

Committee Substitute for Senate Bill No. 978

An act relating to seaport security; amending s. 311.12, F.S.; providing for minimum security standards for seaports; requiring seaports to implement seaport security plans; requiring the approval of seaport security plans by the Office of Drug Control and the Department of Law Enforcement; providing requirements for criminal history checks on applicants for employment or current employees of a seaport; providing an appeal procedure; providing for modification or variance from a particular standard; providing for inspections of seaports; providing requirements for compliance by seaports; providing for the Department of Law Enforcement to impose penalties if a seaport fails to meet certain project timelines; requiring certain reports; providing funding criteria; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 311.12, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 311.12, F.S., for present text.)

311.12 Seaport security standards.—

(1) The statewide minimum standards for seaport security for each seaport identified in s. 311.09, 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 s. 311.12. The statewide minimum standards are hereby 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 of the public, at its offices, and shall provide copies to each affected seaport upon request.

(2) Each seaport identified in s. 311.09 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 Department of Law Enforcement. All such seaports shall allow unimpeded access by the Department of Law Enforcement 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 Restricted Access Area Permit 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.

(3)(a) 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 Department of Law Enforcement and the seaport security plan. Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation 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), shall be paid by the seaport or other employing entity or by the person checked.

(b) 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 criminal history factors established pursuant to this paragraph. The appeal procedure may allow the granting of waivers or conditional employment or access. In addition, 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.

(c) 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:

1. Any person who has within the past 5 years been convicted, regardless of whether adjudication was withheld, for dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any violation of s. 790.07; 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

2. 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 5 years prior to the employment or access date under consideration.

(d) By October 1 of each year, each seaport shall report to the Department of Law Enforcement 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, any special condition imposed, and any other material factors used in making the determination.

(4)(a) 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.

(b) The Office of Drug Control and the Department of Law Enforcement 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 Department of Law Enforcement pursuant to this subsection.

(c) Beginning with the 2001-2002 fiscal year, the Department of Law Enforcement, or any entity designated by the department, shall conduct no less than one annual unannounced inspection of each seaport listed in s. 311.09 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 Department of Law Enforcement, or any entity designated by the department, 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.

(d) By December 31, 2001, and annually thereafter, the Department of Law Enforcement, 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 department.

(e) In making security project or other funding decisions applicable to each seaport listed in s. 311.09, the Legislature may consider as authoritative the annual report of the Department of Law Enforcement required by this section, especially regarding each seaport's degree of substantial compliance with the statewide minimum security standards established by this section.

(5) 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.

(6) 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.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 31, 2001.

Filed in Office Secretary of State May 31, 2001.