

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Justice Appropriations Subcommittee; 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	9 Y, 3 N, As CS	Smith	Lloyd
3) State Affairs Committee	9 Y, 6 N	Camechis	Camechis

SUMMARY ANALYSIS

This bill creates a section of law entitled "prevention of acts of war," which establishes a process for reporting, screening, monitoring, and possibly preventing certain foreign immigrants and refugees from entering or resettling in this state.

With respect to "restricted persons":

- "Restricted person" is defined and any state or local governmental entity or employee is prohibited from cooperating or assisting with the entry or resettlement of a restricted person in this state unless authorized by the Governor;
- The Governor is authorized to monitor the presence of restricted persons in this state;
- The Governor is authorized to use all powers and resources, including emergency powers and military force, to prevent certain restricted persons from entering or resettling in the state and to prevent certain restricted persons residing in the state from committing an act of war;
- The Governor and Attorney General are directed to take any lawful action to prevent the entry or resettlement of certain restricted persons in this state by the Federal Government or any other person;
- Any person who receives state funds is prohibited from assisting with the entry or resettlement of a restricted person in this state for a period of 5 years unless the assistance is authorized by the Governor; and
- Any person who assists with the entry or resettlement of a restricted person in this state is prohibited from receiving state funds for a period of 5 years unless the assistance is authorized by the Governor.

With respect to foreign refugees or immigrants born in the Eastern Hemisphere:

- If, upon the effective date of the bill, a person is engaged through a resettlement program in assisting foreign refugees or immigrants who were born in the Eastern Hemisphere with entry into or resettlement in this state, the person must submit to the Florida Department of Law Enforcement (FDLE) personal identifying information of each such refugee or immigrant who was assisted before the effective date of the bill. The personal identifying information must be provided to FDLE within 30 days after the bill becomes law; and
- If, before the effective date of this bill, a person assisted through a resettlement program any foreign refugee or immigrant who was born in the Eastern Hemisphere with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each such refugee or immigrant currently residing in this state. The personal identifying information must be provided to FDLE within 90 days after the bill becomes law.

With respect to foreign refugees or immigrants regardless of birthplace:

- If, after the effective date of this bill, a person assists through a public or private resettlement program any foreign refugee or immigrant with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each assisted refugee or immigrant. The personal identifying information must be submitted to FDLE when the person agrees to assist the foreign refugee or immigrant;
- The bill requires FDLE to conduct background screenings on all foreign refugees or immigrants who have been or will be assisted with entry or resettlement in this state through a resettlement program and all refugees or immigrants who have continuously resided in this state since January 1, 2011; and
- The bill requires fees incurred by FDLE for background screenings and processing and retention of personal identifying information to be paid by the foreign refugee or immigrant or the person assisting with his or her entry or resettlement in this state.

This bill will have an indeterminate fiscal impact on state government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1095e.SAC

DATE: 2/26/2016

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.¹ 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.²

Refugees

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.³ 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 1980.⁴ The President is responsible for determining the total number of refugees that will be admitted to the United States each year.⁵ 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.⁶

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.⁷ 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 resettlement consideration.⁸ 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 and 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.⁹

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.

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

² 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).

³ 8 U.S.C. § 1101(a)(42)(A).

⁴ 8 U.S.C. §§ 1157, 1521-1524.

⁵ 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).

⁶ *Id.* § 1157(c)(1); 8 C.F.R. 207.

⁷ 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.

⁸ 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).

⁹ 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 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.¹⁰

Refugees who are approved for entry into 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 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.¹¹

The total processing time for a refugee application varies depending upon 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.¹²

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.¹³ 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”¹⁴ 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;
 - Availability of employment opportunities, affordable housing, and public and private resources for refugees in the area;
 - Likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance; and
 - Secondary migration of refugees to and from the area that is likely to occur.¹⁵

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.¹⁶

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.¹⁷ In Florida, the Department of Children and Families’ Refugee Services Program is the recipient of these federal

¹⁰ 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).

¹¹ 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).

¹² U.S. Refugee Admissions Program, *supra* note 8.

¹³ 8 U.S.C. § 1522(a)(2)(A).

¹⁴ *Id.* § 1522(a)(2)(B).

¹⁵ *Id.* § 1522(a)(2)(C).

¹⁶ *Id.* § 1522(a)(2)(D).

¹⁷ 8 U.S.C. §1522; 45 C.F.R. pt. 400.

funds.¹⁸ Florida's Refugee Services Program is the largest in the nation, receiving more than 27,000 refugees, asylees, and Cuban/Haitian entrants each year.¹⁹ Refugee Services' clients all have a legal immigration status.²⁰ The Refugee Services Program only provides services to individuals with specific legal immigration status: 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.²¹

EFFECT OF PROPOSED CHANGES

This bill creates a section of law entitled "prevention of acts of war," which establishes a process for reporting, screening, monitoring, and possibly preventing certain foreign immigrants and refugees from entering or resettling in this state.

Provisions Regarding Restricted Persons

Definitions

The bill defines "*restricted person*" as 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 or prospective invaders are known to originate, organize, or train for violent acts of war; or
- A foreign terrorist organization designated by the United States Secretary of State pursuant to 8 U.S.C. s. 1189 organizes, operates, or trains.

The bill also defines "*invader*" as a person who is not a United States citizen 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 of the United States; or
- Wage war against the United States, to ally with its enemies, or provide comfort and aid to its enemies.

Entry or Resettlement of Restricted Persons

Unless expressly authorized by the Governor, the bill prohibits a state or local government entity or employee from cooperating with or assisting any person, including a federal agent, with the entry into or resettlement in Florida of a restricted person.

In addition, unless expressly authorized by the Governor, the bill prohibits a person who receives state funds for any purpose from assisting with the entry into or resettlement of a restricted person in this state for 5 years after receiving state funds. After the effective date of the bill, a person who assists with the entry into or resettlement of a restricted person in this state is prohibited from receiving state funds for any purpose for 5 years after the most recent act of assistance to a restricted person, unless the Governor expressly authorized such assistance.

Gubernatorial Powers Applicable to Restricted Persons

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 into or resettling in the state and to prevent a

¹⁸ 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).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

restricted person residing in the state from committing violent acts of war, unless the Governor has reasonable cause to believe that a restricted person is not an invader;

- Monitor the presence of a restricted person entering into, resettling in, or residing in the state.
- Adopt emergency rules and permanent rules necessary to implement the bill; and
- Exempt individuals or categories of individuals from the requirements of the bill in order to efficiently use departmental resources for public safety.

Actions to Prevent Resettlement of Restricted Persons

The Governor and the Attorney General are independently authorized to review and challenge the lawfulness of any federal law or regulation encouraging or providing for the entry into or resettlement of restricted persons in this state.

In addition, the Governor and the Attorney General are independently directed to take any action authorized by law to prevent the entry into or resettlement in the state of a restricted person by the Federal Government or any other person, unless the Governor has reasonable cause to believe that the restricted person is not an invader.

Provisions Regarding Foreign Refugees and Immigrants

Definitions

The bill creates two additional definitions that are necessary to implement provisions regarding foreign refugees and immigrants.

The bill defines "*foreign refugee or immigrant*" as a person who is not a United States citizen but who seeks entry into or resettlement in this state.

The bill also defines "*personal identifying information*" of a foreign refugee or immigrant as including passport information and fingerprints, addresses and geographical location of any temporary or permanent residence that has been or may be used, and other information required by the Governor.

Reporting Requirement for Refugees or Immigrants Born in the Eastern Hemisphere

If, upon the effective date of the bill, a person is engaged through a public or private resettlement assistance program in assisting foreign refugees or immigrants who were born in the Eastern Hemisphere with the entry into or resettlement in this state, the person must submit to the Florida Department of Law Enforcement (FDLE) personal identifying information of each such foreign refugee or immigrant who was assisted by the person before the effective date of the bill. The personal identifying information must be provided to FDLE within 30 days after the bill becomes law.

If, before the effective date of this bill, a person assisted through a public or private resettlement program any foreign refugees or immigrants who were born in the Eastern Hemisphere with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each such refugee or immigrant currently residing in the state. The personal identifying information must be submitted to FDLE within 90 days after the bill becomes law.

Reporting Requirements and Background Screenings for Foreign Refugees or Immigrants Regardless of Birthplace

If, after the effective date of this bill, a person assists through a public or private resettlement program *any* foreign refugee or immigrant with entry into or resettlement in this state, the person must submit to FDLE personal identifying information of each foreign refugee or immigrant assisted by the person. The personal identifying information must be submitted to FDLE when the person agrees to assist the foreign refugee or immigrant.

FDLE is required to conduct background screenings on all foreign refugees or immigrants who have been or will be assisted with entry or resettlement in this state through a resettlement program and all refugees or immigrants who have continuously resided in this state since January 1, 2011. The

screening must be conducted within a specified number of days after receiving personal identifying information from persons who assisted with the refugee's or immigrant's entry or resettlement in this state. For refugees or immigrants who have continuously resided in this state since January 1, 2011, it is unclear who will provide information to FDLE, or when FDLE will have to conduct the screening, since the bill does not specify that those refugees and immigrants must be assisted by a person engaged with a resettlement program.

FDLE is authorized to cooperate and share information with federal agencies as may be expedient in conducting the background screening.

FDLE is required to submit a report, as soon as practicable, 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, FDLE must submit a separate report to the person who submitted the personal identifying information, unless directed otherwise by the Governor.

FDLE may also provide background screening information to any local law enforcement agency as directed by the Governor.

Gubernatorial Powers Applicable to Foreign Refugees or Immigrants

The bill authorizes the Governor to:

- Adopt emergency rules and permanent rules necessary to implement the bill;
- Adopt forms and procedures for the collection of personal identifying information required to be submitted to FDLE by the bill; and
- Exempt individuals or categories of individuals from this section in order to efficiently use departmental resources for public safety.

Fees Charged by FDLE

Any fees incurred by FDLE to process and retain personal identifying information and conduct a background screening of a foreign refugee or immigrant must be paid by the foreign refugee or immigrant subject to the background screening or by the person who engaged through a resettlement assistance program in assisting the foreign refugee or immigrant with entry into or resettlement in this state.

FDLE may not assess a fee higher than the lowest fee authorized under s. 943.053, F.S., which establishes fees for the dissemination of criminal justice information by FDLE. Because the bill does not define the scope of the required background screening or specify the personal identifying information that must be collected, the amount and type of fees that may be assessed by FDLE is indeterminate.

Additional Provisions

The bill provides a number of whereas clauses related to the subject of the bill. The bill also specifies that it supplements and does not limit any emergency or military powers otherwise authorized by law.

B. SECTION DIRECTORY:

Section 1 creates s. 943.0323, F.S., related to restricted persons and foreign refugees and immigrants.

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 will have an indeterminate impact on state revenues as a result of the assessment of fees by FDLE.

The bill requires FDLE to collect personal identifying information (PII) and conduct background screenings of foreign refugees and immigrants who use a public or private resettlement assistance program. The bill also requires a refugee or immigrant, or a person who assists a refugee or immigrant, to pay fees assessed by FDLE to process and retain the personal identifying information and conduct a background screening.

Pursuant to Rule 11C-6.010 (5) of the Florida Administrative Code, the cost to retain fingerprints at the state level is \$6 per applicant annually. The first year of retention is included in the cost of the state criminal history record check. The cost for a state and national criminal history record check is \$38.75, of which \$24 goes into the FDLE Operating Trust Fund. An accurate estimate of the potential increase of PII and background screenings cannot be quantified at this time.

2. Expenditures: The bill will have an indeterminate impact on state expenditures.

The bill may result in increased workload due to the additional background screenings FDLE must conduct. The fees associated with such screenings would be paid by the foreign refugee or immigrant or those assisting in their relocation through a specified resettlement assistance program. Even with the revenue from the fees, according to FDLE, "these duties could not be absorbed with current resources."²² The number of additional background screenings that would be required is unknown; therefore an exact cost cannot be accurately quantified at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to impact local government revenues.
2. Expenditures: The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill will have an indeterminate negative fiscal impact on private persons who are required to submit personal identifying information to FDLE regarding any foreign refugee or immigrant assisted with resettlement or entry into this state. The extent of the impact is unclear because the bill does not specify what information must be provided or the manner in which it must be provided.

In addition, the bill will have an indeterminate negative fiscal impact on each foreign refugee or immigrant, or the private person who assisted the foreign refugee or immigrant with the entry or resettlement in this state, who must pay fees charged by FDLE to process and retain personal identifying information and conduct a background screening of the refugee or immigrant. However, because the bill does not specify the scope of the required background check or the extent of the personal identifying information required, the amount of fees that may be charged by FDLE is indeterminate.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²² Florida Department of Law Enforcement, "FDLE Legislative Bill Analysis: HB 1095", January 26, 2016, On file with the House Justice Appropriations Subcommittee,
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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.²³ “Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.”²⁴ 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 admitted into the country.²⁵ 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.”²⁶ Consequently, it appears that only the federal government has the authority to decide which aliens should be admitted to the United States as refugees.²⁷

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.”²⁸ Accordingly, statutory “classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.”²⁹ 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 1868.³⁰ 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.’”³¹

²³ 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).

²⁴ *Arizona*, 132 S. Ct. at 2502.

²⁵ *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 . . .”)

²⁶ 424 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”).

²⁷ 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 . . .”)

²⁸ *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)).

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

³⁰ See *Crandall v. Nevada*, 73 U.S. 35

³¹ *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.”)

Right to Privacy

The first sentence of Article I, Section 23, of the Florida Constitution reads, “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” The right is not limited to citizens of this state; rather, it applies broadly to every natural person. The Florida Supreme Court has concluded that Florida’s constitutional right to privacy is much broader in scope than that of the Federal Constitution.³² Florida’s right to privacy protects two different types of interests. First, it protects individuals from government interference when they make personal decisions. Second, it protects persons from compelled disclosure of private information. It is unclear if the requirement to submit personal identifying information for each foreign refugee and immigrant who enters or resettles in this state comports with the constitutional right to privacy granted to every natural person.

Delegation of Legislative Authority to the Executive

The separation of powers doctrine prevents the Legislature from delegating its constitutional duty³³ to exercise policy-related discretion over the content of law.³⁴ In *Askew v. Cross Key Waterways*,³⁵ the Florida Supreme Court acknowledged that “where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine.”³⁶ However, the court warned that when legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the Legislature in its conduct, the agency becomes the lawgiver rather than the administrator of the law.³⁷ This bill delegates significant authority to the Governor to implement the state’s policy on the entry or resettlement of restricted persons and foreign refugees or immigrants in this state. However, the bill may not provide standards sufficient to support the delegation of power to the Governor or guide the performance of his duties.

- 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:

Public Records

The bill requires certain persons to provide FDLE with personal identifying information for each foreign refugee or immigrant who enters or resettles in this state with the assistance of a public or private resettlement program. The bill defines “personal identifying information” of a foreign refugee or immigrant as including passport information and fingerprints, addresses and geographical location of any temporary or permanent residence that has been or may be used, and *other information required by the Governor*. While the definition specifies certain specific types of information, such as address or fingerprints, the list is not exhaustive. Therefore, the type or extent of personal identifying information that would be required by FDLE is unknown.

Article I, section 24(a) of the Florida Constitution sets forth the state’s public policy regarding access to government records and guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.

³² *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla. 1985).

³³ *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

³⁴ *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937).

³⁵ 372 So.2d 913 (Fla. 1978)

³⁶ *Id.* at 921 (quoting *CEEED v. California Coastal Zone Conservation Comm’n*, 43 Cal.App.3d 306, 325 (Cal. App. 4 Dist. 1974)).

³⁷ *Id.* at 918-19. See also *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla. 1968) (“[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.”). See generally James P. Rhea and Patrick L. —Booterl Imhof, An Overview of the 1996 Administrative Procedure Act, 48 FLA. L. REV. 1 (1996); Dan R. Stengle and James P. Rhea, Putting the Genie Back in the Bottle: The Legislative Struggle to Contain Rulemaking by Executive Agencies, 21 FLA. ST. U. L. REV. 415 (1993); Stephen T. Maher, We’re No Angels: Rulemaking and Judicial Review in Florida, 18 FLA. ST. U. L. REV. 767 (1991).

There does not appear to be a public records exemption that encompasses all of the personal identifying information that FDLE may require regarding foreign refugees or immigrants. It is possible that an existing public records exemption will apply to particular pieces of personal identifying information held by FDLE, depending upon the type of information collected. However, if an existing exemption does not apply, personal identifying information submitted to FDLE for each foreign refugee and immigrant will be a public record that is subject to inspection or copying upon request.

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:

- 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; and
- Make technical and stylistic changes.

On February 16, 2016, the Justice Appropriations Subcommittee adopted one amendment to the bill. The amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that any fees charged by FDLE for conducting background screenings and processing and retaining personal identifying information of foreign refugees or immigrants pursuant to this bill, will be at the expense of said foreign refugee or immigrant, or person(s) assisting in their resettlement through a resettlement program; and
- Limits the amount of fees charged by FDLE for these services to no higher than the minimum authorized under s. 943.053 F.S.

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