

Council Substitute for House Bill No. 7141

An act relating to seaport security; creating s. 311.115, F.S.; establishing the Seaport Security Standards Advisory Council; providing for membership and terms of office; providing duties; providing for per diem and travel expenses; requiring reports to the Governor and Legislature; amending s. 311.12, F.S.; revising provisions relating to seaport security; authorizing the Department of Law Enforcement to exempt all or part of a port from certain security requirements; providing criteria for determining eligibility to enter secure or restricted areas; establishing a statewide access eligibility reporting system within the department; requiring all access eligibility to be submitted to the department and retained within the system; deleting the requirement that seaports promptly notify the department of any changes in access levels; requiring changes in access eligibility status to be reported within a certain time; providing for fees; providing a procedure for obtaining access to secure and restricted areas using federal credentialing; specifying the process for conducting criminal history checks and for the retention of fingerprint information; providing a criminal penalty for providing false information related to obtaining access to restricted seaport areas; providing additional criminal offenses that disqualify a person from employment by or access to a seaport; deleting the requirement that the department notify the port authority that denied employment of the final disposition of a waiver request from background screening requirements; allowing, rather than requiring, certain applications for a waiver from security requirements to be submitted to the Domestic Security Oversight Council for review; requiring a copy of the department's legislative report to be provided to each seaport governing body or authority; adding the department to those entities responsible for allocating funds for security projects; deleting provisions relating to the Seaport Security Standards Advisory Council; repealing s. 311.111, F.S., relating to unrestricted and restricted public access areas and secured restricted access areas; repealing s. 311.125, F.S., relating to the Uniform Port Access Credential System and the Uniform Port Access Credential Card; amending s. 311.121, F.S.; revising the membership of the Seaport Security Officer Qualification, Training, and Standards Coordinating Council; amending ss. 311.123, 311.124, 311.13, 943.0585, and 943.059, F.S.; conforming terms and cross-references; directing the Office of Drug Control to commission an update of the Florida Seaport Security Assessment 2000, which shall be presented to the Legislature by a certain date; authorizing the Department of Law Enforcement to create a pilot project to implement the seaport employee access system; transferring certain equipment from the Department of Highway Safety and Motor Vehicles to the Department of Law Enforcement for use in the project; providing an effective date.

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

Section 1. Section 311.115, Florida Statutes, is created to read:

311.115 Seaport Security Standards Advisory Council.—The Seaport Security Standards Advisory Council is created under the Office of Drug Control. The council shall serve as an advisory council as provided in s. 20.03(7).

(1) The members of the council shall be appointed by the Governor and consist of the following:

(a) Two seaport directors.

(b) Two seaport security directors.

(c) One representative of seaport tenants.

(d) One representative of seaport workers.

(e) One member from the Department of Law Enforcement.

(f) One member from the Office of Motor Carrier Compliance of the Department of Transportation.

(g) One member from the Office of the Attorney General.

(h) One member from the Department of Agriculture and Consumer Services.

(i) One member from the Office of Tourism, Trade, and Economic Development.

(j) One member from the Office of Drug Control.

(k) One member from the Fish and Wildlife Conservation Commission.

(1) The Director of the Division of Emergency Management, or his or her designee.

(2) In addition to the members designated in subsection (1), the council may invite a representative of the United States Coast Guard to attend and participate in council meetings as an ex officio, nonvoting member of the council.

(3) Members of the council shall be appointed to 4-year terms. A vacancy shall be filled by the Governor for the balance of the unexpired term.

(4) The council shall be chaired by the member from the Office of Drug Control.

(5) At least every 4 years after January 15, 2007, the Office of Drug Control shall convene the council to review the minimum security standards referenced in s. 311.12(1) for applicability to and effectiveness in combating current narcotics and terrorism threats to the state's seaports. All sources of information allowed by law shall be used in assessing the applicability and effectiveness of the standards.

(6) Council members shall serve without pay, but shall be entitled to per diem and travel expenses for attendance at officially called meetings as provided in s. 112.061.

(7) The council shall consult with the appropriate area maritime security committees to assess possible impacts to commerce and trade contained in the council's nonclassified recommendations and findings.

(8) The recommendations and findings of the council shall be transmitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. 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.—

(1) SECURITY STANDARDS.—

(a) The statewide minimum standards for seaport security applicable to seaports listed in s. 311.09 shall be those based on 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. The Office of Drug Control within the Executive Office of the Governor shall maintain a sufficient number of copies of the standards at its offices for distribution to the public and provide copies to each affected seaport upon request.

(b) A seaport may implement security measures that are more stringent, more extensive, or supplemental to the minimum security standards established by this subsection.

(c) The provisions of s. 790.251 are not superseded, preempted, or otherwise modified in any way by the provisions of this section.

(2) EXEMPTION.—The Department of Law Enforcement may exempt all or part of a seaport listed in s. 311.09 from the requirements of this section if the department determines that activity associated with the use of the seaport or part of the seaport is not vulnerable to criminal activity or terrorism. The department shall periodically review such exemptions to determine if there is a change in use. Such change may warrant removal of all or part of the exemption.

(3) SECURITY PLAN.—Each seaport listed in s. 311.09 shall adopt and maintain a security plan specific to that seaport which provides for a secure seaport infrastructure that promotes the safety and security of state residents and visitors and the flow of legitimate trade and travel.

(a) Every 5 years after January 1, 2007, each seaport director, with the assistance of the Regional Domestic Security Task Force and in conjunction with the United States Coast Guard, shall revise the seaport's security plan based on the director's ongoing assessment of security risks, the risks of

terrorist activities, and the specific and identifiable needs of the seaport for ensuring that the seaport is in substantial compliance with the minimum security standards established under subsection (1).

(b) Each adopted or revised security plan must be reviewed and approved by the Office of Drug Control and the Department of Law Enforcement for compliance with federal facility security assessment requirements under 33 C.F.R. s. 105.305 and the minimum security standards established under subsection (1). Within 30 days after completion, a copy of the written review shall be delivered to the United States Coast Guard, the Regional Domestic Security Task Force, and the Domestic Security Oversight Council.

(4) SECURE AND RESTRICTED AREAS.—Each seaport listed in s. 311.09 must clearly designate in seaport security plans, and clearly identify with appropriate signs and markers on the premises of a seaport, all secure and restricted areas as defined by the United States Department of Homeland Security-United States Coast Guard Navigation and Vessel Inspection Circular No. 03-07 and 49 C.F.R. part 1572. The plans must also address access eligibility requirements and corresponding security enforcement authorizations.

(a) The seaport's security plan must set forth the conditions and restrictions to be imposed on persons employed at, doing business at, or visiting the seaport who have access to secure and restricted areas which are sufficient to provide substantial compliance with the minimum security standards established in subsection (1) and federal regulations.

1. All seaport employees and other persons working at the seaport who have regular access to secure or restricted areas must comply with federal access control regulations and state criminal history checks as prescribed in this section.

2. All persons and objects in secure and restricted areas are subject to search by a sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act guidelines and s. 311.121, or an employee of the seaport security force certified under the Maritime Transportation Security Act guidelines and s. 311.121.

3. Persons found in these areas without the proper permission are subject to the trespass provisions of ss. 810.08 and 810.09.

(b) As determined by the seaport director's most current risk assessment under paragraph (3)(a), any secure or restricted area that has a potential human occupancy of 50 persons or more, any cruise terminal, or any business operation that is adjacent to a public access area must be protected from the most probable and credible terrorist threat to human life.

(c) The seaport must provide clear notice of the prohibition against possession of concealed weapons and other contraband material on the premises of the seaport. Any person in a restricted area who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or

s. 775.083. This paragraph does not apply to active-duty certified federal or state law enforcement personnel or persons so designated by the seaport director in writing.

(d) During a period of high terrorist threat level, as designated by the United States Department of Homeland Security or the Department of Law Enforcement, or during an emergency declared at a port by the seaport security director due to events applicable to that particular seaport, the management or controlling authority of the port may temporarily designate any part of the seaport property as a secure or restricted area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or a port emergency exists.

(5) ACCESS ELIGIBILITY REPORTING SYSTEM.—Subject to legislative appropriations, the Department of Law Enforcement shall administer a statewide seaport access eligibility reporting system.

(a) The system must include, at a minimum, the following:

1. A centralized, secure method of collecting and maintaining fingerprints, other biometric data, or other means of confirming the identity of persons authorized to enter a secure or restricted area of a seaport.

2. 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.

3. 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.

4. 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.

(b) Each seaport listed in s. 311.09 is responsible for granting, modifying, restricting, or denying access to secure and restricted areas to seaport employees, other persons working at the seaport, visitors who have business with the seaport, or other persons regularly appearing at the seaport. Based upon the person's criminal history check, each seaport may determine the specific access eligibility to be granted to that person. Each seaport is responsible for access eligibility verification at its location.

(c) Upon determining that a person is eligible to enter a secure or restricted area of a port pursuant to subsections (6) and (7), the seaport shall, within 3 business days, report the determination to the department for inclusion in the system.

(d) All information submitted to the department regarding a person's access eligibility screening may be retained by the department for subsequent use in promoting seaport security, including, but not limited to, the review of the person's criminal history status to ensure that the person has not become disqualified for such access.

(e) The following fees may not be charged by more than one seaport and shall be paid by the seaport, another employing entity, or the person being entered into the system to the department or to the seaport if the seaport is acting as an agent of the department for the purpose of collecting the fees:

1. The cost of the state criminal history check under subsection (7).

2. A \$50 fee to cover the initial cost of entering the person into the system and an additional \$50 fee every 5 years thereafter to coincide with the issuance of the federal Transportation Worker Identification Credential described in subsection (6). The fee covers all costs for entering or maintaining the person in the system including the retention and use of the person's fingerprint, other biometric data, or other identifying information.

3. The seaport entering the person into the system may charge an administrative fee to cover, but not exceed, the seaport's actual administrative costs for processing the results of the state criminal history check and entering the person into the system.

(f) All fees identified in paragraph (e) must be paid before the person may be granted access to a secure or restricted area. Failure to comply with the criminal history check and failure to pay the fees are grounds for immediate denial of access.

(g) Persons, corporations, or other business entities that employ persons to work or do business at seaports shall notify the seaport of the termination, resignation, work-related incapacitation, or death of an employee who has access permission.

1. If the seaport determines that the person has been employed by another appropriate entity or is self-employed for purposes of performing work at the seaport, the seaport may reinstate the person's access eligibility.

2. A business entity's failure to report a change in an employee's work status within 7 days after the change may result in revocation of the business entity's access to the seaport.

(h) In addition to access permissions granted or denied by seaports, access eligibility may be restricted or revoked by the department if there is a reasonable suspicion that the person is involved in terrorism or criminal violations that could affect the security of a port or otherwise render the person ineligible for seaport access.

(i) Any suspension or revocation of port access must be reported by the seaport to the department within 24 hours after such suspension or revocation.

(j) The submission of information known to be false or misleading to the department for entry into the system is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) ACCESS TO SECURE AND RESTRICTED AREAS.—

(a) Any person seeking authorization for unescorted access to secure and restricted areas of a seaport must possess, unless waived under paragraph (7)(e), a valid federal Transportation Worker Identification Credential (TWIC) and execute an affidavit under oath which provides TWIC identification information and indicates the following:

1. The TWIC is currently valid and in full force and effect.
2. The TWIC was not received through the waiver process for disqualifying criminal history allowed by federal law.
3. He or she has not, in any jurisdiction, civilian or military, been convicted of, entered a plea of guilty or nolo contendere to, regardless of adjudication, or been found not guilty by reason of insanity, of any disqualifying felony under subsection (7) or any crime that includes the use or possession of a firearm.

(b) Upon submission of a completed affidavit as provided in paragraph (a), the completion of the state criminal history check as provided in subsection (7), and payment of all required fees under subsection (5), a seaport may grant the person access to secure or restricted areas of the port.

(c) Any port granting a person access to secure or restricted areas shall report the grant of access to the Department of Law Enforcement for inclusion in the access eligibility reporting system under subsection (5) within 3 business days.

(d) The submission of false information on the affidavit required by this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Upon conviction for a violation of this provision, the person convicted forfeits all privilege of access to secure or restricted areas of a seaport and is disqualified from future approval for access to such areas.

(e) Any affidavit form created for use under this subsection must contain the following statement in conspicuous type: "SUBMISSION OF FALSE INFORMATION ON THIS AFFIDAVIT IS A FELONY UNDER FLORIDA LAW AND WILL, UPON CONVICTION, RESULT IN DISQUALIFICATION FOR ACCESS TO A SECURE OR RESTRICTED AREA OF A SEAPORT."

(f) Upon each 5-year renewal of a person's TWIC, the person must submit another affidavit as required by this subsection.

(7) CRIMINAL HISTORY SCREENING.—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, or the entire seaport if the seaport security plan does not designate one or more secure or restricted areas.

(a) A person is disqualified from employment or unescorted access if the person:

1. Was convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the offenses listed in paragraph (b) in any

jurisdiction, civilian or military, including courts-martial conducted by the Armed Forces of the United States, during the 7 years before the date of the person's application for access; or

2. Was released from incarceration, or any supervision imposed as a result of sentencing, for committing any of the disqualifying crimes listed in paragraph (b) in any jurisdiction, civilian or military, during the 5 years before the date of the person's application for access.

(b) Disqualifying offenses include:

1. An act of terrorism as defined in s. 775.30.
2. A violation involving a weapon of mass destruction or a hoax weapon of mass destruction as provided in s. 790.166.
3. Planting of a hoax bomb as provided in s. 790.165.
4. A violation of s. 876.02 or s. 876.36.
5. A violation of s. 860.065.
6. Trafficking as provided in s. 893.135.
7. Racketeering activity as provided in s. 895.03.
8. Dealing in stolen property as provided in s. 812.019.
9. Money laundering as provided in s. 896.101.
10. Criminal use of personal identification as provided in s. 817.568.
11. Bribery as provided in s. 838.015.
12. A violation of s. 316.302, relating to the transport of hazardous materials.
13. A forcible felony as defined in s. 776.08.
14. A violation of s. 790.07.
15. Any crime that includes the use or possession of a firearm.
16. A felony violation for theft as provided in s. 812.014.
17. Robbery as provided in s. 812.13.
18. Burglary as provided in s. 810.02.
19. Any violation involving the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance.
20. Any offense under the laws of another jurisdiction that is similar to an offense listed in this paragraph.

21. Conspiracy or attempt to commit any of the offenses listed in this paragraph.

(c) Each individual who is subject to a criminal history check shall file a complete set of fingerprints taken in a manner acceptable to the Department of Law Enforcement for state processing. The results of the criminal history check must be reported to the requesting seaport and may be shared among seaports.

(d) All fingerprints submitted to the Department of Law Enforcement shall be retained by the department and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). An arrest record that is identified with the retained fingerprints of a person subject to the screening shall be reported to the seaport where the person has been granted access to a secure or restricted area. If the fingerprints of a person who has been granted access were not retained, or are otherwise not suitable for use by the department, the person must be refingerprinted in a manner that allows the department to perform its functions as provided in this section.

(e) The Department of Law Enforcement shall establish a waiver process for a person who does not have a TWIC, obtained a TWIC through a federal waiver process, or is found to be unqualified under paragraph (a) and denied employment by a seaport or unescorted access to secure or restricted areas. If the person does not have a TWIC and a federal criminal history record check is required, the Department of Law Enforcement may forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The cost of the national check must be paid by the seaport, which may collect it as reimbursement from the person.

1. Consideration for a waiver shall be based on the circumstances of any disqualifying act or offense, restitution made by the individual, and other factors from which it may be determined that the individual does not pose a risk of engaging in any act within the public seaports regulated under this chapter that would pose a risk to or threaten the security of the seaport and the public's health, safety, or welfare.

2. The waiver process begins when an individual who has been denied initial employment within or denied unescorted access to secure or restricted areas of a public seaport submits an application for a waiver and a notarized letter or affidavit from the individual's employer or union representative which states the mitigating reasons for initiating the waiver process.

3. Within 90 days after receipt of the application, the administrative staff of the Parole Commission shall conduct a factual review of the waiver application. Findings of fact shall be transmitted to the department for review. The department shall make a copy of those findings available to the applicant before final disposition of the waiver request.

4. The department shall make a final disposition of the waiver request based on the factual findings of the investigation by the Parole Commission.

The department shall notify the waiver applicant of the final disposition of the waiver.

5. The review process under this paragraph is exempt from chapter 120.

6. By October 1 of each year, each seaport shall report to the department each instance of denial of employment within, or access to, secure or restricted areas, and each instance waiving a denial occurring during the last 12 months. The report must include the identity of the individual affected, the factors supporting the denial or waiver, and any other material factors used to make the determination.

(f) In addition to the waiver procedure established by the Department of Law Enforcement under paragraph (e), 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 subsection.

(g) Each seaport may allow immediate 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 paragraph must be included in the seaport security plan. All waivers granted by the seaports pursuant to this paragraph must be reported to the department within 30 days after issuance.

(8) WAIVER FROM SECURITY REQUIREMENTS.—The Office of Drug Control and the Department of Law Enforcement may modify or waive any physical facility requirement or other requirement 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 modification or waiver. An alternate means of compliance must not diminish the safety or security of the seaport and must be verified through an extensive risk analysis conducted by the seaport director.

(a) Waiver requests shall be submitted in writing, along with supporting documentation, to the Office of Drug Control and the Department of Law Enforcement. The office and the department have 90 days to jointly grant or reject the waiver, in whole or in part.

(b) The seaport may submit any waivers that are not granted or are jointly rejected to the Domestic Security Oversight Council for review within 90 days. The council shall recommend that the Office of Drug Control and the Department of Law Enforcement grant the waiver or reject the waiver, in whole or in part. The office and the department shall give great weight to the council's recommendations.

(c) A request seeking a waiver from the seaport law enforcement personnel standards established under s. 311.122(3) may not be granted for percentages below 10 percent.

(d) Any modifications or waivers granted under this subsection shall be noted in the annual report submitted by the Department of Law Enforcement pursuant to subsection (10).

(9) INSPECTIONS.—It is the intent of the Legislature that the state’s seaports adhere to security practices that are consistent with the risks assigned to each seaport through the ongoing risk assessment process established in paragraph (3)(a).

(a) The Department of Law Enforcement, or any entity designated by the department, shall conduct at least one annual unannounced inspection of each seaport to determine whether the seaport is meeting the minimum security standards established pursuant to subsection (1) and to identify seaport security changes or improvements needed or otherwise recommended.

(b) 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 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 needed to bring a seaport into compliance with minimum security standards.

(c) Within 30 days after completing the inspection report, the department shall submit a copy of the report to the Domestic Security Oversight Council.

(d) A seaport may request that the Domestic Security Oversight Council review the findings in the department’s report as they relate to the requirements of this section. The council may review only those findings that are in dispute by the seaport. In reviewing the disputed findings, the council may concur in the findings of the department or the seaport or may recommend corrective action to the seaport. The department and the seaport shall give great weight to the council’s findings and recommendations.

(e) All seaports shall allow the Department of Law Enforcement, or an entity designated by the department, unimpeded access to affected areas and facilities for the purpose of plan or compliance inspections or other operations authorized by this section.

(10) REPORTS.—The Department of Law Enforcement, in consultation with the Office of Drug Control, shall annually complete a report indicating the observations and findings of all reviews, inspections, or other operations relating to the seaports conducted during the year and any recommendations resulting from such reviews, inspections, and operations. A copy of the report shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, the governing body of each seaport or seaport authority, and each seaport director. The report must include each director’s response indicating what actions, if any, have been taken or are planned to be taken pursuant to the observations, findings, and recommendations reported by the department.

(11) FUNDING.—

(a) In making decisions regarding security projects or other funding applicable to each seaport listed in s. 311.09, the Legislature may consider the

Department of Law Enforcement's annual report under subsection (10) as authoritative, especially regarding each seaport's degree of substantial compliance with the minimum security standards established in subsection (1).

(b) The Legislature shall regularly review the ongoing costs of operational security on seaports, the impacts of this section on those costs, mitigating factors that may reduce costs without reducing security, and the methods by which seaports may implement operational security using a combination of sworn law enforcement officers and private security services.

(c) Subject to the provisions of this chapter and appropriations made for seaport security, state funds may not be expended for security costs without certification of need for such expenditures by the Office of Ports Administrator within the Department of Law Enforcement.

(d) If funds are appropriated for seaport security, the Office of Drug Control, the Department of Law Enforcement, 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. Any seaport that receives state funds for security projects must enter into a joint participation agreement with the appropriate state entity and use the seaport security plan as the basis for the agreement.

1. If funds are made available over more than 1 fiscal year, the 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.

2. The agreement may include specific timeframes for completion of a security project and the applicable funding reimbursement dates. The agreement may also require a contractual penalty of up to \$1,000 per day to be imposed for failure to meet project completion dates if state funding is available. Any such penalty shall be deposited into the State Transportation Trust Fund and used for seaport security operations and capital improvements.

Section 3. Sections 311.111 and 311.125, Florida Statutes, are repealed.

Section 4. Subsection (3) of section 311.121, Florida Statutes, is amended to read:

311.121 Qualifications, training, and certification of licensed security officers at Florida seaports.—

(3)(a) The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under the Department of Law Enforcement.

~~(a)(b)~~1. The executive director of the Department of Law Enforcement shall appoint 11 members to the council, to which shall include:

1.a. The seaport administrator of the Department of Law Enforcement.

~~2.b.~~ The Commissioner of Education or his or her designee ~~chancellor of the Community College System.~~

3.e. The director of the Division of Licensing of the Department of Agriculture and Consumer Services.

~~4.d.~~ The administrator of the Florida Seaport Transportation and Economic Development Council.

~~5.e.~~ Two seaport security directors from seaports designated under s. 311.09.

6.f. One director of a state law enforcement academy.

7.g. One representative of a local law enforcement agency.

8.h. Two representatives of contract security services.

9.i. One representative of the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles.

~~(b)2.~~ In addition to the members designated in paragraph (a) subparagraph 1., the executive director may invite a representative of the United States Coast Guard to attend and participate in council meetings as an ex officio, nonvoting member of the council.

~~(c) Council members designated under subparagraphs (a)1.-4. in subparagraphs (b)1.a.-d. shall serve for the duration of their employment or appointment. Council members designated under subparagraphs (b)5.-9. sub-subparagraphs (b)1.e.-i. shall be appointed for serve 4-year terms, except that the initial appointment for the representative of a local law enforcement agency, one representative of a contract security agency, and one seaport security director from a seaport designated in s. 311.09 shall serve for terms of 2 years.~~

~~(d) The Commissioner of Education or his or her designee chancellor of the Community College System shall serve as chair of the council.~~

(e) The council shall meet upon the call of the chair, and at least once a year to update or modify curriculum recommendations.

(f) Council members shall serve without pay; however, per diem and travel allowances may be claimed for attendance of officially called meetings as provided by s. 112.061.

~~(g) By December 1, 2006,~~ The council shall identify the qualifications, training, and standards for seaport security officer certification and recommend a curriculum for the seaport security officer training program that includes at least shall include no less than 218 hours of initial certification training and that conforms to or exceeds model courses approved by the ~~Federal Maritime Act~~ under s. 109 of the federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

1.(h) The council may recommend training equivalencies that may be substituted for portions of the required training.

2.(i) The council shall recommend a continuing education curriculum of ~~at least no less than~~ 8 hours of additional training for each annual licensing period.

Section 5. Section 311.123, Florida Statutes, is amended to read:

311.123 Maritime domain security awareness training program.—

(1) The Florida Seaport Transportation and Economic Development Council, in conjunction with the Department of Law Enforcement and the Office of Drug Control within the Executive Office of the Governor, shall create a maritime domain security awareness training program to instruct all personnel employed within a seaport's boundaries about the security procedures required of them for implementation of the seaport security plan required under s. 311.12(3).

(2) The training program curriculum must include security training required pursuant to 33 C.F.R. part 105 and must be designed to enable the seaports in this state to meet the training, drill, and exercise requirements of 33 C.F.R. part 105 and individual seaport security plans and to otherwise comply with the requirements of s. 311.12 ~~relating to security awareness.~~

Section 6. Subsection (1) of section 311.124, Florida Statutes, is amended to read:

311.124 Trespassing; detention by a certified seaport security officer.—

(1) Any Class D or Class G seaport security officer certified under the federal Maritime Transportation Security Act of 2002 guidelines and s. 311.121 or any employee of the seaport security force certified under the federal Maritime Transportation Security Act of 2002 guidelines and s. 311.121 who has probable cause to believe that a person is trespassing pursuant to the provisions of s. 810.08 or s. 810.09 or this chapter in a designated secure or restricted area pursuant to s. 311.12(4) ~~311.111~~ is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer, and such action does ~~shall~~ not render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

Section 7. Section 311.13, Florida Statutes, is amended to read:

311.13 Certain information exempt from disclosure.—Seaport security plans of ~~a seaport authority created pursuant to s. 311.12 by act of the Legislature or of a seaport department of a county or municipality that operates an international seaport~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. In addition, photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, to the extent that a seaport authority ~~created by act of the Legislature or a seaport department of a county or municipality that operates a seaport~~ reasonably determines that such items contain information that is not generally known and that could jeopardize the security of the seaport; however, information relating to real estate leases, layout plans, blueprints, or infor-

~~mation relevant thereto, is not to be included in this exemption. The exemptions in this section are applicable only to records held by a seaport authority created by act of the Legislature or to records of a county or municipal seaport department that operates a seaport.~~

Section 8. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by

a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter 400, or chapter 429;
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or
7. Is seeking authorization from a Florida seaport listed identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12 ~~or s. 311.125~~.

Section 9. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a

criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) **EFFECT OF CRIMINAL HISTORY RECORD SEALING.**—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;
7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history background check under state or federal law; or
8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12 ~~or s. 311.125~~.

Section 10. The Office of Drug Control shall commission an update of the Florida Seaport Security Assessment 2000 referenced in s. 311.12(1)(a), Florida Statutes, as amended by this act. The office shall consult with the Seaport Security Standards Advisory Council in forming the parameters of the update. The updated assessment shall be presented to the President of the Senate and the Speaker of the House of Representatives for review by January 1, 2010. Pursuant to s. 311.13, Florida Statutes, any records included in the assessment which are exempt from s. 119.07(1), Florida Statutes, are exempt from disclosure.

Section 11. The Department of Law Enforcement may create a pilot project of at least three seaports to perform the tasks required in s. 311.12(6) and (7), Florida Statutes, as amended by this act. Equipment purchased by the state to implement the former Florida Uniform Port Access Credential System is transferred from the Department of Highway Safety and Motor Vehicles to the Department of Law Enforcement for use in the pilot project and to assist other seaports with compliance.

Section 12. This act shall take effect July 1, 2009.

Approved by the Governor June 15, 2009.

Filed in Office Secretary of State June 15, 2009.