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107th Congress }
1st Session }

SENATE

{ REPORT
{ 107-64

**PORT AND MARITIME SECURITY ACT OF
2001**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

on

S. 1214



SEPTEMBER 14, 2001.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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(II)

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PORT AND MARITIME SECURITY ACT OF 2001

SEPTEMBER 14, 2001.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1214]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill establishes a coordinated policy to protect our nation's seaports from threats of crime and terrorism that could effect our nation and our maritime commerce. Specifically, the bill would require the creation of national and local seaport security committees to evaluate, plan and implement security measures, and to coordinate Federal, State, and local law enforcement with respect to criminal and terrorist threats at our 50 most economic and strategic seaports. The bill would require the Coast Guard to conduct vulnerability assessments of the 50 identified seaports, and would require local seaport security committees to submit a security program within one year of the completion of a vulnerability assessment for Coast Guard approval.

The bill would direct the government to work with the international and private sector in adopting security standards for seaports, and provide assistance to certain foreign seaports to help upgrade their systems for security. The bill would also require the establishment of a training program for maritime security personnel, and attempt to harmonize the collection of data on seaport related crimes in order to facilitate a coordinated law enforcement effort. The bill would further provide grants and loans to United States

seaports to upgrade security equipment and infrastructure, and provide funds to the United States Customs Service to purchase non-intrusive detection equipment. In order to defray the costs of the bill, the legislation authorizes an extension of tonnage duties, and uses the proceeds to pay for the bill's provisions. As reported, the bill would authorize appropriations for grants for security infrastructure improvements in the amounts of \$40,000,000.

BACKGROUND AND NEEDS

UNITED STATES SEAPORTS

UNITED STATES MARINE TRANSPORTATION SYSTEM

In September 1999, Department of Transportation Secretary Rodney Slater issued a preliminary report of the Marine Transportation System (MTS) Task Force—An Assessment of the U.S. Marine Transportation System. The report reflected a highly collaborative effort among public sector agencies, private sector organizations, and other stakeholders in the MTS.

The report affirmed that the United States has more than 1,000 harbor channels and 25,000 miles of inland, intracoastal, and coastal waterways in the United States which serve over 300 ports, comprised of more than 3,700 terminals that handle passenger and cargo movements. These waterways and ports link to 152,000 miles of railways, 460,000 miles of underground pipelines and 45,000 miles of interstate highways. Further, the report noted that, annually, the U.S. marine transportation system moves more than 2 billion tons of domestic and international freight, imports 3.3 billion tons of domestic oil, transports 134 million passengers by ferry, serves 78 million Americans engaged in recreational boating, and hosts more than 5 million cruise ship passengers.

The MTS provides economic value, as waterborne cargo contributes more than \$742 billion to U.S. gross domestic product and creates employment for more than 13 million citizens. While these figures reveal the magnitude of our waterborne commerce, they do not reveal the growth of waterborne commerce, or the potential problems in coping with this growth. It is estimated that the total volume of domestic and international trade is expected to double over the next twenty years. The MTS Report recognized that the doubling of trade also brings up the troubling issue of how the U.S. is going to protect our maritime borders from crime, threats of terrorism, or our ability to mobilize U.S. armed forces.

REGULATION OF PORT AUTHORITIES

Port Authorities in the United States are instrumentalities of State or local governments, established by State or local enactment. The Federal role in U.S. ports traditionally has been to help fund the construction and maintenance of navigable channels, albeit since 1986, this function has been partially funded by the shipping industry through fees collected under the Harbor Maintenance Tax. Seaport authorities vary in size and composition. They can constitute areas that span miles of waterfront or be relatively compact in size. Additionally, seaports can exert control over business practices as an owner/operator, or can function solely as a landlord.

Some marine terminals are owned and operated under private sector control.

The United States has no national port authority. Jurisdiction is shared by Federal, State, and local governments. The Constitution does not grant regulation over seaports to the Federal government, so under the provisions of the 10th amendment, regulatory authority remains with the States. However, the Constitution does vest the authority to regulate navigable waterways to the Federal government, a task largely delegated to the United States Army Corps of Engineers and the United States Coast Guard. The Federal government also is delegated the right to regulate interstate and foreign commerce, and pursuant to this authority, has plenary powers to regulate port practices. The Federal government traditionally, however, has not exercised its authority to regulate or police the operations of U.S. seaports.

The major Federal authorities at U.S. seaports are the Customs Service and Coast Guard. Customs ensures that all goods and persons entering into the United States do so in accordance with our nation's laws and regulations. Customs also has the authority to enforce all of U.S. export laws, embargoes, and economic trade sanctions. In effectuating this mandate, Customs has the authority to conduct warrantless search and seizures at U.S. borders (land, air, and sea). The Coast Guard was first delegated authority to protect our seaports from acts of aggression during wartime under the Espionage Act of 1917. Gradually, this authority has expanded to include the exercise of non-defense safety and security from intentional destruction or loss or injury due to subversive or terrorist activity. The Coast Guard under the auspices of the "Captain of the Port" has wide ranging authority to enforce security requirements pertaining to its missions of marine safety, environmental protection, maritime law enforcement, and national security. Practically speaking, the Customs Service, because of fiscal constraints, has focused its oversight on policing cargo entry, while the Coast Guard, also constrained by budgetary limitation, has tended to focus more resources on water-side activities. The result of the current practices is that the physical or operational security functions of port operations are largely left to the State or private entities that operate and control the ports.

SEAPORT CRIME AND SECURITY COMMISSION'S FINDINGS

On April 29, 1999, at the urging of Senator Graham, President Clinton signed an Executive Memorandum establishing the Inter-agency Commission on Crime and Security in U.S. Seaports. The Memorandum directed the Commission to report on four main areas: (1) an analysis of the nature and extent of serious crime; (2) an overview of the specific missions and authorities relevant to Federal, State and local government agencies as well as the private sector; (3) an assessment of the nature and effectiveness of ongoing coordination among the Federal agencies and; (4) recommendations for improving the response of Federal, State, and local governments in response to seaport crime.

The Secretary of Treasury (acting through the Customs Commissioner), the Secretary of Transportation (acting through the Maritime Administrator), and the Department of Justice (acting through the Assistant Attorney General for the Criminal Division)

served as the Commission's three co-chairs. Seventeen Federal agencies with an interest in seaport security were represented on the Commission staff. In order to examine the state of security in U.S. ports, the Commission conducted on-site surveys of the following 12 U.S. seaports: Charleston, SC; New Orleans, LA; Detroit, MI; New York/New Jersey; Gulfport, MS; Philadelphia, PA; Long Beach, CA; Port Everglades, FL; Los Angeles, CA; San Juan, PR; Miami, FL; Tacoma, WA. The Commission also conducted field hearings in Baltimore, MD, and Jacksonville, FL. Further, they interviewed shipping industry participants, and conducted on-site review of major foreign ports—Felixstowe, United Kingdom, and Rotterdam, the Netherlands.

In August, 2000, The Interagency Commission on Crime and Security concluded that it was not able to determine the full extent of serious crime at U.S. seaports—primarily because there is no consolidated data base which coordinates Federal, State, or local information that categorizes crime at seaports—it did conclude that crime is significant, and in all likelihood is more extensive than what is currently retrievable. Criminal activity at U.S. seaports includes; importation of drugs, contraband, and illegal merchandise; stowaways and alien smuggling; trade fraud and commercial smuggling; environmental crimes; cargo theft; and the unlawful exportation of controlled commodities, munitions, stolen property, and drug proceeds. Many of these violations are violations of Federal law.

The Commission also evaluated the threats posed by terrorism to U.S. seaports. The Commission believes that a terrorist attack has the potential to cause significant damage, mainly because of the openness of the port, the potential harm and damage that could be caused by many of the cargos, and the usual proximity of large populations living on the waterways.

The Commission found:

The state of security in U.S. seaports generally ranged from poor to fair, and in a few cases, good.

There are no widely accepted standards or guidelines for physical, procedural, and personnel security for seaports, although some ports are making outstanding efforts to improve security. Control of access to the seaport or sensitive areas within the seaport is often lacking. Practices to restrict or control access of vehicles to vessels, cargo receipt and delivery operations, and passenger processing operations at seaports are either not present or not consistently enforced, increasing the risk that violators could quickly remove cargo or contraband. Many ports do not have identification cards issued to personnel to restrict access to vessels, cargo receipt and delivery operations, and passenger processing operations.

At many seaports, the carrying of firearms is not restricted, and thus internal conspirators and other criminals are allowed armed access to cargo vessels and cruise line terminals. In addition many seaports rely on private security personnel who lack the crime prevention and law enforcement capability of regular police officers.

Frequently, Federal, State, and local law enforcement agencies do cooperate with each other in regard to security matters, including the sharing of intelligence. However, there were loca-

tions surveyed where private sector representatives said they were unclear which Federal agency required reports of possible cargo thefts and other violations. No regular security-related local meetings are being held between local law enforcement organizations (Federal, State, and local), the trade, and port authorities, with the exception of those relatively few Strategic Seaports where Port Readiness Committees are active.

CRIME

The Commission found drug smuggling to be the most prevalent and reported crime problem. The Commission compared the volumes of narcotics seized in commercial shipments at the 12 U.S. seaports they visited with seizures at air and land borders from 1996-98 and found that narcotics seized in commercial shipments at the 12 seaports constituted 69 percent of the total weight of cocaine, 55 percent of the marijuana, and 12 percent of the heroin. The Commission also identified concerns that drug smugglers increasingly knew the methods and processes involved in the maritime shipping trade, and were utilizing the system to effectuate criminal behavior.

The Commission also identified smuggling of illegal aliens as a problem, and identified the presence of organized crime rings smuggling aliens into the United States. At the 12 seaports visited by the Commission, it found that between 1996 and 1999, the Immigration and Naturalization Service intercepted a total of 1,187 stowaways and 247 individuals with fraudulent documents arriving aboard vessels.

Cargo theft was also identified as a major problem, not only on port property but also as the cargo is in transit to its final destination. Quantifying the amount of cargo theft that occurred is nearly impossible since law enforcement agencies do not collect data on cargo theft, and State law enforcement officials report theft in different fashions. Some law enforcement officials estimate the direct loss of cargo theft to be about \$6 billion annually, however, the industry believes the direct loss to be more than \$12 billion annually. A study published by the Rand Institute indicates that the theft of high technology products alone in the United States could exceed \$5 billion annually in direct and indirect costs. The Commission report indicates that the majority of cargo theft is often committed by organized criminal groups acting with advance knowledge of shipments.

Export crime is also a major issue confronting seaports. Export crime includes the unlawful export of controlled commodities such as munitions or arms. For instance, law enforcement officials seized six containers of sodium sulfide, a munitions list item and component of mustard gas, which was intended for export to Syria. Other export crimes include money-laundering of large amounts of currency in order to hide criminal proceeds, and the export of stolen vehicles.

The Commission's major recommendation addressing crime called for better data collection of information on seaport related crime. Better data would assist in responding to criminal threats, and allow for a targeted approach to law enforcement. Specifically, the Commission recommended the evaluation of the feasibility of

capturing cargo theft through the National Incident-Based Reporting System.

The Commission also recommended greater coordination of Federal, State, and local law enforcement authorities. Specifically, the Commission recommended action to coordinate law enforcement officials, and advocated utilizing the Coast Guard's "Captain of the Port Authority" to create local port security committees to conduct annual crime threat assessments of U.S. seaports. Another major recommendation was to call for the creation of a national-level security subcommittee to establish voluntary minimum security guidelines for physical security at U.S. seaports.

SEAPORT SECURITY AND TERRORISM

The Commission concluded that the threat of terrorism to U.S. seaports was low. However, the vulnerability to terrorism was rated as high. The Commission concluded that seaports are relatively open and accessible, and handle massive volumes of all sorts of cargo that could be sabotaged in furtherance of terrorist objectives. Additionally, seaports tend to be located close to large population bases, on waterway systems that terrorists could use to easily transmit wide reaching harm. For instance, the detonation of a bomb, the release of contaminants, or the smuggling of chemical or traditional weapons could impact many communities located in proximity to a port or waterway.

The Commission's evaluation of seaport security and vulnerability found that coordination among law enforcement officials is generally acceptable where FBI Joint Terrorism Task Forces exist. However, it should be emphasized that the existing Task Forces do not evaluate the vulnerability of U.S. seaports for secretive crimes such as smuggling and terrorism. Additionally, the report recommended that the Coast Guard and FBI coordinate with relevant agencies to develop a system for categorizing seaport physical and information infrastructure based on vulnerability and threat. The Commission also recommended that the FBI include seaports in the regular domestic terrorism surveys to assess potential threat. Moreover, the Commission indicated that the Coast Guard Captain of the Port and FBI should ensure that their respective Maritime Counter terrorism Plans and Incident Contingency Plans are updated and coordinated annually, and exercised regularly with other concerned Federal, State, local, and private entities.

LEGISLATIVE HISTORY

S. 1214 was introduced on July 20, 2001, by Senator Hollings and cosponsored by Senator Graham. The bill is similar to legislation introduced in the 106th Congress.

During the 106th Congress, in response to the findings of the Interagency Commission on Crime and Security in U.S. Seaports, Senators Hollings introduced S. 2965 on July 27, 2000. The bill was cosponsored by Senators Graham, Breaux, and Cleland. On October 4, 2000, the Committee on Commerce, Science, and Transportation held an oversight hearing on seaport security and the recommendations of the Interagency Commission on Crime and Security in U.S. seaports. The Committee heard testimony from Senator Bob Graham, the Coast Guard, Maritime Administration, and the De-

partment of Justice, as well as the American Association of Port Authorities and a representative from the International Longshoremen's & Warehousemen's Union.

S. 2965 would have directed the Commandant of the Coast Guard to establish a Task Force on Port Security, which would have been responsible for implementing all of the provisions of the legislation. S. 2965 would have required the U.S. Coast Guard to establish local port security committees at each U.S. seaport, to be chaired by the local U.S. Coast Guard Captain-of-the-Port, to help coordinate law enforcement and security at U.S. seaports. S. 2965 would have directed the Task Force on Port Security to develop port security threat assessments for U.S. seaports which must be revised at least every three years, and to develop voluntary minimum security guidelines for seaports, including a "model port" concept for all seaports, and recommended "best practices" guidelines for use by maritime terminal operators.

The bill would have provided incentives for both port infrastructure improvements and research and development of new port security equipment, including \$10 million per annum in loan guarantees to cover the costs of port security infrastructure improvements and the establishment of a \$12 million per annum matching competitive grant program to develop and transfer technology to enhance seaport security. Additionally, the bill would have required the Attorney General to coordinate reports of seaport related crimes and work with State law enforcement officials to harmonize the reporting of data on cargo theft, and authorize grants to States to help modify their crime reporting systems. S. 2965 also would have required Customs to update reporting requirements on cargo and to provide advance notice of cargo movements to help facilitate law enforcement. Finally, the bill would have reauthorized an extension of tonnage duties through 2006, and provide \$40 million from the collection of these duties to carry out all of the provisions of the Port and Maritime Security Act. No further action was taken on the Port and Maritime Security Act of 2000.

In response to concerns about last year's bill, S. 1214 has been modified. The bill would require the Secretary of Transportation to establish a public/private task force to implement the provisions of the legislation. The bill shifts more responsibility to local authorities, in order to take into account the different nature and characteristics of seaport operation. Instead of establishing minimum standards, the bill would require the Coast Guard to establish a process for conducting port vulnerability assessments, and provide funds for the Coast Guard to evaluate the 50 most economically and strategic seaports in the United States. One year after the completion of an assessment, the seaport would be required to submit a security program for approval to the Coast Guard Captain of the Port.

The bill will require the Coast Guard to set up local port security committees to help facilitate law enforcement. Further, the bill would require State and marine terminal operators to pay for enhanced security. The bill makes more funds directly available in grants and loans for security equipment and infrastructure. Additionally, the bill will eliminate the research and development program on new port security equipment in favor of directly providing funds to Customs to purchase non-intrusive seaport security

screening equipment. Another major change to the bill is the creation of a program to certify and educate marine security personnel.

On July 24, 2001, the Committee held a full Committee hearing on seaport security issues and S. 1214. The Committee heard from: Senator Bob Graham; the Maritime Administration; Customs; Coast Guard; Director of Office of Intelligence and Security, Department of Transportation; a representative of the American Association of Port Authorities; President and LEO Maher Terminals Inc.; Vice President, International Transportation Services Inc.; a representative of the American Institute of Marine Underwriters; and the Executive Director of the Maritime Security Council.

On August 2, 2001, S. 1214 was ordered to be reported favorably, without amendment.

SUMMARY OF MAJOR PROVISIONS

S. 1214 would require the Secretary of Transportation to establish a Port Security Task Force. The Task Force is to be comprised of individuals from the Coast Guard and Maritime Administration. The Secretary shall request participation in the Task Force by Customs and other Federal agencies with an interest in crime or terrorism at U.S. seaports. The bill also would require the Secretary to appoint various representatives from the private sector. The purpose of the Task Force is to implement the provisions of the Act, to coordinate programs to enhance the security and safety of U.S. seaports, and provide long-term solutions for seaport safety issues.

S. 1214 would require the U.S. Coast Guard's Captain of the Port to establish local port security committees at each of the 50 U.S. seaports required to undergo a vulnerability assessment. Membership of these committees is to include representatives of the port authority, labor organizations, the private sector, and Federal, State, and local government and law enforcement personnel. Security committees will define the boundaries within which to conduct vulnerability assessments, review vulnerability assessments, establish quarterly meetings to help coordinate law enforcement between local, State and Federal law officials, and conduct an exercise at least once every three years to verify the effectiveness of security plans. The bill would make available \$3,000,000 annually for FYs 2003—2006 to help fund the establishment and operation of these local security committees.

The bill would require the Commandant of the Coast Guard, the Defense Threat Reduction Agency and the Center for Civil Force Protection to develop processes and procedures for conducting port security vulnerability assessments for the 50 most economically and strategically important U.S. seaports, and to revise these assessments at least triennially. The bill would also require the Coast Guard to conduct no fewer than 10 vulnerability assessments annually, in cooperation with port authority officials, and authorizes review and comment of the assessments by individuals with proper security clearances. The bill would mandate the collection of maps and charts of U.S. seaports, in addition to planned security measures, secure dissemination of the information to relevant law enforcement agencies, and an annual report to Congress on the status of seaport security, including recommendations for further improvements.

The bill would direct the Coast Guard and Maritime Administration to issue regulations to protect the public from threats of crime and terrorism resulting from maritime commerce at or originating from seaports. Specifically, each of the 50 ports assessed would be required to submit a security program to the local Captain of the Port one year after the completion of the vulnerability assessment. Security programs would be required to include certain program elements including: provisions for maintaining physical security and procedural security for passengers, cargo, crew members and workers; a credentialing process to limit access to sensitive areas; a process to restrict vehicular access; restrictions on the carriage of firearms and other prohibited weapons; a private security officers certification program, or provisions for the use of qualified law enforcement personnel. In evaluating security programs the Captain of the Port would be directed to incorporate existing security programs and laws and to ensure that the security programs do not conflict with any State or local law. Security programs would be approved or disapproved with explanation by the Captain of the Port. Security programs disapproved would be required to be resubmitted within six months. The bill would make available \$10,000,000 annually for FYs 2003—2006 to carry out these requirements.

The bill requires the Coast Guard and Maritime Administration, in consultation with the Task Force, to develop voluntary minimum security guidance linked to the U.S. Coast Guard Captain-of-the-Port controls and include a model port concept, including a set of recommended “best practices” guidelines for maritime terminal and port operators. The guidance is to be used in evaluating security programs required after the completion of vulnerability assessments.

The bill would direct the Coast Guard to pursue adoption of the guidance standards by international agreement, and the Maritime Administration to pursue adoption of the standards by private sector accreditation organizations. The Administrator of the Maritime Administration also is required to establish a program to assist foreign seaport operators in identifying port security risks, implementing security standards and facilitating information among foreign ports.

The bill would create standards and procedures for the training and certification of maritime security professionals in accordance with internationally recognized law enforcement standards. The bill would establish a Maritime Security Institute at the U.S. Merchant Marine Academy’s Global Maritime and Transportation center for training security personnel. The bill would make available \$7 million for fiscal years 2003 through 2006 for this program.

The bill would provide loan guarantees and grants for port security infrastructure improvements to help seaports enhance their security infrastructure and to purchase new equipment to enhance seaport security effectiveness. It would make available \$8,000,000 and \$2,000,000 for loan administration to the Secretary of Transportation which could guarantee up to \$400,000,000 in loans per year for FYs 2003—2006 for this purpose. The bill would also make available \$10,000,000 for grants for port security infrastructure for FYs 2003—2006 for the administration of this section.

The bill would make available \$15,000,000 up to \$19,000,000 for each fiscal year 2003-2006 for the purchase and use of non-intrusive screening and detection equipment for Customs to use at U.S. seaports, and requires the Department of Transportation to update several reports reflecting the new programs required in the bill.

The bill would instruct the Secretary of Transportation to coordinate, if feasible, the reporting of seaport related crimes with State law enforcement officials, so as to harmonize the reporting of data on cargo theft. If it is not feasible to collect data on cargo theft, then the Secretary is required to evaluate the feasibility of utilizing private data bases. Cargo theft data collected under the provisions of this section are required to be collected with respect to the confidentiality of shipper and carrier, and data collected would be shared with law enforcement through local port security committees. The bill would also clarify that (interstate cargo theft) this a Federal crime, and increases the criminal penalties for cargo theft. The bill would make \$1,000,000 available annually for FYs 2003—2006 for modifications to data bases, and for grants to States to modernize their data bases on cargo theft to carry out this section.

The bill would require the Secretary of Agriculture, Secretary of the Treasury, Secretary of Transportation, and the Attorney General to work together to establish shared dockside inspection facilities at seaports for Federal and State agencies. The bill would make available \$1,000,000 annually for FYs 2003—2006 to carry out this section. The bill would also direct the Customs Service, consistent with plans in the development of the Automated Commercial Environment Project, to improve reporting of imports at seaports, and to disseminate that information to relevant law enforcement agencies with a need to monitor cargo.

In order to fund the provisions included in the bill, this section authorizes an extension of tonnage duties through 2006, and would make directly available \$56,000,000 to \$59,000,00 annually, with increases of one million each year, from these duties for FYs 2003—2006 to carry out the Port and Maritime Security Act of 2001.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

S. 1214, as reported, would authorize programs to enhance security at U.S. seaports. The bill requires port authorities and marine

terminal authorities to participate in a vulnerability assessment of their facility, and then would require them to submit a security program for review and approval to the U.S. Coast Guard. While the bill does not directly mandate a specific system of security and security infrastructure, the Coast Guard could choose to disapprove a security program for reason of inadequate physical security infrastructure. In the event of the disapproval of the program, the port authority and the marine terminal authority would be required to resubmit the security program. The bill does not require approval of revised security programs, however, the U.S. Coast Guard is required to make annual recommendations to improve port security. However, while the cost is not quantifiable, it is probable that the costs of port and marine terminal authorities implementing security programs nationwide will exceed the limited amount of loans and grants provided for in the bill and therefore have some economic impact on port authorities and marine terminal operators..

The bill will have an impact on privacy, since the security programs are required to have an element that would mandate a credentialing process for individuals entering into sensitive areas. The specifics of the credentialing process are left open to be determined by port and marine terminal authorities through the medium of the submission of their security programs. The bill will also increase paper work at port and marine terminal authorities, by requiring them to submit security programs to the U.S. Coast Guard, however, mitigating this burden, is the fact that existing security programs can be made part of the mandated security program. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section designates the Act as the “Port and Maritime Security Act of 2001”.

Section 2. Findings

This section outlines the following findings: U.S. seaports conduct the majority of international trade in passengers and cargo; seaport commerce is expected to grow by three-times in the next twenty (20) years; seaports are often a major location for Federal crimes; seaports are vulnerable to terrorist activities; seaports are international boundaries, but receive no Federal funds for their infrastructure; non-intrusive inspections of containerized cargo at seaports are not adequate; the cruise ship industry is an attractive target for terrorists; effective physical security and access controls at seaports are necessary to prevent crime and threats to seaport operations; the Interagency Commission on Crime and Security in U.S. Seaports has issued recommendations for improving security at seaports; and Congress finds that seaport security should be enhanced by improving communication amongst law enforcement officials, formulating standards for physical seaport security needs, providing financial incentives to improve seaport security, investing in long-term technology enhancements, harmonizing law enforce-

ment data collection, creating shared inspection facilities, and improving U.S. Customs Service reporting procedures.

Section 3. Port Security Task Force

This section requires the Secretary of Transportation to establish a Port Security Task Force. The Task Force is to be comprised of individuals from the public and private sector including the Coast Guard and Maritime Administration. The Secretary is required to request participation of Customs and invite other Federal agencies with an interest in crime or threats of terrorism at U.S. seaports. The bill also requires the Secretary to appoint various representatives from the private sector. The purpose of the Task Force is to implement the provisions of the Act; coordinate programs to enhance the security and safety of U.S. seaports; provide long-term solutions for seaport safety issues; coordinate the security operations of local port security committees; ensure that the public and local port security committees are kept informed about seaport security enhancement developments; and to provide guidance for the award of grants and loans for infrastructure improvements. \$1,000,000 is made available annually for the purpose of this section FYs 2003—2006.

Section 4. Establishment of Local Port Security Committees

This section requires the U.S. Coast Guard's Captain of the Port to establish Local Port Security Committees at each U.S. seaport required to undergo a vulnerability assessment. Membership of these committees is to include representatives of the port authority, labor organizations, the private sector, and Federal, State, and local government, and Federal, State, and local law enforcement personnel. Security committees will define the boundaries within Local Port Security committees, which to conduct vulnerability assessments, review vulnerability assessments, establish quarterly meetings to help coordinate law enforcement between local, State and Federal law officials, and conduct an exercise at least once every three years to verify the effectiveness of security programs. \$3,000,000 is made available annually for purpose of this section FYs 2003—2006.

Section 5. Coast Guard Port Security Vulnerability Assessments

This section requires the Commandant of the Coast Guard, the Defense Threat Reduction Agency and the Center for Civil Force Protection to develop processes and procedures for conducting port security vulnerability assessments for the 50 most economically and strategic U.S. seaports, and to revise this assessment at least triennially. Local Port Security Committees would define the boundaries in which would be included in the vulnerability assessments, such areas could include marine terminals under private and public operation. This section also would require the Coast Guard to conduct no fewer than 10 vulnerability assessments annually, in cooperation with local port authority officials. This section would authorize review and comment of the assessments by individuals with proper security clearance to ensure that the assessment takes into consideration all relevant security measures. This section also mandates the Coast Guard to collect maps and charts of U.S. seaports, in addition to listing details of security measures in place. The Coast Guard is responsible for the secure dissemination of the information to relevant law enforcement agencies, an

annual report on the status of seaport security, including recommendations for further improvements. \$10,000,000 is made available annually for FYs 2003—2006 for vulnerability assessments.

Section 6. Maritime Transportation Security Programs

This section of the bill directs the Coast Guard and Maritime Administration to issue regulations to protect the public from threats of crime and terrorism resulting from maritime commerce at and originating from seaports. Specifically, each port assessed under the provisions of section 5 would be required to submit a security program to the local Captain of the Port, one year after the completion of the vulnerability assessment. Security programs would be required to include certain program elements including: a provision for maintaining physical security and procedural security for passenger, cargo, crew members and workers; a credentialing process to limit access to sensitive areas; a process to restrict vehicular access; a set of restrictions on the carriage of firearms and other prohibited weapons; a private security officers training program, or provision for the use qualified law enforcement personnel. In evaluating security programs the Captain of the Port would be directed to incorporate existing security programs and laws and to ensure that the security programs do not conflict with any State or local law, to help eliminate redundancies, and allow existing practices to continue. Security programs would be approved or disapproved with reason a explanation by the Captain of the Port, and if disapproved, the Captain of the Port shall provide a reason for the disapproval. Security programs disapproved would be required to be resubmitted within six months for approval.

Section 7. Security Program Guidance

This section requires the Coast Guard and Maritime Administration, in consultation with the Task Force to develop voluntary minimum security guidance that is linked to the U.S. Coast Guard Captain-of-the-Port controls and include a model port concept and include a set of recommended “best practices” guidelines for the use of maritime terminal and port operators. The guidance is supposed to be revised not less frequently than every 5 years, and to include the same elements required in Section 6. The guidance should be used to benchmark review of security programs, however, U.S. ports all have unique characteristics and patterns of trade, and each pose different risks, and the Coast Guard should take these characteristics into account when reviewing security programs.

Section 8. International Seaport Security

This section directs the Coast Guard to pursue adoption of the guidance standards by international agreement, and the Maritime Administration to pursue adoption of the standards by private sector accreditation organizations. The Administrator of the Maritime Administration also is required to establish a program to assist foreign seaport operators in identifying port security risks, implementing security standards and facilitating information amongst foreign ports. The Administrator will work with the State Department and Department of Defense to identify foreign ports whose vulnerability pose a strategic risk to the U.S. The bill makes available \$500,00 for each of the fiscal years 2003 through 2006 for this effort.

Section 9. Seaport Security Training

This section requires the Secretary of Transportation to create standards and procedures for the training and certification of maritime security professionals in accordance with internationally recognized law enforcement standards. The bill would establish a Maritime Security Institute at the U.S. Merchant Marine Academy's Global Maritime and Transportation for training security personnel. The bill would make available \$7 million for fiscal years 2003 through 2006 for purposes of this section.

Section 10. Port Security Infrastructure Improvement

This section provides loan guarantees and grants for eligible port security infrastructure improvements. It makes available to the Secretary of Transportation \$8,000,000 and \$2,000,000 for loan administration which could guarantee up to \$400,000,000 in loans per year for FY2003- 2006 for this purpose. The loan guarantee provisions are required to be provided consistent with the terms provided to Title XI shipbuilding and shipyard modernization loan guarantees. In evaluating the creditworthiness of the applicant the Secretary should take into account the financial strength of the port or marine terminal operator. The bill also makes available \$10,000,000 for grants for port security infrastructure for FYs 2003—2006 for each the administration of this section.

Section 11. Screening and Detection Equipment

This section makes available \$15,000,000 to \$19,000,000 for each fiscal year 2003-2006 for the purchase and use of non-intrusive screening and detection equipment for U.S. Customs to use at U.S. seaports.

Section 12. Annual Report on Maritime Security and Terrorism

This section amends the International Maritime and Port Security Act by requiring the report submitted under that Act to include a description of activities undertaken under the Port and Maritime Security Act of 2001, and an analysis of the effect of those activities on port security against acts of terrorism.

Section 13. Revision of Port Security Planning Guide

This section directs the Secretary of Transportation to publish a revised version of the document "Port Security: A National Planning Guide," within 3 years after the enactment of this Act and to make the document available on the Internet.

Section 14. Secretary of Transportation to Coordinate Port-Related Crime Data

This section instructs the Secretary of Transportation to coordinate, if feasible, the reporting of Federal seaport related crimes with Federal agencies, and also with State law enforcement officials, so as to harmonize the reporting of data on cargo theft. If it is not feasible for the Federal Government to collect data on cargo theft, then the Secretary is required to evaluate the feasibility of utilizing private data bases. Cargo theft data collected under the provisions of this section are to be collected with confidentiality of shipper and carrier, and data collected would be shared with law enforcement through local port security committees. The bill also clarifies that interstate cargo theft is a Federal crime of, and increases the criminal penalties for cargo theft. The bill makes \$1,000,000 available annually for FYs 2003—2006 for modifications

to data bases, and for grants to States to modernize their data bases on cargo theft to carry out this section.

Section 15. Shared Dockside Inspection Facilities

This section requires the Secretary of Agriculture, Secretary of the Treasury, Secretary of Transportation, and the Attorney General to work together to establish shared dockside inspection facilities at seaports for Federal and State agencies. Funds made available under this section should be used to address the areas which have the worst problems accommodating Federal inspection needs. Makes available \$1,000,000 annually for FYs 2003—2006 to carry out this section.

Section 16. Improved Customs Reporting Procedures

This section directs the Customs Service, consistent with plans in the development of the Automated Commercial Environment Project, to improve reporting of imports at seaports, and to disseminate that information to relevant law enforcement agencies with a need to monitor cargo.

Section 17. 4-Year Reauthorization of Tonnage Duties

The bill authorizes an extension of tonnage duties through 2006, and makes directly available \$56,000,000- \$59,000,00 annually, with increases of one million each year, from these duties for FYs 2003—2006 to carry out the Port and Maritime Security Act.

Section 18. Definitions

The bill defines “Secretary” as the Secretary of Transportation, and “Task Force” as the Port Security Task Force established under section 3.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

CHAPTER 31. EMBEZZLEMENT AND THEFT

§ 659. Interstate or foreign shipments by carrier; State prosecutions

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motortruck, *trailer*, or other vehicle, or from any tank or storage facility, station, house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, *air cargo container*, air terminal, airport, aircraft terminal or air navigation facility, *or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility* [with intent to convert to his own use] any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property; or

Whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been embezzled or stolen; or

Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains [with intent to convert to his own use] any baggage which shall have come into the possession of any common carrier for transportation in interstate or foreign commerce or breaks into, steals, takes, carries away, or conceals any of the contents of such baggage, or buys, receives, or has in his possession any such baggage or any article therefrom of whatever nature, knowing the same to have been embezzled or stolen—

Whoever embezzles, steals, or unlawfully takes by any fraudulent device, scheme, or game, from any railroad car, bus, vehicle, steamboat, vessel, or aircraft operated by any common carrier moving in interstate or foreign commerce or from any passenger thereon any money, baggage, goods, or chattels, or whoever buys, receives, or has in his possession any such money, baggage, goods, or chattels, knowing the same to have been embezzled or stolen—

Shall in each case be fined under this title or imprisoned not more than ten years, or both; but if the amount or value of such money, baggage, goods or chattels does not exceed \$ 1,000, he shall be fined under this title or imprisoned not more than [one year] *three years*, or both. *Notwithstanding the preceding sentence the court may, upon motion of the Attorney General, reduce any penalty imposed under this paragraph with respect to any defendant who provides information leading to the arrest and conviction of any dealer or wholesaler of stolen goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment.*

The offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

The carrying or transporting of any such money, freight, express, baggage, goods, or chattels in interstate or foreign commerce, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties under this section for unlawful taking, and the offense shall be deemed to have been committed in any district into which such money, freight, express, baggage, goods, or chattels shall have been removed or into which the same shall have been brought by such offender.

To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. The removal of property from a pipeline system which extends interstate shall be prima facie evidence of the interstate character of the shipment of the property.

A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts. *For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transshipment or otherwise.* Nothing contained in this section shall be construed as indicating an intent on the part of Congress to oc-

copy the field in which provisions of this section operate to the exclusion of State laws on the same subject matter, nor shall any provision of this section be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this section or any provision thereof.

It shall be an affirmative defense (on which the defendant bears the burden of persuasion by a preponderance of the evidence) to an offense under this section that the defendant bought, received, or possessed the goods, chattels, money, or baggage at issue with the sole intent to report the matter to an appropriate law enforcement officer or to the owner of the goods, chattels, money, or baggage.

TITLE 46. APPENDIX. SHIPPING

CHAPTER 4. TONNAGE DUTIES

§ 121. Amount of tonnage duties

Upon vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton, and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton.

A tonnage duty of 9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991 [through 2002] *through 2006*, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter is imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46, United States Code) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place; and a duty of 27 cents per ton, not to exceed \$ 1.35 per ton per annum, for fiscal years 1991 [through 2002] *through 2006*, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter is imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. However, neither duty shall be imposed on vessels in distress or not engaged in trade.

Upon every vessel not of the United States, which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of 50 cents per ton: Provided, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States. On all foreign vessels which shall be entered in the United States from any foreign port or place, to and with which vessels of the United States are not ordinarily permitted to enter and trade, there shall

be paid a duty at the rate of \$ 2 per ton; and none of the duties on tonnage above mentioned shall be levied on the vessels of any foreign nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of 50 cents per ton.

* * * * *

§ 132. Vessels not entering by sea

Vessels entering otherwise than by sea from a foreign port at which tonnage or lighthouse dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of 9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991 [through 2002] *through 2006*, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter prescribed by section thirty-six of the Act approved August fifth, nineteen hundred and nine, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes."

MERCHANT MARINE ACT, 1936

TITLE XI—FEDERAL SHIP FINANCING GUARANTEE PROGRAM

[46 U.S.C. APP. 1101 ET SEQ.]

§ 1113. Loan guarantees for port security infrastructure improvements

(a) *IN GENERAL.*—The Secretary, under section 1103(a) and subject to the terms the Secretary shall prescribe and after consultation with the United States Coast Guard, the United States Customs Service, and the Port Security Task Force established under section 3 of the Port and Maritime Security Act of 2001, may guarantee or make a commitment to guarantee the payment of the principal of, and the interest on, an obligation for seaport security infrastructure improvements for an eligible project at any United States seaport involved in international trade.

(b) *LIMITATIONS.*—Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under this title.

(c) *TRANSFER OF FUNDS.*—The Secretary may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 61a)) of making guarantees or commitments to guarantee loans entered into under this section.

(d) *ELIGIBLE PROJECTS.*—A project is eligible for a loan guarantee or commitment under subsection (a) if it is for the construction or acquisition of—

- (1) equipment or facilities to be used for seaport security monitoring and recording;
- (2) security gates and fencing;
- (3) security-related lighting systems;
- (4) remote surveillance systems;
- (5) concealed video systems; or
- (6) other security infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.

§ 1114. Grants

(a) *FINANCIAL ASSISTANCE.*—The Secretary may provide financial assistance for eligible projects (within the meaning of section 1113(d).

(b) *MATCHING REQUIREMENTS.*—

(1) *75-PERCENT FEDERAL FUNDING.*—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project. In calculating that percentage, the non-Federal share of project costs may be provided by in-kind contributions and other noncash support.

(2) *EXCEPTIONS.*—

(A) *SMALL PROJECTS.*—There are no matching requirements for grants under subsection (a) for projects costing not more than \$25,000.

(B) *HIGHER LEVEL OF SUPPORT REQUIRED.*—If the Secretary determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

(c) *ALLOCATION.*—The Secretary shall ensure that financial assistance provided under subsection (a) during a fiscal year is distributed so that funds are awarded for eligible projects that address emerging priorities or threats identified by the Task Force under section 5 of the Port and Maritime Security Act of 2001.

(d) *PROJECT PROPOSALS.*—Each proposal for a grant under this section shall include the following:

(1) The name of the individual or entity responsible for conducting the project.

(2) A succinct statement of the purposes of the project.

(3) A description of the qualifications of the individuals who will conduct the project.

(4) An estimate of the funds and time required to complete the project.

(5) Evidence of support of the project by appropriate representatives of States or territories of the United States or other government jurisdictions in which the project will be conducted.

(6) Information regarding the source and amount of matching funding available to the applicant, as appropriate.

(7) Any other information the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this title.

INTERNATIONAL MARITIME AND PORT SECURITY ACT

SEC. 905. THREAT OF TERRORISM TO UNITED STATES PORTS AND VESSELS. [46 U.S.C. App 1802]

Not later than February 28, 1987, and annually thereafter, the Secretary of Transportation shall report to the Congress on the threat from acts of terrorism to United States ports and vessels operating from those ports.

Beginning with the first report submitted under this section after the date of enactment of the Port and Maritime Security Act of 2001, the Secretary shall include a description of activities undertaken under that Act and an analysis of the effect of those activities on seaport security against acts of terrorism.

