

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 2, 1998 Revised: _____

Subject: Illegal Aliens

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill would require contractors falling within the definition of a “qualified bidder,” “responsible bidder,” “qualified offerer,” or “responsible offerer” to comply with any contract conditions prohibiting the employment of illegal aliens. The term “illegal alien” is further defined as a person who is in the state violating immigration laws and the Constitution of the United States.

This act takes effect October 1, 1998.

This bill amends sections 287.012 and 287.057, Florida Statutes.

II. Present Situation:

The state encourages open and competitive bidding in the procurement of contractual services. Chapter 287, F.S., maintains that fair and open competition reduces the appearance and opportunity for favoritism and instills public confidence that contracts are awarded equitably and economically. In addition, competitive bidding discourages improprieties when the process is monitored properly using uniform procurement procedures, maintains appropriate records justifying agency decisions in the procurement process, and *holds agency and contractor to specific ethical considerations.*

FEDERAL LEGISLATION

The Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, established sanctions prohibiting employers from *knowingly* employing, recruiting, or referring for a fee, an alien not

authorized to work in the United States. Under this act an alien may obtain one of the following three documents for employment authorization:

I-551: The resident alien card issued by the Immigration and Naturalization Service (INS). This card establishes both the identity and employment eligibility and is proof of lawful permanent resident status. It is commonly called the “green card,” although it is now pink;

I-688: This is a temporary resident card issued by the INS to both IRCA legislation and Special Agricultural Workers granted temporary resident status. These temporary resident cards, also known as Employment Authorization Documents, provide space for an alien number, biographical data, fingerprints, signature, and photograph and are provided to two classes of aliens:

I-688A: An employment authorization card issued to temporary residents;

I-688B: An employment authorization card issued to refugees, asylees, asylum applicants, and certain other aliens.

Section 274, Code of Federal Regulations, adds several alternatives for eligible U.S. employment authorization. They are as follows:

Unexpired passports with an **I-551** stamp: The stamp is affixed to the passport as a temporary right-to-work authorization until the alien receives their “green card”;

I-94: Also known as the arrival departure record, this document is provided to all tourists entering and leaving the country with the exception of Canadians who are exempt;

I-327: Individuals in possession of this unexpired re-entry permit are granted leave to their country of origin for a period not to exceed 2 years before returning to the U.S.;

I-571: Known as unexpired refugee travel documents.

For purposes of this analysis an “illegal alien” as defined by the IRCA is a foreign national who entered the U.S. without inspection, entered with fraudulent documentation, or, who after entering legally as a nonimmigrant, violated status and remained in the U.S. without authorization.

Employer Responsibility

Employers must ensure that each employee fills out Section 1 of the Employment Eligibility Verification Form (I-9) which contains: name and address, date of birth, social security number, and employee signature attesting to employment eligibility. The employer is also responsible for completing Section 2 of the I-9 by examining evidence of identity and employment eligibility within 3 business days of the date employment begins. Section 2 requires the employer to record the document title, issuing authority, document number, expiration date, if any, and the date

employment begins. Employees are required to present original documents and the employers may elect, but are not required, to photocopy the documents presented. Below is a list of acceptable documents to be presented by the employee.

LIST OF ACCEPTABLE DOCUMENTS

LIST A		LIST B		LIST C
Documents that Establish Both Identity and Employment Eligibility	OR	Documents that Establish Identity	AND	Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)		1. Driver’s license or ID card issued by a state or outlying possession of the U.S. provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address.		1. U.S. social security card issued by the Social Security Administration.
2. Certificate of U.S. Citizenship (INS form N-560 or N-570)		2. ID card issued by federal, state, or local government agencies or entities provided it contains a photo or information such as name, date of birth, sex, height, eye color, and address.		2. Certification of Birth Abroad issued by the Dept. of State (Form FS-545 or Form DS-1350).
3. Certificate of Naturalization (INS Form N-550 or N-570)		3. School ID card with a photo.		3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the U.S. bearing an official seal.
4. Unexpired foreign passport, with I-551 stamp or attached INS Form I-94 indication unexpired employment authorization.		4. Voters registration card.		4. Native American tribal document.
5. Alien Registration Receipt Card with photo (INS Form I-151).		5. U.S. Military card or draft record.		5. U.S. Citizen ID Card (INS Form I-197)
6. Unexpired Temporary Resident Card (INS Form I-688).		6. Military dependent’s ID card.		6. ID card for use of Resident Citizen in the U.S. (INS Form I-79)
7. Unexpired Employment Authorization Card (INS Form I-688A).		7. U.S. Coast Guard Merchant Mariner Card		7. Unexpired employment authorization document issued by the INS (other than those listed in A)
8. Unexpired Reentry Permit (INS Form I-327).		8. Native American Tribal document		
9. Unexpired Refugee Travel Document (INS Form I-571)		9. Driver’s license issued by a Canadian government authority		

LIST A		LIST B		LIST C
		<p>For persons under age 18 who are unable to present a document listed above:</p>		
<p>10. Unexpired Employment Authorization Document issued by the INS containing a photo (INS Form I-688B)</p>		<p>10. School record or report card.</p>		
		<p>11. Clinic, doctor, or hospital record.</p>		
		<p>12. Day-care or nursery school record.</p>		

Source: Handbook for Employers (Instructions for Completing Form I-9), U.S. Department of Justice, Immigration and Naturalization Service.

Discovery of Unauthorized Aliens After I-9 is Properly Completed

In the event an INS agent discovers that an employee is not actually authorized to work and the employer has properly completed the Form I-9, the employer cannot be charged with a verification violation. A good faith defense can be made against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien, unless the government can show the employer had actual knowledge of the unauthorized status of the employee, if the employer completed the following:

- * Ensured that employees fully and properly completed Section 1 of the I-9 at the time employment began;
- * Reviewed the required documents which should have reasonably appeared to have been genuine and to have related to the person presenting them;
- * Fully and properly completed Section 2 of the I-9, and signed and dated the employer certification;
- * Retained the I-9 for the required period of time; and
- * Made the I-9 available upon request to federal agents and officers.

RECENT ACTIONS AT THE FEDERAL LEVEL

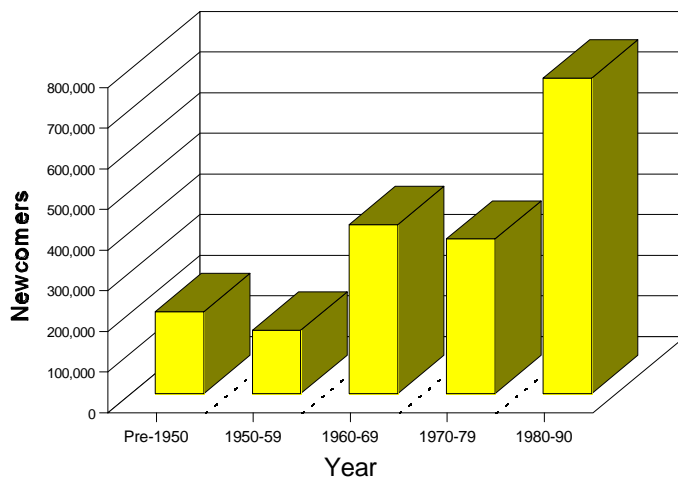
On February 13, 1996, President Clinton issued Executive Order 12989. Under the terms of the order, if a federal contractor is found to be in violation of the employment provisions of IRCA, that contractor will be subject to *debarment for a period of 1 year*. The order requires debarment only for violations of the so-called “knowingly” provisions of IRCA, and not for mere “paperwork” violations. The term “knowing” includes not only actual knowledge, but knowledge

which may be inferred through notice of facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.

STATE OF FLORIDA LEGISLATION

Section 448.09, F.S., prohibits an individual from knowingly employing, hiring, recruiting or referring, for themselves or for another person, for private or for public employment within the state, an alien not duly authorized to work by the immigration laws or the Attorney General of the United States. First violations are subject to a civil fine of not more than \$500, despite the number of aliens with respect to whom the violation occurs. Second violations shall be punishable as a second degree misdemeanor under s. 775.082 or s. 775.083., F.S., and constitute a separate offense for each unauthorized alien.

Florida Newcomers



Source: Florida Newcomers, Florida Advisory Council on Intergovernmental Relations, September, 1994.

Newcomers are refugees and entrants as defined in federal law or regulation, aliens who have arrived in the state, other illegal immigrants who have been granted permission under various federal laws to remain in the United States, and immigrants who have legally entered or settled in the state under federal law. According to the 1990 U.S. Census data, a little more than one-third (39.7%) of the foreign-born population (659,618) entered the United States between 1980 and 1990 and comprised 5.1% of Florida’s total 1990 population. The more detailed information regarding year of Newcomer entry provided by the 1990 U.S. Public Use Microdata Sample indicated that more Newcomers entered Florida between 1980-1990 (776,784), than had entered Florida during any preceding decade:

380,669 between 1970-1979; 416,746 between 1960-1969; 156,243 between 1950-1959; and 202,603 prior to 1950. According to 1990 census data, 12.85 percent of Florida’s total population or 1,662,601 were foreign born individuals.

III. Effect of Proposed Changes:

Section 287.012, F.S., is amended requiring that contractors who fall within the definition of a “qualified bidder,” “responsible bidder,” “qualified offerer,” or “responsible offerer” comply with any contract conditions prohibiting the employment of illegal aliens.

Section 287.012, F.S., is further amended to define an “illegal alien” as a person who is in the state violating immigration laws and the Constitution of the United States.

Section 287.057, F.S., is amended noticing contractors in the contracting documents that:

The employment of unauthorized aliens is considered a violation of s. 274A(c) of the Immigration and Nationality Act. If a contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

This act will take effect October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The amendatory language will not affect an employer's existing legal obligation to obtain proper employment authorization documents for aliens prior to employment. Furthermore, no reference is made to statutory language imposing sanctions for contractors who are not in compliance as a "qualified bidder," "responsible bidder," "qualified offerer," or "responsible offerer" other than possible disqualification. Furthermore, the bill does not address who will be responsible for actually auditing and enforcing the Act.

The definition of "illegal alien" as it appears in this bill is preempted by federal law and confuses the term illegal alien with unauthorized alien as it applies to eligible United States employment.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
