

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1355 Immigration Enforcement
SPONSOR(S): Snyder and others
TIED BILLS: IDEN./SIM. BILLS: SB 1808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	13 Y, 5 N	Padgett	Hall
2) State Affairs Committee	15 Y, 8 N	Roth	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

In 2019, in response to a number of cities in the United States adopting policies to prevent local law enforcement agencies from cooperating with Federal immigration authorities, commonly known as “sanctuary policies,” the Florida Legislature enacted s. 908.103, F.S., which prohibits sanctuary policies in Florida. In conjunction with prohibiting sanctuary policies, the Legislature also declared that it is an important state interest to cooperate with and assist the Federal government in the enforcement of federal immigration laws within Florida.

The bill provides for enhanced cooperation between law enforcement agencies and United States Immigration and Customs Enforcement (ICE), and creates additional contracting requirements for governmental entities. Specifically, the bill:

- Amends the definition of “sanctuary policy” to prohibit any policy adopted or allowed by a state or local government that impedes or prohibits a law enforcement agency from providing information to a state entity on the immigration status of an inmate or detainee in the custody of the law enforcement agency.
- Requires each law enforcement agency that operates a county detention facility to enter into a written agreement with ICE, by January 1, 2023, to participate in the 287(g) program, in which ICE trains local law enforcement officers to perform specified immigration enforcement functions.
- Prohibits a state, regional, or local governmental entity from entering into, amending, or renewing a contract with a common carrier if the carrier is willfully providing any service in furtherance of transporting an unauthorized alien into Florida knowing that the unauthorized alien entered into or remains in the United States in violation of law.
- Requires any contract between a state, regional, or local governmental entity and a common carrier which is executed, amended, or renewed on or after October 1, 2022, to require the common carrier to attest, under penalty of perjury, that it will not willfully provide any service in furtherance of transporting an unauthorized alien into Florida during the contract term knowing that the unauthorized alien entered into or remains in the United States in violation of law, and a provision allowing for termination of the contract for cause if the common carrier is found to be knowingly transporting an unauthorized alien into Florida.

The bill defines a “common carrier” as a person, firm, or corporation that undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his or her services to all such as may choose to employ the common carrier and pay his or her charges.

The bill may have an indeterminate negative fiscal impact on a local government that provides funding to a law enforcement agency that is not currently participating in a 287(g) agreement by requiring the local government to expend funds enforcing immigration laws in partnership with ICE. The bill does not appear to have a fiscal impact on state government.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The federal government has broad power over immigration and alien status, and has implemented an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States.¹ While the federal government's authority over immigration is well established, the United States Supreme Court has recognized that not "every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted" by the federal government.²

The Tenth Amendment's reservation of powers to the states includes traditional "police powers" concerning the promotion and regulation of safety, health, and welfare within the state.³ Moreover, the federal government's power to preempt activity in the area of immigration is further limited by the constitutional bar against directly "commandeering" state or local governments into the service of federal immigration agencies.⁴ States and municipalities have frequently enacted measures, as an exercise of police powers, addressing unauthorized aliens residing in their communities.⁵

Federal Immigration Enforcement

Immigration enforcement may be criminal or civil in nature. Removal, commonly referred to as deportation, is a civil process to formally expel an unauthorized alien from the United States. Federal law specifies the classes of people subject to removal, including an unauthorized alien who was inadmissible at the time of entry into the United States and unauthorized aliens convicted of certain crimes.⁶ A federal immigration officer initiates removal proceedings by arresting a person, receiving custody of a person detained by state or local law enforcement, or issuing a notice to appear.⁷ An immigration judge may order the removal of an unauthorized alien following a merits hearing.⁸

In contrast, immigration-related crimes include unlawful entry,⁹ unlawful reentry,¹⁰ failure to depart after removal,¹¹ human smuggling,¹² and document fraud.¹³ A person convicted of unlawful reentry for entering or attempting to illegally enter the United States more than once serves an average of two years in federal prison.¹⁴

¹ *Arizona v. United States*, 567 U.S. 387 (2012).

² *De Canas v. Bica*, 424 U.S. 351, 355 (1976); see *Arizona*, 567 U.S. 387.

³ *Western Turf Ass'n v. Greenberg*, 204 U.S. 359, 363 (1907).

⁴ See *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

⁵ Congressional Research Service, R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*, at 3 (July 20, 2015), <https://fas.org/sgp/crs/homesecc/R43457.pdf> (last visited Feb. 9, 2022).

⁶ 8 U.S.C. § 1227.

⁷ A notice to appear is a document instructing an individual to appear before an immigration judge. 8 U.S.C. § 1229.

⁸ 8 U.S.C. § 1229a.

⁹ 8 U.S.C. § 1325.

¹⁰ 8 U.S.C. § 1326.

¹¹ 8 U.S.C. § 1253.

¹² 8 U.S.C. § 1324.

¹³ 8 U.S.C. § 1546.

¹⁴ Michael Light, Mark Hugo Lopez, and Ana Gonzalez-Barrera, *The Rise of Federal Immigration Crimes: Unlawful Reentry Drives Growth* (Mar. 18, 2014), http://www.pewresearch.org/wp-content/uploads/sites/5/2014/03/2014-03-18_federal-courts-immigration-final.pdf (last visited Feb. 10, 2022).

287(g) Agreements

In 1996, the United States Congress added s. 287(g) to the federal Immigration and Nationality Act,¹⁵ codified as 8 U.S.C. § 1357(g). This section authorizes the United States Attorney General (AG) to enter into a written agreement with a state or any political subdivision of a state and to allow a state or local officer to perform immigration functions, such as investigating, apprehending, detaining, or transporting aliens.¹⁶ Such a state or local officer acts at the direction and under the supervision of the AG.¹⁷ The state or local officer must:

- Be qualified to perform immigration officer functions, as determined by the AG;¹⁸
- Have knowledge of and adhere to federal law;¹⁹ and
- Have received adequate training on the enforcement of federal immigration laws, as indicated in a written certification.²⁰

The expenses of participating in a 287(g) agreement are divided between Immigration and Customs Enforcement (ICE) and a participating law enforcement agency. Generally, a participating law enforcement agency is responsible for personnel costs, administrative expenses, and security equipment.²¹ ICE is responsible for providing training and information technology equipment to access the ICE computer network.²² For purposes of determining liability and immunity from suit in civil actions, a state or local officer performing immigration functions pursuant to a written 287(g) agreement is considered to be acting under color of federal authority.²³

There are two enforcement models for 287(g) agreements, the Jail Enforcement Model (JEM) and the Warrant Service Officer Model (WSO). Under the JEM, a state or local officer receives specialized training from ICE and performs immigration enforcement functions as provided in the memorandum of agreement between the AG and the state or local jurisdiction.²⁴ Such immigration enforcement functions under the JEM may include the power and authority to:

- Interrogate a person detained in a detention facility about his or her immigration status;
- Serve and execute warrants of arrest or removal for immigration violations;
- Administer oaths and to take and consider evidence to complete alien removal;
- Prepare charging documents;
- Detain and transport arrested aliens subject to removal; and
- Issue immigration detainers.²⁵

Five Florida counties and the Florida Department of Corrections have 287(g) agreements under the JEM.²⁶

Alternatively, a state or local jurisdiction may have a 287(g) agreement under the WSO Model. The WSO Model is a narrower cooperative agreement between the AG and the local jurisdiction in which a state or local officer receives specified training from ICE, but only receives limited authority to serve and execute administrative warrants on behalf of ICE to aliens incarcerated in a county detention facility.²⁷ Forty-two Florida counties have 287(g) agreements under the WSO Model.²⁸

¹⁵ Pub. L. 104–208

¹⁶ 8 U.S.C. § 1357(g)(1).

¹⁷ 8 U.S.C. § 1357(g)(3).

¹⁸ 8 U.S.C. § 1357(g)(1).

¹⁹ 8 U.S.C. § 1357(g)(2).

²⁰ *Id.*

²¹ U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act: Participating Entities*, <https://www.ice.gov/identify-and-arrest/287g> (last visited Feb. 11, 2022).

²² *Id.*

²³ 8 U.S.C. § 1357(g)(8).

²⁴ U.S. Immigration and Customs Enforcement, *287(g) Jail Enforcement Model (JEM)*, <https://www.ice.gov/doclib/about/offices/ero/pdf/jemInfographic.pdf> (last visited Feb. 11, 2022).

²⁵ American Immigration Council, *Fact Sheet: The 287(g) Program: An Overview* (July 8, 2021), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration#:~:text=Under%20the%20jail%20enforcement%20model,to%20be%20subject%20to%20removal.> (last visited Feb. 11, 2022) and *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra*, at FN 21.

²⁶ *Id.* Counties with a JEM include: Clay, Collier, Duval, Hernando, and Pasco.

²⁷ *Id.* Counties with a JEM include: Clay, Collier, Duval, Hernando, and Pasco.

Prohibition of Sanctuary Policies

Section 908.103, F.S., prohibits a state entity,²⁹ law enforcement agency,³⁰ or local governmental entity³¹ from adopting or having in effect a sanctuary policy, defined as a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity that prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373(a) or (b),³² or that prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such law enforcement in, or prohibit the agency from:

- Complying with an immigration detainer;
- Complying with a request from a federal immigration agency³³ (FIA) to notify the agency prior to the release of an inmate or detainee in the custody of the law enforcement agency;
- Providing a FIA access to an inmate or detainee to interview;
- Participating in a 287(g) program or agreement; or
- Providing a FIA with an inmate's incarceration status or release date.

If any executive or administrative state, county, or municipal officer adopts a sanctuary policy, the Governor may initiate judicial proceedings in the name of the state against such officer to enforce compliance with any duty or restrain any unauthorized act.³⁴ In addition, the Florida Attorney General may file suit against a local governmental entity or local law enforcement agency for declaratory or injunctive relief.³⁵ If a court finds that a local governmental entity or local law enforcement agency has adopted a sanctuary policy, it is required to enjoin the unlawful sanctuary policy and include written findings of fact that describe with specificity the existence and nature of such policy.³⁶

Contracts with Common Carriers

Federal Law

Under federal law, the United States Department of Health and Human Services (HHS) is granted legal custody and must provide care for each unaccompanied child in the United States who is a noncitizen.³⁷ Many of these unaccompanied children are taken into custody by immigration authorities while attempting to cross a national border, particularly the border between the United States and Mexico.³⁸ An unaccompanied child is a child that:

- Has no lawful immigration status in the United States;
- Has not attained 18 years of age; and

²⁷ U.S. Immigration and Customs Enforcement, *287(g) Warrant Service Officer (WSO) Model*, <https://www.ice.gov/doclib/about/offices/ero/pdf/WSOPromo.pdf> (last visited Feb. 15, 2022).

²⁸ *Id.* Counties with a WSO Model include: Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Columbia, DeSoto, Flagler, Franklin, Hamilton, Hendry, Highlands, Holmes, Indian River, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Osceola, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Wakulla, and Walton.

²⁹ "State entity" means the state or any office, board, bureau, commission, department, branch, division, or institution thereof, including institutions within the State University System and the Florida College System. S. 908.102(7), F.S.

³⁰ "Law enforcement agency" means an agency in this state charged with enforcement of state, county, municipal, or federal laws or with managing custody of detained persons in this state and includes municipal police departments, sheriffs' offices, state police departments, state university and college police departments, county correctional agencies, and the Department of Corrections. S. 908.102(4), F.S.

³¹ "Local government entity" means any county, municipality, or other political subdivision of this state. S. 908.102(5), F.S.

³² 8 U.S.C. § 1373(a) and (b) bar any restrictions that prevent state or local government entities or officials from voluntarily communicating with federal immigration agencies regarding a person's immigration status.

³³ "Federal immigration agency" means the United States Department of Justice and the United States Department of Homeland Security, a division within such an agency, including United States Immigration and Customs Enforcement and United States Customs and Border Protection, any successor agency, and any other federal agency charged with the enforcement of immigration law. S. 908.102(1), F.S.

³⁴ S. 908.107(1), F.S.

³⁵ S. 908.107(2), F.S.

³⁶ Ss. 908.107(3) and (4), F.S.

³⁷ 6 U.S.C. s. 279(g)(2). U.S. Department of Health and Human Services, *Unaccompanied Children (UC) Program* (Nov. 1, 2021), <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf> (last visited Feb. 11, 2022).

³⁸ *Id.*

- Has no parent or legal guardian in the United States, or no parent or legal guardian in the United State available to provide care and physical custody.³⁹

Once a child is in the custody of HHS, HHS attempts to reunite the child with a parent, relative, or guardian.⁴⁰ While waiting for a relative or guardian to be located, an unaccompanied child is transferred to one of approximately 200 temporary care facilities funded by HHS, which are located in 22 states.⁴¹ As of October 31, 2021, there were approximately 10,680 unaccompanied children in HHS custody.⁴²

In November 2021, multiple news agencies reported that charter flights carrying unaccompanied children were landing at Jacksonville International Airport (JIA).⁴³ According to one report, 78 such charter flights landed at JIA from April 22, 2021, to October 6, 2021, with most flights arriving from Texas, Arizona, and California.⁴⁴ The specifics of where the unaccompanied children on these charter flights are sent once they leave the airport is unknown.⁴⁵ The absence of specific information highlights the lack of transparency in current federal programs that are transporting unauthorized aliens into Florida.

State Law

A person who transports an individual into Florida that he or she knows, or should know, is illegally entering the United States from another country commits the crime of human smuggling, punishable as a third degree felony.⁴⁶ Although the Florida statute has not been challenged, courts have struck down similar laws in other states after determining that such state laws criminalizing transportation of aliens were preempted by federal immigration laws and regulations.⁴⁷

Effect of Proposed Changes

287(g) Agreements

The bill creates s. 908.11, F.S., which requires each law enforcement agency operating a county detention facility to enter into a written agreement with ICE, by January 1, 2023, to participate in an immigration program established under s. 287(g). Under the bill, a law enforcement agency may satisfy this requirement by participating in either the JEM or WSO. Each law enforcement agency that operates a county detention facility must notify, by October 1, 2022, the Florida Department of Law Enforcement (FDLE) of the status of a 287(g) agreement including, if no such agreement is in place, the reasons a 287(g) agreement has not been entered into. The bill requires a law enforcement agency that does not have a 287(g) agreement in place to notify FDLE of such noncompliance on a quarterly basis until such time the agency enters into a 287(g) agreement.⁴⁸

Prohibition of Sanctuary Policies

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Vic Micolucci, *I-TEAM: Documents show 78 flights carrying migrants landed in Jacksonville over last 6 months*, News4Jax (Nov. 17, 2021), <https://www.news4jax.com/i-team/2021/11/16/i-team-documents-show-78-flights-carrying-migrants-landed-in-jacksonville-over-last-6-months/> (last visited Feb. 11, 2022); David Bauerlein, *Gov. Ron DeSantis ties 'illegal immigration' crackdown to stabbing death in Jacksonville*, Florida Times-Union (Dec. 10, 2021), <https://www.jacksonville.com/story/news/state/2021/12/10/gov-desantis-says-biden-border-crisis-requires-new-florida-laws/6459892001/> (last visited Feb. 11, 2022); Adam Shaw, *Florida gov says Biden admin has landed dozens of secret flights carrying illegal migrants into the state*, Fox News (Nov. 6, 2021), <https://www.foxnews.com/politics/florida-desantis-office-claims-more-night-time-migrant-flights> (last visited Feb. 11, 2022).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ S. 787.07, F.S. A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

⁴⁷ *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013), *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006 (9th Cir 2013).

⁴⁸ Forty-seven counties appear to have executed 287(g) agreements with ICE. The counties which do not have such agreements include: Alachua, Citrus, Dixie, Escambia, Gadsden, Gilchrist, Glades, Gulf, Hardee, Hillsborough, Jackson, Lee, Miami-Dade, Okaloosa, Orange, Palm Beach, St. Lucie, Union, Volusia, and Washington.

The bill amends the definition of “sanctuary policy” in s. 908.102, F.S., to prohibit a state or local government entity from adopting any law, policy, practice, procedure, or custom that prohibits or impedes a law enforcement agency from providing information to a state entity on the immigration status of an inmate or detainee in the custody of the law enforcement agency.

Contracts with Common Carriers

The bill prohibits a governmental entity from executing, amending, or renewing a contract with a common carrier if the carrier is willfully providing any service in furtherance of transporting an unauthorized alien into Florida knowing that the unauthorized alien entered into or remains in the United States in violation of law. The bill requires that any contract between a governmental entity and a common carrier that is executed, amended, or renewed on or after October 1, 2022, including a grant agreement or economic incentive program, include:

- An attestation by the common carrier, made under penalty of perjury, that the common carrier is not willfully providing and will not willfully provide any service during the contract term in furtherance of transporting an unauthorized alien into Florida knowing that the unauthorized alien entered into or remains in the United States in violation of law; and
- A provision for termination of a contract for cause if the common carrier is found to be willfully providing any service in furtherance of transporting an unauthorized alien into Florida knowing the unauthorized alien entered into or remains in the United States in violation of law.

A governmental entity is deemed to be compliant once it receives the attestation from the common carrier affirming the carrier is not, and will not, provide any service in furtherance of transporting an unauthorized alien into Florida knowing the unauthorized alien remains in the United States in violation of law.

The bill defines a “common carrier” as a person, firm, or corporation that undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his or her services to all such as may choose to employ the common carrier and pay his or her charges.

The bill defines “governmental entity” as an agency of the state, a regional or a local government created by the State Constitution or by a general or special act, a county or municipality, or any other entity that independently exercises governmental authority.

The bill defines “unauthorized alien” as a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324(h)(3).

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 908.102, F.S., relating to definitions.

Section 2: Creates s. 908.11, F.S., relating to immigration enforcement assistance agreements.

Section 3: Creates s. 908.111, F.S., relating to prohibition against governmental entity contracts with common carriers; required termination provisions.

Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on a local government that provides funding to a law enforcement agency that is not currently participating in a 287(g) agreement by requiring the local government to expend funds enforcing immigration laws in partnership with ICE.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits a governmental entity in Florida from entering into a contract with a common carrier if such common carrier willfully provides any service in furtherance of transporting an unauthorized alien into Florida. The fiscal impact of the bill to common carriers is indeterminate since it is unknown how many governmental entities in Florida have existing contracts with common carriers and will choose to contract for such services in the future.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires each law enforcement agency operating a county detention facility to enter into a 287(g) agreement with ICE, which could require the expenditure of funds. However, an exemption may apply if the bill has an insignificant fiscal impact on counties.

2. Other:

Several provisions in ch. 908, F.S., relating to immigration were challenged in federal court, including s. 908.103, F.S., which prohibits a state entity, law enforcement agency, or local government from adopting a sanctuary policy. *City of South Miami v. DeSantis*, ---F.Supp.3d---, 2021 WL 4272017 (S.D. Fla. Sept. 21, 2021). The Court found the sanctuary policy prohibition was unconstitutional and entered a permanent injunction preventing the state from enforcing such a prohibition. The case was appealed to the Eleventh Circuit Court of Appeals on October 20, 2021, and remains pending.

B. RULE-MAKING AUTHORITY:

The bill grants sufficient rulemaking authority to the Department of Management Services for implementation of a common carrier attestation form.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.