

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 442**

INTRODUCER: Senator Campbell and others

SUBJECT: Haiti's Temporary Protected Status

DATE: November 15, 2017 REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------|----------------|-----------|------------------|
| 1. Sanders | Ryon | MS | Favorable |
| 2. | | JU | |
| 3. | | RC | |

I. Summary:

SM 442 is a memorial to the President of the United States, the Secretary of the U.S. Department of State, and the Secretary of the U.S. Department of Homeland Security (DHS) to urge the extension of Haiti's temporary protected status (TPS) designation for at least 18 months beyond its scheduled January 22, 2018 expiration.

TPS is a temporary immigration benefit granted under the Immigration and Nationality Act to eligible persons who are present or residing in the U.S., but cannot return to their home country due to conditions that pose a serious threat to their health or personal safety. The Secretary of the DHS initially granted a TPS designation for Haiti in 2010 in response to the January 2010 earthquake. Haiti's designation was subsequently extended due to a cholera epidemic in 2010 and impacts from Hurricane Matthew in 2016. Haiti's current TPS designation will expire on January 22, 2018.

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:

U.S. Department of Homeland Security

The U.S. Department of Homeland Security (DHS) was established by the Homeland Security Act of 2002¹ as a cabinet-level agency for the purpose of coordinating and unifying national homeland security efforts.² The agency is led by a secretary appointed by the President and

¹ See Pub. L. No. 107-296, 116 Stat. 2142-2321 (2002).

² Department of Homeland Security, *Creation of the Department of Homeland Security* (Sept. 24, 2015), <https://www.dhs.gov/creation-department-homeland-security> (last visited Nov. 13, 2017).

confirmed by the U.S. Senate. The secretary oversees the agency's efforts to counter terrorism and enhance security, secure and manage U.S. borders, enforce and administer immigration laws, safeguard and secure cyberspace, build resilience to disasters, and provide essential support for national and economic security.³

U.S. Citizenship and Immigration Services

As part of the Homeland Security Act of 2002, U.S. Citizenship and Immigration Services (USCIS) was created within the DHS to oversee lawful immigration to the U.S. USCIS provides immigration benefits to people who are entitled to stay in the U.S. on a temporary or permanent basis. These benefits include:

- Granting of U.S. citizenship to those who are eligible to naturalize;
- Authorizing individuals to reside in the U.S. on a permanent basis; and
- Providing aliens⁴ with the eligibility to work in the U.S.⁵

Temporary Protected Status (TPS)

Temporary protected status (TPS) is a temporary immigration benefit granted under the Immigration and Nationality Act (INA)⁶ to eligible persons who are present or residing in the U.S., but cannot return to their home country due to conditions that pose a serious threat to their health or personal safety.⁷ The Secretary of the DHS may designate a foreign state (country) for TPS⁸ and in turn USCIS may grant TPS to eligible nationals of a designated country.⁹

Designation of a Foreign State for TPS

The Secretary of the DHS is authorized by the INA¹⁰ to designate a country for TPS.¹¹ The secretary, after consultation with appropriate U.S. Government agencies, may designate any country for TPS only if the secretary finds:

- There is an ongoing armed conflict (such as civil war);
- An environmental disaster (such as earthquake or hurricane), or an epidemic; or
- Other extraordinary and temporary conditions.¹²

³ DHS, *Office of the Secretary* (June 14, 2017), <https://www.dhs.gov/office-secretary> (last visited Nov. 13, 2017).

⁴ An alien is defined as any person not a citizen or national of the United States. "Foreign national" is a synonym and used outside of statutes when referring to noncitizens of the U.S. Citizenship and Immigration Services (USCIS), *Glossary*, https://www.uscis.gov/tools/glossary?topic_id=a#alpha-listing (last visited Nov. 14, 2017).

⁵ DHS, *Providing Immigration Benefits & Information* (Oct. 4, 2016), <https://www.dhs.gov/providing-immigration-benefits-information> (last visited Nov. 13, 2017).

⁶ See 8 U.S.C. 1254.

⁷ 8 U.S.C. 1254(b)(1).

⁸ There are ten countries currently designated for TPS: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, and Yemen. See U.S. USCIS, *Temporary Protected Status: Countries Currently Designated for TPS* (Nov. 6, 2017), <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Nov. 8, 2017).

⁹ USCIS, *Temporary Protected Status: What is TPS* (Nov. 6, 2017), <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Nov. 8, 2017).

¹⁰ As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. See 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, title XV, section 1517).

¹¹ Supra note 7.

¹² Supra note 9.

The initial designation period of a country for TPS may not be less than 6 months or more than 18 months. A designation of a country for TPS shall not take effect until a notice is published in the Federal Register.¹³ The notice must:

- Include a statement of the findings that support the TPS designation;
- Provide the effective date of the TPS designation; and
- State an estimate of the number of eligible aliens of the country designated who are eligible for TPS and their immigration status.¹⁴

At least 60 days prior to the expiration of a TPS designation, the Secretary of the DHS, after consultation with appropriate U.S. Government agencies, must review the conditions in the country and determine whether the conditions for such designation continue to be met.¹⁵ Based on the findings of the review the secretary may then terminate or extend the TPS designation.¹⁶

Designation of Persons Seeking TPS

Once the Secretary of the DHS designates a country for TPS, or extends an existing designation, USCIS may grant TPS during the effective dates noticed in the Federal Register to eligible nationals of a designated country, who are already in the U.S.¹⁷ A TPS designation from USCIS ensures that eligible beneficiaries:

- Are not removable from the U.S.;
- Can obtain an employment authorization document (EAD);¹⁸
- May be granted travel authorization; and
- Cannot be detained by the DHS on the basis of his or her immigration status in the U.S.¹⁹

To be eligible for a TPS designation from USCIS, an applicant must:

- Be a national²⁰ of a country designated for TPS, or a person without nationality who last habitually resided in the designated country;
- File a petition with USCIS to include all required forms, evidence, and filing fees within the designated registration period;²¹
- Be continuously physically present in the U.S. since the effective date of the most recent designation date of the applicant's country; and

¹³ 8 U.S.C. 1254(b)(2).

¹⁴ 8 U.S.C. 1254(b)(1)(C).

¹⁵ 8 U.S.C. 1254(b)(3)(A).

¹⁶ See 8 U.S.C. 1254(b)(3).

¹⁷ TPS is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status. However, registration for TPS does not prevent a beneficiary from applying for nonimmigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection for which you may be eligible. Supra note 9.

¹⁸ Employers in the U.S. must verify that all employees, regardless of citizenship or national origin, are allowed to work in the U.S. An EAD issued by USCIS serves as proof that an individual is allowed to work in the U.S. for a specific time period. See USCIS, *Employment Authorization Document* (April 19, 2017), <https://www.uscis.gov/greencard/employment-authorization-document> (last visited Nov. 9, 2017).

¹⁹ Supra note 9.

²⁰ A foreign national is a person without U.S. citizenship or nationality (may include a stateless person). USCIS, *Glossary*, https://www.uscis.gov/tools/glossary?topic_id=f#alpha-listing (last visited Nov. 14, 2017).

²¹ See USCIS, *Temporary Protected Status: Application Process* (Nov. 6, 2017), <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Nov. 8, 2017).

- Be continuously residing in the U.S. since the date specified for the applicant's country.²²

USCIS requires an individual to submit a petition (application) in order to receive a TPS designation and, if requested, an EAD. When USCIS receives an application for TPS it is reviewed for completeness²³ and for the proper fees²⁴ or a properly documented fee waiver request.²⁵ USCIS may then require an applicant to provide biometric data²⁶ for identity verification, background checks, and the production of an EAD. Additional documentation may be requested by USCIS prior to adjudicating the application. If approved, the USCIS will send an approval notice and an EAD, if not yet issued.²⁷

An applicant may be denied TPS or an eligible beneficiary may have their TPS designation revoked if the individual:

- Is convicted of any felony or two or more misdemeanors committed in the U.S.;
- Is found inadmissible as an immigrant under applicable grounds in INA section 212(a), including non-waivable criminal and security-related grounds;
- Is subject to any of the mandatory bars to asylum. These include, but are not limited to, participating in the persecution of another individual or engaging in or inciting terrorist activity;
- Fails to meet the continuous physical presence and continuous residence in the U.S. requirements;
- Fails to meet initial or late initial TPS registration requirements; or
- If granted TPS, fails to reapply for TPS, as required,²⁸ without good cause.²⁹

2010 Haiti Earthquake

On January 12, 2010, a magnitude 7.0 earthquake³⁰ struck the Republic of Haiti and left more than 316,000 dead or missing, 300,000 injured, and over 1.3 million homeless.³¹ It was the most destructive event any country has experienced in modern times when measured in terms of the number of people killed as a percentage of the country's population.³² Approximately 60 percent of the nation's administrative and economic infrastructure was lost and 80 percent of the schools

²² USCIS, *Temporary Protected Status: Eligibility Requirements* (Nov. 6, 2017), <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Nov. 8, 2017).

²³ Incomplete applications are rejected by the USCIS. An applicant may reapply within the registration period after correcting the problems described in the notification of denial. *See supra note 21.*

²⁴ The Secretary of the DHS is authorized by the INA to charge a reasonable fee as a condition of registering for TPS and to receive an EAD. See 8 U.S.C. 1254(c)(1)(B).

²⁵ *Supra note 21.*

²⁶ Biometric data includes photographs, signature, and/or fingerprints. *See supra note 21.*

²⁷ *Supra note 21.*

²⁸ If a country receives a TPS designation of 12 months or longer, eligible beneficiaries granted TPS must reapply annually. See 8 C.F.R. s. 244.17 (1998).

²⁹ *Supra note 22.*

³⁰ Magnitude is a number that characterizes the relative size of an earthquake and is determined by measuring the intensity of seismic waves, or vibrations from earthquakes that travel through the earth. The Richter scale begins at zero, but has no upper limit. The largest known shocks were between magnitudes 8.8 and 8.9. See U.S. Geological Survey, *The Severity of an Earthquake* (Nov. 30, 2016), <https://pubs.usgs.gov/gip/earthq4/severitygip.html> (last visited Nov. 9, 2017).

³¹ DesRoches et al., *Overview of the 2010 Haiti Earthquake*, 1 (2011), <https://escweb.wr.usgs.gov/share/mooney/142.pdf> (last visited Nov. 9, 2017).

³² Haiti's population prior to the January 2010 earthquake was approximately 9.6 million. *See Id.*

and more than 50 percent of the hospitals were damaged or destroyed.³³ Overall losses and damages from the earthquake were estimated to be between \$7 billion and \$14 billion.³⁴

Cholera Outbreak

Ten months following the January 2010 earthquake in Haiti, an outbreak of cholera³⁵ was confirmed for the first time in more than a century.³⁶ Between October 2010 and June 2017, there were 809,492 suspected cases of cholera and 9,507 deaths reported in Haiti.³⁷ An estimated 3 to 5 million cases of cholera and over 100,000 associated deaths occur each year around the world.³⁸ Cholera is usually found in contaminated water or food sources and spread in places with inadequate water treatment, poor sanitation, and inadequate hygiene.³⁹ Although cholera remains a persistent public health threat in Haiti, cases are down significantly from the peak of the epidemic in 2011.⁴⁰

Hurricane Matthew

On October 4, 2016, Hurricane Matthew made landfall on the Tiburon Peninsula in Haiti as a category 4 hurricane.⁴¹ In addition to the damage caused by hurricane force winds and storm surge, heavy rainfall across most of the country resulted in widespread flash flooding, river floods, and mudslides. As a result of Hurricane Matthew, there were 546 direct deaths,⁴² 128 missing persons, and 439 persons injured in Haiti.⁴³ At least 210,000 homes were either

³³ Supra note 31, at 2.

³⁴ Id.

³⁵ Cholera is an acute, diarrheal illness caused by infection of the intestine. Symptoms may cause dehydration and shock and without treatment, death can occur within hours. Centers for Disease Control and Prevention (CDC), *Cholera - General Information: What is cholera?*, <https://www.cdc.gov/cholera/general/index.html> (last visited Nov. 9, 2017).

³⁶ CDC, *Cholera in Haiti*, <https://www.cdc.gov/cholera/haiti/index.html#two> (last visited Nov. 9, 2017).

³⁷ United Nations, *Cholera Factsheet June 2017*,

<http://ht.one.un.org/content/dam/unct/haiti/docs/cholera%20factsheets/EN%20Factsheet%20cholera%2014%20June%202017%20.pdf> (last visited Nov. 13, 2017).

³⁸ Supra note 35.

³⁹ CDC, *Cholera - General Information: Where is cholera found?*, <https://www.cdc.gov/cholera/general/index.html> (last visited Nov. 9, 2017).

⁴⁰ CDC, *Global Health – Haiti, Haiti Fact Sheet*, <https://www.cdc.gov/globalhealth/countries/haiti/factsheet.html> (last visited Nov. 9, 2017).

⁴¹ The Saffir-Simpson Hurricane Wind Scale is a 1 to 5 rating based on a hurricane's sustained wind speed. Hurricanes reaching category 3 and higher are considered major hurricanes because of their potential for significant loss of life and damage. A category 4 hurricane is characterized by sustained wind speeds between 131 and 155 miles per hour. See National Hurricane Center (NHC), *Saffir-Simpson Hurricane Wind Scale*, <http://www.nhc.noaa.gov/aboutsshws.php> (last visited Nov. 8, 2017). See also NHC, *Tropical Cyclone Report, Hurricane Matthew (AL142016)*, 3 (April 7, 2017), http://www.nhc.noaa.gov/data/tcr/AL142016_Matthew.pdf (last visited Nov. 8, 2017).

⁴² Deaths occurring as a direct result of the forces of the hurricane are referred to as "direct" deaths. These would include those persons who drowned in storm surge, rough seas, rip currents, and freshwater floods. Direct deaths also include casualties resulting from lightning and wind-related events (e.g., collapsing structures). Deaths occurring from such factors as heart attacks, house fires, electrocutions from downed power lines, vehicle accidents on wet roads, etc., are considered "indirect" deaths. See NHC, *Tropical Cyclone Report, Hurricane Matthew (AL142016)*, 12 (April 7, 2017), http://www.nhc.noaa.gov/data/tcr/AL142016_Matthew.pdf (last visited Nov. 8, 2017).

⁴³ NHC, *Tropical Cyclone Report, Hurricane Matthew (AL142016)*, 12 (April 7, 2017), http://www.nhc.noaa.gov/data/tcr/AL142016_Matthew.pdf (last visited Nov. 8, 2017).

destroyed or severely damaged.⁴⁴ The World Bank and Inter-American Development Bank estimated a total loss of \$1.9 billion as a result of Hurricane Matthew.⁴⁵

Designation of Haiti for TPS

In response to the 2010 earthquake, the Secretary of the DHS designated Haiti for TPS on January 21, 2010, for a period of 18 months ending on July 22, 2011.⁴⁶ The secretary extended Haiti's TPS designation in 2011, 2012, 2014, and 2015 each for a period of 18 months as conditions prompting the original designation in 2010 and subsequent extension in 2011, to include the cholera outbreak, continued to be met.

A limited, 6-month extension was published in the Federal Register on May 24, 2017, announcing that conditions in Haiti supporting its designation for TPS persist and citing new challenges resulting from Hurricane Matthew in October 2016.⁴⁷ The secretary estimated that approximately 46,000 current Haiti TPS beneficiaries were expected to reapply under the extension.⁴⁸ This extension is effective July 23, 2017 and expires on January 22, 2018.⁴⁹

III. Effect of Proposed Changes:

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto.⁵⁰

SM 442 urges the federal government to extend Haiti's temporary protected status (TPS) designation for at least 18 months beyond its scheduled January 22, 2018 expiration.

Specifically, the memorial urges:

- The President of the United States to instruct the U.S. Department of Homeland Security (DHS) to extend Haiti's TPS designation;
- The Secretary of the U.S. Department of State to recommend to the President of the United States and the DHS that conditions in Haiti fully warrant that the DHS extend Haiti's TPS designation; and
- The Secretary of the DHS to extend Haiti's TPS designation.

Copies of this memorial will be dispatched to the President of the United States, the Chief of Staff to the President of the United States, the Secretary of the U.S. Department of State, and the Secretary of the U.S. Department of Homeland Security.

⁴⁴ Id., at 13.

⁴⁵ Supra note 43, at 14.

⁴⁶ See *Designation of Haiti for Temporary Protected Status*, 75 FR 3476 (Jan. 21, 2010), <https://www.federalregister.gov/documents/2010/01/21/2010-1169/designation-of-haiti-for-temporary-protected-status> (last visited Nov. 9, 2017).

⁴⁷ See *Extension of the Designation of Haiti for Temporary Protected Status*, 80 FR 51582 (May 24, 2017), <https://www.federalregister.gov/documents/2017/05/24/2017-10749/extension-of-the-designation-of-haiti-for-temporary-protected-status> (last visited Nov. 9, 2017).

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ The Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation*, at 137-138. (2009).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
