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 Military and Veterans Affairs, Space, and Domestic Security

BILL:	SM 1710
INTRODUCER:	Senator Evers
SUBJECT:	Declaration of War Against Global Islamic Terrorist Organizations
DATE:	February 19, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanders	Ryon	MS	**Pre-meeting**
2.			RC	

I. Summary:

SM 1710 urges the Congress of the United States and the President of the United States to declare that a war exists between the United States and al-Qaeda, the Islamic State of Iraq and the Levant (ISIL), and all other global Islamic terrorist organizations that similarly engage in acts of terrorism against the United States and its people and against allied and friendly governments and their populations.

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 federal government to act on a particular subject.

II. Present Situation:

Declarations of War

The United States Constitution authorizes Congress to declare war.[1] Pursuant to that power, Congress has enacted eleven formal declarations relating to five different wars in the nation's history, the most recent being those that were adopted during World War II.[2] Congress' power to declare war has also been understood to include the power to issue authorizations for the use of military force (AUMF).[3] Since the Second World War, the United States Congress has only adopted AUMFs.[4]

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[1] U.S. Const., art. I, s. 8, cl. 11.

[2] Jennifer K. Elsea and Richard F. Grimmett, Congressional Research Service, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications* (April 18, 2014), available at https://www.fas.org/sgp/crs/natsec/RL31133.pdf (last visited Feb. 19, 2016).

[3] *Id*. at 23.

[4] *Id*.

Two factors led to the shift away from formal declarations of war. First, no formal declaration of war has been delivered by diplomatic channels since 1945.[5] Nations have increasingly attempted to maintain diplomatic and commercial relationships to the extent possible during conflicts, with the historical tendency to abrogate treaties replaced by a tendency to deem treaties as remaining in effect to the maximum possible extent.[6] Second, a formal declaration of war is the operative event in many statutes to confer special powers on the President, many of which directly affect domestic concerns.[7] These special powers include:

- Interdiction of trade;[8]
- Ordering manufacturing plants to produce arms and seizing them if they fail to comply;[9]
- Taking control of the transportation system;[10] and
- Taking control of communications systems.[11]

The most vital powers relevant to conducting a military operation, however, are triggered by either a declaration of war or an AUMF. Both types of resolutions eliminate the time limits imposed on military deployments by the War Powers Resolution[12] and authorize the capture and detention of enemy combatants through the duration of hostilities.[13] Since the September 11, 2001 terrorist attacks, the U.S. Congress has issued two AUMFs. The first was in 2001 to authorize the U.S. Armed Forces to act against those responsible for 9/11 and the second was in 2002 to authorize the use of force against Iraq.[14]

Foreign Terrorist Organizations

The Secretary of State is responsible for designating Foreign Terrorist Organizations (FTOs), as directed by the Immigration and Nationality Act (INA).[15] The INA defines terrorism as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.[16] A terrorist organization is further defined in the INA as any group practicing, or which has significant subgroups which practice, international terrorism.[17] Designations of an FTO can be done through the INA or under the authority of Executive Order (E.O.) 13224.[18]

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[5] *Id.*
[6] *Id.*
[7] *Supra* note 2, at 25. Some of these powers are also triggered in the event the President declares a national emergency.
[8] 50 U.S.C. s. 1702.
[9] 10 U.S.C. s. 2538.
[10] 10 U.S.C. s. 2644.
[11] 47 U.S.C. s. 606.
[12] *Supra* note 2, at 25.
[13] *Id*, citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (O'Connor, J., plurality opinion) and *Hamdi v. Rumsfeld*, 542 U.S. 507, 588-89 (2004) (Thomas, J., dissenting).
[14] *Supra* note 2.
[15] The National Counterterrorism Center, *2016 Counterterrorism Calendar*, at 4 (2016), available at http://www.nctc.gov/site/pdfs/ct_calendar.pdf (last visited Feb. 18, 2016).
[16] 22 U.S.C. s. 2656f(d)(2).
[17] 22 U.S.C. s. 2656f(d)(3).
[18] *Supra* note 15, at 5.

To be designated as an FTO under the authority of the INA, a group must:

- Be a foreign-based organization;
- Engage in terrorist activity, or retain the capacity to engage in terrorist activity; and
- Threaten the security of U.S. nationals or the national defense, foreign relations, or economic interests of the United States.[19]

Under the authority of E.O. 13224,[20] a wider range of entities can be designated by either the Department of State or the Department of the Treasury as Specially Designated Global Terrorists (SDGTs).[21] SGDTs are individuals or entities that have committed, or pose a significant threat of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.[22]

Terrorist designations play a critical role in the fight against terrorism and are an effective means of curtailing support for terrorist activities and pressuring groups to get out of the terrorism business. Designations support U.S. government efforts to curb terrorist finance, deter donations and contributions, block economic transactions, and implement international obligations under UN Security Council Resolution 1373.[23] The U.S. Department of State currently lists 59 groups designated FTOs.[24]

Al-Qaeda and the Islamic State of Iraq and the Levant (ISIL)

Formed by Osama Bin Ladin in 1988, al-Qaeda[25] was comprised of Arabs who fought in Afghanistan against the Soviet Union, and declared its goal as the establishment of a pan-Islamic caliphate[26] throughout the Muslim world.[27] The group's cohesiveness has diminished in recent years because of leadership losses from counterterrorism pressure in Afghanistan and Pakistan.[28] However, al-Qaeda remains committed to conducting attacks in the United States and against American interests abroad and could seek to reconstitute its remnants in Afghanistan.[29]

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[19] *Id.*
[20] See U.S. Department of State, Office of the Coordinator for Counterterrorism, *Executive Order 13224* (Sept. 23, 2001), available at http://www.state.gov/j/ct/rls/other/des/122570.htm (last visited Feb. 18, 2016).
[21] *Supra* note 15, at 5.
[22] *Id.*
[23] *Id.* UN Security Council Resolution 1373 called for UN member states to work together to suppress terrorist financing, share intelligence on terrorism, monitor borders, and "implement...the relevant international conventions and protocols to combat terrorism". Resolution available at: http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20(2001).pdf (last visited Feb. 19, 2016)
[24] U.S. Department of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations* (2016), available at http://www.state.gov/j/ct/rls/other/des/123085.htm (last visited Feb. 19, 2016).
[25] *Id.* Al-Qaeda was designated as an FTO on October 8, 1999.
[26] A "caliphate," a state governed by a "caliph," refers to the religious and political successors of Muhammad. Disputes over succession form the basis of the early fissures in Islam. Gerhard Bowering, *The Princeton Encyclopedia of Islamic Political Thought* 202 (1st ed. 2013).
[27] *Supra* note 15, at 18.
[28] *Id.*
[29] *Id.*

Abu Musab al-Zarqawi, a previous leader of al-Qaeda, separated from the organization in 2002 to create al-Qaeda in Iraq (AQ-I).[30] Following Zarqawi's death in June 2006, AQ-I leaders repackaged the group as a coalition called the Islamic State of Iraq (ISI).[31] ISI lost its two top leaders in 2010 and was weakened, but not eliminated, by the time of the U.S. withdrawal from Iraq in 2011.[32] The group would later rebrand as the Islamic State of Iraq and the Levant (ISIL)[33] in 2013.[34]

ISIL is currently operating as a terrorist organization primarily in Iraq and Syria.[35] In addition to the group's fighters in Iraq and Syria, ISIL has received pledges of support from various terrorist groups in the Middle East, Africa, and South Asia.[36] Prior to 2015, the majority of the group's attacks were concentrated in Iraq and Syria, but attacks elsewhere in 2015 resulted in more than 1,000 deaths.[37] It is believed active ISIL cells currently operate in Yemen, Egypt, Algeria, Saudi Arabia, Libya, Afghanistan, and Nigeria.[38]

The following military operations are recognized as part of the effort to combat FTOs such as al-Qaeda and ISIL:[39]

- Operation Noble Eagle;
- Operation Enduring Freedom;
- Operation Iraqi Freedom;
- Operation Nomad Shadow;
- Operation New Dawn;
- Operation Inherent Resolve; and
- Operation Freedom's Sentinel.[40]

Operation Inherent Resolve

On October 15, 2014, U.S. Central Command designated new military operations in Iraq and Syria against ISIL as Operation Inherent Resolve.[41] As of January 19, 2016, American and

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[30] Christopher M. Blanchard and Carla E. Humud, Congressional Research Service, *The Islamic State and U.S. Policy*, at 7 (Feb. 9, 2016), available at https://fas.org/sgp/crs/mideast/R43612.pdf (last visited Feb. 19, 2016).
[31] *Id.*
[32] *Id.*
[33] *Supra* note 24. ISIL was designated as an FTO on December 17, 2004.
[34] *Supra* note 30.
[35] John W. Rollins and Heidi M. Peters, Congressional Research Services, *The Islamic State—Frequently Asked Questions: Threats, Global Implications, and U.S. Policy Responses*, at 2 (Nov. 25, 2015), available at https://www.fas.org/sgp/crs/mideast/R44276.pdf (last visited Feb. 29, 2016).
[36] *Supra* note 30, at 1.
[37] *Supra* note 35.
[38] *Id*.
[39] *See* 68 FR 12567-12568 (March 12, 2003).
[40] U.S. Department of Defense, Office of the Under Secretary for Personnel and Readiness, *Global War on Terrorism Expeditionary Medial – Approved Operations* (2015), available at http://prhome.defense.gov/Portals/52/Documents/RFM/MPP/OEPM/docs/GWOT-E%20Medal%20-%20Approved%20Ops%20-%202015%2003%2011.pdf; and *Global War on Terrorism Service Medial – Approved Operations* (2015), available at http://prhome.defense.gov/Portals/52/Documents/RFM/MPP/OEPM/docs/GWOT-S%20Medal%20-%20Approved%20Ops%20-%202015%2003%2011.pdf (both sites last visited Feb. 19, 2016).
[41] U.S. Department of Defense, *Centcom Designates Ops Against ISIL as 'Inherent Resolve'* (Oct. 15, 2014), available at http://www.defense.gov/news/newsarticle.aspx?id=123422&source=GovDelivery (last visited Feb. 19, 2016).

coalition forces have conducted 9,782 airstrikes against ISIL in Syria and Iraq.[42] The American-led coalition contains 60 nations and partner organizations conducting military operations, stopping the flow of fighters and funds to ISIL, and addressing humanitarian crises that ISIL has previously exploited as a recruitment tool.[43] As a result of the operation, various forces have been able to recapture portions of Iraq and northern Syria.[44] It is unclear what impact Operation Inherent Resolve has had on the number of fighters ISIL is able to field in Iraq and Syria, with some reports suggesting the group has been forced to resort to conscription in some areas, while others suggest ISIL is still being replenished with significant numbers of foreign fighters.[45]

In addition to the efforts of the American-led coalition, Russian forces have engaged in the conflict.[46] While initially acting in support of Syrian President Bashir al-Assad, Russian efforts have been focused on ISIL since the group targeted a Russian airliner on October 31, 2015, killing all 224 passengers.[47]

Legal Status of Operation Inherent Resolve

Operation Inherent Resolve was initially launched under a claim of Presidential authority pursuant to the President's Article II powers as commander-in-chief.[48] However, later statements of the Obama administration cited to the authorizations for the use of military force against al-Qaeda and Iraq as providing the legal basis for the strikes.[49] The President also indicated in November 2014 that he intended to seek explicit Congressional authorization to specifically target ISIL, in order to "right-size and update" the earlier authorizations.[50]

Debates over a new authorization for the use of military force are still on-going. The Senate Foreign Relations Committee voted to approve a new AUMF in December 2014, but final passage was hindered by concerns of whether the authority granted to the President was too restricted.[51] The issue was again raised after the Obama administration announced in November 2015 that 50 special operations forces were being sent to Syria to act as advisors to allied rebel groups.[52]

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[42] U.S. Department of Defense, *Operation Inherent Resolve: Targeted Operations against ISIL Terrorists*, available at http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve (last visited Feb. 19, 2016).
[43] *Supra* note 35, at 3.
[44] *Supra* note 30, at 2.
[45] *Supra* note 30, at 4.
[46] *Supra* note 35, at 4.
[47] *Id*.
[48] *Supra* note 35, at 5.
[49] *Id*.
[50] *Id*.
[51] Karen DeYoung, Washington Post, *Senate committee approves military action against Islamic State* (Dec. 11, 2014), available at https://www.washingtonpost.com/world/national-security/senate-committee-approves-military-action-against-islamic-state/2014/12/11/48dbd0fc-815b-11e4-9f38-95a187e4c1f7_story.html (last visited Feb. 19, 2016).
[52] Karoun Demirjian, Washington Post, *Boots on the ground in Syria have lawmakers calling for a new AUMF* (Nov. 1, 2015), available at https://www.washingtonpost.com/news/powerpost/wp/2015/11/01/boots-on-the-ground-in-syria-has-lawmakers-calling-for-a-new-aumf/ (last visited Feb. 19, 2016).

Pending Legislation

There are currently several proposals pending in Congress authorizing the President to use military force against ISIL.

Senate Joint Resolution 29 would authorize the President to use "all necessary and appropriate force" to defend the national security of the United States against ISIL and associated forces, organizations, and persons as well as any successor organizations.[53] The resolution would also require the President to submit a report to Congress at least once every sixty days to provide updates on matters relevant to the resolution.

An earlier measure, Senate Joint Resolution 26, contains virtually identical language.[54] Senate Joint Resolution 26 has a companion measure in the House.[55]

The broad contours of these resolutions appear to derive from a joint resolution filed in 2015.[56] House Joint Resolution 33 would authorize the President to use force against ISIL and associated persons and forces. The resolution would have also repealed the 2002 authorization for the use of military force against Iraq.

Another resolution, House Joint Resolution 27, is structured more narrowly to only allow the President to use force against ISIL.[57] The resolution would also repeal the 2001 and 2002 authorizations for the use of military force against al-Qaeda and Iraq, respectively.

House Joint Resolution 73 asserts that a "state of war" exists between the United States and ISIL and authorizes the President to "use the Armed Forces of the United States to carry on war against the Islamic State".[58]

III. Effect of Proposed Changes:

The memorial urges the Congress of the United States and the President of the United States to declare that a war exists between the United States and al-Qaeda, the Islamic State of Iraq and the Levant (ISIL), and all other global Islamic terrorist organizations that similarly engage in acts of terrorism against the United States and its people and against allied and friendly governments and their populations.

Copies of this memorial will be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

[53] S.J.Res 29, 114th Cong. (2016).
[54] S.J.Res. 26, 114th Cong (2015). S.J. Res 29 contains a precatory clause about ISIL's use of social media and its online magazine in an attempt to radicalize Americans and inspire attacks within the United States.
[55] H.Con.Res. 106, 114th Cong (2016).
[56] H.J.Res. 33, 114th Cong. (2015).
[57] H.J.Res. 27, 114th Cong. (2015).
[58] H.J.Res. 73, 114th Cong. (2015).

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IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.)

None.

B. Amendments:

None.