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LEGISLATIVE ACTION

Senate

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House

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Senator Lee moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 287.058, Florida
Statutes, is amended to read:

287.058 Contract document.—

(1) Every procurement of contractual services in excess of
the threshold amount provided in s. 287.017 for CATEGORY TWO,
except for the providing of health and mental health services or
drugs in the examination, diagnosis, or treatment of sick or



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12 injured state employees or the providing of other benefits as
13 required by chapter 440, shall be evidenced by a written
14 agreement embodying all provisions and conditions of the
15 procurement of such services, which shall, where applicable,
16 include, but not be limited to, a provision:

17 (a) That bills for fees or other compensation for services
18 or expenses be submitted in detail sufficient for a proper
19 preaudit and postaudit thereof.

20 (b) That bills for any travel expenses be submitted in
21 accordance with s. 112.061. A state agency may establish rates
22 lower than the maximum provided in s. 112.061.

23 (c) Allowing unilateral cancellation by the agency for
24 refusal by the contractor to allow public access to all
25 documents, papers, letters, or other material made or received
26 by the contractor in conjunction with the contract, unless the
27 records are exempt from s. 24(a) of Art. I of the State
28 Constitution and s. 119.07(1).

29 (d) Specifying a scope of work that clearly establishes all
30 tasks the contractor is required to perform.

31 (e) Dividing the contract into quantifiable, measurable,
32 and verifiable units of deliverables that must be received and
33 accepted in writing by the contract manager before payment. Each
34 deliverable must be directly related to the scope of work and
35 specify a performance measure. As used in this paragraph, the
36 term "performance measure" means the required minimum acceptable
37 level of service to be performed and criteria for evaluating the
38 successful completion of each deliverable.

39 (f) Specifying the criteria and the final date by which
40 such criteria must be met for completion of the contract.



41 (g) Specifying that the contract may be renewed for a
42 period that may not exceed 3 years or the term of the original
43 contract, whichever is longer, specifying the renewal price for
44 the contractual service as set forth in the bid, proposal, or
45 reply, specifying that costs for the renewal may not be charged,
46 and specifying that renewals are contingent upon satisfactory
47 performance evaluations by the agency and subject to the
48 availability of funds. Exceptional purchase contracts pursuant
49 to s. 287.057(3) (a) and (c) may not be renewed.

50 (h) Specifying the financial consequences that the agency
51 must apply if the contractor fails to perform in accordance with
52 the contract.

53 (i) Addressing the property rights of any intellectual
54 property related to the contract and the specific rights of the
55 state regarding the intellectual property if the contractor
56 fails to provide the services or is no longer providing
57 services.

58 (j) Requiring a contractor or any subcontractor performing
59 a portion of the contract to register with and use E-Verify to
60 the extent required by s. 287.137 for all new employees hired in
61 this state during the term of the contract.

62
63 In lieu of a written agreement, the agency may authorize the use
64 of a purchase order for classes of contractual services if the
65 provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the
66 purchase order or solicitation. The purchase order must include,
67 but need not be limited to, an adequate description of the
68 services, the contract period, and the method of payment. In
69 lieu of printing the provisions of paragraphs (a)-(c) and (g) in



70 the contract document or purchase order, agencies may
71 incorporate the requirements of paragraphs (a)-(c) and (g) by
72 reference.

73 Section 2. Section 287.137, Florida Statutes, is created to
74 read:

75 287.137 Verification of work authorization status; public
76 employers.-

77 (1) As used in this section, the term:

78 (a) "Contractor" means a person or an entity that has more
79 than 10 employees in this state and has entered into, or is
80 attempting to enter into, a contract with a public employer to
81 provide labor, supplies, or services to such employer.

82 (b) "Employee" has the same meaning as provided in s.
83 448.093.

84 (c) "E-Verify" means the Internet-based electronic
85 employment verification system operated by the United States
86 Department of Homeland Security.

87 (d) "Public employer" means an agency or a subdivision of
88 the state, regional, county, local, special district, or
89 municipal government, whether executive, judicial, or
90 legislative, or any public school, community college, or state
91 university, which employs persons who perform labor or services
92 for that employer in exchange for salary, wages, or other
93 remuneration or enters into, or attempts to enter into, a
94 contract with a contractor for an amount that will, or is
95 expected to, exceed the CATEGORY TWO threshold amount provided
96 in s. 287.017.

97 (e) "Subcontractor" means a person or an entity that has
98 more than 10 employees in this state and provides labor,



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99 supplies, or services to or for a contractor or another
100 subcontractor pursuant to a contract that will, or is expected
101 to, exceed the CATEGORY TWO threshold amount provided in s.
102 287.017.

103 (f) "Unauthorized alien" means a person who is not
104 authorized under federal law to be employed in the United
105 States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall
106 be interpreted consistently with that section and any applicable
107 federal rules or regulations.

108 (2) On or after July 1, 2021:

109 (a) Every public employer, contractor, and subcontractor
110 shall register with and use E-Verify to verify the work
111 authorization status of all new employees and identify whether
112 an employee is an unauthorized alien.

113 (b) A public employer or a contractor or subcontractor in
114 this state may not enter into a contract under this section
115 unless each party to the contract registers with and uses E-
116 Verify.

117 Section 3. Present subsection (6) of section 288.061,
118 Florida Statutes, is renumbered as subsection (7), and a new
119 subsection (6) is added to that section to read:

120 288.061 Economic development incentive application
121 process.—

122 (6) Beginning July 1, 2020, the executive director may not
123 approve an economic development incentive application unless the
124 application includes proof to the department that the applicant
125 business will register with and use the E-Verify system, as
126 defined in s. 287.137, or an alternative electronic employment
127 verification system approved by the department, to verify the



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128 work authorization status of all newly hired employees. If the
129 department determines that an awardee is not complying with this
130 subsection, the department must notify the awardee by certified
131 mail of the department's determination of noncompliance and the
132 awardee's right to appeal the determination. Upon a final
133 determination of noncompliance, the awardee must repay all
134 moneys received as an economic development incentive to the
135 department within 30 days after the final determination.

136 Section 4. Section 448.093, Florida Statutes, is created to
137 read:

138 448.093 Definitions; use of electronic employment
139 verification system required for private employers; business
140 licensing enforcement.-

141 (1) DEFINITIONS.-As used in this section, the term:

142 (a) "Agency" means an agency, a department, a board, or a
143 commission of this state or a county or municipality which
144 issues a license to operate a business in this state.

145 (b) "Department" means the Department of Economic
146 Opportunity.

147 (c) "Electronic employment verification system" means:

148 1. An Internet-based system operated by the United States
149 Department of Homeland Security (E-Verify) which allows
150 participating employers to electronically verify the employment
151 eligibility of newly hired employees; or

152 2. A system substantially equivalent to E-Verify which
153 verifies whether an employee is an unauthorized alien as
154 certified by an employer, under penalty of perjury, on a form
155 provided by the department.

156 (d) "Employee" means an individual whose work is performed



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157 under the direction and supervision of the employer and whose
158 employer withholds tax pursuant to the Federal Insurance
159 Contributions Act (FICA) or federal income tax from the
160 individual's compensation, or whose employer issues an Internal
161 Revenue Service W-2 form, but not an Internal Revenue Service
162 Form 1099, to an individual for purposes of documenting
163 compensation. The term includes all individuals or entities that
164 do not meet the definition of an independent contractor under
165 federal laws or regulations to perform a specified portion of
166 labor or services.

167 (e) "Employer" means a person or an entity in this state
168 which employs an employee. The term does not include any of the
169 following:

170 1. A government employer.

171 2. The occupant or owner of a private residence who hires:

172 a. Casual labor, as defined in s. 443.036, to be performed
173 entirely within the private residence; or

174 b. A licensed independent contractor, as defined in federal
175 laws or regulations, to perform a specified portion of labor or
176 services.

177 3. An employee leasing company licensed pursuant to part XI
178 of chapter 468 which enters into a written agreement or
179 understanding with a client company which places the primary
180 obligation for compliance with this section upon the client
181 company. In the absence of a written agreement or understanding,
182 the term includes an employee leasing company.

183 (f) "Knowingly employ an unauthorized alien" has the same
184 meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted
185 consistently with 8 U.S.C. s. 1324a and any applicable federal



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186 rules or regulations.

187 (g) "License" means a franchise, a permit, a certificate,
188 an approval, a registration, a charter, or any similar form of
189 authorization required by state law and issued by an agency for
190 the purpose of operating a business in this state. The term
191 includes, but is not limited to:

192 1. An article of incorporation.

193 2. A certificate of partnership, a partnership
194 registration, or an article of organization.

195 3. A grant of authority issued pursuant to state or federal
196 law.

197 4. A transaction privilege tax license.

198 (h) "Unauthorized alien" means a person who is not
199 authorized under federal law to be employed in the United
200 States, as described in 8 U.S.C. s. 1324a(h) (3). The term shall
201 be interpreted consistently with that section and any applicable
202 federal rules or regulations.

203 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; FINE FOR
204 VIOLATION; SUSPENSION OF BUSINESS LICENSE.-

205 (a) An employer shall, after making an offer of employment
206 which has been accepted by an individual, use an electronic
207 employment verification system to verify such individual's
208 employment eligibility. Verification must occur within the
209 period stipulated by applicable federal rules or regulations.
210 However, an employer is not required to verify the employment
211 eligibility of a continuing employee hired before the date of
212 the employer's registration with an electronic employment
213 verification system.

214 (b) Employers in this state must use an electronic



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215 employment verification system or otherwise be in compliance
216 with this section by no later than January 1, 2021.

217 (c) As an alternative to registering with an electronic
218 employment verification system, an employer may operate a system
219 that complies with 8 U.S.C. s. 1324a, and must also maintain
220 complete copies of all records used to establish an employee's
221 identity and employment authorization for at least 3 years after
222 the employer receives the records or 1 year after the employee
223 ceases to provide services to the employer, whichever is later.

224 1. Copies of all records maintained by employers pursuant
225 to this paragraph or paragraph (b) must be provided to any state
226 or federal government agency upon request.

227 2. Beginning January 1, 2021, the department may conduct
228 random audits of employment files of those employers that do not
229 register with the E-Verify system.

230 (d)1. If an employer does not register with an electronic
231 employment verification system or otherwise comply with the
232 requirements of paragraph (c), the department must submit a
233 notice of violation to the employer, who must then register with
234 an electronic employment verification system or otherwise comply
235 with paragraph (c) and provide an affidavit stating such fact to
236 the department within 30 calendar days after the notice of
237 violation is mailed. If the employer does not become compliant
238 and provide the required affidavit within 30 calendar days
239 following the mailing of the notice of violation, the
240 appropriate licensing agency must suspend all applicable
241 licenses held by the employer until the employer becomes
242 compliant and provides the department with the required
243 affidavit.



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244 2. For any employer found to have violated this subsection
245 three times within any 36 month period, the appropriate agency
246 shall permanently revoke all licenses that are held by the
247 private employer specific to the business location where the
248 unauthorized alien performed work. If the employer does not hold
249 a license specific to the business location where the
250 unauthorized alien performed work, but a license is necessary to
251 operate the private employer's business in general, the
252 appropriate licensing agency shall permanently revoke all
253 licenses that are held by the employer at the employer's primary
254 place of business.

255 3. For purposes of this paragraph, any licenses that are
256 subject to suspension or revocation under subparagraph 1. or
257 subparagraph 2., respectively, are all licenses that are held by
258 the employer specific to the business location where the
259 unauthorized alien performed work.

260 (e) If the department determines that an employer has not
261 registered with an electronic employment verification system or
262 complied with the requirements of paragraph (c), the department
263 may impose a fine of up to \$500 per violation of this
264 subsection.

265 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY;
266 COMPLAINTS.—

267 (a) An employer may not knowingly employ an unauthorized
268 alien.

269 (b) An employer registered with and using an electronic
270 employment verification system may not be held civilly liable in
271 a cause of action for the employer's:

272 1. Hiring of an unauthorized alien if the information



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273 obtained from the electronic employment verification system
274 indicated that the person's work authorization status was not
275 that of an unauthorized alien; or

276 2. Refusal to employ a person if the information obtained
277 from the electronic employment verification system indicated
278 that the person's work authorization status was that of an
279 unauthorized alien.

280 (c) An employer who in good faith registers with and uses
281 an electronic employment verification system is considered to
282 have complied with the requirements of 8 U.S.C. s. 1324a(b) and
283 may not be held liable for any damages and is immune from any
284 legal cause of action brought by any person or entity, including
285 former employees, for the use of and reliance upon any incorrect
286 information obtained from the electronic employment verification
287 system, including any incorrect information obtained as a result
288 of an isolated, sporadic, or accidental technical or procedural
289 failure, when determining final action on a person's work
290 authorization status.

291 (d) For purposes of this subsection, compliance with
292 subsection (2) creates a rebuttable presumption that an employer
293 did not knowingly employ an unauthorized alien in violation of
294 s. 448.09.

295 (e) A person who has a good faith belief that an employer
296 knowingly employs, or has knowingly employed within the last 90
297 calendar days, an unauthorized alien may file a complaint with
298 the department.

299 1. A complaint may not be based on race, color, or national
300 origin, pursuant to state or federal law.

301 2. A person who knowingly files a false or frivolous



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302 complaint under this subsection commits a misdemeanor of the
303 second degree, punishable as provided in s. 775.082 or s.
304 775.083.

305 (f) Upon receipt of a valid complaint substantiated by
306 evidence of a violation of paragraph (a), the department must
307 notify the employer of the complaint and direct the employer to
308 notify any employees named in the complaint. The department
309 shall also determine whether the employer is registered with an
310 electronic employment verification system or otherwise compliant
311 with the requirements of paragraph (2)(c).

312 (g) The department shall request that the Federal
313 Government verify, pursuant to 8 U.S.C. s. 1373(c), the
314 citizenship or immigration status of any employee named in the
315 complaint, and the department must rely upon such verification.
316 The department may not independently make a final determination
317 as to whether an employee is an unauthorized alien.

318 (h) Upon finding that an employer has violated paragraph
319 (a), the department must notify the United States Immigration
320 and Customs Enforcement Agency of the identity of the
321 unauthorized alien and, if known, the physical address at which
322 the unauthorized alien resides.

323 (4) ENFORCEMENT.—

324 (a) For purposes of enforcing this section, the following
325 persons or entities may request, and an employer must provide,
326 copies of any documentation relied upon by the employer for the
327 verification of a person's employment eligibility, including,
328 but not limited to, any documentation required under this
329 section.

330 1. The Department of Law Enforcement.



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331 2. The Attorney General.
332 3. A state attorney.
333 4. The statewide prosecutor.
334 (b) A person or an entity specified in paragraph (a) that
335 makes a request pursuant to this subsection must rely upon the
336 Federal Government to verify a person's employment eligibility
337 and may not independently make a final determination as to
338 whether a person is an unauthorized alien.
339 (5) RULEMAKING.—
340 (a) The department shall adopt rules to define an
341 electronic employment verification system, if any, that is
342 substantially equivalent to or more effective than the E-Verify
343 system with respect to identifying unauthorized aliens and those
344 persons eligible to work in the United States. The rules must
345 identify the types of databases, methodologies, and evidence of
346 identity and employment eligibility that qualify an electronic
347 employment verification system as substantially equivalent to or
348 more effective than the E-Verify system.
349 (b) The department may adopt rules to:
350 1. Specify the manner of notifying licensing agencies,
351 pursuant to paragraph (2) (d), of violations by employers;
352 2. Govern the administration of fines authorized under
353 paragraph (2) (e); and
354 3. Provide for procedures for complaints filed pursuant to
355 subsection (3).
356 (6) CONSTRUCTION.—This section shall be enforced without
357 regard to race, color, or national origin, and shall be enforced
358 in a manner that is fully consistent with any applicable federal
359 laws or regulations.



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360 Section 5. For the 2020-2021 fiscal year, the sum of
361 \$1,612,045 in recurring funds and the sum of \$1,019,600 in
362 nonrecurring funds from the General Revenue Fund are
363 appropriated to the Department of Economic Opportunity, and 15
364 full-time equivalent positions with associated salary rate of
365 681,500 are authorized, for purposes of implementing this act.

366 Section 6. If any provision of this act or its application
367 to any person or circumstance is held invalid, the invalidity
368 does not affect other provisions or applications of the act
369 which can be given effect without the invalid provision or
370 application, and to this end the provisions of this act are
371 severable.

372 Section 7. This act shall take effect July 1, 2020.

373
374 ===== T I T L E A M E N D M E N T =====

375 And the title is amended as follows:

376 Delete everything before the enacting clause
377 and insert:

378 A bill to be entitled
379 An act relating to the verification of employment
380 eligibility; amending s. 287.058, F.S.; requiring
381 written agreements for the procurement of specified
382 contractual services to include a statement regarding
383 the requirement that a contractor or subcontractor
384 register with and use E-Verify; creating s. 287.137,
385 F.S.; defining terms; requiring public employers and
386 certain contractors and subcontractors to register
387 with and use E-Verify by a specified date; prohibiting
388 public employers, contractors, and subcontractors from



389 entering into a contract unless each party to the
390 contract registers with and uses E-Verify; amending s.
391 288.061, F.S.; prohibiting the approval of certain
392 economic development incentive applications after a
393 specified date; requiring an awardee to repay certain
394 moneys within a specified timeframe under certain
395 circumstances; creating s. 448.093, F.S.; defining
396 terms; requiring employers to register with and use an
397 electronic employment verification system to verify
398 the employment eligibility of new employees by a
399 certain date; authorizing employers to use an
400 alternative system that meets specified criteria to
401 confirm an employee's identity, subject to certain
402 requirements; authorizing the Department of Economic
403 Opportunity to conduct random audits of employment
404 files of certain employers; requiring the department
405 to take certain action against a noncompliant
406 employer; requiring the appropriate licensing agency
407 to suspend a noncompliant employer's license until
408 certain conditions are met; requiring permanent
409 revocation of licenses under specified circumstances;
410 authorizing the imposition of fines for violations of
411 the act; prohibiting an employer from knowingly
412 employing an unauthorized alien; providing civil
413 immunity for an employer registered with and using an
414 electronic employment verification system; providing
415 specified immunity and nonliability for an employer
416 who complies in good faith with the requirements of
417 the act; creating a rebuttable presumption for certain



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418 employers that the employer did not knowingly employ
419 an unauthorized alien; authorizing certain persons
420 with knowledge of a violation to file a complaint with
421 the department, subject to certain limitations;
422 providing a penalty for persons who knowingly file
423 false or frivolous complaints; prescribing procedures
424 for the disposition of such complaints; requiring the
425 department to notify the Federal Government of the
426 identity of an unauthorized alien; requiring employers
427 to provide copies of certain documentation, upon
428 request, to specified persons and governmental
429 entities for certain purposes; prohibiting specified
430 persons and entities from making a determination as to
431 whether a person is an unauthorized alien; requiring
432 the department to define by rule electronic employment
433 verification systems substantially equivalent to the
434 E-Verify system; providing requirements for such
435 rules; authorizing the department to adopt additional
436 rules in administering the act; providing for
437 construction; providing appropriations and authorizing
438 positions; providing for severability; providing an
439 effective date.