

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 524

INTRODUCER: Transportation Committee and Senator Latvala

SUBJECT: Seaport Security

DATE: April 9, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|------------------|
| 1. | <u>Fleming</u> | <u>Carter</u> | <u>MS</u> | Favorable |
| 2. | <u>Eichin</u> | <u>Spalla</u> | <u>TR</u> | Fav/CS |
| 3. | <u>Sadberry</u> | <u>Sadberry</u> | <u>BJA</u> | Favorable |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

| | |
|---|--|
| Please see Section VIII. for Additional Information: | |
| 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:

This bill makes several significant changes to the seaport security standards established in s. 311.12, F.S. Specifically, this bill:

- deletes the statewide minimum security standards;
- removes the authority for FDLE to exempt all or part of a seaport from any requirements of s. 311.12, F.S., if FDLE determines the seaport is not vulnerable to criminal activity or terrorism;
- deletes the requirement for FDLE to administer the Access Eligibility Reporting System;
- prohibits a seaport from charging a fee for the administration or production of an access control credential that requires a fingerprint-based background check, in addition to the fee for the federal Transportation Worker Identification Credential (TWIC);
- authorizes a seaport to issue its own seaport-specific access credential and to charge a fee that is no greater than the actual administrative costs for the production and issuance of the credential;
- deletes the requirement for a TWIC holder to execute an affidavit when seeking authorization for unescorted access to secure and restricted areas of a seaport;

- deletes the requirement for seaport employee applicants, current employees, and other authorized persons to submit to a fingerprint-based state criminal history check; and
- includes Port Citrus in various sections of Florida Statute establishing, controlling, or affecting the state's designated deepwater ports.

This bill substantially amends the following sections of the Florida Statutes: 310.002, 311.09, 311.12, 311.121, 311.123, 311.124, 374.976, 403.021, 403.061, 403.813, and 403.816,. This bill also repeals section 311.115 of the Florida Statutes.

This bill takes effect upon becoming law.

II. Present Situation:

Florida's seaports represent an important component of the state's economic infrastructure. The Florida Ports Council estimates that waterborne international trade moving through Florida's seaports was valued at \$56.9 billion in 2009, which represented 55 percent of Florida's \$103 billion total international trade.¹ Because of the ports' importance to the economy of Florida, the level of security that protects against acts of terrorism, trafficking in illicit drugs, cargo theft, and money laundering operations is considered essential.

Florida law requires public seaports to conform to state security standards. Through inspections, the Florida Department of Law Enforcement (FDLE) has the primary responsibility for determining whether each seaport is in conformity with these standards. Additionally, federal law requires seaports to comply with security plans which are reviewed and approved by the United States Coast Guard (USCG).

Security requirements for Florida's fourteen deepwater public ports are regulated under chapter 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),² the Security and Accountability of Every Port Act (SAFE Port Act),³ and the Code of Federal Regulations (CFR).⁴ In addition, provisions of international treaties such as the Safety of Life at Sea (SOLAS), which protects merchant ships, have been incorporated within the CFR in fulfillment of treaty obligations that affect seaport security at U.S. and foreign ports.

Statewide Minimum Seaport Security Standards

Concern over the impact of illicit drugs and drug trafficking came to the forefront in Florida during the mid to late 1990's. According to a Senate Interim Project Summary report at the time, 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.⁵ In the 1999-2000 timeframe, a legislative task force examined the issue of money laundering in Florida related to illicit drug trafficking and found that Florida was attractive to drug traffickers due to a number of

¹ Florida Department of Transportation and Florida Ports Council, "Florida Seaport Fast Facts," October 1, 2011. Available at: <http://www.flaports.org/Assets/10-1-10%20FastFacts%20Seaports%20nj1%20revised%5B1%5D.pdf>

² Public Law (P.L.) 107-295, 116 Stat. 2064 (2002).

³ P.L. 109-347, 120 Stat. 1884 (2006).

⁴ Principally 33 CFR, Parts 101 – 106 as they relate to various aspects of vessel and port security.

⁵ Florida Senate, Interim Report 98-13, Developing a Comprehensive Drug Control Strategy for Florida (Nov., 1998).

factors including Florida's strategic position near drug source countries and numerous international airports and deep water seaports.⁶ The Office of Drug Control in the Executive Office of the Governor, commissioned a Statewide Security Assessment of Florida Seaports in 2000.⁷ The report, which came to be known as the Camber Report, concluded that there was no supervisory agency over all 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.

Section 311.12, F.S., was amended during the 2001 Legislative Session to incorporate, by reference, the seaport security standards proposed in the Camber Report. These standards form the basis for FDLE's current seaport security inspection program. The statewide minimum security standards proposed in the Camber Report include prescriptive regulations on ID badges, access gates and gate houses, designated parking, fencing, lighting, signage, locks and keys, law enforcement presence, cargo processing, storage of loose cargo, high value cargo, and cruise operations security.

Post-9/11 Federal Seaport Security Standards

Prior to 9/11, there was no comprehensive federal law relating to seaport security. The MTSA was enacted in November 2002⁸ and the USCG subsequently adopted regulations to implement the provisions of MTSA.⁹ The MTSA laid out the federal structure for defending U.S. ports against acts of terrorism. In passing the MTSA, Congress set forth direction for anti-terrorism activities but also recognized in its finding that crime on ports in the late 1990's including, drug smuggling, illegal car smuggling, fraud, and cargo theft had been a problem. In laying out 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 card. Additional requirements call for 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.

Title 33 CFR provides for review and approval of Facility Security Plans¹⁰ by the Captain of the Port responsible for each seaport area. The USCG also acknowledged Presidential Executive Order 13132 regarding the principle of Federalism and preemption of state law in drafting MTSA rules.¹¹ Under this provision, Florida has the right to exercise authority over its public seaports that are also regulated by federal authority when there is no conflict between state and federal regulations.¹²

⁶ Legislative Task Force on Illicit Money Laundering, "Money Laundering in Florida: Report of the Legislative Task Force", November 1999.

⁷ Camber Corporation for the Office of Drug Control, Executive Office of the Governor, "Statewide Security Assessment of Florida Seaports," September 2000.

⁸ The Maritime Transportation Security Act of 2002 (P.L. 107-295 of November 25, 2002).

⁹ MTSA is implemented by Title 33 CFR, Parts 101-106 which are administered by the USCG.

¹⁰ 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 with the port boundaries.

¹¹ Federal Register, Vol. 68, No. 204, Wednesday, October 22, 2003, p. 60468.

¹² Presidential Executive Order 13132, "Federalism," August 4, 1999.

Port Access Identification Credentials

When the MTSA was established in 2002, it called for the adoption of a nationwide transportation security card. In response, federal efforts led to the development of the Transportation Worker Identification Credential (TWIC). The purpose of the TWIC program is to provide port workers a single nationwide transportation industry access credential that, after completion of a screening process including a criminal background check to federal standards, authorizes unescorted access to secure areas of regulated port facilities and vessels. The fee to obtain a TWIC is \$132.50 and the credential is valid for 5 years.¹³

The state of Florida does not issue any type of port access credential. The TWIC is the only access control credential required by the state.¹⁴ However, most Florida seaports issue a local port access card that grants various permissions to move about the port. In most cases, local port access cards are not recognized by other ports. Thus, persons seeking access to multiple ports must obtain a TWIC card and multiple local cards, each with a separate cost paid by the applicant or the applicant's employer. The Port of Palm Beach is the only port in Florida that has adopted the TWIC as its sole access credential.

Criminal History Checks

The 2000 Legislature passed CS/CS/CS/SB 1258,¹⁵ which established the requirement for a fingerprint-based criminal history check of current employees and future applicants for employment at Florida's seaports. This law was further amended during the 2001 Legislative Session 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 terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use of weapons or firearms.

After the enactment of the MTSA, the requirement was established for seaport employees and other persons seeking unescorted access to Florida's seaport to obtain a TWIC. The TWIC requires the applicant to be fingerprinted and a background check to be performed by the FBI prior to its issuance.

A 2010 assessment of seaport security in Florida noted that Florida is believed to be the only state that requires both a federal and a state background check.¹⁶

¹³ Transportation Security Administration, "Frequently Asked Questions, Transportation Worker Identification Credential (TWIC)." Available at: http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#twic_cost

¹⁴ The Florida Uniform Port Access Credential (FUPAC) was eliminated in 2009. Although never implemented, the FUPAC was intended to serve as a single seaport access card with biometric capabilities that could be used statewide and replace all of the locally issued access cards.

¹⁵ Ch. 2000-360, Laws of Florida (L.O.F.)

¹⁶ TranSystems Corporation for the Office of Drug Control, Executive Office of the Governor, "TranSystems Florida Seaport Security Assessment 2010". February 2010. Available at: http://www.fdle.state.fl.us/Content/getdoc/2902b533-5d31-4876-9ad6-1cb2a01a2c65/100409_Florida_Seaports_SecurityAssessment_Report.aspx

Seaport Access Eligibility Reporting System

In 2009, the Florida Legislature appropriated \$1 million in federal stimulus funding to FDLE to develop the Seaport Eligibility System (SES) required by Chapter 2009-171, L.O.F. The SES became operational on July 12, 2010 and now allows seaports to share the results of a criminal history check and the current status of state eligibility for access to secure and restricted areas of each port. FDLE asserts that the use of the SES has substantially reduced the costs to seaport workers by eliminating duplicative criminal history fees for workers that apply for access at more than one port. Previously, the applicants had to undergo separate background checks for access to each of the ports. The system also allows for retention of fingerprints and arrest notifications to the ports, therefore, eliminating the need for annual state criminal history checks.¹⁷

According to FDLE, there are approximately 36,865 port workers enrolled in the Seaport Eligibility System, and of those, approximately 24,486 are TWIC holders. The remaining 12,379 workers do not have a TWIC and are not subject to a federal background check under MTSA rules.¹⁸

TranSystems Report

In October 2009, the Florida Office of Drug Control contracted with TranSystems Corporation to provide an analysis of Florida's seaport security, and potential conflicts that exist between regulatory obligations mandated by the state through s. 311.12, F.S., and the federal government through the Maritime Transportation Security Act (MTSA) of 2002.¹⁹ The final report was released in February 2010 and included 11 key findings. Although the report expressed that s. 311.12, F.S., was a necessary and important step in addressing identified threats to Florida's seaports and it built a strong foundation for later compliance with the MTSA, TranSystems' findings focused largely on the observation that the federal government has since created regulations that have rendered much of s. 311.12, F.S., obsolete. Additionally, the report noted that the existence of dual regulations has created confusion, duplication of effort, and wasted financial and human resources.

Florida's Current Seaport Security Laws: Section 311.12, Florida Statutes
The Statewide Minimum Security Standards

The statewide minimum security standards that were incorporated by reference from the 2000 Camber Report commissioned by the Governor's Office of Drug Control are provided in subsection (1). Such minimums include seaport security plans, security training, fencing, lighting, access controls, and other security measures. This subsection also allows a seaport to implement security measures that are more stringent, more extensive, or supplemental to the minimum security standards.

¹⁷ Florida Department of Law Enforcement, "Frequently Asked Questions: Seaport Security." January 2011.

¹⁸ Correspondence with FDLE, March 8, 2011. (On file in Military Affairs, Space, and Domestic Security Committee.)

¹⁹ TranSystems Corporation for the Office of Drug Control, Executive Office of the Governor, "TranSystems Florida Seaport Security Assessment 2010". February 2010. Available at: http://www.fdle.state.fl.us/Content/getdoc/2902b533-5d31-4876-9ad6-1cb2a01a2c65/100409_Florida_Seaports_SecurityAssessment_Report.aspx

Exemption from Security Requirements

Subsection (2) allows FDLE to exempt all or part of a seaport from the requirements of s. 311.12, F.S., if FDLE determines that activity associated with the use of the seaport is not vulnerable to criminal activity or terrorism.

Security Plans

Security plans are outlined in subsection (3) and require that each seaport must adopt and maintain a security plan, which must be revised every 5 years to ensure compliance with the minimum security standards. The law further provides that each adopted or revised security plan must be reviewed and approved by the Office of Drug Control and FDLE to ensure compliance with the applicable federal security assessment requirements and must jointly submit a written review to the U.S. Coast Guard, the Regional Domestic Security Task Force, and the Domestic Security Oversight Council.

Secure and Restricted Areas

Subsection (4) requires each seaport to clearly designate in seaport security plans and clearly identify with markers on the premises of a seaport all secure and restricted areas as defined by the U.S. Department of Homeland Security. Further, certain areas of a seaport are required to be protected from the most probable and credible terrorist threat to human life.

Access Eligibility Reporting System

The requirement for FDLE to implement and administer a seaport access eligibility reporting system is outlined in subsection (5). The law identifies minimum capabilities the system must employ, which include:

- A centralized, secure method of collecting and maintaining finger-prints, other bio-metric data, or other means of confirming the identity of persons authorized to enter a secure or restricted area of a seaport;
- A methodology for receiving from and transmitting information to each seaport regarding a person's authority to enter a secure or restricted area of the seaport;
- A means for receiving prompt notification from a seaport when a person's authorization to enter a secure or restricted area of a seaport has been suspended or revoked; and
- A means to communicate to seaports when a person's authorization to enter a secure or restricted area of a seaport has been suspended or revoked.

Each seaport is responsible for granting, modifying, restricting, or denying access to secure and restricted areas to seaport employees and others. Based upon an individual's criminal history check, each seaport may determine specific access eligibility to be granted to that person. Upon determining that a person is eligible to enter a secure and restricted area of a port, the seaport shall, within 3 business days, report the determination to FDLE for inclusion in the system.

FDLE is authorized to collect a \$50 fee to cover the initial costs for entering an individual into the system and an additional \$50 fee every 5 years thereafter to coincide with the issuance of the TWIC.²⁰

²⁰ FDLE does not currently collect the fees authorized for the administration of the Access Eligibility Reporting System.

Access to Secure and Restricted Areas on Seaports

Subsection (6) requires that a person seeking authorization for unescorted access to secure and restricted areas of a seaport must possess a TWIC and also execute an affidavit that indicates the following:

- The TWIC is currently valid and in full force and effect;
- The TWIC was not received through the waiver process for disqualifying criminal history allowed by Federal law; and
- The applicant has not been convicted of the state-designated disqualifying felony offenses.

FDLE must establish a waiver process for a person who does not have a TWIC, who obtained a TWIC through the federal waiver process, or who is found to be unqualified due to state disqualifying offenses and thus has been denied employment by a seaport or denied unescorted access to secure or restricted areas.

Criminal History Checks

Subsection (7) provides that a fingerprint-based criminal history check must be performed on employee applicants, current employees, and other persons authorized to regularly enter a secure or restricted area. This subsection also includes a list of disqualifying offenses that would preclude an individual from gaining employment or unescorted access.

Waiver from Security Requirements

Subsection (8) permits the Office of Drug Control and FDLE to modify or waive any physical facility requirement contained in the minimum security standards upon a determination that the purpose of the standards have been reasonably met or exceeded at a specific seaport.

Inspections

Subsection (9) requires FDLE to conduct at least one annual unannounced inspection of each seaport to determine whether the seaport is meeting the statewide minimum security standards and to identify seaport security changes or improvements needed, and requires FDLE to submit the inspection report to the Domestic Security Oversight Council.

Reports

Subsection (10) requires FDLE and the Office of Drug Control to annually complete a report indicating the observations and finding of all reviews, inspections, or other operations relating to the seaports conducted for the year.

Funding

Subsection (11) authorizes the Office of Drug Control, FDLE, and the Florida Seaport Transportation and Economic Development Council to mutually determine the allocation of funding for security project needs.

Seaport Security Advisory Council

Section 311.115, F.S., creates the Seaport Security Standards Advisory Council (council) under the Office of Drug Control. The council consists of 14 unpaid council members who represent a wide range of interests as it relates to the security of Florida's seaports. The council convenes at

least every 4 years to review the minimum security standards referenced in s. 311.12(1), F.S., for applicability to and effectiveness in combating current narcotics and terrorism threats to Florida's seaports. The recommendations and findings of the council must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

III. Effect of Proposed Changes:

Section 1 amends s. 311.12, F.S., to:

- delete the statewide minimum security standards and authorizes a seaport to implement security measures that are more stringent, more extensive, or supplemental to the applicable federal security regulations;
- remove the authority for FDLE to exempt all or part of a seaport from any requirements of s. 311.12, F.S., if FDLE determines the seaport is not vulnerable to criminal activity or terrorism;
- delete the requirement for each seaport to update and revise its security plan every five years, and instead requires periodic revisions to the security plan to ensure compliance with applicable federal security regulations;
- delete the requirement for certain entities to review an adopted or revised security plan;
- delete the requirement for a seaport's security plan to require criminal history checks on persons who have access to secure and restricted areas of a seaport;
- delete requirement for certain areas of a seaport, including cruise terminals and other areas with potential occupancies of 50 or more persons, to be protected from the most probable and credible terrorist threat to human life;
- delete the authority of FDLE or the port security director to designate the status of "high terrorist threat level. The Department of Homeland Security retains the authority to designate this status;
- delete the requirement for FLDE to administer the Access Eligibility Reporting System;
- prohibit a seaport from charging a fee for the administration or production of an access control credential that requires a fingerprint-based background check, in addition to the fee for the federal TWIC;
- authorize a seaport to issue its own seaport-specific access credential and to charge a fee that is no greater than the actual administrative costs for the production and issuance of the credential;
- delete the requirement for a TWIC holder to execute an affidavit when seeking authorization for unescorted access to secure and restricted areas of a seaport;

- delete the requirement for a seaport that grants a person access to secure and restricted areas to report the grant of access to FDLE for inclusion in the access eligibility reporting system;
- delete the requirement for seaport employee applicants, current employees, and other authorized persons to submit to a fingerprint-based state criminal history check;
- remove the authority for FDLE and each seaport to establish waiver procedures or to grant immediate temporary waivers to allow unescorted access to a seaport;
- remove the authority of FDLE and the Office of Drug Control to waive a physical facility requirement or other requirements contained in the minimum security standards upon a determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the waiver;
- delete the requirement for FDLE to conduct a predetermined number (five) of inspections, and grants FDLE the authority to conduct an undefined number of unannounced inspections to determine whether a seaport is meeting applicable federal seaport security regulations;
- delete a provision requiring the Office of Drug Control to annually complete a report with FDLE; and
- remove the Office of Drug Control as an entity that participates in determining the allocation of funding for security project needs.

Sections 2 – 4 make conforming changes.

Section 5 repeals s. 311.115, F.S., which established the Seaport Security Standards Advisory Council.

Section 6 provides for the inclusion of Port Citrus in the definition of “port” in s. 310.002, F.S.

Section 7 provides for the inclusion of the port director of Port Citrus in the Florida Seaport Transportation and Economic Development Council created in s. 311.09, F.S.

Section 8 includes Port Citrus in the waterways which may receive assistance from inland navigation districts under s. 374.96, F.S.

Section 9 includes Port Citrus in the legislative declaration of intent regarding preserving and maintaining Florida’s deepwater ports in s. 403.021, F.S.

Section 10 amends s. 403.61, F.S., to include Port Citrus in the ports over which the Department of Environmental Protection has the duty to control and prohibit water and air pollution.

Sections 11 and 12 include Port Citrus in the list of seaports for which certain dredging permits may be issued under ss. 403.813 and 403.816, F.S.

Section 13 provides the bill becomes effective upon becoming law.

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:

This bill would possibly save each port worker hundreds of dollars depending on their individual employment conditions. The table below displays the fees that are currently authorized to be charged to persons seeking regular or unescorted access to Florida’s seaports. Under this bill, port workers would only be liable for the local port access credential fee, a fee that may not be more than the administrative costs needed to produce and administer the credential.

Financial Impact of Florida Seaport Security Laws²¹

| Individuals who hold (and already paid for) a valid TWIC* not obtained through a Transportation Security Administration (TSA) waiver: | |
|--|--------------|
| • FDLE State of Florida criminal history check | \$24 |
| • Fingerprint retention and FDLE seaport access eligibility reporting system | \$50 |
| • Local port fees (approximate/varies) | \$35 |
| Approximate Total | \$110 |
| Individuals who hold a valid TWIC* (obtained through a TSA waiver) or are not required to obtain a TWIC under federal law | |
| • FDLE State of Florida criminal history check | \$24 |

²¹ Florida Ports Council, Memorandum to Florida House Transportation and Highway Safety Subcommittee, Seaport Security Workshop Information. February 22, 2011.

| | |
|--|----------------|
| • FBI national criminal history check | \$19.25 |
| • Fingerprint retention and FDLE seaport access eligibility reporting system | \$50 |
| • Local port fees (approximate/varies) | \$35 |
| Approximate Total | \$130 |

C. Government Sector Impact:

According to FDLE, the bill will result in a negative recurring fiscal impact to the department of \$521,880 due to the elimination of the FDLE criminal history check (21,745 persons x \$24).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Transportation on March 16, 2011 – The CS:

- corrected a reference to federal regulations in s. 311.12, F.S.;
- deleted the authority of FDLE or the port security director to designate the status of “high terrorist threat level”;
- inserted a provision prohibiting a seaport from charging certain fees for credentials after July 1, 2013;
- corrected a cross-reference;
- include Port Citrus in various sections of Florida Statute establishing, controlling, or affecting the state’s designated deepwater ports; and
- revised the bill’s effective date to “upon becoming a law.”

B. Amendments:

None.