Legislation would harm immigrants and cost the state millions of dollars

Overview

Florida has long been a place that attracts immigrants, migrants from other states, and domestic and international tourists. However, HB 1355 and SB 1808, dubbed “Immigration Enforcement,” would set an inhospitable tone toward immigrants, targeting undocumented immigrants and entangling Florida further in federal immigration policy.

The bill has three provisions.

1. **“Sanctuary policy” provision:** Broadens the definition of “sanctuary policy” to include local policies that limit a law enforcement agency from providing information to a state entity about the immigration status of someone in law enforcement custody. This change expands upon the sanctuary policies ban provision of the “Federal Immigration Enforcement” law Florida passed in 2019. This sanctuary policies ban was recently ruled unconstitutional by a federal judge, in part, for its “discriminatory motives” that rely on an “immigrant threat narrative.” Thus, this portion of HB 1355 and SB 1808 is only meaningful if the state wins its appeal on this ruling.

2. **287(g) provision:** Requires all Florida law enforcement agencies operating county detention facilities (i.e., jails) to enter into a 287(g) agreement with Immigration and Customs Enforcement (ICE), a division of the federal Department of Homeland Security. Under these agreements, local law enforcement is trained and deputized to perform certain functions of federal immigration agents, including questioning and detaining immigrants.

   **Currently, 46 counties, the state Department of Corrections, and the City of Jacksonville voluntarily have 287(g) agreements with ICE.** This legislation seeks to require all 67 counties to have these agreements.

3. **Common carrier provision:** Prohibits all state and local government agencies from contracting with transportation companies (common carriers) — including private businesses — who transport “unauthorized aliens” into Florida. Examples of common carriers include airlines, trains, and buses. These businesses would be required to provide an “attestation” of compliance to maintain their state and local government contracts.

   Although HB 1355 and SB 1808 each define “unauthorized alien” somewhat differently, both bills impact international students and overseas tourists, among other immigrant groups.

Advocates and some state legislators have already raised numerous concerns with HB 1355 and SB 1808, including the harm the common carrier provision would do to unaccompanied minor children and those seeking asylum in the United States. What has yet to be considered are the fiscal implications, specifically of the 287(g) and common carrier provisions.
How HB 1355 and SB 1808, “Immigration Enforcement,” would create new fiscal challenges for Florida

287(g) agreements

After 2019’s “Federal Immigration Enforcement” law passed, many county sheriffs voluntarily signed 287(g) agreements with ICE. Florida Policy Institute estimates that, as a result, local and county governments paid at least $32.7 million between 2019 and 2021 ($10.9 million/year on average) to detain immigrants on behalf of ICE. (See Table 1.) This cost falls almost exclusively to local governments and taxpayers.¹¹

An immigration detainer is a request by a local jail or other law enforcement agency to hold a person in custody an additional 48 hours after their release date so that ICE can have added time to decide whether to take federal custody of that person. Concerns of racial profiling and lack of probable cause for doing so have been frequently cited by advocates opposed to these detainers.¹²

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Local &amp; County Detainers¹³</th>
<th>Cost/Day of Incarcerating a Person¹⁴</th>
<th>Av. Days Detained¹⁵</th>
<th>Cost of Honoring Detainers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>4,847</td>
<td>$76.83</td>
<td>22</td>
<td>$8,192,690.22</td>
</tr>
<tr>
<td>2020</td>
<td>8,471</td>
<td>$66.48</td>
<td></td>
<td>$12,389,345.76</td>
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<tr>
<td>2019</td>
<td>8,826</td>
<td>$62.16</td>
<td></td>
<td>$12,083,406.72</td>
</tr>
<tr>
<td>Total</td>
<td>22,154</td>
<td></td>
<td></td>
<td>$32,665,442.70</td>
</tr>
</tbody>
</table>

Sources: FPI analysis of detainers from Syracuse University TRAC database, incarceration costs from FL Dept. of Corrections annual report, and average days detained identified in similar research in Georgia.

Forcing 287(g) agreements on even more Florida counties would only drive up government and taxpayer costs to expand a costly and ineffective program¹⁶ that many law enforcement officers¹⁷ — including some in Florida — oppose.

The common carrier (transportation) provision

Although the Senate amended its definition of “unauthorized alien” in SB 1808,¹⁸ federal immigration law is incredibly complex, and this definition remains very broad. As such, both SB 1808 and HB 1355 would harm a much larger swath of people than the sponsors likely intend.

Two impacted groups who are especially pivotal to Florida’s economy:

1. Tourists and business travelers who entered the U.S. on a B1 (for business) or B2 (for pleasure) visas
2. Foreign college or university students, including study abroad students, who entered the U.S on F1 (academic student), J1 (exchange student), and M1 (vocational student) visas

Florida has the second highest share of non-immigrant visas issued in the U.S. These are visas granting international arrivals temporary admission to the country. Tourists and international students are two of the
key groups issued these visas. According to the Department of Homeland Security’s latest report, 5.84 million of the non-immigrant admissions to the United States in 2020 chose Florida as their destination. 19

International students: Florida has the 7th highest number of international students in the U.S. 20 As of the 2020-21 academic year, 39,179 international students were enrolled in Florida, contributing $1.1 billion to Florida’s economy and supporting 11,023 jobs. 21 When including the family members of international students, this economic impact is likely even higher, as 67,400 of the non-immigrant visas issued for Florida are for these international students and their families. 22

Overseas tourists: Before the pandemic in 2019, international tourists spent $17.3 billion in Florida, 98 percent of which was retained by the state. Twenty percent of that spending was on transportation. 23 State leaders, including the governor, continue to hail their support for tourists. 24 Domestic tourism appears to be recovering, but international tourism still lags. An estimated 4.1 million international tourists came to Florida in 2021, which is nearly 60 percent lower than in 2019. 25

For more info:

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10 HB 1355 defines “unauthorized alien” by reference to a specific chapter of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324a(h)(3). This definition broadly applies to those who lack employment authorization in the U.S. SB 1808 was amended to narrow this definition to those who are unlawfully present, referencing the INA (8 U.S.C. §§ 1101, et. seq.).
13 Some portion of local and counties’ costs for detaining immigrants has been historically reimbursed by the Department of Justice’s State Criminal Alien Assistance Program (SCAAP). Note, however, that Section 287(g) is codified at 8 USC § 1357(g). This section allows for such agreements, but the costs associated with 287(g) compliance specifically

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remains “...at the expense of the State or political subdivision and to the extent consistent with State and local law.” See 8 U.S.C. § 1357(g)(1) (emphasis added). Thus, while Florida cities and counties received $6.9 million in SCAAP funds for the 2019 and 2020 fiscal years, it is unlikely these funds covered much, if any, of each counties’ 287(g) program costs. Moreover, SCAAP did not reimburse Florida localities at all in 2021 and the future of the grant is uncertain. Even if these funds were used for 287(g) costs, that still leaves localities and taxpayers on the hook for $25.8 million dollars over a three-year period.

15 Studies comparing detention lengths for those with and without ICE detainers have found those with detainers linger in jail anywhere from 20 to 22 to 29 days longer than those without detainers, as ICE often fails to pick up those with holds or prolongs the process. Since this data is not readily available for Florida, FPI used the middle of these estimates, 22 days, to estimate the costs of detainer requests in Florida. This is in line with estimates in Colorado (https://www.coloradofiscal.org/displaced-priorities-sb90-the-costs-to-local-communities/) and similar research in Georgia (https://gbi.org/voluntary-immigration-enforcement-a-costly-choice-for-georgia-communities/#_edn30).
17 Jim Mangre and Diane Goldstein, letter opposing SB 1808, Law Enforcement Action Partnership, February 1, 2022, https://drive.google.com/file/d/1Fodju1qro_eVCxY5FEr40vhAHDFiNpi/view.