

STORAGE NAME: h0231s1a.bdt

DATE: April 1, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 231

RELATING TO: Illegal Aliens/Definition of "Qualified Bidder"

SPONSOR(S): Representatives Lippman and Feeney

STATUTE(S) AFFECTED: s. 287.012, Florida Statutes

COMPANION BILL(S): S 56(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 7 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 231 amends the definition of "qualified bidder", "responsible bidder", "qualified offeror" or "responsible offeror" found in s. 287.012, F.S., to include a person who complies with any contract conditions prohibiting the employment of illegal aliens. Chapter 287, F.S., deals with the procurement of personal property and services by the executive branch of state government.

Additionally, CS/HB 231 defines "illegal alien" to mean a person who is in the state in violation of immigration laws and the Constitution of the United States. The committee substitute adds a requirement that there be a notice to contractors proclaiming: "The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.", and it adds an enforcement section providing that: "Any contract with a contractor who knowingly employs illegal aliens, shall be subject to unilateral cancellation."

This committee substitute does not appear to have a fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The state encourages open and competitive bidding in the procurement of goods and services. Chapter 287, F.S., maintains that fair and open competition reduces the appearance and opportunity for favoritism, and instills public confidence in the system that contracts are awarded equitably and economically. Competitive bidding discourages improprieties when the process is monitored properly, when uniform procurement procedures are used, when agency and contractors are held to specific standards and requirements, and when appropriate records justifying agency decisions are maintained.

Florida Requirements

Section 448.09, F.S., prohibits an individual from knowingly employing, hiring, recruiting or referring, for themselves or for another person, for private or for public employment within the state, an alien not duly authorized to work by the immigration laws, or the Attorney General of the United States. This statute also provides for punishment for violations.

Within the May, 1993 General Appropriations Bill (Chapter 93-185, Laws of Florida), the Intergovernmental Affairs Policy Unit of the Office of the Governor was directed to undertake the "Florida Newcomer Study". "Newcomers" are refugees and entrants as defined in federal law or regulation, aliens who have arrived in the state, other illegal immigrants who have been granted permission under the various federal laws to remain in the United States, and immigrants who have legally entered or settled in the state under federal law.

The Intergovernmental Affairs Policy Unit issued its Final Report in September, 1994. The Executive Summary and Report note to the extent possible, patterns and demographics of immigration into Florida, as well as information about services and programs newcomers may utilize. The Report reveals, for example, according to 1990 U.S. Census data, that almost 13% of Florida's total population were foreign born, with almost 40% of those people entering the United States between 1980 and 1990.

Department of Management Services Memorandum No. 22 (96-97), dated February 25, 1997, in accordance with Governor Chiles' Executive Order 96-236, requires the following language be included in solicitations and contracts: "NOTICE TO CONTRACTOR: The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract."

Federal Requirements

The federal government has addressed the issue of illegal aliens unfairly competing for jobs and contracts in the United States with the passage of the Immigration Reform and Control Act of 1986 ("IRCA"), P.L. 99-603. The passage of IRCA established sanctions prohibiting employers from knowingly employing, recruiting, or referring for a fee, an alien not authorized to work in the United States.

IRCA defines an "illegal alien" as a foreign national who entered the U.S. without inspection, entered with fraudulent documentation, or, who after entering legally as a nonimmigrant, violated status and remained in the U.S. without authorization.

Pursuant to IRCA, aliens are issued one of several documents indicating, depending upon what qualifying classification they fall under, that those aliens have been authorized to work in the United States. These documents are commonly known as "green cards", but they are of different color combinations and configurations.

In order to ensure that each job applicant is eligible for employment, IRCA requires that each job applicant presents original documents, such as passports, driver's licenses, Military ID cards, Social Security Cards, various Immigration and Naturalization Service ("INS") Certificates, and the like. The applicant fills out the appropriate section of the Employment Eligibility Verification Form (I-9), containing identifying information. The employer must examine identity and eligibility documents, then record document information to verify their examination of such documents. Employers also may photocopy such documents.

The U. S. Labor Department, Wage & Hour Division routinely checks for compliance with IRCA provisions. and INS also conducts similar employer checks. If it is determined that an employee is not actually authorized to work, but the employer satisfied his or her responsibilities for identity document verification, Form I-9 completion and retention, no violation will be charged against the employer. Sometimes employees present false, or fraudulent documentation, and the employer has no reasonable way of determining the validity of such documents.

On February 13, 1996, President Clinton signed Executive Order 12989. That order provides that a contractor who knowingly violates the IRCA's employment provisions, except for mere "paperwork violations", is subject to debarment for a period of one year. The term "knowingly" includes not only actual knowledge, but knowledge which may be inferred through notice of facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.

B. EFFECT OF PROPOSED CHANGES:

Section 287.012, F.S., is amended requiring that contractors, in order to fall within the definition of a "qualified" or "responsible" bidder or offerer, must also comply with any contract conditions prohibiting the employment of illegal aliens.

This section is further amended to define an "illegal alien" as a person who is in the state in violation of immigration laws and the Constitution of the United States.

The actual effect of this committee substitute, barring the expenditure of resources to create an enforcement capability, would seem to be minimal. An effort was made to determine whether there has been any significant level of employment of illegal aliens by past bidders or offerors. There was a virtual absence of known violations by agency personnel. Perhaps that is due to federal enforcement efforts which are intended to accomplish exactly what this CS/HB 231 seems to be intended to accomplish.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. CS/HB 231 indirectly requires private organizations or individuals who wish to qualify as bidders or offerers to the State of Florida to take whatever actions are necessary to ensure there are no illegal aliens in their employ.

It similarly may require state agencies to take whatever action they may deem necessary, to ensure contractors are in compliance with the provision relative to employment of illegal aliens.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No, not directly.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

No, unless a potential bidder or offerer has, or will have illegal aliens in their employ who are also family members.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 287.012 (13), F.S., to supplement and expand the definition of “qualified” and “responsible” bidder and offerer to include the compliance with any contract conditions prohibiting the employment of illegal aliens.

It creates s. 287.012(20), F.S., which defines “illegal alien” to mean a person who is in the state in violation of immigration laws and the Constitution of the United States.

Section 2: Renumbers s. 287.057(1), F.S., to 287.057(1)(a), F.S. , and creates 287.057(1)(b), F.S., which provides that every invitation to bid, request for proposal or contract shall contain a “Notice To Contractor” which codifies the notice now required by Executive Order and DMS Memo 22 (96 - 97) (see PRESENT SITUATION - **Florida Requirements**), that employment of unauthorized aliens is considered a violation of federal law, and shall be cause for unilateral cancellation of contract(s).

Section 3: Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Unknown, but if the bill becomes law, and an effort is made to enforce the law, agencies will be impacted by the need to use personnel and other resources for enforcement. Also, depending on what the enforcement policy is, and how effective it becomes, some state contracts could be cancelled, causing adverse effects, such as costs related to securing and/or using replacement contractors.

3. Long Run Effects Other Than Normal Growth:

CS/HB 231 increases the responsibility of agency personnel to ensure an absence of illegal aliens in the employ of bidders/offerers. Any governmental costs, would depend on how the provision is enforced, or if it is enforced at all.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

CS/HB 231 embellishes the responsibility of contractors to ensure an absence of illegal aliens in their employ. The costs to private entities is very difficult to estimate.

2. Direct Private Sector Benefits:

Depending on enforcement issues, competition between private entities clearly in compliance with this bills' provisions, those whose contracts may be waiting for compliance to be established, and those not in compliance may all be affected.

3. Effects on Competition, Private Enterprise and Employment Markets:

CS/HB 231 may have the effect of reinforcing the effects of the existing federal and state laws, and Presidential and Gubernatorial Executive Orders. Also see III C 2. Direct Private Sector Benefits.

D. FISCAL COMMENTS:

See Fiscal Impact sections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/HB 231 does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 231 does not reduce the authority of counties or municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

CS/HB 231 Does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Governmental Operations at its March 11, 1997 meeting adopted two amendments to HB 231. The bill was reported as a committee substitute. Amendment No. 1 changes the additional definitional clause in s. 287.012, F.S., to "complies with any contract conditions prohibiting the employment of illegal aliens. Amendment No. 2, adds a subsection to s. 287.057, F.S., creating s. 287.057(1)(b), which requires a notice to contractors that employment of unauthorized aliens is considered a violation of the Immigration Nationality Act, and that if contractors knowingly employ unauthorized aliens, such violation shall be cause for unilateral cancellation of their contracts. This amendment also creates section 287.057(22), which states:"Any contract with a contractor who knowingly employs illegal aliens, shall be subject to unilateral cancellation."

VII. SIGNATURES:

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