

STORAGE NAME: h0231s1b.bdt

DATE: February 17, 1998

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

BILL #: CS/HB 231

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

SPONSOR(S): Representatives Lippman and Feeney

COMPANION BILL(S): SB 1064 (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)
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I. SUMMARY:

CS/HB 231 expands the definition of "qualified bidder," "responsible bidder," "qualified offerer," and "responsible offeror" found in s. 287.012, F.S., to mean a person who complies with any contract conditions prohibiting the employment of illegal aliens. Additionally, the bill provides a definition for "illegal alien" as a person who is in the state in violation of immigration laws and the Constitution of the United States. Finally, CS/HB 231 provides language in s. 287.057, F.S., requiring invitations to bid, requests for proposals, or contracts to contain a notice specifically declaring that the employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act and that such employment of unauthorized aliens shall be cause for unilateral cancellation of the contract. Chapter 287, F.S., addresses the procurement of personal property and services by the Executive Branch of state government.

CS/HB 231 has an indeterminate but insignificant fiscal impact on state government and it does not appear to have a fiscal impact on local governments.

CS/HB 231 was carried over to the 1998 legislative session and placed on the House Consent Calendar pursuant to House Rule 96.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 287, F.S., addresses the procurement of goods and services for the Executive Branch of State government. Fair and open competition in the bidding process not only produces economic advantage, it also reduces favoritism and instills public confidence in the state's procurement process. The procurement process established in Chapter 287, F.S., discourages improprieties when monitored properly, when uniform procedures are used, when agencies and contractors are held to specific requirements and when agencies maintain records justifying their decisions.

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.

The 1993 General Appropriations Bill (Chapter 93-185, Laws of Florida) directed the Intergovernmental Affairs Policy Unit of the Office of the Governor 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 the patterns and demographics of immigration into Florida as well as information about services and programs newcomers may utilize. Using the 1990 U.S. Census data, the Report reveals that almost 13 percent of Florida's total population, at the time, were foreign born, and almost 40% of those people entered the United States between 1980 and 1990.

The 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 to 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 the IRCA established sanctions prohibiting employers from knowingly employing, recruiting, or referring for a fee, an alien not authorized to work in the United States.

The 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 the IRCA, aliens are issued one of several documents indicating, depending upon what qualifying classification they fall under, their authorization 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, the IRCA requires each job applicant to present original documents, such as passports, driver's licenses, Military ID cards, Social Security Cards and various Immigration and Naturalization Service ("INS") Certificates. 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 and subsequently record the document information verifying their examination. Employers may also photocopy such documents.

The U. S. Labor Department, Wage & Hour Division, routinely checks for compliance with IRCA provisions and the INS 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 examining identity and eligibility documents, then no violation will be charged against the employer. Sometimes employees present false or fraudulent documentation and employers have no reasonable way of determining the document's validity.

On February 13, 1996, President Clinton signed Executive Order 12989 providing that contractors who knowingly violate the IRCA's employment provisions, except for mere "paperwork violations," are subject to debarment for a one-year period. The term "knowingly" includes not only actual knowledge but knowledge inferred through the observation or 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.

Section 287.057, F.S., would be amended to codify The Department of Management Services Memorandum No. 22 (96-97) and Governor Chiles' Executive Order 96-236, requiring the following language to 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."

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?

CS/HB 231 may require state agencies to establish enforcement procedures, however, it does not speak specifically to that effect. It would require state agencies to include in invitations to bid, requests for proposals or contracts, a notice to the contractor that employment of unauthorized aliens is a violation of s. 274A(e) of the Immigration and Nationality Act and such violation shall be the cause of unilateral cancellation of the contract.

(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.

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.

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. STATUTE(S) AFFECTED:

Sections 287.012 and 287.057, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 287.012(13), F.S., to supplement and expand the definition of "qualified" and "responsible" bidder and offerer as a person who complies with any contract conditions prohibiting the employment of illegal aliens.

Additionally, it creates s. 287.012(20), F.S., defining "illegal alien" as 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., providing that every invitation to bid, request for proposal or contract shall contain a "Notice To Contractor" that employment of unauthorized aliens is considered a violation of federal law and shall be cause for unilateral cancellation of contract(s), codifying the notice now required by Executive Order and DMS Memo 22 (96-97) (see PRESENT SITUATION - **Florida Requirements**).

Section 3: Provides an effective date of October 1, 1997. It is anticipated that House Bill Drafting will prepare technical amendments for bills carried over from the 1997 legislative session with effective dates that have already passed, if needed.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

It is possible, depending on the enforcement policy established, that some state contracts could be canceled and expenses would be incurred securing replacement contracts.

2. Recurring Effects:

Indeterminate. Depending on the enforcement procedures established, increased agency responsibilities will require the use of agency personnel and resources.

3. Long Run Effects Other Than Normal Growth:

CS/HB 231 may increase the responsibilities of agency personnel to ensure an absence of illegal aliens in the employment of bidders/offerers. Any governmental costs would depend on how the provision is enforced.

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:

Indeterminate. CS/HB 231 reinforces the responsibility of contractors to ensure an absence of illegal aliens in their employment.

2. Direct Private Sector Benefits:

Indeterminate.

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

Indeterminate. Contractors and employers should already be in compliance with federal law.

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:

An effort by the Department of Management Services to determine whether any significant level of activity in the area of employing illegal aliens by past bidders or offerers did not produce any findings. The lack of non-compliance could possibly be due to federal enforcement efforts.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Governmental Operations at its March 11, 1997 meeting adopted two amendments to HB 231 and it was subsequently reported as a committee substitute. Amendment No. 1 changed the new language in s. 287.012, F.S., from requiring a certified oath stating that illegal aliens are not and will not be employed by the contractor to language simply stating that a qualified bidder/offerer is a person who complies with any contract conditions prohibiting the employment of illegal aliens. Amendment No. 2 creates section 287.057(1)(b), F.S., requiring 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 the violation shall be cause for unilateral cancellation of their contracts. This amendment also creates section 287.057(22), F.S., specifically stating: "Any contract with a contractor who knowingly employs illegal aliens, shall be subject to unilateral cancellation."

VII. SIGNATURES:

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