

Judiciary Committee

Thursday, March 10, 2011

2:45 PM

404 HOB

Meeting Packet

**Dean Cannon
Speaker**

**William Snyder
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, March 10, 2011 02:45 pm
End Date and Time: Thursday, March 10, 2011 05:45 pm
Location: 404 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 105 Open House Parties by Goodson
HB 4067 Residence of Clerk of the Circuit Court by McBurney
HB 4121 Clove Cigarettes by Artiles


Consideration of the following proposed committee bill(s):

PCB JDC 11-01 -- Immigration

NOTICE FINALIZED on 03/08/2011 16:15 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 105 Open House Parties
SPONSOR(S): Goodson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 1 N	Krol	Cunningham
2) Judiciary Committee		Krol TK	Havlicak 

SUMMARY ANALYSIS

Section 856.015, F.S., states that a person in control of a residence who allows an open house party to take place commits a second degree misdemeanor if they know a minor has possession of or consumed any alcoholic beverage or drug at their residence and the person fails to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

HB 105 amends present law to make a second or subsequent violation of s. 856.015, F.S., a first degree misdemeanor.

This bill also provides that any violation of s. 856.015, F.S., which results in serious bodily injury or death of the minor, will be punishable by a first degree misdemeanor.

The bill does not appear to have a fiscal impact on state government; however, the bill could have an effect on county jails.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.¹

Section 856.015, F.S., states that a person² in control of a residence who allows an open house party³ to take place commits a second degree misdemeanor if they know a minor⁴ has possession of or consumed any alcoholic beverage⁵ or drug⁶ at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.⁷ A second degree misdemeanor is punishable by up to 60 days in jail and/or a fine not exceeding \$500.⁸

The Florida Department of Law Enforcement reported the following arrests for a violation of s. 856.015, F.S.: 157 in 2008, 230 in 2009 and 174 for 2010.⁹

Proposed Changes

HB 105 amends present law to make a second or subsequent violation of s. 856.015, F.S., a first degree misdemeanor, which is punishable by up to 1 year in jail and/or a fine not to exceed \$1000.¹⁰

This bill also provides that any violation of s. 856.015, F.S., which results in serious bodily injury, as defined in s. 316.1933, F.S.,¹¹ or death of the minor, is a first degree misdemeanor.

B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

¹ Section 562.111, F.S.

² Section 856.015(1)(f), F.S., defines "person" as "an individual 18 years of age or older."

³ Section 856.015(1)(e), F.S., defines "open house party" as "a social gathering at a residence."

⁴ Section 856.015(1)(d), F.S., defines "minor" as "an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

⁵ Section 856.015(1)(a), F.S., defines "alcoholic beverage" as "distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of s. 561.01(4)(b)."

⁶ Section 856.015(1)(c), F.S., defines "drug" as "a controlled substance, as that term is defined in ss. 893.02(4) and 893.03, F.S."

⁷ Section 856.015(3), F.S., provides an exemption for the use of alcoholic beverages at legally protected religious observances or activities.

⁸ Sections 775.082, and 775.083, F.S., respectively.

⁹ Florida Department of Law Enforcement's Statistical Analysis Center, extracted January 1, 2011.

¹⁰ Sections 775.082, and 775.083, F.S., respectively.

¹¹ Section 316.1933(b), F.S., defines the term "serious bodily injury" as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The bill creates the penalty of a first degree misdemeanor for a second or subsequent violation of s. 856.015, F.S. The change in penalty for a second or subsequent violation would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

The bill also creates a penalty of a first degree misdemeanor if a violation of s. 856.015, F.S., results in seriously bodily injury or death of the minor.

The Florida Department of Law Enforcement reported the following arrests for a violation of s. 856.015, F.S.: 157 in 2008, 230 in 2009 and 174 for 2010.

This bill could have an impact on local jails.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

- In subsection 5 it is unclear who "the minor" refers to.
- Currently, the bill has an effective date of July 1, 2011. Generally, bills that impose criminal penalties are effective on October 1 so as to give adequate notice to the public, state attorneys, public defenders, etc.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to open house parties; amending s.
 3 856.015, F.S.; providing that a person who violates the
 4 open house party statute a second or subsequent time
 5 commits a misdemeanor of the first degree; providing that
 6 a person commits a misdemeanor of the first degree if the
 7 violation of the open house party statute causes serious
 8 bodily injury or death of a minor; providing criminal
 9 penalties; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsections (2) and (4) of section 856.015,
 14 Florida Statutes, are amended, and subsection (5) is added to
 15 that section, to read:

16 856.015 Open house parties.—

17 (2) A ~~No~~ person having control of any residence may not
 18 ~~shall~~ allow an open house party to take place at the said
 19 residence if any alcoholic beverage or drug is possessed or
 20 consumed at the said residence by any minor where the person
 21 knows that an alcoholic beverage or drug is in the possession of
 22 or being consumed by a minor at the said residence and where the
 23 person fails to take reasonable steps to prevent the possession
 24 or consumption of the alcoholic beverage or drug.

25 (4) Any person who violates any of the provisions of
 26 subsection (2) commits a misdemeanor of the second degree,
 27 punishable as provided in s. 775.082 or s. 775.083. A person who
 28 violates subsection (2) a second or subsequent time commits a

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29 | misdemeanor of the first degree, punishable as provided in s.
30 | 775.082 or s. 775.083.

31 | (5) If a violation of subsection (2) causes serious bodily
32 | injury, as defined in s. 316.1933, or death of the minor, it is
33 | a misdemeanor of the first degree, punishable as provided in s.
34 | 775.082 or s. 775.083.

35 | Section 2. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 105 (2011)

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	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative(s) Goodson offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line 32 and insert:

6 injury, as defined in s. 316.1933, or death, it is

7
8 -----
9 **T I T L E A M E N D M E N T**

10 Remove line 8 and insert:

11 bodily injury or death; providing criminal

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4067 Residence of Clerk of the Circuit Court

SPONSOR(S): McBurney

TIED BILLS: None IDEN./SIM. BILLS: SB 1100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
2) Judiciary Committee		Bond <i>MB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

In every county, there is a clerk of the court. Current law requires that the clerk, or a deputy employed by the clerk, must reside at the county seat or within 2 miles of the county seat.

This bill repeals the requirement that the clerk or a deputy reside within 2 miles of the county seat.

This bill does not appear to have a fiscal impact on state or local government, and will take effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 28.08, F.S., requires the clerk of the circuit court, or a deputy, to reside at the county seat or within 2 miles thereof. The law was passed in 1871.¹ The act creating the requirement included the same requirement applicable to the county sheriff. The original act required compliance within 3 months, and allowed the court to fine the clerk between \$100 and \$500 for noncompliance. It is unknown why this requirement was enacted.

This bill repeals the requirement that the clerk of the circuit court, or a deputy, must reside at the county seat or within 2 miles thereof.

B. SECTION DIRECTORY:

Section 1 repeals s. 28.08, F.S., relating to place of residence.

Section 2 provides an effective date of July 1, 2011.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹ Chapter 1851.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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2011

1 A bill to be entitled
2 An act relating to residence of the clerk of the circuit
3 court; repealing s. 28.08, F.S., relating to the clerk of
4 the circuit court's place of residence; providing an
5 effective date.

6

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

8

9 Section 1. Section 28.08, Florida Statutes, is repealed.

10

 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4121 Clove Cigarettes

SPONSOR(S): Artiles

TIED BILLS: None IDEN./SIM. BILLS: SB 1778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee		Johnson <i>KJ</i>	Havlicak <i>KH</i>
2) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill repeals s. 859.058, F.S., the statutory prohibition against the sale, use, possession, transfer, or otherwise disposing of clove cigarettes or similar products.

Section 859.058, F.S., has banned clove cigarettes since 1985. However, in practice it is as though no ban were in place. Clove cigarettes are widely available, are subject to the state excise tax, and clove cigarette packages are affixed with a state tax stamp.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Clove Cigarette Ban

Clove cigarettes, in addition to normal cigarette characteristics, are approximately one-third scented clove buds and flavoring.¹

This bill repeals s. 859.058, F.S., which states that “[n]o person shall sell, use, possess, give away, or otherwise dispose of cigarettes or similar products designed or intended for smoking, made in whole or in part from, or containing, cloves, clove oil, or eugenol, or any derivative thereof.”

Clove Cigarette Ban - History

Section 859.058, F.S., was adopted in 1985 as an amendment to H.B. 1365.² H.B. 1365 levied a tax on smokeless tobacco products and loose smoking tobacco.³ This bill repeals only the prohibition on clove cigarettes.

On August 10, 2003, the St. Petersburg Times published an article on the prohibition of clove cigarettes.⁴ It stated that clove cigarettes pose a greater health risk than normal tobacco cigarettes.⁵ The article also contained a history of the statutory ban, including the issuance of an injunction prohibiting the Division of Alcoholic Beverages and Tobacco from enforcing the statute.⁶ This injunction was reportedly issued weeks after the law was passed in 1985.⁷ The judge issuing the injunction was concerned because the law did not specify if the infraction was a civil or criminal violation or the level of such a violation; rather was silent as to how violators should be punished.⁸

Despite the injunction prohibiting the enforcement of the clove cigarette ban, the law was never removed from the statutes.

The St. Petersburg Times article also recounts the experience of an individual cited in 2003 by a sheriff's deputy for having a pack of clove cigarettes in his car.⁹ This occurred despite the pack of clove cigarettes having been purchased at a licensed tobacco distributor in Florida, including payment of the state's excise tax, and despite the presence of the "Class A" Florida tax stamp on the clove cigarette package.¹⁰

The Florida Department of Law Enforcement reports, as of February 15, 2011, no arrests have been entered in the Computerized Criminal History (CCH) database for a violation of s. 859.058, F.S. To be entered into the CCH, one would have to have been arrested and fingerprinted on a criminal charge. Similarly, FDLE reports no convictions under this statute; however there was one adjudication withheld in Volusia County in 2001.¹¹

¹ http://www.ehow.com/list_7447398_clove-cigarette-alternatives.html (last visited March 8, 2011)

² Section 2 of ch. 85-141, L.O.F.

³ Chapter 85-141, L.O.F.

⁴ http://www.sptimes.com/2003/08/10/Pasco/History_clouds_case_o.shtml (last visited March 8, 2011)

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ FDLE explains that the individual cited in the newspaper article for violations of this statute did not show up in the CCH database because they were issued a citation with a notice to appear in court. They were not formally arrested and fingerprinted.

Clove Cigarette Ban – Repeal

This bill repeals the clove cigarette ban, removing the provision from the Florida Statutes. This bill will align the statutes with state practice and with the judicial injunction prohibiting the enforcement of the ban.

B. SECTION DIRECTORY:

Section 1 repeals s. 859.058, F.S., relating to prohibition against clove cigarettes.

Section 2 provides that the act shall become effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

This bill removes a statutory provision that has been invalidated by the judicial branch.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to clove cigarettes; repealing s. 859.058,
3 F.S., relating to prohibitions against sale, use,
4 possession, transfer, or other disposing of clove
5 cigarettes or similar products; providing an effective
6 date.

7

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

9


10 Section 1. Section 859.058, Florida Statutes, is repealed.
11 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 11-01 Immigration

SPONSOR(S): Judiciary Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Thomas	Havlicak 

SUMMARY ANALYSIS

The bill creates the Florida Immigration Enforcement Act. The Act:

- prohibits state and local governments from limiting the enforcement of federal immigration laws or restricting the maintaining or exchanging of information regarding immigration status;
- authorizes a law enforcement officer to determine immigration status of any person who is the subject of a criminal investigation where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States; requires such verification for persons who have been arrested where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States;
- provides that an alien who is in Florida and is unlawfully present in the United States commits a misdemeanor of the second degree;
- prohibits law enforcement officers from using race, color or national origin as a determining factor in enforcement;
- requires every private employer to use the federal E-Verify system to verify the employment eligibility of each employee on or after July 1, 2012 for employers with 100 or more employees, and for all other employers on July 1, 2013;
- provides that an employer may not knowingly employ an unauthorized alien;
- creates a "safe-harbor" provision to protect employers who use E-Verify by establishing a rebuttable presumption that an employer using E-Verify did not knowingly employ an unauthorized alien; and
- authorizes the filing of complaints with the licensing agency, state attorney or attorney general; provides for suspension of license and civil penalties for businesses knowingly employing an unauthorized alien.

The bill further requires public employers to use the federal E-Verify system to verify the employment eligibility of all newly hired employees; prohibits public employers and their contractors and subcontractors from knowingly employing an unauthorized alien; and prohibits public employers from entering into contracts for services unless the contractor and its subcontractors register with and participate in the federal E-Verify system.

The bill requires a court, when determining whether to release a defendant on bail or other conditions, to consider the defendant's legal residency status in the United States.

The bill authorizes a law enforcement officer to make a warrantless arrest if probable cause exists that the person to be arrested is unlawfully in the United States.

The bill provides for enhanced criminal penalties when a criminal offense is committed by an alien unlawfully present in the United States.

There may be a fiscal impact on local governments because the bill creates a new misdemeanor offense that may impact current jail capacity; however, the impact is indeterminate. There may be a fiscal impact to state and local licensing agencies should they be called upon to investigate and enforce employee verification requirements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Immigration into the United States is largely governed by the Immigration and Nationality Act ("INA").¹ The INA utilizes several federal agencies, including the Department of Justice, Department of Homeland Security (DHS), and Department of State to administer and enforce federal immigration policies.² An alien is a person present in the United States who is not a citizen of the United States.³ The INA provides for the conditions whereby an alien may be admitted to and remain in the United States⁴ and provides a registration system to monitor the entry and movement of aliens in the United States.⁵ An alien may be subject to removal for certain actions, including entering the United States without inspection, presenting fraudulent documents at a port of entry, health reasons, violating the conditions of admission, or engaging in certain other proscribed conduct.⁶

Various categories of legal immigration status exist that include students, workers, tourists, research professors, diplomats, and others.⁷ These categories are based on the type and duration of permission granted to be present in the United States, and expire based on those conditions. All lawfully present aliens must have appropriate documentation based on status.⁸

It has been reported that an estimated 825,000 unauthorized immigrants were present in Florida in 2010, representing 4.5% of Florida's population of 18,492,000, a decline from 1.05 million in 2007.⁹ Nevertheless, Florida continued to rank third among states in the size of its unauthorized immigrant population.¹⁰ Of Florida's 9,064,000 total work force, 600,000 are unauthorized immigrants, which represents 6.6% of the work force (above the national average of 5.2%).¹¹

GOVERNOR'S EXECUTIVE ORDER

On January 4, 2011, Governor Scott issued Executive Order 11-02. This order

- Directs "all agencies under the direction of the Governor to verify the employment eligibility of all current and prospective agency employees through the U.S. Department of Homeland Security's E-Verify system."
- Directs "all agencies under the direction of the Governor to include, as a condition of all state contracts, an express requirement that contractors utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the contract term by the contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by the contractor to perform work pursuant to the contract with the state agency."
- Encourages cabinet agencies to use E-Verify.

¹ 8 U.S.C. s. 1101, et seq.

² See, e.g., id. ss. 1103-1104.

³ Id. s. 1101(a)(3).

⁴ Id. ss. 1181-1182, 1184.

⁵ Id. ss. 1201(b), 1301-1306.

⁶ Id. ss. 1225, 1227, 1228, 1229, 1229c, 1231.

⁷ Id. ss. 201 – 210.

⁸ Id. s. 221.

⁹ Jeffrey S. Passel and D'Vera Cohn. "Unauthorized Immigrant Population: National and State Trends, 2010." Washington, DC: Pew Hispanic Center (February 1, 2011).

¹⁰ Id.

¹¹ Id.

ENFORCEMENT - State and local law enforcement officers do not inherently have the authority to enforce federal immigration laws. The INA authorizes areas of cooperation in enforcement between federal, state and local government authorities.¹²

The Secretary of DHS, acting through the Assistant Secretary of Immigration and Customs Enforcement ("ICE"), may enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer.¹³ ICE trains and cross-designates state and local officers to enforce immigration laws as authorized through section 287(g) of the Immigration and Nationality Act. An officer who is trained and cross-designated through the 287(g) program can interview and initiate removal proceedings of aliens processed through the officer's detention facility. Local law enforcement agencies without a 287(g) officer must notify ICE of a foreign-born detainee and an ICE officer must conduct an interview to determine the alienage of the suspect and initiate removal proceedings, if appropriate. Since January 2006, the 287(g) program has been credited with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally.¹⁴ Florida currently has 4 law enforcement agencies that participate in the 287(g) program: the Florida Department of Law Enforcement (FDLE), and the sheriff's offices of Bay, Collier, and Duval counties.

Within the Department of Homeland Security is the Law Enforcement Support Center ("LESC"), administered by ICE, answering queries from state and local officials regarding immigration status. A law enforcement agency can check the immigration status of an arrestee or prisoner through LESL twenty-four hours a day, seven days a week. Significant statistics from LESL for FY 2008:

- The number of requests for information sent to LESL increased from 4,000 in FY 1996 to 807,106 in FY 2008.
- During FY 2008, special agents at LESL placed 16,423 detainers on foreign nationals wanted by ICE for criminal and immigration violations.
- The records of more than 250,000 previously deported aggravated felons, immigration fugitives and wanted criminals are now in the NCIC system.
- Special agents at LESL confirmed 8,440 NCIC hits during FY 2008.¹⁵

EMPLOYMENT - The federal Immigration Reform and Control Act of 1986 (IRCA)¹⁶ made it illegal for any U.S. employer to knowingly:

- Hire, recruit or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or refer for a fee, any person (citizen or alien) without following the record keeping requirements of the Act.¹⁷

The law established a procedure that employers must follow to verify that employees are authorized to work in the United States.¹⁸ The procedure requires employees to present documents that establish

¹² See *id.* s. 1357(g)(1)-(9) (permitting the Department of Homeland Security to enter into agreements whereby appropriately trained and supervised state and local officials can perform certain immigration responsibilities); *id.* s. 1373 (establishing parameters for information-sharing between state and local officials and federal immigration officials); *id.* s. 1252c (authorizing state and local law enforcement officials to arrest aliens unlawfully present in the United States who have previously been convicted of a felony and deported).

¹³ Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296.

¹⁴ Details taken from information provided on the website of ICE - <http://www.ice.gov/news/library/factsheets/287g.htm> (last visited March 8, 2011).

¹⁵ Details taken from information provided on the website of ICE - <http://www.ice.gov/news/library/factsheets/lesc.htm> (last visited March 8, 2011).

¹⁶ Public Law 99-603, 100 Stat. 3359.

¹⁷ 8 U.S.C. s. 1324a.

both the worker's identity and eligibility to work, and requires employers to complete an "I-9" form for each new employee hired.¹⁹ The IRCA provides sanctions to be implemented against employers who knowingly employ aliens who are not authorized to work.²⁰ Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.²¹ The United States Citizenship and Immigration Services (USCIS - formerly the INS and now part of the Department of Homeland Security) enforces these provisions.²²

E-Verify

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA")²³, which, among other things, created various employment eligibility verification programs, including the Basic Pilot program. Originally, the Basic Pilot program (now referred to as E-Verify) was available in five of the seven States that had the highest populations of unauthorized aliens and initially authorized for only four years. However, Congress has consistently extended the program's life. It expanded the program in 2003, making it available in all fifty States. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.²⁴

E-Verify allows employers to ensure that they are hiring authorized workers by electronically comparing the identification and authorization information that employees provide with information contained in federal Social Security Administration ("SSA") and Department of Homeland Security ("DHS") databases. To participate in E-Verify, the employer must sign a memorandum of understanding that governs the system's operation. After enrolling in E-Verify, employers must still complete the I-9 verification process.

If the information that the employer submits matches the records in the federal databases, E-Verify immediately notifies the employer that the individual is employment authorized. If the information the employee has provided does not match the information in the federal databases, E-Verify issues a tentative nonconfirmation. Before issuing a tentative nonconfirmation, however, E-Verify will ask the employer to confirm that the information submitted is accurate to avoid inaccurate results based on typographical errors.

If a tentative nonconfirmation is issued, the employee is notified and given an opportunity to contact SSA or DHS to resolve any potential problem. Until there is a final determination, the employer may not terminate the employee for being unauthorized. Upon receipt of a final nonconfirmation, an employer must terminate the employee per the E-Verify memorandum of understanding. Other information regarding E-Verify:

- Free to employers; must register and agree to an MOU.
- Used by more than 243,000 employers.
- On average, 1,000 new employers enroll each week with the program.
- In FY 2010, the E-verify Program ran more than 16 million queries.²⁵

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* s. 1324a(a)(1)-(2).

²¹ *Id.* s. 1324c.

²² *Id.* s. 1324a.

²³ Public Law 104-208.

²⁴ History taken from information provided on the website of the Department of Homeland Security.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM1000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD> (last visited March 8, 2011).

²⁵ Program description taken from information provided on the website of the Department of Homeland Security.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a16988e60a405110VgnVCM10004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD> (last visited March 8, 2011).

E-Verify was the subject of an independent evaluation in 2009. This study concluded that E-Verify was 95.9% accurate in its initial determination regarding employment authorization.²⁶ E-Verify participants reported minimal costs to participate and were generally satisfied with the program.²⁷

The following statistics, updated by the United States Citizenship and Immigration Services within the Department of Homeland Security based on E-Verify cases in Fiscal Year 2010 (October 2009 through September 2010) found:

- Most employees are automatically confirmed as work authorized.
 - 98.3 percent of employees are automatically confirmed as authorized to work ("work authorized") either instantly or within 24 hours, requiring no employee or employer action.
 - 1.7 percent of employees receive initial system mismatches.
- Of the 1.7% of employees who receive initial system mismatches:
 - 0.3 percent are later confirmed as work authorized after contesting and resolving the mismatch.
 - 1.43 percent are not found work authorized.
- Of the 1.43% of employees not found to be work authorized:
 - 1.3 percent of employees who receive initial mismatches do not contest the mismatch either because they do not choose to or are unaware of the opportunity to contest and as a result are not found work authorized.
 - 0.01 percent of employees who receive initial mismatches contest the mismatch and are not found work authorized.
 - 0.14 percent of employees with initial mismatches are unresolved because the employer closed the cases as "self-terminated" or as requiring further action by either the employer or employee at the end of FY10.²⁸

UNAUTHORIZED ALIENS IN PRISONS - Information is not available to determine the total number of criminal aliens who are in jails and prisons in the United States. However, ICE estimates that 300,000 to 450,000 criminal aliens who are potentially removable are detained each year nationwide at federal, state, and local prisons and jails. These include illegal aliens in the United States who are convicted of any crime and lawful permanent residents who are convicted of a removable offense.

Unauthorized Aliens in Florida Prisons – Florida Model Jail Standard 4.01 provides in part “[w]hen a foreign citizen is received/admitted to a detention facility for any reason, the detention facility shall make notification using the guidelines as set forth by the U.S. Department of State.”²⁹ Generally, when a person is booked into a local jail, jail officials use the information given by the detainee to help determine the person’s citizenship status. If a detainee admits he or she is not a U.S. citizen, or if there is reason to believe a detainee is not a U.S. citizen, jail officials attempt to determine the detainee’s citizenship status by submitting the detainee’s identification information through LESC.

ICE agents working in Florida prison reception centers investigate newly admitted inmates to identify those who may be aliens. If ICE notifies the Department of Corrections that they want to take an alien inmate into custody, the inmate is released into ICE custody when his or her sentence is completed. ICE may refuse to take custody of an alien inmate in some cases, such as when the alien is from a

²⁶ United States Citizenship and Immigration Services; 2009 Westat Report at 116. http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf (last visited March 8, 2011).

²⁷ 2009 Westat Report at 169.

²⁸ From information provided on the website of U.S. Citizenship and Immigration Services of Department of Homeland Security <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=7c579589cdb76210VgnVCM10000b92ca60aRCRD&vgnnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD> (last visited March 8, 2011).

²⁹ http://www.flsheriffs.org/our_program/florida-model-jail-standards/?index.cfm/referer/content.contentList/ID/408/ (last visited March 8, 2011).

country to which he or she cannot be deported. Most alien inmates who complete their sentences in Florida prisons are released to ICE for further immigration processing, including possible deportation. These inmates are deported promptly after release from prison if they have been ordered out of the country and have no further appeals of their final deportation order.

The chart below shows the number of alien inmates released from Florida custody to ICE from 2000 through 2007:

YEAR OF RELEASE	EXPIRATION OF SENTENCE	COMMUNITY SUPERVISION	TOTAL
2000	433	169	602
2001	730	326	1,056
2002	793	323	1,116
2003	798	383	1,181
2004	752	348	1,100
2005	746	326	1,072
2006	754	354	1,108
2007	799	321	1,120
2008	885	337	1,222
TOTAL	6,690	2,887	9,577

Confirmed Aliens in Florida Prisons as of November 30, 2010³⁰

PRIMARY OFFENSE	NUMBER OF CONFIRMED ALIENS	Percent
MURDER/MANSLAUGHTER	1,278	22.66
SEXUAL/LEWD BEHAVIOR	1,000	17.73
ROBBERY	433	7.68
VIOLENT, OTHER	765	13.56
BURGLARY	733	12.99
PROPERTY THEFT/FRAUD/DAMAGE	220	3.90
DRUGS	976	17.30
WEAPONS	86	1.52
OTHER	150	2.66
TOTAL	5,641	100.00

STATE AND LOCAL RESTRICTIONS

Current federal law prohibits any federal, state, or local law from prohibiting or restricting any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status of an individual.³¹ Likewise, no person or agency may prohibit or restrict a federal, state, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

³⁰ Supplied by the Florida Department of Corrections.

³¹ 8 U.S.C. s. 1373(a).

- Maintaining such information.
- Exchanging such information with any other Federal, State, or local government entity.³²

WARRANTLESS ARRESTS

Section 901.15, F.S., delineates when a warrant is not required for a law enforcement officer to arrest a person. Generally, a warrant is not required when the offense is committed in the presence of the officer or, if the offense is a felony, the officer reasonably believes that the person committed or is committing the offense. In addition, the statute provides certain specific additional situations where a warrant is not needed.

CRITERIA FOR BAIL DETERMINATION

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial, including requiring the payment of bail. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

When determining whether to release a defendant on bail or other conditions, s. 903.046, F.S., requires courts to consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of chapter 874 (criminal gang enforcement) or alleged to be subject to enhanced punishment under chapter 874.³³

EFFECT OF THE BILL

SHORT TITLE AND INTENT

The bill provides that ss. 448.081, 448.082, 448.083, 448.084, and 448.09, F.S., are entitled the Florida Immigration Enforcement Act. The bill provides a legislative finding that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Florida.

STATE AND LOCAL GOVERNMENT ENFORCEMENT

The newly created provisions in s. 448.083(1), F.S., prohibit all state and local governments from limiting or restricting the enforcement of federal immigration laws to the full extent permitted by federal

³² 8 U.S.C. s. 1373(b).

³³ Section 903.046, F.S.

law. These provisions also prohibit all state and local governments from restricting the sending, receiving or maintaining information relating to a person's immigration status or restricting the exchanging of such information for:

- Determining eligibility for any public benefit, service or license provided by the federal government or any state or local government.
- Verifying any claim of residence or domicile if determination of residence or domicile is required under federal law, the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding.
- If the person is an alien, determining whether the person is in compliance with the registration laws prescribed by the Federal Immigration and Nationality Act.
- Pursuant to 8 United States Code s. 1373 and 8 United States Code s. 1644.

The Attorney General is authorized to enforce these provisions if there is reasonable cause to believe they have been violated. If a violation is found, the court shall order a civil penalty of not less than five hundred dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action by the Attorney General. Any civil penalty collected must be deposited into the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund created pursuant to s. 943.042, F.S.

The newly created provisions in s. 448.083(2), F.S., authorize a law enforcement officer to determine immigration status of any person who is the subject of a criminal investigation where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States. A law enforcement officer or law enforcement agency must perform such verification if there is reasonable suspicion that a person who has been arrested is an alien and is unlawfully present in the United States. The verification status must be verified with the federal government pursuant to 8 United States Code s. 1373(c).

If the person's status is reported as unlawfully present in the United States, the officer or law enforcement agency must, as soon as practicable, report that person to the United States Immigration and Customs Enforcement or the United States Customs and Border Protection. A correctional facility is to immediately notify ICE or the United States Customs and Border Protection prior to the discharge of an alien unlawfully present in the United States.

A law enforcement officer may not use race, color or national origin as a determining factor in enforcement of these provisions. An alien's immigration status must be determined by a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status or the United States Immigration and Customs Enforcement or the United States Customs and Border Protection. The Act is to be implemented consistent with federal laws, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

The newly created provisions in s. 448.083(3), F.S., create a new criminal penalty. It provides that an alien who is in Florida and is unlawfully present in the United States commits a misdemeanor of the second degree. Any person convicted of this offense may not be fined more than \$100, and for a first violation, may not be sentenced to more than twenty days in jail. For a second or subsequent violation the court may not sentence the person to more than thirty days in jail.

E-VERIFY

Private Employers

The newly created provisions in s. 448.084, F.S., require every private employer to use the federal E-Verify system to verify the employment eligibility of each newly hired employee. However, an employer is not required to verify the immigration status of a continuing employee hired before the date of the applicability of the requirement. Employers with 100 or more employees must comply with this

verification requirement by July 1, 2012. All other employers must comply by July 1, 2013. The bill provides that a private employer may not knowingly employ an unauthorized alien. For purposes of these requirements, the term "private employer" does not include public employers, the occupant or owner of a private residence that hires casual domestic labor to perform work customarily performed by a homeowner entirely within the private residence, and labor and services provided to a person or entity by a licensed independent contractor.

The bill creates a rebuttable presumption that an employer using E-Verify has not knowingly employed an unauthorized alien. Any employer that complies in good faith with the verification provisions establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. An employer is considered to have complied with these requirements, notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

The bill provides that a complaint may be filed by a person who has actual or constructive knowledge that an employer employs, or has within the last 90 days employed, an unauthorized alien. The complaint may be filed with the state attorney, the attorney general, or the agency that issued a license to the employer. A complaint may not be based on race, color, or national origin, except to the extent permitted by the United States Constitution or the State Constitution. Any person who knowingly files a false and frivolous complaint commits a misdemeanor of the second degree.

The licensing agency includes any agency, department, board, or commission of the state or a county, municipality, or political subdivision that issues a license for the purpose of operating a business in this state. A "license" includes a license, permit, certificate, approval, registration, charter, or similar form of authorization required by law and issued by a state or local agency for the purpose of operating a business and includes, but is not limited to:

1. Articles of incorporation.
2. A certificate of partnership, a partnership registration, or articles of organization.
3. A grant of authority issued pursuant to state or federal law.
4. A transaction privilege tax license.

If the licensing agency has reasonable cause to believe that the employer has employed an unauthorized alien, the entity must notify the local law enforcement agency of the presence of the unauthorized alien in the jurisdiction. If a licensing agency finds that an employer has hired an unauthorized alien, the agency shall order the employer to terminate the employment of all unauthorized aliens and file a sworn affidavit with the agency within 10 days after the receipt of the order. The affidavit must state that the employer has corrected the violation. If the employer fails to file the required affidavit, the agency must suspend all applicable licenses held by the employer until the sworn affidavit is filed. Upon finding a second or subsequent violation during a 2-year period, the agency must suspend all applicable licenses for at least 30 days.

If a state attorney or attorney general finds that an employer has hired an unauthorized alien, it may commence a civil or administrative action to enforce these employment provisions. If a court finds that an employer has hired an unauthorized alien, the court must fine the employer not less than five hundred dollars and not more than five thousand dollars. Any such penalty collected must be deposited into the the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund pursuant to s. 943.042, F.S.

Public Employers

The newly created provisions in s. 287.135, F.S., require public employers, effective January 1, 2012, to use the federal E-Verify system to verify the employment eligibility of each newly hired employee. However, a public employer is not required to verify the immigration status of a continuing employee hired before January 1, 2012. The bill provides that a public employer may not knowingly employ an

unauthorized alien. A "public employer" includes any department, agency, county, municipality, or political subdivision of the state.

The bill creates a rebuttable presumption that a public employer using E-Verify has not knowingly employed an unauthorized alien. Any public employer that complies in good faith with the verification provisions establishes an affirmative defense that the public employer did not knowingly employ an unauthorized alien. A public employer is considered to have complied with these requirements, notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

Public Contracts

The newly created provisions in ss. 287.135 and 337.163, F.S., require all public contracts entered into for the physical performance of services on, or after, January 1, 2012, to require the contractor and subcontractors to register and participate in the E-Verify system. These provisions require all such contractors and subcontractors to use the federal E-Verify system and prohibit them from knowingly employing an unauthorized alien. The bill creates a rebuttable presumption that such contractors and subcontractors using E-Verify have not knowingly employed an unauthorized alien. Any such contractor or subcontractor that complies in good faith with the verification provisions establishes an affirmative defense that the contractor or subcontractor did not knowingly employ an unauthorized alien. A contractor or subcontractor is considered to have complied with these requirements, notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

If a contractor knows that a subcontractor is not in compliance with the E-Verify requirements, it must terminate the contract with the subcontractor. If a public employer knows that a contractor is knowingly in violation of the E-Verify requirements, it must immediately terminate the contract with the contractor and the contractor is not eligible for public contracts for 1 year after the date of termination. If the public employer has knowledge that a subcontractor is in violation of the E-Verify requirements, and the contractor is otherwise in compliance, the public employer must promptly notify the contractor and order the contractor to terminate the contract with the noncompliant subcontractor. Contracts terminated pursuant to these provisions are not to be considered a breach of contract.

WARRANTLESS ARREST

The bill amends s. 901.15, F.S., to authorize a law enforcement officer to make a warrantless arrest if probable cause exists that the person to be arrested is unlawfully in the United States.

BAIL DETERMINATION

The bill amends s. 901.15, F.S., to require a court, when determining whether to release a defendant on bail or other conditions, to consider the defendant's legal residency status in the United States.

ENHANCED CRIMINAL PENALTIES

The bill creates s. 921.245, F.S., to provide for enhanced criminal penalties when an offense is committed by an alien unlawfully present in the United States. If the fact finder determines beyond a reasonable doubt that the the defendant committed a charged criminal offense while the defendant is an alien and is unlawfully present in the United States, the penalty for any felony or misdemeanor, or any delinquent act or violation of law that would be a felony or misdemeanor if committed by an adult, may be enhanced. The enhancement affects only the applicable statutory maximum penalty, not the minimum. The enhancement is:

- A misdemeanor of the second degree may be punished as if it were a misdemeanor of the first degree.
- A misdemeanor of the first degree may be punished as if it were a felony of the third degree.
- A felony of the third degree may be punished as if it were a felony of the second degree.
- A felony of the second degree may be punished as if it were a felony of the first degree.
- A felony of the first degree may be punished as if it were a life felony.

Penalties for criminal offenses are generally provided in ss. 775.082 and 775.083, F.S. 775.082. The penalties are as follows:

775.082, F.S. - Incarceration

- (3)(a)3. for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.
- (3)(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.
- (c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.
- (d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.
- (4) (a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;
- (b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

775.083, F.S. - Fines

- (1) (a) \$15,000, when the conviction is of a life felony.
- (b) \$10,000, when the conviction is of a felony of the first or second degree.
- (c) \$5,000, when the conviction is of a felony of the third degree.
- (d) \$1,000, when the conviction is of a misdemeanor of the first degree.
- (e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

EFFECTIVE DATE

The bill provides an effective date of October 1, 2011, except as otherwise provided in the bill itself.

B. SECTION DIRECTORY:

Section 1 creates s. 448.081, F.S., relating to a short title.

Section 2 creates s. 448.082, F.S., relating to intent.

Section 3 creates s. 448.083, F.S., relating to cooperation and assistance in enforcement of immigration laws.

Section 4 creates s. 448.084, F.S., relating to use of E-Verify system required for private employers; licensing enforcement.

Section 5 creates s. 287.135, F.S., relating to verification of immigration status; public employers.

Section 6 creates s. 337.163, F.S., relating to compliance with federal work-authorization program.

Section 7 amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 8 amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 9 creates s. 921.245, F.S., relating to Illegal alien multiplier; enhanced penalties.

Section 10 provides an effective date.

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 government revenues.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government expenditures. See D. FISCAL COMMENTS below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have an indeterminate fiscal impact on local government expenditures. See D. FISCAL COMMENTS below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The mandatory use of E-Verify by all private employers will have an impact on the private sector. However, there is no fee for the use of E-Verify and employers are already required to verify immigration status of employees.

Requiring public contractors and subcontractors to use E-Verify may have an economic impact. However, the Governor's Executive Order has already implemented this requirement for much of state government.

The fiscal impact on the private sector is not known. Private contractors and subcontractors not presently in compliance with the federal work authorization program may have to expend funds to come into compliance.

D. FISCAL COMMENTS:

LAW ENFORCEMENT - The determination of a person's immigration status may have some fiscal impact. If the person's status is reported as unlawfully present in the United States, the officer or law enforcement agency must report that person to ICE or Customs and Border Protection. A correctional facility must immediately notify ICE or the Customs and Border Protection prior to the discharge of an alien unlawfully present in the United States. These provisions may have a slight impact on a local or state law enforcement agency, however, the determination of immigration status is permissive for persons under criminal investigation. Also, it is understood that most law enforcement agencies are presently doing this at the time of arrest. In addition, there is not a fee for the verification from the federal government. It is anticipated that this can be implemented within existing resources.

EMPLOYMENT VERIFICATION - There is more uncertainty in regard to enforcing the E-Verify provisions for private employers. It is unknown how many complaints may be made to licensing entities, state attorneys, and the attorney general. Depending on this volume and the compliance rate of employers, there may be an impact on agency workload. However, since employee verification is an

existing federal requirement on employers (though using E-Verify is optional), it is anticipated that compliance with this bill by employers will be high.

The bill creates a second degree misdemeanor for illegal aliens present in Florida. This may have an impact on local jails.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue. See II.D. FISCAL COMMENTS above.

2. Other:

States are generally free to legislate in areas not controlled by federal law. "Congress has the power under the Supremacy Clause of Article VI of the [United States] Constitution to preempt state law."³⁴ Provisions similar to those in this bill have been passed in other states and have faced legal challenges under the federal preemption doctrine. For instance, the employment verification provision in Arizona's 2007 law is currently pending before the United States Supreme Court.³⁵

In determining whether a state law is preempted, "the purpose of Congress is the ultimate touchstone."³⁶ In the Immigration Reform and Control Act of 1986, Congress provided, "[t]he provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."³⁷ The provisions relating to employment verification and checking the legal status of one who is the subject of a criminal investigation may face similar legal challenges under the federal preemption doctrine.

B. RULE-MAKING AUTHORITY:

The bill does not require any rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁴ *Northwest Central Pipeline Corp. v. State Corp. Comm'n of Kansas*, 489 U.S. 493, 509 (1989).

³⁵ See *Chamber of Commerce of the United States, et. al. v. Whiting* (Case No. 09-115; argued before the U.S. Supreme Court on December 8, 2010).

³⁶ *Altria Group, Inc. v. Good*, 129 S.Ct. 538, 543 (2008).

³⁷ See 8 U.S.C. § 1324a(h)(2)—Unlawful employment of aliens.

29 employers that the employer did not knowingly employ an
 30 unauthorized alien; authorizing an employer or employee to
 31 seek an injunction under certain circumstances;
 32 authorizing certain persons to file a complaint with the
 33 state attorney or attorney general alleging that an
 34 employer has employed an unauthorized alien; authorizing
 35 enforcement by the state attorney and attorney general;
 36 providing civil penalties; prohibiting the filing of a
 37 complaint based on race, color, or national origin;
 38 providing that a person who knowingly files a false and
 39 frivolous complaint commits a misdemeanor of the second
 40 degree; providing for construction of the act; creating s.
 41 287.135, F.S.; defining terms; requiring public employers
 42 to use the federal E-Verify system to verify the
 43 employment eligibility of each employee; prohibiting a
 44 public employer from knowingly employing an unauthorized
 45 alien; creating a rebuttable presumption for certain
 46 public employers that the public employer did not
 47 knowingly employ an unauthorized alien; prohibiting public
 48 employers from entering into a contract for contractual
 49 services with contractors that are not registered and
 50 participating in the federal E-Verify system; prohibiting
 51 certain contractors and subcontractors from knowingly
 52 employing an unauthorized alien; providing procedures and
 53 requirements; creating a rebuttable presumption that
 54 certain contractors and subcontractors did not knowingly
 55 employ an unauthorized alien; creating s. 337.163, F.S.;

56 providing definitions; prohibiting the Department of

57 Transportation from entering into certain contracts with
 58 contractors that are not registered and participating in
 59 the federal E-Verify system; prohibiting certain
 60 contractors and subcontractors from knowingly employing an
 61 unauthorized alien; providing procedures and requirements;
 62 creating a rebuttable presumption that certain contractors
 63 and subcontractors did not knowingly employ an
 64 unauthorized alien; amending s. 901.15, F.S.; providing an
 65 additional instance whereby an arrest may be made by a law
 66 enforcement officer without a warrant; amending s.
 67 903.046, F.S.; providing additional criteria for the court
 68 to consider as to whether to release a defendant on bail
 69 or other conditions; creating s. 921.245, F.S.; providing
 70 for enhanced criminal penalties when an offense is
 71 committed by an alien unlawfully present in the United
 72 States; providing an effective date.

73

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

75

76 Section 1. Section 448.081, Florida Statutes, is created
 77 to read:

78 448.081 Short title.—Section 448.081 through s. 448.09 may
 79 be cited as the “Florida Immigration Enforcement Act.”

80 Section 2. Section 448.082, Florida Statutes, is created
 81 to read:

82 448.082 Intent.-- The Legislature finds that there is a
 83 compelling interest in the cooperative enforcement of federal
 84 immigration laws throughout all of Florida. The Legislature

85 declares that the intent of this act is to discourage and deter
 86 the unlawful entry and presence of aliens in Florida. The
 87 provisions of this act are intended to work together to
 88 accomplish this purpose.

89 Section 3. Section 448.083, Florida Statutes, is created
 90 to read:

91 448.083 Cooperation and assistance in enforcement of
 92 immigration laws.--

93 (1)(a) No official or agency of this state or a county,
 94 municipality or other political subdivision of this state may
 95 limit or restrict the enforcement of federal immigration laws to
 96 less than the full extent permitted by federal law.

97 (b) Except as provided in federal law, officials or
 98 agencies of this state and counties, municipalities and other
 99 political subdivisions of this state may not be prohibited or in
 100 any way be restricted from sending, receiving or maintaining
 101 information relating to the immigration status, lawful or
 102 unlawful, of any individual or exchanging that information with
 103 any other federal, state or local governmental entity for the
 104 following official purposes:

105 1. Determining eligibility for any public benefit, service
 106 or license provided by the federal government, the state, or any
 107 county, municipality or other political subdivision of this
 108 state.

109 2. Verifying any claim of residence or domicile if
 110 determination of residence or domicile is required under federal
 111 law, the laws of this state or a judicial order issued pursuant
 112 to a civil or criminal proceeding in this state.

113 3. If the person is an alien, determining whether the
 114 person is in compliance with the federal registration laws
 115 prescribed by Title II, Chapter 7 of the Federal Immigration and
 116 Nationality Act.

117 4. Pursuant to 8 United States Code s. 1373 and 8 United
 118 States Code s. 1644.

119 (c)1. The Attorney General may enforce the protections of
 120 this subsection if there is reasonable cause to believe that
 121 this subsection has been violated and may commence a civil or
 122 administrative action and seek such other relief as may be
 123 appropriate. If there is a judicial finding that an entity has
 124 violated this subsection, the court shall order that the entity
 125 pay a civil penalty of not less than five hundred dollars and
 126 not more than five thousand dollars for each day that the policy
 127 has remained in effect after the filing of an action pursuant to
 128 this subsection.

129 2. The court shall collect the civil penalty prescribed in
 130 subparagraph 1. and deposit the moneys in the Violent Crime
 131 Investigative Emergency and Drug Control Strategy Implementation
 132 Account within the Department of Law Enforcement Operating Trust
 133 Fund pursuant to s. 943.042.

134 (2)(a)1. For any person who is the subject of a criminal
 135 investigation by a law enforcement official or a law enforcement
 136 agency of this state or of a county, municipality or other
 137 political subdivision of this state where reasonable suspicion
 138 exists that the person is an alien and is unlawfully present in
 139 the United States, a reasonable attempt may be made to determine
 140 the immigration status of the person.

141 2. For any person who is arrested by a law enforcement
 142 official or a law enforcement agency of this state or of a
 143 county, municipality or other political subdivision of this
 144 state, where reasonable suspicion exists that the person is an
 145 alien and is unlawfully present in the United States, a
 146 reasonable attempt shall be made to determine the immigration
 147 status of the person before release.

148 (b) Immigration status shall be verified under this
 149 subsection with the federal government pursuant to 8 United
 150 States Code s. 1373(c). If the person's status is reported by
 151 the federal government as unlawfully present in the United
 152 States, the law enforcement official or law enforcement agency
 153 must, as soon as practicable, report that person to the United
 154 States Immigration and Customs Enforcement or the United States
 155 Customs and Border Protection.

156 (3) An alien who is in Florida and is unlawfully present
 157 in the United States commits a misdemeanor of the second degree
 158 punishable as provided in s. 775.082 and by a fine not to exceed
 159 \$100. For a first violation of this paragraph the court shall
 160 not sentence the person to more than twenty days in jail. For a
 161 second or subsequent violation the court shall not sentence the
 162 person to more than thirty days in jail.

163 (4) A state or local correctional facility shall
 164 immediately notify the United States Immigration and Customs
 165 Enforcement or the United States Customs and Border Protection
 166 prior to the discharge from imprisonment of an alien unlawfully
 167 present in the United States.

168 (5) In the implementation of this section, an alien's
 169 immigration status may be determined by:

170 (a) A law enforcement officer who is authorized by the
 171 federal government to verify or ascertain an alien's immigration
 172 status.

173 (b) The United States Immigration and Customs Enforcement
 174 or the United States Customs and Border Protection pursuant to 8
 175 United States Code s. 1373(c).

176 (6) This section shall be implemented in a manner
 177 consistent with federal laws regulating immigration, protecting
 178 the civil rights of all persons and respecting the privileges
 179 and immunities of United States citizens. A law enforcement
 180 official or agency of this state or a county, municipality or
 181 other political subdivision of this state may not consider race,
 182 color or national origin in the enforcement of this section
 183 except to the extent permitted by the United States Constitution
 184 or the Florida Constitution.

185 Section 4. Effective July 1, 2012, section 448.084,
 186 Florida Statutes, is created to read:

187 448.084 Use of E-Verify system required for private
 188 employers; licensing enforcement.—

189 (1) DEFINITIONS.—As used in this section, the term:

190 (a) "Agency" means an agency, department, board, or
 191 commission of this state or a county, municipality, or political
 192 subdivision issuing a license for the purpose of operating a
 193 business in this state.

194 (b) "E-Verify system" means the Employment Authorization
 195 Program, formerly the "Basic Pilot Program," under Pub. L. No.

196 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 197 30, 1996), as amended, or any successor program designated by
 198 the federal government for verification that an employee is an
 199 employment-authorized alien.

200 (c) "Employee" means any person who performs employment
 201 services in this state for an employer pursuant to an employment
 202 relationship between the person and employer. An employee does
 203 not include an independent contractor.

204 (d) "Employer" means any person or entity transacting
 205 business in this state that employs individuals. The term does
 206 not include:

- 207 1. A government employer;
- 208 2. The occupant or owner of a private residence who hires
 209 casual domestic labor to perform work customarily performed by a
 210 homeowner entirely within a private residence; or
- 211 3. That portion of labor and services provided to a person
 212 or entity by a licensed independent contractor.

213 (e) "License" means a license, permit, certificate,
 214 approval, registration, charter, or similar form of
 215 authorization required by law and issued by an agency for the
 216 purpose of operating a business. A license includes, but is not
 217 limited to:

- 218 1. Articles of incorporation.
- 219 2. A certificate of partnership, a partnership
 220 registration, or articles of organization.
- 221 3. A grant of authority issued pursuant to state or
 222 federal law.
- 223 4. A transaction privilege tax license.

224 (f) "Unauthorized alien" means an alien who is not
 225 authorized under federal law to be employed in the United
 226 States, as described in 8 United States Code s. 1324a(h)(3).
 227 This term shall be interpreted consistently with that section
 228 and any applicable federal rules or regulations.

229 (g) "Knowingly employ an unauthorized alien" has the same
 230 meaning as prescribed in 8 United States Code s. 1324a. The term
 231 shall be interpreted consistently with 8 United States Code s.
 232 1324a and any federal rule or regulation applicable to the
 233 unlawful employment of aliens.

234 (2) VERIFICATION OF EMPLOYMENT ELIGIBILITY; SUSPENSION OF
 235 LICENSE.-

236 (a) Every employer shall use the E-Verify system to verify
 237 the employment eligibility of all newly hired employees within
 238 the period stipulated by federal law or regulations after the
 239 hiring of the employee. However, an employer is not required to
 240 verify the employment eligibility of a continuing employee hired
 241 before the date of the applicability of the verification
 242 requirements of this section on the employer.

243 (b) A business that has not complied with paragraph (a)
 244 shall lose its license to do business in this state until the
 245 business has registered with the E-Verify system and provided
 246 the agency with a sworn affidavit stating that the business has
 247 registered with the E-Verify system.

248 (c) Paragraphs (a) and (b) apply as follows:

249 1. On or after July 1, 2012, with respect to employers
 250 employing 100 or more employees.

251 2. On or after July 1, 2013, with respect to all

252 employers.

253 (3) EMPLOYMENT OF UNAUTHORIZED ALIENS; SUSPENSION OF
 254 LICENSE.—

255 (a) An employer may not knowingly employ an unauthorized
 256 alien.

257 (b) A person who has actual or constructive knowledge that
 258 an employer employs, or has within the last 90 days employed, an
 259 unauthorized alien may file a complaint with the agency.

260 (c) Upon the receipt of a valid complaint of a violation
 261 of paragraph (a), the agency shall notify the employer of the
 262 complaint and direct the employer to notify any affected
 263 employees named in the complaint.

264 (d) The agency shall request that the federal government
 265 verify, pursuant to 8 United States Code s. 1373(c), the
 266 employment status of any employee named in the complaint.

267 (e) If the agency has reasonable cause to believe that the
 268 employer has employed an unauthorized alien, the agency shall
 269 notify the local law enforcement agency of the presence of the
 270 unauthorized alien in the jurisdiction.

271 (f)1. Upon finding that an employer has violated paragraph
 272 (a), the agency shall order the employer to:

273 a. Terminate the employment of all unauthorized aliens;
 274 and

275 b. File a sworn affidavit with the agency within 10 days
 276 after the receipt of the order. The affidavit must state that
 277 the employer has corrected the violation by:

278 (I) Terminating the unauthorized alien's employment;

279 (II) Requesting that a second or additional verification

280 of the alien's employment status be authorized by using the E-
 281 Verify system; or

282 (III) Attempting to terminate the unauthorized alien's
 283 employment, and such termination has been challenged in a court
 284 of competent jurisdiction.

285 2. If the employer fails to file the required affidavit,
 286 the agency shall suspend all applicable licenses held by the
 287 employer. All such licenses suspended shall remain suspended
 288 until the sworn affidavit is filed. Notwithstanding any other
 289 law, the suspended licenses shall be deemed to have been
 290 reinstated upon the filing of the affidavit. During the pendency
 291 of an action, the 10-day period shall be tolled. The 10-day
 292 period shall also be tolled for any period during which the
 293 federal government allows an alien to challenge the federal
 294 government's determination of his or her immigration status or
 295 employment authorization.

296 3. Licenses subject to suspension under this subsection
 297 include all licenses that are held by the employer and that are
 298 necessary to operate the employer's business at the location at
 299 which the unauthorized alien performed work. If a license is not
 300 necessary to operate the employer's business at the specific
 301 location at which the unauthorized alien performed work, but a
 302 license is necessary to operate the employer's business in
 303 general, the licenses subject to suspension under subparagraph
 304 2. include all licenses held by the employer at the employer's
 305 primary place of business.

306 (g) Upon finding a second or subsequent violation of
 307 paragraph (a) during a 2-year period, the agency shall suspend,

308 for at least 30 days, all licenses that are held by the employer
 309 and that are necessary to operate the employer's business at the
 310 location at which the unauthorized alien performed work. If a
 311 license is not necessary to operate the employer's business at
 312 the specific location at which the unauthorized alien performed
 313 work, but a license is necessary to operate the employer's
 314 business in general, the agency shall suspend all licenses held
 315 by the employer at the employer's primary place of business for
 316 30 days or upon compliance with paragraph (f), whichever occurs
 317 later.

318 (h) For the purposes of this section, compliance with
 319 subsection (2) creates a rebuttable presumption that an employer
 320 did not knowingly employ an unauthorized alien in violation of
 321 paragraph (a). An employer that establishes that it has
 322 complied in good faith with the requirements of 8 United States
 323 Code s. 1324a(b) establishes an affirmative defense that the
 324 employer did not knowingly employ an unauthorized alien. An
 325 employer is considered to have complied with the requirements of
 326 8 United States Code s. 1324a(b), notwithstanding an isolated,
 327 sporadic or accidental technical or procedural failure to meet
 328 the requirements, if there is a good faith attempt to comply
 329 with the requirements.

330 (4) INJUNCTION.—At any time after a complaint is received,
 331 an employer subject to a complaint under this section, or any
 332 employee of the employer who is alleged to be an unauthorized
 333 alien, may challenge and seek to enjoin the enforcement of this
 334 section before a court of competent jurisdiction.

335 (5) (a) A person who has actual or constructive knowledge
 336 that an employer employs, or has within the last 90 days
 337 employed, an unauthorized alien may file a complaint with the
 338 local state attorney or the state attorney general. The state
 339 attorney and attorney general may enforce this section if there
 340 is reasonable cause to believe that this section has been
 341 violated and may commence a civil or administrative action and
 342 seek such other relief as may be appropriate. If there is a
 343 judicial finding that an employer has violated this section, the
 344 court shall order that the employer pay a civil penalty of not
 345 less than five hundred dollars and not more than five thousand
 346 dollars.

347 (b) The court shall collect the civil penalty prescribed
 348 in paragraph (a) and deposit the moneys in the Violent Crime
 349 Investigative Emergency and Drug Control Strategy Implementation
 350 Account within the Department of Law Enforcement Operating Trust
 351 Fund pursuant to s. 943.042.

352 (6) A complaint made under this section may not be based
 353 on race, color, or national origin, except to the extent
 354 permitted by the United States Constitution or the Florida
 355 Constitution. A person who knowingly files a false and
 356 frivolous complaint under this section commits a misdemeanor of
 357 the second degree, punishable as provided in s. 775.082 or s.
 358 775.083.

359 (7) CONSTRUCTION.—This section shall be enforced without
 360 regard to race, color, or national origin and shall be construed
 361 in a manner so as to be fully consistent with any applicable
 362 provisions of federal law.

363 Section 5. Effective January 1, 2012, section 287.135,
 364 Florida Statutes, is created to read:

365 287.135 Verification of immigration status; public
 366 employers.--

367 (1) As used in the section, the term:

368 (a) "Contractor" means a person who has entered or is
 369 attempting to enter into a public contract for services with a
 370 public employer.

371 (b) "E-Verify system" means the Employment Authorization
 372 Program, formerly the "Basic Pilot Program," under Pub. L. No.
 373 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 374 30, 1996), as amended, or any successor program designated by
 375 the federal government for verification that an employee is an
 376 employment-authorized alien.

377 (c) "Knowingly employ an unauthorized alien" has the same
 378 meaning as prescribed in 8 United States Code s. 1324a. The term
 379 shall be interpreted consistently with 8 United States Code s.
 380 1324a and any federal rule or regulation applicable to the
 381 unlawful employment of aliens.

382 (d) "Public employer" means any department, agency,
 383 county, municipality, or political subdivision of the state.

384 (e) "Subcontractor" means any supplier, distributor,
 385 vendor, or firm furnishing supplies or services to or for a
 386 contractor or another subcontractor.

387 (f) "Unauthorized alien" means an alien who is not
 388 authorized under federal law to be employed in the United
 389 States, as described in 8 United States Code s. 1324a(h)(3).
 390 This term shall be interpreted consistently with that section

391 and any applicable federal rules or regulations.

392 (2) Every public employer shall use the E-Verify system to
 393 verify the employment eligibility of all newly hired employees
 394 within the period stipulated by federal law or regulations after
 395 the hiring of the employee. However, a public employer is not
 396 required to verify the employment eligibility of a continuing
 397 employee hired before the date of the applicability of the
 398 verification requirements of this section on the employer.

399 (3) (a) A public employer may not knowingly employ an
 400 unauthorized alien.

401 (b) For the purposes of this subsection, compliance with
 402 subsection (2) creates a rebuttable presumption that a public
 403 employer did not knowingly employ an unauthorized alien. A
 404 public employer that establishes that it has complied in good
 405 faith with the requirements of 8 United States Code s. 1324a(b)
 406 establishes an affirmative defense that the public employer did
 407 not knowingly employ an unauthorized alien. A public employer
 408 is considered to have complied with the requirements of 8 United
 409 States Code s. 1324a(b), notwithstanding an isolated, sporadic
 410 or accidental technical or procedural failure to meet the
 411 requirements, if there is a good faith attempt to comply with
 412 the requirements.

413 (4) (a) A contractor or subcontractor may not knowingly
 414 employ an unauthorized alien.

415 (b) 1. A public employer may not enter into a contract for
 416 the physical performance of services unless the contractor
 417 registers and participates in the E-Verify system.

418 2. A contractor or subcontractor may not enter into a

419 contract or subcontract with a public employer in connection
 420 with the physical performance of services unless the contractor
 421 or subcontractor registers with and uses the E-Verify system for
 422 the purpose of verifying information of all newly hired
 423 employees.

424 (c) If a contractor uses a subcontractor, the
 425 subcontractor shall certify to the contractor that the
 426 subcontractor, at the time of certification, does not employ or
 427 contract with an unauthorized alien.

428 (d) A contractor shall maintain a copy of the
 429 certification of a subcontractor throughout the duration of the
 430 term of a contract with the subcontractor.

431 (e) If a contractor knows that a subcontractor is in
 432 violation of this subsection, the contractor shall terminate a
 433 contract with the subcontractor for the violation.

434 (f) If a public employer knows that a contractor is in
 435 violation of this subsection, the public employer shall
 436 immediately terminate the contract with the contractor and the
 437 contractor is not eligible for public contracts for 1 year after
 438 the date of termination. If the public employer has knowledge
 439 that a subcontractor has violated this subsection, and the
 440 contractor has otherwise complied with this subsection, the
 441 public employer shall promptly notify the contractor and order
 442 the contractor to terminate the contract with the noncompliant
 443 subcontractor.

444 (g) A contract terminated pursuant to paragraphs (e) or
 445 (f) is not a breach of contract and may not be considered as
 446 such by the contractor or subcontractor.

447 (h) A contractor or subcontractor may file an action with
 448 a circuit or county court having jurisdiction in the county to
 449 challenge a termination of a contract under this subsection no
 450 later than 20 days after the date on which the contract or
 451 subcontract was terminated.

452 (i) For the purposes of this subsection, compliance with
 453 subparagraphs (b)1. or (b)2. creates a rebuttable presumption
 454 that a contractor or subcontractor did not knowingly employ an
 455 unauthorized alien. A contractor or subcontractor that
 456 establishes that it has complied in good faith with the
 457 requirements of 8 United States Code s. 1324a(b) establishes an
 458 affirmative defense that the contractor or subcontractor did not
 459 knowingly employ an unauthorized alien. A contractor or
 460 subcontractor is considered to have complied with the
 461 requirements of 8 United States Code s. 1324a(b),
 462 notwithstanding an isolated, sporadic or accidental technical or
 463 procedural failure to meet the requirements, if there is a good
 464 faith attempt to comply with the requirements.

465 (5) The provisions of this section shall be construed in a
 466 manner so as to be fully consistent with any applicable federal
 467 law and shall be enforced without regard to race, color, or
 468 national origin.

469 Section 6. Effective January 1, 2012, section 337.163,
 470 Florida Statutes, is created to read:

471 337.163 Compliance with federal work-authorization
 472 program.—

473 (1) As used in this section, the term:

474 (a) "Contractor" means a person who has entered or is

475 attempting to enter into a contract with the department for
 476 services under this chapter.

477 (b) "E-Verify system" means the Employment Authorization
 478 Program, formerly the "Basic Pilot Program," under Pub. L. No.
 479 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
 480 30, 1996), as amended, or any successor program designated by
 481 the federal government for verification that an employee is an
 482 employment-authorized alien.

483 (c) "Knowingly employ an unauthorized alien" has the same
 484 meaning as prescribed in 8 United States Code s. 1324a. The term
 485 shall be interpreted consistently with 8 United States Code s.
 486 1324a and any federal rule or regulation applicable to the
 487 unlawful employment of aliens.

488 (d) "Subcontractor" means any supplier, distributor,
 489 vendor, or firm furnishing supplies or services to or for a
 490 contractor or another subcontractor under this chapter.

491 (e) "Unauthorized alien" means an alien who is not
 492 authorized under federal law to be employed in the United
 493 States, as described in 8 United States Code s. 1324a(h)(3).
 494 This term shall be interpreted consistently with that section
 495 and any applicable federal rules or regulations.

496 (2) (a) A contractor or subcontractor may not knowingly
 497 employ an unauthorized alien.

498 (b) The department may not enter into a contract under
 499 this chapter for contractual services unless the contractor
 500 registers and participates in the E-Verify system.

501 (c) A contractor who receives a contract award under this
 502 chapter for contractual services may not execute a contract,

503 purchase order, or subcontract in connection with the award
 504 unless the contractor and all subcontractors providing services
 505 for the contractor registers and participates in the E-Verify
 506 system. The contractor shall certify in writing to the
 507 department that it is in compliance with this section.

508 (d) A contractor shall ensure that each subcontractor
 509 providing services for the contractor registers and participates
 510 in the E-Verify system. Each subcontractor shall certify in
 511 writing to the contractor that it is in compliance with this
 512 section. A contractor shall maintain a copy of the certification
 513 of a subcontractor throughout the duration of the term of a
 514 contract with the subcontractor.

515 (e) If a contractor knows that a subcontractor is in
 516 violation of this subsection, the contractor shall terminate a
 517 contract with the subcontractor for the violation.

518 (f) If the department knows that a contractor is in
 519 violation of this section, the department shall immediately
 520 terminate the contract with the contractor and the contractor is
 521 not eligible for public contracts for 1 year after the date of
 522 termination. If the department has knowledge that a
 523 subcontractor has violated this section, and the contractor has
 524 otherwise complied with this section, the department shall
 525 promptly notify the contractor and order the contractor to
 526 terminate the contract with the noncompliant subcontractor.

527 (g) A contract terminated pursuant to paragraphs (e) or
 528 (f) is not a breach of contract and may not be considered as
 529 such by the contractor or subcontractor.

530 (h) A contractor or subcontractor may file an action with

531 a circuit or county court having jurisdiction in the county to
 532 challenge a termination of a contract under this subsection no
 533 later than 20 days after the date on which the contract or
 534 subcontract was terminated.

535 (i) For the purposes of this subsection, compliance with
 536 paragraphs (b) or (c) creates a rebuttable presumption that a
 537 contractor or subcontractor did not knowingly employ an
 538 unauthorized alien. A contractor or subcontractor that
 539 establishes that it has complied in good faith with the
 540 requirements of 8 United States Code s. 1324a(b) establishes an
 541 affirmative defense that the contractor or subcontractor did not
 542 knowingly employ an unauthorized alien. A contractor or
 543 subcontractor is considered to have complied with the
 544 requirements of 8 United States Code s. 1324a(b),
 545 notwithstanding an isolated, sporadic or accidental technical or
 546 procedural failure to meet the requirements, if there is a good
 547 faith attempt to comply with the requirements.

548 (3) The provisions of this section shall be construed in a
 549 manner so as to be fully consistent with any applicable federal
 550 law and shall be enforced without regard to race, color, or
 551 national origin.

552 Section 7. Subsection (16) is added to section 901.15,
 553 Florida Statutes, to read:

554 901.15 When arrest by officer without warrant is lawful.—A
 555 law enforcement officer may arrest a person without a warrant
 556 when:

557 (16) The officer has probable cause to believe that the
 558 person to be arrested is unlawfully in the United States in
 559 violation of state and federal law.

560 Section 8. Paragraph (c) of subsection (2) of section
 561 903.046, Florida Statutes, is amended to read:

562 903.046 Purpose of and criteria for bail determination.—

563 (2) When determining whether to release a defendant on
 564 bail or other conditions, and what that bail or those conditions
 565 may be, the court shall consider:

566 (c) The defendant's family ties, length of residence in
 567 the community, legal residency status in the United States,
 568 employment history, financial resources, and mental condition.

569 Section 9. Section 921.245, Florida Statutes, is created
 570 to read:

571 921.245 Illegal alien multiplier; enhanced penalties.--
 572 Upon a finding by the fact finder that the defendant committed
 573 the charged offense while the defendant is an alien and is
 574 unlawfully present in the United States, the penalty for any
 575 felony or misdemeanor, or any delinquent act or violation of law
 576 that would be a felony or misdemeanor if committed by an adult,
 577 may be enhanced. Penalty enhancement affects the applicable
 578 statutory maximum penalty only. Each of the findings required
 579 as a basis for such sentence shall be found beyond a reasonable
 580 doubt. The enhancement will be as follows:

581 (1) (a) A misdemeanor of the second degree may be punished
 582 as if it were a misdemeanor of the first degree.

583 (b) A misdemeanor of the first degree may be punished as
 584 if it were a felony of the third degree. For purposes of

585 sentencing under ch. 921 and determining incentive gain-time
 586 eligibility under ch. 944, such offense is ranked in level 1 of
 587 the offense severity ranking chart.

588 (2) (a) A felony of the third degree may be punished as if
 589 it were a felony of the second degree.

590 (b) A felony of the second degree may be punished as if it
 591 were a felony of the first degree.

592 (c) A felony of the first degree may be punished as if it
 593 were a life felony.

594

595 For purposes of sentencing under ch. 921 and determining
 596 incentive gain-time eligibility under ch. 944, such felony
 597 offense is ranked as provided in s. 921.0022 or s. 921.0023, and
 598 without regard to the penalty enhancement in this subsection.

599 Section 10. Except as otherwise provided herein, this act
 600 shall take effect October 1, 2011.