HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 999 Enforcement of Immigration Laws
SPONSOR(S): Adams
TIED BILLS: **IDEN./SIM. BILLS:** SB 1810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety	7 Y, 1 N	Cunningham	Kramer
2) Safety & Security Council		Cunningham	Havlicak
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 999 prohibits public employers from entering into contracts for the physical performance of services within this state unless the contractor registers and participates in a federal work authorization program. Contractors who receive such contract awards are prohibited from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register and participate in a federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered and participated in a federal work authorization program.

HB 999 requires the Chief of Domestic Security to negotiate the terms of a memorandum of understanding between the state and the US Department of Homeland Security concerning:

- The enforcement of federal immigration and customs laws.
- The detention and removal of individuals not lawfully present in the United States.
- Investigations related to illegal immigration in the state.
- The establishment of law enforcement training standards and the creation of law enforcement training programs relating to federal immigration laws.

Contingent upon funding, the bill requires the Chief of Domestic Security to work with the regional domestic security task forces and state entities responsible for establishing law enforcement training standards to establish training standards and create training programs to enhance the ability of law enforcement officers to enforce federal immigration and customs laws while performing within the scope of their authorized duties. Law enforcement officers certified as trained would be authorized to enforce federal immigration and customs laws while performing within the scope of their authorized duties.

HB 999 provides that if verification of the nationality or lawful immigration status of any person charged with a crime and confined to jail cannot be made from documents in the possession of the prisoner or after a reasonable effort by law enforcement officials, verification must be made within 48 hours through a query to the federal Law Enforcement Support Center.

HB 999 requires agencies and political subdivisions of the state to verify the lawful presence in this country of persons over 18 who have applied for certain state, local, or federal public benefits that are administered by the agency or political subdivision. The bill requires that verification of eligibility for benefits be made through the Systematic Alien Verification for Entitlements (SAVE) Program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill authorizes the Department of Business and Professional Regulation and the Department of Transportation to make rules relating to employment eligibility verification in contracts between public employers and vendors. This bill also requires agencies and political subdivisions of the state to verify the lawful presence of persons over 18 who apply for state, local, or federal public benefits.

Maintain Public Security – This bill requires the Florida Department of Law Enforcement to establish training standards relating to enforcement of federal immigration laws and to enter into a memorandum of understanding with federal entities concerning various aspects of federal immigration law.

B. EFFECT OF PROPOSED CHANGES:

The Federal Work Authorization Program

Current Situation

Background
The federal Immigration Reform and Control Act of 1986 (IRCA) made it illegal for any U.S. employer to knowingly:

- Hire, recruit or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the Act.[1]

The law established a procedure that employers must follow to verify that employees are authorized to work in the United States. The procedure requires employees to present documents that establish both the worker's identity and eligibility to work, and requires employers to complete an "I-9" form for each new employee hired. This procedure is required of all employers, regardless of size.

The United States Citizenship and Immigration Services (USCIS - formerly the INS and now part of the Department of Homeland Security) enforces the above law. However, because the IRCA only required that employees produce paper documents verifying their identity/eligibility, and because such documents are easily falsified, enforcement has been problematic.

In 1996, IRCA was amended by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). In an attempt to address some of the problems related to employment eligibility verification, the IIRIRA, created three pilot programs to test *electronic* employment eligibility verification systems. 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. Participation in the EEV is currently voluntary, is free to employers, and is available in all 50 states.

[1] P.L. 99-603, 100 Stat. 3359. IRCA amended the Immigration and Nationality Act (INA) (codified as amended at 8 USC 1101).

How the EEV Works

Employers participating in the EEV program must, within three days of hiring a new employee, electronically submit certain information about the employee through the EEV system.[2] Generally, employers will receive an initial response from the EEV system regarding an employee's employment eligibility within 3-5 seconds.

The initial response will either confirm the employee's employment eligibility, or will return a "tentative non-confirmation" (TNF). If a TNF is received, the EEV system provides the employer with a letter that must be printed out and given to the employee. The letter states that a TNF was received and requires the employee to check a box indicating whether the employee intends to contest, or not contest the TNF. If the employee elects to contest the TNF, the EEV system provides the employer with a "verifying letter" that informs the employee of why the TNF was received and who to contact to attempt to resolve the issue. The employee has ten days to resolve the issue. During these ten days, the employer is not permitted to terminate the employee for employment eligibility reasons. In cases where it takes longer than ten days to resolve the issue, the United States Department of Homeland Security (USDHS) will contact the employer and advise the employer of the delay.

Effect of the Bill

HB 999 prohibits public employers, starting July 1, 2008, from entering into contracts for the physical performance of services within this state unless the contractor registers and participates in a federal work authorization program. Contractors who receive a contract award under s. 287.057, F.S.,[3] for such services are prohibited from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register and participate in a federal work authorization program. Contractors must also ensure that subcontractors who provide services for the contractor register and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered and participated in a federal work authorization program. The bill requires the Secretary of the Department of Business and Professional Regulation (DBPR) to prescribe forms and adopt rules deemed necessary to effectuate the above.

The bill defines the following terms:

- *Federal Work Authorization Program* – Any program operated by the United States Department of Homeland Security that provides electronic verification of work authorization issued by the United States Bureau of Citizenship and Immigration Services or any equivalent federal work authorization program operated by the United States Department of Homeland Security that provides for the verification of information regarding newly hired employees under the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.
- *Public Employer* – Any department, agency, or instrumentality of the state or a political subdivision of the state.
- *Subcontractor* – Any entity providing services for a contractor, whether as a subcontractor, contract employee, staffing agency, or other entity, regardless of the level of subcontracting duties, if the services provided are related to the contractor's contract with an agency.

HB 999 creates a similar section of statute in s. 337.163, F.S., that, starting July 1, 2008, prohibits the Department of Transportation (DOT) from entering into contracts for the physical performance of services within this state unless the contractor registers and participates in a federal work authorization program. The bill prohibits contractors who receive a contract award under ch. 337, F.S.,[4] for such services from executing a contract, purchase order, or subcontract in connection with the award unless

[2] The information submitted through the EEV system is obtained using the employee's I-9 form, which must be maintained regardless of an employer's participation in the EEV program.

[3] Section 287.057, F.S., relates to the procedures state agencies use to procure contracts for the purchase of commodities or contractual services.

[4] Chapter 337, F.S., relates to contracting by the Department of Transportation.

the contractor and all subcontractors register and participate in a federal work authorization program. Contractors must also ensure that subcontractors who provide services for the contractor register and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered and participated in a federal work authorization program. The bill requires the Secretary of DOT to prescribe forms and adopt rules deemed necessary to effectuate the above. The bill defines the terms "federal work authorization program" and "subcontractor" as indicated above.

State Enforcement of Federal Immigration Laws

Current Situation

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*.

Mass Migration MOU
In 1998, Florida's Governor entered into a MOU with the United States Department of Justice (USDOJ) outlining the terms and conditions under which the State of Florida would provide law enforcement and logistical support to the federal government pursuant to an "actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border." If the magnitude of the actual or imminent event warrants, the United States Attorney General may activate the MOU in conjunction with Florida's Governor. Upon entry of an Executive Order by the Governor, trained Florida state and local law enforcement will be authorized to assist the Federal government in responding to the actual or anticipated mass influx of aliens into Florida. This MOU does not allow for the enforcement of federal immigration statutes by Florida law enforcement officers without a separate agreement. The authority for the MOU is found at Section 103(a)(10) of the Immigration and Naturalization Act (INA) (8 U.S.C. Sections 1101 et. seq.).

In August 2004, the Florida Department of Law Enforcement (FDLE) Executive Director entered into an MOU with United States Customs and Border Protection. This MOU addressed the issues of law enforcement authority discussed in the 1998 MOU. The MOU outlined the training requirements and the terms and conditions under which Florida law enforcement officers could enforce certain federal immigration statutes pursuant to a declared mass immigration event, resulting in "mass migration response operations." This training and authority is commonly referred to as "103 Authority" (referring to the INA Section providing the authorization). This training was initiated in early 2006 and to date; approximately 90 state and local officers in South Florida have been trained. Their authority is limited to observing, stopping, questioning, arresting & detaining and transporting during the declared mass migration emergency.

Domestic Security MOU
In 2002 and 2003 MOUs were entered into between the State of Florida and the USDHS authorizing the conveyance of authority to Florida law enforcement officers who successfully complete training administered by the Bureau of Immigration and Customs Enforcement. Subsequent to the successful completion of the training, certain authority was conveyed to local and state investigators associated with the statewide Regional Domestic Security Task Forces. The training and authority is referred to as "287(g) authority" which is provided within Section 287(g) of the Immigration and Nationality Act. To date 62 Florida law enforcement officers have received this authorization with approximately 45 of those currently active. Their authority includes detention and arrest related to federal immigration violations *with a domestic security nexus*. No specially declared emergency is required for these trained officers to exercise their immigration enforcement authority. Under the Florida agreement with USDHS, the authorized task force members' efforts must have a domestic security nexus and are done under some degree of federal supervision. While these officers could be utilized in response to an

actual or imminent influx of aliens into Florida, that is not the purpose of their extensive training, and their immigration enforcement authority is not limited like officers acting under a Section 103 situation.

Training
The current MOUs require state and local law enforcement officers to undergo specified amounts of training. Specifically, the "mass migration" MOU requires law enforcement officers to undergo no more than 24 hours of instruction, which currently consists of 4 hours of online instruction followed by 8 hours of classroom instruction. The "domestic security" MOU training requirement are more extensive in that it requires law enforcement officers to complete approximately 4 ½ weeks of training. This training is currently provided by USDHS who also develops the curricula for the training programs.

Effect of the Bill

HB 999 requires the Chief of Domestic Security[5] to negotiate the terms of a MOU between the state and the USDOJ or the USDHS concerning:

- The enforcement of federal immigration and customs laws.
- The detention and removal of individuals not lawfully present in the United States.
- Investigations related to illegal immigration in the state.
- The establishment of law enforcement training standards and the creation of law enforcement training programs relating to federal immigration laws.

Contingent upon funding in the federal Homeland Security Appropriation Act of 2007 or any subsequent source of federal funding, the bill requires the Chief of Domestic Security to work with the regional domestic security task forces[6] and state entities responsible for establishing law enforcement training standards[7] to establish training standards and create training programs to enhance the ability of law enforcement officers to enforce federal immigration and customs laws while performing within the scope of their authorized duties. Law enforcement officers certified as trained would be authorized to enforce federal immigration and customs laws while performing within the scope of their authorized duties.

Jails - Determining Lawful Status of Prisoners

Current Situation

Florida Model Jail Standard 4.01 provides in part, "when a foreign citizen is received/admitted to a detention facility for any reason, the detention facility shall inform the US Department of State (USDOS) in accordance with the USDOS rules."

Generally, when a person is booked into a local jail, jail officials use the information given by the detainee to help determine the person's citizenship status. If a detainee admits that he or she is not a US citizen, or if there is reason to believe a detainee is not a US citizen, jail officials will attempt to

[5] Section 943.0311, F.S., states that the executive director of FDLE, or a member of FDLE designated by the executive director, shall serve as the Chief of Domestic Security.
[6] Section 943.0312, F.S., requires FDLE to establish a regional domestic security task force in each of the department's operational regions. The task forces serve in an advisory capacity to FDLE and the Chief of Domestic Security and provide support to FDLE in its performance of functions pertaining to domestic security.
[7] The Criminal Justice Standards & Training Commission (CJSTC), established under Ch. 943, F.S., is an independent policy making body responsible for creating entry-level curricula and certification testing for criminal justice officers in Florida, establishing minimum standards for employment and certification and revoking the certification of officers who fail to maintain these minimum standards of conduct. http://www.fdle.state.fl.us/about_fdle/general.asp.

determine the detainee's citizenship status by submitting the detainee's identification information to United States Immigration and Customs Enforcement (ICE).[8]

ICE partners with the Law Enforcement Support Center (LESC). The LESC provides timely immigration status and identity information to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity.[9] Agencies seeking immigration status information on persons they are investigating may electronically request such information from the LESC, which operates 24 hours a day, 7 days a week, and is available in all 50 states.[10]

Effect of the Bill

HB 999 provides that if verification of the nationality or lawful immigration status of any person charged with a crime and confined to jail cannot be made from documents in the possession of the prisoner or after a reasonable effort by law enforcement officials, verification must be made within 48 hours through a query to the LESC or other office or agency designated for that purpose by the USDHS. The bill requires that the USDHS be notified if it is determined that a prisoner is in the country illegally. The bill specifies that its provisions are not to be construed so as to deny a person bond or prevent a person from being released if otherwise eligible. The Florida Sheriffs Association is responsible for preparing and issuing guidelines and procedures for compliance with the bill's provisions.

Public Benefits

Background

The IRCA required USDHS to establish a system for verifying the immigration status of non-citizen applicants for, and recipients of, certain types of federally funded benefits, and to make the system available to federal, state, and local benefit issuing agencies and institutions that administer such benefits.[11] Consequently, the Systematic Alien Verification for Entitlements (SAVE) Program was created. Administered by the USCIS, SAVE is an intergovernmental information-sharing initiative designed to aid eligibility workers in determining a non-citizen applicant's immigration status, and thereby ensure that only entitled non-citizen applicants receive Federal, state, or local public benefits and licenses.[12]

Currently, IRCA mandates the following programs and overseeing agencies to participate in the verification of an applicant's immigration status:

- Temporary Assistance to Needy Families (TANF) Program
- Medicaid Program, and certain Territorial Assistance Programs (U.S. Department of Health and Human Services)
- Unemployment Compensation Program (U.S. Department of Labor)
- Title IV Educational Assistance Programs (U.S. Department of Education)
- certain Housing Assistance Programs (U.S. Department of Housing and Urban Development).

Additionally, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), created a very complex set of public benefit eligibility requirements that are continuously amended by Congress. While PRWORA did not affirmatively make any person eligible for any benefit, it placed a new set of limitations on non-citizen eligibility on top of any program-specific requirements (some of which may have limited non-citizen eligibility). With certain exceptions,

[8] Local detention facilities also use the Florida Department of Highway Safety and Motor Vehicles (DHSMV) "Driver and Vehicle Information Database" (DAVID) to help verify the identity of detainees. Among the information DHSMV provides are Florida driver license or identification card number, social security number, photograph, and signature.
[9] http://www.ice.gov/partners/lesc/index.htm.
[10] *Id*.
[11] www.uscis.gov
[12] *Id*.

PRWORA made non-citizens who are not "qualified aliens" ineligible for federal public benefits[13], and aliens who are not qualified aliens, lawful nonimmigrants, or aliens paroled into the United States under Section 212(d)(5) of the INA for less than one year ineligible for state or local public benefits[14]. There are also limitations on the eligibility of qualified aliens for certain benefits, again with exceptions.

Effect of the Bill

HB 999 requires agencies and political subdivisions of the state, no later than July 1, 2008, to verify the lawful presence in this country of persons over 18 who have applied for state or local public benefits, as defined by 8 USC 1621, or for federal public benefits, as defined by 8 USC 1611, that are administered by the agency or political subdivision. Verification of a person's lawful presence is not required for:

- Any purpose for which lawful presence in this country is not required by law, ordinance, or regulation;
- Assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 USC 1396b(v)(3)[15], of the alien involved and are not related to an organ transplant procedure;
- Short-term, non-cash, in-kind emergency disaster relief;

---

[13] 8 USC 1611 defines "federal public benefit" in the following manner:

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply--

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

[14] 8 USC 1621 defines ``state or local public benefit'' in the following manner:

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply--

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

[15] 42 USC 1396b(v)(3), defines "emergency medical condition" as "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

- Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- Programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the US Attorney General, in the US Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:
    - Deliver in-kind services at the community level, including through public or private nonprofit agencies;
    - Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
    - Are necessary for the protection of life or safety;
- Prenatal care; or
- Postsecondary education.

The bill also requires the Board of Governors of the State University System to set forth, or cause to be set forth, policies regarding postsecondary education benefits that comply with all applicable federal laws including, but not limited to, those governing ineligibility for public benefits as described in 8 USC 1611, 1621, or 1623.

HB 999 sets forth the procedures for agencies and political subdivisions to verify an applicant's lawful presence. Applicants must execute an affidavit stating that he or she is either a US citizen or permanent legal resident of the US and is 18 or older, or that he or she is a qualified alien or nonimmigrant under the INA and is 18 or older and lawfully present in the US. The bill makes it a first degree misdemeanor for knowingly and willfully making a false or fraudulent statement in an affidavit.

The bill provides that eligibility for benefits shall be made through the SAVE program, but that until such verification of eligibility is made, the affidavit may be presumed to be proof of lawful presence in the US. The bill prohibits agencies and political subdivisions from providing a local, state, or federal benefit in violation of the bill's public benefit-related provisions.

The bill further specifies that agencies and political subdivisions must strive to improve efficiency, reduce delay in the verification process, and provide for the expedient resolution of unique individual circumstances where verification procedures would impose an unusual hardship on a legal resident of the state. State agencies or departments that administer any program of state or local public benefits must compile an annual report regarding compliance with the bill's public benefits-related provisions. The bill also requires that errors and significant delays by the SAVE program be reported to the USDHS who will monitor the program and report annually on errors and delays to ensure the program is not wrongfully denying benefits to legal residents of the state.

C. SECTION DIRECTORY:

Section 1. Creates s. 986.01, F.S., citing chapter 986, F.S., the "Florida Security and Immigration Compliance Act;" creates s. 986.02, F.S., relating to construction; creates s. 986.03, F.S., relating to definitions; creates s. 986.04, F.S., relating to compliance with federal work authorization programs; creates s. 986.05, F.S., relating to chief of domestic security; responsibilities; creates s. 986.06, F.S., relating to determination of lawful status; creates s. 986.07, F.S., relating to agencies, political subdivisions; requirements.

Section 2. Creates s. 337.163, F.S., relating to compliance with federal work authorization program.

Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Sheriffs indicate that local jail provisions should have no additional impact since many of the bills requirements are already standard practice. Also see "Fiscal Comments."

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

C. FISCAL COMMENTS:

As of the date this bill analysis was published, fiscal impact estimates have been received from the following state entities: the Agency for Persons with Disabilities, the Department of Corrections, the Department of Children and Family Services (DCF), the Florida Department of Law Enforcement, the Department of Management Services and the Department of Elderly Affairs. With the exception of the DCF, each agency indicated the potential for increased costs associated with increased workload but did not provide a specific estimate.

In addition to any impact on state agencies, there could be an impact on private sector organizations and local governments as the result of additional workload that may be required if this bill becomes law. Data necessary to estimate these costs are unavailable, so the impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

In the absence of an applicable exemption or exception, Article VII, section 18(a) of the state constitution provides that counties or municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the legislature determines that the law fulfills an important state interest and the law is passed by 2/3 of the membership of each house of the legislature.

Since there is the potential for local governments to incur expenditures as a result of implementing HB 999, the bill could be subject to Article VII, section 18(a) of the state constitution if the fiscal impact were to be determined to be significant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DBPR and DOT to prescribe forms and adopt rules (lines 123-124 and 317) necessary to administer and effectuate the bill's provisions requiring contractors and subcontractors of public employers to participate in a federal work authorization program. The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Note: The following comments have been addressed by the strike-all amendment traveling with the bill.

Federal Work Authorization Program

Line 113 of the bill requires contractors to certify in writing to the *agency* that it is in compliance. While the bill defines the term "public employer," it does not define the term "agency." Additionally, it is unclear whether the term "public employer" should be used instead of "agency."

Lines 122 – 126 require the DBPR to prescribe forms and adopt rules relating to employment eligibility verification in contracts between public employers and vendors. The Department of Management Services (DMS), rather than DBPR, is the state agency responsible for developing and implementing the state's procurement practices and may be better able to carry out this requirement of the bill. However, it is unclear whether either of these agencies has the authority to prescribe forms and adopt rules that would, in part, apply to "political subdivisions of the state" (i.e. counties and cities) as the bill requires.

The bill creates an entirely new chapter in the "Criminal Procedure and Corrections" title of the Florida Statutes. However, provisions of the bill relating to the employment eligibility verification in contracts between public employers and vendors may be better suited for Chapter 287, F.S., which relates to "Procurement of Personal Property and Services."

The bill does not define the term "contractor" (this term is defined in s. 287.012, F.S., as "a person who contracts to sell commodities or contractual services to an agency").

Lines 86 and 285 mention the "United States Bureau of Citizenship and Immigration Services." This federal entity is currently known as the "United States Citizenship and Immigration Services."

The definition of "subcontractor" on lines 95-99 and lines 291-295 is unclear. The term could be defined as "a person who enters into a contract with a contractor for the performance of any part of such contractor's contract."

State Enforcement of Federal Immigration Laws

In the past, state and local law enforcement agencies have expressed concerns about expanding their authority to enforce federal immigration laws.

The term "law enforcement officer" is used without providing a definition. This term could be defined in accordance with s. 943.10, F.S.

Lines 156-159 provides that "a law enforcement officer *certified as trained* in accordance with this section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her duties." This is unclear in that the referred-to section of the bill does not require any type of *certification*. This could be clarified by stating, "A law enforcement officer who is trained in accordance with the standards established pursuant to this section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her duties."

It is unclear whether FDLE's CJSTC has the authority train state and local law enforcement officers on federal immigration laws.

Jails – Determining Lawful Status of Prisoners

Line 163 uses the term "jail" without providing a definition. This term could be defined in accordance as "a county detention facility or a municipal detention facility as those terms are defined in s. 951.23, F.S." The term prisoner is also used without definition (line 164). This term could be defined as "a county prisoner or municipal prisoner as those terms are defined in s. 951.23, F.S."

Lines 161-173 state that if jail officials cannot verify the *nationality* or *lawful immigration status* of a person charged with a crime, verification must be made through the LESC *within 48 hours*. However, a person's *nationality* may have little to do with a person's citizenship status. Additionally, many jails submit a detainee's identification information through the LESC even if the jail has determined the person is in the country legally (i.e. with a visa or greencard). As such, it may be better to require local jails to submit a *foreign-born* detainee's identification information to LESC within 48 hours *of admission*.

Public Benefits

The term "agency" is used without a definition. Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

Line 243 states that "eligibility for benefits shall be made through the SAVE program. However, the SAVE Program does not determine an applicant's *eligibility* for a specific benefit or license – only the applicant's immigration status. As such, line 243 may need to be re-written to state, "verification of an applicant's immigration status shall be made through the SAVE program."

To join the SAVE Program and perform immigration status verification, an agency must first establish a MOU with the SAVE Program, and then establish a purchase order with the SAVE Program contractor to pay for VIS-CPS transaction fees. The bill does not specify that agencies enter into MOUs.

Lines 266-270 appear to be requiring the USDHS to report annually on errors and delays of the SAVE program. It is unclear whether a state can require the federal government to produce an annual report.

D. STATEMENT OF THE SPONSOR

This bill will allow state agencies to more accurately determine the immigration status of people seeking public benefits. It will also help ensure that contractors doing business with the state employ only those people legally allowed to work in the United States. The concerns raised in the bill analysis are addressed by the strike-all amendment.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Homeland Security & Public Safety Committee adopted a strike-all amendment and reported the bill favorably as amended. The amendment addresses many of the issues raised in the bill analysis. Specifically, the amendment reorganizes the bill; provides a phase-in period for compliance with the state contracts portion of the bill; clarifies that the provisions relating to contracts and public benefits only apply to state agencies; and makes technical changes.