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# Judiciary Committee

**Tuesday, November 7, 2017  
9:30 AM  
404 HOB**

**Meeting Packet**

**Richard Corcoran  
Speaker**

**Chris Sprowls  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Tuesday, November 07, 2017 09:30 am  
**End Date and Time:** Tuesday, November 07, 2017 11:30 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 9 Federal Immigration Enforcement by Metz

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, November, 6, 2017.


By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, November 6, 2017.

**NOTICE FINALIZED on 10/31/2017 4:03PM by Ellerkamp.Donna**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 9 Federal Immigration Enforcement  
**SPONSOR(S):** Metz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee		MM MacNamara	Poche 

### SUMMARY ANALYSIS

HB 9 creates the "Rule of Law Adherence Act" (Act) to require state and local governments and law enforcement agencies (covered bodies), including their officials, agents, and employees, to support and cooperate with federal immigration enforcement. Specifically, the bill:

- Prohibits a covered body from having a law, policy, practice, procedure, or custom which impedes a law enforcement agency from communicating or cooperating with a federal immigration agency on immigration enforcement;
- Prohibits any restriction on a covered body's ability to use, maintain, or exchange immigration information for certain purposes;
- Requires a covered body to comply with and support the enforcement of federal immigration law;
- Provides procedures for a law enforcement agency and court to follow when an arrested person cannot provide proof of lawful presence in the United States or is subject to an immigration detainer;
- Requires any sanctuary policies currently in effect be repealed within 90 days of the effective date of the Act;
- Authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer;
- Requires an official or employee of a covered body to report a violation of the Act to the Attorney General or state attorney; failure to report a violation may result in suspension or removal from office;
- Authorizes the Attorney General or a state attorney to seek an injunction against a covered body that violates the Act;
- Imposes a civil penalty of at least \$1,000 but no more than \$5,000 for each day a policy that violates the Act was in effect;
- Creates a civil cause of action for a person injured by the conduct of an alien unlawfully present in the United States against a covered body whose violation of the Act contributed to the person's injury;
- Prohibits the expenditure of public funds to reimburse or defend a public official or employee who violates the Act; and
- Suspends state grant funding eligibility for 5 years for a covered body that violates the Act.

The bill may have an indeterminate impact on local government expenditures. The bill does not appear to have a fiscal impact on state government.

Provisions of the Act creating penalties are effective October 1, 2018. All other provisions of the bill are effective July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The federal government has broad power over immigration and alien status, and has established 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 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>

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.<sup>3</sup> 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.<sup>4</sup> States and municipalities have frequently enacted measures, as an exercise of police powers, addressing aliens residing in their communities.<sup>5</sup>

##### Information Sharing

United States Immigration and Customs Enforcement (ICE) relies on local law enforcement sharing information on arrestees or inmates to identify and apprehend aliens who are unlawfully present. Over the years, some states and localities have restricted government agencies or employees from sharing information with federal immigration agencies.<sup>6</sup>

In 1996, Congress sought to end these restrictions on information-sharing through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)<sup>7</sup> and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).<sup>8</sup> Neither PRWORA nor IIRIRA require state or local government entities to share immigration-related information with federal authorities. Rather, they 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.<sup>9</sup>

##### Immigration Detainers

An immigration detainer is a document by which ICE advises state and local law enforcement agencies of its interest in individual aliens whom those agencies are currently holding.<sup>10</sup> ICE issues a detainer:

- To notify a law enforcement agency that ICE intends to assume custody of an alien in the agency's custody once the alien is no longer detained;
- To request information from a law enforcement agency about an alien's impending release so ICE may assume custody before the alien is released; or

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<sup>1</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).

<sup>2</sup> *De Canas v. Bica*, 424 U.S. 351, 355 (1976); see *Arizona*, 132 S. Ct. 2492.

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

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

<sup>5</sup> Congressional Research Service, R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*, pg. 3 (July 20, 2015).

<sup>6</sup> *Id.* at pg. 9.

<sup>7</sup> 8 U.S.C. s. 1644.

<sup>8</sup> 8 U.S.C. s. 1373.

<sup>9</sup> 8 U.S.C. ss. 1373, 1644.

<sup>10</sup> See 8 U.S.C. ss. 1226, 1357; Congressional Research Service, *supra* FN 5, at pg. 13.

- To request that a law enforcement agency maintain custody of an otherwise releasable alien for no longer than 48 hours to allow ICE to assume custody.<sup>11</sup>

The federal courts and the federal government have characterized an ICE detainer as a request that does not require a local law enforcement agency to comply.<sup>12</sup> The federal courts have held any purported requirement that states hold aliens for ICE may run afoul of the anti-commandeering principles of the Tenth Amendment. For example, in *Galarza v. Szalczyk*, the U.S. Court of Appeals for the Third Circuit noted that if states and localities were required to detain aliens for ICE pursuant to a detainer, they would have to “expend funds and resources to effectuate a federal regulatory scheme,” something found to be impermissible in prior Supreme Court commandeering decisions.<sup>13</sup>

Additionally, a number of recent federal court decisions have held that ICE detainers requesting local law enforcement detain (as opposed to notify) an otherwise releasable individual must specify that there is sufficient probable cause to detain that individual.<sup>14</sup>

### Local Sanctuary City Policies

A number of states and municipalities have adopted formal or informal policies which prohibit or limit police cooperation with federal immigration enforcement efforts.<sup>15</sup> Municipalities that have adopted such policies are sometimes referred to as “sanctuary cities.” The term “sanctuary jurisdiction” is not defined by federal law, though it has been used by the Office of the Inspector General at the U.S. Department of Justice to reference “jurisdictions that may have [laws, ordinances, or policies] limiting the role of local law enforcement agencies and officers in the enforcement of immigration laws.”<sup>16</sup>

Examples of such polices include:

- Not asking an arrested or incarcerated person for his or her immigration status;
- Failing to inform ICE about an alien in custody;
- Not alerting ICE before releasing an alien from custody;
- Failing to transport an undocumented criminal alien to the nearest ICE location; and
- Declining to honor an immigration detainer.<sup>17</sup>

A bulletin issued by the Florida Sheriffs Association highlighted recent federal court decisions<sup>18</sup> relating to ICE detainers and explained that “sheriffs should be aware that any detention of an ICE detainee without probable cause may subject the sheriff’s office to liability for an unlawful seizure.”<sup>19</sup> The bulletin

<sup>11</sup> Law Enforcement Systems and Analysis, Department of Homeland Security, *Declined Detainer Outcome Report*, October 8, 2014 (redacted public version), at pg. 3.

<sup>12</sup> See, e.g., *Garza v. Szalczyk*, 745 F. 3d 634, 640-44 (3d Cir. 2014) (noting that all Courts of Appeals that have commented on the character of ICE detainers refer to them as “requests” or as part of an “informal procedure.”); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F. 3d 435, 438 (6th Cir. 2013); *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015) (“The language of both the regulations and case law persuade the Court that detainers are not mandatory[.]”)

<sup>13</sup> *Garza*, 745 F. 3d at 644.

<sup>14</sup> *Morales*, 793 F. 3d at 214-217 (“Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification.”); *Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317-ST at \*17 (D.Or. April 11, 2014) (holding county liable for unlawful seizure without probable cause, based on an immigration detainer); *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D.Pa. Mar.30, 2012) *rev'd on other grounds*, 745 F.3d 634 (3d Cir.2014).

<sup>15</sup> See Congressional Research Service, *supra* FN 5, at pg. 7-20 (providing examples of various types of “sanctuary” policies used across the country).

<sup>16</sup> U.S. Dep’t of Justice, Office of the Inspector General, Audit Division, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, January 2007 (redacted public version), at pg. vii, n.44 (defining “sanctuary” policies for purposes of study).

<sup>17</sup> *Id.* at 11-17.

<sup>18</sup> *Galarza*, 745 F. 3d at 634; *Miranda-Olivares*, 2014 WL 1414305. Neither of these cases are binding authority in Florida.

<sup>19</sup> Florida Sheriffs Association, *Legal Alert: ICE Detainers* (on file with the Civil Justice Subcommittee).

advised sheriff departments to “request a copy of the warrant or the order of deportation to determine that probable cause in fact exists for the continued detention.”<sup>20</sup>

There is no requirement under federal law to show probable cause for the issuance of an ICE detainer.<sup>21</sup> Under the Priority Enforcement Program, in effect from 2015 to 2017, ICE included a determination of probable cause as part of the immigration detainer form.<sup>22</sup> The Priority Enforcement Program was terminated effective February 20, 2017; however, the immigration detainer form developed for the program is still in use on an interim basis, pending the development of a new form.<sup>23</sup>

In a recent report issued by ICE, Alachua County and Clay County were cited as “non-cooperative jurisdictions” due to their failure to honor detainers and their enactment of policies which limit cooperation with ICE.<sup>24</sup>

#### Texas, SB 4

The Texas Legislature recently passed a law prohibiting sanctuary cities. The law, enacted through SB 4, prohibits cities and counties from adopting policies that limit immigration enforcement, allows police officers to question the immigration status of anyone they detain or arrest, and threatens officials who violate the law with fines, jail time and removal from office.<sup>25</sup> It also directs local officials to cooperate with immigration detainer requests.

A number of Texas cities, including Houston, Austin, San Antonio, and Dallas, joined a lawsuit against the state seeking to strike down the law. On August 30, 2017, a federal district court granted a preliminary injunction preventing portions of the law from taking effect.<sup>26</sup> The following provisions of SB 4 were ruled unconstitutional by the court:

- Local entities may not prohibit, through policy or practice, providing enforcement assistance to federal immigration officers;
- Local entities may not endorse, adopt, or enforce a policy which limits the enforcement of immigration laws;
- Local entities may not prohibit or materially limit the enforcement of immigration laws through a pattern or practice; and
- Law enforcement agencies that have custody of a person subject to a detainer request must comply with, honor, and fulfill all actions in the detainer request.

Provisions were held unconstitutional, violating the First, Fourth, and Fourteenth Amendments. Specifically, punishing speakers based on their viewpoint on local immigration enforcement policy violated the First Amendment. Other portions of the law banning policies that “materially limit” enforcement of immigration laws, were unconstitutionally vague under the Fourteenth Amendment.

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<sup>20</sup> Id.

<sup>21</sup> See 8 U.S.C. s. 1357(a). See generally Congressional Research Service, R42690, *Immigration Detainers: Legal Issues* (May 7, 2015).

<sup>22</sup> U.S. Immigration and Customs Enforcement, *Priority Enforcement Program*, <https://www.ice.gov/pep> (last accessed October 25, 2017). See also Dept. of Homeland Sec., *Form I-247D: Immigration Detainer – Request for Voluntary Action*, May 2015, <https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF> (last accessed October 25, 2017).

<sup>23</sup> Memorandum from John Kelly, Sec’y of Homeland Sec., to Kevin McAleenan, Acting Commissioner of U.S. Customs and Border Protection, et al., *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017), available at [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf) (last accessed October 25, 2017).

<sup>24</sup> U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations Weekly Declined Detainer Outcome Report*, Jan. 28 - Feb. 3, 2017, Section III pg.23-24. ([https://www.ice.gov/doclib/ddor/ddor2017\\_01-28to02-03.pdf](https://www.ice.gov/doclib/ddor/ddor2017_01-28to02-03.pdf)) (last accessed October 25, 2017).

<sup>25</sup> TX S.B. 4, <https://legiscan.com/TX/text/SB4/2017> (last accessed October 25, 2017).

<sup>26</sup> *City of El Cenizo, et al. v. State of Texas, et. al.*, SA-17-CV-404-OLG (August 30, 2017).

Lastly, the court found that prohibiting local officers to act upon information that they may obtain violated the Fourth Amendment in that disregarding such information could lead to unreasonable searches and seizures. The court also prevented the implementation of all provisions of SB 4 related to corrective, disciplinary, or other action against entities or officials violating those parts of the law found to be unconstitutional.<sup>27</sup>

On September 25, 2017, the U.S. Court of Appeals for the Fifth Circuit issued a ruling following an appeal by the state for a stay of the injunction issued by the district court.<sup>28</sup> The Fifth Circuit denied the state's request for a stay with respect to the provisions of SB 4 that address actions or policies "materially limiting" enforcement, and provisions related to the "endorsement" of policies. The court, however, did stay the injunction with respect to requiring law enforcement agencies to "comply with, honor, and fulfill" any immigration detainer request.<sup>29</sup>

### **Effect of Proposed Changes**

HB 9 creates ch. 908, F.S., entitled the "Rule of Law Adherence Act" (the Act), requiring state and local governments and law enforcement agencies to support and cooperate with federal immigration enforcement. The Act prohibits these entities from adopting policies or engaging in practices that limit or prevent them from providing such support or cooperation.

### **Legislative Findings and Intent**

The bill creates s. 908.101, F.S., providing legislative findings regarding immigration enforcement. The bill states it is an important state interest that state entities, local government entities, and their officials owe an affirmative duty to assist the federal government with enforcement of federal immigration laws within the state, including complying with federal immigration detainers. The bill also finds an important state interest in ensuring that efforts to enforce immigration laws are not impeded or thwarted by state or local laws, policies, practices, procedures, or customs as necessary in the interest of public safety and adherence to federal law. Accordingly, state agencies, local governments, and their officials who encourage persons unlawfully present in the United States to locate within this state or who shield such persons from responsibility for their actions breach this duty and should be held accountable.

### **Prohibition of Sanctuary Policies**

The bill creates s. 908.201, F.S., prohibiting a state or local governmental entity, or a law enforcement agency<sup>30</sup> from adopting or having in effect a sanctuary policy, defined as a law, policy, practice, procedure, or custom adopted or permitted by a state entity, law enforcement agency, or local governmental entity which contravenes 8 U.S.C. s. 1373(a) or (b)<sup>31</sup>, or which knowingly prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency with respect to immigration enforcement. Examples of prohibited sanctuary policies include limiting or preventing a state or local governmental entity or law enforcement agency from:

- Complying with an immigration detainer;<sup>32</sup>

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<sup>27</sup> Id.

<sup>28</sup> *City of El Cenzino, et al. v. State of Texas, et al.*, No. 17-50762 (5th Cir., September 25, 2017).

<sup>29</sup> Id. at 6 ("Further, the 'comply with, honor, and fulfill' requirement does not require detention pursuant to every ICE detainer request; rather the...provision mandates that local agencies cooperate according to existing ICE detainer practice and law.")

<sup>30</sup> The definitions of "state entity," "local governmental entity," and "law enforcement agency" include officials, persons holding public office, and representatives, agents, and employees of those entities or agencies.

<sup>31</sup> 8 U.S.C. s. 1373(a) and (b) generally 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. See also *Congressional Research Service*, supra FN 5, at pg. 10.

<sup>32</sup> "Immigration detainer" is defined in the bill as a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request another law enforcement agency detain a person based on an inquiry into the person's immigration status or an alleged violation of a civil immigration law, including detainers issued



- Complying with a request from a federal immigration agency (FIA) to notify the agency prior to the release of an inmate in the state or local governmental entity or law enforcement agency's custody;
- Providing a FIA access to an inmate to interview;
- Initiating an immigration status investigation; or
- Providing a FIA with the incarceration status or release date of an inmate.

#### Cooperation with a Federal Immigration Agency

The bill requires a state or local governmental entity or a law enforcement agency to fully comply with and support immigration law enforcement. This requirement only applies to an official, representative, agent, or employee of such entity or agency when he or she is acting within the scope of their official duties or employment.

The bill creates s. 908.202, F.S., prohibiting any restriction on a state or local governmental entity or law enforcement agency's ability to:

- Send information regarding a person's immigration status to, or requesting or receiving such information from, a FIA;
- Record and maintain immigration information for purposes of the Act;
- Exchange immigration information with a FIA, state or local governmental entity, or law enforcement agency;
- Use immigration information to determine eligibility for a public benefit, service, or license;
- Use immigration information to verify a claim of residence or domicile if such a determination of is required under federal or state law, local government ordinance or regulation, or pursuant to a court order;
- Use immigration information to comply with an immigration detainer; or
- Use immigration information to confirm the identity of an individual who is detained by a law enforcement agency.

Additionally, the bill permits a law enforcement agency that has received verification from a federal immigration official that an alien in the agency's custody is unlawfully present in the United States to transport the alien to a federal facility in this state or to a point of transfer to federal custody outside the jurisdiction of the agency. However, the law enforcement agency must obtain judicial authorization before transporting the alien outside of the state.

The bill requires a judge in a criminal case to order a secure correctional facility<sup>33</sup> to reduce a defendant's sentence by not more than 7 days to facilitate transfer to federal custody if the defendant is subject to an immigration detainer. The judge must indicate on the record that the defendant is subject to an immigration detainer or otherwise indicate that the defendant is subject to transfer into federal custody when making the order. If a judge does not have this information at the time of sentencing, he or she must issue the order to the secure correctional facility as soon as such information becomes available.

The cooperation and support requirements in newly-created s. 908.202, F.S., do not require a state or local governmental entity or law enforcement agency to provide a FIA with information related to a victim or witness to a criminal offense, if the victim or witness cooperates in the investigation or prosecution of the crime. A victim or witness's cooperation must be documented in the entity's or

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pursuant to 8 U.S.C. ss. 1226 and 1357. A detainer is considered facially sufficient when it is complete and indicates on its face, or is supported by an accompanying affidavit or order that indicates, the federal immigration official has reason to believe that the person to be detained may not have been lawfully admitted to the United States or is otherwise not lawfully present.

<sup>33</sup> The term "secure correctional facility" is defined as a state correctional institution in s. 944.02, F.S., or a county detention facility or municipal detention facility in s. 951.23, F.S.

agency's investigative records, and the entity or agency must retain the records for at least 10 years for the purposes of audit, verification, or inspection by the state Auditor General.

### Arrested Persons and Immigration Detainers

The bill creates s. 908.203, F.S., detailing procedures for a law enforcement agency when a person is arrested and cannot provide proof of lawful presence in the United States. Within 48 hours of the arrest, the agency must review any information available from a FIA. If such information reveals that the person is unlawfully present, the agency must:

- Provide immediate notice of the person's arrest and charges to a FIA;
- Inform the judge authorized to grant or deny the person's release on bail of that fact; and
- Record that fact in the person's case file.

An agency is not required to perform this duty when a person is transferred to them from another agency if the previous agency performed the duty before the transfer. A judge who receives notice of a person's immigration status pursuant to this duty must record the status in the court record.

The bill also creates s. 908.204, F.S., providing duties of a law enforcement agency related to an immigration detainer. If an agency has custody of a person subject to a detainer, the agency must inform the judge authorized to grant or deny bail of that fact. The judge must record the fact in the court record, regardless of whether the notice is received before or after judgment in the case. The agency must also record that fact in the person's case file and must comply with, honor, and fulfill the requests made in the detainer. An agency is not required to fulfill this duty for a person who is transferred to them from another agency if the previous agency performed the duty before transferring custody.

### Reimbursement of Costs for Complying with an Immigration Detainer

The bill creates s. 908.205, F.S., authorizing a board of county commissioners to adopt an ordinance requiring any individual detained pursuant to a lawful and valid immigration detainer to reimburse the county for any expenses incurred in detaining that individual. However, an individual is not liable for reimbursement if a FIA determines that the immigration detainer was improperly issued.

The bill also authorizes local government or a law enforcement agency to petition the federal government for the reimbursement of costs. The petition may be made for detention costs and the costs of compliance with federal requests when such costs are incurred in support of federal immigration law.

### Duty to Report

The bill creates s. 908.206, F.S., requiring an official or employee of a state or local governmental entity or law enforcement agency to promptly report a known or probable violation of the Act to the Attorney General or a state attorney. An official or employee's willful and knowing failure to report a violation may result in his or her suspension or removal from office.<sup>34</sup>

The bill protects, pursuant to the state's Whistleblower Act,<sup>35</sup> to any official or employee of a state or local governmental entity or law enforcement agency who is retaliated against by the entity or agency or denied employment because he or she complied with the duty to report.

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<sup>34</sup> Art. IV, s. 7 of the Florida Constitution provides that the Governor may suspend "any state officer not subject to impeachment . . . or any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor." The Senate then "may . . . remove from office or reinstate the suspended official . . ."

<sup>35</sup> S. 112.3187, F.S.

## Enforcement and Penalties for Violations of the Act

The bill creates s. 908.301, F.S., requiring the Attorney General to provide a form on the Department of Legal Affairs' website for a person to submit a complaint alleging a violation of the Act. The bill does not prohibit a person from filing an anonymous complaint or a complaint in a different format than the one prescribed. Any person has standing to submit a complaint.

The bill creates s. 908.302, F.S., establishing penalties for violations of the Act. The state attorney for the county in which a state entity is headquartered, or a local governmental entity or law enforcement agency is located, has primary responsibility for investigating complaints of violations of the Act. The results of any investigation must be provided to the Attorney General in a timely manner.

A state or local government entity or law enforcement agency for which the state attorney has received a complaint must comply with any document request by the state attorney. If the state attorney determines that the complaint is valid, within 10 days of the determination, the state attorney must provide written notification to the entity that the complaint has been filed and found valid, and that the state attorney is authorized to file an action to enjoin the violation if the entity does not comply with ch. 908, F.S., on or before the 60th day after notification is provided.

Within 30 days of receiving written notification of a valid complaint, a state or local government entity or law enforcement agency must provide the state attorney with a copy of:

- The entity's written policies and procedures with respect to FIA enforcement action, including policies with respect to immigration detainees;
- Each immigration detainer received by the entity from a FIA in the current calendar year-to-date and the two prior calendar years; and
- Each response sent by the entity for an immigration detainer for the current year and two prior calendar years.

The Attorney General, the state attorney who conducted the investigation, or a state attorney under an order by the Governor pursuant to s. 27.14, F.S.,<sup>36</sup> may institute proceedings in circuit court to enjoin a state or local governmental entity or law enforcement agency that violates the Act. The court must expedite the action, including setting a hearing at the earliest practicable date.

Upon adjudication or as provided in a consent decree, the court must enjoin the unlawful policy or practice and order that the entity or agency pay a civil penalty of at least \$1,000 but not more than \$5,000 for each day the policy or practice was in effect, commencing on October 1, 2018 or the date the sanctuary policy was first enacted, whichever is later. Payment must be remitted to the Chief Financial Officer (CFO), and deposited into the General Revenue Fund.

A "sanctuary policymaker" is defined in the bill as a state or local elected official, or an appointed official of a local governmental entity governing body, who has voted for, allowed to be implemented, or voted against repeal or prohibition of a sanctuary policy. The bill requires a consent decree, injunction, or order granting civil penalties to identify each sanctuary policymaker. The court must provide a copy of the final order to the Governor within 30 days. A sanctuary policymaker identified in a final order is subject to suspension or removal from office.<sup>37</sup>

The bill also prohibits using public funds to defend or reimburse any sanctuary policymaker or any official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency who knowingly and willfully violates the Act.

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<sup>36</sup> S. 27.14, F.S., authorizes the Governor to issue an executive order requiring a state attorney from another circuit to replace another state attorney in an investigation or case in which the latter state attorney is disqualified or "for any other good and sufficient reason [when] the Governor determines that the ends of justice would be best served."

<sup>37</sup> See FN 34, supra.

### Cause of Action against State or Local Government Entity, or Law Enforcement Agency

The bill creates s. 908.303, F.S., providing a civil cause of action by a person injured by the tortious conduct of an alien unlawfully present in the United States against any state or local governmental entity or law enforcement agency that violates newly-created ss. 908.201, 908.202, and 908.204, F.S. To prevail, the plaintiff must prove by the greater weight of the evidence:

- The existence of a sanctuary policy; and
- Failure to comply with any provision of newly-created s. 908.202, F.S., resulting in the alien having access to the person injured or killed when the tortious conduct occurred.

The bill requires a final judgment in favor of a plaintiff to identify each sanctuary policymaker. The court must provide a copy of the final judgment to the Governor within 30 days. A sanctuary policymaker identified in a final judgment is subject to suspension or removal from office.<sup>38</sup>

A cause of action pursuant to this section may not be brought against a public official or employee of a state or local government or law enforcement agency, including a sanctuary policymaker. There is no civil cause of action against a state entity, local governmental entity, or law enforcement agency that complies with the Act.

### Ineligibility for State Grant Funding

The bill creates s. 908.304, F.S., making ineligible a state or local government entity or law enforcement agency that had a sanctuary policy in violation of ch. 908, F.S., for non-federal grant programs administered by state agencies for 5 years from the date of adjudication that the entity had a sanctuary policy in violation of the Act.

The state attorney must notify the CFO of an adjudicated violation by an entity and provide a copy of the final court injunction, order, or judgment. Upon receiving the notice, the CFO must timely inform all state agencies that administer non-federal grant funding of such violation and direct such agencies to cancel all pending grant applications and enforce the ineligibility of the entity. The prohibition on grant funding does not apply to:

- Funding that is received as a result of an appropriation to a specifically named state entity, local government entity, or law enforcement agency in the General Appropriations Act or other law; and
- Grants awarded prior to the date of an adjudication of violation of the Act.

### Additional Provisions

The bill creates s. 908.401, F.S., providing that ch. 908, F.S., does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g. Education records under 20 U.S.C. s. 1232g, include any record, file, or document which is maintained by an educational agency or institution and contains information directly related to the student. Education records do not include records of instructional or administrative personnel, records created and maintained by a law enforcement unit, or records maintained by certain mental health professionals created in connection with treating the student.<sup>39</sup>

The bill creates s. 908.402, F.S., prohibiting a state or local government entity or law enforcement agency, or a person employed by or otherwise under the direction of such an entity, from basing its

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<sup>38</sup> Id.

<sup>39</sup> 20 U.S.C. s. 1232g(a)(4)(B)  
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actions pursuant to ch. 908, F.S., on the gender, race, religion, national origin, or physical disability of a person, except to the extent allowed by the United States Constitution or the state constitution.

The bill requires any sanctuary policy in effect on the effective date of the Act be repealed within 90 days.

The bill provides that ss. 908.302 and 908.303, F.S., relating to enforcement and penalties for violations of the act and creating a civil cause of action for personal injury or wrongful death attributed to a sanctuary policy, respectively, will take effect on October 1, 2018. All other provisions of the bill are effective on July 1, 2018.

**B. SECTION DIRECTORY:**

**Section 1:** Creates a short title.

**Section 2:** Creates Chapter 908, F.S., consisting of ss. 908.101-908.402, F.S., entitled "Federal Immigration Enforcement."

**Section 3:** Creates an unnumbered section that requires any sanctuary policy in effect on the effective date of the Act must be repealed within 90 days after that effective date.

**Section 4:** Provides an effective date October 1, 2018, for ss. 908.302 and 908.303, F.S.; otherwise provides effective date of July 1, 2018.

## **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:

See "Expenditures," below.

2. Expenditures:

The bill requires a local government entity or law enforcement agency to honor an ICE immigration detainer. Any costs associated with holding an individual pursuant to an immigration detainer are not reimbursed by ICE. However, the bill authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.<sup>40</sup> The bill also authorizes a local government entity or law enforcement agency to petition the federal government to recover costs of detention and complying with a federal request.<sup>41</sup> Accordingly, the bill may have an indeterminate negative impact on local expenditures

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

None.

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<sup>40</sup> See "Reimbursement of Costs for Complying with an Immigration Detainer" section above.

<sup>41</sup> Id.

#### D. FISCAL COMMENTS:

It is unknown how much it costs local governments to comply with immigration detainers. According to the Board of County Commissioners in Miami-Dade County, compliance with immigration detainers in 2011 and 2012 cost the county \$1,002,700 and \$667,076, respectively.<sup>42</sup>

As noted above, a recent federal court decision found that a local law enforcement agency is not required to honor an ICE detainer because such detainers are requests to detain.<sup>43</sup> Federal courts have also held that an ICE detainer must be supported by probable cause.<sup>44</sup> Based on these two lines of federal cases, it appears that a law enforcement agency that voluntarily complies with an ICE detainer that is not supported by probable cause may be subject to legal action.<sup>45</sup>

Lastly, an entity or agency in violation of Act may be subject to a fine of at least \$1,000 but not more than \$5,000 for each day a policy or practice was in effect. These fines are remitted to the CFO and deposited in the General Revenue Fund.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

The bill appears to require a county or municipality to spend funds or take an action requiring the expenditure of funds as described in article VII, section 18 of the Florida Constitution, specifically by requiring the county or municipality to comply with an immigration detainer. However, the bill contains legislative findings that state and local government assistance and cooperation with federal immigration enforcement fulfills an important state interest, and it authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.<sup>46</sup> Moreover, it appears that any expenditure that may be required by the bill applies to "all persons similarly situated" because the bill applies to all state and local governmental entities and all law enforcement agencies.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires the Attorney General to proscribe a form for a person to submit a complaint alleging a violation of the Act, and provide the form through the Department of Legal Affairs' website.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>42</sup> Resolution No. R-1008-13, Board of County Commissioners, Miami-Dade County, Florida (Dec. 3, 2010) .

<sup>43</sup> See "Immigration Detainers," above.

<sup>44</sup> Id.

<sup>45</sup> See *Legal Alert*, supra FN 19.

<sup>46</sup> See "Legislative Findings and Intent" and "Reimbursement of Costs for Complying with an Immigration Detainer," above.

1                                   A bill to be entitled  
 2           An act relating to federal immigration enforcement;  
 3           providing a short title; creating chapter 908, F.S.,  
 4           relating to federal immigration enforcement; providing  
 5           legislative findings and intent; providing  
 6           definitions; prohibiting sanctuary policies; requiring  
 7           state entities, local governmental entities, and law  
 8           enforcement agencies to comply with and support the  
 9           enforcement of federal immigration law; specifying  
 10          duties concerning certain arrested persons; specifying  
 11          duties concerning immigration detainers; prohibiting  
 12          restrictions by such entities and agencies on taking  
 13          certain actions with respect to information regarding  
 14          a person's immigration status; providing requirements  
 15          concerning certain criminal defendants subject to  
 16          immigration detainers or otherwise subject to transfer  
 17          to federal custody; authorizing a law enforcement  
 18          agency to transport an unauthorized alien under  
 19          certain circumstances; providing an exception to  
 20          reporting requirements for crime victims or witnesses;  
 21          requiring recordkeeping relating to crime victim and  
 22          witness cooperation in certain investigations;  
 23          authorizing a board of county commissioners to adopt  
 24          an ordinance to recover costs for complying with an  
 25          immigration detainer; authorizing local governmental

26 entities and law enforcement agencies to petition the  
 27 Federal Government for reimbursement of certain costs;  
 28 requiring report of violations; providing penalties  
 29 for failure to report a violation; providing whistle-  
 30 blower protections for persons who report violations;  
 31 requiring the Attorney General to prescribe the format  
 32 for submitting complaints; providing requirements for  
 33 entities to comply with document requests from state  
 34 attorneys concerning violations; providing for  
 35 investigation of possible violations; providing for  
 36 injunctive relief and civil penalties; requiring  
 37 written findings; prohibiting the expenditure of  
 38 public funds for specified purposes; providing a cause  
 39 of action for personal injury or wrongful death  
 40 attributed to a sanctuary policy; providing that a  
 41 trial by jury is a matter of right; requiring written  
 42 findings; providing for applicability to certain  
 43 education records; prohibiting discrimination on  
 44 specified grounds; providing for implementation;  
 45 requiring repeal of existing sanctuary policies within  
 46 a specified period; providing effective dates.

47

48 Be It Enacted by the Legislature of the State of Florida:

49

50 Section 1. Short title.—This act may be cited as the "Rule



51 of Law Adherence Act."

52 Section 2. Chapter 908, Florida Statutes, consisting of  
 53 sections 908.101-908.402, is created to read:

54 CHAPTER 908

55 FEDERAL IMMIGRATION ENFORCEMENT

56 PART I

57 FINDINGS AND DEFINITIONS

58 908.101 Legislative findings and intent.—The Legislature  
 59 finds that it is an important state interest that state  
 60 entities, local governmental entities, and their officials owe  
 61 an affirmative duty to all citizens and other persons lawfully  
 62 present in the United States to assist the Federal Government  
 63 with enforcement of federal immigration laws within this state,  
 64 including complying with federal immigration detainers. The  
 65 Legislature further finds that it is an important state interest  
 66 that, in the interest of public safety and adherence to federal  
 67 law, this state support federal immigration enforcement efforts  
 68 and ensure that such efforts are not impeded or thwarted by  
 69 state or local laws, policies, practices, procedures, or  
 70 customs. State entities, local governmental entities, and their  
 71 officials who encourage persons unlawfully present in the United  
 72 States to locate within this state or who shield such persons  
 73 from personal responsibility for their unlawful actions breach  
 74 this duty and should be held accountable.

75 908.102 Definitions.—As used in this chapter, the term:

76        (1) "Federal immigration agency" means the United States  
 77 Department of Justice, the United States Department of Homeland  
 78 Security, or any successor agency and any division of such  
 79 agency, including United States Immigration and Customs  
 80 Enforcement, United States Customs and Border Protection, or any  
 81 other federal agency charged with the enforcement of immigration  
 82 law. The term includes an official or employee of such agency.

83        (2) "Immigration detainer" means a facially sufficient  
 84 written or electronic request issued by a federal immigration  
 85 agency using that agency's official form to request that another  
 86 law enforcement agency detain a person based on probable cause  
 87 to believe that the person to be detained is a removable alien  
 88 under federal immigration law, including detainers issued  
 89 pursuant to 8 U.S.C. ss. 1226 and 1357. For purposes of this  
 90 subsection, an immigration detainer is deemed facially  
 91 sufficient if:

92        (a) The federal immigration agency's official form is  
 93 complete and indicates on its face that the federal immigration  
 94 official has probable cause to believe that the person to be  
 95 detained is a removable alien under federal immigration law; or

96        (b) The federal immigration agency's official form is  
 97 incomplete and fails to indicate on its face that the federal  
 98 immigration official has probable cause to believe that the  
 99 person to be detained is a removable alien under federal  
 100 immigration law, but is supported by an affidavit, order, or

101 other official documentation that indicates that the federal  
 102 immigration agency has probable cause to believe that the person  
 103 to be detained is a removable alien under federal immigration  
 104 law.

105 (3) "Inmate" means a person in the custody of a law  
 106 enforcement agency.

107 (4) "Law enforcement agency" means an agency in this state  
 108 charged with enforcement of state, county, municipal, or federal  
 109 laws or with managing custody of detained persons in the state  
 110 and includes municipal police departments, sheriff's offices,  
 111 state police departments, state university and college police  
 112 departments, and the Department of Corrections. The term  
 113 includes an official or employee of such agency.

114 (5) "Local governmental entity" means any county,  
 115 municipality, or other political subdivision of this state. The  
 116 term includes a person holding public office or having official  
 117 duties as a representative, agent, or employee of such entity.

118 (6) "Sanctuary policy" means a law, policy, practice,  
 119 procedure, or custom adopted or permitted by a state entity,  
 120 local governmental entity, or law enforcement agency which  
 121 contravenes 8 U.S.C. s. 1373(a) or (b), or which knowingly  
 122 prohibits or impedes a law enforcement agency from communicating  
 123 or cooperating with a federal immigration agency with respect to  
 124 federal immigration enforcement, including, but not limited to,  
 125 limiting or preventing a state entity, local governmental

126 entity, or law enforcement agency from:

127 (a) Complying with an immigration detainer;

128 (b) Complying with a request from a federal immigration  
129 agency to notify the agency before the release of an inmate or  
130 detainee in the custody of the state entity, local governmental  
131 entity, or law enforcement agency;

132 (c) Providing a federal immigration agency access to an  
133 inmate for interview;

134 (d) Initiating an immigration status investigation; or

135 (e) Providing a federal immigration agency with an  
136 inmate's incarceration status or release date.

137 (7) "Sanctuary policymaker" means a state or local elected  
138 official, or an appointed official of a local governmental  
139 entity governing body, who has voted for, allowed to be  
140 implemented, or voted against repeal or prohibition of a  
141 sanctuary policy.

142 (8) "State entity" means the state or any office, board,  
143 bureau, commission, department, branch, division, or institution  
144 thereof, including institutions within the State University  
145 System and the Florida College System. The term includes a  
146 person holding public office or having official duties as a  
147 representative, agent, or employee of such entity.

148 PART II

149 DUTIES

150 908.201 Sanctuary policies prohibited.—A state entity, law

151 enforcement agency, or local governmental entity may not adopt  
 152 or have in effect a sanctuary policy.

153 908.202 Cooperation with federal immigration authorities.-

154 (1) A state entity, local governmental entity, or law  
 155 enforcement agency shall fully comply with and, to the full  
 156 extent permitted by law, support the enforcement of federal  
 157 immigration law. This subsection is only applicable to an  
 158 official, representative, agent, or employee of such entity or  
 159 agency when he or she is acting within the scope of his or her  
 160 official duties or within the scope of his or her employment.

161 (2) Except as otherwise expressly prohibited by federal  
 162 law, a state entity, local governmental entity, or law  
 163 enforcement agency may not prohibit or in any way restrict  
 164 another state entity, local governmental entity, or law  
 165 enforcement agency from taking any of the following actions with  
 166 respect to information regarding a person's immigration status:

167 (a) Sending such information to or requesting, receiving,  
 168 or reviewing such information from a federal immigration agency  
 169 for purposes of this chapter.

170 (b) Recording and maintaining such information for  
 171 purposes of this chapter.

172 (c) Exchanging such information with a federal immigration  
 173 agency or another state entity, local governmental entity, or  
 174 law enforcement agency for purposes of this chapter.

175 (d) Using such information to determine eligibility for a

176 public benefit, service, or license pursuant to federal or state  
 177 law or an ordinance or regulation of a local governmental  
 178 entity.

179 (e) Using such information to verify a claim of residence  
 180 or domicile if a determination of residence or domicile is  
 181 required under federal or state law, an ordinance or regulation  
 182 of a local governmental entity, or a judicial order issued  
 183 pursuant to a civil or criminal proceeding in this state.

184 (f) Using such information to comply with an immigration  
 185 detainer.

186 (g) Using such information to confirm the identity of a  
 187 person who is detained by a law enforcement agency.

188 (3) (a) This subsection only applies in a criminal case in  
 189 which:

190 1. The judgment requires the defendant to be confined in a  
 191 secure correctional facility; and

192 2. The judge:

193 a. Indicates in the record under s. 908.204 that the  
 194 defendant is subject to an immigration detainer; or

195 b. Otherwise indicates in the record that the defendant is  
 196 subject to a transfer into federal custody.

197 (b) In a criminal case described by paragraph (a), the  
 198 judge shall, at the time of pronouncement of a sentence of  
 199 confinement, issue an order requiring the secure correctional  
 200 facility in which the defendant is to be confined to reduce the

201 defendant's sentence by a period of not more than 7 days on the  
 202 facility's determination that the reduction in sentence will  
 203 facilitate the seamless transfer of the defendant into federal  
 204 custody. For purposes of this paragraph, the term "secure  
 205 correctional facility" means a state correctional institution,  
 206 as defined in s. 944.02, or a county detention facility or a  
 207 municipal detention facility, as defined in s. 951.23.

208 (c) If the applicable information described by  
 209 subparagraph (a)2. is not available at the time the sentence is  
 210 pronounced in the case, the judge shall issue the order  
 211 described by paragraph (b) as soon as the information becomes  
 212 available.

213 (4) Notwithstanding any other provision of law, if a law  
 214 enforcement agency has received verification from a federal  
 215 immigration agency that an alien in the law enforcement agency's  
 216 custody is unlawfully present in the United States, the law  
 217 enforcement agency may securely transport such alien to a  
 218 federal facility in this state or to another point of transfer  
 219 to federal custody outside the jurisdiction of the law  
 220 enforcement agency. A law enforcement agency shall obtain  
 221 judicial authorization before securely transporting such alien  
 222 to a point of transfer outside of this state.

223 (5) This section does not require a state entity, local  
 224 governmental entity, or law enforcement agency to provide a  
 225 federal immigration agency with information related to a victim

226 of or a witness to a criminal offense if such victim or witness  
 227 timely and in good faith responds to the entity's or agency's  
 228 request for information and cooperation in the investigation or  
 229 prosecution of such offense.

230 (6) A state entity, local governmental entity, or law  
 231 enforcement agency that, pursuant to subsection (5), withholds  
 232 information regarding the immigration information of a victim of  
 233 or witness to a criminal offense shall document such victim's or  
 234 witness's cooperation in the entity's or agency's investigative  
 235 records related to the offense and shall retain such records for  
 236 at least 10 years for the purpose of audit, verification, or  
 237 inspection by the Auditor General.

238 908.203 Duties related to certain arrested persons.—

239 (1) If a person is arrested and is unable to provide proof  
 240 of his or her lawful presence in the United States, not later  
 241 than 48 hours after the person is arrested and before the person  
 242 is released on bond, a law enforcement agency performing the  
 243 booking process shall:

244 (a) Review any information available from a federal  
 245 immigration agency.

246 (b) If information obtained under paragraph (a) reveals  
 247 that the person is not a citizen of the United States and is  
 248 unlawfully present in the United States according to the terms  
 249 of the federal Immigration and Nationality Act, 8 U.S.C. ss.  
 250 1101 et seq., the law enforcement agency shall:



251 |       1. Provide immediate notice of the person's arrest and  
 252 | charges to a federal immigration agency.

253 |       2. Provide notice of that fact to the judge authorized to  
 254 | grant or deny the person's release on bail under chapter 903.

255 |       3. Record that fact in the person's case file.

256 |       (2) A law enforcement agency is not required to perform a  
 257 | duty imposed by subsection (1) with respect to a person who is  
 258 | transferred to the custody of the agency by another law  
 259 | enforcement agency if the transferring agency performed that  
 260 | duty before transferring custody of the person.

261 |       (3) A judge who receives notice of a person's immigration  
 262 | status under this section shall ensure that such status is  
 263 | recorded in the court record.

264 |       908.204 Duties related to immigration detainer.-

265 |       (1) A law enforcement agency that has custody of a person  
 266 | subject to an immigration detainer issued by a federal  
 267 | immigration agency shall:

268 |       (a) Provide to the judge authorized to grant or deny the  
 269 | person's release on bail under chapter 903 notice that the  
 270 | person is subject to an immigration detainer.

271 |       (b) Record in the person's case file that the person is  
 272 | subject to an immigration detainer.

273 |       (c) Comply with, honor, and fulfill the requests made in  
 274 | the immigration detainer.

275 |       (2) A law enforcement agency is not required to perform a

276 duty imposed by paragraph (1) (a) or paragraph (1) (b) with  
 277 respect to a person who is transferred to the custody of the  
 278 agency by another law enforcement agency if the transferring  
 279 agency performed that duty before transferring custody of the  
 280 person.

281 (3) A judge who receives notice that a person is subject  
 282 to an immigration detainer shall ensure that such fact is  
 283 recorded in the court record, regardless of whether the notice  
 284 is received before or after a judgment in the case.

285 908.205 Reimbursement of costs.—

286 (1) A board of county commissioners may adopt an ordinance  
 287 requiring a person detained pursuant to an immigration detainer  
 288 to reimburse the county for any expenses incurred in detaining  
 289 the person pursuant to the immigration detainer. A person  
 290 detained pursuant to an immigration detainer is not liable under  
 291 this section if a federal immigration agency determines that the  
 292 immigration detainer was improperly issued.

293 (2) A local governmental entity or law enforcement agency  
 294 may petition the Federal Government for reimbursement of the  
 295 entity's or agency's detention costs and the costs of compliance  
 296 with federal requests when such costs are incurred in support of  
 297 the enforcement of federal immigration law.

298 908.206 Duty to report.—

299 (1) An official, representative, agent, or employee of a  
 300 state entity, local governmental entity, or law enforcement

301 agency shall promptly report a known or probable violation of  
302 this chapter to the Attorney General or the state attorney  
303 having jurisdiction over the entity or agency.

304 (2) An official, representative, agent, or employee of a  
305 state entity, local governmental entity, or law enforcement  
306 agency who willfully and knowingly fails to report a known or  
307 probable violation of this chapter may be suspended or removed  
308 from office pursuant to general law and s. 7, Art. IV of the  
309 State Constitution.

310 (3) A state entity, local governmental entity, or law  
311 enforcement agency may not dismiss, discipline, take any adverse  
312 personnel action as defined in s. 112.3187(3) against, or take  
313 any adverse action described in s. 112.3187(4)(b) against, an  
314 official, representative, agent, or employee for complying with  
315 subsection (1).

316 (4) Section 112.3187 of the Whistle-blower's Act applies  
317 to an official, representative, agent, or employee of a state  
318 entity, local governmental entity, or law enforcement agency who  
319 is dismissed, disciplined, subject to any adverse personnel  
320 action as defined in s. 112.3187(3) or any adverse action  
321 described in s. 112.3187(4)(b), or denied employment because he  
322 or she complied with subsection (1).

323 908.207 Implementation.—This chapter shall be implemented  
324 to the fullest extent permitted by federal law regulating  
325 immigration and the legislative findings and intent declared in

326 s. 908.101.

327 PART III

328 ENFORCEMENT

329 908.301 Complaints.—The Attorney General shall prescribe  
 330 and provide through the Department of Legal Affairs' website the  
 331 format for a person to submit a complaint alleging a violation  
 332 of this chapter. This section does not prohibit the filing of an  
 333 anonymous complaint or a complaint not submitted in the  
 334 prescribed format. Any person has standing to submit a complaint  
 335 under this chapter.

336 908.302 Enforcement; penalties.—

337 (1) The state attorney for the county in which a state  
 338 entity is headquartered or in which a local governmental entity  
 339 or law enforcement agency is located has primary responsibility  
 340 and authority for investigating credible complaints of a  
 341 violation of this chapter. The results of an investigation by a  
 342 state attorney shall be provided to the Attorney General in a  
 343 timely manner.

344 (2) (a) A state entity, local governmental entity, or law  
 345 enforcement agency for which the state attorney has received a  
 346 complaint shall comply with a document request from the state  
 347 attorney related to the complaint.

348 (b) If the state attorney determines that a complaint  
 349 filed against a state entity, local governmental entity, or law  
 350 enforcement agency is valid, the state attorney shall, not later

351 than the 10th day after the date of the determination, provide  
352 written notification to the entity that:

353 1. The complaint has been filed.

354 2. The state attorney has determined that the complaint is  
355 valid.

356 3. The state attorney is authorized to file an action to  
357 enjoin the violation if the entity does not come into compliance  
358 with the requirements of this chapter on or before the 60th day  
359 after the notification is provided.

360 (c) No later than the 30th day after the day a state  
361 entity or local governmental entity receives written  
362 notification under paragraph (b), the state entity or local  
363 governmental entity shall provide the state attorney with a copy  
364 of:

365 1. The entity's written policies and procedures with  
366 respect to federal immigration agency enforcement actions,  
367 including the entity's policies and procedures with respect to  
368 immigration detainers.

369 2. Each immigration detainer received by the entity from a  
370 federal immigration agency in the current calendar year-to-date  
371 and the two prior calendar years.

372 3. Each response sent by the entity for an immigration  
373 detainer described by subparagraph 2.

374 (3) The Attorney General, the state attorney who conducted  
375 the investigation, or a state attorney ordered by the Governor

376 pursuant to s. 27.14 may institute proceedings in circuit court  
377 to enjoin a state entity, local governmental entity, or law  
378 enforcement agency found to be in violation of this chapter. The  
379 court shall expedite an action under this section, including  
380 setting a hearing at the earliest practicable date.

381 (4) Upon adjudication by the court or as provided in a  
382 consent decree declaring that a state entity, local governmental  
383 entity, or law enforcement agency has violated this chapter, the  
384 court shall enjoin the unlawful sanctuary policy and order that  
385 such entity or agency pay a civil penalty to the state of at  
386 least \$1,000 but not more than \$5,000 for each day that the  
387 sanctuary policy was in effect commencing on October 1, 2018, or  
388 the date the sanctuary policy was first enacted, whichever is  
389 later, until the date the injunction was granted. The court  
390 shall have continuing jurisdiction over the parties and subject  
391 matter and may enforce its orders with imposition of additional  
392 civil penalties as provided for in this section and contempt  
393 proceedings as provided by law.

394 (5) An order approving a consent decree or granting an  
395 injunction or civil penalties pursuant to subsection (4) must  
396 include written findings of fact that describe with specificity  
397 the existence and nature of the sanctuary policy in violation of  
398 s. 908.201 and that identify each sanctuary policymaker who  
399 voted for, allowed to be implemented, or voted against repeal or  
400 prohibition of the sanctuary policy. The court shall provide a

401 copy of the consent decree or order granting an injunction or  
 402 civil penalties that contains the written findings required by  
 403 this subsection to the Governor within 30 days after the date of  
 404 rendition. A sanctuary policymaker identified in an order  
 405 approving a consent decree or granting an injunction or civil  
 406 penalties may be suspended or removed from office pursuant to  
 407 general law and s. 7, Art. IV of the State Constitution.

408 (6) A state entity, local governmental entity, or law  
 409 enforcement agency ordered to pay a civil penalty pursuant to  
 410 subsection (4) shall remit payment to the Chief Financial  
 411 Officer, who shall deposit such payment into the General Revenue  
 412 Fund.

413 (7) Except as required by law, public funds may not be  
 414 used to defend or reimburse a sanctuary policymaker or an  
 415 official, representative, agent, or employee of a state entity,  
 416 local governmental entity, or law enforcement agency who  
 417 knowingly and willfully violates this chapter.

418 908.303 Civil cause of action for personal injury or  
 419 wrongful death attributed to a sanctuary policy; trial by jury;  
 420 required written findings.-

421 (1) A person injured in this state by the tortious acts or  
 422 omissions of an alien unlawfully present in the United States,  
 423 or the personal representative of a person killed in this state  
 424 by the tortious acts or omissions of an alien unlawfully present  
 425 in the United States, has a cause of action for damages against

426 a state entity, local governmental entity, or law enforcement  
427 agency in violation of ss. 908.201 and 908.202 upon proof by the  
428 greater weight of the evidence of:

429 (a) The existence of a sanctuary policy in violation of s.  
430 908.201; and

431 (b)1. A failure to comply with a provision of s. 908.202  
432 resulting in such alien's having access to the person injured or  
433 killed when the tortious acts or omissions occurred; or

434 2. A failure to comply with a provision of s.  
435 908.204(1)(c) resulting in such alien's having access to the  
436 person injured or killed when the tortious acts or omissions  
437 occurred.

438 (2) A cause of action brought pursuant to subsection (1)  
439 may not be brought against a person who holds public office or  
440 who has official duties as a representative, agent, or employee  
441 of a state entity, local governmental entity, or law enforcement  
442 agency, including a sanctuary policymaker.

443 (3) Trial by jury is a matter of right in an action  
444 brought under this section.

445 (4) A final judgment entered in favor of a plaintiff in a  
446 cause of action brought pursuant to this section must include  
447 written findings of fact that describe with specificity the  
448 existence and nature of the sanctuary policy in violation of s.  
449 908.201 and that identify each sanctuary policymaker who voted  
450 for, allowed to be implemented, or voted against repeal or



451 prohibition of the sanctuary policy. The court shall provide a  
452 copy of the final judgment containing the written findings  
453 required by this subsection to the Governor within 30 days after  
454 the date of rendition. A sanctuary policymaker identified in a  
455 final judgment may be suspended or removed from office pursuant  
456 to general law and s. 7, Art. IV of the State Constitution.

457 (5) Except as provided in this section, this chapter does  
458 not create a private cause of action against a state entity,  
459 local governmental entity, or law enforcement agency that  
460 complies with this chapter.

461 908.304 Ineligibility for state grant funding.—

462 (1) Notwithstanding any other provision of law, a state  
463 entity, local governmental entity, or law enforcement agency  
464 shall be ineligible to receive funding from non-federal grant  
465 programs administered by state agencies that receive funding  
466 from the General Appropriations Act for a period of 5 years from  
467 the date of adjudication that such state entity, local  
468 governmental entity, or law enforcement agency had in effect a  
469 sanctuary policy in violation of this chapter.

470 (2) The Chief Financial Officer shall be notified by the  
471 state attorney of an adjudicated violation of this chapter by a  
472 state entity, local governmental entity, or law enforcement  
473 agency and be provided with a copy of the final court  
474 injunction, order, or judgment. Upon receiving such notice, the  
475 Chief Financial Officer shall timely inform all state agencies

476 that administer non-federal grant funding of the adjudicated  
 477 violation by the state entity, local governmental entity, or law  
 478 enforcement agency and direct such agencies to cancel all  
 479 pending grant applications and enforce the ineligibility of such  
 480 entity for the prescribed period.

481 (3) This subsection does not apply to:

482 (a) Funding that is received as a result of an  
 483 appropriation to a specifically named state entity, local  
 484 governmental entity, or law enforcement agency in the General  
 485 Appropriations Act or other law.

486 (b) Grants awarded prior to the date of adjudication that  
 487 such state entity, local governmental entity, or law enforcement  
 488 agency had in effect a sanctuary policy in violation of this  
 489 chapter.

490 PART IV

491 MISCELLANEOUS

492 908.401 Education records.—This chapter does not apply to  
 493 the release of information contained in education records of an  
 494 educational agency or institution, except in conformity with the  
 495 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s.  
 496 1232g.

497 908.402 Discrimination prohibited.—A state entity, a local  
 498 governmental entity, or a law enforcement agency, or a person  
 499 employed by or otherwise under the direction or control of such  
 500 an entity, may not base its actions under this chapter on the

501 gender, race, religion, national origin, or physical disability  
502 of a person except to the extent permitted by the United States  
503 Constitution or the state constitution.

504 Section 3. A sanctuary policy, as defined in s. 908.102,  
505 Florida Statutes, as created by this act, that is in effect on  
506 the effective date of this act must be repealed within 90 days  
507 after that date.

508 Section 4. Sections 908.302 and 908.303, Florida Statutes,  
509 as created by this act, shall take effect October 1, 2018, and,  
510 except as otherwise expressly provided in this act, this act  
511 shall take effect July 1, 2018.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Metz offered the following:

**Amendment (with title amendment)**

5 Remove line 378 and insert:  
 6 enforcement agency found to be in violation of this chapter.  
 7 Venue of an action brought by the Attorney General may be in  
 8 Leon County. The

10 -----  
 11 **T I T L E A M E N D M E N T**

12 Remove line 36 and insert:  
 13 injunctive relief and civil penalties; providing for venue;  
 14 requiring