

Legislative Bulletin.....March 19, 2012

Contents:

H.R. 4086 – Foreign Cultural Exchange Jurisdictional Immunity Clarification Act

H.R. 3992 – To allow otherwise eligible Israeli nationals to receive E-2 nonimmigrant visas if similarly situated United States nationals are eligible for similar nonimmigrant status in Israel

H.R. 4086 — Foreign Cultural Exchange Jurisdictional Immunity Clarification Act (Chabot, R-OH)

Order of Business: The bill is scheduled to be considered on Monday, March 19, 2012, under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: H.R. 4086 exempts a foreign state’s activities related to the temporary exhibition or display of works of art or other objects of cultural significance in the United States from being considered “commercial activity” for purposes of section 1605 (a)(3) of Title 28. This federal law permits United States courts to decide legal disputes against foreign states over property taken in violation of international law if the property is connected with a commercial activity carried on in the United States.

The immunity granted to foreign states for activities related to works of art or other objects of cultural significance does not apply in cases under the following conditions:

- the action is based upon a claim that the work of art/object of cultural significance was taken in Europe in violation of international law by a “covered government” between January 30, 1933 and May 8, 1945;
- a court determines that the activity associated with the exhibition or display is a commercial activity; and
- such determination is necessary for the court to exercise jurisdiction over the foreign state.

The bill language defines a “covered government” to mean either the Nazi government of Germany, any government in any area occupied by the military forces of the Nazi government of Germany, any government established with the assistance or cooperation of the Nazi government of Germany, and any government that was an ally of the Nazi government of Germany between January 30, 1933 and May 8, 1945.

Committee Action: Representative Steve Chabot (R-OH) introduced H.R. 4086 on February 24, 2012. The House Committee on Judiciary reported the bill out favorably by voice vote on February 28, 2012.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: No Congressional Budget Office (CBO) cost estimate has been released.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The bill removes jurisdiction of state courts to hear cases that arise out of property disputes of works of art/objects of cultural significance with foreign states.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Yes.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states: “Congress has the power to enact this legislation pursuant to the following: The constitutional authority on which this legislation is based is found in article I, section 8, clause 9; article III, section 1, clause 1; and article III, section 2, clause 2, of the Constitution, which grant Congress authority over federal courts.”

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H.R. 3992 — To allow otherwise eligible Israeli nationals to receive E-2 nonimmigrant visas if similarly situated United States nationals are eligible for similar nonimmigrant status in Israel (*Berman, D-CA*)

Order of Business: The bill is scheduled to be considered on Monday, March 19, 2012 under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: H.R. 3992 permits Israeli nationals to temporarily enter and remain in the United States under the E-2 visa program if Israel extends similar, reciprocal treatment to U.S. nationals. E-2 visas are nonimmigrant visas available to nationals of more than 75 countries who are entitled to enter the U.S. under treaty of commerce provisions “...solely to develop and direct the operations of an enterprise which he has invested...a substantial amount of capital...” Alien employees (and their dependents) of such an investor are also eligible to receive E-2 visas if they are entering the U.S. to perform executive/supervisory duties of the investor, or if their specialized skills are necessary to the “efficient operation of the enterprise.”

Additional Background: According to House Report number [112-410](#), E-2 visas have no numerical cap. The State Department [lists](#) a number of criteria an applicant must satisfy to procure an E-2 visa. Namely, the investor must be a national of a treaty country, and the investment must be sufficient to ensure the successful operation of the enterprise. The program admits aliens for two years and allows extensions in two-year increments. In fiscal year 2010, 25,500 aliens were granted such visas. The Congressional Budget Office (CBO) estimates that enacting this bill will increase the number of E-2 visas by 500 per year. Israeli nationals are already eligible for a similar, E-1 visa category for nonimmigrant traders.

Committee Action: Representative Howard Berman (*D-CA*) introduced H.R. 3992 on February 9, 2012. The Committee on Judiciary marked up the bill and reported it out of committee by a voice vote on February 28, 2012. Senator Chuck Schumer (*D-NY*) has introduced identical legislation ([S.921](#)) in the United States Senate.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: CBO released a cost estimate for H.R. 3992 on March 7, 2012. It states that the net effects of the legislation would be insignificant for each year and over the 2012-2022 period. Additionally, it explains that the State Department will collect approximately \$200,000 more in annual fees to adjudicate and process additional Israeli national E-2 visa applications. Since the State Department is authorized to collect and spend such fees without further appropriation, the net impact on federal spending would not be significant

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Yes. The CBO report for the bill does *not* contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of H.R. 3992 states:

“Congress has the power to enact this legislation pursuant to the following:
Clause 4 of section 8 of article I of the Constitution.”

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