

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1808

INTRODUCER: Appropriations Committee; and Senators Bean and Rodrigues

SUBJECT: Immigration Enforcement

DATE: February 23, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------------|-----------------|-----------|------------------|
| 1. | <u>E. Davis</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 2. | <u>N. Davis/Kolich</u> | <u>Sadberry</u> | <u>AP</u> | Fav/CS |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1808 amends the federal immigration enforcement laws that were enacted in 2019. The laws prohibit sanctuary policies and seek to ensure that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws.

The bill changes three areas of the existing immigration enforcement statutes. Specifically, the bill:

- Expands the definition of “sanctuary policy” to include any law, policy, practice, procedure, or custom of any state or local governmental entity that prohibits a law enforcement agency from providing to any *state entity* information on the immigration status of a person in the custody of the law enforcement agency.
- Requires each law enforcement agency that operates a county detention facility to enter into a “287(g) Agreement” with United States Immigration and Customs Enforcement (ICE) by January 1, 2023.
- Prohibits state and local governmental entities from contracting with common carriers or contracted carriers that willfully transport a person into the state knowing the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from the state or the United States. The bill also specifies that contracts, including a grant agreement or economic incentive program payment agreement, must include certain provisions attesting that the common carrier or contracted carrier is not, and will not,

willfully provide the prohibited services to a person knowing the person is an unauthorized alien.

The bill does not appear to have a fiscal impact on state revenues or expenditures.

II. Present Situation:

Federal Immigration Enforcement Statutes

In 2019, the Legislature passed federal immigration enforcement legislation.¹ The act sought to ensure that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the law prohibits sanctuary policies and requires law enforcement agencies to support the enforcement of federal immigration law. When local law enforcement agencies work with federal immigration officials, aliens who have committed serious crimes are more easily identified and removed.

Definition of Sanctuary Policy

Section 908.102(6), F.S., defines a “sanctuary policy” as:

A law, policy, practice, procedure, or custom that is adopted or allowed by a state entity or local governmental entity which:

- Prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373;² or
- Prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit the law enforcement agency in, or prohibit the 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 the custody of the law enforcement agency;
 - Providing a federal immigration agency access to an inmate for interview;
 - Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357; or
 - Providing a federal immigration agency with an inmate's incarceration status or release date.

¹ Chapter 2019-102, Laws of Fla. The law was challenged in *City of South Miami v. DeSantis*, --- F.Supp.3d ----, 2021WL 4272017 (S.D. Fla. Sept. 21, 2021). Three provisions were enjoined but severable from the remainder of the law. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and is now pending.

² 8 U.S.C. s. 1373 addresses communication between government agencies and the Immigration and Naturalization Service. The statute provides, in part:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

Immigration Enforcement Assistance Agreements

Overview

The Immigration and Nationality Act³ contains a provision in s. 287(g) which established what is commonly referred to today as the “ICE 287(g) Program” (program). The program is a delegation of federal authority that authorizes the Director of ICE to enter into a partnership agreement with a state or local law enforcement entity. Under the terms of the agreement, designated law enforcement officers, who are specially trained and supervised, may perform limited immigration law enforcement activities within their respective jurisdictions. The agreements permit state and local law enforcement officers to identify, arrest, and serve warrants and detainers on individuals who are foreign-born and have criminal charges or convictions.⁴

2019 State Immigration Enforcement Laws

Section 908.106, F.S., requires each county correctional facility to enter into an agreement with a federal immigration agency for the temporary housing and payment of costs for people who are the subject of immigration detainers. Since the 2019 immigration enforcement laws were enacted, most of the state’s sheriffs have entered into 287(g) agreements with ICE to work cooperatively with the federal government to enforce federal immigration laws.

Two 287(g) Models

The ICE website lists two types of 287(g) models: the Jail Enforcement Model (JEM) and, the more limited, Warrant Service Officer Model (WSO).

The JEM “is designed to identify and process removable noncitizens with criminal or pending criminal charges who are arrested by state or local” law enforcement agencies. The local ICE Office of Enforcement and Removal Operation Field Office supervises the program and local law enforcement officers are trained at the Federal Law Enforcement Training Center ICE Academy located in Charleston, South Carolina.⁵

The WSO model is described as a narrower cooperative agreement. Under the provisions of this model, state and local law enforcement officers are “trained, certified, and authorized by ICE to perform limited functions of an immigration officer within the law enforcement agency’s jail and/or correctional facilities” as described in the memorandum of agreement. Officers who are nominated for the program are trained by certified instructors at a location that is located near the law enforcement agency.⁶

Data

For Fiscal Year 2021, ICE reports that 287(g) programs accounted for the following encounters involving noncitizens:

- 394 persons convicted for assault;

³ 8 U.S. Code s. 1101 *et seq.*

⁴ U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, (updated Dec. 15, 2021), available at <https://www.ice.gov/identify-and-arrest/287g> (last visited Feb. 14, 2022).

⁵ *Id.*, “Types of Models.”

⁶ *Id.*

- 646 persons convicted for dangerous drugs;
- 74 persons convicted for sexual offenses or assaults;
- 53 persons convicted for obstructing police;
- 91 persons convicted for weapon offenses; and
- 21 persons convicted for homicide.⁷

According to ICE, as of November, 2021:

- 66 law enforcement agencies in 19 states have entered into 287(g) JEM agreements; and
- 76 law enforcement agencies in 11 states have entered into 287(g) WSO agreements.⁸

Florida Law Enforcement Counties or Departments with 287(g) Agreements

The following 48 law enforcement agencies or counties in Florida have entered into 287(g) agreements:

- WSO Agreements:
 - Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Columbia, DeSoto, Flagler, Franklin, Hamilton, Hendry, Hernando, Highland, Holmes, Indian River, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Osceola, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Wakulla, and Walton Counties.
- JEM Agreements:
 - Clay, Collier, Hernando, Jacksonville-Duval, and Pasco Counties, and the Florida Department of Corrections.

III. Effect of Proposed Changes:

The bill makes three changes to the existing immigration enforcement statutes. The bill:

- Amends the definition of “sanctuary policy.”
- Requires each law enforcement agency operating a county detention facility to enter into a 287(g) agreement with ICE.
- Prohibits state and local governmental entities from contracting with common carriers or contracted carriers that willfully transport a person into Florida knowing the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from the state or the United States. The bill also specifies that contracts, including a grant agreement or economic incentive program payment agreement, must include certain provisions attesting that the common carrier or contracted carrier is not, and will not, willfully provide the prohibited services to a person knowing the person is an unauthorized alien.

Definition of Sanctuary Policy (Section 1)

The bill expands the definition of “sanctuary policy” by adding a sixth element to the definition. The definition is expanded to include any law, policy, practice, procedure, or custom of any state or local government entity that prohibits or impedes a law enforcement agency from providing to

⁷ *Id.*, “287(g) Successes.”

⁸ *Id.*, “Participating Entities.”

any *state entity* information on the immigration status of an inmate or detainee in the custody of the law enforcement agency.

Immigration Enforcement Assistance Agreements (Section 2)

By January 1, 2023, each law enforcement agency that operates a county detention facility is required to enter into a 287(g) agreement with ICE. However, the bill does not specify which model program the law enforcement agency must choose.

Common Carrier and Contracted Carrier Contracts (Section 3)

The final section of the bill defines the terms common carrier,⁹ contract,¹⁰ governmental entity,¹¹ and unauthorized alien¹² and provides contract specifications for governmental entities that enter into contracts with common carriers or contracted carriers.

Under this section, a governmental entity may not execute, amend, or renew a contract with a common carrier or contracted carrier if the carrier is willfully providing any service in furtherance of transporting a person into the state knowing that the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from the state or the United States.

Additionally, each contract executed, amended, or renewed between a governmental entity and a common carrier or contracted carrier on or after October 1, 2022, including a grant agreement or economic incentive program payment agreement, must include:

- An attestation¹³ by the common carrier or contracted carrier that it is not willfully providing and will not willfully provide any service during the term of the contract in furtherance of

⁹ The bill defines “common carrier” to mean a person, firm, or corporation that undertakes for hire, as a regular business, to transport persons or commodities from place to place, offering his or her services to all such as may choose to employ the common carrier and pay his or her charges.

¹⁰ The bill defines “contract” to mean a contract that is subject to the competitive procurement requirements of the contracting governmental entity or a contract for an amount or duration requiring it to include written provisions under the procurement requirements of the governmental entity.

¹¹ The bill defines “governmental entity” to mean an agency of the state, a regional or a local government created by the State Constitution or by general or special act, a county or municipality, or any other entity that independently exercises governmental authority.

¹² The bill defines “unauthorized alien” to mean a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The term is to be interpreted consistently with applicable federal statutes, rules or regulations.

¹³ The attestation must conform with the provisions of s. 92.525, F.S. which states, in part:
92.525 Verification of documents; perjury by false written declaration, penalty.—

(1) If authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths;
(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10, to administer oaths; or
(c) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: “Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

transporting a person into the state knowing that the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from the state or the United States. A governmental entity is deemed to be in compliance with these provisions upon receipt of the common carrier's attestation.

- A provision for termination for cause of the contract, grant agreement, or economic incentive program payment agreement if a common carrier or contracted carrier is found in violation of its attestation.

The Department of Management Services is required to develop by rule, no later than August 30, 2022, a common carrier and contracted carrier attestation form.

Effective Date (Section 4)

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

B. Private Sector Impact:

The bill prohibits a governmental entity in Florida from entering into a contract with a common carrier or contracted carrier if such common carrier or contracted carrier willfully provides any service in furtherance of transporting a person into the state knowing the person is an unauthorized alien; however, a governmental entity in the state may contract with a common carrier or contracted carrier that provides services to facilitate the detention, removal, or departure of the person. The fiscal impact of the bill to common carriers and contracted carriers is indeterminate, since it is unknown how many governmental entities in Florida have existing contracts with common carriers or contracted carriers and will choose to contract for such services in the future.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on a local government that provides funding to a law enforcement agency that is not currently participating in a 287 (g) agreement by requiring the local government to expend funds enforcing immigration law in partnership with ICE.

According to the Florida Department of Law Enforcement (FDLE), the FDLE's Office of Statewide Intelligence will be designated to receive quarterly reports required under the bill. The FDLE does not regularly communicate with county detention facilities for these purposes, and as a result will need to develop policies and procedures for the intake and storage of the reports.¹⁴ However, the impact of this bill does not necessitate additional full-time equivalent positions or resources.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 908.102 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 908.11 and 908.111.

¹⁴ See FDLE, *2022 Agency Legislative Bill Analysis for SB 1808* at 5 (Jan. 19, 2022) (on file with the Senate Appropriations).

¹⁵ *Id.*

IX. Additional Information:

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

CS by Appropriations on February 21, 2022:

The committee substitute:

- Clarifies the bill applies to contracts that are subject to a governmental entity's competitive procurement requirements.
- Includes "contracted carriers" to provisions in the bill that prohibit governmental entities from doing business with common carriers.
- Provides that governmental entities in Florida may contract with common carriers or contracted carriers that provide services to facilitate the detention, removal, or departure of unauthorized aliens from Florida or the United States.
- Corrects a cross-reference to clarify that an unauthorized alien is a person who is unlawfully present in the United States.

- B. **Amendments:**

None.