

By Senator Fasano

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1 A bill to be entitled
2 An act relating to enforcement of immigration laws;
3 creating chapter 986, F.S.; creating the "Florida Security
4 and Immigration Compliance Act"; providing construction;
5 providing definitions; prohibiting public employers from
6 entering into a contract for the physical performance of
7 services within the state with contractors not registered
8 and participating in a federal work-authorization program
9 by a specified date; providing procedures and requirements
10 with respect to the registration of contractors and
11 subcontractors; providing for enforcement; requiring the
12 Secretary of Business and Professional Regulation to
13 prescribe forms and adopt rules; requiring the Chief of
14 Domestic Security to negotiate the terms of a memorandum
15 of understanding between the state and the United States
16 Department of Justice or the United States Department of
17 Homeland Security concerning the enforcement of federal
18 immigration and customs laws, the detention and removal of
19 individuals not lawfully present in the United States,
20 investigations related to illegal immigration in the
21 state, the establishment of specified law enforcement
22 training standards, and the creation of specified law
23 enforcement training programs; providing for the
24 establishment of law enforcement training standards and
25 the creation of training programs contingent upon federal
26 funding; providing that law enforcement officers trained
27 in accordance with such programs are authorized to enforce
28 federal immigration and customs laws while performing
29 within the scope of their authorized duties; providing

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30 requirements and procedures with respect to the
31 determination of lawful immigration status of persons
32 charged with a crime and confined to jail; providing
33 construction; requiring the Florida Sheriffs Association
34 to prepare and issue specified guidelines and procedures;
35 requiring agencies and political subdivisions of the state
36 to verify the lawful presence in the United States of any
37 natural person 18 years of age or older who has applied
38 for state or local public benefits, or for federal public
39 benefits, that are administered by an agency or a
40 political subdivision of the state by a specified date;
41 providing for enforcement; providing exceptions; requiring
42 the Board of Governors of the State University System to
43 set forth policies regarding postsecondary education
44 benefits; providing procedures and requirements with
45 respect to verification of lawful presence in the United
46 States by an agency or political subdivision; providing a
47 penalty for knowingly and willfully making a false,
48 fictitious, or fraudulent statement or representation in
49 an affidavit executed under the act; providing procedure
50 with respect to verification of eligibility for benefits;
51 prohibiting any agency or political subdivision of this
52 state from providing any state, local, or federal benefit
53 in violation of the act; providing for specified annual
54 reports; creating s. 337.163, F.S.; providing definitions;
55 prohibiting the Department of Transportation from entering
56 into a contract for the physical performance of services
57 within this state with contractors not registered and
58 participating in a federal work-authorization program by a

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59 specified date; prohibiting a contractor who receives a
60 contract award from the department for the performance of
61 services within this state from executing a contract,
62 purchase order, or subcontract in connection with the
63 award unless the contractor and all subcontractors
64 providing services register and participate in a federal
65 work-authorization program; providing procedures and
66 requirements with respect to the registration of
67 contractors and subcontractors; providing for enforcement;
68 requiring the Secretary of Transportation to prescribe
69 forms and adopt rules; providing effective dates.
70

71 Be It Enacted by the Legislature of the State of Florida:
72

73 Section 1. Chapter 986, Florida Statutes, consisting of
74 sections 986.01, 986.02, 986.03, 986.04, 986.05, 986.06, and
75 986.07, is created to read:

76 986.01 Short title.--This chapter may be cited as the
77 "Florida Security and Immigration Compliance Act."

78 986.02 Construction.--All requirements of this chapter
79 concerning immigration or the classification of immigration
80 status shall be construed in conformity with federal immigration
81 law.

82 986.03 Definitions.--As used in this chapter:

83 (1) "Federal work-authorization program" means any program
84 operaed by the United States Department of Homeland Security
85 which provides electronic verification of work authorization
86 issued by the United States Bureau of Citizenship and Immigration
87 Services or any equivalent federal work-authorization program

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88 operated by the United States Department of Homeland Security
89 which provides for the verification of information regarding
90 newly hired employees under the Immigration Reform and Control
91 Act of 1986, Pub. L. No. 99-603.

92 (2) "Public employer" means any department, agency, or
93 instrumentality of the state or a political subdivision of the
94 state.

95 (3) "Subcontractor" means any entity providing services for
96 a contractor, whether as subcontractor, contract employee,
97 staffing agency, or other entity, regardless of the level of
98 subcontracting duties, if the services provided are related to
99 the contractor's contract with an agency.

100 986.04 Compliance with federal work-authorization
101 program.--

102 (1) Commencing July 1, 2009, no public employer shall enter
103 into a contract under s. 287.057 for the physical performance of
104 services within this state unless the contractor registers and
105 participates in a federal work-authorization program.

106 (2) No contractor who receives a contract award under s.
107 287.057 for the physical performance of services within this
108 state shall execute a contract, purchase order, or subcontract in
109 connection with the award unless the contractor and all
110 subcontractors providing services for the contractor register and
111 participate in a federal work-authorization program. The
112 contractor shall certify in writing to the agency that it is in
113 compliance with this subsection.

114 (3) A contractor shall ensure that each subcontractor
115 providing services for the contractor registers and participates
116 in a federal work-authorization program. Each subcontractor shall

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117 certify in writing to the contractor that it is in compliance
118 with this subsection.

119 (4) This section shall be enforced without regard to race,
120 religion, gender, ethnicity, or national origin.

121 (5) Except as provided in s. 337.163(6), the Secretary of
122 Business and Professional Regulation shall prescribe forms and
123 adopt rules deemed necessary to administer and effectuate this
124 section and shall publish such rules on the Department of
125 Business and Professional Regulation's Internet website.

126 986.05 Chief of Domestic Security; responsibilities.--

127 (1) (a) The Chief of Domestic Security, as defined in s.
128 943.0311, shall negotiate the terms of a memorandum of
129 understanding between the State of Florida and the United States
130 Department of Justice or the United States Department of Homeland
131 Security concerning:

132 1. The enforcement of federal immigration and customs laws.

133 2. The detention and removal of individuals not lawfully
134 present in the United States.

135 3. Investigations related to illegal immigration in the
136 state.

137 4. The establishment of law enforcement training standards
138 and the creation of law enforcement training programs as provided
139 in subsection (2).

140 (b) The memorandum of understanding shall be signed on
141 behalf of the state by the Chief of Domestic Security and the
142 Governor, or as otherwise required by the appropriate federal
143 agency.

144 (2) (a) Contingent upon funding in the federal Homeland
145 Security Appropriation Act of 2008 or any subsequent source of

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146 federal funding, the Chief of Domestic Security shall work with
147 the regional domestic security task forces and the various state
148 entities responsible for establishing training standards
149 applicable to state law enforcement officers to establish
150 training standards and create training programs the purpose of
151 which is to enhance the ability of law enforcement officers to
152 enforce federal immigration and customs laws while performing
153 within the scope of their authorized duties.

154 (b) A law enforcement officer certified as trained in
155 accordance with this section is authorized to enforce federal
156 immigration and customs laws while performing within the scope of
157 his or her authorized duties.

158 986.06 Determination of lawful status.--

159 (1) If verification of the nationality or lawful
160 immigration status of any person who is charged with a crime and
161 confined to jail for any period of time cannot be made from
162 documents in the possession of the prisoner or after a reasonable
163 effort on the part of law enforcement officials to determine the
164 nationality or immigration status of the person so confined,
165 verification shall be made within 48 hours through a query to the
166 Law Enforcement Support Center (LESC) of the United States
167 Department of Homeland Security or other office or agency
168 designated for that purpose by the United States Department of
169 Homeland Security. If it is determined that the prisoner is in
170 the United States unlawfully, the law enforcement agency shall
171 notify the United States Department of Homeland Security.

172 (2) Nothing in this section shall be construed to deny a
173 person bond or prevent a person from being released from
174 confinement if such person is otherwise eligible for release.

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175 (3) The Florida Sheriffs Association shall prepare and
176 issue guidelines and procedures for compliance with the
177 provisions of this section.

178 986.07 Agencies, political subdivisions; requirements.--

179 (1) Except as provided in subsection (3) or where exempted
180 by federal law, no later than July 1, 2009, every agency or
181 political subdivision of this state shall verify the lawful
182 presence in the United States of any natural person 18 years of
183 age or older who has applied for state or local public benefits,
184 as defined in 8 U.S.C. s. 1621, or for federal public benefits,
185 as defined in 8 U.S.C. s. 1611, which are administered by the
186 agency or political subdivision.

187 (2) This section shall be enforced without regard to race,
188 religion, gender, ethnicity, or national origin.

189 (3) Verification of an individual's lawful presence in the
190 United States under this section shall not be required for:

191 (a) Any purpose for which lawful presence in the United
192 States is not required by law, ordinance, or regulation;

193 (b) Assistance for health care items and services that are
194 necessary for the treatment of an emergency medical condition, as
195 defined in 42 U.S.C. s. 1396b(v) (3), of the alien involved and
196 are not related to an organ transplant procedure;

197 (c) Short-term, non-cash, in-kind emergency disaster
198 relief;

199 (d) Public health assistance for immunizations with respect
200 to immunizable diseases and for testing and treatment of symptoms
201 of communicable diseases whether or not such symptoms are caused
202 by a communicable disease;

203 (e) Programs, services, or assistance such as soup

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204 kitchens, crisis counseling and intervention, and short-term
205 shelter specified by the United States Attorney General, in the
206 United States Attorney General's sole and unreviewable discretion
207 after consultation with appropriate federal agencies and
208 departments, which:

209 1. Deliver in-kind services at the community level,
210 including through public or private nonprofit agencies;

211 2. Do not condition the provision of assistance, the amount
212 of assistance provided, or the cost of assistance provided on the
213 individual recipient's income or resources; and

214 3. Are necessary for the protection of life or safety;

215 (f) Prenatal care; or

216 (g) Postsecondary education.

217 (4) The Board of Governors of the State University System
218 shall set forth, or cause to be set forth, policies regarding
219 postsecondary education benefits which comply with all applicable
220 federal laws including, but not limited to, those governing
221 ineligibility for public benefits as described in 8 U.S.C. s.
222 1611, s. 1621, or s. 1623.

223 (5) (a) Verification of lawful presence in the United States
224 by the agency or political subdivision required to make such
225 verification shall occur as follows:

226 1. The applicant for benefits must execute an affidavit
227 stating that he or she is a United States citizen or a permanent
228 legal resident of the United States and is 18 years of age or
229 older; or

230 2. The applicant for benefits must execute an affidavit
231 stating that he or she is a qualified alien or nonimmigrant under
232 the federal Immigration and Nationality Act, is 18 years of age

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233 or older, and is lawfully present in the United States.

234 (b) Any person who knowingly and willfully makes a false,
235 fictitious, or fraudulent statement or representation in an
236 affidavit executed pursuant to paragraph (a) commits a
237 misdemeanor of the first degree, punishable as provided in s.
238 775.082 or s. 775.083.

239 (6) For any applicant who has executed an affidavit
240 attesting to the fact that he or she is an alien lawfully present
241 in the United States, eligibility for benefits shall be made
242 through the Systematic Alien Verification for Entitlements
243 Program (SAVE) established by the United States Bureau of
244 Citizenship and Immigration Services or a successor program
245 designated by the United States Department of Homeland Security.
246 Until such verification of eligibility is made, the affidavit may
247 be presumed to be proof of lawful presence in the United States
248 for the purposes of this section.

249 (7) In carrying out the provisions of this section,
250 agencies or political subdivisions of this state shall endeavor
251 to improve efficiency, reduce delay in the verification process,
252 and provide for the expedient resolution of unique individual
253 circumstances where verification procedures would impose an
254 unusual hardship on a legal resident of the state.

255 (8) (a) No agency or political subdivision of this state
256 shall provide any state, local, or federal benefit, as defined in
257 8 U.S.C. s. 1611 or s. 1621, in violation of this section.

258 (b) Each state agency or department that administers any
259 program of state or local public benefits shall compile an annual
260 report with respect to its compliance with this section.

261 (9) Any and all errors and significant delays by the

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262 Systematic Alien Verification for Entitlements Program shall be
263 reported to the United States Department of Homeland Security and
264 to the Secretary of State, who shall monitor the program and its
265 verification application errors and significant delays and report
266 annually on such errors and significant delays to ensure that the
267 application of the program is not wrongfully denying benefits to
268 legal residents of the state.

269 (10) Notwithstanding subsection (5), any applicant for
270 federal benefits as defined in 8 U.S.C. s. 1611 or state or local
271 benefits as defined in 8 U.S.C. s. 1621 shall not be guilty of
272 any crime for executing an affidavit attesting to lawful presence
273 in the United States which contains a false statement if such
274 affidavit is not required by this section.

275 Section 2. Section 337.163, Florida Statutes, is created to
276 read:

277 337.163 Compliance with federal work-authorization
278 program.--

279 (1) As used in this section, the term:

280 (a) "Federal work-authorization program" means any program
281 operated by the United States Department of Homeland Security
282 which provides electronic verification of work authorization
283 issued by the United States Bureau of Citizenship and Immigration
284 Services or any equivalent federal work-authorization program
285 operated by the United States Department of Homeland Security
286 which provides for the verification of information regarding
287 newly hired employees under the Immigration Reform and Control
288 Act of 1986, Pub. L. No. 99-603.

289 (b) "Subcontractor" means any entity providing services for
290 a contractor, whether as subcontractor, contract employee,

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291 staffing agency, or other entity, regardless of the level of
292 subcontracting duties, if the services provided are related to
293 the contractor's contract with the department.

294 (2) Commencing July 1, 2009, the department shall not enter
295 into a contract under this chapter for the physical performance
296 of services within this state unless the contractor registers and
297 participates in a federal work-authorization program.

298 (3) No contractor who receives a contract award under this
299 chapter for the physical performance of services within this
300 state shall execute a contract, purchase order, or subcontract in
301 connection with the award unless the contractor and all
302 subcontractors providing services for the contractor register and
303 participate in a federal work-authorization program. The
304 contractor shall certify in writing to the department that it is
305 in compliance with this subsection.

306 (4) A contractor shall ensure that each subcontractor
307 providing services for the contractor registers and participates
308 in a federal work-authorization program. Each subcontractor shall
309 certify in writing to the contractor that it is in compliance
310 with this subsection.

311 (5) This section shall be enforced without regard to race,
312 religion, gender, ethnicity, or national origin.

313 (6) The Secretary of Transportation shall prescribe all
314 forms and adopt rules deemed necessary for the application of
315 this section to any contract or agreement relating to public
316 transportation and shall publish such rules and regulations on
317 the department's Internet website.

318 Section 3. This act shall take effect July 1, 2008, except
319 that subsection (2) of section 986.05, Florida Statutes, as

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320 created by this act, shall take effect only if funding under the
321 federal Homeland Security Appropriation Act of 2008 or any
322 subsequent source of federal funding is provided to fund the
323 provisions of that subsection.