

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 605 CS Travel To and Commerce With Terrorist Nations
SPONSOR(S): Rivera and others
TIED BILLS: HB 827 **IDEN./SIM. BILLS:** SB 1788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Domestic Security Committee</u>	<u>6 Y, 2 N, w/CS</u>	<u>Garner</u>	<u>Newton</u>
2) <u>Agriculture Committee</u>	<u>Withdrawn</u>	<u></u>	<u></u>
3) <u>Finance & Tax Committee</u>	<u>Withdrawn</u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u>8 Y, 0 N</u>	<u>Garner</u>	<u>Bussey</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 605 w/CS places assessments on terrorist nation-related travel services provided in Florida, and levies a surcharge on the direct sale of cattle from Florida to terrorist nations (Terrorist nations include Cuba, Iran, Libya, North Korea, Sudan and Syria). Specifically, the bill:

- Assesses a \$100 flat fee plus \$0.04 per aircraft pound on each instance of air charter to a designated terrorist nation, and imposes a 10 percent assessment on the contracted value of waterborne charter travel to a designated terrorist nation.
- Imposes an annual assessment on Florida travel service providers authorized by the U.S. Department of the Treasury Office of Foreign Assets Control to provide terrorist nation-related travel services in an amount sufficient to cover the costs of implementation of the program. The assessment is to be in an amount sufficient to cover the costs of the program.
- Levies a 10 percent surcharge on the final sale price of beef or dairy cattle transshipped from a Florida airport or seaport for direct sale to a designated terrorist nation.

The Department of Revenue (DOR) is required to develop a disclosure form to be filled out by persons traveling to a terrorist nation, and delivered to the department by a travel service provider. Information from the forms is used to populate a Terrorist Nations Travel Database created by DOR that must be monitored by DOR and the Department of Children and Family Services (DCFS) to determine eligibility for certain benefits.

In addition, the bill makes eligibility for certain Refugee Resettlement Grant, Food Stamp, and Medicaid program benefits contingent on otherwise eligible persons refraining from travel to a designated terrorist nation. Violation by persons not already receiving benefits results in disqualification for a period of 1 to 5 years. Violation by persons receiving benefits results in disqualification for an indefinite period. DCFS is required to develop a waiver form to be signed by benefits applicants. The waiver form must explain the disqualification provisions and be signed by an applicant indicating that he or she attests, under penalty of perjury, that no travel to a terrorist nation has occurred, and that such travel will be reported if it occurs.

State universities and public community colleges organizing educational or cultural trips to terrorist nations are required to file reports to the Department of Education describing the trips in specified detail. The bill provides a monetary penalty for violation of its requirements ranging from \$5,000 to \$10,000 per violation. The bill also provides rule making authority for the Department of Revenue to enforce the collection of the assessments provided. Provisions of the bill held to be invalid are deemed severable.

The bill is expected to have a fiscal impact on multiple state agencies and the private sector. For details, see the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT section of the analysis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill requires the Department of Revenue (DOR) to enforce the collection of assessments and penalties related to travel to nations designated as terrorist nations, and requires the Department of Agriculture and Consumer Services (DACS) to levy a surcharge on cattle sold directly to terrorist nations. As part of this program, the DOR is required to create a Terrorist Nations Travel Database populated with information submitted by persons traveling to terrorist nations. The Database is to be monitored by the Department of Children and Family Services in order to enforce disqualifications of certain persons from government benefits.

Ensure Lower Taxes

The bill requires security assessments against charter air and seagoing travel providers that are hired to carry passengers to designated terrorist nations. For air travel, there is a \$100 flat assessment and an additional assessment of \$0.04 per landed aircraft pound on each trip to a terrorist nation. For water travel, there is an assessment of 10 percent of the value paid for each charter to a terrorist nation. In addition, each Florida travel service provider that is authorized by the federal government to provide travel services to terrorist nations is required to pay an annual assessment sufficient to cover the costs of administering the regulation.

Safeguard Individual Liberty

The bill requires travel service providers to collect personal information from persons who travel to a terrorist nation and to submit that information to DOR to be input in a database that is monitored by the Department of Children and Family Services. In addition, the bill disqualifies certain persons who travel to terrorist nations from benefits to which they are otherwise entitled.

Empower Families

The bill may impede family members from visiting one another where one family member is a refugee residing in and receiving assistance in Florida and the other remains in a place designated as a terrorist nation.

Maintain Public Security

The bill places barriers before certain benefit recipients wishing to travel to terrorist nations, and creates a database of personal information regarding persons who travel to terrorist nations.

B. EFFECT OF PROPOSED CHANGES:

Terrorist Nations

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism. The countries are designated "terrorist nations" under the requirements of three laws: section 6(j) of the Export Administration Act; section 40 of the Arms Export Control Act; and section 620A of the Foreign Assistance Act. Sanctions resulting from designation under these acts include:

- A ban on arms-related exports and sales.

- 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.
- Prohibitions on economic assistance.
- Imposition of miscellaneous financial and other restrictions, including:
 - Requiring the United States 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 United States;
 - Authority to prohibit any U.S. person from engaging in a financial transaction with a terrorism-list government without a Treasury Department License;
 - Prohibition of Defense Department contracts above \$100,000 with companies controlled by terrorist-list states.

Currently, the State Department designates six countries under these authorities: Cuba, Iran, Libya, North Korea, Sudan and Syria. Cuba is the only designated country in the Western Hemisphere.

Charter Travel to Terrorist Nations

Title 31 of the Code of Federal Regulations, Chapter V, prescribes the ability and legal method to travel to and do business with countries such as Cuba, Iran, Libya, North Korea, Sudan and Syria. The ability to travel to these countries varies as do the requirements for and the ability to be authorized or licensed by the Office of Foreign Assets Control (OFAC) within the United States Department of the Treasury for such travel.

Because of its proximity to Florida and the demographic makeup of the state, Cuba is likely the only listed terrorist nation receiving regular charter air and vessel travelers from Florida. According to OFAC, there are currently approximately 148 entities in Florida that are licensed under the Cuban Assets Control Regulations (31 C.F.R. Part 515) to provide travel, carrier, or remittance forwarding services to persons under the jurisdictional control of the United States. OFAC administers the regulatory program that permits certain transactions involving property in which Cuba has an interest with respect to the provision of travel services, carrier services, and the forwarding of remittances.

The Service Provider Program of the Cuban Assets Control Regulations prohibit 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. Such property includes, but is not limited to: Cuban passports; Cuban visas; food, lodging, and ground transportation in Cuba; remittances where the beneficiary is a Cuban national; and any Cuba travel-related services. Consistent with OFAC's enforcement functions, 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. Criminal penalties for violation of the Regulations range up to 10 years in prison, and \$1 million in corporate and \$250,000 in individual fines. OFAC may impose civil penalties up to \$55,000 per violation.

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 the institution. Such licenses are valid for multiple

trips over a two-year period. Specific licenses may also be issued (in some instances with extended validity permitting multiple trips) for educational activities that do not take place under the auspices of accredited United States academic institutions. Religious organizations are also eligible for multiple-trip two-year specific licenses authorizing travel-related transactions by their representatives in connection with a program of religious activities in Cuba.

Other travel categories for which specific licenses may be issued include, but are not limited to: free-lance journalism; activities of recognized human rights organizations and other humanitarian projects that directly benefit the Cuban people; certain public performances, clinics, workshops, exhibitions and athletic and other competitions; certain non-commercial activities of private foundations or research or educational institutions; and travel-related transactions involving informational materials, donations of food or exportations of goods licensed by the Department of Commerce.

The Refugee Resettlement Program

The following description of the Refugee Resettlement Program is excerpted from the United States Department of Health and Human Services website. For more information, see that site at: <http://www.acf.dhhs.gov/programs/orr/programs/refrp.htm>

The United States Department of Health and Human Services (HHS) has responsibility for the domestic program of refugee resettlement services which includes cash and medical assistance to arriving refugees and a broad range of social services for refugees who have been present in the United States for less than five years. The Office of Refugee Resettlement at HHS provides funding for refugee services programs through state governments as well as through non-governmental organizations.

The U.S. resettlement program is designed to function as a public-private partnership, with non-governmental organizations (NGOs) playing a key role. NGOs participate in every step of the process, working in partnership with the federal and state agencies as well as with each other to provide effective and coordinated services to refugees. Some of the NGOs seek church groups and volunteers from local communities to provide a variety of services, and to contribute clothing and household furnishings to meet the needs of arriving refugees. In addition, they often become mentors and friends of refugees, providing orientation to community services, and providing supportive services such as tutoring children after school, and teaching families how to shop, among other things. Volunteers come from the local community and may be citizens or refugees and immigrants who arrived earlier.

Other private non-profit agencies in the partnership are refugee organizations, known as Mutual Assistance Associations (MAAs), many of which have national networks in place. These organizations are an important source of emotional support to refugees as well as services, and they provide a place for refugees to connect with their ethnic culture through holiday and religious celebrations, and a way to meet their countrymen who now live in the United States.

The U.S. program operates according to a worldwide processing priority system established to provide orderly management and processing of refugee applications. UNCHR-referred cases and those identified by United States Embassies are designated Priority One. Priority Two is reserved for groups of special concern identified by the U.S. Department of State, and selection is based on individual circumstances. Priority Three provides access to close family members (spouses, unmarried children, and parents) of persons residing permanently in the United States.

Resettlement benefits for refugees arriving in the United States are provided through a combination of public and private funding. Public funding is largely coming from the federal government; however, some states provide additional funds. The private non-profit NGOs that place refugees in communities raise considerable funding privately, and recruit volunteers, contributing generously to the cost of resettlement.

Ongoing benefits for the newly arrived refugees include transitional cash assistance, health benefits, and a wide variety of social services, provided through Office of Refugee Resettlement grants. Transitional cash assistance benefits are provided to refugees on the basis of family composition. Single adults and childless couples are eligible for Refugee Cash Assistance for up to eight months after arrival. They are expected to be employed by that time. However, families with children under 18 years of age are eligible for the mainstream welfare program that assists unemployed families for a longer time period of two years. The amount of cash assistance depends on family composition, and is established by the individual states.

Health benefits follow similar rules. Singles and childless couples are eligible for Refugee Medical Assistance for their first eight months in the United States. However, families with minor children are eligible for the Medicaid program which is the mainstream health benefits program for unemployed and low-income families in the United States. While there are certain federal requirements that state welfare programs must follow, states also have flexibility and options in designing their programs. Therefore, the cash and medical benefits available in each state vary in terms of time limits and benefits.

Social services provided through a refugee services system are available for the first five years after arrival in the United States, although the program of services is structured to promote employment and self-sufficiency much earlier than five years. Services are also provided following job placement to ensure continued employment, and to enhance opportunities for advancement. There are continuing services beyond five years on a limited basis for those refugees who are identified as difficult to employ. They are assisted in overcoming barriers and learning new skills that will improve their chances for employment.

However, the range of social services goes far beyond employment services. The resettlement process, as observed by service providers, has created awareness of many other social needs of refugees during their early years in the United States that need to be addressed. English language training is, of course, a basic service offered to all refugees. Other important services are targeted at community and family strengthening, cultural orientation, ethnic community development, family counseling, and social adjustment.

Refugees who are elderly or disabled receive benefits from the Social Security Administration, the same as U.S. citizens. However, recent changes by Congress limit the eligibility of non-citizens to their first seven years in the United States. Time limits for non-citizens do not apply once they become U.S. citizens. The refugee program offers citizenship classes to assist refugees who wish to study for the citizenship test.

Over the years, the United States has accepted a number of unaccompanied refugee minors. These children are placed in special foster care programs in certain states, and are provided the regular foster care services of that state, as well as supplemental services that are culturally and linguistically appropriate. As the children near adulthood, they are assisted in the transition to independent living and with career choices. The primary focus of the Unaccompanied Minors Program has always been to work toward reuniting these children with relatives whenever possible.

Another special services program was established to provide a comprehensive program of support for domestic centers and programs for victims of torture. This ORR program provides direct services to victims of torture, including treatment and rehabilitation, social and legal services, and research and training for health care providers to enable them to treat the physical and psychological effects of torture. Currently the ORR is funding 17 separate programs for victims of torture in the United States.

Two factors have added significantly to the effectiveness of refugee services. One is the use of case managers by refugee services programs who track the progress of each case and refer refugees to the services they need, when they need them. The use of case managers has been a strong factor in increased self-sufficiency. Secondly, ORR regulations were revised five years ago to require services

be provided by bi-lingual, bi-cultural service providers. This has had a great impact on easing the integration of refugees into American society.

Currently, there are no state-imposed restrictions on eligibility for the Refugee Resettlement, Refugee Cash Assistance, Refugee Medical Assistance, Medicaid, or Food Stamps benefits programs for anyone who travels to a designated terrorist nation.

Effects of HB 605 w/CS

Assessments on Charters Providing Travel to Terrorist Nations

HB 605 w/CS creates s. 288.857, F.S., the "Commerce with Terrorist Nations Act," which provides for a security assessment against every person or entity that directly transports persons via a charter aircraft or charter vessel that originates in Florida and arrives in an identified terrorist state. The assessment levied against charter aircraft on each takeoff is \$100 regardless of the size of the aircraft, and an additional \$0.04 per thousand pounds of landed aircraft weight. The assessment levied against a charter vessel is 10 percent of the total consideration due for the chartered travel. The assessment is in addition to any other taxes or assessments required by law. Persons operating under contract with a federal or state authority, performing duties of employment for the federal government, or performing active military duty are exempt from the provisions of the bill.

The bill defines a terrorist nation as any state, country, or nation presently deemed a state sponsor of terrorism by the United States Department of State (State Department). The bill requires the Florida Department of Revenue (DOR) to document states or nations identified as terrorist states by the State Department, specify those states in rule, and annually update the list contained in the rule.

Persons or entities subject to the charter travel security assessment are required by the bill to remit the assessment to DOR in a manner prescribed by that department. DOR is required to transfer the assessment amounts, less administrative costs, to a State Homeland Security Trust Fund to be created by the linked HB 827. The bill limits the amount deducted by DOR for administrative costs to 3 percent of the total revenues collected. The deducted amounts may only include those costs reasonably attributable to the collection of the assessment. The amount that is transferred to the Trust Fund must include all accrued interest and delinquency penalties. The bill requires DOR to administer, collect, and enforce the security assessment using the same procedures that are provided for the administration, collection, and enforcement of the general sales tax pursuant to ch. 212, F.S., unless otherwise provided in the bill. DOR is granted the authority to adopt the rules necessary to administer the provisions of the bill, and to adopt emergency rules. Emergency rules adopted under the bill's provisions remain effective for 6 months after the date of adoption and may be renewed while full rulemaking procedures are pending.

Mandatory Submission of Travel Information

HB 605 w/CS requires that any of Florida's state universities or state community colleges organizing or directing the organization of a cultural or educational trip to a terrorist nation utilizing charter transportation must provide certain documents to the Florida Department of Education (DOE). These documents include:

- A report specifying the number of students (both degree seeking and non-degree seeking), employees, and non-employees participating in the trip;
- A detailed itinerary of the trip, including hotel and restaurant accommodations, planned excursions, and scheduled meetings with governmental authorities or individuals or organizations not affiliated with the terrorist nation;
- A complete accounting of all costs associated with the trip and a complete accounting of the use or deposit of all moneys received in payment for the trip;

- The certificates of incorporation of any entity or entities contracted to organize or facilitate the trip; and
- A statement confirming adherence to all provisions of the federal government's Cuban Assets Control Regulations provided in 31 C.F.R. s. 515.536.

The university or community college must provide the information to DOE no later than 30 days after the completion of the trip. The bill authorizes DOE to promulgate rules necessary to administer these provisions.

Eligibility for Federal Refugee Resettlement Grant Benefits

HB 605 w/CS provides that, effective January 1, 2006, any person aged 18 to 65 who has been a permanent Florida resident for less than 5 years, and who has not been determined by the Florida Medicaid program to be either disabled or pregnant, is ineligible to participate in certain refugee benefit programs if it is determined by the Florida Department of Children and Family Services (DCFS) that the person has traveled to a designated terrorist nation. The disqualification applies to the Refugee Resettlement Program, the Refugee Cash Assistance Program, the Refugee Medical Assistance Program, and the Food Stamp and Welfare Programs, and is for a minimum period of 1 year, or until the 5-year residency requirement has been met, whichever period is greatest. This travel restriction does not apply to persons traveling as part of active military duty, federal employment, or under federal contract or state authority.

Terrorist Travel Disclosure Forms and the Terrorist Nations Travel Database

HB 605 w/CS requires DOR to develop a "Terrorist Travel Disclosure Form" that will inform a Florida resident seeking travel to an identified terrorist nation that such travel could result in ineligibility for the Refugee Resettlement, Refugee Cash Assistance, Refugee Medical Assistance, Medicaid and Food Stamp programs. The form must include 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 person requesting travel services to a terrorist nation. The form must also contain a sworn statement attesting to the validity of an "application." It is unclear from the text of the bill what application is referred to in this sworn attestation.

Travel service providers in Florida authorized by OFAC to provide terrorist nation-related travel services must submit disclosure forms completed by their customers to DOR no later than 15 days after travel has commenced. DOR is required to enforce an annual assessment against the travel service providers authorized by OFAC, in an amount sufficient to fulfill the costs associated with administering the regulation. Currently, there are approximately 147 such providers in Florida. The assessment is to be deposited into the General Revenue Fund.

DOR is also required, by January 1, 2006, to create a "Terrorist Nations Travel Database" to handle all of the information contained in the terrorist travel disclosure forms submitted by the affected authorized travel service providers. The database must be made available to any state agency responsible for determining initial or continuing eligibility for Refugee Resettlement, Refugee Cash Assistance, Refugee Medical Assistance, Medicaid or Food Stamp program benefits, and for informing program recipients that have had eligibility for these benefits terminated. DCFS is required to monitor the database on a monthly basis to ensure that benefit recipients are in compliance with the act.

Utilization of Funds Available After Disqualification for Benefits

HB 605 w/CS requires that, effective January 1, 2006, all state funds derived as a result of the denial or discontinuance of benefits caused by the provisions of this bill must be redirected to the Department of Elderly Affairs for elderly nutrition programs. The bill prohibits using any of the redirected funds to replace existing funding for elderly nutrition programs. The bill specifies that all funds redirected to elderly nutrition programs are intended to expand funding and access to those programs.

Terrorist Travel Waiver Form and Penalties for Noncompliance

The bill requires DCFS, no later than January 1, 2006, to include 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 waiver form must inform applicants of the disqualification from eligibility for such programs and the penalties for noncompliance that will result from travel to terrorist countries. The waiver form must contain a sworn statement and agreement, signed by the applicant under penalty of perjury, that he or she will inform DCFS of any travel or intention to travel to a terrorist nation while receiving any benefits provided under the Refugee Resettlement, Food Stamp, and Medicaid programs.

Any benefit recipients aged 18 to 65 who have been residents of Florida for less than five years who are found to be in violation of "the eligibility requirements associated with travel to terrorist nations, will be ineligible for the Refugee Cash Assistance, Refugee Medical Assistance, Medicaid and Food Stamp programs for an indefinite period.

Terrorist Commerce Surcharge

The bill requires DACS, no later than January 1, 2006, to begin levying a 10 percent terrorist commerce surcharge on the final sale price of any beef or dairy cattle transshipped from any Florida airport or seaport for direct sale to any terrorist nation. The collections from this surcharge must be used by the University of Florida's Institute of Food and Agricultural Sciences to fund its Citrus Research Initiative, the Canker Genome Project, and the Citrus Abscission and Mechanical Harvest Project.

Implementation, Penalties, and Severability

The bill requires the Department of Children and Family Services, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Agriculture and Consumer Services to submit a report to the Legislature describing the actions necessary to implement the provisions of the bill. The report must include written comments from the agencies' federal counterparts concerning any requirements necessary to implement the provisions of the bill, including needed waivers, and it must contain the recommended actions that need to be taken by the respective agencies, and fiscal notes.

Travel services providers that violate the Sellers of Travel Act are subject to a fine of \$5,000 per violation to be imposed by DACS. Any entity providing travel services in violation of any provision of the Travel to and Commerce With Terrorist Nations Act are subject to a \$10,000 fine per violation imposed by DACS. The bill provides for severability of any of its provisions that are held to be invalid.

Exemptions

The provisions of the bill do not apply to:

- Any person operating by contract with a federal authority or an authority of the State of Florida;
- Any person in performance of active military duty;
- Any person employed with the federal government in the performance of his or her official duties;
- Any person operating by contract with a private entity in the exercise of emergency medical care and treatment, with the sole and express purpose of retrieving an individual in the terrorist nation for emergency medical care and treatment outside the terrorist nation.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.857, F.S., creating the "Travel To and Commerce With Terrorist Nations Act"; providing for assessments against certain activities related to travel to terrorist nations; providing

for disqualification of certain people who travel to terrorist nations for certain benefit programs; providing penalties for violation of the Act.

Section 2. Amends s. 559.935, F.S., providing that sellers of travel authorized by OFAC to provide terrorist nation-related travel services to qualifying individuals are exempt from the provisions of ss. 559.928, 559.929, 559.9295, 559.931, and 559.932.

Section 3. Provides for severability of portions held invalid.

Section 4. Provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	<u>FY 05-06</u>	<u>FY 06-07</u>	<u>FY 07-08</u>
1. Revenues:			
Recurring to GR*	Indeterminate	Indeterminate	Indeterminate

**See FISCAL COMMENTS section, below.*

2. Expenditures:

a. Non-Recurring GR*

<i>DOR</i>	
Expenses	\$ 60,767
OCO	\$ 5,500

<i>DCFS</i>	
Programming to the FLORIDA system	\$ 328,842
Waiver form	\$ 67,731

<u>Total non-recurring</u>	<u>\$ 462,840</u>
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b. Recurring GR*

<i>DOR</i>			
3 FTE			
Salaries	\$ 90,586	\$ 90,586	\$ 90,586
Expenses	\$ 65,686	\$ 65,686	\$ 65,686

<u>Total recurring</u>	<u>\$ 156,272</u>	<u>\$ 156,272</u>	<u>\$ 156,272</u>
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<u>Total Operating Costs</u>	<u>\$ 619,112</u>	<u>\$ 156,272</u>	<u>\$ 156,272</u>
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**See DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR and FISCAL COMMENTS sections of the analysis below.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 605 w/CS requires DOR to collect an assessment from travel services providers in Florida that are authorized by the U.S. Treasury Department's Office of Foreign Assets Control to provide travel services to designated terrorist nations. The assessment is to be in an amount sufficient to cover DOR's costs of implementing the provisions of the bill. Based on DOR's estimates of its annualized costs of implementing the provisions of this bill, approximately \$156,272, and the bill's requirements that the costs be spread evenly across affected travel service providers subject to the assessment, the annual assessment per provider is expected to be slightly more than \$1,000. This list is based on DOR's reported cost estimate divided by the number of travel service providers that are listed on OFAC's current list of terrorist nation-related travel providers subject to Florida jurisdiction. The current list includes 147 current and 1 delinquent travel providers subject to Florida jurisdiction. In addition, charter air and water travel businesses in Florida will be required to pay a security assessment for each instance of travel to a terrorist nation that is provided to their customers. This assessment as it applies to air charters is \$100 flat plus \$0.04 per pound of landed weight. As it applies to vessel charters, the assessment is 10 percent of the value of the consideration paid for the charter. Any entity providing travel services in violation of the bill's provisions may be subject to a fine of \$5,000-\$10,000 per violation.

Charter businesses providing travel to terrorist nations and other travel service providers, like travel agents, that provide terrorist nation-related travel services will incur administrative and recordkeeping costs and burdens in complying with the bill's requirements to process forms and account for assessments due.

In addition, beneficiaries of certain resettlement benefits programs will lose benefits if they are found to have traveled to a terrorist nation. According to the Department of Children and Family Services, "The proposed restrictions could unintentionally harm individuals who travel to terrorist nations for purely personal or humanitarian reasons. This could include a Cuban born child who returned to Cuba to visit an ailing grandparent, or an Afghani refugee who returned to Afghanistan to reunite with her child found in a refugee camp in Pakistan and attempt to obtain refugee status for that child."

D. FISCAL COMMENTS:

Department of Revenue

The bill provides for the levy of a security assessment on charter transportation for trips originating in Florida and arriving in an identified terrorist nation. The security assessment is levied on charter aircraft on each takeoff at the rate of \$100, plus \$0.04 per pound of the aircraft's maximum takeoff weight. Also, a security assessment is levied on charter vessels on each assessable transaction or incident at a rate of 10 percent of the total consideration received. Any person or entity that transports persons via charter aircraft or vessel shall remit the assessment to DOR in a manner prescribed by the department. In preparing its cost analysis, DOR assumed that the assessment would be registered, reported, and paid through an internet application. Based on that assumption, DOR estimated that professional services for requirements gathering and Web site design, development, testing and deployment would cost \$42,500, that site-hosting hardware would cost \$10,000, and that yearly web site hosting services (daily transmission, maintenance & translation) would cost \$4,000 per month, or \$48,000 for the year.

This bill also requires DOR to develop a disclosure form that includes the name, mailing address, social security number or alien resident number, date of birth, place of birth, date of FL residency established, telephone number and signature of an individual requesting terrorist nation-related travel services. This form must also contain a sworn statement attesting to the validity of the application, and the form must

be available on the DOR web site. In addition, the bill provides that DOR shall create, operate and maintain a Terrorist Nations Travel Database. The database is populated from information received from the disclosure form received from authorized travel service providers. According to DOR, the data will be input manually from paper. The department will require 3 FTE's to sort and extract mail, screen, image and data capture the forms.

DOR will also develop a Taxpayer Information Bulletin (TIP) that will be posted to its web site. Some mailing cost could be incurred depending on the number of TIPs mailed.

Department of Agriculture and Consumer Services

The bill levies a 10 percent surcharge on beef and dairy cattle exports to terrorist nations to be collected by DACS. Because the value of total cattle exports to terrorist nations in the future is unknown, the revenue generated by the surcharge is indeterminate. According to DACS, its Division of Animal Industry will be able to administer the surcharge with existing staff that is currently responsible for handling cattle exportation.

Department of Children and Family Services

Under the provisions of the bill, persons who are otherwise eligible for Refugee Resettlement Grant and Food Stamp and Medicaid benefits become ineligible for those benefits upon traveling to a designated terrorist nation. The bill requires that the funds made available because of such disqualifications be redirected to the Department of Elderly Affairs for elderly nutrition programs. According to DCFS, it is doubtful that the number of individuals on assistance under the designated programs who would become ineligible is high enough to result in a benefit to the Department of Elder Affairs elderly nutrition programs great enough to offset the costs to DCFS in implementing the provisions of the bill.

DCFS comments that implementation of the bill's provisions could complicate the work of the department in modernizing and redesigning its Economic Self-Sufficiency Program Office to improve efficiency and effectiveness. DCFS projects that it will require \$396,573 in programming changes to its FLORIDA system, and to create the Terrorist Travel Waiver Form required by the bill. According to DCFS, the bill requires modifications to the FLORIDA system to collect and process information, and create a new data exchange with the Terrorist Nations Travel Database created by DOR. In order to have the ability to determine the amount of benefits saved for diversion to the Department of Elder Affairs, DCFS would be required to modify the programming of its system. In addition, new programming will be required to enable DCFS to track the persons who are disqualified from receiving benefits pursuant to the bill.

According to DCFS, it would require a federal waiver before benefit money remaining after disqualification of the recipient could be redirected to elderly nutrition programs. Refugee assistance and Food Stamps are 100 percent federally funded, while Medicaid benefits are 60 percent federally funded. According to DCFS, "It is unlikely that the federal agencies would allow their savings to be redirected in this manner. Further, the benefit costs are drawn down entitlements that, if not utilized for the intended purposes, are simply not received by the state." According to the department, the affected grants cannot be reassigned by state law.

Department of Education

The Department of Education anticipates that there will be an impact on the state university and community college systems; however, the department has been unable to quantify the impacts.

Revenues

The Revenue Estimating Conference has determined that the total revenue generated by the bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Congressional Foreign Commerce Power and the Commerce Clause

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.¹ 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.² 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.³

A 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 listed 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. However, Congress has not taken the opportunity to examine the issues presented in this bill and has not expressed acquiescence in the imposition by states of security assessments on travel to terrorist nations or the levying of surcharges on exported cattle. Neither has Congress affirmatively granted states the authority to impose such assessments and surcharges.

If a court finds that the taxable activities addressed in the bill or the provision of benefits disqualified in the bill are subject to the protection of the Commerce Clause and that the taxes and ineligibility for benefits are 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.

Preemption

States are generally free to legislate in areas not controlled by federal regulation. Federal regulation of a particular subject, however, preempts state regulation related to the same subject. In Barnett Bank of Marion County v. Nelson, 517 U.S. 25 (1996), for instance, the United States Supreme Court held that a federal statute which granted small-town banks the authority to sell insurance preempted a Florida Statute which prohibited such sales. Even where a state law does not directly conflict with a federal regulation, courts may still invalidate the law if they find that Congress has intended to

¹ See Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976).

² Barclays Bank PLC v. Franchise Tax Board, 512 U.S. 298, 328 (1994).

³ See id.; Wardair Canada v. Florida Dept. of Revenue, 477 U.S. 1 (1986); Gerling Global Reinsurance, *supra*.

occupy the entire field.⁴ This is true even where the state law seems to reinforce or compliment the federal regulation. Courts tend to look at whether the scheme of federal regulation is comprehensive.⁵ They may also consider whether a federal agency has been created to administer the law in a particular field. If a federal agency has been established, courts will likely deem preempted all matters within the jurisdiction of the agency.

The United States Department of the Treasury's Office of Foreign Assets Control regulates the travel to, and provision of travel-related services for travel to, designated terrorist nations in general, and Cuba in particular. If a court found that Congress had preempted the regulation of travel to terrorist nations, portions of this bill governing such travel could be held preempted to the federal government and declared invalid.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority for the Departments of Education and Revenue for the purposes of implementing the provisions of the bill. The bill also grants emergency rulemaking authority to the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue suggests that the bill should provide a more specific reference to the United States Department of State document used by DOR as the source for compiling and maintaining the list of terrorist states. The list appears annually in a document titled *Patterns of Global Terrorism*, which is compiled and submitted to Congress in compliance with 22 U.S.C. section 2656f(a). The Department of Revenue also recommends that the bill language be amended to allow DOR to publish the listing of identified terrorist states via the Florida Administrative Weekly, as opposed to providing the listing within an administrative rule. This would allow for immediate updates of the listing by avoiding the required administrative procedures for amending a rule.

The disqualification periods provided in the bill for refugee resettlement benefits and Food Stamp and Medicaid benefits is unclear. In subsection (10) of the Act, refugee resettlement program recipients who travel to terrorist nations are barred indefinitely from Medicaid, Food Stamp, Refugee Cash Assistance, and Refugee Medical Assistance, while in subsection (6) of the Act, persons who have been residents of Florida for less than five years and travel to a terrorist nation are disqualified from the benefits for a period of one year or until the five year threshold is reached, whichever period is longer. It is also unclear from the language of the bill how establishment of residency is to be determined for the purposes of enforcing the Act.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 13, 2005, the Committee on Domestic Security adopted one amendment and then reported the bill favorably as amended with a committee substitute. The amendment:

- Provides that the Department of Revenue will be responsible for developing a terrorist travel disclosure form, maintain a terrorist nations travel database, and collecting assessments from certain travel service providers instead of the Department of Agriculture and Consumer Services.
- Specifies that a 10 percent surcharge shall only be levied on cattle sales that are made *directly* to terrorist nations.
- Exempts from the bill's provisions those persons operating by contract with a private entity in the exercise of emergency medical care and treatment, with the sole and express purpose of retrieving an individual in the terrorist nation for emergency medical care and treatment outside the terrorist nation.

⁴ Campbell v. Hussey, 368 U.S. 297 (1961).

⁵ Pennsylvania v. Nelson, 350 U.S. 497 (1956).

- Exempts from current registration and bond requirements those sellers of travel that are authorized by the Office of Foreign Assets Control to provide terrorist nation-related travel services to qualifying individuals.