

**STORAGE NAME:** h0855s1.cpcs.doc

**DATE:** February 25, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** CS/HB 855

**RELATING TO:** Illegal Smuggling of Aliens

**SPONSOR(S):** Committee on Crime Prevention, Corrections & Safety and Representative Barreiro

**TIED BILL(S):**

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

- (1) CRIME PREVENTION CORRECTIONS & SAFETY YEAS 8 NAYS 0
  - (2) SELECT COMMITTEE ON SECURITY
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill makes it a criminal act to knowingly, or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter or reside in the United States, bring, or attempt to bring or conspire to bring an alien to the state of Florida.

This bill takes effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

Heretofore the state of Florida has not been engaged in the investigation, arrest, prosecution and incarceration of persons engaged in alien smuggling.

B. PRESENT SITUATION:

There is currently no Florida statute under which a person can be charged with the crime of "alien smuggling" and the term smuggling is not used in Florida Statutes. There is, however, a federal statutory scheme that criminalizes the bringing of aliens to the United States. Specifically, 8 USC §1324, Bringing in and Harboring Certain Aliens, defines the following as criminal acts:

(a)(1)(A)(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v) (I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).

C. EFFECT OF PROPOSED CHANGES:

The bill provides that it is unlawful for any person to knowingly or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter or reside in the United States pursuant to the United States Immigration and Naturalization Code section 1101, et seq., brings, attempts to bring or conspires to bring to the state of Florida in any manner whatsoever such alien, regardless of any official action which may later be taken with respect to such alien.

The bill provides definitions for two (2) terms that are consistent with the above referenced United States Code section. The term "alien" is defined as "any person who is not a citizen or national of the United States." The term "National of the United States" is also defined as "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

There are three (3) penalty provisions in the bill. The first is a felony of the second degree for any person who commits the above prohibited act. The second provides that any person who in the course of committing the above prohibited act causes serious bodily injury to, or places in jeopardy the life of, any other person, commits a felony of the first degree. The third penalty provision provides that any person who commits the above prohibited act and in the course of such action causes death of another commits a capital felony.

The bill also has a sentencing clause that authorizes the sentencing court take into consideration a federal offense comparable to the offense under this section which the defendant is to be sentenced and the maximum penalty provided for such federal offense.

Finally, the bill provides for the use of videotaped depositions of witnesses to a violation the act(s) prohibited by this bill who have been deported or otherwise expelled from the United States, or is otherwise unable to testify, provided such witness was available for cross examination and the deposition complies with the Florida Rules of Evidence.

The effective date of this bill is July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

There will be a fiscal impact on local law enforcement, state attorneys, and the courts to arrest, detain, prosecute and adjudicate persons charged under with violating the criminal act created by this bill. The extent of the fiscal impact is undeterminable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated.

D. FISCAL COMMENTS:

The bill creates several criminal offenses. The Criminal Justice Impact Conference has determined that the bill will have an insignificant impact on the Department of Corrections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The sum and substance of this bill was reviewed by the United States Department of Justice and input received was incorporated into the committee substitute.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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