

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Eduardo Garcia, Chair

AJR 3 (Alejo) – As Amended May 19, 2016

**SUBJECT:** Cuban embargo

**SUMMARY:** Memorializes the California Legislature's support for full normalization of diplomatic relations with Cuba and calls on the U.S. Congress to advance legislation remove barriers full diplomatic relations and to help increase trade between the U.S. and Cuba. Specifically, **this bill:**

- 1) Makes a number of declarations, including, but not limited to:
  - a) The Obama administration announced that new regulations would be proposed at the U.S. Department of the Treasury and the U.S. Department of Commerce that would allow for more exports of certain products to Cuba;
  - b) The U.S. and Cuba recently signed an agreement to restore commercial airline service between both countries. Potential air travel could be as high as 115 flights per day. Authorized travel to Cuba by U.S. citizens has already increased by over 50% since travel restrictions were eased in December 2014;
  - c) Prior to the 1960 U.S. embargo, the U.S. accounted for nearly 70% of Cuba's international trade, with nearly 84% of all food consumed in Cuba being imported;
  - d) In 2000, under the Trade Sanctions Reform and Export Enhancement Act (TSRA), the U.S. Congress began to allow the sale of agricultural and medical products to Cuba. In four years, U.S. exports to Cuba rose from less than \$1 million to \$392 million by 2004, with U.S. agricultural products capturing 42% of the Cuban market. A 2001 study sponsored by the Cuba Policy Foundation found the estimated economic impact of expanded agricultural exports under the TSRA is \$3.6 billion;
  - e) A report by the U.S. International Trade Commission states that small exporters currently avoid the Cuban market because of the complexity of TSRA regulations;
  - f) Studies show that lifting the embargo could result in an economic spark of \$1.1 billion, \$365 million from sales of U.S. goods, and a creation of up to 6,000 American jobs, predominantly in agriculture, and telecommunications;
  - g) California is currently the eighth largest economy in the world but exported only \$122,000 in agricultural products to Cuba in 2013. According to the U.S. Department of Agriculture's Economic Research Service data for 2013, each dollar of agricultural exports stimulated an additional \$1.22 in business activity, thereby further highlighting the potential for creating American jobs through California agricultural exports;
  - h) As Cuba raises its agricultural profile, Cuba will need food manufacturing technology and education on effective practices that Californian expertise can provide; and
  - i) As a growing middle class rises, Cuba will require and be able to pay for new infrastructure, including telecommunications, medical devices, and pharmaceuticals.
  - j) The U.S. will also benefit from Cuba's current expertise in providing high-quality, low-cost medicines, including vaccines.

- 2) Resolves that the California Legislature urges the U.S. Congress to support President Obama's initiative to normalize diplomatic relations with Cuba and to move forward with legislation to help increase trade with Cuba.
- 3) Resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the U.S. President and Vice President and to the leadership in U.S. Senate and House of Representatives.

**FISCAL EFFECT:** None

### **POLICY ISSUE FRAME**

The U.S. has maintained an economic, commercial, and financial embargo of Cuba for more than 50 years. Since the removal of Soviet financial backing in the 1990s, Cuba has faced even more severe economic difficulties. Cuba has routinely used the status of the embargo, both internally and with the world at-large, as the primary reason for their economic problems. For 26 consecutive years, the United Nations has annually passed a resolution calling for the lift of the embargo and condemning the U.S. for using access to food as a tool to gain a political objective. Since the embargo, the U.S. has almost consistently accepted Cuban asylum seekers and supported their adjustment to permanent resident status.

In December 2014, President Obama called for a new path forward for U.S. and Cuba relations, which included the normalization of foreign relations and the lifting of all special sanctions. In taking this unprecedented action, President Obama said "it was clear that decades of U.S. isolation of Cuba had failed to accomplish our enduring objective of promoting the emergence of a democratic, prosperous, and stable Cuba." In the ensuing months, the Obama Administration has taken a wide range of regulatory steps toward normalization. A 2015 Poll by the Pew Research Center found that 73% of Americans approve the thawing of relations between the U.S. and Cuba and the reestablishment of trade relations.

This resolution expresses the California Legislature's support for lifting sanctions and taking concrete steps to expand trade opportunities with Cuba. The analysis includes background on U.S. relations with Cuba, human rights challenges, and California's important role in advising on federal issues impacting the economic conditions of California. Amendments are discussed in Comment #7.

### **COMMENTS:**

- 1) **Author Purpose:** According to the Author, "AJR 3 was created as a way to urge the United States Congress to recognize the importance of supporting the Obama Administration for improving trade relations with the Cuban government. By normalizing trade relations with Cuba, California and its small and medium-sized enterprises would have access to a much needed market, and allowing them to provide produce and telecommunication goods to a developing market. Cuba is in the beginning stages of creating a private industry sector for small business, as well as tourism, and to create construction jobs for the improvement of their crumbling infrastructure. A healthy trade partnership with Cuba would create thousands of new American jobs, and bring revenue and economic development for our country and the state of California. This bill will allow the Legislature of the State of California to continue its worldwide leadership role by expressing their support for normalizing trade relations with Cuba, and to champion a positive worldwide outcome."
- 2) **U.S. Relations with Cuba:** Western European influence in Cuba began with the first voyage of Christopher Columbus in 1492. Cuba was claimed and held by Spain for the next several centuries. African slaves were imported to work on coffee and sugar plantations. Harsh conditions for the native

peoples under Spanish rule resulted in a number of unsuccessful independence movements. Ultimately, U.S. intervention during the Spanish-American War and the Treaty of Paris established Cuban independence from Spain in 1898. Following three-and-a-half years of U.S. military rule, Cuba became an independent republic in 1902. Subsequent Cuban governments, according to the World Fact Book, have been primarily dominated by the military and corrupt politicians that failed to provide broad-based prosperity to the people of Cuba.

In 1959, Fidel Castro, led a rebel army that overthrew a U.S.-backed government and established a communist government that has held uninterrupted power up to today. Castro stepped down as president in February 2008 and selected his younger brother Raul Castro as the next and current president. Cuba's communist revolution, with Soviet support, was exported to other areas of South and Central America and Africa during the 1960s, 1970s, and 1980s. With the demise of the Soviet Union in the 1990s, Cuba's subsidies (\$4 to \$6 billion annually) were eliminated, resulting in great economic hardship for the people.

Illegal migration of Cubans seeking asylum in the U.S. has continued throughout the nearly 60 years since the revolution. In FY 2014, the U.S. Coast Guard interdicted 2,111 Cuban nationals at sea, the highest number since FY 2008. Also in FY 2014, 24,289 Cuban migrants presented themselves at various land border ports of entry throughout the U.S.

U.S. President Barak Obama initiated the re-establishment of diplomatic relations with the Cuban government in December 2014, with the reopening of U.S. and Cuban embassies in their respective countries in July 2015. The first visit of a sitting U.S. President in nearly 90 years, occurred when President Obama, his wife, and two daughters visited Havana in March 2016. The chart below provides a historical outline of the U.S.' trade relationship with Cuba.

<b>The Trade Relationship Between the U.S. and Cuba (1961 to 2016)</b>	
<b>Ending Relations with Cuba</b>	
January 1961	The U.S. severs diplomatic relations with Cuba.
April 1961	The Bay of Pigs invasion is launched.
September 1961	The Foreign Assistance Act of 1961 authorizes the President to establish and maintain "a total embargo upon all trade between Cuba and the U.S."
February 1962	The Kennedy Administration extends the embargo to prohibit imports into the U.S.
March 1962	The embargo is further tightened to prohibit imports into the U.S. from any country, if those goods were made in or contained Cuban materials.
February 1963	The Kennedy Administration prohibits U.S. government-purchased cargoes from being transported on foreign flag vessels which had called at a Cuban port.
July 1963	The U.S. Treasury publishes the Cuban Assets Control Regulations. These regulations embody the essential features of the U.S. economic embargo against Cuba that have been in effect ever since, including a freeze on all Cuban-owned assets in the U.S. and a prohibition on all non-licensed financial and commercial transactions between Cuba and the U.S. and between Cuban and U.S. nationals (including the spending of money by U.S. citizens in the course of travel to Cuba).
1966	The Cuban Adjustment Act of 1966 is enacted, which allows Cubans arriving in the U.S. without immigration documentation to stay and adjust to permanent resident status.
1976	The U.S. Immigration and Nationality Act amends the Cuban Adjustment Act by exempting Cuban immigration from the numerical limitations in the U.S. preference system.
1980	The Refugee Act of 1980 is enacted, which reduces the time Cuban immigrants must stay in the country in order to adjust to permanent resident status from two years to one year.
<b>More Recent Developments</b>	
1994	The U.S.-Cuba Migration Accord is signed under which the U.S. agreed to admit at least 20,000 Cubans per year directly from Cuba through legal channels. In exchange Cuba pledged to prevent further unlawful departures by rafters. The objective of the Accord was to provide for the safe, legal and orderly immigration to the U.S.

1995	The second U.S. Cuban Migration Accord is signed to address the outcome of the approximately 33,000 Cubans who were encamped at Guantanamo. These individuals had been relocated to Guantanamo, when the U.S. had temporarily implemented a policy of intercepting Cuban asylum seekers before they could reach U.S. soil.
1996	The Cuba Liberty and Democratic Solidarity Act (the "Helms-Burton Act") becomes law. The act seeks to strengthen international sanctions against Cuba. Among other measures, the Helms-Burton Act required the preparation of a plan for U.S. assistance to help transition Cuba to a democratically elected form of government. The Helms-Burton Act also codified the existing Cuban Asset Control Regulations, which meant that future substantive changes would require U.S. Congressional action.
1998	The U.S. eases restrictions on the sending of money to relatives by Cuban Americans.
2000	Trade Sanctions Reform and Export Enhancement Act is adopted which allows for the sale of agricultural and medical products to Cuba.
2001	U.S. food exports are allowed to Cuba for the first time in 40 years after a request comes from the Cuban government following Hurricane Michelle.
2003	President George Bush implements measures to hasten the end of communist rule in Cuba, including tightening of travel restrictions, increasing enforcement on illegal cash transfers, and a more vigorous information campaign against Cuba.
2008	During his first U.S. presidential campaign, Barack Obama stated he would seek to change U.S. policy regarding Cuba by allowing unlimited family travel and remittances to Cuba.
December 2014	President Obama issues statement about charting a new course on Cuba, which includes the re-establishment of diplomatic relations with Cuba.
January 2015	The U.S. initiates a new round of talks under 1994-95 U.S. Cuba Migration Accords. These were the first talks held after the policy changes announced in December 2014 and reflected the new emphasis of engagement and dialogue.
July 2015	<ul style="list-style-type: none"> <li>• The U.S. and Cuba reestablish diplomatic relations by opening embassies in each other's capitols.</li> <li>• General licenses become available for authorized travelers under 12 official travel categories: (1) family visits, (2) official business of the U.S. government and certain intergovernmental organizations; (3) journalistic activities; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; (7) public performances, clinics, athletics and other competitions; (8) support for the Cuban people; (9) humanitarian projects; (10) activities of private foundations, research, or educational activities; (11) exportation, importation, or transmission of information or information materials; and (12) certain export transactions.</li> </ul>
September 2015	<p>Revisions to the Cuban Assets Control Regulations and the Export Administration Regulations are announced to authorize, among other things:</p> <ul style="list-style-type: none"> <li>• The transport of certain travelers sea under a general license;</li> <li>• Persons subject to U.S. jurisdiction to establish telecommunication and internet-based businesses in Cuba;</li> <li>• Banking institutions to open and maintain accounts for Cuban individuals for use while he or she is located outside Cuba;</li> <li>• Certain commodities and software for use in software development will be allowed to be exported and reexported to eligible users in Cuba;</li> <li>• Limits on donative remittances, except to the Cuban government or Communist Party, are eliminated; and a range of other actions related to commerce.</li> </ul>
November 2015	U.S. and Cuba hold binational migration talks based on the further implementation of the 1994-95 U.S. Cuba Migration Accords. The Whitehouse states that there is no plan to alter the current migration policy regarding Cuba.
January 2016	<ul style="list-style-type: none"> <li>• President Obama issues Presidential Memorandum to the U.S. Trade Representative relative to the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.</li> <li>• The U.S. Department of Commerce issues final rule for the creation of a License Exception Support for the Cuban People, which authorizes the export and reexport, without license, of certain items that are intended to improve the living conditions of the people of Cuba. The new policy also authorized a case-by-case license review of telecommunication devises.</li> <li>• U.S. Treasury amends restrictions regarding the entry into blocked airspace, code-sharing, and leasing arrangements to facilitate carrier services by air. This is expected to ease transportation sanctions which allow up to 110 non-stop flights per day between the U.S. and Cuba.</li> </ul>
March 2016	<ul style="list-style-type: none"> <li>• Travel restrictions are lifted for individuals who are traveling to Cuba for people-to-people</li> </ul>

	<p>educational travel, provided that the traveler participates in a full schedule of educational activities. This change is intended to make authorized educational travel more accessible and less expensive to U.S. citizens. The statutory prohibition on travel for tourist activities remains in place.</p> <ul style="list-style-type: none"> <li>• Cuban nationals in the U.S. under a non-immigrant status are allowed to earn a salary, consistent with their particular visa category. U.S. companies are authorized to sponsor or hire Cuban nationals to work or perform in the U.S. under similar conditions as other foreign nationals. Particularly focused on artists, performers, and athletes.</li> </ul>
April 2016	<p>Regulatory changes are made to the Cuban Assets Control Regulation to allow importation of certain goods produced by independent Cuban entrepreneurs. Products NOT covered include, but are not limited to, animal, vegetable, and mineral products, vehicles and associated transportation equipment, arms and munitions, machinery and electrical equipment, alcohol, and tobacco.</p>
<p>Source: Multiple sources including press statements, Federal Register publications, and news stories. Not all sources could be corroborated by official documents.</p>	

- 3) **President's 2016 Proclamation:** In February of 2016, President Obama issued Presidential Proclamation (PP) officially modifying the U.S.'s position on the Cuba. The PP noted that the underlying conditions which necessitated the national emergency were no longer relevant and that the U.S.' longstanding policy had, at times, resulted in the U.S. being isolated from regional and international partners and being limited in its ability to influence outcomes in the Western Hemisphere. The policy also, according to the PP, impaired the U.S.' ability to promote positive change in Cuba.

The PP cited the U.S. intention and commitment to work with Cuba on matters of mutual concern including migration, human rights, counter-narcotics, environmental protection, and human trafficking. In moving forward on these actions, it is the U.S.' overarching objective to stabilize the region and to stem the flow of Cuban nationals to U.S., which have had a destabilizing effect on neighboring countries.

As the chart above outlines, since President Obama first announced a new path forward with Cuba in December 2014, the Administration has taken many steps toward removing barriers to full diplomatic relations. With each of these actions, the position of many Americans has also been evolving. A February 2016 Gallup Poll found that a majority of Americans view Cuba favorably, an increase of 16 points from two years ago and 33 points from 2006. According to Gallup, the largest shift in public opinion came in the summer of 2015 when formal diplomatic relations were restored and both countries opened embassies. The highest unfavorable rating was in 1996 when the U.S. Congress passed the Helms-Burton Act.

- 4) **Federal Legislation:** The U.S. Congress is currently considering legislation that would effectuate the purposes of this resolution, including, but not limited to, HR 3238 (Emmer R-Minnesota) The Cuba Trade Act of 2015. This bill is currently pending before the U.S. House of Representative's Subcommittee on Trade. There are 23 co-authors (12-Dem and 11-Rep), including California Representatives Sam Farr, Barbara Lee, and Ann Eshoo. A summary of the changes, as identified by the Congressional Research Service are described below.
- a) The Cuban Democracy Act of 1992 is amended to eliminate:
    - i) Presidential authority to impose sanctions against Cuban trading partners;
    - ii) Restrictions on transactions between U.S.-owned or controlled firms and Cuba; and
    - iii) Limitations on direct shipping between Cuban and U.S. ports, and restrictions on remittances.
  - b) The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 is amended to eliminate:
    - i) The enforcement of an economic embargo of Cuban provisions; and
    - ii) The prohibition on indirect financing of Cuba.

- c) The Trade Sanctions Reform and Export Enhancement Act of 2000 is amended to:
- i) Remove Cuba from the list of state sponsors of terrorism subject to agricultural and medical export restrictions;
  - ii) Eliminate the prohibition on U.S. assistance, including foreign assistance, export assistance, and any credit or guarantees being made available for exports to Cuba;
  - iii) Eliminate the prohibition against a U.S. person's providing payment or financing terms for sales of agricultural commodities or products to Cuba;
  - iv) Prohibit the U.S from providing any foreign assistance to Cuba or any financial assistance, loans, loan guarantees, extension of credit, or other financing for exports to Cuba; and
  - v) Eliminate the prohibition on the U.S. entry of merchandise that is of Cuban origin is or has been located in or transported from or through Cuba, or is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.
- d) The federal government is prohibited from obligating or expending funds to promote trade with or develop markets in Cuba, except for certain commodity promotion programs.

- 5) **Human Rights in Cuba:** The harsh treatment of individuals who are considered counter-revolutionary, including journalists, teachers, and human rights activities have been well documented. According to Human Rights Watch, "The Cuban government continues to repress dissent and discourage public criticism. While in recent years it has relied less on long-term prison sentences to punish its critics, short-term arbitrary arrests of human rights defenders, independent journalists, and other critics have increased dramatically. Other repressive tactics employed by the government include beatings, public acts of shaming, and the termination of employment."

Freedom House, a U.S. based nonprofit that annually produces a comparative assessment of over 195 countries, scored Cuba a 6 out of 7 (7 being the worst) for its actions related to civil liberties. Among other concerns raised was the escalation of short-term "preventative" detentions, which further eroded core civil rights such as freedom of the press, expression, belief, and assembly. Freedom House notes in their 2015 assessment that the Cuban Council of State has complete control over the courts and the judiciary. Cuba does not regularly grant international humanitarian organizations access to prisons and Cubans of African descent have been reported to experience widespread discrimination.

While human rights groups express significant concerns over the abuse of human rights, including arbitrary detentions in which individuals are beaten, threatened, and held incommunicado for hours and days, groups like Human Rights Watch, also believe that the U.S. sanctions have imposed indiscriminate hardship on the Cuban people and have done little to address the country's poor record on human rights.

These concerns over the impact of U.S. sanctions on the Cuban people have also been repeatedly and consistently expressed through resolutions adopted by the General Assembly of the United Nations. In October 2014, 188 of the 192 member countries voted to approve a resolution that called on the U.S. to end its economic, commercial, and financial embargo of Cuba. Among other issues, the resolution called on the U.S. to refrain from applying laws and regulations, such as the 1996 Helms-Burton Act, and that food should not be used as an instrument for political and economic pressure.

In announcing the U.S.' intent to normalize diplomatic relations with Cuba and ease restrictions on travel and commerce, President Obama noted that these changes in U.S. policy were predicated on key concessions by the Cuban government, including a commitment to release 53 political prisoners and to

allow visits by international human rights monitors. President Obama has also stated that human rights will be a "critical focus" to the U.S. continued engagement.

- 6) **State's role in Federal Trade Policy:** U.S. trade policy is developed within a framework that envisions active participation by both the Administrative and Legislative branches, as well as input from states and the public at-large.

One component of this consultation process is led by the U.S. Trade Representative (USTR) who regularly seeks the input of states through a Governor appointed State Point of Contract (SPOC). California has chosen to codify this federal-state consultation process by defining the role of the SPOC in statute. Not only is the SPOC the designated trade policy liaison between the Administration and Legislative branches, but the individual is also tasked with assisting the Legislature in assessing the impact of federal trade policy on California. In addition to the SPOC process, the USTR maintains nearly 30 trade-related advisory committees, including the Intergovernmental Policy Advisory Committee on Trade (IGPAC). The IGPAC is currently comprised of 24 state and local officials, including members of state legislatures, state trade directors, and related national associations. Mark Chandler with the City and County of San Francisco is the only California member of the IGPAC.

Another component of the consultation process is the ability of states to speak directly to the U.S. President and Congress. Given the significance of the trade and foreign investment to the California economy, the Legislature has regularly weighed-in on important trade-related discussions. These issues range for export finance, the foreign investor visa program, infrastructure development, and trade agreements. Comment 8 includes a partial list of related resolutions expressing California's position on trade and matters of foreign relations.

- 7) **Amendments:** Staff understands that the author will offer additional whereas clauses to be adopted by the Committee. These provisions are intended to provide a further framework for the Legislature's support for normalizing relations with Cuba. In summary, this language includes the following:
- a) WHEREAS, California is the main producer, in the U.S., of delicate fresh fruits and vegetables such as strawberries, raspberries, lettuce, broccoli, artichokes, and cauliflower, that contain essential vitamins and minerals needed for daily nutrition that Cuba's population could benefit from;
  - b) WHEREAS, California would benefit from Cuba's medical advances in lung cancer, diabetic foot ulcer, and advanced head and neck tumor treatment, and the opportunity to conduct further research on Cuba's medical accomplishments;
  - c) WHEREAS, California's 89,000 Cuban Americans would benefit from normalizing trade relations with Cuba by permitting air travel to and from Cuba, and for remittance practice purposes; and
  - d) WHEREAS, by normalizing trade relations would enable California, the Cuban Government and its people to exchange dialogue, and a better opportunity for influence on one another in regards to human right practices.
- 8) **Related Legislation:** Below is a list of the related bills. The first subsection is a list of bills related to Cuba and the second subsection includes resolutions to the U.S. Congress on trade related activities.
- a) Cuba-related legislation:
    - i) **SCR 79 (Murry, Alpert, Burton, Figueroa, and Karnett) Sister State Relationship with Cuba:** This resolution would have extended an invitation to the people of Cuba, to join with California in a sister state relationship that would have facilitated the exchange of cultural and

environmental information and ultimately promoted mutual international trade and commerce between Cuba and California. Status: Died on the Senate Inactive File, 2002.

- ii) ***SJR 39 (Burton, Alpert, Figueroa, Karnette, Murray, and Romero) Removal of Trade Restrictions***: This resolution urges the President and Congress of the U.S. to consider the removal of trade, financial, and travel restrictions to Cuba. Status: Adopted, Resolution Chapter 136, Statutes of 2002.
  - iii) ***SJR 36 (Cedillo) Removal of Trade Restrictions***: This resolution urges the President and the Congress of the U.S. to consider the removal of commercial, economic, and financial restrictions relating to agricultural sales to Cuba. Status: Held at the Assembly Desk, 2010.
- b) Resolutions expressing California's position on U.S. Trade Policy and related issues:
- i) ***AJR 4 (Hueso and V. Manuel Pérez) United States-Mexico Border Infrastructure***: This resolution states the Legislature's support for federal funding of necessary infrastructure improvements to the San Ysidro, Calexico, and Otay Mesa Ports of Entry. Status: Adopted by the Legislature, Resolution 24, Statutes of 2013.
  - ii) ***AJR 12 (Gatto) Foreign Minimum Wage***: This resolution states the Legislature's support for raising minimum wage in foreign countries when discussing international treaties and trade agreements. Status: Adopted by the Legislature, Resolution 152, Statutes of 2013.
  - iii) ***AJR 37 (Muratsuchi) Export-Import Bank of the United States***: This resolution expresses Legislature's support for reauthorizing the Export-Import Bank of the United States. Status: Adopted by the Legislature, Resolution 72, Statutes of 2014.
  - iv) ***AJR 53 (Rendon) National Freight Network Trust Fund Act of 2014***: This resolution expresses the Legislature's support for the passage and enactment of the National Freight Network Trust Fund Act of 2014, which would provide a dedicated federal funding source for freight-related transportation projects. Status: Adopted by the Legislature, Resolution 167, Statutes of 2014
  - v) ***SR 20 (Emmerson, Berryhill, DeSaulnier, Liu, Steinberg, Walters, and Wright) Transatlantic Trade and Investment Partnership\****: This resolution urges the President and United States Senate to negotiate and ratify, respectively, the Transatlantic Trade and Investment Partnership agreement with the European Union. Status: Approved, by the Senate, Statutes 2013.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

American Federation of State, County and Municipal Employees, AFL-CIO

##### **Opposition**

None Received

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