

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 727 Diplomatic Relations with Cuba

**SPONSOR(S):** Diaz, Jr.; Nunez; and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SM 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	9 Y, 4 N	Renner	Kiner
2) State Affairs Committee	11 Y, 5 N	Moore	Camechis

### SUMMARY ANALYSIS

On December 17, 2014, President Obama announced diplomatic and economic policy changes to begin normalizing the relationship between the United States (U.S.) and Cuba. Generally, the changes include, but are not limited to:

- Allowing travel to Cuba for authorized purposes;
- Loosening the travel restrictions on travel agents and airlines;
- Raising the limits on and authorizing certain categories of remittances to Cuba;
- Allowing U.S. financial institutions to open correspondent accounts at Cuban financial institutions to ease the processing of authorized transactions;
- Authorizing certain transactions with Cuban nationals located outside of Cuba; and
- Allowing activities related to telecommunications, financial services, trade, and shipping.

This memorial expresses profound disagreement with the decision of the President to restore full diplomatic relations with Cuba, and opposes the opening of a Cuban consulate or any diplomatic office in Florida. Furthermore, the memorial urges Congress to uphold the embargo until the dictatorship is no longer in power and basic human and civil rights are again recognized in Cuba.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Background**

In 1898, Spain relinquished control of Cuba to the U.S. with the Treaty of Paris, and in 1902, the U.S. granted Cuba its independence but retained the right to intervene only to preserve Cuban independence and stability.<sup>1</sup> Subsequently, in 1934, Cuba and the U.S. entered into a treaty, which, among other things, leased Guantanamo Bay naval base to the U.S.<sup>2</sup>

In 1959, Cuba's authoritarian regime, led by Fidel Castro, assumed power by force over the Fulgencio Batista regime. After Castro declared that Cuba was a socialist state in 1961, he developed close ties with the Soviet Union that lasted for the next 30 years.<sup>3</sup> Castro worked to advance geopolitical goals of the Soviet Union, funded violent insurrectional activities, and participated in foreign interventions.<sup>4</sup>

The relationship between the U.S. and Cuba deteriorated when the Cuban government expropriated U.S. properties, moved toward the adoption of a one-party communist system,<sup>5</sup> and hiked taxes on U.S. imports.<sup>6</sup> In response, the U.S. imposed an exports embargo on Cuba in 1960, and officially severed diplomatic relations with the Cuban government in 1961.<sup>7</sup> The embargo included commercial, economic, and financial restrictions. Currently, the Cuban embargo is enacted through various federal laws, including the Cuban Assets Control Regulations,<sup>8</sup> the Export Administration Act,<sup>9</sup> and the Cuban Liberty and Democratic Solidarity Act of 1996.<sup>10</sup>

##### **Cuban Assets Control Regulations**

The Cuban Assets Control Regulations (Regulations), implemented by the Department of the Treasury's Office of Foreign Assets Control (OFAC), was issued in 1963 in response to certain hostile actions by the Cuban government.<sup>11</sup> They are still in force today and affect all U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the U.S., and all branches and subsidiaries of U.S. organizations throughout the world.<sup>12</sup> The goal of the sanctions is to isolate the Cuban government economically and deprive it of U.S. dollars.<sup>13</sup> The Regulations generally prohibit the following:<sup>14</sup>

- Products, technology, or services from being exported from the U.S., except for publications, informational materials, certain donated food, and certain goods licensed for export or re-export by the U.S. Department of Commerce (medicine and medicinal supplies, food, and agricultural

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<sup>1</sup> U.S. Department of State Background Notes on Cuba, November, 2011, *available at* <http://www.state.gov/outofdate/bgn/cuba/191090.htm> (last visited February 23, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Council on Foreign Relations, *available at* <http://www.cfr.org/cuba/us-cuba-relations/p11113> (last visited February 23, 2015).

<sup>7</sup> U.S. Department of State Background Notes on Cuba, November, 2011, *available at* <http://www.state.gov/outofdate/bgn/cuba/191090.htm> (last visited February 23, 2015).

<sup>8</sup> 31 CFR Part 515.

<sup>9</sup> 15 CFR, parts 730-774.

<sup>10</sup> 22 U.S. Code, §6021-6091.

<sup>11</sup> U.S. Department of the Treasury Overview of the Cuban Assets Control Regulations, 2001, *available at* <http://www.treasury.gov/resource-center/sanctions/Documents/tab4.pdf> (last visited February 23, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

commodities). This prohibition includes dealing in or assisting the sale of goods or commodities to or from Cuba, even if done entirely offshore.

- Importing Cuban-origin goods or services, either directly or through third countries.
- Transactions involving property in which Cuba or a Cuban national has an interest.
- Buying from or selling to Cuban nationals, whether they are physically located in Cuba or doing business elsewhere on behalf of Cuba.
- Cuban interests involving assets and accounts.
- Cuban gift parcels that exceed a certain amount.

Additionally, only persons with certain licenses are allowed to engage in travel-related transactions in Cuba.<sup>15</sup> Also, U.S. persons aged 18 or older may send to the household of any individual in Cuba “individual-to-household” cash remittances of up to \$300 per household in any consecutive three-month period, provided that no member of the household is a senior-level Cuban government or senior-level Cuban communist party official.<sup>16</sup>

The Regulations have been amended numerous times. Specifically, the Regulations were amended under President Obama in 2009 to promote democracy and human rights in Cuba by easing travel restrictions to facilitate greater contact between separated family members in the U.S. and Cuba and by increasing the flow of remittances and information to the Cuban people.<sup>17</sup> The Regulations were amended again under President Obama in 2011 to increase people-to-people contact, support civil society in Cuba, enhance the free flow of information to, from, and among the Cuban people, and help promote their independence from Cuban authorities.

## **Export Administration Regulations**

The Department of Commerce, through the Export Administration Regulations (EAR), implements the Export Administration Act of 1979,<sup>18</sup> which regulates the export or re-export of U.S.-origin dual-use goods, software, and technology.<sup>19</sup> The Department of Commerce also imposes certain export and re-export controls for foreign policy reasons, notably against countries designated by the U.S. Secretary of State as state sponsors of international terrorism. In 1982, Cuba was officially designated as a country to have repeatedly provided support for acts of international terrorism.<sup>20,21</sup>

## **Cuban Liberty and Democratic Solidarity Act of 1996**

The Cuban Liberty and Democratic Solidarity Act of 1996, among other things, requires the President, upon determining that a democratically-elected government is in power in Cuba, to designate a U.S.-Cuba Council to:<sup>22</sup>

- Ensure coordination between the U.S. government and the private sector in responding to change and promoting market-based development in Cuba;
- Establish periodic meetings between the U.S. and Cuban private sectors for the purpose of facilitating bilateral trade; and

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Federal Register’s final rule on Cuban Assets Control Regulations, 31 CFR part 515, *available at* <https://www.federalregister.gov/articles/2015/01/16/2015-00632/cuban-assets-control-regulations> (last visited February 23, 2015).

<sup>18</sup> 50 U.S. Code, App 2401-2420.

<sup>19</sup> U.S. Department of State website on “A Resource on Strategic Trade Management and Export Controls,” *available at* <http://www.state.gov/strategictrade/overview/> (last visited February 23, 2015).

<sup>20</sup> U.S. Department of State website on “State Sponsors of Terrorism,” *available at* <http://www.state.gov/j/ct/list/c14151.htm> (last visited February 23, 2015).

<sup>21</sup> Cuba is considered a terrorist nation by three federal laws: the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act.

<sup>22</sup> Library of Congress Summary for the Cuban Liberty and Democratic Solidarity Act of 1996, Section 203, *available at* <https://www.govtrack.us/congress/bills/104/hr927/summary> (LIBERTAD) Act of 1996 ( version) - GovTrack.us (last visited February 24, 2015).

- Requires the President, once he has sent Congress a determination that a transition or a democratically-elected government is in power in Cuba, to report to appropriate congressional committees on the assistance provided to Cuba.

Only after the President has sent a determination to Congress is the President authorized to suspend the U.S. economic embargo against Cuba.<sup>23</sup> Furthermore, the President is authorized to terminate the embargo **only** when a democratically-elected government is installed.<sup>24</sup> However, a suspension or termination of the embargo will cease to be effective upon passage by Congress of a joint resolution disapproving of such action.<sup>25</sup>

## **Cuban Political Conditions and Human Rights**

Under Castro, fundamental freedoms have been restricted, political opponents have been repressed, and human rights have been violated. Raul Castro replaced his brother in 2008 as chief of state, president of Cuba, and commander-in-chief of the armed forces.<sup>26</sup> Cuba, as a totalitarian communist state, controls most aspects of Cuban life through the Communist Party, the government bureaucracy, and the state security apparatus.<sup>27</sup>

The government restricts freedom of movement, both domestically and internationally, freedom of speech, freedom of the press, and freedom of assembly.<sup>28</sup> The government maintains complete control over all forms of mass media, including newspapers, radio, and television.<sup>29</sup>

## **Diplomatic and Economic Changes to Cuba Sanctions**

On December 17, 2014, President Obama announced diplomatic and economic changes to begin normalizing the relationship between the U.S. and Cuba. Generally, the changes include, but are not limited to:<sup>30</sup>

- Allowing travel to Cuba for authorized purposes;
- Loosening the travel restrictions on travel agents and airlines;
- Raising the limits on and authorizing certain categories of remittances to Cuba;
- Allowing U.S. financial institutions to open correspondent accounts at Cuban financial institutions to ease the processing of authorized transactions;
- Authorizing certain transactions with Cuban nationals located outside of Cuba; and
- Allowing activities related to telecommunications, financial services, trade, and shipping.

The U.S. Department of the Treasury and the U.S. Department of Commerce were directed to revise the Cuban Assets Control Regulations and the Export Administration Regulations to implement the changes. The regulations became effective on January 16, 2015.

In addition to the above economic and diplomatic changes, President Obama, in his statement on the Cuba policy changes,<sup>31</sup> directed the Secretary of State to review Cuba's designation as a State Sponsor of Terrorism. Moreover, after the government of Canada hosted discussions with the Cuban government and the U.S. government, and at the urging of Pope Francis, it was arranged for Alan Gross, a USAID sub-contractor, to be released in exchange for three Cuban spies. Gross was

<sup>23</sup> *Id.* at section 204

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> U.S. Department of State Background Notes on Cuba, November, 2011, *available at* <http://www.state.gov/outofdate/bgn/cuba/191090.htm> (last visited February 23, 2015).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> U.S. Department of the Treasury Fact Sheet on the Regulatory Amendments to the Cuba Sanctions, *available at* <http://www.treasury.gov/press-center/press-releases/Pages/j19740.aspx> (last visited February 24, 2015).

<sup>31</sup> President Obama's statement on Cuba Policy Changes can be found on The White House Office of the Press Secretary's website, *available at* <http://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes> (last visited February 24, 2015).

imprisoned for five years and was released on humanitarian grounds. Only after Gross was released did President Obama announce the economic and diplomatic changes. A U.S. intelligence asset jailed in Cuba for 20 years was also released. Lastly, President Obama stated that the U.S. will reestablish an embassy in Havana in the coming months.

### **Effect of Proposed Changes**

This memorial expresses profound disagreement with the decision of the President of the United States to restore full diplomatic relations with Cuba and opposes the opening of a Cuban consulate or any diplomatic office in Florida. Furthermore, the memorial urges Congress to uphold the embargo until the dictatorship is no longer in power and basic human and civil rights are again recognized in Cuba.

Copies of the memorial will be sent to the President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the U.S. Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

#### **B. SECTION DIRECTORY:**

Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.