

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 145
Judiciary Committee Substitute Adopted 4/11/17
PROPOSED COMMITTEE SUBSTITUTE S145-PCS35302-BA-15

Short Title: Government Immigration Compliance.

(Public)

Sponsors:

Referred to:

March 1, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO
3 COMPLY WITH STATE LAWS RELATED TO IMMIGRATION, TO PROHIBIT UNC
4 CONSTITUENT INSTITUTIONS FROM BECOMING SANCTUARY UNIVERSITIES,
5 AND TO DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO ENTER INTO A
6 MEMORANDUM OF AGREEMENT WITH THE DEPARTMENT OF HOMELAND
7 SECURITY.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. RECODIFICATION OF STATUTE AND REPEAL OF STATUTORY**
11 **EXCEPTION**

12 **SECTION 1.(a)** G.S. 15A-311 is recodified as G.S. 64-6 under Article 1 of
13 Chapter 64 of the General Statutes.

14 **SECTION 1.(b)** G.S. 15A-311, as recodified by subsection (a) of this section,
15 reads as rewritten:

16 "**§ 64-6. ~~Consulate~~ Certain documents not acceptable as identification.**

17 (a) The following documents are not acceptable for use in determining a person's actual
18 identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other
19 government official:

20 (1) A matricula consular or other similar document, other than a valid passport,
21 issued by a consulate or embassy of another country.

22 (2) An identity document issued or created by any person, organization, county,
23 city, or other local authority, except where expressly authorized to be used
24 for this purpose by the General Assembly.

25 (b) No local government or law enforcement agency may establish, by policy or
26 ordinance, the acceptability of any of the documents described in subsection (a) of this section
27 as a form of identification to be used to determine the identity or residency of any person. Any
28 local government policy or ordinance that contradicts this section is hereby repealed.

29 ~~(c) Notwithstanding subsection (a) of this section, documents described in subdivision~~
30 ~~(2) of subsection (a) of this section may be used by a law enforcement officer to assist in~~
31 ~~determining the identity or residency of a person when they are the only documents providing~~
32 ~~an indication of identity or residency available to the law enforcement officer at the time."~~
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1 **PART II. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL**
2 **GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO**
3 **IMMIGRATION**

4 **SECTION 2.(a)** Chapter 64 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 3.

7 "Local Government Noncompliance With State Laws Related to Immigration.

8 **"§ 64-49. Findings.**

9 The General Assembly finds the following:

- 10 (1) That the policy objectives it seeks to further by enacting State laws
11 applicable to cities, counties, and law enforcement agencies are frustrated
12 when those entities do not uniformly comply with State law.
- 13 (2) That Section 7(1) of Article V and other sections of the North Carolina
14 Constitution grant the General Assembly supreme power and complete
15 discretion over the appropriation of State funds.
- 16 (3) That the General Assembly's power over the appropriation of State funds can
17 be used to create additional incentives for cities, counties, and law
18 enforcement agencies to comply with duly enacted laws.
- 19 (4) That statutorily setting forth the manner in which the General Assembly
20 elects to exercise its discretion with respect to appropriations provides cities,
21 counties, and law enforcement agencies with a measure of predictability that
22 can be useful to those entities in planning and carrying out their functions
23 and duties.

24 **"§ 64-50. Definitions.**

25 The following definitions apply in this Article:

- 26 (1) Affected local government. – Any of the following:
- 27 a. A municipality found to be not in compliance with a State law related
28 to immigration.
- 29 b. A municipality in which a municipal law enforcement agency has
30 been found to be not in compliance with a State law related to
31 immigration.
- 32 c. A county found to be not in compliance with a State law related to
33 immigration.
- 34 d. A county in which a county law enforcement agency has been found
35 to be not in compliance with a State law related to immigration.
- 36 (2) Law enforcement agency. – A municipal police department, a county police
37 department, or a sheriff's office.
- 38 (3) State law related to immigration. – G.S. 64-6(b), 153A-145.5, or
39 160A-205.2.

40 **"§ 64-51. Attorney General to prepare form.**

41 (a) Preparation of Form. – The Attorney General shall prescribe a form for a person to
42 allege that a city, county, or law enforcement agency is not in compliance with a State law
43 related to immigration. The form shall clearly state that completed forms shall be sent to the
44 Attorney General, and the form shall be made available to the public on the Attorney General's
45 Web site.

46 (b) Certain Information Not Required. – A person shall not be required to list the
47 person's Social Security number on the complaint form or to have the form notarized.

48 **"§ 64-52. Filing of statement alleging noncompliance with a State law related to**
49 **immigration.**

50 Any person with a good-faith belief that a city, county, or law enforcement agency is not in
51 compliance with a State law related to immigration may file a statement with the Attorney

1 General setting forth the basis for that belief. The statement may be on a form prescribed by the
2 Attorney General pursuant to G.S. 64-51 or may be made in any other form that gives the
3 Attorney General information sufficient to proceed with an investigation pursuant to
4 G.S. 64-53. Nothing in this section shall be construed to prohibit the filing of anonymous
5 statements that are not submitted on a prescribed form.

6 **"§ 64-53. Investigation.**

7 (a) Investigation. – Within 45 days of receipt of a statement filed in accordance with
8 G.S. 64-52, the Attorney General shall commence an investigation of whether the city, county,
9 or law enforcement agency is in fact not in compliance with a State law related to immigration.
10 The Attorney General shall make a determination and conclude an investigation commenced
11 pursuant to this subsection within 60 days of the investigation's commencement.

12 (b) Assistance by Law Enforcement. – The Attorney General may request that the State
13 Bureau of Investigation assist in an investigation under this section, and the State Bureau of
14 Investigation shall assist in the investigation when it receives such a request.

15 (c) Production of Documents. – A local government shall produce records or
16 documents related to alleged noncompliance with a State law related to immigration within 10
17 business days of a request by the Attorney General to do so.

18 (d) Confidentiality. – Statements filed with the Attorney General pursuant to G.S. 64-52
19 and reports and other investigative documents and records of the Attorney General connected
20 to an investigation under this section shall be confidential and not matters of public record,
21 except when the local government under investigation requests in writing that these documents
22 be made public. Once an investigation under this section is complete, or once 60 days have
23 elapsed since the investigation was commenced, whichever is earlier, the statement and all
24 other reports and other investigative documents and records of the Attorney General connected
25 to an investigation under this section, not otherwise privileged or confidential under law, shall
26 be public records.

27 **"§ 64-54. Consequences of noncompliance with a State law related to immigration.**

28 (a) Consequences of Noncompliance Generally. – If the Attorney General determines
29 that an affected local government is not in compliance with a State law related to immigration,
30 all of the following shall apply:

31 (1) The affected local government shall be ineligible to receive distributions
32 under G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L,
33 105-187.19(b), and 136-41.1 for one 12-month period beginning as soon as
34 practicable after the date the Department of Transportation, the State
35 Controller, and the Secretary of Revenue are notified of noncompliance with
36 the State law related to immigration under subdivisions (3) and (4) of this
37 section.

38 (2) If, within 60 days of the Attorney General's determination, the affected local
39 government fails to demonstrate to the Attorney General's satisfaction that it
40 is in compliance with all State laws related to immigration, the period of
41 ineligibility shall be extended for an additional 12-month period.

42 (3) The Attorney General shall notify the following entities of the determination
43 that the affected local government is not in compliance with a State law
44 related to immigration and of the duration of the period of ineligibility to
45 receive funds determined pursuant to subdivision (1) of this subsection:

46 a. The affected local government.

47 b. The chairs of the Appropriations Committees of the Senate and
48 House of Representatives.

49 c. The chairs of the Joint Legislative Commission on Governmental
50 Operations.

51 d. The Office of State Budget and Management.

1 e. The Secretary of Revenue.

2 (4) The Office of State Budget and Management shall notify the Department of
3 Transportation and the State Controller of an affected local government's
4 ineligibility to receive the funds described in subdivision (1) of this
5 subsection. The Secretary of Revenue shall withhold any distributions
6 otherwise due to the affected local government under subdivision (1) of this
7 subsection.

8 (5) The Department of Transportation, the State Controller, and the Secretary of
9 Revenue shall ensure that the funds described in subdivision (1) of this
10 subsection are not distributed to an affected local government and that the
11 funds are instead distributed to other local governments that are eligible for
12 distributions pursuant to the relevant statute.

13 (b) Consequences of Noncompliance; E-Verify Statutes. – When the Attorney General
14 receives a notification from the Commissioner of Labor pursuant to G.S. 64-33.1(b), the
15 Attorney General, the Office of State Budget and Management, the State Controller, the
16 Secretary of Revenue, and the Department of Transportation shall take all of the actions
17 described in subsection (a) of this section except that those actions shall be taken with respect
18 to only the following entities, as applicable:

19 (1) A municipality found by the Commissioner of Labor to have violated
20 G.S. 143-133.3.

21 (2) A municipality in which all or part of a local school administrative unit
22 governed by a local board, as those terms are defined in G.S. 115C-5, found
23 by the Commissioner of Labor to have violated G.S. 143-133.3 is located.

24 (3) A county found by the Commissioner of Labor to have violated
25 G.S. 143-133.3.

26 (4) A county in which all or part of a local school administrative unit governed
27 by a local board, as those terms are defined in G.S. 115C-5, found by the
28 Commissioner of Labor to have violated G.S. 143-133.3 is located.

29 (c) Exceptions. – No enactment by the General Assembly shall be construed as an
30 exception to this section unless it specifically mentions this section.

31 **"§ 64-55. Attorney General to maintain copies of orders; reporting.**

32 (a) Database. – The Attorney General shall maintain a database of the local
33 governments and law enforcement agencies that are ineligible to receive the funds described in
34 G.S. 64-54(a)(1) and shall make the database accessible to the public through the Attorney
35 General's Web site.

36 (b) Reporting. – The Attorney General shall report quarterly to the Joint Legislative
37 Commission on Governmental Operations on all of the following:

38 (1) The number of statements received by the Attorney General pursuant to
39 G.S. 64-52.

40 (2) The number of investigations performed pursuant to G.S. 64-53.

41 (3) The number of times consequences for noncompliance with a State law
42 related to immigration were imposed pursuant to G.S. 64-54.

43 (4) The names of cities, counties, and law enforcement agencies found not to be
44 in compliance with a State law related to immigration.

45 **"§ 64-56. Appeal.**

46 A determination made by the Attorney General under this Article may be appealed only to
47 the extent and in the manner required by the United States and North Carolina Constitutions.
48 The imposition of consequences for noncompliance with a State law related to immigration
49 pursuant to G.S. 64-54 shall not occur until an appeal made under this section is complete.
50 However, if an appeal under this section is unsuccessful, the length of the period during which
51 an affected local government shall be ineligible to receive the funds described in

1 G.S. 64-54(a)(1) shall be the same as it would have been had no appeal been made. The
2 Attorney General must notify the entities listed in G.S. 64-54(a)(3) of the unsuccessful appeal.
3 Once notified, the Office of State Budget and Management shall notify the Department of
4 Transportation and the State Controller of the unsuccessful appeal. The period of ineligibility
5 under G.S. 64-54(a)(1) and (2) shall begin as soon as practicable after the date the Department
6 of Transportation, the State Controller and the Secretary of Revenue are notified of the
7 unsuccessful appeal.

8 **"§ 64-57. Attorney General may designate appointed official to carry out duties.**

9 The Attorney General may designate a person to carry out the Attorney General's duties
10 under this Article. The designee shall be an individual appointed by the Attorney General and
11 shall not be a member of the Council of State or any other elected official.

12 **"§ 64-58. Rules.**

13 The Attorney General shall adopt rules needed to implement this Article.

14 **"§ 64-59. Private enforcement.**

15 In addition to any other remedies at law or in equity, any person who resides within the
16 jurisdiction of a city, county, or law enforcement agency that the person believes is not in
17 compliance with a State law related to immigration may bring an action for declaratory and
18 injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court
19 shall award the prevailing party in an action brought under this section reasonable attorneys'
20 fees and court costs as authorized by law."

21 **SECTION 2.(b)** G.S. 64-33.1 reads as rewritten:

22 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

23 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
24 the board or governing body of the State, or of any institution of the State government, or of
25 any political subdivision of the State, found to have committed the violation that the board or
26 governing body of the State, or of any institution of the State government, or of any political
27 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
28 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
29 government, or of any political subdivisions of the State, issued notices pursuant to this section
30 and shall make that list available on its Web site.

31 (b) Violations by Certain Local Entities. – For a violation of G.S. 143-133.3 by a
32 political subdivision of the State, the Commissioner shall immediately notify the Attorney
33 General of the violation so that the Attorney General can take action in accordance with
34 G.S. 64-54(b). Additionally, the Commissioner shall notify the Attorney General if, within 60
35 days of the Commissioner's determination that there has been a violation, the political
36 subdivision fails to demonstrate to the Commissioner's satisfaction that the political subdivision
37 is in compliance with G.S. 143-133.3. The Commissioner may hold additional hearings as
38 needed to implement this subsection."

39 **SECTION 2.(c)** The Attorney General's office shall take reasonable steps to notify
40 local governments of the provisions of this act so that the local governments can take
41 appropriate steps to comply with this act's requirements.

42 **SECTION 2.(d)** G.S. 136-41.1 is amended by adding a new subsection to read:

43 "(e) No city or town shall receive any allocation under this section for any period during
44 which it is ineligible to receive those funds under G.S. 64-54."

45 **SECTION 2.(e)** G.S. 105-113.82(a) reads as rewritten:

46 "(a) Amount. – ~~The Subject to G.S. 64-54,~~ the Secretary must distribute annually a
47 percentage of the net amount of excise taxes collected on the sale of malt beverages and wine
48 during the preceding 12-month period ending March 31 to the counties or cities in which the
49 retail sale of these beverages is authorized in the entire county or city. The percentages to be
50 distributed are as follows:

51"

1 **SECTION 2.(f)** G.S. 105-164.44F(a) reads as rewritten:

2 "(a) Amount. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute part of the taxes
3 imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The
4 Secretary must make the distribution within 75 days after the end of each calendar quarter. The
5 amount the Secretary must distribute is the following percentages of the net proceeds of the
6 taxes collected during the quarter:

7 "

8 **SECTION 2.(g)** G.S. 105-164.44I(a) reads as rewritten:

9 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to the
10 counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications
11 service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the
12 distribution within 75 days after the end of each calendar quarter. The amount the Secretary
13 must distribute is the sum of the revenue listed in this subsection. From this amount, the
14 Secretary must first make the distribution required by subsection (b) of this section and then
15 distribute the remainder in accordance with subsections (c) and (d) of this section. The revenue
16 to be distributed under this section consists of the following:

17 "

18 **SECTION 2.(h)** G.S. 105-164.44L(a) reads as rewritten:

19 "(a) Distribution. – ~~The Subject to G.S. 64-54, the~~ Secretary must distribute to cities
20 twenty percent (20%) of the net proceeds of the tax collected under G.S. 105-164.4 on piped
21 natural gas, less the cost to the Department of administering the distribution. Each city's share
22 of the amount to be distributed is its excise tax share calculated under subsection (b) of this
23 section plus its ad valorem share calculated under subsection (c) of this section. A gas city will
24 also receive an amount calculated under subsection (b1) of this section as part of its excise tax
25 share. If the net proceeds of the tax allocated under this section are not sufficient to distribute
26 the excise tax share of each city under subsection (b) of this section and the gas city share under
27 subsection (b1) of this section, the proceeds shall be distributed to each city on a pro rata basis.
28 The Secretary must make the distribution within 75 days after the end of each quarter."

29 **SECTION 2.(i)** G.S. 105-187.19(b) reads as rewritten:

30 "(b) Each quarter, the Secretary shall credit thirty percent (30%) of the net tax proceeds
31 to the General Fund. ~~The Subject to G.S. 64-54, the~~ Secretary shall distribute the remaining
32 seventy percent (70%) of the net tax proceeds among the counties on a per capita basis
33 according to the most recent annual population estimates certified to the Secretary by the State
34 Budget Officer."

35 36 **PART III. WAIVER OF LOCAL GOVERNMENT IMMUNITY**

37 **SECTION 3.(a)** G.S. 153A-145.5 reads as rewritten:

38 "**§ 153A-145.5. Adoption of sanctuary ordinance ~~prohibited; prohibited; waiver of~~**
39 **immunity.**

40 ...

41 (c) A county in violation of this section shall have waived its governmental immunity
42 as provided in G.S. 153A-435.1."

43 **SECTION 3.(b)** Article 23 of Chapter 153A of the General Statutes is amended by
44 adding a new section to read as follows:

45 "**§ 153A-435.1. Waiver of immunity; sanctuary status.**

46 (a) A county shall have waived its immunity from civil liability in tort if it does not
47 comply with G.S. 153A-145.5 and an unauthorized alien commits a crime against a person or
48 property within the corporate limits of the county.

49 (b) Immunity shall be waived under subsection (a) of this section even if the county has
50 not purchased insurance as authorized in G.S. 153A-435."

51 **SECTION 3.(c)** G.S. 160A-205.2 reads as rewritten:

1 "§ 160A-205.2. Adoption of sanctuary ordinances ~~prohibited~~prohibited; waiver of
2 immunity.

3 ...
4 (c) A city in violation of this section shall have waived its governmental immunity as
5 provided in G.S.160A-485.1."

6 **SECTION 3.(d)** Article 21 of Chapter 160A of the General Statutes is amended by
7 adding a new section to read as follows:

8 "§ 160A-485.1. Waiver of immunity; sanctuary status.

9 (a) A city shall have waived its immunity from civil liability in tort if it does not
10 comply with G.S. 160A-205.2 and an unauthorized alien commits a crime against a person or
11 property within the corporate limits of the city.

12 (b) Immunity shall be waived under subsection (a) of this section even if the city has
13 not purchased insurance as authorized in G.S. 160A-485 or G.S. 160A-485.5(a)."
14

15 **PART IV. CREATION OF ADDITIONAL INCENTIVES FOR UNC CONSTITUENT** 16 **INSTITUTIONS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION**

17 **SECTION 4.** Part 3 of Article 1 of Chapter 116 of the General Statutes is amended
18 by adding a new section to read:

19 "§ 116-40.13. Adoption of sanctuary status prohibited; investigation; penalties.

20 (a) No constituent institution may have in effect any policy or procedure that limits or
21 restricts the enforcement of federal immigration laws to less than the full extent permitted by
22 federal law.

23 (b) No constituent institution shall do any of the following related to information
24 regarding the citizenship or immigration status, lawful or unlawful, of any individual:

25 (1) Prohibit law enforcement officials or agencies from gathering such
26 information.

27 (2) Direct law enforcement officials or agencies not to gather such information.

28 (3) Prohibit the communication of such information to federal law enforcement
29 agencies.

30 (c) Within 45 days of receipt of a report that a constituent institution is in violation of
31 either or both subsection (a) or (b) of this section, the President shall commence an
32 investigation. The President shall conclude the investigation and make a determination within
33 60 days of the investigation's commencement. Upon determining a constituent institution is in
34 violation of either or both subsection (a) or (b) of this section, the President shall immediately
35 notify the Board of Governors.

36 (d) Upon receipt of a determination from the President under subsection (c) of this
37 section, the Board of Governors shall immediately revoke the constituent institution's status as
38 a special responsibility constituent institution under Part 2A of Article 1 of this Chapter. The
39 revocation shall apply to the current fiscal year. If, within 60 days of the President's
40 determination, the constituent institution fails to demonstrate to the President's satisfaction that
41 it is in compliance with subsections (a) and (b) of this section, the Board of Governors shall
42 extend the revocation of special responsibility constituent institution status for an additional
43 fiscal year."
44

45 **PART V. DPS/ICE MOA**

46 **SECTION 5.** The Secretary of the Department of Public Safety shall enter into a
47 Memorandum of Agreement (MOA) with the Director of U.S. Immigration and Customs
48 Enforcement (ICE) pursuant to section 287(g) of the Illegal Immigration Reform and
49 Immigrant Responsibility Act of 1996, as amended, to permit designated State law enforcement
50 officers to perform immigration law enforcement functions. The designated State law

1 enforcement officers shall be required to receive appropriate training as provided by ICE and
2 shall function under the supervision of ICE officers when performing under the MOA.

3

4 **PART VI. EFFECTIVE DATE**

5 **SECTION 6.** Sections 1 and 2 of this act become effective August 1, 2017. The
6 remainder of this act is effective when it becomes law.