

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1401

Export of Goods, Commodities, & Things of Value to Foreign Countries

Countries

SPONSOR(S): Rivera

TIED BILLS:

IDEN./SIM. BILLS: SB 2576

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	13 Y, 0 N	McDonald	Williamson
2)	Government Operations Appropriations Committee	14 Y, 0 N	Dykes	Topp
3)	Economic Development & Community Affairs Policy Council		McDonald	Tinker
4)				
5)				

SUMMARY ANALYSIS

The bill prohibits any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government from issuing a certificate of free sale, export certification report, certificate of good manufacturing practices, permit, registration, license, or certification of any kind for any good, commodity, or thing of value to a foreign country determined by the United States Secretary of State to be a state sponsor of terrorism.

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.

Federal law specifically prohibits certain goods or products from being sent to countries designated as "state sponsors of terrorism;" however, certain goods or products classified as "humanitarian" are permitted to be transported to such countries. Federal law and regulations and guidelines for such enforcement provided by the Office of the U.S. Secretary of State govern what can be done by the various states.

The Florida Department of Agriculture and Consumer Services issues a certificate of free sale, also known as a certificate for export or a certificate to foreign governments, to exporters of products to foreign countries. These are required by some countries as assurance from a foreign agency that the products listed on the certificate are freely sold and manufactured in the U.S. Some foreign destinations also require a "certificate of origin" for the purpose of authenticating the country of origin of the merchandise being shipped. Some require an Apostille from the Florida Department of State, which is a document that certifies that the department's notary who notified the documents is, in fact, a notary.

There is no known fiscal impact caused by the bill.

The bill takes effect upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### State Sponsors of Terrorism

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act,<sup>1</sup> the Arms Export Control Act,<sup>2</sup> and the Foreign Assistance Act.<sup>3</sup> The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.<sup>4</sup> Some of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above \$100,000 with companies controlled by terrorist-list states.<sup>5</sup>

Some types of humanitarian aid are permitted with countries on the "State Sponsors of Terrorism" list. For example, the United States is the largest contributor for humanitarian aid to Sudan, which is one of the four countries on the state sponsors of terrorism list.

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.<sup>6</sup>

##### Certificate of Origin and Free Sale - Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services issues a "certificate of free sale," also known as a "certificate for export" or a "certificate to foreign governments," to exporters of products to foreign countries. These are required by some countries as assurance from a foreign agency that the products listed on the certificate are freely sold and manufactured in the U.S. Some foreign destinations

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<sup>1</sup> Section 6(j), U.S. Export Administration Act.

<sup>2</sup> Section 40, U.S. Arms Export Control Act.

<sup>3</sup> Section 620A, U.S. Foreign Assistance Act.

<sup>4</sup> U.S. Department of State website, <http://www.state.gov/s/ct/c14151.htm>, Office of Coordinator for Counterterrorism, State Sponsors of Terrorism, last viewed on March 22, 2010.

<sup>5</sup> U.S. Department of State website, <http://www.state.gov/s/ct>, Country Reports on Terrorism, last viewed on March 22, 2010.

<sup>6</sup> See Footnote 5.

also require a "certificate of origin" for the purpose of authenticating the country of origin of the merchandise being shipped.

Some foreign governments require an *Apostille* from the Florida Department of State, which is a document that certifies that the department's notary who notarized the documents is, in fact, a notary.

Requirements to obtain a certificate of origin and free sale from the Department of Agriculture and Consumer Services are as follows:

- The exporter must provide documented proof that they are a registered Florida corporation or company, and
- The exporter must provide documented proof that they have been inspected by their County Health Department, Division of Food Industry, or FDA.

Between 90 percent and 95 percent of the exporters require a certificate of origin and free sale.

Currently, the Department of Agriculture and Consumer Services issues approximately 1,350 certificates per year. On the average, the department turns down about 10 requests per year for the "state sponsors of terrorism" restriction. These refusals almost always relate to trade with Cuba.

### **Effect of Proposed Changes**

The bill prohibits any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government from issuing a certificate of free sale, export certification report, certificate of good manufacturing practices, permit, registration, license, or certification of any kind for any good, commodity, or thing of value to a foreign country determined by the United States Secretary of State to be a state sponsor of terrorism.<sup>7</sup>

There is no indication as to what agencies might fall under the prohibition. It is known that the Department of Agriculture and Consumer Services has been involved in issuing certain documents as described above for several years. This, in part, grew out of cattlemen and others involved with Florida agribusiness exporting products to foreign countries.

State agencies must abide by the federal requirements regarding export to state sponsors of terrorism.

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

Section 1. Creates an unnumbered section of law that prohibits a state agency from exporting goods, commodities, and things of value to foreign countries that support international terrorism.

Section 2. Provides an effective date of becoming a law.

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

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

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

None.

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<sup>7</sup> In subsection (2), the bill references provisions in the United States Code in determining what determines what foreign countries are covered under prohibition on issuance of certain certificates. The bill refers to 50 U.S.C. App. S. 2405(j) which requires a validated license for the export of goods or technology to a country that repeatedly provides support for international acts of terrorism and the export of those goods could make a significant contribution to the military potential of the country, including its military logistics capability, or could enhance the ability of the country to support acts of international terrorism. It also refers to 22 U.S.C. s. 2371(a) which prohibits assistance under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.), the Peace Corps Act (22 U.S.C. 2501 et seq), or the Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.). Finally, 22 U.S.C. s. 2780(d) relates to activities that aid or abet international proliferation of nuclear explosive devices, or the acquisition or stockpiling of such or chemical, biological, or radiological weapons.

2. Expenditures:  
None.

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

1. Revenues:  
None.
2. Expenditures:  
None.

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

Unknown fiscal impact. It is not known how many businesses, if any, could be impacted by the bill because of the federal prohibitions.

**D. FISCAL COMMENTS:**

According to the Department of Agriculture and Consumer Services, there is no fiscal impact on the agency because the department does not issue documentation to any country identified by the United States Secretary of State as having provided support acts of terrorism.<sup>8</sup>

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

No known constitutional concerns.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Department of Agriculture and Consumer Services stated there is a possibility that litigation will be caused by this legislation; however, no detail was given concerning the grounds for the possible litigation.<sup>9</sup>

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

None.

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<sup>8</sup> Analysis of HB 1401 by the Department of Agriculture and Consumer Services, March 16, 2010, p. 1.

<sup>9</sup> Information provided by the Department of Agriculture and Consumer Services on March 22, 2010, which is on file with the Governmental Affairs Policy Committee.