

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 308

INTRODUCER: Senators Bean and Steube

SUBJECT: Federal Immigration Enforcement

DATE: January 29, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 308 creates the “Rule of Law Adherence Act.” The act requires state entities, law enforcement agencies, and local governmental entities and their officials to cooperate with federal immigration authorities in enforcing federal immigration laws. The bill is divided into four main sections: Findings and Definitions; Duties; Enforcement; and Miscellaneous. In establishing a framework for state officials to support the enforcement of federal immigration law, the bill:

- Requires a covered government body to comply with and support the enforcement of federal immigration law.
- Prohibits a state entity, local governmental entity, or law enforcement agency from having a law or procedure which impedes a law enforcement agency from communicating or cooperating with a federal immigration agency on immigration enforcement.
- Prohibits any restriction on a covered body’s ability to use, maintain, or exchange immigration information for certain purposes.
- Provides procedures for a law enforcement agency and court to follow when an arrested person cannot provide proof of lawful presence in the United States or is subject to an immigration detainer.
- Requires any sanctuary policies currently in effect be repealed within 90 days after the effective date of the act.
- Authorizes a board of county commissioners to enact an ordinance requiring those detained pursuant to a properly issued immigration detainer to reimburse the county for its costs of complying with the detainer.
- Requires an official or employee of a covered body to report a violation of the act to the Attorney General or state attorney. Failure to report a violation may result in suspension or removal from office.
- Authorizes the Attorney General or a state attorney to seek an injunction against a government body that violates the act.

- Imposes a civil penalty of at least \$1,000 but no more than \$5,000 for each day a policy is in effect that violates the act.
- Creates a civil cause of action for a person injured by the conduct of an alien unlawfully present in the United States against a government body whose violation of the act contributed to the person's injury.
- Prohibits the expenditure of public funds to reimburse or defend a public official or employee who violates the act.
- Suspends state grant funding eligibility for 5 years for a government body that violates the act.

## II. Present Situation:

### Federal Immigration Law

The Federal Government's authority to regulate immigration law is established in the United States Constitution. This power is extensive. The Constitution grants Congress the power to "establish an uniform Rule of Naturalization,"<sup>1</sup> and to "regulate Commerce with foreign Nations."<sup>2</sup> Additional authority is found in the Federal Government's broad powers over foreign affairs.<sup>3</sup>

The individual states are not granted similar powers under the Constitution and they may not encroach upon federal authority in this area. When states enact immigration laws, they are often challenged on the grounds that the law is preempted by federal law under the Supremacy Clause of the Constitution.<sup>4</sup> The federal preemption doctrine is a principle of law which holds that federal laws take precedence over state laws, and as such, states may not enact laws that are inconsistent with the federal law.

Yet, the U.S. Supreme Court has noted that this vast federal power is not without limits. In *De Canas v. Bica*, a 1976 decision, the U.S. Supreme Court held that federal immigration law does not inherently preempt state court jurisdiction over all matters involving immigration issues. The Court noted that it has never held that every state statute "which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power."<sup>5</sup> In *Arizona v. United States*,<sup>6</sup> a 2012 U.S. Supreme Court ruling, the Court similarly stated that "In preemption analysis, courts should assume that 'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'"

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<sup>1</sup> U.S. CONST. art. 1, s. 8, cl. 4.

<sup>2</sup> U.S. CONST. art. 1, s. 8, cl. 3.

<sup>3</sup> *Toll v. Moreno*, 458 U.S. 1 (1982).

<sup>4</sup> U.S. CONST. art. 6. The Supremacy Clause states that the Constitution and federal laws "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

<sup>5</sup> *De Canas v. Bica*, 424 U.S. 351, 355 (1976).

<sup>6</sup> *Arizona v. United States*, 567 U.S. 387, 400 (2012).

## Tenth Amendment and Anti-Commandeering Doctrine

While the Federal Government has substantial authority to preempt state or local immigration regulations, the authority is restricted by the anti-commandeering principles of the Tenth Amendment.<sup>7</sup> Those principles prevent Congress from “commandeering” or forcing state or local governments to implement a federal regulatory program.<sup>8</sup> Some state and local jurisdictions have relied on this principle to avoid enforcing federal immigration policies and, as a result, have established sanctuary jurisdictions.<sup>9</sup>

## Sanctuary Jurisdictions

Although the term “sanctuary jurisdiction” is not defined in federal statute or regulation, it is generally understood to be a jurisdiction that has adopted a law or policy intended to significantly limit participation in the enforcement of federal immigration activities. States and municipalities have adopted varying degrees of sanctuary policies which have taken on multiple forms. Some jurisdictions have adopted “don’t enforce” policies in which law enforcement is restricted from cooperating with federal immigration authorities who are attempting to apprehend removable aliens. Other jurisdictions have adopted “don’t ask” policies that restrict law enforcement officials from inquiring about someone’s immigration status. Yet other entities have adopted “don’t tell” policies that restrict local law enforcement officials from sharing information with federal immigration officials. These last measures are primarily directed at preventing federal immigration officials from relying on the information to identify and arrest for removal aliens who are unlawfully present. Some jurisdictions have even adopted policies that prevent law enforcement officials from alerting federal immigration official about the release status of aliens who are incarcerated.<sup>10</sup>

## Immigration Law and Removals

The Federal Government, through immigration law,<sup>11</sup> seeks to control the number and type of aliens who are granted permission to enter, remain in the United States, and become citizens. Just as the Federal Government has established criteria for entering the country, it has also established formal criteria and procedures for removing or deporting an alien from this country who has violated the immigration laws. An alien may be removed for a number of reasons,

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<sup>7</sup> The Tenth Amendment to the United States Constitution provides “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

<sup>8</sup> *New York v. U.S.*, 505 U.S. 144, 188 (1992). In weighing whether a federal law that created incentives for states to dispose of low-level radioactive waste violated the anti-commandeering doctrine the Court held, “Whatever the outer limits of that sovereignty may be, one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program.” See also *Printz v. United States*, 521 U.S. 898 (1997). The Court has also held that every federal requirement imposed on state or local entities is not necessarily a violation of the anti-commandeering doctrine. Some federal statutes that require states to collect and report information to federal agencies are acceptable. *Reno v. Condon*, 528 U.S. 141 (2000).

<sup>9</sup> Sarah S. Herman, Congressional Research Service, *State and Local “Sanctuary” Policies Limiting Participation in Immigration Enforcement*, (March 23, 2017) <https://fas.org/sgp/crs/homesecc/R44795.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> The Immigration and Nationality Act of 1952 and its amendments contain the current body of immigration law. It is contained in 8 U.S.C.A., Title 8 – Aliens and Nationality.

including entering the country illegally, remaining longer than a visa authorizes, committing marriage fraud to obtain entry, or committing certain crimes.<sup>12</sup>

### **Immigration Detainers**

An immigration detainer<sup>13</sup> is a notice that the Department of Homeland Security issues to a law enforcement agency, whether federal, state, or local, to notify the agency that Immigration and Customs Enforcement (ICE) intends to assume custody of someone in that law enforcement agency's custody. A detainer serves three purposes:

- To notify a law enforcement agency that ICE intends to assume custody of an alien once he or she is no longer subject to that agency's detention;
- To request information from the law enforcement agency about the alien's upcoming release so that ICE may gain custody before the alien is released from custody; and
- To request the law enforcement agency to maintain custody of an alien who would otherwise be released for no more than 48 hours to permit ICE enough time to assume custody.<sup>14</sup>

According to U.S. Immigration and Customs Enforcement, detainers are an essential tool ICE needs to identify and remove criminal aliens who are currently in the custody of federal, state, or local law enforcement. ICE is dependent on state and local law enforcement to partner with them in this effort.<sup>15</sup>

Whether to comply with a federal immigration detainer has been a challenging issue for local law enforcement agencies. For many years, sheriffs' offices simply honored detainers and provided the requested information about the detention or upcoming release of someone held in custody. In 2014, this changed. Two federal court cases<sup>16</sup> questioned the legality of detaining an inmate based solely upon a detainer from ICE when there was no accompanying probable cause to support the detention.<sup>17</sup> In both cases the plaintiffs were detained pursuant to ICE detention orders. Information was provided to the counties which indicated that investigations were being undertaken to learn whether the plaintiffs were candidates for removal and deportation. Both counties were ultimately held civilly liable for an unlawful seizure, even though the counties complied with a federal regulation cited in the detainer form that gave them the apparent authority to detain the inmates. Not surprisingly, ICE detainers have been interpreted by federal courts to be requests, not mandatory commands that deprive an agency of any discretion whether to detain an alien. In *Galarza*, the court noted that under the Tenth Amendment, immigration

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<sup>12</sup> 8 U.S.C. s. 1227.

<sup>13</sup> For a copy of the current detainer form issued by the Department of Homeland Security, see <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>.

<sup>14</sup> *Ice Detainers: Frequently Asked Questions*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/ice-detainers-frequently-asked-questions>.

<sup>15</sup> *Id.* The authority to issue a detainer stems from federal regulations found at 8 C.F.R. § 287.7, which arises from the Secretary's power under the Immigration and Nationality Act § 103(a)(3), 8 U.S.C. 1103(a)(3), to issue "regulations ... necessary to carry out [her] authority" under the INA, and from ICE's general authority to detain individuals who are subject to removal or removal proceedings."

<sup>16</sup> *Galarza v. Szalczyk*, 745 F. 3d 634 (3d Cir. 2014) and *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305(D. Ore. April 11, 2014).

<sup>17</sup> Florida Sheriffs Association, *Legal Alert: ICE Detainers* (on file with the Senate Committee on Judiciary).

officials may not command state and local officials to imprison suspected aliens, because doing so would be inconsistent with the anti-commandeering principle of the Tenth Amendment.<sup>18</sup>

### **New Enforcement Policy Between ICE and 17 Florida Sheriffs**

On January 17, 2018, the U.S. Immigration and Customs Enforcement office issued a news release announcing that 17 basic ordering agreements had been agreed to with sheriffs around the state. These agreements detail “a new process to clarify that aliens held by these jurisdictions are held under the color of federal authority.” As such, the local law enforcement jurisdictions receive “liability protection from potential litigation as a result of faithfully executing their public safety duties.” The news release stated that sheriffs will no longer have to choose between releasing criminal illegal aliens from their custody back into the community or exposing themselves to potential civil liability for violating the alien’s civil rights. The participating sheriffs will also receive compensation for complying with the detainers.<sup>19</sup>

### **Texas Legislation and Litigation**

In 2017, Texas enacted SB 4, a law that, among other things, directs certain law enforcement entities to comply with ICE immigration detainer requests.<sup>20</sup> Several cities moved for preliminary injunctive relief against the implementation and enforcement of the bill before it became effective. The plaintiffs challenged the bill in Federal District Court on the grounds of federal preemption and violations of First amendment free speech and Fourth Amendment search and seizure protections.<sup>21</sup> The court granted a preliminary injunction preventing five sections of the law from taking effect. The state appealed to the U.S. Court of Appeals for the Fifth Circuit and requested a stay of each injunction. The Fifth Circuit stayed part of the district court’s injunction and denied part of the state’s request. The court denied the state’s request with regard to the provisions that address actions or policies “materially limiting” enforcement, and provisions related to the “endorsement” of policies. However, the court did stay the injunction with regard to two important components, keeping the components in effect during the pendency of litigation.

The first of these components prohibits local law enforcement entities and others from materially limiting persons having authority that may impact immigration matters from “assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance.”<sup>22</sup> The second component of the Texas legislation that remains in effect during the litigation is the component that requires law enforcement agencies to “comply with, honor, and fulfill” any immigration detainer request.<sup>23</sup>

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<sup>18</sup> *Galarza*, 745 F. 3d at 643.

<sup>19</sup> U.S. Immigration and Customs Enforcement, News Release (Jan. 17, 2018) (on file with the Senate Committee on Judiciary).

<sup>20</sup> *Texas Senate Bill 4 (2017-2018)*, <https://legiscan.com/TX/bill/SB4/2017>.

<sup>21</sup> *City of El Cenizo, et al., v. State of Texas, et al.*, SA-17-CV-404-OLG (W.D. Tex. Aug. 30, 2017).

<sup>22</sup> *City of El Cenizo, et al, v. State of Texas, et al.*, No. 17-50762 (5th Cir. Sept. 25, 2017). The appellate court, however, acknowledged that the words “materially limits” may need to be clarified.

<sup>23</sup> *Id.*

### III. Effect of Proposed Changes:

#### **The Rule of Law Adherence Act**

SB 308 creates the “Rule of Law Adherence Act” in chapter 908, F.S. The act seeks to ensure state and local government cooperation in the enforcement of federal immigration laws. The act is divided into four general categories: Findings and Definitions; Duties; Enforcement; and Miscellaneous.

#### *Part I – Findings and Definitions*

##### Findings and Intent (s. 908.101, F.S.)

The first legislative findings note two important state interests:

- State and local governments and their officials owe the citizens and other persons lawfully present a duty to assist the Federal Government with enforcement of immigration laws, including the duty to comply with federal immigration detainers; and
- In the interest of public safety and adherence to federal law, the state must support federal immigration enforcement efforts and ensure that those efforts are not impeded by laws, policies, or similar procedures.

The third and final point is that state and local entities and their officials who encourage the unlawful presence of persons in the state or who shield those persons from personal responsibility for their unlawful actions breach their duty and should be held accountable.

Definitions are provided for 8 terms used in the bill. Those definitions are discussed, when necessary, in the context of the provisions of the bill.

#### *Part II – Duties*

##### Sanctuary Policies are Prohibited (s. 908.201, F.S.)

A state entity, local governmental entity, or law enforcement agency is prohibited from adopting or having a sanctuary policy. A sanctuary policy is generally defined as a law or policy which contravenes 8 U.S.C. s. 1373(a) or (b), by:

- Prohibiting or restricting information between a Federal, state, or local government agency and the Immigration and Naturalization Service regarding the citizenship or immigration status of an individual; or
- Prohibiting or restricting a Federal, state, or local government entity from sending, requesting, receiving, maintaining, or exchanging information regarding the immigration status of an individual to, or from, the Immigration and Naturalization Service.

Additionally, a sanctuary policy means a policy which knowingly prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency with regard to federal immigration enforcement, including, but not limited to, limiting or preventing a state entity, local governmental entity, or law enforcement agency from:

- Complying with an immigration detainer;
- Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in its custody;

- Providing a federal immigration agency access to an inmate for an interview;
- Initiating an immigration status investigation; or
- Providing a federal immigration agency with an inmate's incarceration status or release date.

#### Cooperation with Federal Immigration Authorities is Required (s. 908.202, F.S.)

A state entity, law enforcement agency, or local governmental entity must comply with and support the enforcement of federal immigration law. However, this requirement only applies to an official, representative, agent, or employee when he or she is acting within the scope of official duties or scope of employment.

The bill prohibits any restrictions on a state entity, local governmental entity, or law enforcement agency's ability to:

- Send information regarding a person's immigration status to, or requesting, receiving, or reviewing that information from a federal immigration agency;
- Record and maintain immigration information for purposes of the act;
- Exchange immigration information with a federal immigration agency, state entity, local governmental entity, or law enforcement agency;
- Use immigration information to determine eligibility for a public benefit, service, or license;
- Use immigration information to verify a claim of residence or domicile if a determination of residence or domicile is required under federal or state law, local government ordinance or regulation, or pursuant to a judicial order;
- Use immigration information to comply with an immigration detainer; or
- Use immigration information to confirm the identity of a person who is detained by a law enforcement agency.

#### Criminal Cases

The bill requires a judge in a criminal case to order a secure correctional facility<sup>24</sup> where the defendant is to be confined to reduce a defendant's sentence by not more than 7 days if the facility determines that the reduction will facilitate the defendant's seamless transfer into federal custody if he or she is subject to an immigration detainer. The judge must indicate on the record that the defendant is subject to an immigration detainer or otherwise indicate that the defendant is subject to transfer into federal custody when making the order. If a judge does not have this information at the time of sentencing, he or she must issue the order to the secure correctional facility as soon as the information becomes available.

#### Transport

The bill permits a law enforcement agency that has received verification from a federal immigration agency that an alien in the law enforcement agency's custody is unlawfully present in the United States to securely transport the alien to a federal facility in this state or to a point of transfer to federal custody outside the jurisdiction of the agency. However, the law enforcement agency must first obtain judicial authorization before transporting the alien outside of the state.

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<sup>24</sup> The term "secure correctional facility" is defined as a state correctional institution in s. 944.02, F.S., or a county detention facility or municipal detention facility in s. 951.23, F.S.

### Victims or Witnesses

The cooperation and support requirements in this section do not require a state entity, local governmental entity, or law enforcement agency to provide a federal immigration agency with information related to a victim or witness to a criminal offense if the victim or witness timely cooperates in good faith in the investigation or prosecution of the crime. A victim or witness's cooperation must be documented in the entity's or agency's investigative records, and the entity or agency must retain the records for at least 10 years for the purposes of audit, verification, or inspection by the Auditor General.

### Duties Related to Certain Arrested Persons (s. 908.203, F.S.)

The bill details procedures for a law enforcement agency to follow when a person is arrested and he or she cannot provide proof of lawful presence in the United States. Within 48 hours of the arrest and before he or she is released on bond, the agency must review any information available from a federal immigration agency. If the information reveals that the person is not a citizen and is unlawfully present, the agency must:

- Provide immediate notice of the person's arrest and charges to a federal immigration agency;
- Notify the judge authorized to grant or deny the person's release on bail of that information; and
- Record that information in the person's case file.

A law enforcement agency is not required to perform this duty when a person is transferred to it from another agency if the previous agency performed the duty before the transfer. A judge who receives notice of a person's immigration status pursuant to this duty must record the status in the court record.

### Duties Related to Immigration Detainers (s. 908.204, F.S.)

The bill establishes the duties of a law enforcement agency when it has custody of someone subject to an immigration detainer. If an agency has custody of a person subject to a detainer, the agency must:

- Inform the judge who is authorized to grant or deny bail of the detainer;
- Record the detainer information in the person's case file; and
- Comply with, honor, and fulfill the requests made in the detainer.

A law enforcement agency is not required to perform the three duties listed above for a person who is transferred from another law enforcement agency if the previous agency performed the duty before transferring custody. Additionally, a judge who receives notice that someone is subject to an immigration detainer must ensure that the detainer information is recorded in the court record, regardless of whether the detainer notice is received before or after a judgment is rendered in the case.

### Reimbursement of Costs from a Detained Person (s. 908.205, F.S.)

The bill authorizes a board of county commissioners to adopt an ordinance requiring any person detained pursuant to an immigration detainer to reimburse the county for any expenses incurred in detaining that person. However, the person is not liable for expenses if a federal immigration agency determines that the immigration detainer was improperly issued.

The bill also authorizes a local government or a law enforcement agency to petition the Federal Government for the reimbursement of detention and compliance costs when the costs are incurred in support of federal immigration law.

Duty to Report Violations (s. 908.206, F.S.)

An official or employee of a state entity, local governmental entity, or law enforcement agency must promptly report a known or probable violation of the act to either the Attorney General or a state attorney having jurisdiction over the entity or agency. If he or she willfully and knowingly fails to report a known or probable violation of the act, he or she may be suspended or removed from office under general law and Article IV section 7 of the State Constitution.<sup>25</sup>

The bill protects, pursuant to the state's Whistleblower Act,<sup>26</sup> any official or employee of a state entity, local governmental entity, or law enforcement agency who is retaliated against by the entity or agency or denied employment because he or she complied with the duty to report.

Implementation (s. 908.207, F.S.)

Chapter 908, F.S., which is the substance of the bill must be implemented to the fullest extent authorized by federal law regulating immigration and the legislative findings announced earlier in the bill.

***Part III – Enforcement***

Complaints (s. 908.301, F.S.)

The Attorney General must provide, through the Department of Legal Affairs' website, the format for someone to submit a complaint alleging that a violation of this chapter has occurred. Complaints are also permitted that are anonymous or submitted in a different format. Anyone has standing to submit a complaint.

Penalties (s. 908.302, F.S.)

The responsibility to investigate credible complaints rests with the state attorney for the county where the state entity is headquartered or where a local governmental entity or law enforcement agency is located. The results of the investigation must be provided to the Attorney General in a timely manner.

When the state attorney receives a complaint, the entity in question must comply with a document request by the state attorney. If the state attorney determines that a request is valid, he or she, no later than 10 days after the determination is made, must provide written notification to the entity that:

- The complaint has been filed.

<sup>25</sup> Article IV, section 7 of the State Constitution provides that the Governor may suspend "any state officer not subject to impeachment . . . or any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor." The Senate then "may. . . remove from office or reinstate the suspended official . . ."

<sup>26</sup> Section 112.3187, F.S.

- The state attorney has determined that the complaint is valid.
- The state attorney is authorized to file an action to enjoin the violation if the entity does not comply with chapter 908, F.S., on or before the 60th day after notice is provided.

Within 30 days after receiving a written notice from the state attorney of a violation, the entity must provide the state attorney with a copy of:

- The entity's written policies and procedures regarding federal immigration agency enforcement actions, including policies and procedures for immigration detainers.
- Each immigration detainer received from a federal immigration agency in the current calendar year-to-date as well as the two previous calendar years.
- Each response sent by the entity for an immigration detainer in the current calendar year-to-date and the two previous calendar years.

The Attorney General, the state attorney who conducted the investigation, or a state attorney who has been ordered by the Governor<sup>27</sup> to conduct an investigation, may institute proceedings in circuit court to enjoin an entity or law enforcement agency found to be in violation of this act. The circuit court is required to expedite the action, including setting a hearing at the earliest practicable time.

Upon an adjudication, or as provided in a consent decree,<sup>28</sup> that a sanctuary policy violation has occurred, the court must enjoin the unlawful sanctuary policy and order the violating entity to pay a civil penalty to the state of at least \$1,000, but not more than \$5,000, for each day the sanctuary policy was in effect. This calculation begins on October 1, 2018, or the date the policy was first enacted, whichever occurs later, and is measured until the date the injunction was granted. The court maintains continuing jurisdiction over the parties and subject matter and may enforce its orders by imposing additional civil penalties as provided for in the bill and with contempt proceedings as provided by law. Payments must be remitted to the Chief Financial Officer who will deposit the payment into the General Revenue fund.

When a court approves a consent decree or grants an injunction or civil penalty as discussed above, the court must include written findings of fact that describe with specificity the existence and nature of the sanctuary policy that violates the act and identify each sanctuary policymaker who voted for, allowed to be implemented, or voted against repeal of prohibition of the sanctuary policy. The court must provide a copy of the consent decree or order with written findings to the Governor within 30 days after issuing the decree or order. The sanctuary policymaker identified in an order, injunction, or penalty may be suspended or removed from office under the provisions of general law or the State Constitution.<sup>29</sup>

The bill prohibits using public funds to defend or reimburse a sanctuary policymaker, official, or entity who knowingly and willfully violates the provisions of the act unless the payment is required by law.

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<sup>27</sup> Section 27.14, F.S. authorizes the Governor to issue an executive order requiring a state attorney from one circuit to replace a state attorney for an investigation, case, or matter "for any other good and sufficient reason" when the Governor determines that the ends of justice would be best served."

<sup>28</sup> A consent decree, sometimes referred to as a consent order, is a court decree in which all parties agree. BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>29</sup> See footnote 22 above.

Civil Causes of Action for Personal Injury or Wrongful Death (s. 908.303, F.S.)

The bill provides a cause of action for someone injured or killed by the tortious acts or omissions of an alien unlawfully present in the United States. The cause of action may be against a state entity, local governmental entity, or law enforcement agency for violation of a sanctuary policy prohibition or for not cooperating with federal immigration authorities.

To prevail, the injured person or personal representative must prove by the greater weight of the evidence:

- The existence of a sanctuary policy in violation of s. 908.201, F.S., as discussed above and either:
  - A failure to comply with the provisions requiring cooperation with the federal immigration authorities that results in the alien having access to the person harmed; or
  - A failure to comply with an immigration detainer that results in the alien having access to the person harmed.

A trial by jury is a matter of right in these actions. A final judgment for a plaintiff must include written findings of fact that describe with specificity the existence and nature of the violative sanctuary policy and identify each policymaker who voted for the policy, allowed it to be implemented, or voted against its repeal or prohibition. The court must provide the Governor a copy of the final judgment within 30 days after the judgment is rendered. A sanctuary policymaker identified in the final judgment may be suspended or removed from office as provided by law.

The bill does not create a private cause of action against a state entity, local governmental entity, or law enforcement agency that complies with the bill.

Ineligibility for State Grant Funding (s. 908.304, F.S.)

If a state entity, local governmental entity, or law enforcement agency is found to have a sanctuary policy in effect that is a violation of chapter 908, F.S., that entity is not eligible to receive funding from a nonfederal grant program administered by state agencies that receive funding from the General Appropriations Act for 5 years from the date of adjudication that the policy is a violation of the chapter.

The state attorney must notify the Chief Financial Officer of an adjudicated violation of this chapter and provide him or her with a copy of the final court injunction, order, or judgment. When the CFO receives the notice, he or she must timely inform that pertinent state agencies of the adjudicated violation and direct the agencies to cancel all pending grant applications and enforce the ineligibility of the entity. These provisions do not apply to:

- Funding received as a result of an appropriation to a specifically named entity or agency in the General Appropriations Act or other law; or
- Grants awarded before an adjudication that an entity had a sanctuary policy in effect that was a violation of this chapter.

***Part IV – Miscellaneous*****Education Records (s. 908.401, F.S.)**

The bill provides that it does not apply to the release of education records of an agency or institution, unless that release conforms to the provisions of the Family Educational rights and Privacy Act of 1974. For purposes of that bill, education records mean those records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for the agency or institution. Education records do not include records of instructional, supervisory, and administrative personnel, records maintained by a law enforcement unit of the educational agency or institution, certain employment records for people who are not in attendance at the agency or institution, and medical or psychological records used in treating a student.<sup>30</sup>

**Discrimination Prohibited (s. 908.401, F.S.)**

The bill prohibits discrimination based upon a person's gender, race, religion, national origin, or physical disability, except as authorized by the United States Constitution or State Constitution.

**Repeal of Sanctuary Policies Required (Section 3)**

Any sanctuary policy, as defined in the bill, and in effect on its effective date must be repealed within 90 days after the act's effective date.

**Effective Dates**

The act takes effect on July 1, 2018, but the sections pertaining to enforcement penalties contained in s. 908.302, F.S., and civil causes of action for injury or death by an unlawfully present alien, s. 908.303, F.S., take effect on October 1, 2018.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

This bill will likely result in litigation challenging the constitutionality of its provisions much like the challenges to somewhat similar Texas legislation. The Texas legislation

<sup>30</sup> 20 U.S.C. 1232g(a)(4)(A) and (B).

was challenged on the grounds of federal preemption, vagueness, violations of the First Amendment and Fourth Amendments to the United States Constitution, chilling protected activity, and violations of the Equal Protection Clause of the United States Constitution. The ultimate resolution of *City of El Cenizo, et al, v. State of Texas* will likely provide guidance to any federal courts that must examine the constitutionality of this bill.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill may reduce the costs of crime to the private sector to the extent that the bill facilitates the removal of criminal aliens who have a tendency for recidivism. To the extent that the bill reduces the supply of labor provided by aliens who may not be legally employed, the bill may result in an increase in wages or labor costs or higher employment levels for citizens and aliens who are legally authorized to work.

**C. Government Sector Impact:**

The bill requires local governments and law enforcement agencies to honor ICE immigration detainers. The bill does not state that these costs will be reimbursed by ICE. The bill, however in s. 908.205, F.S., authorizes a board of county commissioners to adopt an ordinance requiring a detained person to reimburse the county for expenses related to the detainer. Also, a local governmental entity or law enforcement agency may petition the Federal Government for reimbursement of its detention costs and the costs of compliance with federal requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 908.101, 908.402, 908.102, 908.302, 908.303, 908.201, 908.202, 908.203, 908.204, 908.205, 908.206, 908.207, 908.301, 908.304, and 908.401.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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