

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 915 Enforcement of Immigration Laws
SPONSOR(S): Governmental Affairs Policy Committee, Adams and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	9 Y, 1 N, As CS	Haug	Williamson
2)	Economic Development & Community Affairs Policy Council			
3)	Government Operations Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The bill prohibits public employers from entering into contracts for the physical performance of services within this state unless the contractor registers with and participates in a federal work authorization program. Contractors who receive such contract awards are prohibited from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register with and participate in a federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program. Compliance with this requirement is phased in between July 1, 2010 and July 1, 2012, based upon the number of employees employed by a contractor or subcontractor.

The bill also requires the Chief of Domestic Security to negotiate the terms of a memorandum of understanding between the state and the U.S. Department of Homeland Security concerning:

- The enforcement of federal immigration and customs laws.
- The detention and removal of individuals not lawfully present in the United States.
- Investigations related to illegal immigration in the state.
- The establishment of law enforcement training standards and the creation of law enforcement training programs relating to federal immigration laws.

Contingent upon funding, the bill requires the Chief of Domestic Security to work with the regional domestic security task forces and state entities responsible for establishing law enforcement training standards to establish training standards and create training programs. The purpose of the training programs is to enhance the ability of law enforcement officers to enforce federal immigration and customs laws while performing within the scope of their authorized duties. Law enforcement officers certified as trained are authorized to enforce federal immigration and customs laws while performing within the scope of their authorized duties.

The bill additionally provides that if verification of the nationality or lawful immigration status of any person charged with a crime and confined to jail cannot be made from documents in the possession of the prisoner or after a reasonable effort by law enforcement officials, verification must be made within 48 hours through a query to the federal Law Enforcement Support Center.

The bill further requires agencies and political subdivisions of the state to verify the lawful presence in this country of persons over 18 who have applied for certain state, local or federal public benefits administered by the agency or political subdivision. The bill requires that verification of eligibility for benefits be made through the Systematic Alien Verification for Entitlements (SAVE) Program.

The bill has a fiscal impact on state government. See "Fiscal Comments" section.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Federal Work Authorization Program

Background

The federal Immigration Reform and Control Act of 1986 (IRCA) made it illegal for any U.S. employer to knowingly:

- Hire, recruit or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the Act.¹

The law established a procedure that employers must follow to verify that employees are authorized to work in the United States. The procedure requires employees to present documents that establish both the worker's identity and eligibility to work, and requires employers to complete an "I-9" form for each new employee hired. This procedure is required of all employers, regardless of size.

The United States Citizenship and Immigration Services (USCIS - formerly the INS and now part of the Department of Homeland Security) enforces the above law. However, because the IRCA only required that employees produce paper documents verifying their identity or eligibility, and because such documents are easily falsified, enforcement has been problematic.

In 1996, IRCA was amended by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). In an attempt to address some of the problems related to employment eligibility verification, the IIRIRA created three pilot programs to test electronic employment eligibility verification systems. Of these three programs, the Basic Pilot program, an Internet-based system operated by USCIS in partnership with the Social Security Administration (SSA), was chosen for nationwide implementation. Now known as the Employment Eligibility Verification Program (EEV), the Basic Pilot program provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The EEV is free to employers and is available in all 50 states.

¹ P.L. 99-603, 100 Stat. 3359. IRCA amended the Immigration and Nationality Act (INA) (codified as amended at 8 U.S.C. 1101).

Effect of the Bill

The bill prohibits public employers from entering into contracts for the physical performance of services within this state unless the contractor registers and participates in a federal work authorization program. The Florida Security and Immigration Compliance Act is created in s. 287.0575, F.S., to require compliance with federal work authorization programs. Contractors who receive a contract award under s. 287.057, F.S.,² for such services are prohibited from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register and participate in a federal work authorization program. Contractors also must ensure that subcontractors who provide services for the contractor register with and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program over a phased in schedule between July 1, 2010 and July 1, 2012.³

The bill also defines the following terms:

- *Federal Work Authorization Program* – Any program operated by the United States Department of Homeland Security that provides electronic verification of work authorization issued by the United States Bureau of Citizenship and Immigration Services or any equivalent federal work authorization program operated by the United States Department of Homeland Security that provides for the verification of information regarding newly hired employees under the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.
- *Public Employer* – Any department, agency, or instrumentality of the state or a political subdivision of the state.
- *Subcontractor* – Any entity providing services for a contractor, whether as a subcontractor, contract employee, staffing agency, or other entity, regardless of the level of subcontracting duties, if the services provided are related to the contractor's contract with an agency.

The bill additionally creates a similar section of statute in s. 337.163, F.S. Starting July 1, 2010, the Department of Transportation (DOT) is prohibited from entering into contracts for the physical performance of services within this state unless the contractor registers with and participates in a federal work authorization program. The bill prohibits contractors who receive a contract award under ch. 337, F.S.,⁴ for such services from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register with and participate in a federal work authorization program. Contractors also must ensure that subcontractors who provide services for the contractor register with and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program. The bill requires the Secretary of DOT to prescribe forms and adopt rules deemed necessary to effectuate the process. The bill defines the terms "federal work authorization program" and "subcontractor" as previously indicated.

State Enforcement of Federal Immigration Laws

Current Situation

State and local law enforcement officers do not inherently have the authority to enforce federal immigration laws. Florida, however, has entered into memorandums of understanding (MOUs) with the federal government that allow state and local law enforcement officers to enforce federal immigration laws in limited capacities.

Mass Migration Memorandum of Understanding

In 1998, Florida's Governor entered into a MOU with the United States Department of Justice (USDOJ) outlining the terms and conditions under which the State of Florida would provide law enforcement and logistical support to the federal government pursuant to an "actual or imminent mass influx of aliens arriving off the coast of the United States or near a land border." If the magnitude of the actual or

² Section 287.057, F.S., relates to the procedures state agencies use to procure contracts for the purchase of commodities or contractual services.

³ Employers with 500 or more employees must comply by July 1, 2010, employers with 100 or more employees by July 1, 2011 and all other employers by July 1, 2012.

⁴ Chapter 337, F.S., relates to contracting by the Department of Transportation.

imminent event warrants, the United States Attorney General may activate the MOU in conjunction with Florida's Governor. Upon entry of an Executive Order by the Governor, trained state and local law enforcement will be authorized to assist the Federal government in responding to the actual or anticipated mass influx of aliens into Florida. This MOU does not allow for the enforcement of federal immigration statutes by Florida law enforcement officers without a separate agreement. The authority for the MOU is found at Section 103(a)(10) of the Immigration and Naturalization Act (INA).⁵

In August 2004, the Executive Director of the Florida Department of Law Enforcement (FDLE) entered into an MOU with United States Customs and Border Protection. This MOU addressed the issues of law enforcement authority discussed in the 1998 MOU. The MOU outlined the training requirements and the terms and conditions under which Florida law enforcement officers could enforce certain federal immigration statutes pursuant to a declared mass immigration event, resulting in "mass migration response operations." This training and authority is commonly referred to as "103 Authority" (referring to the INA Section providing the authorization). This training was initiated in early 2006 and to date; approximately 90 state and local officers in South Florida have been trained. Their authority is limited to observing, stopping, questioning, arresting and detaining and transporting during the declared mass migration emergency.

Domestic Security Memorandum of Understanding

In 2002 and 2003, the State of Florida entered into MOUs with the United States Department of Homeland Security (USDHS) authorizing the conveyance of authority to Florida law enforcement officers who successfully complete training administered by the Bureau of Immigration and Customs Enforcement. Subsequent to the successful completion of the training, certain authority was conveyed to local and state investigators associated with the statewide Regional Domestic Security Task Forces. The training and authority is referred to as "287(g) authority" which is provided within Section 287(g) of the Immigration and Nationality Act. To date 62 Florida law enforcement officers have received this authorization with approximately 35 of those currently active. Their authority includes detention and arrest related to federal immigration violations with a domestic security nexus. No specially declared emergency is required for these trained officers to exercise their immigration enforcement authority. Under the Florida agreement with USDHS, the authorized task force members' efforts must have a domestic security nexus and are done under some degree of federal supervision. While these officers could be utilized in response to an actual or imminent influx of aliens into Florida, that is not the purpose of their extensive training, and their immigration enforcement authority is not limited like officers acting under a Section 103 situation.

Training

The current MOUs require state and local law enforcement officers to undergo specified amounts of training. Specifically, the "mass migration" MOU requires law enforcement officers to undergo no more than 24 hours of instruction, which currently consists of 4 hours of online instruction followed by 8 hours of classroom instruction. The "domestic security" MOU training requirements are more extensive in that it requires law enforcement officers to complete approximately 4½ weeks of training. This training currently is provided by USDHS, which also develops the curricula for the training programs.

Effect of the Bill

The bill requires the Chief of Domestic Security⁶ to negotiate the terms of a MOU between the state and the USDOJ or the USDHS concerning:

- The enforcement of federal immigration and customs laws.
- The detention and removal of individuals not lawfully present in the United States.
- Investigations related to illegal immigration in the state.
- The establishment of law enforcement training standards and the creation of law enforcement training programs relating to federal immigration laws.

⁵ 8 U.S.C. 1101 et seq.

⁶ Section 943.0311, F.S., states the executive director of FDLE, or a member of FDLE designated by the executive director, shall serve as the Chief of Domestic Security.

Contingent upon funding in the federal Homeland Security Appropriation Act of 2009 or any subsequent source of federal funding, the bill requires the Chief of Domestic Security to work with the regional domestic security task forces⁷ and state entities responsible for establishing law enforcement training standards⁸ to establish training standards and create training programs to enhance the ability of law enforcement officers to enforce federal immigration and customs laws while performing within the scope of their authorized duties. Law enforcement officers who have completed the requisite training in compliance with the MOU's are authorized to enforce federal immigration and customs laws while performing within the scope of their authorized duties.

Jails - Determining Lawful Status of Prisoners

Current Situation

Florida Model Jail Standard 4.01 provides in part, "[w]hen a foreign citizen is received/admitted to a detention facility for any reason, the detention facility shall inform the Department of State in accordance with the U.S. Department of State rules which are available online at www.state.gov."⁹

Generally, when a person is booked into a local jail, jail officials use the information given by the detainee to help determine the person's citizenship status. If a detainee admits he or she is not a U.S. citizen, or if there is reason to believe a detainee is not a U.S. citizen, jail officials attempt to determine the detainee's citizenship status by submitting the detainee's identification information through a United States Immigration and Customs Enforcement (ICE) system known as the Law Enforcement Support Center (LESC).¹⁰ The LESC provides timely immigration status and identity information to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity.¹¹ Agencies seeking immigration status information on persons under investigation may electronically request such information from the LESC, which operates 24 hours a day, 7 days a week, and is available in all 50 states.¹²

Effect of the Bill

The bill provides that if verification of the nationality or lawful immigration status of any person charged with a crime and confined to jail cannot be made from documents in the possession of the prisoner or after a reasonable effort by law enforcement officials, verification must be made within 48 hours through a query to the LESC or other office or agency designated by the USDHS for that purpose. The bill requires notification of the USDHS if it is determined that a prisoner is in the country illegally. The bill specifies that its provisions are not to be construed so as to deny a person bond or prevent a person from being released if otherwise eligible. The Florida Sheriffs Association is responsible for preparing and issuing guidelines and procedures for compliance with the bill's provisions.

Public Benefits

Background

The IRCA requires USDHS to establish a system for verifying the immigration status of non-citizen applicants for and recipients of certain types of federally funded benefits. The system must be made available to federal, state and local benefit issuing agencies and institutions that administer such benefits.¹³ Consequently, the Systematic Alien Verification for Entitlements (SAVE) Program was

⁷ Section 943.0312, F.S., requires FDLE to establish a regional domestic security task force in each of the department's operational regions. The task forces serve in an advisory capacity to FDLE and the Chief of Domestic Security and provide support to FDLE in its performance of functions pertaining to domestic security.

⁸ The Criminal Justice Standards & Training Commission (CJSTC), established under Ch. 943, F.S., is an independent policy making body responsible for creating entry-level curricula and certification testing for criminal justice officers in Florida, establishing minimum standards for employment and certification and revoking the certification of officers who fail to maintain these minimum standards of conduct. *See also* http://www.fdle.state.fl.us/about_fdle/general.asp.

⁹ <http://www.flsheriffs.org/FMJS.pdf>.

¹⁰ Local detention facilities also use the Florida Department of Highway Safety and Motor Vehicles (DHSMV) "Driver and Vehicle Information Database" (DAVID) to help verify the identity of detainees. Among the information DHSMV provides are Florida driver license or identification card number, social security number, photograph and signature.

¹¹ <http://www.ice.gov/partners/lesc/index.htm>.

¹² *Id.*

¹³ <http://www.uscis.gov>.

created. Administered by the USCIS, SAVE is an intergovernmental information-sharing initiative designed to aid eligibility workers in determining a non-citizen applicant's immigration status, and thereby ensuring only entitled non-citizen applicants receive Federal, state or local public benefits and licenses.¹⁴

The mandates of the IRCA apply to the following federal programs:

- Temporary Assistance to Needy Families (TANF) Program (U.S. Department of Health and Human Services).
- Medicaid Program, and certain Territorial Assistance Programs (U.S. Department of Health and Human Services).
- Unemployment Compensation Program (U.S. Department of Labor).
- Title IV Educational Assistance Programs (U.S. Department of Education).
- Certain Housing Assistance Programs (U.S. Department of Housing and Urban Development).

Additionally, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created a complex set of public benefit eligibility requirements that are continuously amended by Congress. While PRWORA did not affirmatively make any person eligible for any benefit, it placed a new set of limitations on non-citizen eligibility on top of any program-specific requirements (some of which may have limited non-citizen eligibility). With certain exceptions, PRWORA made non-citizens who are not "qualified aliens" ineligible for federal public benefits.¹⁵ Additionally, PRWORA made aliens who are not qualified aliens, lawful nonimmigrants or aliens paroled into the United States (under Section 212(d)(5) of the INA for less than one year) ineligible for state or local public benefits.¹⁶ There also are limitations regarding eligibility of qualified aliens for certain benefits, again with exceptions.

¹⁴ *Id.*

¹⁵ 8 U.S.C. 1611 defines "federal public benefit" in the following manner:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
 - (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.
- (2) Such term shall not apply--
- (A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;
 - (B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or
 - (C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

¹⁶ 8 U.S.C. 1621 defines "state or local public benefit" in the following manner:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
 - (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
- (2) Such term shall not apply--
- (A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;
 - (B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or
 - (C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

Effect of the Bill

The bill requires agencies and political subdivisions of the state, no later than July 1, 2010, to verify the lawful presence in this country of persons over 18 who have applied for state or local public benefits¹⁷ or for federal public benefits¹⁸ that are administered by the agency or political subdivision. Verification of a person's lawful presence is not required for:

- Any purpose for which lawful presence in this country is not required by law, ordinance, or regulation;
- Assistance for health care items and services that are necessary for the treatment of an emergency medical condition¹⁹ of the alien involved and are not related to an organ transplant procedure;
- Short-term, non-cash, in-kind emergency disaster relief;
- Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- Programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the U.S. Attorney General, in the U.S. Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:
 - Deliver in-kind services at the community level, including through public or private nonprofit agencies;
 - Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
 - Are necessary for the protection of life or safety;
- Prenatal care; or
- Postsecondary education.

The bill also requires the Board of Governors of the State University System to set forth, or cause to be set forth, policies regarding postsecondary education benefits that comply with all applicable federal laws including, but not limited to, those governing ineligibility for public benefits as described in 8 U.S.C. 1611, 1621 or 1623.

Additionally, the bill sets forth the procedures for agencies and political subdivisions to use when verifying an applicant's lawful presence. Applicants must execute an affidavit stating he or she is either a U.S. citizen or permanent legal resident of the U.S. and is 18 or older or that he or she is a qualified alien or nonimmigrant under the INA and is 18 or older and lawfully present in the U.S. The bill makes it a first degree misdemeanor for knowingly and willfully making a false or fraudulent statement in an affidavit.

The bill requires eligibility for benefits to be made through the SAVE program; however, until such verification of eligibility is made, the affidavit may be presumed to be proof of lawful presence in the United States. The bill prohibits agencies and political subdivisions from providing a local, state or federal benefit in violation of the bill's public benefit-related provisions.

The bill further requires agencies and political subdivisions to strive to improve efficiency, reduce delay in the verification process, and provide for the expedient resolution of unique individual circumstances where verification procedures would impose an unusual hardship on a legal resident of the state. State agencies or departments that administer any program for state or local public benefits must compile an annual report regarding compliance with the bill's public benefits-related provisions. The bill also

¹⁷ As defined in 8 U.S.C. 1621.

¹⁸ As defined in 8 U.S.C. 1611.

¹⁹ 42 U.S.C. 1396b(v)(3), defines "emergency medical condition" as "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

requires that errors and significant delays by the SAVE program be reported to the USDHS, which will monitor the program and report annually on errors and delays to ensure the program is not wrongfully denying benefits to legal residents of the state.

B. SECTION DIRECTORY:

Section 1. Names the act the "Florida Security and Immigration Compliance Act."

Section 2. Creates s. 287.0575, F.S., providing definitions; requiring compliance with federal work authorization programs; prohibiting an agency from entering into a contract for the performance of services with contractors who are not registered and participating in a federal work authorization program by specified dates; providing for enforcement; requiring the department to prescribe forms and adopt rules.

Section 3. Creates s. 337.163, F.S., providing definitions; prohibiting the Department of Transportation from entering into a contract for the performance of services with contractors who are not registered and participating in a federal work authorization program by specified dates; providing for enforcement; requiring the department to prescribe forms and adopt rules.

Section 4. Amends s. 943.0311, F.S., providing requirements regarding a memorandum of understanding between the State of Florida and the United States Department of Justice; requiring the establishment of training standards for law enforcement officers if funding is received.

Section 5. Creates s. 951.30, F.S., providing requirements for the determination of lawful immigration status by county and municipal detention facilities; requiring the Florida Sheriffs Association to prepare and issue specified guidelines and procedures.

Section 6. Creates Part IV of chapter 23, F.S., titled "Agency Administration of Public Benefits," providing requirements for agencies to follow when verifying the lawful status of certain persons who have applied for specified public benefits; requiring annual reports.

Section 7. Provides an effective date of July 1, 2009, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires all contractors and subcontractors who seek a contract award under s. 287.057, F.S., to participate in a "federal work authorization program" as defined in Section 1 of the bill. The fiscal impact on the private sector is not known.

D. FISCAL COMMENTS:

The Department of Children and Family Services provided the following fiscal comment:
The bill requires the Department to verify an applicant's lawful presence. The scope of the project is to generate a new affidavit form mailed to the client, and upon receiving the affidavit forms, update the FLORIDA system with appropriate verification codes for the legal status and determination of their eligibility status.²⁰

It is not clear if the Department will be allowed to phase in the requirement for individuals already on assistance. Forty three and one half additional full time employees are projected to be needed to address the workload of the new applicants. The cost for these employees and ongoing postage is estimated at \$2,357,099 the first year and \$2,029,712 for recurring costs in subsequent years. Much of the expense can be mitigated if the requirement is not in addition to the DRA verification requirement.²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Management Services and the Department of Transportation to adopt rules, including prescribing forms, necessary to administer agency contractor and subcontractor compliance with the federal work authorization program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Children and Family Services

The Department of Children and Family Services suggested an amendment to the bill to remove the fiscal impact:

- On page 10, between lines 279 and 280, insert:
Affidavits are not required for benefits that use other means of verifying eligible noncitizen status and require applicants to provide their citizen/noncitizen status under penalty of perjury.

Other Comments: Department of Law Enforcement

The Department of Law Enforcement provided the following comments and suggested changes to several provisions of the bill (line and section references have been updated to align with the Committee Substitute):

(1) Negotiation of a Memorandum of Understanding with the federal government will require the Federal government to agree as a party to the Memo. Federal resources may not be available to support agreement on all items listed in the bill's expectations for agreement.

²⁰ Department of Children and Families HB 915 (2009) Staff Analysis and Economic Impact (Feb. 26, 2009) at 6 (on file with the Governmental Affairs Policy Committee).

²¹ *Id.* at 4.

(2)(a) Immigration and Customs Enforcement and many agencies, including FDLE, have previously provided training to officers who will be empowered with federal authority under its “287(g)” approach. The bill is silent as to who is to provide the requisite training that will allow state and locals to enforce federal immigration law. It appears to anticipate that the training will be provided by state and/or local agencies to their officers. While this can be done, the training must conform to minimum standards. Since the federal government has already implemented similar training, the federal standards will likely be the de facto standards that will apply to Florida-provided training. In general, such training lasts for several days, and as such will be expensive to provide, and will require detachment of street officers and others for several days to obtain the training.

It is unclear who is to provide instructors for such training, and who will pay for the costs associated with those instructors. There are some private contractors who can provide such training, but at a cost.

(2)(b) Lines 190-194 will clarify the status of state and local officers to enforce federal immigration and customs laws. The status to do so now is vague and is in need of clarification. However, the inclusion of “customs” laws significantly expands the potential scope of this bill beyond immigration enforcement. In reality, state and local officers need authority to enforce “immigration” laws but few of those officers need authority to enforce, or need to be enforcing, “Customs” laws. Consideration ought to be given to eliminating the reference to “Customs”.

(3) The verification portion addressed in lines 199-211 will likely require fingerprint based efforts since name-based verification is inherently unreliable. Careful coordination with the LESC to determine whether it can provide the required information within 48 hours will be needed.

(4) Lines 212-216 suggest that a person verified to be illegally in the country may “otherwise” be eligible to post bond or be released pending trial. FDLE suggests that if the person’s illegal presence has become known or is suspected by law enforcement, the subject becomes a prime candidate for absconding and not returning for trial. Consideration should be given to indicating that such factors should weigh against release pending trial.

(5) [Lines 217-219] The Florida Sheriffs Association should develop its guidelines “in conjunction with FDLE” due to FDLE’s domestic security function and statewide perspective, as well as its prior involvement in immigration enforcement via its earlier “287(g)” agreements.

(6) Lines 226-320 (new s. 23.40, F.S.): Just as with law enforcement training, the ability to identify “lawful presence” requires specialized training and effort. Requiring “every agency or political subdivision” to verify such presence will require some training, possibly not as extensive as law enforcement.

(7) Lines 315-320 appear to provide immunity from prosecution for providing false statements on affidavits regarding “lawful presence” unless the affidavit is required by the bill. It is unclear why such immunity ought to be provided. The State ought not encourage providing false statements on any affidavit in any context.

(8) Given the reliance of so many of the obligations on the proper operation of federal verification options and systems, consideration should be given to an

“escape clause” that would relieve agencies from the obligations to make the required verifications if the federal systems are not operating properly.

(9) To encourage agencies to send officers to training and to engage in immigration enforcement, consideration should be given to providing “immunity from liability” for good faith enforcement efforts.

(10) Immigration enforcement expansion will require careful coordination and effort and for many, substantial (and potentially costly) training will be essential before engaging in immigration enforcement. There may be an indeterminate, but substantial fiscal impact upon state and local law enforcement as they move to implement the bill’s training obligations.²²

Other Comments: Reporting Requirements

The bill creates annual reporting requirements; however it does not specify a reporting date or identify the recipient(s) of such reports.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Governmental Affairs Policy Committee met on March 25, 2009, and adopted a strike all amendment. The strike-all amendment addresses some issues raised in the bill analysis. Specifically, the strike-all amendment:

- Substantially reorganizes the bill.
- Provides a two year phase-in period for compliance with the state contracting provisions.
- Authorizes the Department of Management Services to administer the provisions of the bill instead of the Department of Business and Professional Regulation.

The bill was reported favorably as a Committee Substitute.

²² Florida Department of Law Enforcement HB 915 (2009) Substantive Bill Analysis (Mar. 17, 2009) (on file with the Governmental Affairs Policy Committee). *See also* additional comments in an email and attachment from staff of the Florida Department of Law Enforcement to staff of the Governmental Affairs Policy Committee (Mar. 23, 2009) (on file with the Governmental Affairs Policy Committee).