

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 Judiciary Committee

BILL: SM 314

INTRODUCER: Senators Fasano and Haridopolos

SUBJECT: Ecumenical Patriarchate/Government of Turkey

DATE: February 2, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	Favorable
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

This Senate Memorial urges the U.S. Congress to encourage the government of Turkey to end policies negatively affecting the Ecumenical Patriarchate, which is the spiritual center of the Eastern Orthodox Christian Church and is located in Istanbul. Among other provisions, the memorial expresses the Legislature's desire for the Turkish government to grant the Ecumenical Patriarchate international recognition of its leader, freedom over decisions about succession in its leadership, and the right to train clergy of all nationalities.

II. Present Situation:

Ecumenical Patriarchate in Turkey

Turkey's constitution establishes the country as a secular state. The U.S. Department of State reports that the constitution contains provisions specifying religious freedom but also contains provisions governing the country's secularism which can operate to restrict religious freedom.¹ The government imposes restrictions on Islamic and other religious groups, including restrictions on Islamic religious expression in governmental offices and state-run institutions, on the grounds of maintaining a secular state. In addition, the department reports that members of religious minorities experience difficulties in worshipping, registering with the government, and training followers.²

¹ U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *Turkey: International Religious Freedom Report 2009* (Oct. 26, 2009), <http://www.state.gov/g/drl/rls/irf/2009/130299.htm> (last visited Feb. 1, 2010). See also Niyazi Oktem, *International Law and Religion Symposium Article: Religion in Turkey*, 2002 B.Y.U. L. REV. 371 (2002).

² U.S. Dep't of State, *supra* note 1.

Muslims comprise the largest percentage of the Turkish population, with official estimates citing 99 percent. According to the U.S. Department of State, however, the actual population of Muslims in Turkey is slightly lower, because its government recognizes three minority religious communities – Greek Orthodox Christians, Armenian Orthodox Christians, and Jews – and counts other non-Muslim communities as Muslim.³

The Turkish government's recognition of the special legal status of the three religious minorities does not extend to the leadership organs of those minorities. Therefore, for example, the "Armenian and Ecumenical Greek Orthodox Patriarchates continued to seek legal recognition of their status as patriarchates rather than foundations."⁴

Located in Istanbul, Turkey, the Ecumenical Patriarchate is the spiritual center of the Orthodox Christian Church. The Ecumenical Patriarch is the church's highest authority and spiritual leader of Orthodox Christians worldwide.⁵ Ecumenical Patriarch Bartholomew assumed that spiritual leadership position in November 1991.⁶ However, the Turkish government does not recognize his ecumenical status, "acknowledging him only as the head of the county's Greek Orthodox community."⁷

Although there are an estimated 300 million Orthodox Christians worldwide, there are fewer than 3,000 Greek Orthodox Christians in Turkey.⁸ Particular policies of the government of Turkey are cited as negatively affecting the Ecumenical Patriarchate. For example, in 1971, Turkey nationalized private institutions of higher learning, leading to the closure of the Patriarchate's Halki seminary on the Island of Heybeli. The government has not permitted the reopening of the school, "effectively prevent[ing] the Patriarchate from training clergymen and potential successors to the position of Ecumenical Patriarch."⁹

In addition, Turkey also requires that the Ecumenical Patriarch and the Ecumenical Patriarchate's leadership staff be Turkish citizens. Further, the governor of Istanbul may reject candidates for the position of Ecumenical Patriarch as well as the ultimate choice by the electors.¹⁰ Noting the decline in the population of Greek Orthodox Christians in Turkey, authors on the subject have reported that these policies affect the operational viability of the Ecumenical

³ U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *Turkey: International Religious Freedom Report 2004*, <http://www.state.gov/g/drl/rls/irf/2004/35489.htm> (last visited Feb. 1, 2010).

⁴ U.S. Dep't of State, *supra* note 1. The status as a foundation rather than a patriarchate affects property rights. A 1974 court ruling limited the ability of minority foundations to acquire property, and the state took control of property acquired after 1936. Law changes effective in 2008 enabled minority foundations to acquire property but did not authorize them to reclaim state-expropriated property. *Id.*

⁵ Maria Burnett, Maria Pulzetti, and Sean Young, *Turkey's Compliance with Its Obligations to the Ecumenical Patriarchate and Orthodox Christian Minority*, a paper prepared at the request of the Greek Orthodox Archdiocese of America, 1 (December 11, 2004), available at <http://www.ellopos.net/politics/yalelawstudy.pdf> (on file with the Senate Committee on Judiciary).

⁶ Ecumenical Patriarchate of Constantinople, *Who is Ecumenical Patriarch Bartholomew?*, <http://patriarchate.org/patriarch/narrative> (last visited Feb. 1, 2010). Istanbul was formerly known as Constantinople.

⁷ U.S. Dep't of State, *supra* note 1.

⁸ There are also an estimated 65,000 Armenian Orthodox Christians in Turkey. U.S. Dep't of State, *supra* note 3.

⁹ Joanna Balaskas, *The International Legal Personality of the Eastern Orthodox Ecumenical Patriarchate of Constantinople*, 2 HOFSTRA L. & POL'Y SYMP. 135, 145-46 (1997).

¹⁰ *Id.* at 146; Maria Burnett et al., *supra* note 5.

Patriarchate by limiting the pool of potential successors to the position of Ecumenical Patriarch.¹¹

U.S. Government Policy and Action by States

The U.S. Department of State summarizes the policy of the United States regarding religious freedom in Turkey as follows:

The U.S. Government discusses religious freedom with the Government and state institutions as part of its overall policy to promote human rights. The U.S. Ambassador and other diplomatic officials, including staff of the consulate general in Istanbul and the consulate in Adana, maintained close relations with the Muslim majority and other religious groups. The Ambassador and other officials also continued to urge the Government to permit the reopening of the Halki seminary on Heybeli Island.

On April 6, 2009, President Obama addressed Parliament and emphasized the U.S. interest in seeing Halki seminary reopened in recognition of the importance of religious freedom. On April 7, President Obama met with leaders of religious communities, including the Ecumenical Patriarch, Chief Rabbi, Armenian Archbishop, Syrian Orthodox Metropolitan, and Mufti of Istanbul.

The Ambassador regularly discussed government policy regarding Islam and other religious groups as well as specific cases of religious discrimination and other topics concerning religious freedom in private meetings with cabinet members. The Ambassador met with Diyanet President Ali Bardakoglu on January 8, 2009, to discuss the work of the Diyanet.¹² Other embassy and consulate officers held similar meetings with government officials. Diplomats from the Embassy and consulates met regularly with representatives of various religious groups. These meetings covered a range of topics, including problems faced by non-Muslim groups and the debate over the role of Islam in the country.

The consulate general in Istanbul provided security training for minority religious communities as a part of its overall security strategy.¹³

According to the Order of Saint Andrew the Apostle, Archons of the Ecumenical Patriarchate, 24 states have passed memorials similar to the one that is the subject of this bill analysis, asking the U.S. Congress to encourage Turkey to end practices that negatively affect the Ecumenical Patriarchate.¹⁴

¹¹ *Id.*

¹² The Diyanet is Turkey's Directorate/Presidency of Religious Affairs. U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report 2005*, <http://www.state.gov/g/drl/rls/irf/2005/51586.htm> (last visited Feb. 1, 2010).

¹³ U.S. Dep't of State, *supra* note 1.

¹⁴ Open letter to members of the Florida Legislature from the Order of Saint Andrew the Apostle, Jan. 16, 2010 (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

This Senate Memorial expresses the Legislature's desire for the U.S. Congress to encourage the government of Turkey to revise policies negatively affecting the Ecumenical Patriarchate, which is located in Istanbul and is the spiritual center of the Eastern Orthodox Christian Church. In particular, the memorial urges Congress to encourage the Turkish government to:

- Safeguard religious and human rights;
- End government discrimination against the Ecumenical Patriarchate;
- Give the Ecumenical Patriarch international recognition, ecclesiastical succession, and the right to train clergy regardless of nationality; and
- Respect property rights and human rights relating to the Ecumenical Patriarchate.

The memorial provides for copies of it to be submitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the state's congressional delegation.

Both houses of the Florida Legislature must pass a memorial, but a memorial is not subject to gubernatorial approval or veto.¹⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Generally the federal government exercises dominion over foreign affairs of the United States. Section 10 of article I of the U.S. Constitution specifically prohibits states from engaging in certain foreign affairs activities. Further, the federal government can preempt conflicting state laws through the enactment of a federal law or treaty, and federal courts can "preempt state laws that improperly affect foreign affairs."¹⁶ However, because this Senate Memorial is simply an expression of state intent rather than a proposed enactment of state law, it does not implicate the issue of preemption and state latitude to affect foreign affairs.

¹⁵ The Florida Senate, *Manual for Drafting Legislation*, 137-38 (6th ed. 2009).

¹⁶ Celeste Borei Pozo, *Foreign Affairs Power Doctrine Wanted Dead or Alive: Reconciling One Hundred Years of Preemption Cases*, 41 VAL. U. L. REV. 591, 591-92 (2006).

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. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.