

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires employers in certain professions to provide proof of compliance with federal worker authorization programs to the Department of Business and Professional Regulation.

Promote personal responsibility: The bill provides penalties for employers using workers who are not in compliance with a federal worker authorization program.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Federal Work Authorization Program

The United States has been dealing with persons entering the country illegally since immigration was first controlled in 1885. In 1964, the termination of the Bracero Program¹ led to increased undocumented immigration. With the realization that undocumented immigrants were coming to the U.S. to find work, Congress began investigating legislative approaches to curtail undocumented immigration.

While it was illegal for a non-citizen to be in the U.S. without permission, it was not against the law for employers to employ persons who were in the U.S. illegally.² In 1971, a bill was introduced into Congress that made hiring unauthorized workers illegal and imposed penalties on employers who broke this law. This legislation passed the House of Representatives but was never heard in the Senate. Similar legislation was considered in 1974 and 1975 but failed to pass either House of Congress. In the ensuing years, study groups initiated at both the executive and congressional level reviewed the continued influx of undocumented immigration and ways to control it.

In 1986, after reviewing the proposals of the various study groups and two failed attempts at passing legislation, the U.S. Congress passed the Immigration Reform and Control Act of 1986 (IRCA). By the early 1980s, in the absence of a federal statute, 12 states had passed laws prohibiting the employment of undocumented immigrants.³ IRCA pre-empted the state mandates relating to employer sanctions. However, states are not prohibited from adopting more stringent regulations.

IRCA made it illegal for an employer to knowingly hire, recruit, or refer for a fee individuals not authorized to work in the U.S. Fines for first-time violations start at \$250 per unauthorized employee and increase up to \$10,000 per unauthorized employee for third and subsequent violations. IRCA prohibits employers from discriminating on the basis of national origin or citizenship status in hiring, firing, and referral or recruitment for a fee. The law also established the Office of the Special Counsel for Immigration-Related Unfair Employment Practices in the Department of Justice to investigate claims of discrimination and to prosecute employers engaging in these practices.

IRCA also established an employment verification system allowing an employee to attest that he/she is a citizen or national of the U.S., a lawful permanent resident, or an alien otherwise authorized to work in

¹ The Bracero Program served as a major labor source to meet the needs of U.S. agricultural employers.

² Only employers hiring under the Farm Labor Contract Registration Act were prohibited from knowingly hiring undocumented workers. The "Texas Proviso" in Section 274 of the Immigration and Nationality Act of 1952 expressly excluded the employment of illegal aliens from the definition of "harboring" which was a felony.

³ Such laws were enacted in California, Connecticut, Delaware, Florida, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, Vermont, and Virginia.

the U.S. Employers are responsible for examining the documentation and attesting that said documentation appears to be genuine. IRCA provides penalties for failure of employers to verify documentation. All employers, regardless of size, are required to follow this procedure.

The United States Citizenship and Immigration Service (USCIS)⁴ was responsible for enforcing the above law. However, because IRCA only required that employees produce paper documents verifying their identity/eligibility, and because such documents are easily falsified, enforcement has been problematic.

The Immigration Act of 1990 made several amendments to the IRCA provisions. Among other things, it added Section 274C, which provides penalties for making, using, providing, or accepting fraudulent documents. It also provided a provision prohibiting employers from requesting more or different documents than an employee presents.

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

Enforcement

Enforcement of foreign labor violations is the responsibility of the United States Immigration and Customs Enforcement (ICE). Created in 2003, the agency combines the law enforcement arms of the former Immigration and Naturalization Service (INS) and the former U.S. Customs Services, to more effectively enforce U.S. immigration and customs laws and to protect the United States against terrorist attacks. ICE is the largest investigative branch of the Department of Homeland Security (DHS).

According to an article⁵ published in the Florida Restaurant & Lodging Association magazine, statistics through May of the FY 2006 report that ICE is conducting far more criminal investigations than the former INS. The article goes on to state, "According to ICE, they found that businesses viewed the INS' administrative fines as a 'cost of doing business.' Rather than continue to collect fine revenue without making a dent in the in-flow of illegal labor, ICE now seeks to criminally prosecute illegal alien employers and seize assets derived from their illicit activities."

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

Current Florida law⁶ prohibits any person knowingly employing, hiring, recruiting, or referring, for private or public employment, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States. The first violation is considered a noncriminal violation punishable by a civil fine of not more than \$500, regardless of the number of aliens with respect to whom the violation occurred. A subsequent violation constitutes a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500. Any subsequent violation constitutes a separate offense with respect to each unauthorized alien.

⁴ USCIS –formerly the Immigration and Naturalization Service and now part of the Department of Homeland Security.

⁵ *Putting U.S. Immigration Law to Work in Your Favor*, Florida Restaurant and Lodging Association, January/February 2007

⁶ s. 448.09, F.S.

Effect of Proposed Legislation

HB 119 requires persons in certain professions applying to the Department of Business and Professional Regulation (DBPR) for licensure, certification, or registration, or renewal of a license, certificate, or registration, to ensure compliance with a federal work authorization program. The specified professions are farm labor contractors, construction contractors, public lodging and restaurants, and the wine, beer, and liquor industries. Proof of compliance must be provided to DBPR by the applicant for all employees. Subcontractors of the applicant must supply proof of compliance to the applicant, who in turn must supply proof to DBPR.

The bill provides for DBPR or, in circumstances where a Board of Directors exist, the Board to impose penalties for non-compliance of federal immigration law. The penalties range from denial of application for initial or renewal of a license, certification, or registration to temporary suspension or complete revocation of a license, certificate or registration. Additionally, a fine of \$25,000 for each person not duly authorized to work by the federal immigration laws shall be imposed.

The bill also provides penalties for landowners who violate provisions of the federal immigration law. The penalties for non-compliance include denial of agricultural lands classification for a period of 2-10 years, dependant upon the number of unauthorized aliens employed by the landowner. The bill provides for the land to be assessed at just valuation for the period of time greenbelt is denied. Additionally, the landowner shall be fined \$25,000 for each unauthorized alien employed.

The bill instructs the Department of Agriculture and Consumer Services (DACS) to provide information to persons regulated by DACS to encourage compliance with a federal work authorization program. The bill provides a definition for federal work authorization program.

C. SECTION DIRECTORY:

Section 1: Amends s. 193.461, F.S.; providing for the loss of agricultural classification for a specified time period as it relates to employment of unauthorized aliens.

Section 2: Amends s. 448.09, F.S.; providing for a civil fine of \$25,000 per unauthorized alien employed.

Section 3: Amends s. 570.07, F.S.; amending duties of the Department of Agriculture and Consumer Services (DACS) to include providing information to persons regulated by DACS to encourage compliance with federal work authorization programs; and, provides a definition for federal work authorization program.

Section 4: Creates s. 559.7915, F.S.; requiring persons applying with the Department of Business and Professional Regulation (DBPR) for licensure, certification, or registration or renewal of license, certificate, or registration for specified industries to ensure compliance with a federal work authorization program regarding all employees, including crews of contractors and subcontractors; provides for proof of compliance to be by certification of the applicant of all employees and by certification to the applicant by contractor or subcontractor that said contractor or subcontractor is in compliance; provides a definition for federal work authorization program; provides grounds for disciplinary action; and, provides penalties for non-compliance.

Section 5: Provides an effective date of January 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Indeterminate. See fiscal comments.
2. Expenditures:
Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Indeterminate. See fiscal comments.
2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As long as the private sector abides by the laws related to federal immigration and federal worker authorization programs, there should be no fiscal impact. However, if violations occur, the penalties (\$25,000 in civil fines per non-authorized worker or increase in property tax from loss of agricultural exemption) would present a fiscal burden to employers.

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services (department) reports that there will be a minimal expenditure to each of the department's regulatory divisions to distribute the information to persons served or regulated by the department. The department anticipates the expenditures can be handled through existing funding.

While the Department of Business and Professional Regulation (DBPR) has not submitted a fiscal note on this bill for review, it appears there is an indeterminate impact on DBPR for their role in ensuring compliance with these new provisions.

Furthermore, in situations where a property appraiser determines that a landowner has violated federal immigration law, the landowner will lose their agricultural property tax exemptions, thus increasing local government revenues. The state could also see an indeterminate increase of revenues from collections of any civil fines imposed by enforcing the provisions of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A