

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
MILITARY AFFAIRS, SPACE, AND DOMESTIC SECURITY
Senator Altman, Chair
Senator Hill, Vice Chair

MEETING DATE: Thursday, March 10, 2011
TIME: 3:15 —5:15 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Altman, Chair; Senator Hill, Vice Chair; Senators Bennett, Bullard, Jones, Sachs, and Storms

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 236 Hays (Identical H 95)	State Parks; Provides for the parents of certain deceased veterans to receive lifetime annual entrance passes to state parks at no charge. MS 03/10/2011 EP BC	
2	SB 330 Gaetz (Identical H 553)	Violations of the Florida Election Code; Provides that a candidate who, in a primary or other election, falsely represents that he or she served or is currently serving in the military, commits a violation of the Florida Election Code. Requires that the commission adopt rules to provide for an expedited hearing for complaints filed with the commission. Requires that the Director of the Division of Administrative Hearings assign an administrative law judge to provide an expedited hearing in certain cases, etc. EE 01/26/2011 Favorable RC 02/24/2011 Favorable MS 03/10/2011 GO BC	
3	SB 368 Fasano (Identical H 123)	Driver's License Fees for Disabled Veterans; Provides that disabled veterans who meet certain qualifications are entitled to a specified reduction in driver's license fees. Reorganizes provisions. MS 03/10/2011 TR BC	
4	SB 430 Altman (Identical H 171)	Veterans' Affairs; Expands the definition of "veteran" for purposes of construction of the Florida Statutes. Provides educational opportunity at state expense for dependent children of military personnel who die or suffer certain disability in specified military operations. MS 03/10/2011 HE BC	

COMMITTEE MEETING EXPANDED AGENDA

Military Affairs, Space, and Domestic Security
Thursday, March 10, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 450 Bennett (Similar CS/H 215)	Emergency Management; Cites this act as the "Postdisaster Relief Assistance Act." Provides immunity from civil liability for providers of temporary housing and aid to emergency first responders and their immediate family members following a declared emergency. Provides nonapplicability. Provides definitions. MS 03/10/2011 JU RC	
6	SB 524 Latvala (Identical H 283, Compare H 755, S 436, S 932)	Seaport Security; Deletes provisions relating to statewide minimum standards for seaport security. Deletes provisions authorizing the Department of Law Enforcement to exempt all or part of a seaport from specified requirements in certain circumstances. Prohibits a seaport from charging any fee for administration or production of access control credentials that require or are associated with a fingerprint-based background check, in addition to the fee for the federal TWIC, etc. MS 03/10/2011 TR BC	
7	SB 652 Simmons (Identical H 703)	Liability of Spaceflight Entities; Saves a provision from future repeal which provides spaceflight entities with immunity from liability for the loss, damage, or death of a participant resulting from the inherent risks of spaceflight activities. MS 03/10/2011 JU RC	
8	Presentation by the Florida Retail Federation		

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, Space, and Domestic Security Committee

BILL: SB 236

INTRODUCER: Senator Hays

SUBJECT: State Parks

DATE: February 15, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	MS	Pre-meeting
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill allows parents of members of United States Armed Forces, National Guard, or reserve components who have fallen in combat to receive a lifetime family annual pass to Florida state parks at no charge.

The bill provides an effective date of July 1, 2011.

The bill substantially amends section 258.0145(3) of the Florida Statutes.

II. Present Situation:

The Division of Recreation and Parks (division), which is part of the Department of Environmental Protection (department), oversees Florida's 160 state parks. The division has statutory authority¹ to charge reasonable fees for the use or operation of facilities and concessions in state parks.

The division offers a discount of one-half off of the daily admission fee to Florida National Guard active members, spouses and minor children. In addition, the division offers a Family Annual Entrance pass for \$120 and an Individual Annual Entrance pass for \$60. During the 2010 legislative session, s. 258.0145 F.S. was created to allow certain park fee discounts to people who provide written documentation which evidences their eligibility. There are three categories of eligibility and resulting discounts²:

¹ Section 258.014(1), F.S.

² <http://www.floridastateparks.org/default.cfm>

- Active duty members and honorably discharged veterans of the United States Armed Forces, National Guard, or reserve components thereof shall receive a 25% discount on annual entrance passes.
- Honorably discharged veterans who have service-connected disabilities shall receive lifetime family annual entrance passes at no charge.
- Surviving spouses of deceased members of the United States Armed Forces, National Guard, or reserve components thereof who have fallen in combat shall receive lifetime family annual entrance passes at no charge.

•

The monies collected from these fees are deposited into the State Park Trust Fund which is used for the administration, improvement and maintenance of the state parks and any acquisition of lands for state park purposes.

III. Effect of Proposed Changes:

Section I: The bill amends s. 258.0145(3) F.S.:

- to expand the current fee waiver for surviving spouses to include parents of deceased members of the United States Armed Forces, National Guard, or any of their reserve components who have fallen in combat to receive lifetime family annual entrance passes at no charge as long as the proper documentation³, a DD 1300, is provided along with proof of parenthood.

Section II: Provides an effective date of July 1, 2011.

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.

³ A Department of Defense Form 1300 is a report of casualty form.

B. Private Sector Impact:

Parents of deceased members of the United States Armed Forces, National Guard, or reserve components will benefit from the waived entrance fees.

C. Government Sector Impact:

The department estimates that there will be a potential reduction in state revenue of up to \$30,000. However, the department states that the publicity and goodwill earned by the state is expected to offset the loss in revenues and result in increased visitation, thereby generating additional economic benefit for local communities and the state.

For the most part, there would be no fiscal impact on local governments. However, according to the department's website, some counties impose a surcharge in addition to the division's entrance fee. If the surcharges were waived, this may represent a potential reduction in revenue for the counties that impose the surcharge.

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.)

None.

B. Amendments:

None.

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, Space & Domestic Security

BILL: SB 330

INTRODUCER: Senator Gaetz

SUBJECT: Political speech; military service misrepresentations

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Favorable
2.	Fox	Phelps	RC	Favorable
3.	Fleming	Carter	MS	Pre-Meeting
4.			GO	
5.			BC	
6.				

I. Summary:

Senate Bill 330 makes it an administrative violation of the Florida Election Code for candidates to misrepresent the fact that they served, or are currently serving, in the U.S. military; a civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or the administrative law judge (ALJ) hearing the case, as appropriate.

This bill creates Section 104.2715 of the Florida Statutes.

II. Present Situation:

Section 104.271, Florida Statutes, makes it a violation of the Florida Election Code for a candidate to knowingly make a false statement about an opposing candidate in an election, an offense punishable by an administrative fine of up to \$5,000:

Any candidate who, in a primary or other election, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of this code.¹

This appears to be the only provision in the Code that directly addresses false political speech.

Interestingly, what SB 330 proposes is strikingly similar to the federal Stolen Valor Act, which makes it a crime to falsely represent having been awarded a military honor, declaration, medal,

¹ § 104.241(2), F.S.

badge, etc. There is currently a disagreement among courts in different federal judicial circuits with respect to the constitutionality of that statute.²

III. Effect of Proposed Changes:

Senate Bill 330 subjects candidates to a civil fine of up to \$5,000 for falsely representing in an election that they have served, or are serving, in the nation's military. It provides for the expedited hearing of complaints by the Florida Elections Commission or an ALJ at the Division of Administrative Hearings (DOAH), as appropriate, and further authorizes the Commission to adopt rules to provide for such expedited hearing.

Also worth noting are the facts that any person may file a complaint with the Florida Elections Commission; and, any fine assessed is deposited in the State's General Revenue Fund.

The bill takes effect July 1, 2011.

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:

None.

C. Government Sector Impact:

Minimal; may result in some minor, additional revenue from violation penalties.

² See *U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that Stolen Valor Act violates First Amendment free speech rights); *but see*, *U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are *not protected* by the First Amendment). Although *Alvarez* is the only *appellate* decision interpreting the Stolen Valor Act, the U.S. Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. Indeed, the federal district judge in *Robbins* expressly refused to follow the 2-1 majority decision in *Alvarez*, choosing instead to adopt the dissent's position that *false speech is not entitled* to first amendment protection.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill grants specific penalty power to the administrative law judge at DOAH, to account for the recent First District Court of Appeals decision in *Davis v. Florida Elections Commission*.³

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³ 44 So.3d 1211 (Fla. 1st DCA 2010) (ALJ has no statutory authority to institute penalties for election violations originating with the Florida Elections Commission) .

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, Space, and Domestic Security Committee

BILL: SB 368

INTRODUCER: Senator Fasano

SUBJECT: Driver's License Fees for Disabled Veterans

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Pre-meeting
2.			TR	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands benefits for qualified disabled veterans who have a service-connected disability rating of at least 50-percent but less than 100-percent to receive a 50-percent reduction in the driver license fees outlined in section 322.21 of the Florida Statutes.

This bill substantially amends section 322.21 of the Florida Statutes.

II. Present Situation:

Driver License Fees

The Division of Driver Licenses (division) within the Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for the distribution of driver licenses in the state. Section 322.21, F.S., provides for driver license fees and the process for handling and collecting. The fees for driver licenses, identification cards, endorsements, and driver license reinstatements are addressed in this section as follows:

License Type	Fee Amount
Commercial Driver License: original or renewal	\$75
Class E Driver License: original, renewal, or extension	\$48
License Restricted to Motorcycle Use Only: original, renewal, or extension	\$48
Driver License: replacement	\$25
Identification Card: original, renewal, or replacement	\$25
Endorsements required by s. 322.57, F.S.	\$7
Hazardous Material Endorsement required by s. 322.57(1)(d), F.S.	not to exceed \$100
Reinstatement following a suspension	\$45
Reinstatement following a revocation	\$75

The fees collected pursuant to this section are deposited into the General Revenue Fund and support the maintenance and operation of the DHSMV. As of March 2, 2011, 15,507,284 Floridians held a driver license and 1,424,115 held an identification card issued by the division.¹

Section 322.21(7), F.S., currently provides an exemption from driver license fees for a veteran who: has been honorably discharged from the Armed Forces; has been issued a valid identification card by the Florida Department of Veterans' Affairs (FDVA);² has a total and permanent service-connected disability rating of 100-percent;³ is in receipt of disability retirement pay from any branch of the U.S. Armed Services; and is qualified to obtain a driver license. The DHSMV reports that for the 2010 calendar year, the division issued 2,749 driver licenses to 100-percent service-connected disabled veterans, and from January 2005 to January 2011, the division has issued 17,081 driver licenses to 100-percent service-connected disabled veterans.⁴

Disability Compensation Rating for Veterans

The United States Department of Veteran Affairs provides monthly disability compensation to veterans who are disabled by an injury or illness that was incurred or aggravated during active military service. These disabilities are considered to be service-connected. Disability compensation varies with the degree of disability and the number of a veteran's dependents.⁵ The rate of compensation is graduated according to the combined degree of the veteran's disabilities,

¹ Correspondence with DHSMV. March 2, 2011.

² Pursuant to s. 295.17, F.S., the FDVA may issue an identification card to any veteran who is a permanent Florida resident and who has a 100-percent service-connected disability.

³ The disability rating of veteran can be determined by the USDVA or the United State Department of Defense.

⁴ Correspondence with DHSMV. March 2, 2011.

⁵ USDVA Federal Benefits for Veterans, Dependents and Survivors. 2010 Edition. Available at: http://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp

from 10-percent to 100-percent disabling, in increments of 10-percent.⁶ A disability rating of 100-percent is considered a total and permanent service-connected disability.

III. Effect of Proposed Changes:

This bill amends s. 322.21(7), F.S., to allow qualified disabled veterans who have a service-connected disability rating of at least 50-percent but less than 100-percent to receive a 50-percent reduction in the driver license fees outlined in s. 322.21, F.S. A disabled veteran is eligible for the driver license fee reduction if the veteran:

- has been honorably discharged from the Armed Forces;
- has been issued a valid identification card by the FDVA;
- has a total and permanent service-connected disability rating of at least 50-percent but less than 100-percent;
- is in receipt of disability retirement pay from any branch of the U.S. Armed Services; and
- is qualified to obtain a driver license under s. 322.21, F.S.

The FDVA reports that for the 2010 fiscal year, there were 71,163 veterans in Florida whose service-connected disability rating ranged from 50-percent to 90-percent.⁷ This disability range comprises 29-percent of all disabled veterans in Florida. The data is not available to determine how many of these veterans are eligible to obtain a driver license.

This bill has an effective date of July 1, 2011.

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:

This bill will have a fiscal impact due to loss of revenue collected from driver license fees. The amount of revenue loss is indeterminate given that it is unclear how many

⁶ 2010 USDVA Annual Benefits Report, page 3. Available at: http://www.vba.va.gov/REPORTS/abr/2010_abr.pdf

⁷ Disability ratings are calculated in increments of 10-percent, ranging from 10-percent to 100-percent.

veterans who have a service-connected disability rating of at least 50-percent but less than 100-percent are eligible to obtain a driver license, and therefore would be eligible to receive a 50-percent reduction from driver license fees.

B. Private Sector Impact:

This bill would allow veterans who have at least a 50-percent but less than 100-percent service-connected disability rating to receive a 50-percent discount on the fees for driver licenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Identification Cards for Disabled Veterans

This bill provides that in order for a veteran who has at least a 50-percent but less than 100-percent service-connected total and permanent disability rating to be eligible to receive a 50-percent reduction in the fees for driver licenses, the veteran must have been issued a valid disabled veteran identification card from the FDVA. However, current law does not allow for a veteran who has a disability rating below 100-percent to obtain an identification card from the FDVA. Section 295.17, F.S., provides that only an honorably discharged veteran who is 100-percent service-connected disabled is eligible to obtain an identification card from the FDVA.

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.)

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Military Affairs, Space, and Domestic Security (Storms) recommended the following:

Senate Amendment

Delete line 20
and insert:
Department of Veterans' Affairs in accordance with s. 295.17, or
the veteran must provide an official letter from the United
States Department of Veterans Affairs or its predecessor stating
the percentage of the veteran's service-connected disability and
a copy of the veteran's honorable discharge at the time of
application for a driver's license or driver's license renewal;

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, Space, and Domestic Security Committee

BILL: SB 430

INTRODUCER: Senator Altman

SUBJECT: Veterans' Affairs

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Pre-meeting
2.			HE	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends the statutory definition of a “veteran” in s. 1.01(14), F.S. As a result, veterans who served during Operation New Dawn, but were not deployed into an area of operation, are eligible for wartime service benefits.

This bill also extends post-secondary scholarship program eligibility to the children of veterans who die or become disabled while serving in Operation New Dawn.

This bill has an effective date of July 1, 2011.

This bill substantially amends sections 1.01 and 295.0185 of the Florida Statutes.

Present Situation:

Wartime Veteran Benefits

Section 1.01 (14), F.S., defines of the term “veteran” that is used in determining eligibility of veterans for benefits provided by the state. Under the current definition, a person who has served in the active military, naval, or air service and who has been discharged or released from active duty under honorable conditions is eligible for standard veterans’ benefits. A veteran is eligible for enhanced benefits for wartime service if the veteran served in a campaign or expedition for which a campaign badge¹ has been authorized² or served during one of the following periods of wartime service:

¹ A current list of U.S. military campaign badges may be found at:
http://www.tioh.hqda.pentagon.mil/Awards/service_campaign.aspx.

- (a) Spanish-American War: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion.
- (b) Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.
- (c) World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.
- (d) World War II: December 7, 1941, to December 31, 1946.
- (e) Korean Conflict: June 27, 1950, to January 31, 1955.
- (f) Vietnam Era: February 28, 1961, to May 7, 1975.
- (g) Persian Gulf War: August 2, 1990, to January 2, 1992.
- (h) Operation Enduring Freedom: October 7, 2001, and ending on the date thereafter prescribed by presidential proclamation or by law.
- (i) Operation Iraqi Freedom: March 19, 2003, and ending on the date thereafter prescribed by presidential proclamation or by law.

On August 31, 2010, President Obama announced the end of Operation Iraqi Freedom and the commencement of the new mission, Operation New Dawn.³ As part of Operation New Dawn, U.S. Forces have three primary missions: advising, assisting, and training the Iraqi Security Forces; conducting partnered counterterrorism operations; and providing support to provincial reconstruction teams and civilian partners as they help build Iraq's civil capacity.⁴

However, a new campaign medal does not accompany the commencement of Operation New Dawn. "U.S. troops will not get a new campaign medal if they take part in Operation New Dawn. The current Iraq Campaign Medal⁵ campaign phase, 'Iraqi Sovereignty,' which took effect January 1, 2009, describes both the initial phase of Operation New Dawn and the final phase of Operation Iraqi Freedom."⁶ Thus, servicemembers who serve in direct support of Operation New Dawn may be eligible to receive the Iraq Campaign Medal. Under the current law (s. 1.01(14), F.S.), receipt of the Iraq Campaign Medal for service during Operation New Dawn qualifies such veterans for wartime benefits. However, those veterans who served active duty during Operation New Dawn, but were not deployed into the campaign, are not eligible.

Florida wartime benefits for eligible veterans include: veterans' hiring and retention preference,⁷ career training admission preference (Vietnam Era),⁸ State Veteran Nursing Home admittance priority preference,⁹ certain local business tax exemptions,¹⁰ certain Florida Retirement System

² The provision regarding campaign badges was added in 2003. Prior to then, statutes allowed those who served during the defined wartime periods to be eligible for wartime benefits.

³ <http://www.whitehouse.gov/the-press-office/2010/08/31/remarks-president-address-nation-end-combat-operations-iraq>

⁴ http://www.af.mil/news/story_print.asp?id=123220049.

⁵ Department of the Army. Iraq Campaign Medal Page. Office of the Administrative Assistant to the Secretary of the Army, Institute of Heraldry. Available at: http://www.tioh.hqda.pentagon.mil/Awards/iraq_campaign.aspx.

⁶ Statement by Defense Department spokeswoman Eileen Lainez. October 22, 2010. Article available at: <http://www.military.com/news/article/no-campaign-medal-for-operation-new-dawn.html>.

⁷ Section 295.07, Florida Statutes.

⁸ Section 295.125, Florida Statutes.

⁹ Section 296.08, Florida Statutes.

(FRS) benefits,¹¹ and certain homestead tax exemptions for those meeting other eligibility criteria.¹²

Educational Benefits

Since 1941, Florida has provided educational opportunity for the dependent children of deceased or totally and permanently disabled veterans of the U.S. Armed Forces. In 2006, these benefits were extended to include spouses of deceased or totally and permanently disabled veterans of the U.S. Armed Forces. Section 295.01, F.S., establishes the eligibility requirements for the Scholarships for Children and Spouses of Deceased or Disabled Veterans (CSDDV) program for dependent children and spouses of certain military veterans. Under this section, dependent children and an unremarried spouse of a veteran who died from service-connected injuries, disease, or disability while on active-duty, or was determined to have a 100 percent permanent and total-service connected disability, are eligible for the scholarship. The section provides certain criteria, including Florida residency criteria, which a child or spouse must meet in order to be eligible for the scholarship. Scholarship recipients are also subject to the requirements of ss. 295.03, 295.04, 295.05, and 1009.40, F.S.

Subsections 295.016-295.0195, F.S., specify military actions or conflicts that constitute eligible periods of military service for purposes of the scholarship program established in s. 295.01, F.S. Section 295.0195 provides scholarships for the children of deceased or disabled military personnel who died or became disabled in Operation Enduring Freedom (2001) and Operation Iraqi Freedom (2003). In order for such a child to be eligible for the scholarship, the servicemember must have been a Florida resident at the time of the disability or death. Presently, chapter 295, F.S., does not extend such state-sponsored educational benefits to the children of military personnel who have died or became 100-percent disabled in Operation New Dawn, which began on September 1, 2010.

The chart on the next page displays the appropriations, expenditures, and the number of participating students in the CSDDV scholarship program from fiscal year 2007-08 to 2009-10. The Legislature appropriated \$2,442,776 for the CSDDV scholarship program for fiscal year 2010-2011.¹³

¹⁰ Section 205.171, Florida Statutes.

¹¹ Sections 121.021(20)(b) and 121.111, Florida Statutes.

¹² Section 196.24, Florida Statutes.

¹³ Florida Department of Education, *2009-10 Annual Report to the Commissioner*. Available at: <http://www.floridastudentfinancialaid.org/SSFAD/pdf/annualreportcurrent.pdf>

**SCHOLARSHIPS FOR CHILDREN AND SPOUSES OF
DECEASED OR DISABLED VETERANS AND SERVICEMEMBERS**

Year	Total Spouses Disbursed	Total Children Disbursed	Total Disbursed	Average Award	Expended Funds	Appropriations
2007-08	16	459	475	\$2,392	\$1,136,148	\$1,101,410
2008-09	52	643	695	\$2,536	\$1,762,248	\$1,997,365
2009-10	56	685	741	\$2,588	\$1,917,830	\$1,997,365

Florida Department of Education, *Annual Report to the Commissioner*, 2010.

II. Effect of Proposed Changes:

Section 1 This bill adds Operation New Dawn to the list of qualifying military campaigns or expeditions found in s. 1.01(14), F.S. Inclusion of this operation in the statute would qualify veterans for wartime service veterans’ benefits who have served honorably but have not met the criteria for award of a campaign medal.

The qualifying period for Operation New Dawn begins September 1, 2010, and will end on a date thereafter prescribed by presidential proclamation or by law.

Section 2 This bill amends s. 295.0185, F.S., to extend program eligibility to the dependents of veterans who die or become disabled while serving in Operation New Dawn.

Section 3 This bill provides an effective date of July 1, 2011.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would enable an unknown number of additional children of deceased or disabled veterans to qualify for post-secondary educational benefits.

C. Government Sector Impact:

The state will be responsible for paying for the educational benefits provided in this bill to children of military personnel who die or suffer a service-connected 100-percent total and permanent disability in Operation New Dawn. Presently, the number of eligible scholarship recipients is indeterminate.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

Good 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 Communications, Energy, and Public Utilities Committee

BILL: SB 450

INTRODUCER: Senator Bennett

SUBJECT: Emergency Management

DATE: March 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	CU	Pre-meeting
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill provides immunity from civil liability for individuals, corporation, or other business entities that, in good faith, provide housing, food, water, or electricity to emergency first responders or their family members in response to a declared state of emergency or a declared public health emergency. The bill provides specific requirements with regard to when the immunity applies and when it does not.

This bill creates section 252.515 of the Florida Statutes.

II. Present Situation:

Presently, s. 252.36(2), F.S., empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency is imminent. Also, s. 381.00315, F.S., empowers the State Health Officer to declare public health emergencies.¹ State of emergencies and public health emergencies may only last for 60 days unless the Governor renews the declarations.²

Chapter 768, F.S., deals with the tort of negligence and provides several sections where certain individuals or groups are immune from civil liability if the individuals or groups meet the statutory requirements. For example, the Good Samaritan Act, under s. 768.13, F.S., provides that any health care providers, including a hospital licensed under chapter 395, that provide emergency services pursuant to certain statutes are immune from civil liability unless the health

¹ Section 381.00315(1)(b), F.S., provides in part: "Public health emergency" means any occurrence, or threat thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.

² See ss. 252.36(2) and 381.00315, F.S.

care provider acted with reckless disregard. “Reckless disregard” is defined as “such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which is necessary to make the conduct negligent.”³ Also, s. 768.1315, F.S., provides that a state agency or subdivision which donates fire control or fire rescue equipment to a volunteer fire department is not liable for civil damages caused by a defect in the equipment which occurs after the donation.

III. Effect of Proposed Changes:

This bill creates the “Postdisaster Relief Assistance Act.” Within this bill, there are two categories of providers that may be immune from civil liability. First, the bill provides that any individual, corporation, or other business entity within the state who, in good faith, provides temporary housing, food, water, or electricity to emergency first responders or the immediate family members⁴ of emergency first responders may not be held liable for any civil damages if their actions are like that of an ordinary reasonably prudent person under the same or similar circumstances.

The immunity from civil liability applies in emergency situations that are related to and that arise out of a public health emergency pursuant to s. 381.00315, F.S., or a state of emergency pursuant to s. 252.36, F.S., for a period of 6 months following the declared public health emergency or the declared a state of emergency.

Second, the bill also provides that any entity, employee thereof, or any individual that annually registers prior to a declared emergency with a county emergency management agency as a housing provider and, in good faith, provides housing, food, water and electricity to emergency first responders or their immediate family members may not be held liable for any civil damages unless their actions demonstrate a reckless disregard for the consequences of another.

The immunity from civil liability for this category of providers applies when a sudden or unexpected post-emergency situation or occurrence arises as a result of a declared emergency pursuant to s. 252.36, F.S. The period of time in which the immunity applies is also for 6 months following a declared state of emergency.

The immunity provided to persons under this bill does not apply to damages as a result of any act or omission:

- That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity continues to apply for the duration of the extension; or
- That is unrelated to the original declared emergency or any extension thereof.

This bill defines “reckless disregard” as conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect

³ s. 768.13(2)(b)3., F.S.

⁴ The bill defines immediate family member as a parent, spouse, child or sibling.

the life or health of another, taking into account the extent or serious nature of the prevailing circumstances.

This has an effective date of July 1, 2011.

Other Potential Implications:

This bill provides two categories of individuals or groups that may be immune from civil liability. The first category (Category 1) of individuals or groups may be immune from civil liability without registering with a local emergency management agency, while the second group (Category 2) may receive immunity if registered. There are some potential implications or concerns that may arise as a result of having these two different categories.

- First, the two categories have different standards of conduct which triggers or bars the granting of their immunity. The concern is that these two standards of conduct may overlap one another thus creating an ambiguity of when the immunity applies and to whom.
- Secondly, the bill provides immunity for those in Category 1 when two situations arise, namely, a declared state of emergency or a declared state of public health emergency. However, Category 2's immunity is triggered only when "necessitated by a sudden or unexpected post-emergency situation or occurrence arising as a result of a declared emergency." The concern is that this distinction may lead to confusion as to when and who is immune from civil liability.
- Third, the bill provides that Category 1's immunity is applicable for the "temporary" provision of housing, food, water, and electricity, however, the word "temporary" is not used for those in Category 2. This distinction may be significant because, to add temporal language within this bill that is already temporary in its application may lead to ambiguity and confusion. Moreover, not including the word "temporary" to Category 2 may lead to the incorrect conclusion that they may provide housing, food, water, and electricity to first responders indefinitely and thus receive immunity for that indefinite period of time which is not the intent of the bill.

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:

None.

C. Government Sector Impact:

This bill grants immunity from civil liability to specific entities that annually register with a county emergency management agency. As a result, counties may incur minimal expenditures relating to such registration.

VI. Technical Deficiencies:

The bill provides that,

“Any individual, corporation, or other business entity within the state, including an individual, corporation, or business entity listed in subparagraph 2, who in good faith provides housing, food, water, or electricity to emergency first responders or the immediate family members of the emergency first responders...” may not be held liable for civil damages.

However, physicians, dentists, registered nurses, or emergency medical technicians, do not generally provide housing, food, water, or electricity to first responders and typically serve in a first responders capacity. Therefore, an ambiguity is created as to who are the first responders and who are the providers of housing, food, water, and electricity. First responders are not defined in the bill.

Also, the bill provides that immunity from civil liability does not apply in situations that are “unrelated to the original declared emergency or any extension thereof.” However, the overall purpose of the bill is to shield those that provide housing, food, water, and electricity from civil liability but the language stated above may create an ambiguity as to what is regarded as “relating to the original declared emergency.” Ultimately, this language may be interpreted to undermine the intent or the bill.

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.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Military Affairs, Space, and Domestic Security
(Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 252.515, Florida Statutes, is created to
read:

252.515 Postdisaster Relief Assistance Act; immunity from
civil liability.-

(1) This act may be cited as the "Postdisaster Relief
Assistance Act."

(2) Any person who gratuitously and in good faith provides
temporary housing, food, water, or electricity to emergency



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13 first responders or the immediate family members of emergency
14 first responders in response to an emergency situation related
15 to and arising out of a public health emergency declared
16 pursuant to s. 381.00315 or a state of emergency declared
17 pursuant to s. 252.36, may not be held liable for any civil
18 damages as a result of providing the temporary housing, food,
19 water, or electricity unless the person acts in a manner that
20 demonstrates a reckless disregard for the consequences of
21 another.

22 (3) As used in this section, the term:

23 (a) "Emergency first responder" means:

24 1. A physician licensed under chapter 458.

25 2. An osteopathic physician licensed under chapter 459.

26 3. A chiropractic physician licensed under chapter 460.

27 4. A podiatric physician licensed under chapter 461.

28 5. A dentist licensed under chapter 466.

29 6. An advanced registered nurse practitioner certified
30 under s. 464.012.

31 7. A physician assistant licensed under s. 458.347 or s.
32 459.022.

33 8. A worker employed by a public or private hospital in the
34 state.

35 9. A paramedic as defined in s. 401.23(17).

36 10. An emergency medical technician as defined in s.
37 401.23(11).

38 11. A firefighter as defined in s. 633.30.

39 12. A law enforcement officer as defined in s. 943.10.

40 13. A member of the Florida National Guard.

41 14. Any other personnel designated as emergency personnel



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42 by the Governor pursuant to a declared emergency.

43 (b) "Immediate family member" means any parent, spouse,
44 child, or sibling.

45 (4) The immunity provided by this section does not apply to
46 damages as a result of any act or omission:

47 (a) That occurs more than 6 months after the declaration of
48 an emergency by the Governor, unless the declared state of
49 emergency is extended by the Governor, in which case the
50 immunity provided by this section continues to apply for the
51 duration of the extension and 6 months thereafter; or

52 (b) That is unrelated to the original declared emergency or
53 any extension thereof.

54 (5) As used in this section, the term "reckless disregard"
55 means such conduct that a reasonable person knew or should have
56 known at the time such services were provided, would be likely
57 to result in injury so as to affect the life or health of
58 another, taking into account the extent or serious nature of the
59 prevailing circumstances.

60 (6) A person may register with a county emergency
61 management agency as a temporary provider of housing, food,
62 water, or electricity for emergency first responders if the
63 county provides for such registration. A person who has
64 registered with a county emergency management agency as a
65 provider of temporary housing, food, water, or electricity to
66 emergency first responders or the immediate family members of
67 emergency first responders is presumed to have acted in good
68 faith in providing such housing, food, water, or electricity.

69 Section 2. This act shall take effect July 1, 2011.
70



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71 ===== T I T L E A M E N D M E N T =====

72 And the title is amended as follows:

73 Delete everything before the enacting clause

74 and insert:

75 A bill to be entitled

76 An act relating to emergency management; creating s.

77 252.515, F.S.; providing a short title; providing

78 immunity from civil liability for providers of

79 temporary housing and aid to emergency first

80 responders and their immediate family members

81 following a declared emergency; providing definitions;

82 providing nonapplicability; authorizing specified

83 registration with a county emergency management agency

84 as a provider of housing and aid for emergency first

85 responders; providing an effective date.

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, Space, and Domestic Security Committee

BILL: SB 524

INTRODUCER: Senator Latvala

SUBJECT: Seaport Security

DATE: March 9, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Pre-meeting
2.			TR	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill makes several significant changes to the seaport security standards outlined in s. 311.12, F.S. More specifically, this bill does the following:

- 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 FLDE 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 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; and
- deletes the requirement for seaport employee applicants, current employees, and other authorized persons to submit to a fingerprint-based state criminal history check.

This bill substantially amends the following sections of the Florida Statutes: 311.12, 311.121, 311.123, 311.124. This bill also repeals section 311.115 of the Florida Statutes.

This bill takes effect on July 1, 2011.

II. Present Situation:

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. Federal law requires seaports to comply with security plans which are reviewed and approved by the United States Coast Guard (USCG).

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 ports are regulated under chapter 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),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 the 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 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

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).

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.

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 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 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

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 goal of the TWIC program is to provide a single nationwide transportation industry access credential that, after completion of a screening process, which includes a criminal background check against federal standards, will

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.

signify eligibility for unescorted access to a facility. The fee to obtain a TWIC is \$132.50 and is valid for 5 years.¹³

Additionally, 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 state 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.

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. 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.

Criminal History Checks

The 2000 Legislature passed CS/CS/CS/SB 1258,¹⁴ 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.¹⁵

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

¹³Transportation 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 2000-360, Laws of Florida (L.O.F.)

¹⁵ 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

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.¹⁶

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.¹⁷

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 2002.¹⁸ 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). This subsection also allows a seaport to implement security measures that are more stringent, more extensive, or supplemental to the minimum security standards.

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 requires 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

¹⁶ Florida Department of Law Enforcement, "Frequently Asked Questions: Seaport Security." January 2011.

¹⁷ Correspondence with FDLE, March 8, 2011.

¹⁸ 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

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 probably 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.¹⁹

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.

¹⁹ FDLE does currently collect the fees authorized for the administration of the Access Eligibility Reporting System.

FDLE must establish a waiver process for a person who does not have a TWIC, obtained a TWIC through the federal waiver process²⁰, or 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.

²⁰ Describe federal waiver

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 5 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 set forth conditions to be imposed on persons who have access to secure and restricted areas of a seaport;
- delete requirement for certain areas of a seaport to be protected from the most probable and credible terrorist threat to human life;
- 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 (5) 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.
- remove the Office of Drug Control as an entity that participate in determining the allocation of funding for security project needs.

Sections 2 – 4 make conforming changes.

Section 5 deletes s. 311.115, F.S.

Section 6 provides an effective date of July 1, 2011.

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 possible 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, in which a port could not charge a fee that is more than the administrative costs needed to produce and administer the credential.

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

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)	\$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.	

C. Government Sector Impact:

This bill will have a fiscal impact on FDLE. The provisions in the bill would eliminate FDLE’s role in conducting criminal history checks and administering the access eligibility reporting system and thus, FDLE would no longer collect fees for those services.²²

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

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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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, Space, and Domestic Security Committee

BILL: SB 652

INTRODUCER: Senator Simmons

SUBJECT: Liability of spaceflight entities

DATE: March 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Pre-meeting
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill saves section 331.501, F.S., from repeal which provides spaceflight entities with immunity from liability for the loss, damage, or death of a participant resulting from the inherent risks of spaceflight activities.

This bill takes effect July 1, 2011.

This bill substantially amends section 331.501 of the Florida Statutes.

II. Present Situation:

Section 331.501, F.S., was created by the 2008 Legislature and provides that a spaceflight entity¹ is not liable for injury to or death of spaceflight participant² resulting from the inherent risks of spaceflight launch activities³, so long as a required warning is given to and signed by the participant. The law further provides that a participant or participant's representative may not

¹ "Spaceflight entity" means any public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities.

² "Spaceflight participant" means an individual, who is not crew, carried within a launch vehicle or reentry vehicle as defined in 49 U.S.C. s. 70102.

³ "Spaceflight activities" means launch services or reentry services as those terms are defined in 49 U.S.C. s. 70102. 49 U.S.C. s. 70102 defines "launch services" as activities involved in the preparation of a launch vehicle, payload, crew (including crew training), or space flight participant for launch and the conduct of a launch, and defines "reentry services" as activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), or space flight participant for reentry and the conduct of a reentry.

recover from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities. The immunity provided by s. 331.501, F.S., does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:

- Commits gross negligence or willful or wanton disregard for the safety of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition; or
- Intentionally injures the participant.

To receive the immunity, the spaceflight entity must have each participant sign a required warning statement. The warning statement must contain, at a minimum, the following statement:

WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Injuries caused by the inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.

The limitation on liability established in s. 331.501, F.S., is in addition to any other limitation of legal liability that might otherwise be provided by law.

Section 331.501, F.S., includes a provision that the section will expire on October 2, 2018, unless reviewed and reenacted by the Legislature.

III. Effect of Proposed Changes:

This bill saves s. 331.501, F.S., from future repeal by deleting the provision that provides for s. 331.501, F.S., to expire on October 2, 2018, unless reviewed and reenacted by the Legislature.

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:

C. Government Sector Impact:

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.)

None.

B. Amendments:

None.

- Within the Retail Federation, we have about 19 of our large corporate members that participate in our Emergency Preparedness Network. This network of retailers works in cooperation and partnership with the Florida Division of Emergency Management throughout declared emergencies.
- In the wake of an emergency, the primary focus of all retailers is to keep stores up and running, or return them to some level of operation as soon as possible. This allows them to provide much-needed goods to the local community, bolsters the local economy, and it provides a sense of normalcy and comfort to disaster-impacted areas.
- The efforts of retailers don't stop at store operations.
- Many retailers, such as Walmart and Target, generously support the sheltering and mass care efforts of the Salvation Army and the American Red Cross through donations of supplies and relief kits. Target has also facilitated opportunities for team members to volunteer at the shelters. Walmart has, on certain occasions, offered sheltering assistance to store associates.
- Retailers of all sizes play an active role in local emergency management efforts. Walgreens, for example, has associates who participate in the Palm Beach County Hazardous Emergency

Response Pharmacy sub-committee and the Miami-Dade Disaster Team.

- Some retailers allow for strategic uses of their properties to aid in emergency response:
 - Walmart has allowed the state to use unopened properties as Points of Distribution.
 - Winn-Dixie has recently entered into an agreement with JEA to allow them to position 300 of their service vehicles at the Distribution Center in Baldwin Florida. This includes the use of warehouse space for the sheltering of up to 150 JEA Storm Riders. This will allow JEA to position its assets further away from potentially higher winds from tropical weather systems and respond quickly to restore power to the City of Jacksonville and their customers.
 - Sea World and Busch Gardens have allowed their parking lots to be used as staging areas. For example, they have allowed power trucks to use their lots before and after emergencies. Also, the Kennedy Space Center has relocated vehicles and transportation assets inland to their parking lots.
 - Macy's has allowed both FEMA and FPL to use their parking lots in the past, but the ability to do this is dependent on the particular mall property in question

- Florida's retail industry shares a very strong partnership with the Division of Emergency Management, and is always open to opportunities to partner and provide support.
- The focus is on getting back to business as usual as quickly as possible. Open retail stores serve as a gathering place for impacted communities. Even though life outside the store may be chaotic, it can be reassuring to know you can visit your neighborhood Walmart, get what you need, and feel the comfort of a little normalcy. Our members tell us that - whether it's for the air conditioning, the electricity, or just a break in the monotony - citizens flock to open malls and retail stores after disasters. Our members are focused on keeping their stores running so they can be ready to serve their guests at a time when they need it most.