

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5B Transportation of Inspected Unauthorized Aliens

**SPONSOR(S):** Snyder

**TIED BILLS:** IDEN./SIM. BILLS: SB 6-B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Appropriations Committee	20 Y, 8 N	Davis	Pridgeon
2) Judiciary Committee	17 Y, 7 N	Leshko	Kramer

**SUMMARY ANALYSIS**

Since 2020, U.S. Customs and Border Protection has reported an increase in total enforcement actions at all land borders and specifically at the Southwest Land Border. In an effort to mitigate the impacts of increased migration on Florida, the 2022 Legislature appropriated \$12 million to the Department of Transportation to implement a program to facilitate the transport of unauthorized aliens from the state.

Later, in January 2023, Governor DeSantis issued Executive Order 23-03 declaring a state of emergency in Florida and directing state agencies to take necessary actions to protect Floridians from the impacts of increased migration at the border.

HB 5B creates the Unauthorized Alien Transport Program within the Division of Emergency Management (DEM) within the Executive Office of the Governor for the purpose of facilitating the transport of inspected unauthorized aliens within the United States, consistent with federal law. The bill defines an “inspected unauthorized alien” as an individual who has documentation from the United States Government indicating that the United States Government processed and released him or her into the United States without admitting the individual in accordance with the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The bill authorizes DEM to contract for services to implement the program notwithstanding s. 287.057, F.S., requiring a competitive solicitation process. Under the bill, DEM may adopt rules to implement the program, which will expire on June 30, 2025.

The bill repeals section 185 of ch. 2022-156, Laws of Fla., and approves all payments made pursuant to that section. Under the bill, any unexpended portion of the appropriation is immediately reverted.

The bill appropriates \$10 million in nonrecurring funds for FY 2022-2023 from the General Revenue Fund to DEM for the Unauthorized Alien Transport Program.

The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Immigration Enforcement

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.<sup>1</sup> 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.<sup>2</sup>

In federal fiscal year (FFY) 2020,<sup>3</sup> the total enforcement actions of the Office of Field Operations (OFO) and the U.S. Border Patrol (USBP)<sup>4</sup> were 646,822, including apprehensions or inadmissibles and expulsions,<sup>5</sup> with 458,088 of those occurring at the Southwest Land Border.<sup>6</sup> In FFY 2021, total enforcement actions rose to 1,956,519, with 1,734,686 of those occurring at the Southwest Land Border and in FFY 2022 the total rose again to 2,766,582 with 2,378,944 of those occurring at the Southwest Land Border.<sup>7</sup> To date in FFY 2023, the total enforcement actions have reached 863,929 with 727,660 of those occurring at the Southwest Land Border.<sup>8</sup>

Criminal noncitizens<sup>9</sup> encountered at the borders are a subset of the total inadmissibles encountered and USBP arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens for the past four years at all land borders were:<sup>10</sup>

FFY 2020	FFY 2021	FFY 2022	FFY 2023 (to date)
9,447	17,330	29,021	6,980

##### *Transport of Unauthorized Aliens*

Chapter 2022-156, Laws of Fla., the General Appropriations Act, appropriated \$12 million to the Department of Transportation (DOT) to implement a program to transport unauthorized aliens<sup>11</sup> from the state.<sup>12</sup> The Act authorized DOT, after receiving at least two quotes, to negotiate and enter into contracts consistent with federal law with private parties, including common carriers, to implement the

<sup>1</sup> *Arizona v. United States*, 567 U.S. 387 (2012).

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

<sup>3</sup> The federal fiscal year runs October 1 – September 30.

<sup>4</sup> Both are federal law enforcement agencies under U.S. Customs and Border Protection.

<sup>5</sup> U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 3, 2023).

<sup>6</sup> U.S. Customs and Border Protection, *Southwest Land Border Encounters*, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited Feb. 3, 2023). This figure includes both Title 8 enforcement actions and Title 42 expulsions. Title 8 enforcement actions include apprehensions or inadmissibles. Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the U.S. but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe. Apprehensions refers to the physical control or temporary detention of a person who is not lawfully in the U.S. which may or may not result in an arrest. Title 42 expulsions refers to individuals encountered by USBP or OFO and expelled to the country of last transit or home country in the interest of public health. U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last visited Feb. 3, 2023).

<sup>7</sup> *Supra* notes 5 and 6.

<sup>8</sup> *Supra* note 6.

<sup>9</sup> Criminal noncitizens refers to noncitizens who have been convicted of a crime, whether in the U.S. or abroad, so long as the conviction is for conduct which is deemed criminal in the United States. *Supra* note 5.

<sup>10</sup> *Supra* note 5.

<sup>11</sup> The Act defined "unauthorized alien" as a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq.

<sup>12</sup> Ch. 2022-156, s. 185, Laws of Fla.

program.<sup>13</sup> Under the Act, any unexpended funds remaining as of June 30, 2022, would revert and then be appropriated to DOT for the same purposes for FY 22-23.<sup>14</sup>

In September 2022, the DOT chartered two planes to relocate migrants from Texas to Massachusetts, with the flights stopping in Crestview, Florida. The flights were funded through the appropriation in ch. 2022-156, Laws of Fla.<sup>15</sup> Following these flights, several lawsuits<sup>16</sup> were filed which allege, in part, that neither section 185 nor Florida law provides authority for the transport of aliens from states other than Florida,<sup>17</sup> and that section 185 violates the Florida Constitution by failing to comply with the competitive solicitation process in ch. 287, F.S., and by creating a new substantive program within an appropriations bill.<sup>18</sup>

### *Executive Order 23-03 (Emergency Management – Illegal Migration)*

In January 2023, based on findings that there is an unmanageable strain on local resources to handle the mass migration of unauthorized aliens into the state and in an effort to mitigate the potential for detrimental effects such as increased crime, diminished economic opportunities and wages for American workers, and burdens on the education and health care systems, Governor Ron DeSantis issued Executive Order 23-03:

- Declaring a state of emergency in Florida based on the migration of unauthorized aliens;
- Designating the Director of the Division of Emergency Management as State Coordinating Officer for the duration of the state of emergency and directing the Director to execute the State's Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency;<sup>19</sup>
- Authorizing the Adjutant General to activate the Florida National Guard as needed;
- Authorizing the Executive Office of the Governor to suspend all statutes and rules affecting budgeting to the extent necessary to provide budget authority for state agencies to cope with the emergency;
- Authorizing state agencies to suspend provisions of any regulatory statutes prescribing the procedures for conduct of business if strict compliance would interfere with addressing the emergency;
- Authorizing each political subdivision to waive procedures and formalities, including following local procurement and contracting policies; and
- Directing that sufficient funds be made available to state and local agencies from the Emergency Preparedness and Response Fund.<sup>20</sup>

### **Effect of Proposed Changes**

HB 5B creates the Unauthorized Alien Transport Program within the Division of Emergency Management (DEM) within the Executive Office of the Governor for the purpose of facilitating the

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<sup>13</sup> Generally, Florida law requires state agencies procuring commodities or contractual services in excess of \$35,000 to use the competitive solicitation process. A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the procurement method. Ss. 287.017 and 287.057(1), F.S.

<sup>14</sup> Ch. 2022-156, s. 185, Laws of Fla.

<sup>15</sup> TransparencyFlorida, 2022-23 Payments by Vendor- Operational, Department of Transportation, [http://www.transparencyflorida.gov/Disbursements/DisbByVendorPmt.aspx?FY=23&Obj=139900&DisbDate=0000&BE=55150200&AC=108845&Fund=1000&FundType=&LI=\\*\\*\\*\\*&AmiType=O&Vend=VERTOL+SYSTEMS+COMPANY+INC&ObjSrch=&ST=&OB=Y&SC=F](http://www.transparencyflorida.gov/Disbursements/DisbByVendorPmt.aspx?FY=23&Obj=139900&DisbDate=0000&BE=55150200&AC=108845&Fund=1000&FundType=&LI=****&AmiType=O&Vend=VERTOL+SYSTEMS+COMPANY+INC&ObjSrch=&ST=&OB=Y&SC=F) (last visited Feb. 3, 2023).

<sup>16</sup> *Alianza Americas v. DeSantis*, No. 22-CV-11550-ADB (D. Mass. Nov. 29, 2022); *Florida Immigrant Coalition, Inc. v. DeSantis*, No. 22-CV-23927 (S.D. Fla. Dec. 1, 2022); *Pizzo v. DeSantis*, 2022-CA-1681 (Fla. 2d Cir. Ct. Dec. 5, 2022).

<sup>17</sup> *Alianza Americas v. DeSantis*, No. 22-CV-11550-ADB (D. Mass. Nov. 29, 2022); *Pizzo v. DeSantis*, 2022-CA-1681 (Fla. 2d Cir. Ct. Dec. 5, 2022).

<sup>18</sup> *Pizzo v. DeSantis*, 2022-CA-1681 (Fla. 2d Cir. Ct. Dec. 5, 2022); Art. III, s. 6, Fla. Const. provides that laws revising or amending current laws shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. Art. III, s. 12, Fla. Const. provides that laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

<sup>19</sup> S. 252.36(1), F.S.

<sup>20</sup> Fla. Exec. Or. 23-03 (Emergency Management – Illegal Migration) (Jan. 6, 2023) <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-03-1.pdf> (last visited Feb. 3, 2023).

transport of inspected unauthorized aliens within the United States, consistent with federal law. The bill defines an “inspected unauthorized alien” as an individual who has documentation from the United States Government indicating that the United States Government processed and released him or her into the United States without admitting the individual in accordance with the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The bill requires the term to be interpreted consistently with any applicable federal statutes, rules, or regulations.

The bill authorizes DEM to contract for services to implement the program notwithstanding s. 287.057, F.S., requiring a competitive solicitation process. Under the bill, DEM may adopt rules to implement the program, which will expire on June 30, 2025.

The bill also repeals section 185 of ch. 2022-156, Laws of Fla., and approves all payments made pursuant to that section. Under the bill, any unexpended portion of that appropriation is immediately reverted.

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#### B. SECTION DIRECTORY:

**Section 1:** Creates the Unauthorized Alien Transport Program.

**Section 2:** Appropriates \$10 million from the General Revenue Fund to DEM.

**Section 3:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill repeals section 185 of ch. 2022-156, Laws of Fla. All payments made pursuant to that section are deemed approved and any unexpended balance of funds appropriated to FDOT immediately revert. As of January 31, 2023, there was a total of \$1.565 million in disbursements from this appropriation, leaving a balance of \$10.435 million.<sup>21</sup>

##### 2. Expenditures:

The bill appropriates \$10 million in nonrecurring general revenue funds to DEM to implement the Unauthorized Alien Transport Program.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

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<sup>21</sup> TransparencyFlorida: <http://www.transparencyflorida.gov> (last visited Feb. 4, 2023).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill authorizes DEM to adopt rules to implement the Unauthorized Alien Transport Program.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES