

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2614

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Commerce with Terrorist States Act

DATE: March 24, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dodson</u>	<u>Skelton</u>	<u>HP</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>ED</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RI</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

The bill creates the “Commerce with Terrorist States Act,” which provides for a security assessment charge for every person or entity chartering travel that originates in this state and arrives in an identified terrorist state. The assessment is at the rate of 10% of the total consideration received or to be received for the chartered travel, in addition to any other taxes or assessments that may be due. Only persons operating under federal or state authority and persons acting in the performance of active military duty are exempt from the security assessment.

The term “terrorist state” is defined in the bill as any state, country, or nation presently deemed a state sponsor of terrorism by the U.S. Department of State. Currently, those states are Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. For the purposes of the bill, the Florida Department of Revenue is responsible for documenting states or nations identified as terrorist states by the U.S. Department of State, specifying in rule states or nations deemed terrorist states by the State of Florida, and periodically updating the list of countries recognized by the state as terrorist states.

Persons responsible for charging the required 10% security assessment are directed to remit the proceeds from the assessment to DOR which must transfer these funds to the State Homeland Security Trust Fund created under SB 2620. The bill does not specify the uses of these funds.

The bill also requires that mandatory travel information be reported to the Departments of Education and Law Enforcement by any university or community college within the State University System that utilizes chartered travel for transportation to an identified terrorist state. The bill allows for severable treatment of its provisions.

This bill creates section 288.857 of the Florida Statutes.

II. Present Situation:

Law Enforcement/Security Costs: The events of September 11, 2001, fundamentally changed the way transportation security is performed in the United States. Airlines must screen all checked passenger bags, as mandated by Congress. A multi-layered system has been implemented to screen passengers and baggage using explosive detection equipment, an enhanced computer-assisted passenger prescreening system, explosive-trace detection, sniffing by trained dogs, and manual searches, or some combination of these methods. Although most of these costs are being paid by the airlines, airports are impacted by having to provide the physical space to house security personnel and equipment. Federal funds are being made available to airports to implement their share of the requirements.

Federal legislation requiring screening of cargo continues to be discussed, as are security requirements for general aviation airports.

As for seaport and maritime security, Florida seaports have taken the lead among their peers in other states by implementing state-required security plans and procedures. These plans include facility improvements and the purchase of security equipment, such as container scanners, as well as background checks and badging of certain port employees and port users. In addition, shippers and other maritime-related businesses are beginning to feel the impact of new Coast Guard security regulations.

Florida has 19 commercial service airports, 112 general aviation airports, and an estimated 700 privately owned airports and airparks. The state also has 14 deepwater ports located along the Atlantic and Gulf coasts, and is home to four of the 20 busiest container seaports in the nation and the top three cruise ports in the world. In addition, there are a number privately owned ports along both coastlines that serve specific businesses. All of these facilities have been impacted to some degree by the new security requirements since September 11, 2001.

Airport and seaport security project costs could run into hundreds of millions of dollars. Airports and seaports have received a combination of federal, state, and local-government funds to help defray some of these costs, and have used some of their revenues generated by business using the facilities.¹

In Florida seaports, law enforcement/security operational costs have increased 276% since September 11, 2001 and the total number of law enforcement/security personnel have increased 153%. The state's share of law enforcement/security costs has increased from nothing in FY 01-02 to 8.2 million in FY 02-03 and 7.1 million in FY 03-04. The seaport share of costs has gone from \$23.1 million to \$34.9 million over the same period of time.²

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

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

Florida's airport security needs have been estimated at \$1 billion by the airports themselves. The airports are hoping to get special appropriations from Congress through the Transportation Security Agency (TSA).³

Federal Designation as a Terrorist State: Currently, seven countries are designated as terrorist states: Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. Designating countries that repeatedly support international terrorism, that is, placing a country on the "terrorism list" imposes four main sets of US Government sanctions:

1. A ban on arms-related exports and sales.
2. Controls over exports of dual use items, requiring 30-day Congressional notification for goods or services that could significantly enhance the terrorist list country's military capability or ability to support terrorism.
3. Prohibitions on economic assistance.
4. Imposition of miscellaneous financial and other restrictions, including:
 - Requiring the US 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 US courts.
 - Denying companies and individuals tax credits for income earned in terrorist list countries.
 - Denial of duty-free treatment for goods exported to the US.
 - Authority to prohibit any US person from engaging in a financial transaction with a terrorist list government without a Treasury Department license.
 - Prohibition of Defense Department contracts above \$100,000 with companies controlled by terrorist list states.⁴

The state sponsors of terrorism list has been relatively static since its initiation in 1979, with only two states ever having been removed: South Yemen, which was removed in 1990 when it merged with North Yemen to form the current state of Yemen; and Iraq, which was removed from the list in 1982 and was returned to the list in 1990 after its invasion of Kuwait.⁵

Federal Restrictions on Travel to Terrorist States: Under Title 31 of the Code of Federal Regulations Chapter V, the ability to travel and do business with countries such as Cuba, Iraq, Iran, Libya, and Sudan are delineated. The ability to travel to these and other countries varies as do the requirements for and the ability to be authorized or licensed by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury for such travel. Specific licenses may be issued to authorize travel transactions related to certain educational activities by students or employees affiliated with a licensed academic institution meeting certain requirements. Once licensed, categories of travelers associated with

³ Information provided by Mr. Bill Ashbaker with the Florida Department of Transportation's Aviation Office, March 23, 2004. The Florida Department of Transportation does not keep a database of federal funding to individual airports.

⁴ "Patterns of Global Terrorism" report, US Department of State, pp. 76-81. This report is required to be submitted to Congress pursuant to Title 22 of the United States Code, Section 2656f(a).

⁵ "The "FTO List" and Congress: Sanctioning Designated Foreign Terrorist Organizations", Audrey Kurth Cronin, Specialist in Terrorism, Foreign Affairs, Defense, and Trade Division, October 21, 2003, pp. CRS-3 and CRS-4.

the institution are authorized to travel. Specific licenses are also provided to such groups as religious organizations, humanitarian projects, journalistic activities, and private foundations. According to the Florida Department of Education, licenses for educational institutions for cultural education trips are not being renewed by OFAC; therefore, when those licenses expire, no universities or community colleges will be able to embark on such trips. Other educational licenses will still be available through the OFAC.

III. Effect of Proposed Changes:

The bill creates s. 288.857, F.S., the "Commerce with Terrorist States Act," which provides for a security assessment charge for every person or entity chartering travel that will originate in this state and arrive in an identified terrorist state. The assessment is at the rate of 10% of the total consideration received or to be received for the chartered travel, in addition to any other taxes or assessments that may be due. Only persons operating under federal or state authority and persons acting in the performance of active military duty are exempt from the security assessment. The bill does not exempt humanitarian or religious groups that travel by chartered transportation.

The term "terrorist state" is defined in the bill as any state, country, or nation presently deemed a state sponsor of terrorism by the U.S. Department of State. Currently, those states are Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. For the purposes of the bill, the Florida Department of Revenue (DOR) is responsible for documenting states or nations identified as a terrorist state by the U.S. Department of State, specifying in rule states or nation deemed terrorist states by the State of Florida, and periodically updating the list of countries recognized by the state as terrorist states.

Persons responsible for charging the required 10% security assessment are directed to remit the proceeds from the assessment to DOR which must transfer these funds to the State Homeland Security Trust Fund created under SB 2620. The bill does not specify the uses of these funds.

The bill also requires that mandatory travel information be reported to the Departments of Education and Law Enforcement by any university or community college within the State University System that utilizes chartered travel for transportation to an identified terrorist state.

The bill allows for severable treatment of its provisions.

The bill takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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

D. Other Constitutional Issues:

Congressional Foreign Commerce Power: Article I, section 8 of the United States Constitution grants Congress the power to “regulate Commerce with foreign 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.⁶ 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.⁷ 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.⁸

The 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 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.

If the court finds that the taxable activity is subject to the protection of the Commerce Clause and that the tax is 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.

Prohibitions on Collecting Certain Fees and Head Charge for Commercial or General Aviation: A state, a political subdivision of a state, and any person who has purchased or leased an airport under s. 47134 of title 49, U.S.C., may not levy or collect a tax, fee, head charge, or other charge on the following:

- An individual traveling in air commerce;
- The transportation of an individual traveling in air commerce;
- The sale of air transportation; or
- The gross receipts from that air commerce or transportation.⁹

⁶ See *Michelin Tire Corp. v. Wages*, 423 U.S. 276 (1976).

⁷ *Barclays Bank PLC v. Franchise Tax Board*, 512 U.S. 298, 328 (1994).

⁸ See *id.*; *Wardair Canada v. Florida Dept. of Revenue*, 477 U.S. 1 (1986); *Gerling Global Reinsurance*, *supra*.

⁹ 49 U.S.C. 40116(b). There are two exceptions provided: 49 U.S.C. 40116(c) and 49 U.S.C. 40117.

The bill, as written, levies a head charge on charter aircraft travel.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The bill places additional responsibilities on the Departments of Revenue, Education, and Law Enforcement for carrying out the provisions of the bill. The bill also provides for the adoption of rules to implement the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As currently drafted, the bill requires persons traveling on cultural or educational trips to provide detailed information on the trip itinerary including lodging, restaurants, planned excursions, etc. to both the Departments of Education and Law Enforcement no later than 50 days prior trip commencement. Neither the purpose of the information nor the intended use of the information is provided in the legislation.

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

Concerns were raised by the Department of Law Enforcement that the bill does not specify what FDLE is expected to do with the information collected pursuant to the provisions in subsection (5). If the intent is for FDLE to conduct backgrounds on those students or individuals, the bill should cite specific authority to do so. This information cannot be documented as intelligence or entered into the terrorist intelligence database (ThreatNet) or documented as intelligence because there is no reasonable suspicion of criminal activity to warrant that entry. Any requirements for FDLE to perform background checks of these individuals would pose a potential workload impact on either the Office of Statewide Intelligence or the Domestic Security Task Forces. Additionally, without clarifications about how this information is to be used, it is anticipated that privacy questions and concerns will arise.

The Department of Revenue raised the following concerns with the ability to implement the legislation as written:

- It is unclear whether DOR is required to incorporate a listing of terrorist states within the required rule of those states identified as a terrorist state or merely define or discuss by rule those states or nations that will be deemed a terrorist state by the State of Florida. If it is the former, an actual listing of identified terrorist states must be incorporated into the rule, for purposes of ensuring compliance by DOR regarding rule updates based on additions to and deletions from the listing of terrorist states, more guidance is needed on the required frequency of the updates as described by the term “periodically.”
- Bill does not specify how frequently collections from the security assessment should be remitted to DOR by persons performing chartered services subject to the security assessment.
- Bill does not address application of penalties to businesses and entities subject to the assessment that fail to register with DOR. Nor does it address penalties and interest for businesses or entities that fail to collect, remit, or remit timely the assessment.
- Refunds and audits for compliance are not addressed by the bill, nor is the related keeping of books and records.
- DOR does not “deposit” funds into the Trust Fund but “transfers” funds to the State Homeland Security Trust Fund.
- The effective date of July 1, 2004 is insufficient to allow DOR to make computer software changes, promulgate rules, create forms, etc.
- The bill should provide specific reference to the US Department of State publication that should be used by DOR as a source for compiling and maintaining a list of identified terrorist states.
- Also recommended that the bill language be amended to allow DOR to publish the listing of identified terrorist states via 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 bill refers to the Department of Business and Professional Regulation in its provision on rulemaking; however, the department has no jurisdiction over charter airlines or charter boats.

The bill requires detailed information only on cultural or educational trips involving the state university or community college systems. Other travelers are not required to provide information.

VIII. Amendments:

None.