

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 Military Affairs and Domestic Security Committee

BILL: CS/SB 2684

INTRODUCER: Military Affairs and Domestic Security Committee

SUBJECT: Seaport Security

DATE: April 1, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	MS	Fav/CS
2.			CJ	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

Committee Substitute to SB 2684 responds to several of the recommendations made in Senate Interim Project Report 2009-122. This CS substantially amends s. 311.12, F.S., relating to seaport security policy. The bill retains certain portions of Florida's current seaport security law while realigning other portions to present an overall program that better coincides with federal seaport security efforts. CS/SB 2684 repeals s. 311.111, F.S., relating to seaport security area designations and s. 311.125, F.S., relating to the Uniform Port Access Credential. Residual language from those sections is placed in s. 311.12, F.S.

This bill substantially amends s. 311.12; amends ss. 311.121, 311.123, 311.124, 311.13, 943.0585, and 943.059; creates s.311.115; and repeals ss.311.111 and 311.125 of the Florida Statutes.

II. Present Situation:

Senate Interim Project 2009-122 reviewed the current state of Florida's seaport security environment. In receiving the report, the Senate Military Affairs and Domestic Security Committee accepted several staff recommendations for immediate action including those

recommendations regarding the need to review and modernize state law and better align state law to federal regulations.¹

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

Florida's public seaports represent an important component of the state's economic infrastructure. The Florida Ports Council estimated that by 2008, the annual economic impact of Florida's seaports would have approached approximately 350,000 jobs, \$43 billion in gross economic output, and \$1.3 billion in annual state and local tax revenues.² Staff reviews of major ports' annual reports, audits, and "State of the Port" presentations confirmed growth of commercial activity in difficult economic environments for all but one port. The Port of Miami reported declines in cargo activity, but increased cruise activities for the period.³

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

Security requirements for Florida's fourteen deepwater public ports are provided under ch. 311, Florida Statutes. 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),⁴ the Security and Accountability for Every Port Act (SAFE Port Act),⁵ and the Code of Federal Regulations (CFR).⁶ In addition, provisions of international treaties such as the Safety of Life at Sea (SOLAS), which protect the safety of merchant ships, have been incorporated within the CFR in fulfillment of treaty obligations that affect seaport security at United States and foreign ports.

Concern over the impact of illicit drugs and drug trafficking came to the forefront in Florida during the mid to late 1990s. According to a 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.⁷

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

¹ Note: Senate Bill 2684 does not incorporate all of the staff recommendations of Senate Interim Project Report 2009-122 due to time and funding limitations.

² Florida Ports Council, "Florida Seaports' Statewide and Regional Strategic Visioning Process," July-September 2006, Presentation on Results of Strategic Visioning, September 27, 2006.

³ Jaxport 2008 Annual Report, 2008 Port Canaveral Annual Report, Port Everglades 2007 Annual Report, 2007 Port of Miami Comprehensive Financial Report, and Port of Tampa "State of the Port" report.

⁴ Public Law (P.L.) 107-295, 116 Stat. 2064 (2002).

⁵ P.L. 109-347, 120 Stat. 1884 (2006).

⁶ Principally 33 CFR, Parts 101 – 106 as they relate to various aspects of vessel and port security.

⁷ Florida Senate, Interim Project Summary 98-13, "Developing a Comprehensive Drug Control Strategy for Florida," November, 1998, p. 2.

First, the presiding officers of the Legislature formed a task force that examined, among other things, the issue of money laundering related to illicit drug trafficking.⁸ The task force found that Florida was attractive to drug traffickers due to a number of factors including Florida's strategic position near drug source countries and numerous international airports and deep water seaports.⁹ The task force provided a number of recommendations including designating a state agency responsible for seaport and airport security and described the then current seaport security situation by saying:

"Customs considers poor seaport security a major reason for drug smuggling. Unlike airports, there is no viable system of federal regulations mandating specific security standards for seaports and marine terminals. Fairly new regulations govern security for large passenger vessels and cruise ship terminals. There are however, no corresponding federal regulations for sea cargo vessels and seaport and marine terminals."¹⁰

Second, the Governor's Office of Drug Control commissioned a Statewide Security Assessment of Florida Seaports. The report, which came to be known as the Camber Report,¹¹ concluded that there was no supervisory agency with oversight of the seaports of the state, no federal or state security standards that governed the seaports' operation, and only limited background checks were conducted on employees at the docks, thus allowing convicted felons, some with arrests for drug-related charges, to work at the seaports.

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

Third, the Fifteenth Statewide Grand Jury conducted an analysis of Florida's drug control efforts. The Statewide Grand Jury supported the conclusions and recommendations of the Camber Report and highlighted the need for background screening due to testimony they received that "some dock workers carry firearms and that intimidation by dock workers is used as a method of avoiding detection of illegal drug activity."¹² The report cited efforts to impede law enforcement officers at the Miami seaport including simple harassment, blocking law enforcement vehicles with cargo containers, and even dropping a cargo container on a law enforcement vehicle occupied by police canine. Testimony revealed that as many as 60 percent of the Port of Miami dock workers had felony arrests, half of which were drug related charges.¹³

The 2000 Legislature passed CS/CS/CS/SB 1258.¹⁴ This legislation provided additional regulations for money laundering and created s. 311.12, F.S., relating to seaport security. In

⁸ Legislative Task Force on Illicit Money Laundering, "Money Laundering in Florida: Report of the Legislative Task Force", November 1999.

⁹ Ibid, p. 18.

¹⁰ Ibid, p. 46.

¹¹ Camber Corporation for the Office of Drug Control, Executive Office of the Governor, "Statewide Security Assessment of Florida Seaports," September 2000.

¹² Fifteenth Statewide Grand Jury Report, "An Analysis of Florida's Drug Control Efforts," December 14, 2000.

¹³ Ibid.

¹⁴ 2000-360, Laws of Florida (L.O.F.)

creating s. 311.12, F.S., the Legislature introduced regulation of seaports that benefited from public financing and provided for:

- Development and implementation of a statewide seaport security plan including minimum standards for seaport security that address the prevention of criminal activity and money laundering;
- Development of individual seaport security plans at each of the ports listed in s. 311.09 (1), F.S.¹⁵;
- Establishment of a fingerprint-based criminal history check of current employees and future applicants for employment at Florida's seaports; and
- A requirement directing the Florida Department of Law Enforcement (FDLE) to annually conduct no less than one unannounced inspection at each of the public ports and report its findings to the Governor, the President of the Senate, the Speaker of the House, and the chief administrator of each seaport inspected.

Section 311.12, F.S., was amended during the 2001 Legislative Session to incorporate seaport security standards.¹⁶ The section has been further amended to disqualify persons who have been convicted of certain offenses within the previous seven years from gaining initial employment within or regular access to a seaport or port restricted access area. Current disqualifying offenses relate to terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use of weapons or firearms.

Attacks on America Changed the Seaport Security Environment

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

Since September 11, 2001, the U.S. Congress has produced multiple pieces of legislation that affect seaport security. This effort included passage of the Homeland Security Act of 2002 which resulted in a major governmental reorganization that created the Department of Homeland Security (DHS).¹⁷ The U. S. Customs and Border Protection agency (CBP) was transferred to DHS with the mission to prevent terrorists and terrorist weapons from entering the U. S.¹⁸ The Transportation Security Administration (TSA) was transferred to DHS with the mission of overseeing security for highways, railroads, buses, mass transit systems, ports, and the nation's 450 commercial airports.¹⁹ The U. S. Coast Guard (USCG) was also transferred to DHS and

¹⁵ The seaports listed in s. 311.09(1), F.S., include the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina. The ports of Fort Pierce and Port St. Joe are currently exempted from annual inspection under the provisions of s. 311.12, F.S., based on a finding that these seaports are considered inactive for purposes of the statute.

¹⁶ Note: Camber Report standards were incorporated in s. 311.12, F.S., by 2001-112, L.O.F. These standards form the basis for FDLE's current seaport security inspection program.

¹⁷ The Homeland Security Act of 2002, P.L. 107-296 (2002).

¹⁸ Department of Homeland Security Fact Sheet @ www.dhs.gov/dhspublic/display?theme=43&content=5437&print=true.

¹⁹ Transportation Security Administration, What is TSA? @ www.TSA.gov.

given the mission of lead federal agency for maritime homeland security including ports, waterways, and coastal security as well as drug interdiction.²⁰

Congress passed the MTSA in November of 2002, thereby laying out the federal structure for defending U.S. ports against acts of terrorism. In passing MTSA, Congress primarily set forth direction for anti-terrorism activities but also recognized in its findings 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, 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 card²¹ along with requirements to conduct vulnerability assessments for port facilities and vessels and establishment of a process to assess foreign ports, from which vessels depart on voyages to the United States.²²

The MTSA is implemented by Title 33 Code of Federal Regulations (CFR).²³ Title 33 CFR provides for review and approval of Facility Security Plans²⁴ by the Captain of the Port (COTP) responsible for each seaport area.²⁵ The USCG also acknowledged Presidential Executive Order 13132 regarding the principle of Federalism and preemption of state law in drafting MTSA rules.²⁶ 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. Executive Order 13132 states in Section 4:

(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear

²⁰ Congressional Research Service, "Homeland Security: Coast Guard Operations – Background and Issues for Congress," October 25, 2006. Note: According to this report, under the Ports and Waterways Safety Act of 1972 (P.L. 92-340) and the Maritime Transportation Security Act of 2002 (P.L. 107-295 of November 25, 2002), the Coast Guard has responsibility to protect vessels and harbors from subversive acts. With regard to port security, the Coast Guard is responsible for evaluating, boarding, and inspecting commercial ships approaching U. S. waters, countering terrorist threats in U.S. ports, and helping protect U. S. Navy ships in U. S. ports. A Coast Guard officer in each port area is designated the COPT to serve as the lead federal official for security and safety of vessels and waterways in that area.

²¹ The Maritime Transportation Security Act of 2002 (P.L. 107-295 of November 25, 2002)

²² Government Accountability Office, "Maritime Security, One Year Later: A Progress Report on the SAFE Port Act," GAO-18-171T, October 16, 2007, p. 1.

²³ Title 33 CFR, Parts 101 through 106 which are administered by the USCG.

²⁴ Title 33 CFR, Subpart 101.105 defines a facility as any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. A seaport may be considered a facility by itself or in the case of large seaports may include multiple facilities within the port boundaries.

²⁵ Note: This is significant in Florida in that port tenants individually bear security plan responsibility under USCG administration of Title 33 CFR, while ch. 311, F.S., holds each seaport's port authority responsible for security plan development and implementation.

²⁶ Federal Register, Vol. 68, No. 204, Wednesday, October 22, 2003, p. 60468.

evidence to conclude that the Congress intended the agency to have the authority to preempt State law.²⁷

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

- Codified the Container Security Initiative and the Customs-Trade Partnership Against Terrorism (C-TPAT) which are two programs administered by CBP to help reduce threats associated with cargo shipped in containers;
- Established the Domestic Nuclear Detection Office which is responsible for conducting research, development, testing, and evaluation of radiation detection equipment; and
- Required that all containers entering high volume U.S. ports be scanned for radiation sources by December 31, 2007.²⁸

The Legislature has continued to introduce improvements to Florida's seaport security policy. The Legislature addressed the issue of a uniform port access credential during the 2003 session. The transportation industry expressed a desire for a single access credential that could be used statewide to facilitate seaport access. As a result, a Florida Uniform Port Access Credential (FUPAC) was provided for in s. 311.125, F.S. This credential as developed in accordance with the statute included deployment of requisite hardware infrastructure. At the same time, the federal government attempted to develop its own credential known as the Transportation Worker Identification Credential (TWIC). A concerted effort was made to develop system compatibility between FUPAC and TWIC. As the systems were developed, it became increasingly clear that dually compatible hardware systems were unnecessary. It was determined that the solution to meeting both state and federal goals in providing adequate seaport security could be achieved through systems process alignments and adequate data sharing. In 2008, the federal government began a final effort to field the TWIC as a nationwide identification credential that can be used in conjunction with other access control procedures to grant seaport access permission. Florida's seaports are authorized to develop specific procedures for granting and controlling seaport access pursuant to s. 311.12, F.S., and individual seaport permissions. All of the active seaports listed in ch. 311, F.S., with one exception, use a local issue credential for such permission and control in addition to the TWIC which is used for identification purposes. In addition, individual terminals and facilities within the ports may require separate credentials. One seaport has adopted the TWIC as its sole access credential.

The federal TWIC is being deployed in at least two phases. Phase I, the current deployment, provides for the issuance of credentials to be used as photo identification cards only. Phase II, which has been delayed indefinitely due to contract issues with federal vendors, would provide fully interactive, biometric reader capability use of the card. There is no known target date for full implementation of the biometric capability. On March 27, 2009, the U. S. Coast Guard, Department of Homeland Security, released an Advanced Notice of Proposed Rulemaking (ANPRM) to discuss "... preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities...for use of electronic readers designed to work with [TWIC] as an access control measure."²⁹

²⁷ Presidential Executive Order 13132, "Federalism," August 4, 1999.

²⁸ The Security and Accountability for Every Port Act of 2006 (P.L. 109-347).

²⁹ Federal Register, Vol. 74, No. 58, March 27, 2009, at page 13360.

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

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

III. Effect of Proposed Changes:

CS/SB 2684 substantially amends s. 311.12, F.S. The bill retains certain portions of Florida's current seaport security law while realigning other portions to present an overall program that better coincides with federal seaport security regulations and reduces duplication of effort and confusion between state law and federal regulations. The bill repeals s. 311.111, F.S. relating to seaport security area designations and s. 311.125, F.S., relating to the Uniform Port Access Credential. Residual language from those sections is placed in s. 311.12, F.S.

Current law remains unchanged with respect to minimum seaport security standards and the listing of Florida seaports that are subject to those standards, a requirement that subject seaports adopt a seaport security plan and the Office of Drug Control and FDLE review and approve those plans, an annual seaport security inspection program, regular legislative review of ongoing security operational costs to seaports, and the establishment of the Seaport Security Standards Advisory Council.

This PCS provides for the following changes to Florida seaport security law:

Section 311.115, F.S., is created to clarify the relationship of the currently established Seaport Security Standards Advisory Council to seaport security. The council's mission is tangential to the operational seaport security requirements found s. 311.12, F.S. In addition, council membership is expanded to include a seaport tenants representative, a seaport workers representative, a representative from the Fish and Wildlife Conservation Commission, and the Director of the Division of Emergency Management.³⁰

Currently, s. 311.12, F.S., allows that a seaport may be determined to be inactive for purposes of meeting minimum security standards. This CS allows FDLE to exempt all *or part* of a seaport from minimum standards if they are determined not to be vulnerable to criminal activity or terrorism. This change provides flexibility in application of standards.

Additional proposed changes to s. 311.12, F.S. include:

- Deleting a requirement for quarterly threat assessments by the seaport director. Instead, this CS allows for greater flexibility in revising seaport security plans by basing such revisions on

³⁰ See section VI Technical Deficiencies in this staff analysis.

the director's *ongoing* assessment of security risks, the risk of terrorist activities, and the specific and identifiable needs of the seaport;

- Deleting s. 311.111, F.S. security area designations. This CS introduces use of the term "Secure and Restricted Areas," and directly aligns Florida seaport security definitions with federal definitions; and
- Deleting references to certain Federal Emergency Management Agency circulars relating to terrorist risk assessments. Current requirements for the seaport director's risk assessment remain unchanged.

CS/SB 2684 repeals s. 311.125, F.S., and deletes all references to the Florida Uniform Port Access Credential and related references to the Department of Highway Safety and Motor Vehicles. This bill removes the requirement in current law to develop a statewide port access credential. Instead, it provides for an access eligibility reporting system for ascertaining access eligibility at each public seaport and reliance on the federal Transportation Worker Identification Credential (TWIC) coupled with a state criminal history check.

Each listed seaport is responsible for granting, modifying, restricting, or denying access to workers, visitors who have business with the seaport, and other persons regularly appearing at the seaport and for verifying a person's eligibility for access at its location. Subject to Legislative appropriations, FDLE is directed to administer a statewide access eligibility reporting system which at a minimum must include:

- A centralized secure database;
- A methodology for transmitting and receiving data between the department and each seaport; and
- The means to communicate that a person's authorization to enter a secure or restricted area has been suspended or revoked.

Any suspension or revocation of port access must be reported by the seaport to FDLE within 24 hours. In addition to access permissions granted or denied by seaports, FDLE may restrict or revoke access permissions if there is a reasonable suspicion that the person is involved in terrorism or criminal violations that could affect the security of a port.

The submission of information to FDLE for entry into the system that is known to be false or misleading is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill provides that all seaport employees or other persons working at the seaport who have regular access to secure or restricted areas must comply with federal regulations and state criminal history checks as prescribed in this act.

This CS retains the current law requirement that a fingerprint-based criminal history check serve as the basis for determining a person's eligibility to regularly enter seaport secure or restricted areas. A provision is added that requires seaports to notify FDLE, within three business days, that a determination has been made regarding a person's access eligibility. The department is authorized to retain information regarding a person's access eligibility and may use that information to ensure continued eligibility through data base monitoring.

CS/SB 2684 requires that a person seeking unescorted access to seaport secure or restricted areas must possess a TWIC. This CS deletes the provision in current law that requires a person accessing a seaport more than five times in any 90-day period must obtain a port access credential. Under this CS, persons seeking access to seaport secure or restricted areas must either possess a TWIC and have successfully undergone a state criminal history check or be escorted. A person in possession of a TWIC by waiver may apply for a state waiver. Provisions of the access process include:

- A requirement that the person execute an affidavit under oath providing TWIC identification information and indicating:
 - The TWIC is currently valid and in full force;
 - He or she did not receive the TWIC through a waiver of federal disqualifying criminal history; and
 - Has not been involved in any manner whatsoever with a disqualifying felony or crime involving use or possession of a firearm;
- A requirement to successfully complete a state criminal history check;
- Authorization for a seaport to grant secure or restricted area access upon submission of a completed affidavit, completion of a required state criminal history check, and payment of all required fees. This provision saves the cost of a duplicate federal criminal history check;
- A provision making submission of false information on the affidavit a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.;
- A conspicuously displayed statement on the affidavit form declaring submission of false information is a felony and will result, upon conviction, in disqualification for access to seaport restricted access areas; and
- Submission of a new affidavit upon the occasion of the five year renewal of a person's TWIC.

This CS expands the waiver process currently in law to include persons who obtained a TWIC through a federal waiver process.

Provisions are included in this bill to allow for the creation of a pilot project at a minimum of three seaports to reduce costs and impacts while implementing TWIC, plus the state criminal history check, as the access credential in use at Florida seaports. Existing equipment purchased for this purpose is transferred from the Department of Highway Safety and Motor Vehicles to FDLE.

CS/SB 2684 provides for the payment of fees to cover the costs of access determination and system maintenance. Such fees may not be charged by more than one seaport. These fees include:

- The cost of a state finger-print based criminal history check, payable to FDLE;
- A \$50 fee that covers all costs for entering or maintaining the person in the access eligibility reporting the system for a period of five years, payable to FDLE. The fee is chargeable every five years thereafter to coincide with the issuance of a TWIC; and
- Permitting the initial seaport entering a person into the system to charge an additional administrative fee to cover, but not exceed, the seaport's system participation costs.

Current law provides that a person who has been convicted of certain offenses, regardless of adjudication, shall be disqualified from employment within or unescorted access to restricted access areas of a seaport for a period of seven years after completion of incarceration or required supervision. This CS adopts the federal requirement and applies a seven year provision to convictions and pleas of guilty or nolo contendere regardless of adjudication or five years after release from incarceration or any supervision imposed as a result of committing any of the disqualifying crimes.

This CS adds certain criminal offenses to the list of those state offenses that currently disqualify a person for employment or unescorted access on a seaport. This change brings Florida's list of disqualifying offenses into better alignment with federal regulations, since these crimes are disqualifying at the federal level. The added offenses include:

- Criminal anarchy or inciting insurrection;
- Use of commercial transportation in the commission of a felony;
- Racketeering activity;
- Money laundering;
- Criminal use of personal identification;
- Bribery; and
- A violation of s. 316.302, F.S., relating to the transport of hazardous materials;

CS/SB 2684 requires that a report of findings from FDLE inspections be made available to the Domestic Security Oversight Council. The affected seaport may request the council to review the department's findings as they relate to s. 311.12, F.S. The council may only review those findings that are in dispute and may concur in the findings of the department or the seaport, or may make its own corrective action recommendations to the seaport.

This CS adds the governing body of each seaport or seaport authority to the list of persons who receive a copy of FDLE's required annual seaport security report. In addition, CS/SB 2684 adds a requirement that FDLE provide an assessment briefing to the board members of the governing authority of the seaport and the co-chairs of the regional domestic security task force after it completes its annual seaport inspection. The briefing must address inspection findings, areas of concern, and recommendations for improvement. Board members are required to attend these briefings and attendance records shall be published and announced at the board's next regular meeting. The board must make transcripts and audio recordings of all proceedings during the briefings.

CS/SB 2684 corrects a previous drafting oversight by including FDLE along with the Office of Drug Control and the Florida Seaport Transportation and Economic Development Council as the entities responsible for determining the allocation of any funds appropriated for seaport security based on security projects identified in approved security plans

CS/SB 2684 amends:

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

- Sections. 311.123, 943.0585, and 943.059, F.S., to reflect reference changes resulting from the reorganization of s. 311.12, F.S., and the repeal of s. 311.125, F.S.;
- Section 311.124, F.S., to conform terms and references resulting from the reorganization of s. 311.12, F.S.; and
- Section 311.13, F.S., to delete unnecessary references to “a seaport authority created by an act of the Legislature.”

The Office of Drug Control is directed to commission an update of the Florida Seaport Security Assessment 2000 referenced in s. 311.12 (1) (a), F.S. to be presented to the Legislature by January 1, 2010. The office is directed to consult with the Seaport Security Standards Advisory Council in formulating update parameters.

Pursuant to s. 311.13, F.S., any assessment records which are exempt from s. 119.07 (1), F.S., are exempt from disclosure.

Paragraph (b) of s. 311.12 (10), F.S., as amended by this act, shall only take effect if SB 2162 or similar legislation is enacted in the same legislative session.³¹

Except as otherwise expressly provided this PCS provides for an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Repeal of s. 311.125, F.S., relating to the Uniform Port Access Credential and the other provisions of this CS will result in an estimated cost savings of 90 percent to seaport employers and workers, those persons whose business purposes require regular seaport access, and to transportation industry workers who frequently access Florida’s seaports.

³¹ See section VI Technical Deficiencies in this staff analysis.

Such persons will incur the costs of obtaining a federal TWIC card, a state criminal history background check, a \$50 fee that covers all costs for entering or maintaining the person in the access eligibility reporting the system for a period of five years, and an allowable charge by the entering seaport not to exceed the actual cost of system administration.

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

C. Government Sector Impact:

Current law requires those seaports which receive state funding and are listed in ch. 311, F.S., to provide for adequate seaport security. The Congressional Research Service estimates that a terrorist detonation of a 10- to 20-kiloton nuclear device at a major seaport (a low probability but high consequence event) would kill 50,000 to 1 million people, would result in direct property damage of \$50 to \$500 billion, incur trade disruption losses of \$100 to \$200 billion, and incur indirect costs of \$300 billion to \$1.2 trillion.³² A Florida Ports Council commissioned study reports that the seaports covered under ch. 311, F.S. spent approximately \$57 million in 2007 for operational security.³³

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

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 Military Affairs and Domestic Security on March 31, 2009:

This CS deletes:

- The provision in current law known as the “Five in 90-day rule,” relating to a requirement to obtain a seaport access credential if accessing a port more than five times in a 90-day period;
- A provision in the original proposed committee bill relating to definitions of and required procedures for “visitors” and “cruise ship passengers”;

³² Congressional Research Service, Terrorist Nuclear Attacks on Seaport: Threat and Response, January 24, 2005.

³³ First Southwest Company, The Capacity of Florida’s Seaports to Fund Their Five-Year Capital Improvement Programs and the Cost of Mandated Seaport Security, February 13, 2008.

- A provision in the original proposed committee bill relating to an expedited access process; and
- References in the original proposed committee bill to a required federal criminal history check for persons not in possession of a TWIC.

This CS adds provisions for:

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

B. Amendments:

None.