 492 recommend that the Office of Drug Control and the Department of
 493 Law Enforcement grant the waiver or reject the waiver, in whole
 494 or in part. The office and the department shall give great
 495 weight to the council's recommendations.

496 (c) A request seeking a waiver from the seaport law
 497 enforcement personnel standards established under s. 311.122(3)
 498 may not be granted for percentages below 10 percent.

499 (d) Any modifications or waivers granted under this
 500 subsection shall be noted in the annual report submitted by the
 501 Department of Law Enforcement pursuant to subsection (10).

502 (9) INSPECTIONS.--It is the intent of the Legislature that
 503 the state's seaports adhere to security practices that are
 504 consistent with the risks assigned to each seaport through the

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

505 ongoing risk assessment process established in paragraph (3) (a).

506 (a) The Department of Law Enforcement, or any entity
507 designated by the department, shall conduct at least one annual
508 unannounced inspection of each seaport to determine whether the
509 seaport is meeting the minimum security standards established
510 pursuant to subsection (1) and to identify seaport security
511 changes or improvements needed or otherwise recommended.

512 (b) The Department of Law Enforcement, or any entity
513 designated by the department, may conduct additional announced
514 or unannounced inspections or operations within or affecting any
515 seaport to test compliance with, or the effectiveness of,
516 security plans and operations at each seaport, to determine
517 compliance with physical facility requirements and standards, or
518 to assist the department in identifying changes or improvements
519 needed to bring a seaport into compliance with minimum security
520 standards.

521 (c) Within 30 days after completing the inspection report,
522 the department shall submit a copy of the report to the Domestic
523 Security Oversight Council.

524 (d) A seaport may request that the Domestic Security
525 Oversight Council review the findings in the department's report
526 as they relate to the requirements of this section. The council
527 may review only those findings that are in dispute by the
528 seaport. In reviewing the disputed findings, the council may
529 concur in the findings of the department or the seaport or may
530 recommend corrective action to the seaport. The department and
531 the seaport shall give great weight to the council's findings
532 and recommendations.

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

533 (e) All seaports shall allow the Department of Law
534 Enforcement, or an entity designated by the department,
535 unimpeded access to affected areas and facilities for the
536 purpose of plan or compliance inspections or other operations
537 authorized by this section.

538 (10) REPORTS.--The Department of Law Enforcement, in
539 consultation with the Office of Drug Control, shall annually
540 complete a report indicating the observations and findings of
541 all reviews, inspections, or other operations relating to the
542 seaports conducted during the year and any recommendations
543 resulting from such reviews, inspections, and operations. A copy
544 of the report shall be provided to the Governor, the President
545 of the Senate, the Speaker of the House of Representatives, the
546 governing body of each seaport or seaport authority, and each
547 seaport director. The report must include each director's
548 response indicating what actions, if any, have been taken or are
549 planned to be taken pursuant to the observations, findings, and
550 recommendations reported by the department.

551 (11) FUNDING.--

552 (a) In making decisions regarding security projects or
553 other funding applicable to each seaport listed in s. 311.09,
554 the Legislature may consider the Department of Law Enforcement's
555 annual report under subsection (10) as authoritative, especially
556 regarding each seaport's degree of substantial compliance with
557 the minimum security standards established in subsection (1).

558 (b) The Legislature shall regularly review the ongoing
559 costs of operational security on seaports, the impacts of this
560 section on those costs, mitigating factors that may reduce costs

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

561 without reducing security, and the methods by which seaports may
562 implement operational security using a combination of sworn law
563 enforcement officers and private security services.

564 (c) Subject to the provisions of this chapter and
565 appropriations made for seaport security, state funds may not be
566 expended for security costs without certification of need for
567 such expenditures by the Office of Ports Administrator within
568 the Department of Law Enforcement.

569 (d) If funds are appropriated for seaport security, the
570 Office of Drug Control, the Department of Law Enforcement, and
571 the Florida Seaport Transportation and Economic Development
572 Council shall mutually determine the allocation of such funds
573 for security project needs identified in the approved seaport
574 security plans. Any seaport that receives state funds for
575 security projects must enter into a joint participation
576 agreement with the appropriate state entity and use the seaport
577 security plan as the basis for the agreement.

578 1. If funds are made available over more than 1 fiscal
579 year, the agreement must reflect the entire scope of the project
580 approved in the security plan and, as practicable, allow for
581 reimbursement for authorized projects over more than 1 year.

582 2. The agreement may include specific timeframes for
583 completion of a security project and the applicable funding
584 reimbursement dates. The agreement may also require a
585 contractual penalty of up to \$1,000 per day to be imposed for
586 failure to meet project completion dates if state funding is
587 available. Any such penalty shall be deposited into the State

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

588 Transportation Trust Fund and used for seaport security
 589 operations and capital improvements.

590 Section 3. Sections 311.111 and 311.125, Florida Statutes,
 591 are repealed.

592 Section 4. Subsection (3) of section 311.121, Florida
 593 Statutes, is amended to read:

594 311.121 Qualifications, training, and certification of
 595 licensed security officers at Florida seaports.--

596 (3)~~(a)~~ The Seaport Security Officer Qualification,
 597 Training, and Standards Coordinating Council is created under
 598 the Department of Law Enforcement.

599 ~~(a)~~~~(b)~~1. The executive director of the Department of Law
 600 Enforcement shall appoint 11 members to the council, to which
 601 ~~shall~~ include:

602 ~~1.a.~~ The seaport administrator of the Department of Law
 603 Enforcement.

604 ~~2.b.~~ The Commissioner of Education or his or her designee
 605 ~~chancellor of the Community College System.~~

606 ~~3.c.~~ The director of the Division of Licensing of the
 607 Department of Agriculture and Consumer Services.

608 ~~4.d.~~ The administrator of the Florida Seaport
 609 Transportation and Economic Development Council.

610 ~~5.e.~~ Two seaport security directors from seaports
 611 designated under s. 311.09.

612 ~~6.f.~~ One director of a state law enforcement academy.

613 ~~7.g.~~ One representative of a local law enforcement agency.

614 ~~8.h.~~ Two representatives of contract security services.

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

615 9.~~1.~~ One representative of the Division of Driver Licenses
 616 of the Department of Highway Safety and Motor Vehicles.

617 (b)2. In addition to the members designated in paragraph
 618 (a) ~~subparagraph 1.~~, the executive director may invite a
 619 representative of the United States Coast Guard to attend and
 620 participate in council meetings as an ex officio, nonvoting
 621 member of the council.

622 (c) Council members designated under subparagraphs (a)1.-
 623 4. in sub-subparagraphs (b)1.a.-d. shall serve for the duration
 624 of their employment or appointment. Council members designated
 625 under subparagraphs (b)5.-9. ~~sub-subparagraphs (b)1.e.-i.~~ shall
 626 be appointed for serve 4-year terms, ~~except that the initial~~
 627 ~~appointment for the representative of a local law enforcement~~
 628 ~~agency, one representative of a contract security agency, and~~
 629 ~~one seaport security director from a seaport designated in s.~~
 630 ~~311.09 shall serve for terms of 2 years.~~

631 (d) The Commissioner of Education or his or her designee
 632 ~~chancellor of the Community College System~~ shall serve as chair
 633 of the council.

634 (e) The council shall meet upon the call of the chair, and
 635 at least once a year to update or modify curriculum
 636 recommendations.

637 (f) Council members shall serve without pay; however, per
 638 diem and travel allowances may be claimed for attendance of
 639 officially called meetings as provided by s. 112.061.

640 (g) ~~By December 1, 2006,~~ The council shall identify the
 641 qualifications, training, and standards for seaport security
 642 officer certification and recommend a curriculum for the seaport

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

643 security officer training program that includes at least ~~shall~~
 644 ~~include no less than~~ 218 hours of initial certification training
 645 and that conforms to or exceeds model courses approved ~~by the~~
 646 ~~Federal Maritime Act~~ under s. 109 of the federal Maritime
 647 Transportation Security Act of 2002 for facility personnel with
 648 specific security duties.

649 1.(h) The council may recommend training equivalencies
 650 that may be substituted for portions of the required training.

651 2.(i) The council shall recommend a continuing education
 652 curriculum of at least ~~no less than~~ 8 hours of additional
 653 training for each annual licensing period.

654 Section 5. Section 311.123, Florida Statutes, is amended
 655 to read:

656 311.123 Maritime domain security awareness training
 657 program.--

658 (1) The Florida Seaport Transportation and Economic
 659 Development Council, in conjunction with the Department of Law
 660 Enforcement and the Office of Drug Control within the Executive
 661 Office of the Governor, shall create a maritime domain security
 662 awareness training program to instruct all personnel employed
 663 within a seaport's boundaries about the security procedures
 664 required of them for implementation of the seaport security plan
 665 required under s. 311.12(3).

666 (2) The training program curriculum must include security
 667 training required pursuant to 33 C.F.R. part 105 and must be
 668 designed to enable the seaports in this state to meet the
 669 training, drill, and exercise requirements of 33 C.F.R. part 105
 670 and individual seaport security plans and to otherwise comply

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

671 with the requirements of s. 311.12 ~~relating to security~~
 672 ~~awareness.~~

673 Section 6. Subsection (1) of section 311.124, Florida
 674 Statutes, is amended to read:

675 311.124 Trespassing; detention by a certified seaport
 676 security officer.--

677 (1) Any Class D or Class G seaport security officer
 678 certified under the federal Maritime Transportation Security Act
 679 of 2002 guidelines and s. 311.121 or any employee of the seaport
 680 security force certified under the federal Maritime
 681 Transportation Security Act of 2002 guidelines and s. 311.121
 682 who has probable cause to believe that a person is trespassing
 683 pursuant to ~~the provisions of~~ s. 810.08 or s. 810.09 or this
 684 chapter in a designated secure or restricted area pursuant to s.
 685 311.12(4) ~~311.111~~ is authorized to detain such person in a
 686 reasonable manner for a reasonable period of time pending the
 687 arrival of a law enforcement officer, and such action does ~~shall~~
 688 not render the security officer criminally or civilly liable for
 689 false arrest, false imprisonment, or unlawful detention.

690 Section 7. Section 311.13, Florida Statutes, is amended to
 691 read:

692 311.13 Certain information exempt from
 693 disclosure.--Seaport security plans ~~of a seaport authority~~
 694 created pursuant to s. 311.12 ~~by act of the Legislature or of a~~
 695 ~~seaport department of a county or municipality that operates an~~
 696 ~~international seaport~~ are exempt from s. 119.07(1) and s. 24(a),
 697 Art. I of the State Constitution. In addition, photographs,
 698 maps, blueprints, drawings, and similar materials that depict

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

699 critical seaport operating facilities are exempt from s.
 700 119.07(1) and s. 24(a), Art. I of the State Constitution, to the
 701 extent that a seaport ~~authority created by act of the~~
 702 ~~Legislature or a seaport department of a county or municipality~~
 703 ~~that operates a seaport~~ reasonably determines that such items
 704 contain information that is not generally known and that could
 705 jeopardize the security of the seaport; however, information
 706 relating to real estate leases, layout plans, blueprints, or
 707 information relevant thereto, is not ~~to be~~ included in this
 708 exemption. ~~The exemptions in this section are applicable only to~~
 709 ~~records held by a seaport authority created by act of the~~
 710 ~~Legislature or to records of a county or municipal seaport~~
 711 ~~department that operates a seaport.~~

712 Section 8. Paragraph (a) of subsection (4) of section
 713 943.0585, Florida Statutes, is amended to read:

714 943.0585 Court-ordered expunction of criminal history
 715 records.--The courts of this state have jurisdiction over their
 716 own procedures, including the maintenance, expunction, and
 717 correction of judicial records containing criminal history
 718 information to the extent such procedures are not inconsistent
 719 with the conditions, responsibilities, and duties established by
 720 this section. Any court of competent jurisdiction may order a
 721 criminal justice agency to expunge the criminal history record
 722 of a minor or an adult who complies with the requirements of
 723 this section. The court shall not order a criminal justice
 724 agency to expunge a criminal history record until the person
 725 seeking to expunge a criminal history record has applied for and
 726 received a certificate of eligibility for expunction pursuant to

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

727 subsection (2). A criminal history record that relates to a
728 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
729 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
730 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
731 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
732 any violation specified as a predicate offense for registration
733 as a sexual predator pursuant to s. 775.21, without regard to
734 whether that offense alone is sufficient to require such
735 registration, or for registration as a sexual offender pursuant
736 to s. 943.0435, may not be expunged, without regard to whether
737 adjudication was withheld, if the defendant was found guilty of
738 or pled guilty or nolo contendere to the offense, or if the
739 defendant, as a minor, was found to have committed, or pled
740 guilty or nolo contendere to committing, the offense as a
741 delinquent act. The court may only order expunction of a
742 criminal history record pertaining to one arrest or one incident
743 of alleged criminal activity, except as provided in this
744 section. The court may, at its sole discretion, order the
745 expunction of a criminal history record pertaining to more than
746 one arrest if the additional arrests directly relate to the
747 original arrest. If the court intends to order the expunction of
748 records pertaining to such additional arrests, such intent must
749 be specified in the order. A criminal justice agency may not
750 expunge any record pertaining to such additional arrests if the
751 order to expunge does not articulate the intention of the court
752 to expunge a record pertaining to more than one arrest. This
753 section does not prevent the court from ordering the expunction
754 of only a portion of a criminal history record pertaining to one

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

755 | arrest or one incident of alleged criminal activity.
 756 | Notwithstanding any law to the contrary, a criminal justice
 757 | agency may comply with laws, court orders, and official requests
 758 | of other jurisdictions relating to expunction, correction, or
 759 | confidential handling of criminal history records or information
 760 | derived therefrom. This section does not confer any right to the
 761 | expunction of any criminal history record, and any request for
 762 | expunction of a criminal history record may be denied at the
 763 | sole discretion of the court.

764 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 765 | criminal history record of a minor or an adult which is ordered
 766 | expunged by a court of competent jurisdiction pursuant to this
 767 | section must be physically destroyed or obliterated by any
 768 | criminal justice agency having custody of such record; except
 769 | that any criminal history record in the custody of the
 770 | department must be retained in all cases. A criminal history
 771 | record ordered expunged that is retained by the department is
 772 | confidential and exempt from the provisions of s. 119.07(1) and
 773 | s. 24(a), Art. I of the State Constitution and not available to
 774 | any person or entity except upon order of a court of competent
 775 | jurisdiction. A criminal justice agency may retain a notation
 776 | indicating compliance with an order to expunge.

777 | (a) The person who is the subject of a criminal history
 778 | record that is expunged under this section or under other
 779 | provisions of law, including former s. 893.14, former s. 901.33,
 780 | and former s. 943.058, may lawfully deny or fail to acknowledge
 781 | the arrests covered by the expunged record, except when the
 782 | subject of the record:

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

- 783 1. Is a candidate for employment with a criminal justice
784 agency;
- 785 2. Is a defendant in a criminal prosecution;
- 786 3. Concurrently or subsequently petitions for relief under
787 this section or s. 943.059;
- 788 4. Is a candidate for admission to The Florida Bar;
- 789 5. Is seeking to be employed or licensed by or to contract
790 with the Department of Children and Family Services, the Agency
791 for Health Care Administration, the Agency for Persons with
792 Disabilities, or the Department of Juvenile Justice or to be
793 employed or used by such contractor or licensee in a sensitive
794 position having direct contact with children, the
795 developmentally disabled, the aged, or the elderly as provided
796 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
797 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),
798 chapter 916, s. 985.644, chapter 400, or chapter 429;
- 799 6. Is seeking to be employed or licensed by the Department
800 of Education, any district school board, any university
801 laboratory school, any charter school, any private or parochial
802 school, or any local governmental entity that licenses child
803 care facilities; or
- 804 7. Is seeking authorization from a ~~Florida~~ seaport listed
805 ~~identified~~ in s. 311.09 for employment within or access to one
806 or more of such seaports pursuant to s. 311.12 ~~or s. 311.125~~.
- 807 Section 9. Paragraph (a) of subsection (4) of section
808 943.059, Florida Statutes, is amended to read:
- 809 943.059 Court-ordered sealing of criminal history
810 records.--The courts of this state shall continue to have

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

811 jurisdiction over their own procedures, including the
812 maintenance, sealing, and correction of judicial records
813 containing criminal history information to the extent such
814 procedures are not inconsistent with the conditions,
815 responsibilities, and duties established by this section. Any
816 court of competent jurisdiction may order a criminal justice
817 agency to seal the criminal history record of a minor or an
818 adult who complies with the requirements of this section. The
819 court shall not order a criminal justice agency to seal a
820 criminal history record until the person seeking to seal a
821 criminal history record has applied for and received a
822 certificate of eligibility for sealing pursuant to subsection
823 (2). A criminal history record that relates to a violation of s.
824 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
825 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
826 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
827 916.1075, a violation enumerated in s. 907.041, or any violation
828 specified as a predicate offense for registration as a sexual
829 predator pursuant to s. 775.21, without regard to whether that
830 offense alone is sufficient to require such registration, or for
831 registration as a sexual offender pursuant to s. 943.0435, may
832 not be sealed, without regard to whether adjudication was
833 withheld, if the defendant was found guilty of or pled guilty or
834 nolo contendere to the offense, or if the defendant, as a minor,
835 was found to have committed or pled guilty or nolo contendere to
836 committing the offense as a delinquent act. The court may only
837 order sealing of a criminal history record pertaining to one
838 arrest or one incident of alleged criminal activity, except as

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

839 provided in this section. The court may, at its sole discretion,
840 order the sealing of a criminal history record pertaining to
841 more than one arrest if the additional arrests directly relate
842 to the original arrest. If the court intends to order the
843 sealing of records pertaining to such additional arrests, such
844 intent must be specified in the order. A criminal justice agency
845 may not seal any record pertaining to such additional arrests if
846 the order to seal does not articulate the intention of the court
847 to seal records pertaining to more than one arrest. This section
848 does not prevent the court from ordering the sealing of only a
849 portion of a criminal history record pertaining to one arrest or
850 one incident of alleged criminal activity. Notwithstanding any
851 law to the contrary, a criminal justice agency may comply with
852 laws, court orders, and official requests of other jurisdictions
853 relating to sealing, correction, or confidential handling of
854 criminal history records or information derived therefrom. This
855 section does not confer any right to the sealing of any criminal
856 history record, and any request for sealing a criminal history
857 record may be denied at the sole discretion of the court.

858 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
859 history record of a minor or an adult which is ordered sealed by
860 a court of competent jurisdiction pursuant to this section is
861 confidential and exempt from the provisions of s. 119.07(1) and
862 s. 24(a), Art. I of the State Constitution and is available only
863 to the person who is the subject of the record, to the subject's
864 attorney, to criminal justice agencies for their respective
865 criminal justice purposes, which include conducting a criminal
866 history background check for approval of firearms purchases or

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

867 transfers as authorized by state or federal law, to judges in
 868 the state courts system for the purpose of assisting them in
 869 their case-related decisionmaking responsibilities, as set forth
 870 in s. 943.053(5), or to those entities set forth in
 871 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 872 licensing, access authorization, and employment purposes.

873 (a) The subject of a criminal history record sealed under
 874 this section or under other provisions of law, including former
 875 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 876 deny or fail to acknowledge the arrests covered by the sealed
 877 record, except when the subject of the record:

- 878 1. Is a candidate for employment with a criminal justice
 879 agency;
- 880 2. Is a defendant in a criminal prosecution;
- 881 3. Concurrently or subsequently petitions for relief under
 882 this section or s. 943.0585;
- 883 4. Is a candidate for admission to The Florida Bar;
- 884 5. Is seeking to be employed or licensed by or to contract
 885 with the Department of Children and Family Services, the Agency
 886 for Health Care Administration, the Agency for Persons with
 887 Disabilities, or the Department of Juvenile Justice or to be
 888 employed or used by such contractor or licensee in a sensitive
 889 position having direct contact with children, the
 890 developmentally disabled, the aged, or the elderly as provided
 891 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 892 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
 893 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

894 6. Is seeking to be employed or licensed by the Department
 895 of Education, any district school board, any university
 896 laboratory school, any charter school, any private or parochial
 897 school, or any local governmental entity that licenses child
 898 care facilities;

899 7. Is attempting to purchase a firearm from a licensed
 900 importer, licensed manufacturer, or licensed dealer and is
 901 subject to a criminal history ~~background~~ check under state or
 902 federal law; or

903 8. Is seeking authorization from a Florida seaport
 904 identified in s. 311.09 for employment within or access to one
 905 or more of such seaports pursuant to s. 311.12 ~~or s. 311.125~~.

906 Section 10. The Office of Drug Control shall commission an
 907 update of the Florida Seaport Security Assessment 2000
 908 referenced in s. 311.12(1)(a), Florida Statutes, as amended by
 909 this act. The office shall consult with the Seaport Security
 910 Standards Advisory Council in forming the parameters of the
 911 update. The updated assessment shall be presented to the
 912 President of the Senate and the Speaker of the House of
 913 Representatives for review by January 1, 2010. Pursuant to s.
 914 311.13, Florida Statutes, any records included in the assessment
 915 which are exempt from s. 119.07(1), Florida Statutes, are exempt
 916 from disclosure.

917 Section 11. The Department of Law Enforcement may create a
 918 pilot project of at least three seaports to perform the tasks
 919 required in s. 311.12(6) and (7), Florida Statutes, as amended
 920 by this act. Equipment purchased by the state to implement the
 921 former Florida Uniform Port Access Credential System is

ENROLLED

CS/HB 7141, Engrossed 1

2009 Legislature

922 | transferred from the Department of Highway Safety and Motor
923 | Vehicles to the Department of Law Enforcement for use in the
924 | pilot project and to assist other seaports with compliance.

925 | Section 12. This act shall take effect July 1, 2009.