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1 A bill to be entitled
2 An act relating to enforcement of immigration laws;
3 amending s. 445.009, F.S.; requiring one-stop career
4 center staff to verify the employment eligibility of
5 workers referred to employers using a federal program
6 for electronic verification of employment eligibility;
7 providing an exception; requiring notice to employers
8 on the exception to use of electronic verification;
9 providing definitions relating to administration of
10 public benefits; prohibiting an agency from providing
11 federal, state, or local public benefits to certain
12 aliens; providing exceptions; requiring an agency to
13 verify the eligibility of applicants for public
14 benefits using the federal Systematic Alien
15 Verification for Entitlements Program; requiring
16 agencies to compile and maintain compliance
17 information; creating s. 901.37, F.S.; directing
18 certain agencies having custody of arrestees to make
19 reasonable efforts to determine whether the arrestees
20 are present in the United States lawfully; providing
21 for fingerprints of the arrestees to be checked
22 against federal databases; providing that holding
23 agencies shall notify the United States Department of
24 Homeland Security regarding individuals in their
25 custody whose unlawful presence in the United States
26 is established independently by the agencies;
27 requiring the Department of Law Enforcement to enter
28 into and maintain an agreement with the United States
29 Department of Homeland Security for checking

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30 fingerprints of arrestees against federal databases to
31 determine immigration status; providing for a
32 presumption as to risk of flight in order to avoid
33 prosecution; creating s. 945.80, F.S.; requiring the
34 Department of Corrections to release nonviolent
35 inmates to the custody of the United States
36 Immigration and Customs Enforcement under certain
37 circumstances; providing a definition; requiring the
38 department to identify criminal aliens who are
39 eligible for removal; prescribing certain procedures
40 for the transfer of an inmate to federal custody;
41 requiring the Parole Commission to provide notice to
42 such criminal aliens; providing that a prisoner
43 released under this authority shall be under
44 conditional supervision of the Parole Commission;
45 prescribing conditions of such supervision; providing
46 for procedures for revocation of release upon
47 violation of the conditions; providing that a releasee
48 whose conditional release is revoked is not thereafter
49 eligible for any form of discretionary release;
50 providing an exception; directing the secretary of the
51 department to pursue an agreement with the United
52 States Department of Homeland Security regarding the
53 rapid repatriation of removable custodial aliens;
54 requiring the department to compile statistics;
55 authorizing the Department of Corrections and the
56 Parole Commission to adopt rules; providing for
57 applicability; amending s. 947.141, F.S.; conforming
58 procedures relating to a violation of conditional

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59 release to account for conditional release for
60 deportation; providing for issuance of a warrant,
61 detention without bond under certain conditions, a
62 hearing conducted by a commissioner of the Parole
63 Commission or an authorized representative, findings
64 and entry of an order, revocation of release, and
65 arrest without a warrant under certain conditions;
66 providing an effective date.

67
68 WHEREAS, Florida ranks third among states in the size of
69 its unauthorized immigrant population, with an estimated range
70 of 725,000 to 950,000 unauthorized immigrants in this state, and

71 WHEREAS, unauthorized immigration contributes directly and
72 indirectly to substantial costs to the state in policy areas
73 including, but not limited to, law enforcement, criminal
74 justice, labor and employment, education, health care, and human
75 services, and

76 WHEREAS, the costs related to unauthorized immigration can
77 consume limited state resources, and

78 WHEREAS, the federal government has failed to enforce
79 immigration laws adequately and to adopt and implement
80 comprehensive reforms to immigration laws in order to control
81 and contain unauthorized immigration effectively, and

82 WHEREAS, because of the federal government's failure, and
83 because they cannot ignore the challenges posed by unauthorized
84 immigration, states must assume the mantle of leadership for
85 enacting policies to promote within their borders compliance
86 with the immigration laws of this nation, NOW, THEREFORE,
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88 Be It Enacted by the Legislature of the State of Florida:

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90 Section 1. Subsection (12) is added to section 445.009,
91 Florida Statutes, to read:

92 445.009 One-stop delivery system.—

93 (12) (a) Staff of the one-stop delivery system shall use the
94 federal program for electronic verification of employment
95 eligibility which is known as the E-Verify Program, or any
96 successor program, to verify the employment eligibility of any
97 worker who is referred to an employer and shall issue to the
98 employer a certification of the verification as provided in
99 regulations of the United States Department of Homeland
100 Security.

101 (b) The requirement to verify employment eligibility under
102 this subsection does not apply in the case of a worker who uses
103 an online referral system and does not report in person to the
104 one-stop career center. If a worker reports in person to a one-
105 stop career center after using the online referral system, the
106 one-stop career center shall perform the verification required
107 by this subsection. The website for the Agency for Workforce
108 Innovation and for the one-stop delivery system in the area
109 served by each regional workforce board shall provide notice to
110 employers that the one-stop career center is not performing
111 electronic-verification inquiries for online referrals.

112 (c) The Agency for Workforce Innovation, together with the
113 regional workforce boards, shall consult with the United States
114 Department of Homeland Security, the United States Department of
115 Labor, and any other appropriate federal agencies to develop
116 procedures, consistent with federal requirements, addressing

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117 circumstances in which use of the E-Verify Program, or any
118 successor program, is not possible based on the information or
119 documentation presented by the worker.

120 Section 2. Agency administration of public benefits;
121 verification of lawful status.—

122 (1) As used in this section, the term:

123 (a) "Agency" means any state, county, district, authority,
124 or municipal officer, department, division, board, bureau,
125 commission, or other separate unit of government created or
126 established by law including, for the purposes of this section,
127 any other public or private agency, person, partnership,
128 corporation, or business entity acting on behalf of any public
129 entity.

130 (b) "Federal public benefit" has the same meaning as in 8
131 U.S.C. s. 1611(c).

132 (c) "Qualified alien" has the same meaning as in 8 U.S.C.
133 s. 1641(b).

134 (d) "SAVE Program" means the Systematic Alien Verification
135 for Entitlements (SAVE) Program established by the United States
136 Citizenship and Immigration Services.

137 (e) "State or local public benefit" has the same meaning as
138 in 8 U.S.C. s. 1621(c).

139 (2) (a) Except as otherwise provided in 8 U.S.C. s. 1621(b),
140 an alien is not eligible for any state or local public benefit
141 unless the alien is:

142 1. A qualified alien;

143 2. A nonimmigrant under the federal Immigration and
144 Nationality Act; or

145 3. An alien who is paroled into the United States under s.

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146 212(d)(5) of the federal Immigration and Nationality Act for
147 less than 1 year.

148 (b) Each agency shall verify through the SAVE Program the
149 eligibility under this subsection of any applicant for a state
150 or local public benefit administered by the agency.

151 (3)(a) Except as otherwise provided in 8 U.S.C. s. 1611(b),
152 an alien who is not a qualified alien is not eligible for any
153 federal public benefit.

154 (b) Each agency shall verify through the SAVE Program the
155 eligibility under this subsection of any applicant for a federal
156 public benefit administered by an agency.

157 (4)(a) An agency may not provide any state or local public
158 benefit or federal public benefit in violation of this section.

159 (b) Each agency that administers a state or local public
160 benefit or federal public benefit shall annually compile and
161 maintain information on its compliance with this section.

162 (c) In the implementation of this section, each agency
163 shall endeavor to improve efficiency, minimize delays in the
164 verification process, and provide for the expeditious resolution
165 of individual cases in which verification procedures would
166 impose undue hardship on a legal resident. An agency shall
167 report all errors in the SAVE Program to the United States
168 Department of Homeland Security.

169 Section 3. Section 901.37, Florida Statutes, is created to
170 read:

171 901.37.—Identification of unauthorized immigrants upon
172 arrest and confinement.—

173 (1) When a person is confined in a jail or other criminal
174 detention facility after being arrested, the agency having

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175 custody of the person shall make a reasonable effort to
176 determine the nationality of the person and whether the person
177 is present in the United States lawfully, including, but not
178 limited to, participating in the submission of fingerprints
179 pursuant to the agreement under subsection (2). If the holding
180 agency establishes, independent of the submission of
181 fingerprints, that the person is not lawfully present in the
182 United States, the agency shall notify the United States
183 Department of Homeland Security.

184 (2) The Department of Law Enforcement shall enter into, and
185 perform all actions reasonably necessary to meet its obligations
186 under, a memorandum of agreement with the United States
187 Department of Homeland Security to implement a program through
188 which fingerprints submitted by local law enforcement agencies
189 during the arrest and booking process are checked against
190 federal databases in order to assess the immigration status of
191 individuals in custody.

192 (3) This section may not be construed to:

193 (a) Authorize the arrest of a person on suspicion that the
194 person is not present in the United States lawfully; or

195 (b) Deny a person bond or prevent release of a person from
196 confinement if the person is otherwise eligible for release.

197 However, for the purpose of the bail determination required by
198 s. 903.046, Florida Statutes, a determination that the person is
199 not present in the United States lawfully raises a rebuttable
200 presumption that there is a risk of flight to avoid prosecution.

201 Section 4. Section 945.80, Florida Statutes, is created to
202 read:

203 945.80 Rapid removal of deportable criminal aliens.—

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204 (1) Notwithstanding any law to the contrary, and pursuant
205 to s. 241(a)(4)(B)(ii) of the federal Immigration and
206 Nationality Act, the secretary of the department shall release a
207 prisoner, prior to the completion of his or her sentence, to the
208 custody and control of the United States Immigration and Customs
209 Enforcement if:

210 (a) The prisoner is confined pursuant to a final conviction
211 for a nonviolent offense;

212 (b) The department has received a final order of removal
213 for the prisoner from the United States Immigration and Customs
214 Enforcement; and

215 (c) The secretary determines that removal is appropriate
216 and in the best interest of the state.

217
218 As used in this section, the term "nonviolent offense" means a
219 third-degree felony violation under chapter 810 or any other
220 felony offense that is not a forcible felony as defined in s.
221 776.08.

222 (2)(a) The department shall identify, during the inmate-
223 reception process and among the existing inmate population,
224 prisoners who are eligible for removal under this section and
225 determine whether removal is appropriate and in the best
226 interest of the state. The department shall provide eligible
227 prisoners with information on this section.

228 (b) The department shall coordinate with federal
229 authorities to determine the eligibility of a prisoner for
230 removal and to obtain a final order of removal.

231 (3)(a) Upon approval for removal of the prisoner under this
232 section, the department shall establish a release date for the

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233 prisoner to be transferred to federal custody. The department
234 shall maintain control of and responsibility for the custody of
235 the prisoner until the prisoner is physically transferred to
236 federal custody.

237 (b) In coordination with the department, the Parole
238 Commission shall provide notice and obtain acknowledgment in
239 writing that notice was provided to each alien who is approved
240 for removal and deportation that reentry into the United States
241 requires the return of the alien to the custody of the
242 department in order to complete the remainder of his or her
243 sentence imposed by the court. The alien must agree to release
244 into federal custody under this section.

245 (4) A prisoner who is released under this section shall be
246 under conditional supervision of the Parole Commission for the
247 remainder of the maximum period for which he or she has been
248 sentenced.

249 (a) The conditions of supervision for a prisoner who is
250 released under this section are that he or she must not:

251 1. Violate the law of this state or of any other
252 jurisdiction of the United States; or

253 2. Return to the United States after release.

254 (b) If a prisoner who is released under this section
255 returns to the United States, the Parole Commission shall revoke
256 the release of the prisoner in accordance with the procedures in
257 s. 947.141 and seek the return of the prisoner to the custody of
258 the department to serve the remainder of the sentence imposed by
259 the court.

260 (c) A prisoner whose conditional deportation release is
261 revoked is not thereafter eligible for any form of discretionary

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262 release except as the result of accrual of any gain time earned
263 after return to prison.

264 (5) The secretary of the department shall pursue, and is
265 authorized to enter into, an agreement with the United States
266 Department of Homeland Security regarding the rapid repatriation
267 of removable custodial aliens from the United States pursuant to
268 this section.

269 (6) The department shall compile statistics on
270 implementation of this section, including, but not limited to:

271 (a) The number of prisoners who are transferred to federal
272 custody;

273 (b) The number of prisoners who are removed or deported;

274 (c) The number of releasees who reenter the United States,
275 including the number who are returned to the custody of the
276 department; and

277 (d) The annual cost-avoidance achieved.

278 (7) The department and the Parole Commission may adopt
279 rules pursuant to ss. 120.536(1) and 120.54 to implement the
280 provisions of this section.

281 (8) To the extent practicable, this section applies to all
282 prisoners actually in confinement on, and all prisoners taken
283 into confinement after, July 1, 2011.

284 Section 5. Section 947.141, Florida Statutes, is amended to
285 read:

286 947.141 Violations of conditional release, control release,
287 ~~or~~ conditional medical release, ~~or~~ addiction-recovery
288 supervision, or conditional deportation release.-

289 (1) If a member of the commission or a duly authorized
290 representative of the commission has reasonable grounds to

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291 believe that an offender who is on release supervision under s.
292 947.1405, s. 947.146, s. 947.149, ~~or~~ s. 944.4731, or s. 945.80
293 has violated the terms and conditions of the release in a
294 material respect, such member or representative may cause a
295 warrant to be issued for the arrest of the releasee; if the
296 offender was found to be a sexual predator, the warrant must be
297 issued.

298 (2) Upon the arrest on a felony charge of an offender who
299 is on release supervision under s. 947.1405, s. 947.146, s.
300 947.149, ~~or~~ s. 944.4731, or s. 945.80, the offender must be
301 detained without bond until the initial appearance of the
302 offender at which a judicial determination of probable cause is
303 made. If the trial court judge determines that there was no
304 probable cause for the arrest, the offender may be released. If
305 the trial court judge determines that there was probable cause
306 for the arrest, such determination also constitutes reasonable
307 grounds to believe that the offender violated the conditions of
308 the release. Within 24 hours after the trial court judge's
309 finding of probable cause, the detention facility administrator
310 or designee shall notify the commission and the department of
311 the finding and transmit to each a facsimile copy of the
312 probable cause affidavit or the sworn offense report upon which
313 the trial court judge's probable cause determination is based.
314 The offender must continue to be detained without bond for a
315 period not exceeding 72 hours excluding weekends and holidays
316 after the date of the probable cause determination, pending a
317 decision by the commission whether to issue a warrant charging
318 the offender with violation of the conditions of release. Upon
319 the issuance of the commission's warrant, the offender must

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320 continue to be held in custody pending a revocation hearing held
321 in accordance with this section.

322 (3) Within 45 days after notice to the Parole Commission of
323 the arrest of a releasee charged with a violation of the terms
324 and conditions of conditional release, control release,
325 conditional medical release, ~~or~~ addiction-recovery supervision,
326 or conditional deportation release, the releasee must be
327 afforded a hearing conducted by a commissioner or a duly
328 authorized representative thereof. If the releasee elects to
329 proceed with a hearing, the releasee must be informed orally and
330 in writing of the following:

331 (a) The alleged violation with which the releasee is
332 charged.

333 (b) The releasee's right to be represented by counsel.

334 (c) The releasee's right to be heard in person.

335 (d) The releasee's right to secure, present, and compel the
336 attendance of witnesses relevant to the proceeding.

337 (e) The releasee's right to produce documents on the
338 releasee's own behalf.

339 (f) The releasee's right of access to all evidence used
340 against the releasee and to confront and cross-examine adverse
341 witnesses.

342 (g) The releasee's right to waive the hearing.

343 (4) Within a reasonable time following the hearing, the
344 commissioner or the commissioner's duly authorized
345 representative who conducted the hearing shall make findings of
346 fact in regard to the alleged violation. A panel of no fewer
347 than two commissioners shall enter an order determining whether
348 the charge of violation of conditional release, control release,

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349 conditional medical release, ~~or~~ addiction-recovery supervision,
350 or conditional deportation release has been sustained based upon
351 the findings of fact presented by the hearing commissioner or
352 authorized representative. By such order, the panel may revoke
353 conditional release, control release, conditional medical
354 release, ~~or~~ addiction-recovery supervision, or conditional
355 deportation release and thereby return the releasee to prison to
356 serve the sentence imposed, reinstate the original order
357 granting the release, or enter such other order as it considers
358 proper. Effective for inmates whose offenses were committed on
359 or after July 1, 1995, the panel may order the placement of a
360 releasee, upon a finding of violation pursuant to this
361 subsection, into a local detention facility as a condition of
362 supervision. For prisoners who have violated the conditions
363 governing removal and deportation of criminal aliens under s.
364 945.80, the commission shall order the return to prison.

365 (5) Effective for inmates whose offenses were committed on
366 or after July 1, 1995, notwithstanding the provisions of ss.
367 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and
368 951.23, or any other law to the contrary, by such order as
369 provided in subsection (4), the panel, upon a finding of guilt,
370 may, as a condition of continued supervision, place the releasee
371 in a local detention facility for a period of incarceration not
372 to exceed 22 months. Prior to the expiration of the term of
373 incarceration, or upon recommendation of the chief correctional
374 officer of that county, the commission shall cause inquiry into
375 the inmate's release plan and custody status in the detention
376 facility and consider whether to restore the inmate to
377 supervision, modify the conditions of supervision, or enter an

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378 order of revocation, thereby causing the return of the inmate to
379 prison to serve the sentence imposed. The provisions of this
380 section do not prohibit the panel from entering such other order
381 or conducting any investigation that it deems proper. The
382 commission may only place a person in a local detention facility
383 pursuant to this section if there is a contractual agreement
384 between the chief correctional officer of that county and the
385 Department of Corrections. The agreement must provide for a per
386 diem reimbursement for each person placed under this section,
387 which is payable by the Department of Corrections for the
388 duration of the offender's placement in the facility. This
389 section does not limit the commission's ability to place a
390 person in a local detention facility for less than 1 year. This
391 subsection is not applicable to a person violating the
392 conditions governing removal and deportation of criminal aliens
393 under s. 945.80.

394 (6) Whenever a conditional release, control release,
395 conditional medical release, ~~or~~ addiction-recovery supervision,
396 or conditional deportation release is revoked by a panel of no
397 fewer than two commissioners and the releasee is ordered to be
398 returned to prison, the releasee, by reason of the misconduct,
399 shall be deemed to have forfeited all gain-time or commutation
400 of time for good conduct, as provided for by law, earned up to
401 the date of release. However, if a conditional medical release
402 is revoked due to the improved medical or physical condition of
403 the releasee, the releasee shall not forfeit gain-time accrued
404 before the date of conditional medical release. This subsection
405 does not deprive the prisoner of the right to gain-time or
406 commutation of time for good conduct, as provided by law, from

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407 the date of return to prison.

408 (7) If a law enforcement officer has probable cause to
409 believe that an offender who is on release supervision under s.
410 947.1405, s. 947.146, s. 947.149, ~~or~~ s. 944.4731, or s. 945.80
411 has violated the terms and conditions of his or her release by
412 committing a felony offense, the officer shall arrest the
413 offender without a warrant, and a warrant need not be issued in
414 the case.

415 Section 6. This act shall take effect July 1, 2011.