

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 283 Seaports

SPONSOR(S): Criminal Justice Subcommittee; Transportation & Highway Safety Subcommittee; Young and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Johnson	Brown
2) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
3) Justice Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

In 2000, based on issues related to criminal activity in Florida's seaports, the Legislature created s. 311.12, F.S., containing statewide minimum seaport security standards. Following the September 11, 2001, terrorist attacks, Congress enacted federal seaport security requirements. The state security standards have been amended several times since enactment, and there are instances in which the state standards may conflict, be duplicative, or be redundant to federal standards. CS/CS/HB 283 makes the following changes to the state's seaport security laws; federal requirements and standards will remain in place:

- Repeals the statewide minimum seaport security standards.
- Provides seaports may implement security standards more stringent than the federal standards.
- Removes the authority for Florida Department of Law Enforcement (FDLE) to exempt all or part of a seaport from the state's seaport security requirements, if FDLE determines that it is not vulnerable to criminal activity or terrorism.
- Revises the requirements for seaports to update their security plans, consistent with federal requirements.
- Deletes FDLE's Access Eligibility Reporting System.
- Prohibits seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the Federal Transportation Worker Identification Credential (TWIC).
- Provides that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under certain circumstances.
- Removes the state criminal history screening and the state specific disqualifying offenses for working in a seaport.
- Removes the ability for the Office of Drug Control and FDLE to waive state-specific seaport security requirements.
- Repeals the Seaport Security Standards Advisory Council.

FDLE will see a decrease in revenue due to the removal of the requirements that FDLE operate the access eligibility reporting system and run state background checks on seaport workers. Seaports, port tenants, and port employees should see a reduction in costs due to the elimination of the state's seaport security requirements.

The bill also amends various seaport-related statutes to add Port Citrus to those sections' provisions.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0283d.CRJS

DATE: 3/24/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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.

Security requirements for Florida's fourteen deepwater public ports² are regulated under ch. 311, F.S. Florida law requires public seaports to conform to statewide minimum security standards.³ Through inspections, the Florida Department of Law Enforcement (FDLE) has the primary responsibility for determining whether each seaport is in conformity with these standards.

For purposes of protection against acts of terrorism, Florida's deepwater ports are also regulated by federal law under the Maritime Transportation Security Act of 2002 (MTSA),⁴ the Security and Accountability of 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 protects merchant ships, have been incorporated within the CFR in fulfillment of treaty obligations that affect seaport security at U.S. and foreign ports. Federal law requires seaports to comply with security plans which are reviewed and approved by the United States Coast Guard (USCG).

Florida's Minimum Seaport Security Standards

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

First, the presiding officers of the Legislature formed a task force that examined, among other things, the issue of money laundering related to illicit drug trafficking.⁷ 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.⁸ 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.

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> (March 10, 2011).

² These ports are listed in s. 311.09(1), F.S., and 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.

³ Section 311.12, F.S.

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

⁸ Ibid, p. 18.

There are however, no corresponding federal regulations for sea cargo vessels and seaport and marine terminals.”⁹

Second, the Governor’s Office of Drug Control¹⁰ 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

In response, 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 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 public ports;
- Establishment of a fingerprint-based criminal history check of current employees and future applicants for employment at Florida’s seaports; and
- Directed 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, by reference, the seaport security standards proposed in the Camber Report.¹⁵ 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.

⁹ Ibid, p. 46.

¹⁰ The Governor’s Office recently eliminated the Office of Drug Control.

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

¹⁵ Ch. 2001-112, L.O.F.

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 2002¹⁶ and the USCG subsequently adopted regulations to implement the provisions of MTSA.¹⁷ The MTSA laid out the federal structure for defending U.S. ports against acts of terrorism. In passing 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, 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 along with requirements to conduct vulnerability assessments for port facilities and vessels and establish 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 Plans¹⁸ 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.¹⁹ 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.²⁰

Port Access Identification Credentials

The Florida 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. Section 311.125, F.S., required that each port subject to statewide minimum security standards in Chapter 311, F.S., use FUPAC by July 1, 2004. No FUPAC cards were ever issued and this section was repealed in 2009.

At the same time, the federal government attempted to develop its own credential known as the Transportation Worker Identification Credential (TWIC). FUPAC cards were not issued because state officials were working with TSA to consolidate the FUPAC and TWIC into one port access card. In lieu of a FUPAC, individual ports conducted national and state criminal background checks on each applicant who required access to port facilities. The same disqualifying offenses that would prevent an applicant from being issued a FUPAC also disqualified the applicant from receiving a port specific credential; creating a de facto FUPAC.

The federal TWIC is being deployed in 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 for fully interactive usage of the card, including biometric reader capabilities. 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 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."²¹

¹⁶ The Maritime Transportation Security Act of 2002 (P.L. 107-295 of November 25, 2002).

¹⁷ MTSA is implemented by Title 33 CFR, Parts 101-106 which are administered by the USCG.

¹⁸ 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.

¹⁹ Federal Register, Vol. 68, No. 204, Wednesday, October 22, 2003, p. 60468.

²⁰ Presidential Executive Order 13132, "Federalism," August 4, 1999.

²¹ Federal Register, Vol. 74, No. 58, March 27, 2009, at page 13360.

Criminal History Checks

The 2000 legislation 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 in 2001 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, seaport employees and other persons seeking unescorted access to Florida's seaport were required 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.²²

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 went live 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.²³

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.²⁴

TranSystems Report

In February 2010, TranSystems issued a Florida Seaport Security Assessment which was prepared for the Florida Office of Drug Control. Some of the recommendations that the report provided were:

- Transfer the sole responsibility for security standards, plans, practices, and audits to the U.S. Coast Guard.
- Re-task FDLE with the responsibility to develop port-specific threat intelligence for use by seaport security directors and eliminate FDLE's compliance inspection responsibilities.
- Modify the membership, meeting, and report requirements for the Seaport Security Standards Advisory Committee.
- Eliminate prescribed security standards and incorporate performance and risk-based security standards.
- Eliminate the state criminal background checks for those requesting access to restricted areas within the seaport if they have undergone the FBI-conducted background check and been issued a TWIC.
- Authorize seaports to issue a port-specific identification badge for a specific port and stipulate that it will be used in conjunction with the federal TWIC.
- Eliminate the requirement for on-site sworn law enforcement presence at the ports.²⁵

²² 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

²³ Florida Department of Law Enforcement, "Frequently Asked Questions: Seaport Security." January 2011.

²⁴ Correspondence with FDLE, March 8, 2011.

²⁵ *TranSystems Florida Seaport Security Assessment 2010*, Contract No. 10-DS-20-14-00-22-087, Prepared for: Florida Office of Drug Control, February 2010.

Following the issuance of the report, the Office of Drug Control responded that “the study echoed many of the same unfounded grievances concerning security inspections the ports have voiced since 2001, but failed to provide any recommended improvements to seaport security,” and that the study was strongly biased toward the ports without balancing security needs. The letter points out that the study recommends that security responsibility be transferred to the Coast Guard using the less stringent federal standards. The letter argues that complying with the standards in state law “has caused no discernable economic hardship for the ports, nor is there any substantial evidence that conforming to s. 311.12 has caused a loss of business to non-Florida seaports. . . .FDLE reports that seaports have seen significant decreases in cargo theft and pilfering.”²⁶

Differences between Federal and State Standards

There are some differences between the federal security standards and the existing state security standards. First, the state standards contain some specific requirements such as minimum lighting standards and fence height and require seaports to employ sworn law enforcement officers. The federal government uses flexible standards based on risk. Additionally, state law requires a state background check on both TWIC holders and employees who are not required to hold a TWIC.

There are some crimes that disqualify persons from working in Florida ports, which would not prohibit that person from obtaining a TWIC from the Federal government. These crimes include dealing in stolen property, manslaughter, burglary, aggravated assault, aggravated battery, aggravated stalking, any other violent felony, using a weapon in the commission of a felony, and felony theft.

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 seaports. 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.

Proposed Changes

Florida is believed to be the only state with its own seaport security standards in addition to the federal standards. Florida’s law only applies to public seaports and does not apply to businesses on the Miami River or other private seaport or cargo terminals, which may be only a few yards from the public seaport. The state seaport security standards are codified in s. 311.12, F.S., and the bill makes significant changes to this section. For ease of understanding, the analysis is arranged by topic with a brief explanation of the current law followed by the proposed change.

Statewide Minimum Security Standards

The current statewide minimum security standards were incorporated into statute by reference from the 2000 Camber Report commissioned by the Governor’s Office of Drug Control. Current law allows a seaport to implement security measures that are more stringent, more extensive, or supplemental to the minimum security standards. Additionally, the provisions of s. 790.251, F.S.,²⁷ are not superseded, preempted, or otherwise modified in any way by seaport security statutes.

The bill deletes the statewide minimum security standards, but authorizes a seaport to implement security measures that are more stringent, more extensive, or supplemental to the applicable federal security regulations.²⁸

²⁶ Letter from Bruce D. Grant, Direct, Florida Office of Drug Control, to Larry Cretul, Speaker, Florida House of Representatives. March 4, 2010.

²⁷ Section 790.251, F.S., relates to the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

²⁸ 33 C.F.R. s. 105.305

Exemption from Security Requirements

Current law allows FDLE to exempt all or part of a seaport from the security requirements in 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.

Given the elimination of the statewide seaport security standards as explained above, the bill removes the authority for FDLE to exempt all or part of a seaport from those standards.

Security Plans

Current law requires each seaport to adopt and maintain a security plan, which must be revised every five 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.

The bill deletes 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. The bill also deletes the requirement for FDLE and the Office of Drug Control to review an adopted or revised security plan.

Secure and Restricted Areas

Current law requires each seaport to clearly designate in seaport security plans and identify with markers on the premises 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. The law also requires certain notices concerning the prohibition of concealed weapons and other contraband material. It also allows the temporary designation of a secure and restricted area during a period of high terrorist threat level.

The bill deletes the requirement for a seaport's security plan to set forth conditions to be imposed on persons who have access to secure and restricted areas of a seaport. It also removes a requirement that areas of a seaport with a potential human occupancy of 50 or more persons or any cruise terminal must be protected from the most probable and credible terrorist threat to human life. However, federal rules regarding passenger and ferry facilities and cruise ship terminals will remain in effect.²⁹

The bill removes an incorrect reference to a Coast Guard circular and corrects an incorrect reference to the Code of Federal Regulation.

The bill also removes references to FDLE and a seaport's security director designating a period of high terrorist threat level, since they do not have the legal authority to make this designation. The bill still provides that the Department of Homeland Security may make this designation.

Access Eligibility Reporting System

Current law requires FDLE to implement and administer a seaport access eligibility reporting system. 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

²⁹ 33 C.F.R. s. 105.285 provides additional security requirements for passenger and ferry facilities. 33 C.F.R. s. 105.290 provides additional security requirements for cruise ship terminals.

- 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 for that person. Upon determining that a person is eligible to enter a secure and restricted area of a port, the seaport shall, within three business days, report such determination to FDLE for inclusion in the system.

This system can be used to determine who is authorized to work on the ports and the ports can utilize the database to determine if an individual has been processed by another seaport. This database can also be used to notify seaports if anyone authorized to work on the port has been arrested in Florida. However it does not include federal charges and denial of access is only authorized for convictions.

On a daily basis, the TSA updates its list of canceled TWIC cards. The list includes arrests for serious federal crimes and threat information from domestic and international databases. However, it does not include state arrests.

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 five years thereafter to coincide with the issuance of the TWIC.³⁰

The bill deletes the requirement for FDLE to administer the Access Eligibility Reporting System.

Access to Secure and Restricted Areas on Seaports

Current law 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 any state-designated disqualifying felony offense.

FDLE is required to establish a waiver process for a person who has been denied employment by a seaport or denied unescorted access to secure or restricted areas who:

- Does not have a TWIC,
- Obtained a TWIC through the federal waiver process, or
- Is found to be unqualified due to state disqualifying offenses.

The bill prohibits seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the (TWIC). The bill also provides that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under the following circumstances:

- The individual seeking to gain secured access is a new hire as defined under 33 C.F.R. s. 105; or
- The individual has lost or misplaced his or her federal TWIC.

The bill 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. It also deletes a reporting requirement to FDLE regarding grants of access, to conform to the removal of the access eligibility reporting system.

³⁰ FDLE currently collects the fees authorized for the administration of the Access Eligibility Reporting System.

Criminal History Checks

Current law requires that a fingerprint-based state criminal history check must be performed on employee applicants, current employees, and other persons authorized to regularly enter a secure or restricted area. The statutes also include a list of disqualifying offenses that would preclude an individual from gaining employment or unescorted access.

The bill deletes the requirement for seaport employee applicants, current employees, and other authorized persons to submit to a fingerprint-based state criminal history check. The bill also removes the authority for FDLE and each seaport to establish waiver procedures or to grant immediate temporary waivers to allow unescorted access to a seaport.

Waiver from Security Requirements

Current law 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.

In light of the bill's removal of the statewide security standards, the bill removes 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.

Inspections

Current law requires FDLE, or an entity it designates, to conduct at least one annual unannounced inspection of each seaport to determine whether the seaport is meeting the statewide minimum security standards, to identify seaport security changes or improvements needed, and to submit the inspection report to the Domestic Security Oversight Council.³¹ Seaports may request that the Domestic Security Oversight Council review the findings of FDLE's report, if the seaport disputes those findings.

The bill deletes the requirement for FDLE, or an entity it designates, to conduct an annual unannounced security inspection of each seaport to determine if it meets the state's seaport security standards. However, the bill provides that FDLE, or an entity it designates, may conduct unannounced inspections to determine whether a seaport is meeting applicable federal seaport security regulations.

Reports

Current law requires FDLE, in consultation with Office of Drug Control, to annually complete a report indicating the observations and findings of all reviews, inspections, or other operations relating to the seaports conducted for the year.

The bill removes the requirement that FDLE complete such report in consultation with the Office of Drug Control.

Funding

Current law 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.

The bill removes the Office of Drug Control as an entity that participates in determining the allocation of funding for seaport security projects.

Seaport Security Standards Advisory Council

Section 311.115, F.S., creates the Seaport Security Standards Advisory 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

³¹ The Domestic Security Oversight Council is created in s. 943.0313, F.S.

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.

The bill repeals the Seaport Security Standards Advisory Council.

The bill also amends ss. 311.121(2), 311.123(1), and 311.124(1), F.S. to make conforming changes in the bill.

The bill amends various sections of statute to include Port Citrus in those sections' provisions. Specifically, the bill amends:

- Sections 310.002, F.S., to add Port Citrus to the definition of the term "port."
- Section 311.09, F.S., to include a representative of Port Citrus as a member of the Florida Seaport Transportation and Economic Development Council.
- Section 374.976, F.S., to conform provisions relating to include Port Citrus in provisions relating to the authority of inland navigation districts.
- Section 403.021, F.S., to conform provisions to include Port Citrus in legislative declarations relating to environmental control.
- Section 403.061, F.S., to conform provisions to include Port Citrus in provisions relating to powers of the Department of Environmental Protection.
- Section 403.813, F.S., to conform provisions to include Port Citrus in provisions relating to permits issued at Department of Environmental Protection district centers.
- Section 403.816, F.S., to conform provisions to include Port Citrus in provisions relating to certain maintenance projects at deepwater ports and beach restoration projects.

B. SECTION DIRECTORY:

Section 1. Amends s. 311.12, F.S., relating to seaport security.

Section 2. Amends s. 311.121, F.S., relating to qualifications, training, and certification of licensed security officers at Florida seaports.

Section 3. Amends s. 311.123, F.S., relating to maritime domain security awareness training program.

Section 4. Amends s. 311.124, F.S., relating to trespassing; detention by a certified seaport security officer.

Section 5. Repeals s. 311.115, F.S., relating to the Seaport Security Standards Advisory Council.

Section 6. Amends s. 310.002, F.S., relating to definitions.

Section 7. Amends s. 311.09, F.S., relating to Florida Seaport Transportation and Economic Development Council.

Section 8. Amends s. 374.976, F.S., relating to authority to address impacts of waterway development projects.

Section 9. Amends s. 403.021, F.S., relating to legislative declaration; public policy.

Section 10. Amends s. 403.061, F.S., relating to department; powers and duties.

Section 11. Amends s. 403.813, F.S., relating to permits issued at district centers; exceptions.

Section 12. Amends s. 403.816, F.S., relating to permits for maintenance dredging of deepwater ports and beach restoration projects.

Section 13. The bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to FDLE, the SES went live in July 2010. Although it was authorized to begin collecting fees for enrollment in Fiscal Year 2010-2011, FDLE provided the system at no cost for the first year of operation. FDLE negotiated with the seaports to postpone the collection of the fees until the system's billing component was completed according to schedule in the spring of 2011.

The elimination of the requirement for the state background check will result in a decrease in trust fund revenues to FDLE of \$521,880. These revenues are used to support the State's criminal history system. According to FDLE, fees from criminal history checks generated approximately \$44 million in revenue in fiscal year 2009-2010. The amount of revenue attributable to background checks associated with the state's seaport security law is less than 1.2 percent of the total revenue.

2. Expenditures:

FDLE used \$1 million in federal stimulus funds that were appropriated by the Legislature in 2009 to develop the SES. It is not clear if Florida will face any sanctions or whether FDLE would be allowed to reprogram the system for other criminal justice purposes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Public seaports will see a reduction in costs associated with complying with state seaport security standards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could potentially save each port worker hundreds of dollars depending on their individual employment conditions. The table below displays the state and local 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 which may not exceed the administrative costs needed to produce and administer the credential.

Additionally, lessening costs on the ports would lessen the burden on port employees and tenants and potentially stimulate commerce by relieving burdensome regulatory measures.

Financial Impact of Florida Seaport Security Laws³²

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)	\$35
• <u>Total</u>	<u>\$110</u>

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
• FBI national criminal history check	\$19.25
• Fingerprint retention and FDLE seaport access eligibility reporting system	\$50
• Local port fees (approximate)	\$35
• <u>Total</u>	<u>\$130</u>
* The fee for the TWIC is not included in these fee amounts. The current fee to obtain a TWIC is \$132.50 and it is valid for 5 years.	

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

³² Florida Ports Council, Memorandum to Florida House Transportation and Highway Safety Subcommittee, Seaport Security Workshop Information. February 22, 2011.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted two amendments to the bill and reported the bill favorably as a Committee Substitute. The amendments:

- Prohibit seaports from charging a fee for the administration or production of any access control credential that requires or is associated with a fingerprint-based background check, in addition to the fee for the Federal Transportation Worker Identification Credential (TWIC).
- Provide that beginning July 1, 2013, a seaport may not charge a fee for a seaport specific access credential issued in addition to the federal TWIC, except under certain circumstances.
- Adds Port Citrus to various seaport-related statutes.

This analysis is drafted to the Committee Substitute.

On March 15, 2011, the Transportation & Highway Safety Subcommittee adopted four amendments and reported the bill favorably as a Committee Substitute. These amendments:

- Removed an incorrect reference to a Coast Guard circular and corrected an incorrect reference to the Code of Federal Regulation.
- Removes references to FDLE and a seaport's security director designating a high terrorist threat level. These entities do not have the legal authority to designate a high terrorist threat level.
- Corrects an incorrect cross-reference.
- Change the effective date to upon becoming law.

The analysis is drafted to the Committee Substitute.