The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL:	CS/SB 2482
INTRODUCER:	Commerce Committee and Senator Gelber
SUBJECT:	Regional Workforce Boards/Job Orders/H-2B Visa
DATE:	March 18, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Fav/CS**
2.			TA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The H-2B Temporary Labor Certification (Non-agricultural) permits employers to hire foreign workers to come temporarily to the U.S. and perform temporary non-agricultural services or labor on a one-time, seasonal, peakload, or intermittent basis. The Agency for Workforce Innovation has a ministerial role in the H-2B Certification process. The H-2B Certification process requires an employer to advertise a job order with the state workforce agency for a period of at least 10 days prior to applying for the certification.

CS/SB 2482 requires job orders to be placed with the regional workforce board or the state's job bank system for a period of 30 days, rather than 10 days. Also, the CS requires H-2B job orders or print advertisements required by 20 C.F.R part 655, Subpart A, to be placed within 30 miles of the area of intended employment.

The CS also requires that all contracts for construction funded by the state must contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have substantially equal qualifications to those of non-residents. Local construction contracts funded with local funds have the option to

require such provisions. However, the required contract provision may not be enforced when the contract is funded by federal aid funds and such provision would conflict with federal law.

The CS provides for severability of the provisions of the bill.

This CS creates two undesignated sections of the Florida Statutes.

II. Present Situation:

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) is the federal agency that oversees lawful immigration to the United States.[1] The agency issues visas for individuals to come to the U.S. for permanent and temporary work. A temporary (nonimmigrant) worker is an individual seeking to enter the U.S. temporarily for a specific purpose. Nonimmigrants enter the U.S. for a temporary period of time, and once in the U.S., are restricted to the activity or reason for which their nonimmigrant visa was issued. A permanent (immigrant) worker is an individual who is authorized to live and work permanently in the U.S.

In general, in order to come to the U.S. lawfully as a nonimmigrant worker, the prospective employer must file a nonimmigrant petition on the individual's behalf. Nonimmigrant work visas include:

- Temporary Workers:
  - Foreign nationals with extraordinary ability in Sciences, Arts, Education, Business or Athletics (O visas)
  - International cultural exchange visitors (Q visas)
  - Intra-company transferees (L visas)
  - Nurses coming to health professional shortage areas (H1-C)
  - Performing athletes, artists, entertainers (P visas)
  - Specialty occupations in fields requiring highly specialized knowledge (H-1B)
  - Temporary agricultural workers (H-2A)
  - Temporary workers performing other services or labor of a temporary or seasonal nature (H-2B)
  - Training in a program not primarily for employment (H-3)
- Foreign Media Workers (I visa)
- Religious Workers (R visa)
- Treaty Traders & Treaty Investors (E visa)
- Australian in Specialty Occupation (E-3 visa)
- Chile Free Trade Agreement Professional (H-1B1 visa)
- Mexican and Canadian (NAFTA) Workers (TN and TD visas)
- Singapore Free Trade Agreement Professional (H-1B1 visa)

Hiring foreign workers for employment in the U.S. normally requires approval from several federal agencies. First, for certain visas, employers must seek labor certification through the U.S.

[1] For more detailed information on the visa process or specific visas, see the U.S. Department of State website at http://www.travel.state.gov/visa/temp/types/types_1275.html, the U.S. Citizenship and Immigration Services website at http://www.uscis.gov/portal/site/uscis/, and the U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification at http://www.foreignlaborcert.doleta.gov/ (last visited 3/11/2010).

Department of Labor (USDOL). Once the application is certified (approved), the employer must petition USCIS for a visa. Approval by USDOL does not guarantee a visa issuance. The U.S. Department of State will issue an immigrant visa number to the foreign worker for U.S. entry. Applicants must also establish that they are admissible to the U.S. under the provisions of the Immigration and Nationality Act.

U.S. Department of Labor, Office of Foreign Labor Certification

The USDOL administers various foreign labor certification programs through the Employment and Training Administration, Office of Foreign Labor Certification. The Office of Foreign Labor Certification has a national office and two processing centers (Atlanta and Chicago), and works in cooperation with state workforce agencies to administer the programs.

USDOL issues labor certifications for permanent and temporary employment under the following programs:

- Permanent Labor Certification
- H-1B Specialty (Professional) Workers
- H-1C Nurses in Disadvantaged Areas
- H-2A Temporary Labor Certification (Seasonal Agricultural)
- H-2B Temporary Labor Certification (Non-agricultural)
- D-1 Crewmembers Certification

The Immigration and Nationality Act directs the Secretary of Labor to certify that there are not sufficient workers who are able, willing, qualified and available and the employment of an alien will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. The regulations of USDOL delineate the specific rules to be followed for each program that requires labor certification from the Secretary of Labor. Further, regulations require that the wages attested to on foreign labor certification applications must be the average wage (prevailing wage) paid to all other workers in the requested occupation in the area of intended employment.

H-2B Temporary Labor Certification (Non-agricultural)

The H-2B visa classification permits employers to hire foreign workers to come temporarily to the U.S. and perform temporary non-agricultural services or labor on a one-time, seasonal, peakload, or intermittent basis.[2] Only temporary employment that is full-time is qualified for certification.

To qualify, an employer must:

- Establish that its need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as permanent or temporary.
- Demonstrate that there are not sufficient U.S. workers who are capable of performing, or willing to perform, the temporary services or labor at the time of filing the petition for H-2B classification and at the place where the foreign worker is to perform the work; and
- Show that the employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

[2] Spouses and unmarried children under the age of 21 may see admission to the U.S. under an H-4 visa. Family members may not engage in employment in the U.S. while in the county pursuant to an H-4 visa.

There is a statutory cap on the total number of visas allowed. Currently, the H-2B visa cap set by Congress per federal fiscal year is 66,000 (33,000 for the period October 1 – March 31, and 33,000 for the period April 1 – September 30). Any unused numbers from the first half of the federal fiscal year is added to the cap for the second half of the year. However, there is no carryover of unused allotments from one federal fiscal year to the next. H-2B workers can apply to extend their stays and these individuals are not counted towards the cap.

Currently, H-2B visas may be issued for the following countries:[3]

• Argentina	• Australia	• Belize	• Brazil	• Bulgaria	• Canada
• Chile	• Costa Rica	• Croatia	• Dominican Republic	• Ecuador	• El Salvador
• Ethiopia	• Guatemala	• Honduras	• Indonesia	• Ireland	• Israel
• Jamaica	• Japan	• Lithuania	• Mexico	• Moldova	• The Netherlands
• Nicaragua	• New Zealand	• Norway	• Peru	• Philippines	• Poland
• Romania	• Serbia	• Slovakia	• South Africa	• South Korea	• Turkey
• Ukraine	• United Kingdom	• Uruguay			

An individual from a county not on the list may only receive an H-2B visa if the Secretary of Homeland Security determines that it is in the U.S. interest for that alien to be the beneficiary of such a petition.

Typically an H-2B visa will only be authorized for no longer than 1 year; however, this may be extended for qualifying employment in increments of up to 1 year. The maximum period of stay is 3 years. An individual who has held an H-2B visa for 3 years is required to leave and remain outside the U.S. for an uninterrupted period of 3 months before seeking readmission.

H-2B visa classification requires the Secretary of Homeland Security to consult with appropriate agencies before admitting H-2B non-immigrants. The USDOL reviews applications and issues certifications for H-2B visa classifications. USDOL reviews and processes all H-2B applications on a first in, first out basis.

The H-2B Temporary Labor Certification (Non-agricultural) process requires employers seeking to employ temporary workers to take certain actions prior to filing an application for certification. Employers must:

- Obtain a prevailing wage determination from the Chicago National Processing Center; and then
- Begin recruitment no more than 120 calendar days before the date of need for workers, including:

[3] Department of Homeland Security, Identification of Foreign Countries Whose Nationals are Eligible to Participate in the H-2A and H-2B Visa Programs, 75 FR 2879-02 (1/19/2010).

- Submitting a job order to the state workforce agency serving the area of intended employment at least 10 full days prior to applying for certification;[4]
- Concurrently publishing 2 print advertisements for the postion(s), one of which must be on a Sunday;
- Contacting the local union if the employer is party to a collective bargaining agreement; and
- Contacting any employees in the same job occupation that the employer laid off within 120 days of the first date of need.

The employer may place the job order with the state workforce agency by utilizing whatever form or electronic systems the agency employs for such orders, or submit the job order directly with the agency for it to place the order. This is the Agency for Workforce Innovation's ministerial, and only, role in the H-2B Certification process.[5] The job order must state that it is being placed in connection with a future application for H-2B workers.

The employer is required to keep documentation that it has complied with these recruitment requirements for 3 years after receiving the certification.

After seeking U.S. workers to fill the positions, the employer can file an Application for Temporary Employment Certification, AppendixB.1, and a recruitment report to the USDOL's Chicago National Processing Center. The recruitment report must:

- Identify each recruitment source by name;
- List the name and contact information for each U.S. worker who applied or was referred, and the disposition of each worker, including any applicable laid-off workers; and
- Indicate whether the worker was hired or not, and if worker was not hired, list the lawful, job-related reasons for not hiring the worker.

The recruitment report cannot be prepared any earlier than 2 calendar days after the last date on which the job order was posted and no earlier than 5 calendar days after the last newspaper advertisement was published.

As part of the Application for Temporary Employment Certification the employer must attest that it will abide by certain conditions, including:

- The employer is offering terms and working conditions normal to U.S. workers similarly employed in the area of intended employment;
- The job opportunity is not vacant because the former worker is on strike or locked out in the course of a labor dispute involving a work stoppage;
- The job opportunity is open to any qualified U.S. worker, and any U.S. worker applicants were rejected only for lawful, job-related reasons;

[4] 20 C.F.R. s. 655.4 (2009) defines the area of intended employment as "the geographic area within normal commuting distance of the… (worksite address)…"

[5] As of January 18, 2009, the state workforce agencies no longer receive applications for the certification. USDOL modernized the procedures for issuance of H-2B labor certifications in December 2008. The changes centralized processing and enabled employers to conduct pre-filing recruitment of U.S. workers. See 73 F.R. 245, Final Rule on 20 C.F.R. Parts 655 and 656. Specifically see 20 C.F.R. 655.1 to 655.35 for regulations relating to the certification process.

- The employer will comply with applicable federal, state, and local employment laws and regulations; and
- The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation within 120 calendar days before the date of need of the H-2B worker through 120 calendar days after the date of need, except where the employer also attests that it offered the job opportunity and it was either refused by the laid-off U.S. worker or the worker was rejected for a lawful, job-related reason.

If an application is certified, the employer will receive a certification and a final determination letter, which then must be submitted to USCIS for application for the needed visas. Certification is issued to the employer, not the worker, and is not transferable to another employer or worker. If the application is denied, the employer will receive a final determination letter that states the reason for denial and, if applicable, will address the availability of U.S. workers in the occupation as well as the prevailing wages of similarly employed U.S. workers. Generally, the USDOL will deny an application where the employer has a recurring seasonal or peakload need lasting longer than 10 months.

USDOL audits H-2B certification applications,[6] and if it determines that the employer failed to produce all required documentation or determines that the employer made a material misrepresentation on the application, then the employer may be subject to supervised recruitment, debarment, or other sanctions.[7] Further, any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, may be referred to the U.S. Department of Justice. Additionally, USCIS does not permit an employer to collect a job placement fee or other compensation (either direct or indirect) from an alien H-2B worker at any time as a condition of employment.

H-2B Certification Applications Data for Federal FY 2008-2009[8]

The following tables illustrate the number of applications for H-2B Classification received by the USDOL, the numbers of workers requested and those actually certified, and the types of workers certified for work in Florida. This does not mean that all these workers were necessarily provided with visas, as discussed above in the Present Situation.

Table 1: H-2B Applications Federal FY 2008-2009

	Certified	Partially Certified	Denied	Total
Total U.S.	4,143	1,728	1,219	7,090
Florida	291	138	106	535

[6] The December 2008 regulatory changes also introduced post-adjudication audits and procedures for penalizing employers who fail to comply with program requirements. Additionally, the Department of Homeland Security agreed to delegate to USDOL H-2B enforcement authority. See 20 C.F.R. 655.50 to 655.80.

[7] Supervised recruitment allows an employer to participate in the pre-application recruitment process under the supervision of USDOL. 20 C.F.R. 655.30 (2009). Debarment prohibits an employer from participating in the H-2B process, either for a period of time or permanently, depending on the violation. 20 C.F.R. 655.31 (2009). Other sanctions include civil penalties or fines. See 20 C.F.R. 655.65 (2009).

[8] Data obtained from the Foreign Labor Certification Data Center, available at http://www.flcdatacenter.com/CaseH2B.aspx (last visited 3/13/2010). Data has been summarized and manipulated to provide a shorthand overview of the number of workers certified by USDOL.

Table 2: H-2B Workers Federal FY 2008-2009		
	Requested	**Certified**
Total U.S.	214,744	154,489
Florida	17,447	11,569

Table 2: H-2B Data for Florida Federal FY 2008-2009	
Job Area	**Sum of # Workers Certified**
Amusement Park	89
Child Care	1
Cleaner	10
Construction Related	382
Customer Service Related	18
Deckhand	6
Driver	10
Food Related	1,033
Government Customer Service	24
Grounds Keeping	2,236
Hotel Related	4,368
Information Clerk	15
Janitor	120
Laundry	19
Lifeguard	4
Municipal Maintenance Worker	12
Personal Attendant	1
Recreation Related	65
Restaurant Related	1,881
Retail Related	150
Stable Attendant	1,119
Survey Worker	6
Grand Total	**11,569**

III. Effect of Proposed Changes:

Section 1 requires that job orders associated with the H-2B Certification process to be posted and active for 30 calendar days whether placed with the regional workforce board or posted by the employer on the state's job bank system. Currently the state's job-listing site is the Employ Florida Marketplace (www.employflorida.com). This is an increase of 20 days over the federal law requirement that job order be posted for 10 full days.

Also, the CS requires H-2B job orders or print advertisements required by 20 C.F.R part 655, Subpart A, to be placed within 30 miles of the area of intended employment. Federal law currently requires that the job advertisements be placed in the area of intended employment.

This section creates an undesignated section of the Florida Statutes.

Section 2 requires all contracts for construction funded by the state must contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have substantially equal qualifications to those of non-residents. Local construction contracts funded with local funds have the option to require such provisions.

However, for work involving federal aid funds, the contract provision may not be enforceable to the extent it conflicts with federal law.

The term "Substantially equal qualifications" is defined.

This section creates an undesignated section of the Florida Statutes.

Section 3 provides for severability of the provisions of the CS.

Section 4 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Preference – In General
State and local governments have an interest in the employment of their residents and the promotion of resident businesses or goods. Such protectionist tactics for the benefit of the state and its residents have regularly been challenged in both state and federal courts. State laws and local government ordinances granting preference in hiring, contracting, or the procurement of goods may be challenged under at least four U.S. Constitutional provisions: the Privileges and Immunities Clause, the Due Process Clause, the Commerce Clause, and the Equal Protection Clause. However, federal and various state court rulings on such "preference" requirements are inconsistent.

Preference – In hiring state or local residents
Preference statutes that require the hiring of state residents have been challenged on grounds that they violate the privileges and immunities clause, the commerce clause, and the due process. State and federal court holdings have been inconsistent, leading to little certainty as to the constitutionality of any preference statute that a state may implement.

In general, courts that have found preference statutes to be constitutional, have held that employment is not a fundamental right, and that the preference statute need only be rationally related to the purpose of discrimination against nonresidents. On the other hand, courts that have found preference statutes to be unconstitutional, have held that employment is a fundamental right, and that the preference statute needs to be closely related to the purpose of discrimination against nonresidents.

Privileges and Immunities (Article IV, Section 2, U.S. Constitution)
The Privileges and Immunities clause prohibits states from discriminating against citizens from other states. It states that "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

The following table sets forth the general court holdings for constitutional and unconstitutional statutes, and specific cases. As can be seen from the table, a statute that may be held constitutional in one court may be found to be unconstitutional by another.

	Constitutional	Unconstitutional
Generally	• Discrimination bears a "reasonable relationship" to the purpose for discriminating o State has valid interest in promoting employment for its residents o State may discriminate against nonresidents when dealing with its own property	• Only permitted to discriminate where nonresidents constitute a "peculiar source of evil" (discrimination will cure the evil) o Statute needs to justify a proprietary interest the state has in a particular work or project
Specific Cases	Held Valid: Preference to hire residents for public works contracts to insure that government-created construction jobs benefit the state's citizens (and lowers unemployment) (State Supreme Court) State stopped corporation from completing public works project because it failed to employ residents as required (valid interest in promoting employment of residents) Contract condition that all laborers for building school building be residents for 6 months prior to award of contract (State was dealing with its own property) Requirement of contractor on public works project for state or municipality to prefer residents Requirement that contractor fill 50% of positions with city residents (both state residents and nonresidents treated the same since both are non-city residents) Requirement to employ qualified residents for public-works contracts (government funded positions)	Held Invalid: Preference of residents would alleviate unemployment problem – no close relationship between discrimination and unemployment (ex: reason for unemployment was lack of education and job training, not residents from other states; or, ex: at a time when unemployment high throughout USA) Preference of residents would stop "migration of economic benefits" from the state Preference for employment of citizens who had resided in the state for at least 1 year (found no substantial reason other than were nonresidents) State cannot use its control over a resource to create absolute employment preference for residents Requirement of contractor on public works project for state to hire only residents Requirement that contractor fill 40% of positions with city residents Preference for residents in a project funded mostly with federal funds

Due Process (14th Amendment)

The 14th Amendment ensures fair procedures when the government imposes a burden on an individual.

The following table sets forth the general court holdings for constitutional and unconstitutional statutes, and specific cases. As can be seen from the table, a statute that may be held constitutional in one court may be found to be unconstitutional by another.

	Constitutional	Unconstitutional

Generally	• Public employment is not a fundamental right
	• Statute needs to be "rationally related" to the government's interest
	  o Promoting employment in state
	  o Confer a benefit on residents in area of employment
		• Employment is a fundamental right
		• Statute must have a "compelling" governmental interest

Specific Cases	Held Valid: Required preference in hiring for public works contracts first to residents, second to nonresidents 1-year residency requirement valid under 14th Amd. (but not privileges and immunities) Prohibition on employing nonvoters for public works projects Requirement for county projects that employees should be county residents Statute requirement that persons be residents for 6 months and contract clause that those employed be voters	Held Invalid: Preferring older residents over newer residents Requiring labors on public works project to be at least state residents for 1 year (basis that older residents had contributed more in taxes) City requirement that labors for public works contract be county residents for 6 months

Commerce Clause (Article I, Section 8, U.S. Constitution)

The Commerce Clause indirectly restrains state regulatory powers to the extent such powers interfere with interstate commerce.

The following table sets forth the general court holdings for constitutional and unconstitutional statutes, and specific cases. As can be seen from the table, a statute that may be held constitutional in one court may be found to be unconstitutional by another.

Constitutional	Unconstitutional
• Majority of cases • Preference law will be upheld – o Where state is acting as "market participant" rather than "market regulator"; or ▪ City required public works contractors hire 50% city residents; City expended its own funds, and was market participant ▪ City not regulating flow of commerce between private parties when requiring preference for residents o When nonresidents are not totally excluded from employment	• Statute would result in state becoming an isolated economic unit • Statute that required preference of residents in all work connected with a certain industry affected businesses other than those with which the state transacted business (interstate commerce)

Current Preference Statutes in Florida

The following are preferences currently in Florida statutes for residents:

- Preference may be given to hire Florida residents for state employment. Section 110.105, F.S.
- Preference by every official board (state, county, municipality) to residents for contracts for construction of any public administrative or institutional building whenever the persons can be employed at no greater expense than nonresidents. Section 255.04, F.S.
- Section 110.2135, F.S., allows for preferences in hiring veterans (*not required to be residents*)

Florida law also contains preferences resident businesses. A bid preference statute can entitle a qualifying contractor to the award of a contract even though the contractor has not submitted the lowest bid. Such a law may deem the bid of a qualifying contractor as being the lowest bid where

it is substantially equal to or within a prescribed percentage of the lowest bid. The following are preferences already in Florida statutes for resident businesses:

- Section 283.35, F.S., allows agencies to give preference to vendors located in Florida when awarding printing contracts (when can be done at no greater expense, and comparable level of quality as nonresident vendor).
- Preference by every official board (state, county, municipality) to residents for contracts or purchase of material for construction of any public administrative or institutional building whenever the materials can be purchased at no greater expense than nonresidents. Section 255.04, F.S.
- Preference is allowed by an agency, county, municipality, school district, or other political subdivision for Florida businesses for the purchase of personal property WHEN the lowest responsible and responsive bidder's state allows preference (same amount applied – reciprocal preference) – does not apply to transportation projects funded with federal funds. Section 287.084, F.S.
- Foreign manufacturers who have a factory in Florida that employs over 200 employees shall have preference over another foreign company when price, quality, and service are the same, regardless of where the product is manufactured. Section 287.092, F.S.
- Commodities manufactured, grown, or produced in Florida are given preference when equal in price, quality, and service. Section 287.082, F.S.
- Preference by counties, municipalities, special districts, or other political subdivision of the state to build/improve a public building/structure for Florida lumber, timber, and other forest products if available and price, fitness, and quality are equal to such products produced and manufactured outside the state
- Sections 283.32 and 287.045, F.S., allows for preference for recycled materials recovered in Florida (up to 15% price preference)

The following are other preferences already in Florida statutes:[9]

- Sections 283.32 and 287.045, F.S., allows for preference for recycled materials (up to 10% price preference)
- Certified minority business enterprises given up to 10% price preference. Section 287.057, F.S.
- Certified service-disabled veteran business enterprises given preference. Section 295.187, F.S.
- Businesses with drug-free workplace programs given preference when equal with respect to price, quality, and service. Section 287.087, F.S.
- Horses bred in Florida have preference over non-Florida-bred horses in racing. For example, see s. 550.375, F.S.

Conclusion

In light of the constraints discussed above on a state's ability to prefer the hiring of state residents, the CS may be appropriate for state and local contracts funded by state and local funds. However, given the inconsistent holdings of state and federal courts in the U.S., it cannot be assumed with any certainty that the CS provisions dealing with preference would be held to be constitutional if challenged in court.

[9] This list is not comprehensive.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employers will be required to post job orders for an additional 20 days. This may increase the likelihood that a qualified U.S. citizen may apply for the job, eliminating the need for an H-2B Certification.

As part of the pre-application process for H-2B Certification, federal law currently requires employers to post their job orders in the area of intended employment. To comply with the statute, employers will need to ensure that the job advertisement is placed within 30 miles of the area. However, by complying with the federal requirements, employers will mostly likely meet this provision. Federal regulations defined the "area of intended employment" as "the geographic area within normal commuting distance of the… (worksite address)…" The definition states that "[t]here is no rigid measure of distance which constitutes a normal commuting area, because there may be widely varying factual circumstances among different areas."[10]

Contractors who are awarded a contract funded by state funds will be required by the terms of the contract to hire Floridians if they are substantially equal to nonresidents. Failure to do so may result in a breach of contract on the part of the contractor. However, such contract terms may result in the employment of Florida residents.

C. Government Sector Impact:

Currently the Agency for Workforce Innovation State Office staff post H-2B job orders received from employers in the Employ Florida Marketplace Job Bank System for a period not less than 10 calendar days. Employers may also post their own job orders in the Employ Florida Marketplace Job Bank System for a period of not less than 10 calendar days. This CS will require the jobs to be posted for an additional 20 days, which will have, at most, an insignificant fiscal impact on the agency.

All contracts funded with state funds will be required to contain a provision that requires the hiring of Floridians if they are substantially equal to nonresidents.

VI. Technical Deficiencies:

None.

[10] See 20 C.F.R. s. 655.4 (2009).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce Committee on March 17, 2010:
The CS differs from the bill as filed in the following ways:

- Requires jobs to be posted on the state's job bank system, instead of the regional workforce board's job-listing site;
- Includes a new provision to require all contracts for construction funded by the state must contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have substantially equal qualifications to those of non-residents and to the extent such provision does not interfere with federally funded projects;
- Provides that local construction contracts funded with local funds may require such provisions; and
- Provides for severability of the provisions of the bill.

B. Amendments:

None.