

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Commerce and Consumer Services Committee

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BILL: SB 1788

SPONSOR: Senator Clary

SUBJECT: Travel to and Commerce With Terrorist Nations

DATE: April 25, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	<b>Unfavorable</b>
2.	_____	_____	DS	_____
3.	_____	_____	JU	_____
4.	_____	_____	GE	_____
5.	_____	_____	TA	_____
6.	_____	_____	WM	_____

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## I. Summary:

The bill creates the "Travel to and Commerce with Terrorist Nations Act," to do the following:

- Assess a fee against chartered aircraft or vessels used to transport persons from this state to a terrorist nation;
- Require the state universities and community colleges using charter transportation to facilitate a trip to a terrorist nation to provide the Department of Education with a detailed report of such a trip within 30 days its completion;
- Disqualify certain applicants from participating in the Refugee Resettlement Program, Refugee Cash Assistance Program, or the Refugee Medical Assistance Program for a minimum of one year if they have traveled to a terrorist nation;
- Prospectively, indefinitely disqualify participants in the Refugee Resettlement Program who violate the restrictions against traveling to terrorist nations;
- Impose a 10 percent surcharge on the export of cattle from Florida ports to terrorist nations; and
- Impose a series of requirements on state agencies to implement this act.

This bill creates the following section of Florida Statutes: 288.857.

## II. Present Situation

### Law Enforcement/Security Costs

The way transportation security is performed in the United States was fundamentally changed by the events of September 11, 2001. 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 required to provide the physical space to house security personnel and equipment through the use of federal funds.

Florida seaports have taken the lead amongst other states in increasing seaport and maritime security 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 of privately owned ports along both coastlines that serve specific businesses. All of these facilities have been impacted 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 businesses using the facilities.<sup>1</sup>

In Florida seaports, law enforcement/security operational costs have increased 276 percent since September 11, 2001, and the total number of law enforcement/security personnel has increased 153 percent. 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.<sup>2</sup>

### **Federal Designation as a Terrorist State**

Currently, six countries are designated as terrorist states: Cuba, Iran, 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 U.S. government sanctions:

1. A ban on arms-related exports and sales.
2. Controls over exports of dual use items, requiring a 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.

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<sup>1</sup> Information in the above paragraphs is from the House Committee on Transportation Fact Sheet on Airport and Seaport Security, December 2003.

<sup>2</sup> "Florida Seaports Law Enforcement/Security Operational Costs Since 9/11," Florida Ports Council, March 2004.

4. Imposition of miscellaneous financial and other restrictions, including:

- Requiring the U.S. 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 U.S. courts.
- Denying companies and individuals tax credits for income earned in terrorist list countries.
- Denial of duty-free treatment for goods exported to the U.S.
- Authority to prohibit any U.S. 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.<sup>3</sup>

The state-sponsors of terrorism list has been relatively static since its initiation in 1979. Only two states have ever been removed: South Yemen, which was removed in 1990 when it merged with 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.<sup>4</sup> Iraq was removed again from the list in 2004.

### **Federal Restrictions on Travel to Terrorist States**

Chapter 5, Title 31 of the Code of Federal Regulations delineates the ability to travel and do business with countries such as Cuba, Iraq, Iran, Libya, and Sudan. The ability to travel to these and other countries varies, as do the requirements for and the ability to be authorized or licensed by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury for such travel. Travel and trade with Cuba, the closest of these countries to Florida, is directly regulated by the Service Provider Program of the Cuban Assets Control Regulations. This program prohibits all unlicensed transactions by persons subject to the jurisdiction of the United States involving property in which Cuba or a Cuban national has any interest whatsoever, direct or indirect, unless exempt or otherwise authorized. Civil and criminal fines and penalties and the loss of operating authority may be imposed for violations of, or activity inconsistent with, the Service Provider Program.

### **Cultural and Educational Travel to Cuba**

Under the Cuban Assets Control Regulations, OFAC may issue specific licenses to accredited United States academic institutions to authorize travel-related transactions related to certain educational activities by students or employees affiliated with those institutions. 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

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<sup>3</sup> "Patterns of Global Terrorism" report, U.S. 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).

<sup>4</sup> "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.

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 OFAC.

### **Family Educational Rights and Privacy Act**

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. Generally, schools must have written permission from the student (or, for students under age 18, the student's parent) in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to certain parties under various conditions stipulated by rule.<sup>5</sup>

### **Regulation of Sellers of Travel in Florida**

Part XI of ch. 559, F.S., governs the regulation of "sellers of travel" in this state by the Department of Agriculture and Consumer Services. Section 559.927(1), F.S., defines "seller of travel" as, in pertinent part:

[A]ny resident or nonresident person, firm, corporation, or business entity who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups, including but not limited to, vacation or tour packages, or vacation certificates in exchange for a fee, commission or other valuable consideration.

Section 559.935, F.S., identifies sellers of travel that are exempt from registration and regulation by the department. Generally, travel sellers or their affiliates engaged in selling airline tickets or those offering vacation certificates which have contracted with the Airlines Reporting Corporation (ARC), an airline-owned corporation that offers financial, marketing, ticket distribution and other services to sellers of travel are exempt from state regulation. Instead, members of ARC are subject to federal regulation.

### **Refugee Resettlement Act**

The Refugee Act of 1980, Pub. L. No. 96-212, codified this country's efforts to aid individuals fleeing persecution in their homelands. In addition, the act provided the foundation for today's

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<sup>5</sup> Schools generally may disclose student information to: School officials with legitimate educational interests; other schools to which a student is transferring; specified officials for audit or evaluation purposes; appropriate parties in connection with financial aid to a student; organizations conducting certain studies for or on behalf of the school; accrediting organizations; persons in order to comply with a judicial order or lawfully issued subpoena; appropriate officials in cases of health and safety emergencies; and state and local authorities, within a juvenile justice system, pursuant to specific state law. See 34 CFR § 99.31.

asylum adjudication process and the development of an Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. The program does the following:

- Provides temporary cash assistance to qualified individuals;
- Medical Assistance for refugees who have lived in the U.S. for eight months or less; and
- Social services to eligible refugees who have lived in the United States for five years or less.

ORR's funds and facilitates a variety of programs that offer, among other benefits and services, cash and medical assistance, employment preparation and job placement, skills training, English language training, social adjustment and aid for victims of torture. These services are available to refugees and asylees as defined under the Immigration and Nationality Act (INA),<sup>6</sup> Cuban and Haitian entrants, certain Amerasians, victims of a severe form of trafficking, and permanent residents who had held one of the other categories.<sup>7</sup> Refugees who do not qualify under the Temporary Assistance to Needy Families (TANF) program may qualify for Refugee Cash Assistance. Refugees who are not eligible for Refugee Cash Assistance may receive Refugee Medical Assistance under the state's Medicaid Program.

### III. Effect of Proposed Changes:

**Section 1** creates s. 288.857, F.S., the "Travel to and Commerce With Terrorist Nations Act."

Subsection (2) provides the legislative intent for the act. Generally, the Florida Legislature intends to prevent subsidizing nations designated as purveyors of state-sponsored terrorism, fund efforts to improve security to combat terrorist acts, and to discourage travel activities and commerce with such nations.

Subsection (3) provides definitions of the following terms.

"Terrorist nation" is defined as those nations identified by the United States Department of State as being state sponsors of terrorism. The Florida Department of Revenue is required to annually identify those countries. Currently, six nations are identified by the U.S. Department of State as being state sponsors of terrorism: Cuba, Iran, Libya, North Korea, Sudan, and Syria.<sup>8</sup>

"Assessable transaction or incident" is defined as a payment by a passenger for travel on a charter vessel.

"Charter aircraft" is defined as any form of aircraft hired for exclusive temporary use by a single traveler or group of travelers.

"Charter transportation" is defined as travel via charter aircraft or charter vessel when the aircraft or vessel is hired for exclusive temporary use by a single traveler or group of travelers.

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<sup>6</sup> The INA was created in 1954, Public Law No. 82-414.

<sup>7</sup> Office of Refugee Resettlement, *Eligibility for Refugee Assistance and Services Through the Office of Refugee Resettlement*. <<http://www.acf.dhhs.gov/programs/orr/geninfo/index.htm>>. 29 March 2002. 26 March 2005.

<sup>8</sup> U.S. Department of State, *State Sponsors of Terrorism*. 22 March 2005. <<http://www.state.gov/s/ct/c14151.htm>>.

“Charter vessel” is defined as any form of watercraft hired for exclusive temporary use by a single traveler or group of travelers.

“Directly carries or transports” means to conduct a single continuous charter flight or charter vessel voyage that originates from any location in Florida and arrives in a terrorist nation. Temporary stops for less than eight hours by the aircraft or vessel do not disqualify the flight or voyage from regulation by this bill.

Subsection (4) of this section provides that any person or entity who directly transports persons via charter aircraft or charter vessels from Florida to a terrorist nation is exercising an assessable privilege. A security assessment is imposed for each type of transportation. For chartered aircraft, the assessment is \$100 for each takeoff, plus an additional charge of \$0.04 per pound of the aircraft’s maximum takeoff weight. For chartered vessels, an assessment of 10 percent is levied on each transaction.

The assessments, less administrative costs of up to 3 percent, must be paid to the Department of Revenue (DOR), who then transfers the funds into the State Homeland Security Trust Fund.<sup>9</sup> DOR is required to administer, collect and enforce this assessment in the same manner as the department administers the state sale tax. The bill excludes the security assessment from estimated tax computations under s. 212.11, F.S., and dealer’s credit for collecting taxes or fees under s. 212.12, F.S.<sup>10</sup>

Subsection (5) requires universities or community colleges with the State University System and Florida Community College System that organize or direct the organization of a cultural or education trip to any terrorist nation using charter transportation to provide the Florida Department of Education a detailed report concerning the trip. This report must be submitted no later than 30 days after the completion of the trip and must specify the following:

- Number of degree-seeking and nondegree-seeking student participants;
- Number of employees of the educational institution and number of persons not employees of the institution who participated;
- A detailed itinerary of the trip including:
  - Hotel and restaurant accommodations;
  - Planned excursions; and
  - Scheduled meetings with governmental authorities, individuals, or organizations not affiliated with the government or host nation.
- An accounting of all costs associated with the trip including an accounting of the use or deposit of all moneys received as payment for the trip;
- Certificates of incorporation of the entities contracted to organize or facilitate the trip; and
- A statement certifying adherence to the United States Department of Treasury Cuban Assets Control Regulations, 31 C.F.R. s. 515.536.

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<sup>9</sup> This trust fund is proposed by SB 1776.

<sup>10</sup> Ch. 212, F.S., governs taxes on sales, use and other transactions. Section 212.11, F.S., addresses dealers’ calculation of monthly tax returns while s. 212.12, F.S., addresses a dealer’s credit for collecting taxes.

Subsection (6) provides a penalty against permanent residents who travel to terrorist nations. The bill targets individuals between the ages of 18 and 65 years of age and limits their access to public benefits and protected immigration status. Specifically, the bill prohibits those individuals who have established permanent residency for less than 5 years and who have not been determined by the Florida Medicaid program to be either disabled or pregnant from participating in the following programs:

- The Refugee Resettlement Program under Title IV of the Immigration and Nationality Act;
- The Refugee Cash Assistance program; and
- Medicaid and food stamp programs.

Persons who travel to terrorist nations must be excluded from such benefits for a minimum of one year or until the person's 5-year Florida residency threshold is reached. The bill directs the Department of Children and Families (DCF) to determine whether an individual applying for the aforementioned benefits has traveled to a terrorist nation and should be subject to these restrictions. These restrictions are effective beginning on January 1, 2006.

Subsection (7) provides that state funds derived from the denial or discontinuance of benefits in section 6 shall be redirected to the Department of Elderly Affairs (DEA) for elderly nutrition programs. However, such funds may not be used to replace existing funding for these programs.

Subsection (8) requires the Department of Agriculture and Consumer Services (DACS) to develop a disclosure form to inform Florida residents wishing to travel to terrorist nations of the risk of disqualification from the programs and services specified in section 6. The form will also be used to collect the name, mailing address, social security number or alien resident number, date of birth, place of birth, date on which Florida residency was established, telephone number and signature of the individual. It must also include a sworn statement attesting to the validity of the form.

Traveler and providers of travel that are subject to the jurisdiction of the state of Florida are required to submit a completed travel disclosure form to DACS no later than 15 days after travel commenced. DACS is responsible for annually assessing a fee against all related travel services, sufficient to fund the cost of the department's administrative responsibilities.

Subsection (9) requires DACS to create and operate a database in which information contained in terrorist travel disclosure forms and information from authorized travel services providers will be maintained. The database must be accessible to any state agency responsible for determining eligibility for the Refugee Resettlement Program, the Refugee Cash Assistance Program, the Refugee Medical Assistance program, Medicaid, or the food stamp program. The database will also be used to inform program recipients subject to the penalties in this act of the termination of their eligibility for such programs. DCF must monitor this database on a monthly basis to ensure compliance of benefit recipients.

Subsection (10) requires DCF to include, by January 1, 2006, a terrorist travel waiver form in all "Request for Assistance" application packets that include Temporary Cash Assistance, food

stamps and Medicaid for all applicants under the Refugee Resettlement Program. The form must inform prospective applicants of the possibility of being disqualified from eligibility for such programs as a result of travel to terrorist nations and the attendant penalties. The waiver form must include a sworn statement and agreement, under penalty of perjury, that the benefits applicant will inform DCF of any travel or intention to travel to a terrorist nation while receiving the aforementioned benefits. The bill also provides that any participant in the Refugee Resettlement Program who violates the eligibility requirements outlined in section 6 will be ineligible, for an indefinite period of time, for the Refugee Cash Assistance Program, the Refugee Medical Assistance program, Medicaid, and the food stamp program.

Subsection (11) requires the Department of Agriculture and Consumer Services to levy a 10 percent terrorist commerce surcharge on the final sales price of any beef or dairy cattle transshipped from any Florida airport or seaport for sale to any terrorist nation. Surcharge proceeds are to be allocated to the Institute of Food and Agricultural Sciences of the University of Florida for its Citrus Canker Genome Project and the Citrus and Abscission and Mechanical Harvest Project.

Subsection (12) provides implementation requirements for the bill. It requires DCF, DEA, the Agency for Health Care Administration (AHCA) and DACS to submit a report to the Legislature indicating the steps each has taken to implement this act. The report must contain written comments from the agencies' federal counterparts as to any requirements necessary to implement the act, including, the need to secure federal waivers and recommended action, whether fiscal or substantive, to be taken by the agencies.

Subsection (13) provides a \$10,000 per penalty violation against any travel service that violates the act.

Subsection (14) exempts the following persons from this act:

- Persons operating under a contract with a federal authority or an authority of the State of Florida.
- Persons in performance of active military duty.
- Persons employed with the federal government in the performance of his or her official duties.

Subsection (15) permits DOE and DOR to adopt rules necessary to administer this act. DOR is also authorized to adopt emergency rules, as necessary. Such emergency rules to remain in effect for 6 months, subject to renewal.

**Section 2** contains a severability provision that permits a provision to be held invalid without affecting the validity of the remainder of the act.

**Section 3** provides that the act becomes effective upon becoming a law.



**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

The bill provides that proceeds collected for security assessments must be remitted to the Department of Revenue for deposit into the State Homeland Security Trust Fund.

## D. Other Constitutional Issues:

**Congressional Foreign Commerce Power**

Article I, Section 8 of the United States Constitution grants Congress the power to regulate commerce with foreign countries.<sup>11</sup> 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.<sup>12</sup> Courts hold state or local laws to be unconstitutional under the Commerce Clause if they impair the federal government's ability to speak with "one voice" internationally.<sup>13</sup> 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.<sup>14</sup>

In order to be constitutional under Article I, Section 8, the taxes set forth in SB 1788 cannot prevent the federal government from "speaking with one voice" when regulating commercial relations with foreign governments. More importantly, "a state tax at variance with federal policy will violate the 'one voice' standard if it either implicates foreign policy issues which must be left to the Federal Government or violates a clear federal directive."<sup>15</sup> In determining compliance with 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.

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<sup>11</sup> U.S. Const., Art. I, s. 8, cl. 3 (The power "to regulate commerce with foreign nations, and among the several states and with the Indian Tribes.").

<sup>12</sup> See, *Michelin Tire Corp. v. Wages*, 423 U.S. 276 (1976).

<sup>13</sup> See, *Barclays Bank PLC v. Franchise Tax Board*, 512 U.S. 298, 328 (1994).

<sup>14</sup> See, *id.*; see also, *Wardair Canada v. Florida Dept. of Revenue*, 477 U.S. 1 (1986).

<sup>15</sup> See, *Florida Dept. of Revenue*, 2005 WL 373941 (Fla. 2005), relying on, *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 194 (1983).

The federal government currently restricts travel to terrorist nations. Because the federal government has already acted in this regard, efforts by states to further restrict travel or trade may be held unconstitutional under the Commerce Clause.

### **Federal Law Preemption: Prohibitions on Collecting Certain Fees and Head Charge for Commercial or General Aviation**

Under the Federal Anti-Head Tax Act, a state, a political subdivision of a state, and any person who has purchased or leased an airport under 49 U.S.C. s. 47134, may not levy or collect a tax, fee, head charge, or other charge on the following:

- An individual traveling in air commerce;
- The transportation of an individual traveling in air commerce;
- The sale of air transportation; or
- The gross receipts from that air commerce or transportation.<sup>16</sup>

The bill levies a take-off fee, together with a charge per pound for aircraft engaged in travel to terrorist states. Neither of these fees are likely to be found an impermissible head tax as prohibited by 49 U.S.C. 40116;<sup>17</sup> however, usually such fees are designated as “landing fees,” which are explicitly permitted under federal law, rather than the “take-off” fees provided by this bill, which apparently are not permitted under federal law.<sup>18</sup>

### **Agricultural Export Tax**

The Import-Export Clause<sup>19</sup> generally forbids state duties on exports without congressional consent.<sup>20</sup> However, states may exact generally applicable, nondiscriminatory taxes even if those taxes fall on imports or exports.<sup>21</sup> Such exactions are valid as long as they do not interfere with the following policy concerns: “1) maintaining federal uniformity in foreign commercial relations; 2) preventing the diversion to the states revenue generated by imported goods; and 3) maintaining harmony among the states by preventing states from taxing goods flowing through seaboard states' ports to (or from) other states.”<sup>22</sup>

<sup>16</sup> 49 U.S.C. 40116(b). There are two exceptions provided: 49 U.S.C. 40116(c) and 49 U.S.C. 40117.

<sup>17</sup> See, e.g., *New England Legal Fndn. v. Mass Port Authority et al.*, 883 F. 2d 157 (1989) (stating that landing fees and charges per pound of aircraft weight did not violate the Federal Anti-Head Tax Act).

<sup>18</sup> Landing fees are specifically permitted under 49 U.S.C. 40116(e)(2), whereas “take-off fees” are not. This subsection does, however, also permit the imposition of “other service charges” for use of airport facilities, provided that they are reasonable. It is likely that a “take-off fee,” which is conceptually similar to a “landing fee,” could be included under this “other service charge” exemption contained in the law.

<sup>19</sup> The Import-Export Clause, Art. I, s.10, cl. 2 of the U.S. Constitution states: “No state shall, without the Consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it’s [sic] inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and such laws shall be subject to the revision and controul [sic] of the Congress.”

<sup>20</sup> 6 Fla. Tax Review (Explaining in fn. 337, “The language of the Export Clause forbids “Imposts or Duties on Imports or Exports,” but presumably the term “imposts” is limited to imports, so that “duties” is left for exports.)

<sup>21</sup> 71 Am. Jur. 2d State and Local Taxation Sec. 176, *relying on, Auto Cargo, Inc. v. Miami Dade County*, 237 F.3d 1289 (11<sup>th</sup> Cir. 2001).

<sup>22</sup> See, *Michelin Tire Corp. v. W.L. Wages*, 423 U.S. 276, 285-286.

The federal government has imposed its own agricultural sanctions against the terrorist nations identified by the Department of State. For example, the Bureau of Industry and Security (BIS), Department of Commerce approves exports to Cuba.<sup>23</sup> By attempting to impose additional sanctions, this bill may, in violation of *Michelin* as well as general Commerce Clause and Import-Export Clause jurisprudence, impede federal uniformity on foreign commercial affairs.

### **Educational Reporting Requirements**

The bill requires educational institutions to file detailed reports regarding any trips to terrorist nations. In addition to this disclosure, the bill requires *all those* seeking to travel to terrorist nations to submit a travel disclosure form detailing the traveler's name, mailing address, social security number or alien resident number, date of birth, date on which Florida residency was established, telephone number, and signature of the individual requesting travel services to a terrorist nation. The bill appears to require students to provide this information as well. If so, the disclosure of students' names or other identifying information about students may violate FERPA.

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

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

None.

### **B. Private Sector Impact:**

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

### **C. Government Sector Impact:**

The bill imposes new responsibilities on several state agencies.

DOR is required to collect the security assessment against charter aircraft and vessels. To implement these requirements, DOR estimates it will cost \$106,500 during FY 2005-2006, and \$48,000 per year thereafter. The DOR fiscal analysis assumes the tax will be registered, reported and paid through an internet application.

DACS is required to develop a "Terrorist Travel Disclosure Form," collect such forms when submitted by persons traveling to terrorist nations, maintain a database of information from those forms, annually assess terrorist national travel providers,<sup>24</sup> and

<sup>23</sup> 15 C.F.R. s. 730.1 (2003); see also, Michael C. McClintock, *Selling Agricultural Commodities to Cuba—What Happens Next?*, 17 St. Thomas L. Rev. 225 (2004).

<sup>24</sup> DACS reports that s. 559.928, F.S., will need to be amended to authorize this new assessment.

levy a surcharge on cattle exported to terrorist nations from Florida ports. DACS reports that it will need \$1.58 million in FY 2005-06 and at least \$1 million for the following 2 years to fund these new responsibilities.

Subsection (5) requires universities or community colleges with the State University System and Florida Community College System that organize or direct the organization of a cultural or education trip to any terrorist nation using charter transportation to provide the Florida Department of Education a detailed report concerning the trip.

DCF will be required to monitor the “Travel to and Commerce with Terrorist Nations” database established by DACS, to determine whether program recipients have violated this act. DCF reports this requirement creates additional workload responsibilities and raises computer systems interface concerns. According to DCF, data matching could be onerous, particularly in tracking individuals who have similar names or those whose Social Security numbers were not available when they disclosed their intent to travel to DACS. Moreover, currently contracted providers determine eligibility for refugee services. This bill does not provide access to the database for these providers.

Currently, DCF uses the Florida system to collect and process client information. A new data exchange mechanism would have to be created to allow communications with the DACS terrorist travel database. In addition, DCF would need to develop a mechanism to divert funding derived from unpaid benefits to the Department of Elderly Affairs’ public assistance programs.

DCF reports the overall fiscal impact would be \$396,573—\$328,842 to adjust the FLORIDA system and \$67,731 for the cost of paper and printing the additional travel advisory for each Request for Assistance.

The bill also has a cost benefit to one state agency. The bill provides that state funds derived from the denial or discontinuance of benefits be redirected to DEA for elderly nutrition programs.

## **VI. Technical Deficiencies:**

Section (3)(a) of the bill defines terrorist states as those that are “presently” deemed state sponsors of terrorism by the U.S. Department of State. The use of the word “presently” in this section could imply that the list should include those states that are categorized by the State Department at the time the bill is enacted; however, other language in the section, especially regarding the Department of Revenue’s obligation to update the list of terrorist states, suggests another interpretation. It may be helpful to amend this language to provide that the act’s provisions will apply for travel to a state that is deemed a state sponsor of terrorism at the time an individual or entity regulated by the bill travels to such state. This language change would accommodate the potentially fluctuating nature of the list of terrorist states.

**VII. Related Issues:**

The bill requires that savings resulting from the disqualification of certain individuals from benefits programs be redirected to elderly nutrition programs. This would require a federal waiver to apply to the 100 percent federally funded refugee assistance and food stamp benefits and the 60 percent federally funded Medicaid benefits. DCF reports it is unlikely that the federal agencies will permit their savings to be redirected in this manner.

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

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## **VIII. Summary of Amendments:**

None.

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