HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 w/CS Charter Travel to Terrorist States
SPONSOR(S): Rivera, Planas
TIED BILLS: HB 1195 **IDEN./SIM. BILLS:** SB 2614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce	18 Y, 0 N w/CS	McDonald	Billmeier
2) Appropriations			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates s. 288.857, F.S., the "Commerce with Terrorist States Act," which provides for a security assessment of every person or entity chartering travel that will originate in this state and arrive in an identified terrorist state. The assessment levied on charter aircraft on each take off is $100, irrespective of the charter aircraft size, and an additional charge of $0.04 per thousand pounds of landed aircraft weight. The assessment on a charter vessel is at the rate of 10% of the total consideration received or to be received for the chartered travel, in addition to any other taxes or assessments that may be due. Persons operating under contract with a federal or state authority, employed with the federal government in performance of their duties, or acting in the performance of active military duty are exempt from the provisions of the bill.

Terrorist state is defined in the bill as any state, country, or nation presently deemed a state sponsor of terrorism by the U.S. Department of State. Currently, those states are Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. For the purposes of the bill, the Florida Department of Revenue (DOR) is responsible for documenting states or nations identified as a terrorist state by the U.S. Department of State, specifying these in rule, and annually updating the list contained in rule.

Persons receiving the consideration are directed to remit the proceeds from the assessment to DOR. Proceeds of the assessment, less administrative costs, must be transferred by DOR to the State Homeland Security Trust Fund created under HB 1195. The administrative costs deducted cannot exceed 3 percent of the total revenues collected and may include only those costs reasonably attributable to the fee. Proceeds include all funds collected and received, including interest and penalties on delinquent fees. Procedures and authority for administration, collection and enforcement of the security assessment is provided for DOR. Additionally, authority and procedures of DOR to audit and make assessments, to require keeping of books and records, and to the charging of interest and delinquent fees are provided.

The bill requires travel information be reported to the Departments of Education by any university or community college within the State University System or community college system that utilizes chartered travel for transportation to an identified terrorist state.

The bill allows for severable treatment of its provisions.

At this time, the cost for implementing the legislation is unknown. See "Fiscal Comments."

The bill takes effect January 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[x]	N/A[]
4. Increase personal responsibility?	Yes[]	No[x]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

The bill places additional responsibilities on the Departments of Revenue and Education for carrying out the provisions of the bill. The bill also provides for the adoption of rules to implement the provisions of the bill.

The bill does not expand individual freedom nor increase personal responsibility because it requires persons traveling on cultural or educational trips described in subsection (5) that under licenses issued by the federal government to provide detailed information on the trip itinerary including lodging, restaurants, planned excursions, etc. to the Department of Education no later than 30 days prior trip commencement. Neither the purpose of the information nor the intended use of the information is provided in the legislation.

B. EFFECT OF PROPOSED CHANGES:

Background:

Law Enforcement/Security Costs

The events of September 11, 2001, fundamentally changed the way transportation security is performed in the United States.

Airlines must screen all checked passenger bags, as mandated by Congress. A multi-layered system has been implemented to screen passengers and baggage using explosive detection equipment, an enhanced computer-assisted passenger prescreening system, explosive-trace detection, sniffing by trained dogs, and manual searches, or some combination of these methods. Although most of these costs are being paid by the airlines, airports are impacted by having to provide the physical space to house security personnel and equipment. Federal funds are being made available to airports to implement their share of the requirements.

Federal legislation requiring screening of cargo continues to be discussed, as are security requirements for general aviation airports.

As for seaport and maritime security, Florida seaports have taken the lead among their peers in other states by implementing state-required security plans and procedures. These plans include facility improvements and the purchase of security equipment, such as container scanners, as well as background checks and badging of certain port employees and port users. In addition, shippers and other maritime-related businesses are beginning to feel the impact of new Coast Guard security regulations.

Florida has 19 commercial service airports, 112 general aviation airports, and an estimated 700 privately owned airports and airparks. The state also has 14 deepwater ports located along the Atlantic and Gulf coasts, and is home to four of the 20 busiest container seaports in the nation and the top three cruise ports in the world. In addition, there are a number privately owned ports along both coastlines that serve specific businesses. All of these facilities have been impacted to some degree by the new security requirements since September 11, 2001.

Airport and seaport security project costs could run into hundreds of millions of dollars. Airports and seaports have received a combination of federal, state and local-government funds to help defray some of these costs, and have used some of their revenues generated by business using the facilities.[1]

In Florida seaports, law enforcement/security operational costs have increased 276% since September 11, 2001 and the total number law enforcement/security personnel have increased 153%. The state's share of law enforcement/security costs has increased from nothing in FY 01-02 to 8.2 million in FY 02-03 and 7.1 million in FY 03-04. The seaport share of costs has gone from $23.1 million to $34.9 million over the same period of time.[2]

Florida's airport security needs have been estimated at $1 billion by the airports themselves. The airports are hoping to get special appropriations from Congress through the Transportation Security Agency (TSA).[3]

Federal Designation as a Terrorist State

Currently, seven countries are designated as terrorist states: Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan.

Designating countries that repeatedly support international terrorism, that is, placing a country on the "terrorism list" imposes four main sets of US Government sanctions:

1. A ban on arms-related exports and sales.
2. Controls over exports of dual use items, requiring 30-day Congressional notification for goods or services that could significantly enhance the terrorist list country's military capability or ability to support terrorism.
3. Prohibitions on economic assistance.
4. Imposition of miscellaneous financial and other restrictions, including:
    - Requiring the US to oppose loans by the World Bank and other international financial institutions.
    - Lifting the diplomatic immunity to allow families of terrorist victims to file civil lawsuits in US courts.
    - Denying companies and individuals tax credits for income earned in terrorist list counties.
    - Denial of duty-free treatment for goods exported to the US.
    - Authority to prohibit any US person from engaging in a financial transaction with a terrorist list government without a Treasury Department license.
    - Prohibition of Defense Department contracts above $100,000 with companies controlled by terrorist list states.[4]

The state sponsors of terrorism list has been relatively static since its initiation in 1979, with only two states ever having been removed: South Yemen, which was removed in 1990 when it merged with

[1] Information in the above paragraphs is from the House Committee on Transportation Fact Sheet on Airport and Seaport Security, December 2003.
[2] "Florida Seaports Law Enforcement/Security Operational Costs Since 9/11", Florida Ports Council, March 2004.
[3] Information provided by Mr. Bill Ashbaker with the Florida Department of Transportation's Aviation Office, March 23, 2004. The Florida Department of Transportation does not keep a database of federal funding to individual airports.
[4] "Patterns of Global Terrorism" report, US Department of State, pp. 76-81. This report is required to be submitted to Congress pursuant to Title 22 of the United States Code, Section 2656f(a).

North Yemen to form the current state of Yemen; and Iraq, which was removed from the list in 1982 and was returned to the list in 1990 after its invasion of Kuwait.[5]

Federal Restrictions on Travel to Terrorist States

Under Title 31 of the Code of Federal Regulations Chapter V, the ability to travel and do business with countries such as Cuba, Iraq, Iran, Libya, and Sudan are delineated. The ability to travel to these and other countries varies as does the requirements for and the ability to be authorized or licensed by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury for such travel. Specific licenses may be issued to authorize travel transactions related to certain educational activities by students or employees affiliated with a licensed academic institution meeting certain requirements. Once licensed, categories of travelers associated with the institution are authorized to travel. Specific licenses are also provided to such groups as religious organizations, humanitarian projects, journalistic activities, and private foundations. According to the Florida Department of Education, licenses for educational institutions for cultural education trips are not being renewed by OFAC; therefore, when those licenses expire, no universities or community colleges will be able to embark on such trips. Other educational licenses will still be available through the OFAC.

Effect of Proposed Changes:

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Persons receiving the consideration are directed to remit the proceeds from the assessment to DOR. Proceeds of the assessment, less administrative costs, must be transferred by DOR to the State Homeland Security Trust Fund created under HB 1195. The administrative costs deducted cannot exceed 3 percent of the total revenues collected and may include only those costs reasonably attributable to the fee. Proceeds include all funds collected and received, including interest and penalties on delinquent fees. Procedures and authority for administration, collection and enforcement of the security assessment is provided for DOR. Additionally, authority and procedures of DOR to audit and make assessments, to require keeping of books and records, and to the charging of interest and delinquent fees are provided.

The bill requires travel information be reported to the Departments of Education by any university or community college within the State University System or community college system that utilizes chartered travel for transportation to an identified terrorist state.

The bill allows for severable treatment of its provisions and provides an effective date of January 1, 2005.

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[5] "The "FTO List" and Congress: Sanctioning Designated Foreign Terrorist Organizations", Audrey Kurth Cronin, Specialist in Terrorism, Foreign Affairs, Defense, and Trade Division, October 21, 2003, pp. CRS-3 and CRS-4.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.857, F.S., the "Commerce with Terrorist States Act."
Section 2. Provides for severability of provisions.
Section 3. Provides an effective date of January 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There could be potential negative impact on charter companies providing transportation services as described in the legislation. There could also be an impact on private sector groups licensed by the federal government to travel to such countries for humanitarian or other purposes.

D. FISCAL COMMENTS:

The amount of funds to be generated from the assessment is not able to be determined at this time. The funds generated are to be deposited into the State Homeland Security Trust Fund. The uses of those funds are not provided in this legislation but in the bill creating the trust fund.

The Department of Revenue (DOR) states that there will be administrative costs that will be incurred by the department to implement the bill; however, an estimate of these costs has not been provided by DOR. The bill provides that proceeds of the assessment, less administrative costs, must be transferred by DOR to the State Homeland Security Trust Fund created under HB 1195. The administrative costs deducted cannot exceed 3 percent of the total revenues collected and may include only those costs reasonably attributable to the fee. Proceeds include all funds collected and received, including interest and penalties on delinquent fees. Additionally, paragraph (4)(a) of the bill, will require businesses and entities subject to the security assessment to be registered with DOR. According to DOR, this will require computer program changes. DOR has not indicated if the fiscal requirements of such a change are included in the administrative costs to be deducted or is an additional cost to be incurred prior to the collection of such administrative costs.

According to the Department of Education, there will be an impact on the department and on the state university and community college systems; however, it is not able to be quantified at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Congressional Foreign Commerce Power

Article I, section 8 of the United States Constitution grants Congress the power to "regulate Commerce with foreign Nations[.]" This power is Congress's exclusive domain, in which states have even less freedom to act than with respect to the regulation of interstate commerce.[6] Courts hold state or local laws to be unconstitutionally in conflict with the Congressional foreign commerce power if they impair the federal government's ability to speak with "one voice" internationally.[7] In those cases where state or local laws with international effect have been found valid, this has usually been because Congress had an opportunity to examine the specific issue and either acquiesced in, or affirmatively granted, the states' authority to do so.[8]

The tax cannot prevent the federal government from "speaking with one voice" when regulating commercial relations with foreign governments (cannot "impair federal uniformity in an area where federal uniformity is essential) – in determining this factor, international agreements regulating trade are relevant. The U.S. does not maintain international agreements with any of the terrorist states. Although both Cuba and the U.S. are members of the World Trade Organization and have both agreed to abide by the General Agreement on Tariffs and Trade (GATT), GATT does not include trade between the U.S. and Cuba in its provisions. In addition, in light of the Helms-Burton Act, this bill does not have an effect contrary to the "one voice" of the U.S.

If the court finds that the taxable activity is subject to the protection of the Commerce Clause and that the tax is discriminatory, the State will have to show a compelling justification for discrimination and the unavailability of non-discriminatory alternatives adequate to preserve the state's interest.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is provided for the Departments of Education and Revenue for the purposes of implementing s. 288.857, F.S. Also, provides emergency rulemaking authority for the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires detailed information only on cultural or educational trips involving the state university or community college systems. Other travelers are not required to provide information.

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[6] *See Michelin Tire Corp. v. Wages,* 423 U.S. 276 (1976).
[7] *Barclays Bank PLC v. Franchise Tax Board,* 512 U.S. 298, 328 (1994).
[8] *See id; Wardair Canada v. Florida Dept. of Revenue,* 477 U.S. 1 (1986); *Gerling Global Reinsurance, supra.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 24, 2004, the Committee on Commerce passed HB 1193 with a committee substitute. The committee substitute differs from the original bill in the following ways:

- Organizes definitions alphabetically with the exception of the first definition on “terrorist state.”
- Clarifies the responsibility of the Department of Revenue (DOR) related to the definition of “terrorist state” to make certain that the only list used is the state sponsor of terrorism list of the United States Department of State and that DOR update its list in rule annually.
- Adds a definition of “assessable transaction or incident”.
- Changes the assessment levy requirement for charter aircraft to a take off levy at the rate of $100, irrespective of the charter aircraft size, and an additional charge of $0.04 per thousand pounds of landed aircraft weight. Retains the method of assessment for charter vessels.
- Allows DOR to retain administrative costs from proceeds collected prior to transfer of funds to the State Homeland Security Trust Fund. The administrative costs deducted cannot exceed 3 percent of the total revenues collected and may include only those costs reasonably attributable to the fee.
- In subsection (4)(c) of the bill, defines the term “proceeds” to include all funds collected and received, including interest and penalties on delinquent fees.
- Procedures and authority for administration, collection and enforcement of the security assessment is provided for DOR.
- Provides authority and procedures of DOR to audit and make assessments, to require keeping of books and records, and to the charging of interest and delinquent fees.
- Deletes the requirement that the Florida Department of Law Enforcement receive information from a university or community college that organizes or directs the organization of a cultural or educational trip utilizing charter transportation to a terrorist.
- Expands the exemption to include any person employed with the federal government in performance of his or her official duties.
- Deletes reference to the Department of Business and Professional Regulation in provisions relating to rulemaking authority.
- Provides for DOR to adopt emergency rules and provides for length of effect of such rules.
- Requires that payment of assessment be accompanied by a form prescribed by DOR.
- Changes the effective date of the bill to January 1, 2005.