

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 219 Immigration
SPONSOR(S): Governmental Affairs Policy Committee, Adams and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1880

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Governmental Affairs Policy Committee</u>	<u>14 Y, 0 N, As CS</u>	<u>Haug</u>	<u>Williamson</u>
2)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u>Haug</u>	<u>Tinker</u>
3)	<u></u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The federal Immigration Reform and Control Act of 1986 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.

This 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 bill prohibits public employers from entering into contracts with a state agency for the physical performance of services unless the contractor registers with 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 with and participate in a federal work authorization program. The bill requires specified contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program. Compliance with this requirement is phased in between July 1, 2011 and July 1, 2013, based upon the number of employees employed by a specified contractor or subcontractor.

The bill also requires the Department of the Lottery to verify that the winner of a prize from specified lottery games is a citizen of or legally present in the United States. The Department of the Lottery may have increased personnel costs to train Lottery prize payment staff on citizenship and immigration requirements and to administer the bill.

The bill creates a fiscal impact on the Department of Management Services and the Department of Transportation associated with the promulgation of rules and the administration of those rules to ensure contractors and subcontractors participate in a federal work authorization program. The Department of the Lottery may incur increased personnel costs to train Lottery prize payment staff on citizenship and immigration requirements purposes of administering the bill.

Private contractors and subcontractors not presently in compliance with the federal work authorization program may have to expend funds to come into compliance.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Federal Work Authorization Program

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 IRCA. However, because the IRCA only required that employees produce paper documents verifying their identity or 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 for nationwide implementation. 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. The EEV 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 U.S.C. 1101).

Effect of the Bill

The bill prohibits public employers from entering into contracts with a state agency for the physical performance of services unless the contractor registers and participates in a federal work authorization program.

The Florida Security and Immigration Compliance Act

The Florida Security and Immigration Compliance Act is created in s. 287.0575, F.S., to require compliance with federal work authorization programs. Contractors who receive a contract award under s. 287.057, F.S.,² 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 ensure that subcontractors who provide services for the contractor register with and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program over a phased in schedule between July 1, 2011 and July 1, 2013.³ The bill also requires the Department of Management Services to adopt rules and prescribe forms necessary to administer this bill.

Department of Transportation

The bill creates similar requirements in s. 337.163, F.S. Starting July 1, 2011, the Department of Transportation (DOT) is prohibited from entering into contracts for the physical performance of services unless the contractor registers with and participates in a federal work authorization program. The bill prohibits contractors who receive a contract award under ch. 337, F.S.,⁴ from executing a contract, purchase order, or subcontract in connection with the award unless the contractor and all subcontractors register with and participate in a federal work authorization program. Contractors also must ensure that subcontractors who provide services for the contractor register with and participate in the federal work authorization program. The bill requires contractors and subcontractors to certify in writing that they have registered with and participate in a federal work authorization program. It also requires the Secretary of DOT to prescribe forms and adopt rules deemed necessary to effectuate the process.

Definitions

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.

The Florida Lottery

Background

Under current law, the Department of the Lottery is not required to limit the sale of lottery tickets or the payment of lottery prizes based upon citizenship or immigration status.⁵

² Section 287.057, F.S., relates to the procedures state agencies use to procure contracts for the purchase of commodities or contractual services.

³ Employers with 500 or more employees must comply by July 1, 2011, employers with 100 or more employees by July 1, 2012 and all other employers by July 1, 2013.

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

⁵ Sections 24.1055 and 24.115, F.S. According to the Department on the Lottery's website (<http://www.flalottery.com/inet/games-HowToClaimMain.do>) to claim a prize of \$600 or more, the player must complete a Florida Lottery Winner Claim Form and present

Effect of the Bill

The bill requires the Department of the Lottery to verify that the winner of a prize from specified lottery games is a citizen of or legally present in the United States.

B. SECTION DIRECTORY:

Section 1: Amends s. 24.115, F.S., providing that the Department of the Lottery may not pay specified prizes until the department verifies the winner is a citizen of or legally present in the United States.

Section 2: Creates s. 287.0575, F.S., providing definitions; requiring compliance with federal work authorization programs; prohibiting an agency from entering into a contract for the performance of services with contractors who are not registered and participating in a federal work authorization program by specified dates; providing for enforcement; requiring the Department of Management Services to prescribe forms and adopt rules.

Section 3: Creates s. 337.163, F.S., providing definitions; prohibiting the Department of Transportation from entering into a contract for the performance of services with contractors who are not registered and participating in a federal work authorization program by specified dates; providing for enforcement; requiring the department to prescribe forms and adopt rules.

Section 4: Providing an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill creates a fiscal impact on the Department of Management Services and the Department of Transportation associated with the promulgation of rules. These departments also will incur costs associated with the administration of those rules in order to ensure contractors and subcontractors participate in a federal work authorization program.

The Department of the Lottery may incur increased personnel costs to train Lottery prize payment staff on citizenship and immigration requirements purposes of administering the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

one form of the following identification that is current or was issued within the past five years and bares a serial number or other identifying number:

- An identification card or driver's license issued by a public agency authorized to issue driver's licenses in Florida, a state other than Florida, a territory of the U.S., Canada, or Mexico.
- A passport issued by the U.S. Department of State.
- A passport issued by a foreign government.
- An identification card issued by any branch of the U.S. armed forces.
- An identification card issued by the U.S. Bureau of Citizenship and Immigration Services.

The Florida Lottery Winner Claim Form (<http://www.flalottery.com/inet/downloads/englishclaim.pdf>) has somewhat different identification requirements most notably the identification card or driver's license can be from *any country* and a sixth category is added: "Other proof of identity authorized for use by notaries public in Chapter 117, Florida Statutes."

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private contractors and subcontractors not presently in compliance with the federal work authorization program may have to expend funds to come into compliance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Management Services and the Department of Transportation to adopt rules to effectuate contractor and subcontractor compliance with the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of the Lottery provided the following comments:

- The Lottery's current prize claim procedures require the claimant to state under oath whether they are a U.S. citizen. The primary purpose of this requirement is to ensure that federal income taxes are withheld at the proper rate—25% for citizens and higher rates for non-citizens. Those claiming to be citizens, as well as certain legal aliens, are required to furnish a Social Security number. We follow the procedures deemed acceptable by the Internal Revenue Service for federal tax purposes.
- Unscrupulous individuals already engage in unlawful scams, victimizing the elderly, in particular, in which they represent themselves as "illegal aliens" and, therefore, unable to redeem their allegedly winning lottery ticket. The victim is then convinced to withdraw enough money from their bank to pay a "discounted" value for the ticket, which in reality is not a winning ticket at all. By the time the victim learns the ticket is worthless, the perpetrator has vanished with the victim's money. HB 421, by prohibiting lottery claims by illegal aliens, could add a note of authenticity to these scams, making them even more prevalent.
- There are a variety of avenues by which a person can legally be in the United States, such as tourists with passports, students with visas, workers with work permits, legal residents, etc., and each avenue would have guidelines, such as the length of time a tourist may stay in the United States on a passport, and questions, such as whether the person had overstayed the permissible length of time. The documentation required to prove legal presence in the United States would not necessarily be the same for each person, and Lottery employees would be required to exercise individual judgment in determining whether documents presented were satisfactory. Therefore, this provision would require Lottery staff to become extensively trained in immigration policy.

- The current language does not make it unlawful for a person not legally in the United States to purchase a lottery ticket. Case law holds that the purchase of a lottery ticket establishes a contract between the ticket purchaser and the lottery issuing the ticket. If the purchase of a ticket is not made illegal, a question arises as to whether or not the Lottery is in breach of contract.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 24, 2010, the Governmental Affairs Policy Committee reported HB 219 favorably as a committee substitute.

The bill as filed prohibited all public employers from entering into contracts for the physical performance of services unless the contractor and all sub-contractors registered with and participated in a federal work authorization program. It also required the Chief of Domestic Security to negotiate the terms of a memorandum of understanding between the state and the U.S. 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.

Additionally, the bill as filed required 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. Verification of the nationality or lawful immigration status of any person charged with a crime and confined to jail must be completed within 48 hours through a query to the federal Law Enforcement Support Center.

The bill as filed further required 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 administered by the agency or political subdivision. It required that verification of eligibility for benefits be made through the Systematic Alien Verification for Entitlements (SAVE) Program.

The committee substitute narrows the scope of the bill and adds a provision that was not in the bill as filed. The committee substitute prohibits public employers from entering into contracts with a state agency for the physical performance of services unless the contractor registers with 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 with and participate in a federal work authorization program. The committee substitute requires specified contractors and subcontractors to certify in writing they have registered with and participate in a federal work authorization program. Compliance with this requirement is phased in between July 1, 2011 and July 1, 2013, based upon the number of employees employed by a specified contractor or subcontractor.

The new provision contained in the committee substitute requires the Department of the Lottery to verify that the winner of a prize from specified lottery games is a citizen of or legally present in the United States.