HB 232-FN-LOCAL - AS INTRODUCED

2019 SESSION

HOUSE BILL 232-FN-LOCAL

AN ACT relative to enforcement of immigration laws and the prohibition of sanctuary policies.


COMMITTEE: Municipal and County Government

ANALYSIS

This bill establishes the New Hampshire anti-sanctuary act, which requires state and local government entities to comply with federal immigration detainer requests. The bill also prohibits state and local government entities from adopting policies that prohibit, restrict, or discourage the enforcement of federal immigration law.

Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears [in brackets and struckthrough.] Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to enforcement of immigration laws and the prohibition of sanctuary policies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Anti-Sanctuary Act. Amend RSA by inserting after chapter 103 the following new chapter:

CHAPTER 103-A

ANTI-SANCTUARY ACT

103-A:1 Title. This chapter shall be known as the New Hampshire Anti-Sanctuary Act.

103-A:2 Definitions. In this chapter:

I. "Department of Homeland Security" means the United States Department of Homeland Security and any of its agencies, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, United States Citizenship and Immigration Services, and any successor department or agency. The term includes officials, officers, representatives, agents, and employees.

II. "Immigration detainer request" means a written federal government request to a state or local government entity to maintain custody of an alien, including a Department of Homeland Security Form I-247 or a similar or successor form. "Immigration detainer request" includes only written federal government requests that are accompanied by any of the following properly completed forms or similar or successor forms, if such forms or similar or successor forms are signed by an authorized United States immigration and customs enforcement officer or similar officer of the Department of Homeland Security:

(a) Department of Homeland Security Form I-200; or
(b) Department of Homeland Security Form I-205.

III. "Immigration law" means a law of this state or a federal law relating to aliens, immigrants, or immigration, including but not limited to the federal Immigration and Nationality Act, 8 U.S.C. section 1101, et seq.

IV. "Inmate" means any individual in the custody of a law enforcement agency.

V. "Law enforcement agency" means an agency in the state or a political subdivision thereof charged with enforcement of state, county, city, municipal, or federal laws, or with managing or maintaining custody of detained, arrested, or sentenced persons in the state, and includes but is not limited to city and town police departments, sheriffs' offices, county departments of corrections, the state police, the department of corrections, the division of motor vehicles, the fish and game commission, the liquor commission, and campus police. The term includes officials, officers,
representatives, agents, and employees.

VI. "Local government entity" means any county, city, municipality, town, village, village district, special district, or other political subdivision of this state, including law enforcement agencies. The term includes officials, officers, representatives, agents, and employees.

VII. "Policy" includes but is not limited to a formal, written rule, directive, policy, procedure, regulation, motion, order, ordinance, resolution, or amendment and an informal, unwritten policy, practice, or custom.

VIII. "State government entity" means any public agency, bureau, commission, council, department, or other office, body, or entity established under the laws of the state, including law enforcement agencies. The term includes officials, officers, representatives, agents, and employees.

103-A:3 Immigration Detainer Requests; Sanctuary Policies Prohibited.

I. A state or local government entity that has custody of an individual who is subject to an immigration detainer request shall:

(a) Fully comply with, honor, and fulfill any instruction or request made in the detainer request and in any other legal document provided by a federal agency; and

(b) Inform the individual that the individual is being held pursuant to an immigration detainer request issued by the Department of Homeland Security.

II. A state or local government entity shall not adopt or enforce a policy or take any other action in violation of 8 U.S.C. section 1373. Nor shall a state or local government entity adopt or enforce a policy or take any other action to prohibit, limit, or in any way restrict or discourage, a 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:

(a) Sending such information to, or requesting or receiving such information from, the Department of Homeland Security or any other federal agency;

(b) Maintaining such information;

(c) Exchanging such information with any other federal, state, or local government entity;

(d) Inquiring about the immigration status of any individual;

(e) Determining eligibility for any public benefit, service, or license provided by federal law or a law of this state or its political subdivisions;

(f) Verifying a claim of residence or domicile if a determination of residence or domicile is required under federal law or a law of this state or its political subdivisions or under a judicial order issued pursuant to a civil or criminal proceeding in this state; or

(g) Confirming the identity of an individual who is detained by a law enforcement agency.

III. A state or local government entity shall not adopt or enforce a policy or take any other action to prohibit, limit, or in any way restrict or discourage the enforcement of federal immigration law, including, but not limited to:
(a) Prohibiting, limiting, restricting, or discouraging a state or local government entity from honoring, cooperating with, or complying with immigration detainer requests;

(b) Requiring the Department of Homeland Security, or other federal agency, to obtain or provide a judicial warrant or other court order, or to demonstrate probable cause, before a state or local government entity will honor, cooperate with, or comply with an immigration detainer request;

(c) Prohibiting, limiting, restricting, or discouraging a state or local government entity from providing a federal immigration official access to an inmate for an interview;

(d) Prohibiting, limiting, restricting, or discouraging a state or local government entity from assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance;

(e) Prohibiting, limiting, restricting, or discouraging a state or local government entity from permitting a federal immigration officer to enter and conduct enforcement activities at a jail or other detention facility to enforce a federal immigration law;

(f) Prohibiting, limiting, restricting, or discouraging a state or local government entity from initiating or conducting an immigration status investigation;

(g) Prohibiting, limiting, restricting, or discouraging a state or local government entity from providing a federal immigration official with the incarceration status or release date of an inmate in custody of a state or local government entity; or

(h) Prohibiting, limiting, restricting, or discouraging a state or local government entity from negotiating, entering into, or modifying a memorandum of agreement between a state or local government entity and the Department of Homeland Security, or any other federal agency or official, as provided in 8 U.S.C. section 1357(g), or any similar agreement, concerning the enforcement of federal immigration laws.

103-A:4 Duty to Report. Any person holding public office or having official duties as an official, officer, representative, agent, or employee of a state or local government entity shall have a duty to report a suspected violation of RSA 103-A:3. Persons reporting under this section shall be protected under RSA 275-E, the Whistleblowers’ Protection Act.

103-A:5 Complaint Process; Penalties.

I. The attorney general shall receive complaints regarding alleged violations of RSA 103-A:3. Any person, including a federal agency, may file such a complaint. The person shall include with the complaint any evidence the person has in support of the complaint. Such complaints shall be submitted in writing in such form and manner as prescribed by the attorney general. In lieu of submitting a complaint, any member of the legislature may request, at any time, that the attorney general investigate whether a state or local government entity has violated RSA 103-A:3.

II. Upon receiving a complaint or request, the attorney general shall investigate and determine whether a violation of RSA 103-A:3 has occurred. The attorney general shall issue an opinion stating whether the state or local government entity, which is the subject of the complaint
or request, has intentionally enacted or adopted a policy that is in violation of this chapter. If a state or local government entity has intentionally adopted a policy in violation of RSA 103-A:3 and has failed to repeal or rescind such policy within 60 days of the issuance of the attorney general’s opinion, the state or local government entity shall become ineligible to receive any moneys that would otherwise be remitted to it by any other state or local government entity. Such ineligibility shall continue until such time as the attorney general certifies that the policy has been repealed, rescinded, or is otherwise no longer in effect.

III. The attorney general shall send to the state or local government entity that was the subject of the investigation and to the state treasurer a copy of any opinion issued pursuant to this section and any certification by the attorney general that a violation of RSA 103-A:3 is no longer in effect.

103-A:6 Cause of Action to Enjoin Sanctuary Policy.

I. Any resident of the state may bring a civil action in the superior court regarding an alleged violation of RSA 103-A:3. The court shall expedite any action under this section, including scheduling hearings at the earliest practicable date.

II. If there is a judicial finding that a state or local government entity has violated RSA 103-A:3, the court shall enjoin such policy or practice and take other action to ensure compliance as is within the jurisdiction of the court.

103-A:7 Completion of Sentence in Federal Custody.

I. A court, in a criminal proceeding in this state in which the sentence requires a defendant who is the subject of an immigration detainer request to be confined in a correctional facility, shall issue an order at the time of sentencing requiring the correctional facility in which the defendant is to be confined and all appropriate officers to require the defendant to be transferred to serve in federal custody the final portion of the defendant’s sentence, not to exceed a period of 7 days, if a facility or officer determines that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody. The court shall retain jurisdiction to issue such an order at a later date if the court receives notice from a federal agency that a defendant was the subject of an immigration detainer request at the time of sentencing. The court shall issue such an order as soon as practicable after receiving such notice.

II. In the absence of an order issued under paragraph I, a facility or officer acting under exigent circumstances may perform such a transfer after making a determination that the change in the place of confinement will facilitate the seamless transfer of an inmate into federal custody.

III. An inmate shall be transferred pursuant to this section only if appropriate officers of the federal government consent to the transfer of the inmate into federal custody under the circumstances described in this section.

103-A:8 Implementation; Discrimination Prohibited; Severability.

I. This chapter shall be implemented in a manner consistent with federal laws and regulations governing immigration, protecting the civil rights of all persons, and respecting the
privileges and immunities of United States citizens.

II. In complying with the requirements of this chapter, a state or local government entity may not consider an individual's race, color, religion, language, or national origin, except to the extent permitted by the Constitution of the United States, the constitution of the state of New Hampshire, or federal law.

III. It is the intent of the legislature that every provision of this chapter, and every application thereof to any person or entity, are severable from each other. If any part or provision of this chapter is in conflict or inconsistent with applicable provisions of federal law, or otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this chapter shall not be affected thereby.

2 Effective Date. This act shall take effect upon its passage.
AN ACT relative to enforcement of immigration laws and the prohibition of sanctuary policies.

FISCAL IMPACT:  [X] State  [X] County  [X] Local  [ ] None

<table>
<thead>
<tr>
<th></th>
<th>FY 2020</th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriation</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>Indeterminable</td>
<td>Indeterminable</td>
<td>Indeterminable</td>
<td>Indeterminable</td>
</tr>
</tbody>
</table>

Funding Source:  [X] General  [X] Education  [X] Highway  [X] Other

COUNTY:

<table>
<thead>
<tr>
<th></th>
<th>Indeterminable Decrease</th>
<th>Indeterminable Decrease</th>
<th>Indeterminable Decrease</th>
<th>Indeterminable Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
</tr>
<tr>
<td>Expenditures</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
</tr>
</tbody>
</table>

LOCAL:

<table>
<thead>
<tr>
<th></th>
<th>Indeterminable Decrease</th>
<th>Indeterminable Decrease</th>
<th>Indeterminable Decrease</th>
<th>Indeterminable Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
</tr>
<tr>
<td>Expenditures</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
<td>Indeterminable Increase</td>
</tr>
</tbody>
</table>

METHODOLOGY:

This bill prohibits state and local government entities from adopting or enforcing policies that would prohibit, limit, or in any way restrict or discourage the enforcement of federal immigration laws and requires compliance with federal immigration detainer requests. State and local government entities include state, county and local political subdivisions, including law enforcement agencies, and officials, officers, representatives, agents, and employees. Any person holding public office or having official duties as an official, officer, representative, agent or employee of a state or local government entity shall have a duty to report a suspected violation and such persons shall be protected under RSA 275-E, the Whistleblowers' Protection Act. Any person, including a federal agency, may file a complaint with the Attorney General's Office (AG) regarding alleged violations of the statute. Any member of the legislature may also request that the AG investigate whether a state or local government entity has violated the statute. The AG would issue an opinion stating whether the state or local government entity intentionally enacted or adopted a policy in violation of the statute. If the state or local
government entity fails to repeal or rescind the policy within 60 days of the issuance of the opinion, the entity shall become ineligible to receive any money that would otherwise be remitted to it by any other state or local government entity. The AG indicates this bill may increase the number of investigations the office would have to handle but the extent of that increase and the associated expenditures are indeterminable. There are no additional revenues to the AG's office.

AGENCIES CONTACTED:
Department of Justice