

HB 266-FN-LOCAL - AS INTRODUCED

2021 SESSION

21-0196
06/05

HOUSE BILL ***266-FN-LOCAL***

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

SPONSORS: Rep. Potucek, Rock. 6; Rep. Binford, Graf. 15; Rep. L. Turcotte, Straf. 4; Rep. Gorski, Hills. 7; Rep. Dolan, Rock. 5; Rep. Layon, Rock. 6; Rep. Hough, Belk. 3; Rep. DeLemus, Straf. 24; Rep. Abramson, Rock. 37; Sen. Gannon, Dist 23

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

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

3 CHAPTER 103-A

4 ANTI-SANCTUARY ACT

5 103-A:1 Title. This chapter shall be known as the New Hampshire Anti-Sanctuary Act.

6 103-A:2 Definitions. In this chapter:

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

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

19 (a) Department of Homeland Security Form I-200; or

20 (b) Department of Homeland Security Form I-205.

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

24 IV. "Law enforcement agency" means an agency in the state or a political subdivision thereof
25 charged with enforcement of state, county, city, municipal, or federal laws, or with managing or
26 maintaining custody of detained, arrested, or sentenced persons in the state, and includes but is not
27 limited to city and town police departments, sheriffs' offices, county departments of corrections, the s

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

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

4 VII. "State government entity" means any public agency, bureau, commission, council,
5 department, or other office, body, or entity established under the laws of the state, including law
6 enforcement agencies. The term includes officials, officers, representatives, agents, and employees.
7 state police, the department of corrections, the division of motor vehicles, the fish and game
8 commission, the liquor commission, and campus police. The term includes officials, officers,
9 representatives, agents, and employees.

10 103-A:3 Immigration Detainer Requests; Sanctuary Policies Prohibited.

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

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

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

17 II. A state or local government entity shall not adopt or enforce a policy or take any other
18 action in violation of 8 U.S.C. section 1373. Nor shall a state or local government entity adopt or
19 enforce a policy or take any other action to prohibit, limit, or in any way restrict or discourage, a
20 state or local government entity from doing any of the following with respect to information
21 regarding the immigration status, lawful or unlawful, of any individual:

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

24 (b) Maintaining such information;

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

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

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

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

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

35 III. A state or local government entity shall not adopt or enforce a policy or take any other
36 action to prohibit, limit, or in any way restrict or discourage the enforcement of federal immigration
37 law, including, but not limited to:

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1 (a) Prohibiting, limiting, restricting, or discouraging a state or local government entity
2 from honoring, cooperating with, or complying with immigration detainer requests;

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

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

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

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

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

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

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

24 103-A:4 Complaint Process; Penalties.

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

31 II. Upon receiving a complaint or request, the attorney general shall investigate and
32 determine whether a violation of RSA 103-A:3 has occurred. The attorney general shall issue an
33 opinion stating whether the state or local government entity, which is the subject of the complaint or
34 request, has intentionally enacted or adopted a policy that is in violation of this chapter. If a state or
35 local government entity has intentionally adopted a policy in violation of RSA 103-A:3 and has failed
36 to repeal or rescind such policy within 60 days of the issuance of the attorney general's opinion, the
37 state or local government entity shall become ineligible to receive any moneys that would otherwise

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1 be remitted to it by any other state or local government entity. Such ineligibility shall continue until
2 such time as the attorney general certifies that the policy has been repealed, rescinded, or is
3 otherwise no longer in effect.

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

8 103-A:5 Implementation; Discrimination Prohibited; Severability.

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

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

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

22 2 Effective Date. This act shall take effect upon its passage.

**HB 266-FN-LOCAL- FISCAL NOTE
AS INTRODUCED**

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

FISCAL IMPACT: State County Local None

| STATE: | Estimated Increase / (Decrease) | | | |
|------------------------|---|------------------------------------|----------------------------------|--------------------------------|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
| Appropriation | \$0 | \$0 | \$0 | \$0 |
| Revenue | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | Indeterminable | Indeterminable | Indeterminable |
| Funding Source: | <input checked="" type="checkbox"/> General | <input type="checkbox"/> Education | <input type="checkbox"/> Highway | <input type="checkbox"/> Other |

COUNTY:

| | | | | |
|---------------------|-----|----------------|----------------|----------------|
| Revenue | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | Indeterminable | Indeterminable | Indeterminable |

LOCAL:

| | | | | |
|---------------------|-----|----------------|----------------|----------------|
| Revenue | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | Indeterminable | Indeterminable | Indeterminable |

METHODOLOGY:

This bill includes the following provisions:

- Prohibits the State, its political subdivisions, and law enforcement agencies from adopting and enforcing policies that:
 - Prohibit or discourage state or local government entities from, among other things, inquiring about a person’s immigration status, sending or requesting information from federal agencies, or exchanging information with other federal, state, or local governmental units
 - Prohibit state and local government entities from cooperating with or complying with immigration detainer requests or efforts by the Department of Homeland Security to detain an undocumented immigrant in the custody of a state or local governmental unit.
- Establishes a complaint process that would require the Department of Justice to investigate and determine whether violations of this bill’s prohibitions have occurred. The consequences for being in violation of the bill’s provisions include prohibiting the state or local government entity from receiving “any moneys that would otherwise be

remitted to it by any other state or local government entity.” This creates a new form of offense that the Department of Justice would be responsible for investigating and enforcing.

This bill would likely increase the workload for the Department of Justice. The current number of State and local agencies that have or would retain policies that violate the bill’s provisions is unknown. This means that the increased workload is similarly unknown. Therefore, the fiscal impact is indeterminable.

AGENCIES CONTACTED:

Department of Justice