

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 Fiscal Policy

BILL: SB 6-B

INTRODUCER: Senator Ingoglia

SUBJECT: Transportation of Inspected Unauthorized Aliens

DATE: February 3, 2023

REVISED: 2/07/23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parsons</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

I. Summary:

SB 6-B creates the Unauthorized Alien Transport Program within the Division of Emergency Management. The division will implement a program to facilitate the transport of inspected unauthorized aliens within the United States, consistent with federal law. The division is authorized to contract for services to implement the program, notwithstanding s. 287.057, F.S., relating to competitive procurement laws. The program expires June 30, 2025. The bill appropriates \$10 million to the division for Fiscal Year 2022-2023 for the program.

The bill repeals section 185 of ch. 2022-156, Laws of Florida. All payments made pursuant to that section are deemed approved and any unexpended balance of funds appropriated to the Department of Transportation immediately revert.

This bill takes effect upon becoming a law.

The fiscal impact of the bill is neutral.

II. Present Situation:

The federal government has broad power over immigration and alien status.¹ This broad power is enforced through an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States, including the Immigration and Nationality Act.² 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.³

In federal fiscal year 2020, the U.S. Border Patrol and Office of Field Operations had 646,822 enforcement actions for the year; in 2021, that total increased to over 1.9 million actions, an

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

² 8 U.S.C. 1108, et seq.

³ *De Canas v. Bica*, 424 U.S. 351, 355 (1976); see *Arizona*, 567 U.S. 387.

increase of over 200 percent. The total enforcement actions in federal fiscal year 2022 was about 2.8 million, another 41 percent increase, and to date for 2023, the total is already over 860,000.⁴ These statistics include individuals “encountered at ports of entry who are seeking lawful admission into the United States 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.” The total also includes encounters that led to apprehensions or expulsions; apprehensions refer to individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.

In addition to the dramatic increase in border encounters, the recidivism rate has also increased. “Recidivism refers to percentage of individuals apprehended more than one time by the Border Patrol within a fiscal year.”⁵ In federal fiscal year 2019, the rate was only 7 percent. However, that climbed to an increase of 26 percent in federal fiscal year 2020 and 27 percent in federal fiscal year 2021.

Encounters with criminal noncitizens were:

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

“Criminal noncitizens refers to noncitizens who have been convicted of crime, whether in the United States or abroad, so long as the conviction is for conduct which is deemed criminal by the United States.”⁶

In ch. 2022-156, Laws of Florida, the General Appropriations Act, the Department of Transportation was appropriated \$12 million from general revenue to implement a program to facilitate the transport of unauthorized aliens from this state consistent with federal law.⁷ An “unauthorized alien” was defined to mean a person who is unlawfully present in the U.S. according to the terms of the federal Immigration and Nationality Act.

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.⁸ Following these flights, several lawsuits⁹ were

⁴ U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2023*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited February 3, 2023). The federal fiscal year is October to September.

⁵ *Id.*

⁶ *Id.*

⁷ Section 185, ch. 2022-156, Laws of Florida.

⁸ Transparency Florida, 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=*****&AmtType=O&Vend=VERTOL+SYSTEMS+COMPANY+INC&ObjSrch=&ST=&OB=Y&SC= F (last visited Feb. 3, 2023).

⁹ *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).

filed which allege, in part, that neither section 185 nor Florida law provides authority for the transport of aliens from states other than Florida,¹⁰ 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.¹¹

On January 6, 2023, the Governor issued Executive Order No. 23-03, Emergency Management – Illegal Migration. Based on findings of unprecedented interdictions, attempts of entry, and border patrol encounters, the Governor designated the migration of unauthorized aliens to Florida as likely to constitute a major disaster and designated the director of the Division of Emergency Management as the state coordinating officer for the disaster with direction to execute response, recovery, and mitigation plans necessary to cope with the emergency. The order also activates the Florida National Guard, as needed, to assist with the efforts. The order waives contracting policies and requirements, allows for expenditure of state funds through the Emergency Preparedness and Response Fund, and authorizes medical professionals, social workers, and counselors with good and valid licenses issued by other states to provide humanitarian aid services.

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term “agency” is defined broadly to mean any unit of the executive branch of state government.¹² The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.¹³

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreements authorizing a state agency to make purchases under such contract.¹⁴ The DMS negotiates contracts and purchasing agreements that are intended to leverage the state’s buying power.

Section 287.017, F.S., establishes the purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S., as follows:

- Category One: \$20,000;
- Category Two: \$35,000;
- Category Three: \$65,000;
- Category Four: \$195,000; and

¹⁰ *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).

¹¹ *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.

¹² Section 287.012(1), F.S., defines the term “agency” to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

¹³ See ss. 287.032 and 287.042, F.S.

¹⁴ Section 287.042(16), F.S.

- Category Five: \$325,000.

Section 287.056, F.S., requires agencies and permits eligible users¹⁵ to purchase commodities and contractual services from purchasing agreements and state term contracts¹⁶ procured by the DMS. Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term, or condition than that provided in the state term contract is available.¹⁷ The use of a request for quote does not constitute a decision subject to protest.¹⁸ Rule 60A-1.043, Florida Administrative Code, requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than Category One (\$20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.¹⁹

With certain exceptions,²⁰ the procurement of commodities or contractual services in excess of Category Two, \$35,000, requires agencies to use a competitive solicitation process.²¹ Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.²² Depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, agencies may use a variety of methods, including:

- Single source contracts,²³ used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid (ITB),²⁴ used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results. The agency specifically defines the scope of work for the contractual service and establishes precise specifications for the commodity or group of commodities;
- Requests for proposals (RFP),²⁵ which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),²⁶ which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors. Agencies

¹⁵ Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the DMS pursuant to rule to purchase from state term contracts or to use the online procurement system.

¹⁶ Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

¹⁷ Section 287.056(2), F.S.

¹⁸ Section 287.056(2), F.S.

¹⁹ Rule 60A-1.043, F.A.C.

²⁰ Section 287.057(3)(e), F.S.

²¹ Section 287.057(1), F.S.

²² *Id.*

²³ Section 287.057(3)(c), F.S.

²⁴ Section 287.057(1)(a), F.S.

²⁵ Section 287.057(1)(b), F.S.

²⁶ Section 287.057(1)(c), F.S.

must specify the criteria in determining the acceptability and selection of the vendors in which the agency will invite to negotiate.

III. Effect of Proposed Changes:

The bill creates the Unauthorized Alien Transport Program with the Division of Emergency Management. The division will implement a program to facilitate the transport of inspected unauthorized aliens²⁷ within the United States, consistent with federal law. The division is authorized to contract for services to implement the program, notwithstanding s. 287.057, F.S., relating to competitive procurement laws. The program expires June 30, 2025. The bill appropriates \$10 million to the division for Fiscal Year 2022-2023 for the program.

The bill repeals section 185 of ch. 2022-156, Laws of Florida. All payments made pursuant to that section are deemed approved and any unexpended balance of funds appropriated to the Department of Transportation immediately revert.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees, and thus the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

²⁷ The bill defines “inspected unauthorized alien” as individual who has documentation from the federal government indicating that the government processed and released him or her into the United States without admitting the individual in accordance with the federal law. The term must be interpreted consistently with any applicable federal statutes, rules, or regulations.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill appropriates \$10 million in nonrecurring funds from the General Revenue Fund to the Division of Emergency Management for Fiscal Year 2022-2023.

The bill repeals section 185 of ch. 2022-156, Laws of Florida. All payments made pursuant to that section are deemed approved and any unexpended balance of funds appropriated to the Department of Transportation immediately revert. As of January 31, 2023, there were a total of \$1.565 million in disbursements from this appropriation, leaving a balance of \$10.435 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Division of Emergency Management is authorized to adopt rules to implement the program created by the bill.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

This bill repeals section 185 of chapter 2022-156, Laws of Florida.

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.