

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1470

SPONSOR: Home Defense, Public Security, and Ports Committee and Senator Haridopolos

SUBJECT: Seaport Security

DATE: April 1, 2004                      REVISED: \_\_\_\_\_

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

**I. Summary:**

Committee Substitute for Senate Bill 1470 provides that all public or private entities operating on public property on an active public seaport and subject to inspection must conform to the statewide minimum seaport security standards provided in s. 311.12, F.S.

This CS amends s. 311.12, F.S.

**II. Present Situation:**

Florida has fourteen public, commercial seaports, as defined in s. 311.09, F.S. The seaports are designated for purposes of participating as members of the Florida Seaport Transportation Economic Development (FSTED) Council. The purpose of the FSTED Council is to review and evaluate construction and infrastructure projects to “improve the movement and intermodal transportation of cargo or passengers in commerce and trade...”<sup>1</sup> through state funding provided by the Legislature. The Council’s recommendations are given to the State Department of Transportation for inclusion in its legislative budget request, pursuant to s. 311.09(10), F.S.

Statewide minimum standards for seaport security are set forth in the “Port Security Standards - Compliance Plan” (Compliance Plan) provided to the Legislature on December 11, 2000. Each seaport must maintain a security plan that is tailored to meet the individual needs of the port and assures compliance with the statewide standards. Section 311.12, F.S., provides statewide minimum security standards for the following public, commercial seaports: 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.

<sup>1</sup> Section 311.07(1), F.S.

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

Section 311.12(1)(a), F.S., provides that the statewide minimum standards for seaport security for each seaport identified in s. 311.09, F.S., shall be those based upon the Florida Seaport Security Assessment 2000 and set forth in the “Port Security Standards—Compliance Plan” delivered to the Speaker of the House of Representatives and the President of the Senate on December 11, 2000, pursuant to this section. The statewide minimum standards are adopted. The Office of Drug Control within the Executive Office of the Governor shall maintain a sufficient number of copies of the standards for use by the public, at its offices, and shall provide copies to each affected seaport upon request.

Seaports identified in s. 311.09, F.S., include the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

Section 311.12(1)(b), F.S., provides that the Florida Department of Law Enforcement (FDLE) may exempt any seaport identified in s. 311.09, F.S., from all or part of the requirements of subsections (1)-(5) if the FDLE determines that the seaport is not active. The FDLE shall periodically review exempted seaports to determine if there is maritime activity at the seaport. A change in status from inactive to active may warrant removal of all or part of any exemption provided by the department.

Section 311.12(2), F.S., provides that each seaport identified in s. 311.09, F.S., shall maintain a security plan relating to the specific and identifiable needs of the seaport which assures that the seaport is in substantial compliance with the statewide minimum standards established pursuant to subsection (1). Each plan adopted or revised pursuant to this subsection must be reviewed and approved by the Office of Drug Control and the FDLE. All such seaports shall allow unimpeded access by the FDLE to the affected facilities for purposes of inspections or other operations authorized by this section. Each seaport security plan may establish restricted access areas within the seaport consistent with the requirements of the statewide minimum standards. In such cases, a Uniform Port Access Credential Card, authorizing restricted-area access, shall be required for any individual working within or authorized to regularly enter a restricted access area and the requirements in subsection (3) relating to criminal history checks and employment restrictions shall be applicable only to employees or other persons working within or authorized to regularly enter a restricted access area. Every seaport security plan shall set forth the conditions and restrictions to be imposed upon others visiting the port or any restricted access area sufficient to provide substantial compliance with the statewide minimum standards.

Section 311.12(3)(a), F.S., provides that a fingerprint-based criminal history check shall be performed on any applicant for employment, every current employee, and other persons as designated pursuant to the seaport security plan for each seaport. The criminal history check shall be performed in connection with employment within or other authorized regular access to a restricted access area or the entire seaport if the seaport security plan does not designate one or

more restricted access areas. With respect to employees or others with regular access, such checks shall be performed at least once every 5 years or at other more frequent intervals as provided by the seaport security plan. Each individual subject to the background criminal history check shall file a complete set of fingerprints taken in a manner required by the FDLE and the seaport security plan. Fingerprints shall be submitted to the FDLE for state processing and to the FBI for federal processing. The results of each fingerprint-based check shall be reported to the requesting seaport. The costs of the checks, consistent with s. 943.053(3), F.S., shall be paid by the seaport or other employing entity or by the person checked.

Section 311.12(3)(b), F.S., provides that, by January 1, 2002, each seaport security plan shall identify criminal convictions or other criminal history factors consistent with paragraph (c) which shall disqualify a person from either initial seaport employment or new authorization for regular access to seaport property or to a restricted access area. Such factors shall be used to disqualify all applicants for employment or others seeking regular access to the seaport or restricted access area on or after January 1, 2002, and may be used to disqualify all those employed or authorized for regular access on that date. Each seaport security plan may establish a procedure to appeal a denial of employment or access based upon procedural inaccuracies or discrepancies regarding criminal history factors established pursuant to this paragraph. A seaport may allow waivers on a temporary basis to meet special or emergency needs of the seaport or its users. Policies, procedures, and criteria for implementation of this subsection shall be included in the seaport security plan. All waivers granted pursuant to this paragraph must be reported to the FDLE within 30 days of issuance.

Section 311.12(3)(c), F.S., provides that, in addition to other requirements for employment or access established by each seaport pursuant to its seaport security plan, each seaport security plan shall provide that:

- ▶ Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08, F.S.; an act of terrorism as defined in s. 775.30, F.S.; planting of a hoax bomb as provided in s. 790.165, F.S.; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166, F.S.; dealing in stolen property; any violation of s. 893.135, F.S.; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014, F.S.; any violation of s. 790.07, F.S.; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses shall not be qualified for initial employment within or regular access to a seaport or restricted access area; and
- ▶ Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to a seaport or restricted access area unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

Section 311.12(3)(d), F.S., provides that, by October 1 of each year, each seaport shall report to the FDLE each determination of denial of employment or access, and any determination to authorize employment or access after an appeal of a denial made during the previous 12 months. The report shall include the identity of the individual affected, the factors supporting the determination, and any other material factors used in making the determination.

Section 311.12(4)(a), F.S., provides that, subject to the provisions of subsection (6), each affected seaport shall begin to implement its security plan developed under this section by July 1, 2001.

Section 311.12(4)(b), F.S., provides that the Office of Drug Control and the FDLE may modify or waive any physical facility or other requirement contained in the statewide minimum standards for seaport security upon a finding or other determination that the purposes of the standards have been reasonably met or exceeded by the seaport requesting the modification or waiver. Such modifications or waivers shall be noted in the annual report submitted by the FDLE pursuant to this subsection.

Section 311.12(4)(c), F.S., provides that, beginning with the 2001-2002 fiscal year, the FDLE, or any entity designated by the FDLE, shall conduct no less than one annual unannounced inspection of each seaport listed in s. 311.09, F.S., to determine whether the seaport is meeting the minimum standards established pursuant to this section, and to identify seaport security changes or improvements necessary or otherwise recommended. The FDLE, or any entity designated by the FDLE, may conduct additional announced or unannounced inspections or operations within or affecting any affected seaport to test compliance with, or the effectiveness of, security plans and operations at each seaport, to determine compliance with physical facility requirements and standards, or to assist the department in identifying changes or improvements necessary to bring a seaport into compliance with the statewide minimum security standards.

Section 311.12(4)(d), F.S., provides that, by December 31, 2001, and annually thereafter, the FDLE, in consultation with the Office of Drug Control, shall complete a report indicating the observations and findings of all inspections or operations conducted during the year and any recommendations developed by reason of such inspections. A copy of the report shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chief administrator of each seaport inspected. The report shall include responses from the chief administrator of any seaport indicating what actions, if any, have been taken or are planned to be taken in response to the recommendations, observations, and findings reported by the FDLE.

Section 311.12(4)(e), F.S., provides that in making security project or other funding decisions applicable to each seaport listed in s. 311.09, F.S., the Legislature may consider as authoritative the annual report of the FDLE required by this section, especially regarding each seaport's degree of substantial compliance with the statewide minimum security standards established by this section.

Section 311.12(5), F.S., provides that, nothing in this section shall be construed as preventing any seaport from implementing security measures that are more stringent, greater than, or

supplemental to the statewide minimum standards established by this section except that, for purposes of employment and access, each seaport shall adhere to the requirements provided in paragraph (3)(c) and shall not exceed statewide minimum requirements.

Section 311.12(6), F.S., provides that when funds are appropriated for seaport security, the Office of Drug Control and the Florida Seaport Transportation and Economic Development Council shall mutually determine the allocation of such funds for security project needs identified in the approved seaport security plans required by this section. Any seaport that receives state funds for security projects must enter into a joint participation agreement with the appropriate state entity and must use the seaport security plan developed pursuant to this section as the basis for the agreement. If funds are made available over more than one fiscal year, such agreement must reflect the entire scope of the project approved in the security plan and, as practicable, allow for reimbursement for authorized projects over more than 1 year. The joint participation agreement may include specific timeframes for completion of a security project and the applicable funding reimbursement dates. The joint participation agreement may also require a contractual penalty, not to exceed \$1,000 per day, to be imposed for failure to meet project completion dates provided state funding is available. Any such penalty shall be deposited into the State Transportation Trust Fund to be used for seaport security operations and capital improvements.

### **III. Effect of Proposed Changes:**

The CS amends s. 311.12, F.S. (Seaport security standards), to clarify existing law to provide that all public and private entities operating on public property on an active public seaport identified in s. 311.09, F.S., and subject to inspection pursuant to s. 311.12(1)(b), F.S., must conform to the statewide minimum security standards provided in s. 311.12, F.S.

This CS is effective upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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