By the Committees on Commerce and Tourism; and Judiciary; and Senators Lee, Gruters, Harrell, and Simmons

A bill to be entitled
An act relating to the verification of employment eligibility; amending s. 287.058, F.S.; requiring written agreements for the procurement of specified contractual services to include a statement regarding the requirement that a contractor or subcontractor register with and use an employment verification system; creating s. 287.137, F.S.; defining terms; requiring public employers and certain contractors and subcontractors to register with and use an employment verification system by a specified date; prohibiting public employers, contractors, and subcontractors from entering into a contract unless each party to the contract registers with and uses an employment verification system; creating s. 448.093, F.S.; defining terms; requiring employers who meet specified criteria to register with and use an employment verification system to verify the employment eligibility of new employees; prescribing an implementation schedule for the employment verification requirement; authorizing the imposition of fines for violations of the act; requiring a violating employer to submit certain affidavits to the Department of Economic Opportunity; requiring the department to order the appropriate licensing agency to suspend an employer’s license under certain circumstances; providing civil immunity for an employer registered with and using an employment verification system; providing specified immunity and

CODING: Words struck are deletions; words underlined are additions.
nonliability for an employer who complies in good faith with the requirements of the act; creating a rebuttable presumption for certain employers that the employer did not knowingly employ an unauthorized alien; requiring the department to define by rule employment verification systems substantially equivalent to the E-Verify system; providing requirements for such rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

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

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

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

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

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

   (j) Requiring a contractor or any subcontractor performing a portion of the contract to register with and use an employment verification system to the extent required by s. 287.137 for all new employees hired in this state during the term of the contract.

In lieu of a written agreement, the agency may authorize the use of a purchase order for classes of contractual services if the provisions of paragraphs (a)-(j) are included in the purchase order or solicitation. The purchase order must include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(c) and (g) in the contract document or purchase order, agencies may incorporate the requirements of paragraphs (a)-(c) and (g) by reference.

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

287.137 Verification of work authorization status; public employers.—

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

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

(b) “Employee” has the same meaning as provided in s. 448.093.

(c) “Employment verification system” has the same meaning as provided in s. 448.093.

(d) “Public employer” means a department, an agency, or a political subdivision of this state which enters into, or attempts to enter into, a contract with a contractor for an amount that will, or is expected to, exceed the CATEGORY TWO threshold amount provided in s. 287.017.

(e) “Subcontractor” means a person or an entity that has more than 10 employees in this state and provides labor, supplies, or services to or for a contractor or another subcontractor pursuant to a contract that will, or is expected to, exceed the CATEGORY TWO threshold amount provided in s. 287.017.

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

(2) On or after July 1, 2021:

(a) Every public employer, contractor, and subcontractor shall register with and use an employment verification system to verify the work authorization status of all new employees and identify whether an employee is an unauthorized alien.

(b) A public employer or a contractor or subcontractor in
this state may not enter into a contract under this section
unless each party to the contract registers with and uses an
employment verification system.

Section 3. Section 448.093, Florida Statutes, is created to read:

448.093 Definitions; use of employment verification system
required for private employers; business licensing enforcement.—
(1) DEFINITIONS.—As used in this section, the term:
(a) “Agency” means an agency, a department, a board, or a
commission of this state or a county or municipality which
issues a license to operate a business in this state.
(b) “Department” means the Department of Economic
Opportunity.
(c) “Employee” means an individual whose work is performed
under the direction and supervision of the employer and whose
employer withholds tax pursuant to the Federal Insurance
Contributions Act (FICA) or federal income tax from the
individual’s compensation, or whose employer issues an Internal
Revenue Service W-2 form, but not an Internal Revenue Service
Form 1099, to an individual for purposes of documenting
compensation. The term does not include a licensed independent
contractor as defined in federal laws or regulations.
(d) “Employer” means a person or an entity in this state
which employs an employee. The term does not include:
1. A government employer.
2. The occupant or owner of a private residence who hires:
a. Casual labor, as defined in s. 443.036, to be performed
entirely within the private residence; or
b. A licensed independent contractor, as defined in federal
laws or regulations, to perform a specified portion of labor or
services.

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

(e) “Employment verification system” means:

1. An Internet-based system operated by the United States
Department of Homeland Security which allows participating
employers to electronically verify the employment eligibility of
newly hired employees;

2. A system to verify whether an employee is an
unauthorized alien that an employer certifies, under penalty of
perjury, on a form provided by the department as a substantially
equivalent electronic employment verification system to that
specified in subparagraph 1.; or

3. A system that complies with 8 U.S.C. 1324a and the
employer maintains complete copies of all records used to
establish an employee’s identity and employment authorization
for at least 3 years after the employer receives the records or
1 year after the employee ceases to provide services to the
employer, whichever is later.

(f) “Knowingly employ an unauthorized alien” has the same
meaning as in 8 U.S.C. s. 1324a. The term shall be interpreted
consistently with 8 U.S.C. s. 1324a and any applicable federal
rules or regulations.

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

1. An article of incorporation.
2. A certificate of partnership, a partnership
registration, or an article of organization.
3. A grant of authority issued pursuant to state or federal
law.
4. A transaction privilege tax license.

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

(2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; FINE FOR
VIOLATION; SUSPENSION OF BUSINESS LICENSE.—

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

(b) The requirement to use an employment verification
system shall be phased in as follows:

1. Employers having at least 500 employees in this state
must use an employment verification system beginning January 1,
2. Employers having at least 100 employees in this state must use an employment verification system beginning July 1, 2021.

3. Employers having at least 20 employees in this state must use an employment verification system beginning January 1, 2022.

   (c) If an employer does not register with an employment verification system, the department may impose a fine of up to $500 on the employer, who must then register with an employment verification system and provide an affidavit stating such fact to the department within 30 days. If the employer does not register with and provide the required affidavit within 30 days after the imposition of the fine becomes final, the department must order the appropriate agency to suspend all applicable licenses held by the employer until the employer registers with an employment verification system and provides the department with the required affidavit.

   (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; IMMUNITY.—

   (a)1. An employer registered with and using an employment verification system may not be held civilly liable in a cause of action for the employer’s:

      a. Hiring of an unauthorized alien if the information obtained from the employment verification system indicated that the person’s work authorization status was not that of an unauthorized alien; or

      b. Refusal to hire a person if the information obtained from the employment verification system indicated that the person’s work authorization status was that of an unauthorized
2. An employer who in good faith registers with and uses an employment verification system is considered to have complied with the requirements of 8 U.S.C. s. 1324a(b) and may not be held liable for any damages and is immune from any legal cause of action brought by any person or entity, including former employees, for the use of and reliance upon any incorrect information obtained from the employment verification system, including any incorrect information obtained as a result of an isolated, sporadic, or accidental technical or procedural failure, when determining final action on a person’s work authorization status.

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

(4) RULEMAKING.—The department shall adopt rules to define an employment verification system, if any, that is substantially equivalent to or more effective than the E-Verify system with respect to identifying unauthorized aliens and those persons eligible to work in the United States. The rules must identify the types of databases, methodologies, and evidence of identity and employment eligibility that qualify an employment verification system as substantially equivalent to or more effective than the E-Verify system.

Section 4. This act shall take effect July 1, 2020.