

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SR 1064

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Garcia

SUBJECT: United States Department of State's List of Foreign Terrorist Organizations

DATE: February 14, 2022 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Caldwell</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Lloyd</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 1064 expresses the Florida Senate's commitment to a stable and prosperous Colombia. This assistance includes Florida's support for peace, security, and prosperity and opposition to terrorist groups and those who give aid to terrorist groups. CS/SR 1064 further expresses the Florida Senate's opposition to the Revolutionary Forces of Colombia (FARC)'s removal from the designated terror organization list. The resolution provides that the Florida Senate will use all means possible, including divesture, to impede ties, commercial or otherwise, with FARC.

II. Present Situation:

The United States Department of State, specifically the Secretary of State, is authorized to administer and enforce the immigration and nationality laws of the nation, including those laws which affect the nationality of a person not in the United States¹ which also includes the designation of organizations as foreign terrorist organizations. A foreign terrorist organization has been defined in federal law to mean an organization that includes two or more individuals who engage in any of the following activities which are considered terrorist activities:

¹ Immigration and Nationality Act, 8 U.S.C. §1104(a), (2021 Ed. Supp. and Supp. II (1/31/2021)), available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1104&num=0&edition=prelim> (last visited January 3, 2022).

- Commit or incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;²
- Endorse or espouse terrorist activity or persuades others to endorse or espouse terrorist activity or to support a terrorist organization;
- Has received military-type training³ from or on behalf of an organization that, at the time the training was received, met the definition of a terrorist organization;
- Is the spouse of or a child of an individual who would be inadmissible to the United States, if this activity occurred within the last five years; or
- Is a member of a terrorist organization unless the individual can demonstrate by clear and convincing evidence that he or she should not have reasonably known that the organization was a terrorist organization.⁴

If the Secretary of State determines that an organization has engaged in terrorist activity as described above or terrorism as defined in the *Foreign Relations Authorization Act*,⁵ the Secretary is statutorily authorized to designate the organization or the individual as a terrorist organization or a terrorist. Such a designation would require notice to Congress, publication in the Federal Register, and the notification to financial institutions to freeze assets of the designated organizations and individuals.⁶

Besides these designations, the United States may use other classifications to identify and attempt to prohibit the entry of certain individuals into the country or inhibit their growth and access to financial and other resources. Identifying an individual as *Specially Designated Global Terrorist* (SDGT) will result in notifications to the public and international financial community impeding the individual's or an organization's ability to conduct transactions in this country, including access to any property and banking interests.⁷ The Department of the Treasury maintains several databases of individuals and companies which are updated regularly and individuals and organizations have the ability to seek judicial review of their placement on the lists.⁸

Executive Order 13224, As Amended, and Other Presidential Authorities

Following a series of terrorist attacks in the United States, a national emergency was declared by President George Bush on September 23, 2001, under Executive Order 13224 (EO), as

² A terrorist activity is defined as those actions which are covered by the definition of a "terrorist activity" under 8 U.S.C. §1182(a)(3)(B), available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim> (last visited January 3, 2022).

³ Military type training received from or on behalf of an organization which meets the definition of a terrorist organization must meet the requirements of section 2339(D)(c)(1) of Title 18.

⁴ 8 U.S.C. §1182(a)(3)(B)(2018 Ed. Supp. and Supp. II (1/31/2021)).

⁵ Under the *Foreign Relations Act*, (Pub. L. No. 100-204, s. 140, 22 U.S.C. 2656f), terrorism is defined as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents. International terrorism is defined to specifically mean involving citizens or territory of more than one country.

⁶ 8 U.S.C. §1189(a)(2018 Ed. Supp. and Supp. II (1/31/2021)).

⁷ United States Department of the Treasury, *Frequently Asked Questions – Specially Designated Nationals and SDN List*, available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1631> (last visited January 3, 2022).

⁸ United States Department of the Treasury, Office of Foreign Assets Control – Sanctions Programs and Information, available at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> (last visited January 3, 2022).

amended,⁹ pursuant to the powers vested in the President of the United States by the Constitution and the laws of the United States of America, including but not limited to, the *National Emergencies Act*,¹⁰ *International Emergency Economic Powers Act (IEEPA)*¹¹, section 5 of the *United Nations Participation Act of 1945, as amended*¹² (*UNPA*), and several United Nations Security Council Resolutions.¹³ This EO was issued to address continuing threats to the national security, foreign policy, and the economy of the United States.

The IEEPA further authorizes the President to regulate and exert control over the nation's domestic and international economic transactions during an emergency, in consultation with Congress, and in alignment with the provisions of the *National Emergencies Act*.¹⁴ The initial and ongoing authorizations under both of these Acts are published, when declared by the President or other authorized officials, in the *Federal Register*. The threats identified in that specific executive order have been reviewed annually by Congress and continued each year since its first renewal in 2002 in accordance with the notice and timing provisions of the *IEEP*.¹⁵

National Emergencies Act

Under the *National Emergencies Act*, the President is required to consult with Congress in advance in every possible instance and to continue that consultation process as long as such authorities are exercised by the President. In exercising these authorities, the President must also provide:

- Regular periodic reports to Congress on the use of any Presidential authorities pursuant to the *Executive Order* as to the justification, in whole or in part, for the action;
- Explanations as to why the circumstances constituted an unusual and extraordinary threat which had its source in whole or substantial part outside the United States, to the national security, foreign policy, economy of the United States;

⁹ Executive Order 13224, as amended, was issued on September 23, 2001 by then-President George W. Bush. The Executive Order declared a national emergency to deal with foreign terrorists and foreign terrorist organizations who posed a grave danger to the United States, its national security, foreign policy, and its economy. The Executive Order sought to block the assets of individuals and entities who provided support, services, or assistance to terrorists or terrorist organizations, including their affiliates, front organizations, associates, and subsidiaries.

¹⁰ National Emergencies Act (originally enacted as Pub. L. 94-412, Sept. 14, 1976); 50 U.S.C. §1601, *et seq.*, (2018 Ed. Supp. and Supp. II (1/31/2021)), available at

<https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter34&edition=prelim> (last visited December 29, 2021).

¹¹ International Emergency Economic Powers Act (IEEP); 50 U.S.C. §1701(2018 Ed. and Supp. II (1/31/2021)), available at <https://uscode.house.gov/browse/prelim@title50/chapter35&edition=prelim> (last visited January 4, 2022).

¹² United Nations Participation Act (UNPA) (originally enacted as Pub. L. 89-206, Sept. 28, 1965); 22 U.S.C. §287c, (2018 Ed. and Supp. II (1/31/2021)), available at

<https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter7/subchapter16&edition=prelim> (last visited December 29, 2021).

¹³ The United Nations Security Council Resolutions (UNSCR) which were in effect concurrently or overlapped with that of different EO's noticed national emergency time periods were UNSCR 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the sanctions contained within, and UNSCR 1363 of July 30, 2001, which established the mechanism by which the sanctions of the various UNSCRs could be monitored.

¹⁴ International Emergency Economic Powers Act (IEEP), *Supra*, note 11 at §1703.

¹⁵ 50 U.S.C. §1622(d) (2018 Ed. and Supp. II (1/31/2021)), available at <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title50-section1622&num=0&saved=L3ByZWxpbUB0aXRzZTUwL2NoYXB0ZXIzNA%3D%3D%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGI0bGU1MC1jaGFwdGVyMzQ%3D%7C%7C%7C0%7Cfalse%7Cprelim> (last visited December 27, 2021).

- Rationale for why the authorities to be exercised and the actions to be taken deal with those circumstances;
- Description of why the President believes the actions are necessary to deal with those circumstances;
- Identification of any foreign countries with respect to where any such actions are to be taken and why such actions are to be taken with respect to those countries.¹⁶

National emergencies declared by the President are immediately transmitted to Congress and published in the *Federal Register*.¹⁷ An annual report is also sent from the Secretary to the Speaker of the House of Representatives and the Senate Committee on Foreign Relations by April 30th which provides a detailed assessment of each foreign country's acts of foreign terrorism which were considered of major significance in the Secretary's opinion, including acts of international terrorism which Congress was notified about in the past five years pursuant to terrorist activity where United States Citizens were killed in areas administered by either Israel or the Palestinian Authority, and any other information the Secretary determines should be included in the report.¹⁸

Revolutionary Forces of Colombia – (FARC)

In November 2021, the Secretary released changes to the foreign terrorist designations list and among those modifications was the revocation of a Colombian group, the *Revolutionary Forces of Colombia (FARC)*, designation as a Foreign Terrorist Organization (FTO); a designation held since October 1997.¹⁹ FARC had previously sought removal of the designation which had been denied. Such statuses are reviewed on a five-year cycle.²⁰

Formed in 1964, FARC was Colombia's largest rebel group known as a guerrilla organization focused on overthrowing the Colombian government, redistributing the country's wealth, and fighting inequality.²¹ The organization was also known for drug trafficking, murder, bombings, extortions, and kidnappings. The European Union had removed FARC from its equivalent designated terrorist list following the signed peace agreement in 2016 having only placed FARC on the list in 2002 when the European Union designated terrorist list originated.²²

¹⁶ Periodic follow-up reports to Congress are expected once every succeeding six months when an exercise of authorities has occurred. These reports are considered supplemental to any reports required under the *National Emergencies Act*. See 50 U.S.C. §1703(c) (2018 Ed. Supp. and Supp. II (1/31/2021)).

¹⁷ 50 U.S.C. 1621 (2018 Ed. Supp. and Supp. II. (1/31/2021)); available at <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter34/subchapter1&edition=prelim> (last visited December 28, 2021).

¹⁸ 22 U.S.C. §2656f (Annual country reports on terrorism)(2018 Ed. Supp. and Supp. II (1/31/2021)) available at [https://uscode.house.gov/view.xhtml?req=\(title:22%20section:2656f%20edition:prelim](https://uscode.house.gov/view.xhtml?req=(title:22%20section:2656f%20edition:prelim) (last visited December 29, 2021).

¹⁹ Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52650, 52650 (October 8, 1997).

²⁰ Designation of Foreign Terrorist Organizations, 8 U.S.C. §1189(a)(4)(C) (2018 Ed. Supp and Supp. II (1/31/2021)), available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1189&num=0&edition=prelim> (last visited December 29, 2021).

²¹ Who are the FARC?, BBC.com, available at <https://www.bbc.com/news/world-latin-america-36605769> (last visited December 29, 2021).

²² Sputnik International, *EU Suspends Sanctions Against FARC After Colombia Signs Peace Deal With Rebels*, (September 27, 2016), available at <https://sputniknews.com/20160927/eu-suspends-sanctions-farc-1045733938.html> (last visited December 29, 2021).

A ceasefire and Peace Accord were finally signed in 2016 after several failed attempts, and as a condition of that Peace Accord, FARC demobilized and disarmed itself. Some dissidents disagreed with the Peace Accord and retained the FARC name and continued with the illegal activities and re-armed themselves. Those members of FARC who disarmed formally dissolved FARC and have changed its name to “Comunes” or as translated in English to “Commons,” in January 2021 in an attempt to move away from a guerilla group with the same name and its past.²³ The new organization has been granted seats in Congress in accordance with the Peace Accord and elections will occur in March 2022.²⁴ Prior commanders and leaders once involved with the disbanded FARC, however, are not excused from their past crimes and remain on the terrorist list for both their past and any future activities.²⁵

Additional organizations, the *Revolutionary Armed Forces of Colombia – People’s Army (FARC – EP)* and *Segunda Marquetalia*, which developed after the Peace Accord and have continued to mobilize and engage in terrorist activity according to the Department of State, have been found responsible for the killing of former FARC members other community leaders.²⁶ *Segunda Marquetalia* has been identified as another organization, along with *FARC-EP* involved in the kidnappings and ransoming of government employees, attempted killings of political leaders, and engaging in mass destruction and assassinations.²⁷ These two organizations were added to the *Foreign Terrorist Organizations List* as FARC’s designation was revoked on November 30, 2021.²⁸ The leaders of the newly added organizations, Luciano Marin Arango, Hernan Dario Valasquez Saldarriaga, Henry Castellanos Garzon, Nestor Gregorio Fernandez, Miguel Santanilla Botache, and Euclides Espana Caicedo have also been newly designated as SDGTs under EO 13224, as amended.²⁹

Florida’s Excluded Vendor and Scrutinized Companies Provisions

As organizations are designated as terrorist organizations at the national level, the State of Florida is also identifying organizations to ensure such entities and individuals are barred from receiving state material support or resources as state vendors.³⁰ To be eligible to conduct business with the State of Florida:

- Vendors must register with Florida Department of State’s Division of Corporations and the MyFloridaMarketPlace;
- Have a copy of their E-Verify status and current W-9 filed with the Department of Financial Services, and

²³ Radina Gigova and Fernando Ramos, *Colombia’s FARC Party is Changing its Name to ‘Comunes,’* CNN.com, available at <https://www.cnn.com/2021/01/25/world/colombia-farc-changes-name-intl/index.html> (last visited December 29, 2021).

²⁴ *Id.*

²⁵ Antony J. Blinken, United States Department of State, *Revocation of the Terrorist Designations of the Revolutionary Armed Forces of Colombia (FARC) and Additional Terrorist Designations*, November 30, 2021, available at:

<https://www.state.gov/revocation-of-the-terrorist-designations-of-the-revolutionary-armed-forces-of-colombia-farc-and-additional-terrorist-designations/> (last visited December 28, 2021).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 775.33, F.S.

- Not be listed on the State of Florida’s Convicted, Suspended, or Discriminatory List.³¹

Standard contract provisions in all state contracts prohibit the use of any vendors, suppliers, contractors, subcontractors, or consultants who appear on the state’s suspended vendor list, convicted vendor list, or discriminatory vendor list.³² Those categories are explained in the chart provided below. Entities and individuals have the right to request an administrative hearing about placement on the discriminatory vendor list.³³

Type of Vendor	Statutory Citation	Explanation
Convicted Vendor	287.133, F.S.	A finding of guilt of a public entity crime ³⁴ , with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or nolo contendere plea.
Discriminatory Vendor	287.134, F.S.	A determination of liability by a state or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion has been successfully made against the vendor.
Scrutinized Companies	287.135, F.S.	Prohibition against contracting with certain scrutinized companies on the Scrutinized Company List and: <ul style="list-style-type: none"> - Engaged in a Boycott of Israel; - Contracted greater than \$1 million with activities in the Sudan or in the Iran Petroleum Energy Sector List; or - Engaged in business operations in Cuba or Syria.
Suspended Vendor	287.1351, F.S.	A vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its duties under those contracts. A suspended vendor may not submit a bid, proposal, or reply to an agency or enter into a renewal after being placed on the suspended vendor list.

³¹ See Department of Management Services, *Doing Business with the State of Florida Checklist*, https://www.dms.myflorida.com/content/download/147572/983242/Doing_Business_with_the_State_of_Florida_-_Vendor_Communication_7.2.19.pdf (last visited December 29, 2021).

³² See Sample State Term Contract, Section 5; Compliance with Laws (State Term Contract), (copy of Department of Management Services’ Standard State Term Contract on file with Committee on Military and Veterans Affairs, Space, and Domestic Security as of January 4, 2022). See also copies of executed state term contracts at *State Contracts and Agreements*, Department of Management Services, [State Contracts and Agreements / State Purchasing / Business Operations / Florida Department of Management Services - DMS \(myflorida.com\)](#) (last viewed January 3, 2022).

³³ Section 287.134(3)(a), F.S.

³⁴ A public entity crime is defined as a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or public subdivision or any other state or with the United States, including but not limited to any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation. See section 287.133(g), F.S.

The state has also defined statutorily “terrorist” and “terrorist organization” by cross referencing its definition to the federal definition of a “terrorist organization” under section 219 of the Immigration and Nationality Act (INA).³⁵

Under the federal definition, whichever organizations or individuals named by the Secretary of State to the Designation of Foreign Terrorist Organizations are the entities that meet the statutory definition. The designation takes effect upon publication in the *Federal Register* and is effective until revoked with a chance for the organization or individual to seek a review upon petition at specified intervals.³⁶

Ongoing Divestiture of State Funds

In addition to the procurement and purchasing protections, current state law also directs the State Board of Administration to identify to the best of its abilities all scrutinized companies in which public funds are held, including those countries which are designated state sponsors of terror.³⁷

III. Effect of Proposed Changes:

CS/SR 1064 provides historical background between the United States and Colombia within the context of FARC’s role in that history through a series of opening whereas clauses.

CS/SR 1064 declares the Florida Senate’s opposition to the removal of FARC from the list of designated terrorist organizations and condemns any regime in any country which gives aid to terrorist groups in Colombia through providing training, weapons, funding, or by hosting those groups within its borders.³⁸ The resolution explicitly declares Florida’s opposition to any further efforts to change the status of countries such as Cuba or Iran in a like manner.

CS/SR 1064 further expresses the state’s interest in using all means possible, including divestiture to impede ties, commercial or otherwise, with FARC.

CS/SR 1064 recognizes that a stable and prosperous Colombia serves the needs of the Colombian people and the interests of Florida in Latin America.

³⁵ The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that:–

(A) The organization is a foreign organization;

(B) The organization engages in a terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22, U.S.C.) or retains the capability and intent to engage in terrorist activity; and

(C) The terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

³⁶ Designation of Foreign Terrorist Organizations, 8 U.S.C. §1189 (2018 Ed. Supp. and Supp. II (1/31/2021)).

³⁷ Section 215.473(2) and (3), F.S.

³⁸ On November 30, 2021, the Department of State revoked the designation of the Revolutionary Forces of Colombia (FARC) as a foreign terrorist organization under the Immigration and Nationalization Act (INA) and as a Specially Designated Global Terrorist (SDGT) pursuant to Executive Order 13224, as amended. See Revocation of the Terrorist Designations of the Revolutionary Armed Forces of Colombia (FARC) and Additional Terrorists Designations, A Press Statement by Anthony J. Blinken, Secretary of State, November 30, 2021, <https://www.state.gov/revocation-of-the-terrorist-designations-of-the-revolutionary-armed-forces-of-colombia-farc-and-additional-terrorist-designations/> (last visited December 27, 2021). The Department of State added the designation of FTO and SDGT to the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP) and Segunda Marquetella. The respective leaders of these organizations were also added to the same lists.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that keeping FARC on the designated terrorist organization list would help Colombia reduce and eliminate public integrity fraud, corruption, murder, torture, kidnapping, and the gross violation of human rights, the private sector in Colombia may impact on improved living and working conditions in Colombia thus creating a better environment for commercial markets that were free from terrorist organizations. This change in working and living conditions in Colombia may have a trickle-down effect on goods and services received from Colombia in the United States in the extended future. The impact on the United States' private sector is unknown.

C. Government Sector Impact:

When the United States removed FARC from the designated terrorist organization list, supporters announced the action as a step forward for the now re-branded, re-named, political group, COMMON. The action was seen as a step which would allow them to be eligible for aid and assistance from the United States as the group continues work on the 2016 peace agreement. Being eligible for grants and assistance may accelerate the implementation of certain elements of the peace agreement. Those impacted by the change also identified the stigmatization of prior combatants and that revocation would assist with the continued assimilation of these individuals into the community.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on February 1, 2022:

The Senate Committee on Military and Veterans Affairs, Space, and Domestic Security adopted a CS/SR 1064 which:

- Reflected on FARC's removal from the Foreign Terrorist Organizations list;
- Expressed the Florida Senate's opposition to any future change in the current status of Iran and Cuba by the Department of State;
- Condemned any country which gives aid to Columbia through training, weapons, or hosting troops within their border;
- Encouraged the Florida Senate to use all means possible to impede ties, commercial or otherwise with FARC; and
- Recognized that a stable and prosperous Colombia serves the Colombian people first, but also Florida's interests in Latin America.

B. Amendments:

None.