

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

FINAL HOUSE FLOOR ACTION: 77 Y's 42 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1355 passed the House on March 9, 2022, as CS/SB 1808.

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.

The bill provides for enhanced cooperation between law enforcement agencies and United States Immigration and Customs Enforcement (ICE), adds data collection requirements in criminal cases relating to immigration status, and creates 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, including a grant agreement or economic incentive program payment agreement, with a common carrier or contracted carrier if the carrier is willfully providing any service in furtherance of transporting a person into Florida knowing that the person is an unauthorized alien, except to facilitate the detention of the person, or the removal or departure of the person from Florida or the United States.
- Requires any contract between a state, regional, or local governmental entity and a common carrier or contracted carrier which is executed, amended, or renewed on or after October 1, 2022, to require the carrier to attest, under penalty of perjury, that it will not willfully provide any service in furtherance of transporting a person into Florida during the contract term knowing that the person is an unauthorized alien, except to facilitate the detention of the person, or the removal or departure of the person from Florida or the United States, and a provision allowing for termination of the contract for cause if the carrier is found to be knowingly transporting an unauthorized alien into Florida.
- Expands criminal justice data collection and reporting requirements by requiring clerks of the court, county detention facilities, and the Department of Corrections (DOC) to record the immigration status of a defendant, inmate, or person under supervision on probation or community control.

Under the bill, an “unauthorized alien” is a person who is unlawfully present in the United States according to the terms of the Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The bill requires the term “unauthorized alien” to be interpreted consistently with any applicable federal statutes, rules, or regulations.

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 may have an indeterminate negative fiscal impact on state government by requiring DOC to report the immigration status of each inmate in DOC custody or supervision and on a local government that operates a detention facility by requiring such a facility to report the immigration status of each inmate to FDLE.

The bill was approved by the Governor on June 17, 2022, ch. 2022-193, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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

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/homsec/R43457.pdf> (last visited Mar. 18, 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 Mar. 18, 2022).

¹⁵ Pub. L. 104–208

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 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 (DOC) 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

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 Mar. 18, 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 Mar. 18, 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 Mar. 18, 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 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 Mar. 18, 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.

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

Criminal Justice Data Collection

In 2018, the Legislature enacted s. 900.05, F.S., to standardize and consolidate the collection and reporting of criminal justice data and promote transparency. This statute requires the clerks of court, state attorneys, public defenders, county jail operators, DOC, the Justice Administrative Commission, and regional counsels to collect certain data elements.³⁷ Clerks of the court are currently required to collect data on the immigration status of a defendant in a criminal case "if applicable."³⁸ The entities required to collect criminal justice data must transmit such data to the Department of Law Enforcement (FDLE) each month.³⁹ FDLE is required to publish the data on its department website and make the data searchable by specified categories.⁴⁰

Contracts with Common Carriers or Contracted Carriers

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 S. 900.05, F.S.

³⁸ S. 900.05(3)(a)12.e., F.S.

³⁹ S. 900.05(4), F.S.

⁴⁰ *Id.* and s. 943.6871, F.S.

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.⁴¹ 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.⁴² An unaccompanied child is a child that:

- Has no lawful immigration status in the United States;
- Has not attained 18 years of age; and
- Has no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody.⁴³

Once a child is in the custody of HHS, HHS attempts to reunite the child with a parent, relative, or guardian.⁴⁴ 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.⁴⁵ As of October 31, 2021, there were approximately 10,680 unaccompanied children in HHS custody.⁴⁶

In November 2021, multiple news agencies reported that charter flights carrying unaccompanied children were landing at Jacksonville International Airport (JIA).⁴⁷ 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.⁴⁸ The specifics of where the unaccompanied children on these charter flights are sent once they leave the airport is unknown.⁴⁹ 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.⁵⁰ 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.⁵¹

Effect of the Bill

287(g) Agreements

The bill creates s. 908.11, F.S., which requires each law enforcement agency operating a county

⁴¹ 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 Mar. 18, 2022).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 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 Mar. 18, 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 Mar. 18, 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 Mar. 18, 2022).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 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.

⁵¹ *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).

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 FDLE, by October 1, 2022, 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.⁵²

Prohibition of Sanctuary Policies

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.

Criminal Justice Data Collection

The bill amends criminal justice data collection and reporting requirements in s. 900.05, F.S., by requiring:

- Clerks of the court to record and report the immigration status of a defendant in all criminal cases.
- County detention facilities to record and report the immigration status of each inmate.
- DOC to record and report the immigration status of each inmate in custody or supervised by DOC on probation or community control.

Contracts with Common Carriers or Contracted Carriers

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

- An attestation by the common carrier or contracted carrier, made under penalty of perjury, that the carrier is not willfully providing and will not willfully provide any service during the contract term in furtherance of transporting a person into Florida knowing that the person is an unauthorized alien, except to facilitate the detention of the person, or the removal or departure of the person from Florida or the United States; and
- A provision for termination of a contract for cause if the common carrier or contracted carrier is found in violation of the required attestation.

A governmental entity is deemed to be compliant once it receives the attestation from the common carrier or contracted carrier affirming the carrier is not, and will not, provide any service in furtherance of transporting a person into Florida knowing that the person is an unauthorized alien, except to facilitate the detention of the person, or the removal or departure of the person from Florida or the United States.

The bill provides definitions for the following terms:

⁵² 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.

- “Common carrier” means 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.
- “Contract” means a contract that is subject to the competitive procurement requirements of the contracting governmental entity or a contract for an amount or duration requiring it to include written provisions under the procurement requirements of the governmental entity.
- “Governmental entity” means 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.
- “Unauthorized alien” means a person who is unlawfully present in the United States according to the terms of the Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The term must be interpreted consistently with any applicable federal statutes, rules, or regulations.

The bill became effective on June 17, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state government expenditures by requiring DOC to report the immigration status of each inmate in DOC custody or supervision.

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. The bill may also have an indeterminate negative fiscal impact on a local government that operates a detention facility by requiring such a facility to report the immigration status of each inmate to FDLE.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

