

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1095 Prevention of Acts of War

**SPONSOR(S):** Criminal Justice Subcommittee; Ray and others

**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 4 N, As CS	Malcolm	White
2) Justice Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The bill creates a process for the reporting, screening, and possible monitoring and exclusion of certain foreign immigrants and refugees (defined in the bill as a "restricted person"). Specifically, the bill:

- Prohibits any state or local governmental entity or employee from cooperating or assisting with the entry or resettlement of a restricted person into the state unless authorized by the Governor;
- Prohibits any person who receives funds from the state from assisting with the entry or resettlement of a restricted person into the state for a period of 5 years;
- Prohibits any person who assisted with the entry or resettlement of a restricted person into the state from receiving funds from the state for a period of 5 years;
- Requires that any person who assists with the entry or resettlement of a foreign refugee or immigrant into the state through a public or private resettlement assistance program must submit to the Department of Law Enforcement (Department) the personal identifying information of the foreign refugee or immigrant the person assisted;
- Requires the Department to conduct background screenings on new foreign refugees or immigrants and certain current foreign refugees or immigrants who have been in the state since 2011;
- Requires the Department to submit a report of the results of the background screening, including any information indicating whether the foreign refugee or immigrant is a restricted person or an invader, to the Governor and the United States Department of Homeland Security;
- Authorizes the Governor to:
  - monitor a restricted person in the state;
  - to use all powers and resources, including emergency powers and military force, to prevent a restricted person from entering or resettling in the state or to prevent a restricted person residing in the state from committing an act of war; and
  - exempt individuals or categories of individuals from the bill.
- Authorizes the Governor and the Attorney General to review and challenge the lawfulness of any federal law or action that encourage or authorizes the entry or resettlement of a restricted person into the state.

The bill may have an indeterminate negative fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact on local governments.

The bill provides that it will be effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The federal government has “broad, undoubted power over the subject of immigration and the status of aliens,” and thus has established an “extensive and complex” set of rules governing the admission and removal of aliens, along with conditions for aliens’ continued presence within the United States.<sup>1</sup> Federal law creates a number of immigrant classifications, such as family members of U.S. citizens, spouses and fiancés of U.S. citizens, employment-based immigrants, asylees, and refugees.<sup>2</sup>

#### **Refugee**

A refugee is generally defined in federal law as a person who is outside his or her home country, and who is unable or unwilling to return to and avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>3</sup> The admission and resettlement of refugees in the United States is governed by the federal Immigration and Nationality Act, as amended by the Refugee Act of 1980.<sup>4</sup> The President is responsible for determining the total number of refugees that will be admitted to the United States each year.<sup>5</sup> Subject to the President’s numerical limitations, the U.S. Citizenship and Immigration Services within the Department of Homeland Security processes applications for refugee status and determines whether to admit an individual to the United States as a refugee.<sup>6</sup>

#### **Refugee Application and Processing**

The refugee application process typically begins when the United Nations High Council on Refugees (UNHCR) refers a refugee applicant’s case to the United States for resettlement.<sup>7</sup> The case is first received and processed by one of nine Department of State-funded Resettlement Support Centers (RSCs) located outside the U.S. The RSC prepares the refugee application for U.S. resettlement consideration.<sup>8</sup> It collects biographic and other information from the applicant to prepare for an adjudication interview and security screening. Enhanced security screening is a joint responsibility of the Department of State, the Department of Homeland Security, and includes the participation of multiple U.S. Government intelligence and security agencies, including the Federal Bureau of Investigation and the Department of Defense.<sup>9</sup>

Officers from the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) review all the information that the RSC has collected and conduct an in-person interview with each refugee applicant before deciding whether to approve the applicant for entry and resettlement in the United States.

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<sup>1</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).

<sup>2</sup> See Directory of Visa Categories, U.S. Department of State, Bureau of Consular Affairs, <https://travel.state.gov/content/visas/en/general/all-visa-categories.html> (last visited Jan. 29, 2015).

<sup>3</sup> 8 U.S.C. § 1101(a)(42)(A).

<sup>4</sup> 8 U.S.C. §§ 1157, 1521-1524.

<sup>5</sup> 8 U.S.C. § 1157(a)(2)-(3). The President may increase the number of refugees to be admitted in a given year if he determines that an “unforeseen refugee situation exists” and certain other conditions are met. 8 U.S.C. § 1157(b).

<sup>6</sup> *Id.* § 1157(c)(1); 8 C.F.R. 207.

<sup>7</sup> Some refugees can start the application process with the RSC without a referral from UNHCR or other entity. This includes close relatives of asylees and refugees already in the United States and refugees who belong to specific groups set forth in statute or identified by the Department of State as being eligible for direct access to the program.

<sup>8</sup> U.S. Refugee Admissions Program, Application and Case Processing, U.S. Department of State, <http://www.state.gov/j/prm/ra/admissions/index.htm> (last visited Jan. 29, 2015).

<sup>9</sup> Background Briefing on Refugee Screenings and Admissions, U.S. Department of State (Nov. 17, 2015), <http://www.state.gov/r/pa/prs/ps/2015/11/249613.htm> (last visited Jan. 29, 2015).

Approved refugees undergo a health screening to identify medical needs and to ensure that those with a contagious disease do not enter the United States. Finally, the RSC requests a “sponsorship assurance” from a one of nine U.S.-based resettlement agencies which then decides where in the United States the refugee will be placed, subject to final approval from the Department of State’s Bureau of Population, Refugees, and Migration.<sup>10</sup>

Those refugees who are approved for entry in to the United States by USCIS receive assistance upon arrival in the United States through the Department of State’s Reception and Placement Program – a cooperative public-private program made up of a number of participants. After one year being in the United States, refugees are required to apply for permanent residence (commonly referred to as a green card) and after five years in the United States, a refugee is eligible to apply for U.S. citizenship.<sup>11</sup>

The total processing time for a refugee application varies depending on an applicant’s location and other circumstances, but the average time from the initial UNHCR referral to arrival as a refugee in the United States is about 18-24 months.<sup>12</sup>

### **State Involvement in Refugee Settlement**

Both the Director of the Office of Refugee Resettlement and the Bureau of Population, Refugees, and Migration are required to consult regularly with state and local governments and private nonprofit agencies concerning the sponsorship process and the distribution of refugees among the states and localities.<sup>13</sup> The Director is also required to “develop and implement, in consultation with representatives of voluntary agencies and state and local governments, policies and strategies for the placement and resettlement of refugees . . . .”<sup>14</sup> Such policies and strategies must:

- insure that a refugee is not placed or resettled in an area highly impacted by the presence of refugees or comparable populations unless the refugee has family residing in that area;
- provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly meet with state and local government officials to plan and coordinate the appropriate placement of refugees: and
- take into account:
  - the proportion of refugees and comparable entrants in the population in the area;
  - the availability of employment opportunities, affordable housing, and public and private resources for refugees in the area;
  - the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance; and
  - the secondary migration of refugees to and from the area that is likely to occur.<sup>15</sup>

Congress has also required that, “[w]ith respect to the location of placement of refugees within a State,” the Bureau must, consistent with the above policies and strategies and to the maximum extent possible, take into account recommendations of the state in determining where to place a refugee.<sup>16</sup>

### **Refugee Services Program in Florida**

The Office of Refugee Resettlement within the United States Department of Health and Human Services makes federal funds available to states to support the resettlement of refugees.<sup>17</sup> In Florida,

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<sup>10</sup> 8 U.S.C. § 1522(b)(1)(A); U.S. Gov’t Accountability Office, GAO-12-729, *Refugee Resettlement: Greater Consultation with Community Stakeholders Could Strengthen Program* 4-5, 7 (2012); see U.S. Dep’t of State, *The Reception and Placement Program*, available at <http://www.state.gov/j/prm/ra/receptionplacement/index.htm> (last visited Jan. 29, 2015).

<sup>11</sup> U.S. Dep’t of State, *The Reception and Placement Program*, available at <http://www.state.gov/j/prm/ra/receptionplacement/index.htm> (last visited Jan. 29, 2015).

<sup>12</sup> U.S. Refugee Admissions Program, *supra* note 8.

<sup>13</sup> 8 U.S.C. § 1522(a)(2)(A).

<sup>14</sup> *Id.* § 1522(a)(2)(B).

<sup>15</sup> *Id.* § 1522(a)(2)(C).

<sup>16</sup> *Id.* § 1522(a)(2)(D).

<sup>17</sup> 8 U.S.C. §1522; 45 C.F.R. pt. 400.

the Department of Children and Families' Refugee Services Program is the recipient of these federal funds.<sup>18</sup> Florida's Refugee Services Program is the largest in the nation, receiving more than 27,000 refugees, asylees, and Cuban/Haitian entrants each year.<sup>19</sup> Refugee Services' clients all have a legal immigration status.<sup>20</sup> The Refugee Services Program only provides services to individuals with specific legal immigration statuses: refugees, asylees, Cuban/Haitian entrants, and foreign victims of human trafficking. Cubans account for more than 80% of the arrivals to the state each year.<sup>21</sup>

### **Effect of the Bill**

The bill creates s. 940.0323, F.S., titled "Prevention of acts of war," which creates a process for the reporting, screening, and possible monitoring and exclusion of certain foreign refugees.

### **Definitions**

The following significant terms are defined in the bill:

- An "invader" is a person who is not a United States citizen and who enters into or remains in the state with the intent of doing violence to persons or destroying property as part of any conspiracy or plan to:
  - Violently injure the way of life for citizens of the state;
  - Weaken or conquer all or any portion of the state or the United States; or
  - Wage war against the United States, ally with its enemies, or provide comfort and aid to its enemies.
- A "restricted person" is a foreign refugee or immigrant for whom there is reasonable cause to believe that he or she originates from, or has been in close proximity to, any location designated by the Governor in which: invaders, prospective invaders, or designated foreign terrorist organizations<sup>22</sup> are known to originate, organize, or train.
- The "personal identifying information" of a foreign refugee or immigrant includes passport information and fingerprints, addresses and geographical location of any temporary or permanent residence, and other information required by the Governor under s. 940.0323, F.S.

### **Restriction on Cooperation with the Entry or Resettlement of Restricted Person**

The bill prohibits any state or local governmental entity or employee from cooperating or assisting with the entry or resettlement of a restricted person into the state unless authorized by the Governor.

The bill also prohibits any person who, before, on, or after the effective date of the bill, receives state funds for any purpose from assisting with the entry or resettlement of a restricted person in the state for 5 years after receiving such funds unless the Governor expressly authorizes such assistance. A person, who, after the effective date of the bill, assists with the entry or resettlement of a restricted person in the state, may not receive state funds for any purpose for 5 years after the most recent act of assistance unless the Governor authorizes the assistance.

### **Screening of Refugees and Immigrants**

The bill requires that any person who assists with the entry or resettlement of a foreign refugee or immigrant into the state through a public or private resettlement assistance program must submit to the Department of Law Enforcement (Department) the personal identifying information of the foreign refugee or immigrant the person assisted. The time-frame for submitting the information to the Department is as follows:

- A person who was providing assistance upon the effective date of the bill must submit the information within 30 days after the effective date of the bill.

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<sup>18</sup> Refugee Services Program, Department of Children and Families, *General Program Overview*, <http://www.myflfamilies.com/service-programs/refugee-services/overview> (last visited Jan. 15, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 8 U.S.C. §1189 authorizes the United States Secretary of State to designate foreign terrorist organizations.

- A person who provides assistance after the effective date of the bill must submit the information upon agreeing to provide assistance.
- A person who was providing assistance before the effective date of the bill must submit the information within 90 days after the effective date of the bill,.

The bill exempts from the background screening requirement those refugees and immigrants who were born in the western hemisphere and reside in the state on the effective date of the bill.

The Department must conduct a background screening of a foreign refugee or immigrant within 15 days after receipt of the personal identifying information of those refugees and immigrants who enter the state on or after the effective date of the bill. The Department has 30 days to conduct a background screening after receiving the personal identifying information of those refugees and immigrants who entered the state before the effective date of the bill. However, for refugees or immigrants who have continually resided in the state since January 1, 2011, the Department has 90 days after receipt of the personal identifying information to conduct the screening. The Department may cooperate and share information with federal agencies as necessary to conduct the background screening.

The Department must submit a report of the results of the background screening, including any information indicating whether the foreign refugee or immigrant is a restricted person or an invader, to the Governor and the United States Department of Homeland Security. Within 10 days after submitting the report, the Department must submit a separate report to the person who submitted the personal identifying information, unless directed otherwise by the Governor. The Department may also provide background screening information to any local law enforcement agency as directed by the Governor.

### **Gubernatorial Powers**

The bill authorizes the Governor to use all powers and resources, including police powers, emergency powers, and military force, to prevent a restricted person from entering or resettling in the state and to prevent a restricted person residing in the state from committing an act of war, unless the Governor has reasonable cause to believe that the restricted person is not an invader. The governor is also authorized to:

- Monitor the presence of a restricted person entering, resettling, or residing in the state.
- Adopt emergency and permanent rules necessary to implement the bill.
- Adopt forms and procedures for the collection of personal identifying information.
- Exempt individuals or categories of individuals from the bill in order to efficiently use resources for public safety.

### **Actions to Prevent the Resettlement of Restricted Persons**

The bill authorizes the Governor and the Attorney General to review and challenge the lawfulness of any federal law or regulation encouraging or providing for the entry or resettlement of a restricted person into the state. The bill also directs the Governor and the Attorney General to take any action authorized by law to prevent the entry or resettlement into the state of a restricted person by the federal government or any person unless the Governor has reasonable cause to believe that the restricted person is not an invader.

### **Additional Provisions**

The bill provides a number of whereas clauses related to the subject of the bill.

The bill also provides that it does not supplement or limit any emergency or military powers otherwise authorized by law.

The bill provides that it will be effective upon becoming law.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 943.0323, F.S., related to prevention of acts of war.

Section 2 provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill requires the Department of Law Enforcement to conduct background screenings of foreign refugees and immigrants who use a public or private resettlement assistance program. Consequently, the bill may have a negative impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

##### Preemption

It appears that to the extent the bill attempts to regulate immigration, it may be precluded under principles of preemption, specifically field preemption, pursuant to the Supremacy Clause of the United States Constitution.<sup>23</sup> "Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards."<sup>24</sup> While the United States Supreme Court has "never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted," it has found field preemption in certain core areas of immigration law, such as the field of alien registration and determining what aliens may be

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<sup>23</sup> U.S. Const. art. VI, cl. 2. Field preemption occurs when Congress has determined to exercise exclusive authority and "displace state law altogether" in a particular field. *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012).

<sup>24</sup> *Arizona*, 132 S. Ct. at 2502.

admitted into the country.<sup>25</sup> The Court has stated that the “[p]ower to regulate immigration,” which it described as the power to “determin[e] who should or should not be admitted into the country, and the conditions under which a legal entrant may remain,” is “unquestionably exclusively a federal power.”<sup>26</sup> Consequently, it appears that only the federal government has the authority to decide which aliens should be admitted to the United States as refugees.<sup>27</sup>

#### Due Process and Equal Protection

The United States Supreme Court has held that the due process and equal protection clauses of the Fourteenth Amendment “encompass lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside.”<sup>28</sup> Accordingly, statutory “classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.”<sup>29</sup> The Court has explained that “[a]liens as a class are a prime example of a ‘discrete and insular’ minority for whom such heightened judicial solicitude is appropriate [, thus] the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.”

#### Right to Travel

Freedom of movement and interstate travel has been recognized by the United States Supreme Court as a fundamental right under the United States Constitution since 1868.<sup>30</sup> The Court “has made it clear that, whatever may be the scope of the constitutional right of interstate travel, aliens lawfully within this country have a right to enter and abide in any State in the Union ‘on an equality of legal privileges with all citizens under nondiscriminatory laws.’”<sup>31</sup>

#### B. RULE-MAKING AUTHORITY:

The bill authorizes the governor to adopt emergency and permanent rules necessary to implement the bill and to adopt forms and procedures for the collection of personal identifying information as required by the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 3, 2016, the Criminal Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

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<sup>25</sup> *DeCanas v. Bica*, 424 U.S. 351, 355 (1976); *Arizona*, 132 S. Ct. at 2502 (“the Federal Government has occupied the field of alien registration”); *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941) (“where the federal government, in the exercise of its superior authority in this field, has enacted . . . a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations”); *Toll v. Moreno*, 458 U.S. 1, 11 (1982) (“The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States . . . .”)

<sup>26</sup> 424 U.S. at 354-55; see also *Arizona*, 132 S. Ct. at 2498 (“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”); *Hines*, 312 U.S. at 62 (recognizing “the supremacy of the national power in the general field of foreign affairs, including power over immigration, naturalization and deportation”).

<sup>27</sup> See Op. Tenn. Att’y Gen. 15-17 (Nov. 30, 2015); *United States v. Alabama*, 691 F.3d 1269, 1295 (11th Cir. 2012) (“Congress intended that the Executive Branch determine who must be removed and who may permissibly remain. [A]lthough Alabama has taken it upon itself to unilaterally determine that any alien unlawfully present in the United States cannot live within the state’s territory, regardless of whether the Executive Branch would exercise its discretion to permit the alien’s presence. This is not a decision for Alabama to make . . . .”)

<sup>28</sup> *Graham v. Richardson*, 403 U.S. 365, 371 (1971) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Truax v. Raich*, 239 U.S. 33, 39, (1915); *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 420 (1948)).

<sup>29</sup> *Graham*, 403 U.S. at 371-72 (1971) (citing *United States v. Carolene Products Co.*, 304 U.S. 144, 152—153, n. 4 (1938)).

<sup>30</sup> See *Crandall v. Nevada*, 73 U.S. 35

<sup>31</sup> *Graham*, 403 U.S. at 377-7; see *Takahashi*, 334 U.S. at 420 (“The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide ‘in any state’ on an equality of legal privileges with all citizens under non-discriminatory laws.”)

- revise the definition of “restricted person” to authorize the Governor to designate the locations from which a refugee or immigrant originates that classifies him or her as a “restricted person”;
- add locations in which a foreign terrorist organization organizes, operates, or trains to the types of locations from which a refugee or immigrant originates that classifies him or her as a “restricted person”;
- exempt immigrants and refugees from the western hemisphere who are currently in the state from the required background screening;
- make technical and stylistic changes.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.