

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1820

SPONSOR: Home Defense, Public Security, and Ports Committee

SUBJECT: Seaport Security Standards

DATE: April 15, 2004

REVISED: 04/20/04 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------------|
| 1. | <u>Dodson</u> | <u>Skelton</u> | <u>HP</u> | <u>Fav/CS</u> |
| 2. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/1 amendment</u> |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Committee Substitute for Senate Bill 1820 amends s. 311.12, F.S., to require the Legislature to review any seaport that is not in substantial compliance with the statewide minimum security standards by November 2005, as reported by the Florida Department of Law Enforcement (FDLE).

The CS also requires the Legislature to review, by December 31, 2004, the ongoing costs of operational security on seaports to consider: the impacts of minimum security standards mandated under s. 311.12, F.S., on those costs, mitigating factors that may reduce costs without reducing security, and methods by which seaports may implement operational security using a combination of sworn law enforcement officers and private security services.

The CS also provides that, subject to the provisions of ch. 311, F.S., and appropriations made for seaport security, state funds may not be expended for operational security costs without certification of need for such expenditures by the Office of Ports Administrator within FDLE.

The provisions of the CS are being proposed as a result of an interim study on seaport security conducted by the Home Defense, Public Security, and Ports Committee.

This CS amends s. 311.12, F.S.

II. Present Situation:

Florida has fourteen public, commercial seaports, as defined in s. 311.09, F.S. The seaports are designated for purposes of participating as members of the Florida Seaport Transportation Economic Development (FSTED) Council. The purpose of the FSTED Council is to review and

evaluate construction and infrastructure projects to “improve the movement and intermodal transportation of cargo or passengers in commerce and trade...”¹ through state funding provided by the Legislature. The Council’s recommendations are given to the State Department of Transportation for inclusion in its legislative budget request, pursuant to s. 311.09(10), F.S. The fourteen public, commercial seaports are: 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.

Pursuant to s. 311.12(1)(b), F.S., the ports of Fort Pierce and Port St. Joe are currently in “inactive” status for purposes of compliance with state seaport security standards. This status is determined by periodic checks by FDLE to determine if there is any maritime activity at the seaport. If such activity is occurring, the status will be changed to “active” for compliance purposes.

In 2000, Florida adopted statewide minimum standards for each of the seaports identified in s. 311.09, F.S. These standards are set forth in the “Port Security Standards and Compliance Plan” adopted in December 2000.

Originally, the statewide minimum standards law was intended to slow the traffic of illegal drugs and cargo through Florida’s publicly funded seaports. All seaports were required to produce a seaport security plan, which was accepted as complete based on required criteria by the FDLE and the Office of Drug Control. Annual, unannounced inspections of each seaport to assure compliance with an approved security plan, as required by law, began in 2001. Law enforcement inspections were done, as scheduled, and seaports were provided with information based on those inspections that would help make port facilities more secure. Focus areas included improved perimeter security through fencing, gating, CCTV surveillance and law enforcement patrols; and improved lighting and better access control for restricted areas on each seaport.

Immediately following the attacks on America in September 2001, Governor Bush ordered an assessment of all critical infrastructures in the state. Seaports were considered high-risk targets due to the vital role intermodal transportation plays in our economy.

Senate Interim Study. During the 2003-2004 interim, the Committee on Home Defense, Public Security, and Ports conducted a study, which reviewed the security of Florida’s seaports. *See Seaport Security (December 2003), Report Number 2004-150, Senate Committee on Home Defense, Public Security, and Ports.* The Senate interim study found that four Florida seaports are currently in substantial compliance with state seaport standards. Most other ports are close to being in compliance pending completion of infrastructure and or technology improvements depending on grants funding. While the FDLE is given responsibility for performing annual seaport security inspections, no state agency has authority to sanction a seaport for failure to comply with the law. The FDLE is required to make the results of its annual inspections available to the Legislature. Each seaport’s degree of substantial compliance may be taken into consideration by the Legislature in making security project or other funding decisions pursuant to s. 311.12(4)(e), F.S. While the majority of Florida’s seaports have made good-faith efforts to comply with the minimum security standards, only the Legislature may address the issue of non-

¹ Section 311.07(1), F.S.

compliance, as no recourse is provided to law enforcement to address those ports found in regular and continuous non-compliance.

Funding. In the year following the September attacks in 2001, the FSTED Council redirected almost \$8 million of infrastructure economic development funding towards operational costs on the member seaports. These funds were spent to increase law enforcement presence on the ports. Since 2001, FSTED estimates that Florida ports have spent approximately \$57.3 million in state funds for physical and operational security. From FSTED economic development funds authorized in ch. 311, F.S., \$2.3 million was spent to pay for National Guard presence in cruise terminals and \$17.8 million was spent to pay for costs associated with increased law enforcement presence on the seaports. In addition, \$37.2 million was diverted from capital improvement projects to increase perimeter and premises protection. Florida seaports have worked with the FDLE and the Office of Drug Control to secure federal ports security funding. From 2001 to date, the federal government has awarded \$262 million in two rounds of seaport security grants and \$75 million in high-risk, high-threat critical infrastructure security grants.

Of those Round One and Round Two awards, Florida seaports have received \$34,102,526 in port security grants and \$6,280,423 in High-Risk, High-Threat Critical Infrastructure security grants.² Round Three awards, issued in December 2003, reflected \$7,508,747 in funding for projects on public seaports and at private terminals in Florida. The focus of the grant awards appeared to be on making improvements at a large number of fuel terminals across the nation to bring them to a minimum level of security. This focus was different than the earlier rounds and actual overall dollar amounts were reduced for Florida, but quite a large number of facilities received funding for public seaports and at private fuel terminals along the coastlines. Grant awards for each round of funding have been based on the prioritized lists of security projects agreed to by the FSTED Council, the FDLE, and the Office of Drug Control. Those prioritized lists have then been reviewed by the U.S. Department of Transportation Maritime Administration (MARAD), the United States Coast Guard (USCG), and the U.S. Department of Homeland Security Transportation Security Administration (TSA) for final award designation.

Currently, there is one federal award cycle outstanding. Round Four funding comes as part of the federal fiscal year 2004-2005 Department of Homeland Security Budget approved on October 1, 2003. Available Round Four funding will be \$125 million. Application guidelines have not yet been published for Round Four.

III. Effect of Proposed Changes:

For purposes of making security project or other funding decisions concerning public seaports, under current law, the Legislature may consider a seaport's degree of substantial compliance with the statewide minimum security standards established in s. 311.12, F.S. The degree of compliance with security standards is determined by the FDLE through seaport security inspections and is reported annually to the Legislature.

² Under the Wartime Supplemental Appropriations Act of 2003, the Department of Homeland Security Office of Domestic Preparedness awarded High-Risk, High-Threat Critical Infrastructure grants to seaports and private facilities on seaports. This total reflects all funds received by Florida entities through this grant award.

This CS amends s. 311.12(4)(e), F.S., to require the Legislature to review any seaport that is not in substantial compliance with the statewide minimum security standards by November 2005, as reported by the Florida Department of Law Enforcement (FDLE).

The CS also requires the Legislature to review, by December 31, 2004, the ongoing costs of operational security on seaports to consider: the impacts of minimum security standards mandated under s. 311.12, F.S., on those costs, mitigating factors that may reduce costs without reducing security, and methods by which seaports may implement operational security using a combination of sworn law enforcement officers and private security services.

The CS also provides that, subject to the provisions of ch. 311, F.S. (i.e., the Florida Seaport Transportation and Economic Development Program), and appropriations made for seaport security, state funds may not be expended for operational security costs without certification of need for such expenditures by the Office of Ports Administrator within FDLE.

The CS takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

The amendment authorizes the seaport security director or the director's agent to take into custody and detain a person who the director or agent has probable cause to believe is trespassing in a restricted access area of a seaport, pending arrival of a law enforcement officer. Detention is in a reasonable manner and for a reasonable period (similar to a provision in the retail theft statute). Custody and detention that are in accordance with law by an authorized person does not render the person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. A law enforcement officer must be called to the scene immediately after the person is taken into custody. ***Staff note: This amendment creates a subsection (7) within s. 311.12, F.S., but the amendatory clause of Section 1 of the CS does not reference subsection (7).*** (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
