HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Federal Immigration Enforcement
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	9 Y, 5 N	Stranburg	Bond
2) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N, As CS	Darden	Miller
3) Judiciary Committee		Stranburg	Camechis

SUMMARY ANALYSIS

Although the federal government has broad powers over immigration enforcement, federal immigration agencies rely on state and local law enforcement agencies to assist and cooperate in the enforcement of federal immigration laws. The bill creates the "Rule of Law Adherence Act" (Act) to require state and local governments and law enforcement agencies, including their officials and employees, to support and cooperate with federal immigration enforcement. Specifically, the bill:

- prohibits a state or local governmental entity or law enforcement agency 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 state or local governmental entity or law enforcement agency's ability to use, maintain, or exchange immigration information for certain enumerated purposes;
- requires a state or local governmental entity and law enforcement agency 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- requires any sanctuary policies currently in effect be repealed within 90 days of the effective date of the Act;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 state or local governmental entity or law enforcement agency 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 state or local governmental entity or law enforcement agency that violates the Act;
- requires a state or local governmental entity or law enforcement agency that violates the Act to pay a civil penalty of at least $1,000 but no more than $5,000 for each day the policy 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 state or local governmental entity or law enforcement agency 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 state government or local government entity or law enforcement agency 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.

The bill has an effective date of October 1, 2017, for provisions creating penalties. All other provisions of the bill have an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The federal government has "broad, undoubted power over the subject of immigration and the status of aliens," and thus has established an "extensive and complex" set of rules governing the admission and removal of aliens, along with conditions for aliens' continued presence within the United States.[1] 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.[2] The Tenth Amendment's reservation of powers to the states includes traditional "police powers" concerning the promotion and regulation of safety, health, and welfare within the state.[3] Pursuant to the exercise of these police powers, states and municipalities have frequently enacted measures which address aliens residing in their communities.[4] The federal government's power to preempt activity in the area of immigration may be further limited by the constitutional bar against directly "commandeering" state or local governments into the service of federal immigration agencies.[5]

Information-Sharing

United States Immigration and Customs Enforcement (ICE) relies heavily on local law enforcement sharing information regarding an arrestee or inmate to identify and apprehend aliens who are unlawfully present in the United States. Over the years, some states and localities have restricted government agencies or employees from sharing information with federal immigration agencies.[6]

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

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 in relation to criminal violations.[10] ICE issues a detainer in three situations:

- 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 by the agency;
- To request information from a law enforcement agency about an alien's impending release so ICE may assume custody before the alien is released from the agency's custody; and

[1] *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).
[2] *De Canas v. Bica*, 424 U.S. 351, 355 (1976); *see Arizona*, 132 S. Ct. 2492.
[3] *Western Turf Ass'n v. Greenberg*, 204 U.S. 359, 363 (1907).
[4] Congressional Research Service, R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement* 3 (July 20, 2015).
[5] *See Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).
[6] Congressional Research Service, *supra* note 4, at 9.
[7] 8 U.S.C. s.1644.
[8] 8 U.S.C. s.1373.
[9] 8 U.S.C. ss. 1373, 1644.
[10] *See* 8 U.S.C. ss. 1226, 1357;Congressional Research Service, *supra* note 4, at 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.[11]

The federal courts and the federal government have characterized an ICE detainer as a request that does not require the receiving local law enforcement agency to comply with the detainer.[12] 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 decisions regarding commandeering.[13]

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

Jurisdictions with Policies that May Be Affected by the Bill

A number of states and municipalities have adopted formal or informal policies which prohibit or limit police cooperation with federal immigration enforcement efforts.[15] Municipalities that have adopted such policies are sometimes referred to as "sanctuary cities," though there is no consensus as to the meaning of this term. 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."[16] Examples of such polices include: not asking an arrested or incarcerated person for his or her immigration status, not informing ICE about an alien in custody, not alerting ICE before releasing an alien from custody, not transporting an undocumented criminal alien to the nearest ICE location, and declining to honor an immigration detainer.[17]

A bulletin issued by the Florida Sheriffs Association highlighted recent federal court decisions[18] 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."[19] The bulletin

---

[11] Law Enforcement Systems and Analysis, Department of Homeland Security, *Declined Detainer Outcome Report*, October 8, 2014 (redacted public version), at 3.
[12] *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); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, slip op. (D. Oregon April 11, 2014); Memorandum from R. A. Cuevas, Jr. to Board of County Commissioners of Miami-Dade County, RE: Resolution directing the Mayor to implement policy on responding to detainer requests from the United States Department of Homeland Security Immigration Enforcement, Resolution R-1008-13, p. 14 (Dec. 3, 2013) (containing correspondence from David Ventura, Assistant Director, U.S. Immigration and Customs Enforcement to Miguel Marquez, County Counsel, County of Santa Clara re: U.S. Immigration and Customs Enforcement Secure Communities Initiative).
[13] *Garza*, 745 F. 3d at 644.
[14] *Morales v. Chadburn*, 793 F. 3d 208, 214-217 (1st Cir. 2015); *Miranda-Olivares*, slip op. at 9-11; *Mendoza v. Osterberg*, 2014 WL 3784141 (D. Neb. 2014); *Uroza v. Salt Lake County*, 2013 WL 653968 (D. Utah 2013); *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D.Pa. Mar.30, 2012) *rev'd on other grounds*, 745 F.3d 634 (3d Cir.2014).
[15] *See* Congressional Research Service, *supra* note 4, at 7-20 (providing examples of various types of "sanctuary" policies used across the country).
[16] 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 vii, n.44 (defining "sanctuary" policies for purposes of study).
[17] *Id.* at 11-17.
[18] *Galarza*, 745 F. 3d at 634; *Miranda-Olivares*, 2014 WL 1414305. Neither of these cases are binding authority in Florida.
[19] 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."[20]

There is no requirement under federal law to show probable cause for the issuance of an ICE detainer.[21] 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.[22] 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.[23] Should the new forms remove probable cause findings consistent with federal statutory law, jurisdictions implementing the recommendations of the Florida Sheriffs Association bulletin may be in violation of the requirements of this bill.

The county commission in Miami-Dade adopted a policy in 2010 that provided that an ICE detainer would only be honored if the federal government agrees to reimburse the county for costs incurred in complying with the detainer and the inmate subject to the detainer has a previous conviction for a forcible felony or the inmate has pending charges for a non-bondable offense.[24] In January 2017, the mayor of Miami-Dade County reversed this policy and the county now accepts immigration detainers from ICE.[25] If the requirements of this bill had been in effect, this policy change would have placed Miami-Dade County in compliance.

Effect of Proposed Changes

The bill creates ch. 908, F.S., consisting of ss. 908.101-908.402, F.S., to create the "Rule of Law Adherence Act." The Act requires state and local governments and law enforcement agencies to support and cooperate with federal immigration enforcement.

Legislative Findings and Intent

The bill creates s. 908.101, F.S., to provide 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 this 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.

---

[20] *Id*.
[21] *See* 8 U.S.C. s. 1357(a). *See generally* Congressional Research Service, R42690, *Immigration Detainers: Legal Issues* (May 7, 2015).
[22] U.S. Immigration and Customs Enforcement, *Priority Enforcement Program*, https://www.ice.gov/pep (last accessed April 12, 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 April 12, 2017).
[23] 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 (last accessed April 12, 2017).
[24] Resolution No. R-1008-13, Board of County Commissioners, Miami-Dade County, Florida (Dec. 3, 2010).
[25] Douglas Hanks, *Miami-Dade turned over 11 people to immigration authorities in week under new policy*, Miami Herald, February 3, 2017, http://www.miamiherald.com/news/local/community/miami-dade/article130688064.html (last accessed April 12, 2017).

Prohibition against Sanctuary Policies

The bill creates s. 908.201, F.S., to prohibit a state or local governmental entity, or a law enforcement agency[26] from adopting or having in effect a sanctuary policy. A "sanctuary policy" is defined in the bill 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)[27], 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 polices include limiting or preventing a state or local governmental entity or law enforcement agency from:

- complying with an immigration detainer;[28]
- complying with a request from a federal immigration agency 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 federal immigration agency access to an inmate for interview;
- initiating an immigration status investigation; or
- providing a federal immigration agency with the incarceration status or release date of an inmate.

Cooperation with Federal Immigration Authorities

The bill creates s. 908.202, F.S., to prohibit 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 federal immigration agency;
- record and maintain immigration information for purposes of the Act;
- exchange immigration information with a federal immigration agency, 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;

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

[26] The definitions of "state entity," "local governmental entity," and "law enforcement agency" in the bill include officials, persons holding public office, representatives, agents, and employees of those entities or agencies.

[27] 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* note 4, at 10.

[28] "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 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 otherwise is not lawfully present in the United States.

Additionally, the bill provides that 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, the agency may 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 to a point of transfer outside of this state.

The bill requires a judge in a criminal case to order a secure correctional facility[29] 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 to the secure correctional facility. 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 federal immigration agency 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 pursuant to this exemption must be documented in the entity or 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 Auditor General.

Duties Related to 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 federal immigration agency. If such information reveals that the person is unlawfully present in the United States, the agency must provide immediate notice of the person's arrest and charges to a federal immigration agency, 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 on a person who is transferred to them from another agency if the previous agency performed the duty before the transferring of custody. A judge who receives notice of a person's immigration status pursuant to this duty must record that person's status in the court record.

The bill also creates s. 908.204, F.S., to provide duties of a law enforcement agency related to an immigration detainer. If an agency has custody of a person subject to an immigration detainer, the agency must inform the judge authorized to grant or deny bail that the person is subject to an immigration detainer. The judge must record the fact that the person is subject to a detainer in the court record, regardless of whether the notice is received before or after judgment in the case.

The agency must record that the person is subject to an immigration detainer 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 on a person who is transferred to them from another agency if the previous agency performed the duty before the transferring of custody.

Reimbursement of Costs for Complying with an Immigration Detainer

The bill creates s. 908.205, F.S., to authorize 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 the individual. However, an individual is not liable under

[29] 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.

an ordinance enacted pursuant to this provision if a federal immigration agency determines that the immigration detainer was improperly issued.

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

Duty to Report

The bill creates s. 908.206, F.S., to require 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 the 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 pursuant to general law and the Florida Constitution.[30]

The bill provides protections under the Whistle-blower's Act[31] 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 in s. 908.206, F.S.

Enforcement of Violations of the Act

The bill creates s. 908.301, F.S., to require that the Attorney General 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 by this section. Any person has standing to submit a complaint.

The bill creates s. 908.302, F.S., to provide for the enforcement of violations of the Act and establish penalties for such violations. 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 a document request by the state attorney related to the complaint. 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, that the state attorney has found the complaint valid, and that the state attorney is authorized to file an action to enjoin the violation if the entity does not come into compliance 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 federal immigration agency enforcement action, including policies with respect to immigration detainers;
- each immigration detainer received by the entity from a federal immigration agency in the current calendar year-to-date and the two prior calendar years; and

[30] 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 . . ."

[31] Section 112.3187, F.S.

- 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 that conducted the investigation, or a state attorney ordered by the Governor pursuant to s. 27.14, F.S.,[32] 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 by the court or as provided in a consent decree declaring that a state or local governmental entity or law enforcement agency has violated the Act, 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, 2017, or the date the sanctuary policy was first enacted, whichever is later.

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 after the date of rendition. A sanctuary policymaker identified in a final order is subject to suspension or removal from office by the Governor pursuant to general law and the Florida Constitution.[33]

A state or local governmental entity or law enforcement agency ordered to pay a civil penalty must remit payment to the Chief Financial Officer. The Chief Financial Officer must deposit such payments into the General Revenue Fund.

The bill also prohibits the expenditure of public funds to defend or reimburse any sanctuary policy maker 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.

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

The bill creates s. 908.303, F.S., to provide a civil cause of action for a person injured by (or the personal representative of a person killed by) the tortious conduct of an alien unlawfully present in the United States against any state or local governmental entity or law enforcement agency in violation of newly-created ss. 908.201, 908.202, and 908.204, F.S. To prevail in the new cause of action, 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 after the date of rendition. A sanctuary policymaker identified in a final judgment is subject to suspension or removal from office by the Governor pursuant to general law and the Florida Constitution.[34]

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.

[32] Section 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 [.]."
[33] *See* note 30, *supra*.
[34] *See* note 30, *supra*.

Lastly, the bill provides that the Act does not create a private 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., to prohibit a state or local government entity or law enforcement agency that had a sanctuary policy in violation of ch. 908, F.S., from receiving funding for non-federal grant programs administered by state agencies. This prohibition runs for 5 years from the date of adjudication that the entity had a sanctuary policy in violation of ch. 908, F.S.

The state attorney must notify the state's Chief Financial Officer (CFO) of an adjudicated violation by an entity and provide the CFO with 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 the violation by the entity. The CFO must then direct such agencies to cancel all pending grant applications and enforce the ineligibility of the entity for the 5-year period.

The bill provides that 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 ch. 908, F.S.

Additional Provisions

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

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.

The bill creates s. 908.402, F.S., to prohibit a state or local government entity or law enforcement agency, or a person employed by or otherwise under the direction of such an entity, to base its 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 also creates s. 908.207, F.S., to provide that the Act be implemented to the fullest extent permitted by federal immigration law and the legislative findings and intent declared in s. 908.101, F.S.

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, 2017. The bill provides an effective date of July 1, 2017, to all other portions of the bill.

B. SECTION DIRECTORY:

Section 1 creates a short title.

Section 2 creates ch. 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, 2017, for ss. 908.302 and 908.303, F.S., and an effective date of July 1, 2017, for all other provisions in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Expenditures" section below.

2. Expenditures:

   The bill requires a local government or law enforcement agency to honor an ICE immigration detainer. Any costs incurred by a local government or law enforcement agency in holding an individual pursuant to an immigration detainer are not reimbursed by ICE.[35] However, the bill authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.[36] 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 in support of federal immigration law.[37] Accordingly, the bill may have an indeterminate negative impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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.[38]

As noted above, recent federal courts have determined that a local law enforcement agency is not required to honor an ICE detainer because such detainers are requests to detain.[39] Federal courts have also held that an ICE detainer must be supported by probable cause.[40] 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.[41]

[35] Resolution No. R-1008-13, *supra* note 24.
[36] *See* “Reimbursement of Costs for Complying with an Immigration Detainer” section above.
[37] *Id*.
[38] Resolution No. R-1008-13, *supra* note 24.
[39] *See* “Immigration Detainers” section above.
[40] *Id.*
[41] *See Legal Alert*, *supra* note 19.

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.[42] 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:

Newly-created s. 908.301, F.S., in the bill requires the Attorney General to prescribe and provide through the Department of Legal Affairs' website a form for a person to submit a complaint alleging a violation of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes a reference to a specific immigration program, clarifying that state or local law enforcement agencies must view any information available from a federal immigration agency;
- Requires a state or local law enforcement agency to provide immediate notice of the arrest and charges of a person determined to not be a citizen of the United States and unlawfully present under federal immigration law; and
- Creates a civil cause of action for personal injury or wrongful death attributable to a state entity, local government entity, or state or local law enforcement agency not complying in an immigration detainer.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

[42] *See* "Legislative Findings and Intent" and "Reimbursement of Costs for Complying with an Immigration Detainer" sections above.