

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SM 882

INTRODUCER: Senators Campbell and Garcia

SUBJECT: Deferred Action for Childhood Arrivals Program

DATE: January 12, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Hendon | Hendon | CF | Pre-meeting |
| 2. | _____ | _____ | JU | _____ |
| 3. | _____ | _____ | RC | _____ |

I. Summary:

SM 882 urges the U.S. Congress to preserve the Deferred Action for Childhood Arrivals Program (DACA). DACA is a program that defers the deportation of illegal aliens who came to the U.S. as children. The program is currently being litigated in federal court and Executive Order No. 13,768 orders federal agencies to end the program by March 5, 2018.

II. Present Situation:

Memorials

Memorials have no force of law and instead allow the Legislature to express a desire for the federal government to take an action. Senate rule 4.13 requires that memorials be read by title on two separate days before a voice vote on adoption, unless decided otherwise by a two-thirds vote of those Senators present.

Deferred Action for Childhood Arrivals Program

On June 15, 2012, the Secretary of U.S. Department of Homeland Security (DHS) announced that certain people who came to the United States as children and meet several guidelines may request consideration of deferred action for a period of two years, subject to renewal.¹ This new initiative is called the Deferred Action for Childhood Arrivals Program (DACA). They are also eligible for work authorization. Deferred action is when the government defers a removal action against an individual for a certain period of time. Deferred action does not provide lawful status.

¹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services website. See <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca>, (last visited 1/10/18).

On November 20, 2014, the DHS issued a new memorandum, expanding the parameters of DACA and creating a new policy called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). Among other things—such as the expansion of the coverage criteria under the 2012 DACA policy to encompass aliens with a wider range of ages and arrival dates, and lengthening the period of deferred action and work authorization from two years to three—the November 20, 2014 memorandum directed agencies “to establish a process, similar to DACA, for exercising prosecutorial discretion through the use of deferred action, on a case-by-case basis,” to certain aliens who have “a son or daughter who is a U.S. citizen or lawful permanent resident.”²

Prior to the implementation of DAPA, twenty-six states—led by Texas—challenged the policies announced in the November 20, 2014 memorandum in the U.S. District Court for the Southern District of Texas. In an order issued on February 16, 2015, the district court preliminarily enjoined the policies nationwide. The district court held that the plaintiff states were likely to succeed on their claim that the DAPA program did not comply with relevant authorities.³

The United States Court of Appeals for the Fifth Circuit affirmed, holding that Texas and the other states had demonstrated a substantial likelihood of success on the merits and satisfied the other requirements for a preliminary injunction. The Fifth Circuit concluded that the Department’s DAPA policy conflicted with the discretion authorized by Congress. In considering the DAPA program, the court noted that the Immigration and Nationality Act “flatly does not permit the reclassification of millions of illegal aliens as lawfully present and thereby make them newly eligible for a host of federal and state benefits, including work authorization.” According to the court, “DAPA is foreclosed by Congress’s careful plan; the program is ‘manifestly contrary to the statute’ and therefore was properly enjoined.”⁴

Although the original DACA policy was not challenged in the lawsuit, both the district and appellate court decisions relied on factual findings about the implementation of the 2012 DACA memorandum. The Fifth Circuit agreed with the lower court that DACA decisions were not truly discretionary, and that DAPA and expanded DACA would be substantially similar in execution. Both the district court and the Fifth Circuit concluded that implementation of the program did not comply with the Administrative Procedure Act because the Department did not implement it through notice-and-comment rulemaking.⁵

The Supreme Court affirmed the Fifth Circuit’s ruling by a 4-4 vote. The preliminary injunction therefore remains in place today. In October 2016, the Supreme Court denied a request from DHS to rehear the case upon the appointment of a new Justice. After the 2016 election, both parties agreed to a stay in litigation to allow the new administration to review these issues.

On January 25, 2017, President Trump issued Executive Order No. 13,768, “Enhancing Public Safety in the Interior of the United States.” In that Order, the President directed federal agencies to “[e]nsure the faithful execution of the immigration laws . . . against all removable aliens,” and

² Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA), U.S. Department of Homeland Security, September 5, 2017. Available at <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>, (last visited 1/10/18).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

established new immigration enforcement priorities. On February 20, 2017, then Secretary of Homeland Security John F. Kelly issued an implementing memorandum, stating “the Department no longer will exempt classes or categories of removable aliens from potential enforcement,” except as provided in the Department’s June 15, 2012 memorandum establishing DACA, and the November 20, 2014 memorandum establishing DAPA and expanding DACA.⁶

On January 9, 2018, Judge William Alsup of the Federal District Court in California issued a nationwide injunction ordering the Trump administration to start the program back up again.⁷ The judge found that the decision to end the program was improper, and the administration must “maintain the DACA program on a nationwide basis” as the legal challenge to the president’s decision goes forward. The judge required that beneficiaries of DACA be allowed to renew their status in the program. The government will not however, be required to accept new applications from immigrants. The judge also said the administration could continue to prevent DACA recipients from returning to the United States if they leave the country.

III. Effect of Proposed Changes:

The memorial contains whereas clauses to explain the rationale behind the memorial. The memorial states that the DACA program created the opportunity for such children to apply for temporary residence and eligibility for a work permit in the United States. Eligible applicants have arrived in the United States when they were under 16 years of age and have lived here continuously since June 15, 2007. The memorial states that 787,580 individuals, including 50,216 in Florida have qualified for DACA. The memorial states that President Donald Trump’s administration rescinded the DACA program, but delayed full implementation of the rescission for 6 months so that the Congress of the United States may reach a legislative resolution on the program. Finally, the memorial states that ending the DACA program will uproot hundreds of thousands of DACA recipients and separate them from their family, friends, and support networks.

The memorial urges the Congress of the United States to preserve the DACA Program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ *Id.*

⁷ “Trump Must Keep DACA Protections for Now, Judge Says”, New York Times, 1/10/18.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A legislative authorization of the deferred removal of DACA participants would allow children to remain in the U.S. to pursue education and work activities.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.