



# SENATE BILL 145: Government Immigration Compliance.

2017-2018 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	April 3, 2017
<b>Introduced by:</b>	Sen. Sanderson	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	First Edition		Committee Co-Counsel

**OVERVIEW:** *Senate Bill 145 would:*

- *Remove the current exemption permitting law enforcement officers to use otherwise prohibited forms of identification to assist in determining a person's identity or residency when no other documents are available to the officer.*
- *Provide that a city or county that fails to comply with prohibitions against accepting certain forms of identification or that adopts a prohibited sanctuary policy or ordinance is ineligible to receive distributions of certain taxes and appropriations otherwise due for the fiscal year following the first date of noncompliance.*
- *Provide that a city or county that adopts a prohibited sanctuary policy or ordinance also waives its governmental immunity from civil tort liability for crimes against person or property committed by an unauthorized alien within its corporate limits.*
- *Prohibit constituent institutions of the University of North Carolina from having in effect policies or practices that would prevent law enforcement officers from gathering information concerning the citizenship or immigration status of any person.*
- *Revoke the institution's designation as a "special responsibility constituent institution" for violating this prohibition.*
- *Direct the Department of Public Safety to enter into an agreement with Immigrations and Customs Enforcement (ICE) authorizing designated State law enforcement officers to enforce immigration laws under supervision by ICE officers.*

**CURRENT LAW:**

**Prohibition against Acceptance of Certain Forms of Identification by Local Governments and Law Enforcement Agencies**

Cities and counties and their local law enforcement agencies are prohibited from accepting the following forms of identification for use in determining a person's identity or residency, and are prohibited from establishing by policy or ordinance the acceptability of such documents for such use:

- A matricula consular or other similar document issued by a consulate or embassy of another country other than a valid passport
- An identity document created by any person, organization, county, city or other local authority not expressly authorized to be used for this purpose by the General Assembly.

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578

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However, the law provides an exception under which these forms of identification may be used by a law enforcement officer to assist in determining the identity or residency of a person when they are the only documents available to the law enforcement officer at the time.<sup>1</sup>

## **Prohibition against Local Government Adoption of Sanctuary Policies or Ordinances**

Local governments are not permitted to:

- Adopt any policy, ordinance or procedure that limiting the enforcement of federal immigration laws.
- Prohibit law enforcement officials or agencies from gathering information about the citizenship or immigration status of any person or direct the officials or agencies not to gather such information.
- Prohibit communication of such information to federal law enforcement agencies.<sup>2</sup>

There currently are no penalties imposed for violating these prohibitions.

## **Special Responsibility Constituent Institutions of the University of North Carolina**

Constituent institutions of the University of North Carolina that are designated by the Board of Governors as "special responsibility constituent institutions" are granted additional management authority and discretion over their budgets.<sup>3</sup> This designation is "based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it."<sup>4</sup>

Institutions designated as special responsibility constituent institutions are delegated the authority and discretion to:

- Receive General Fund appropriations in a lump sum at the budget code level.
- Spend overhead receipts and General Fund appropriations in the manner deemed by the Chancellor to best advance the programs and services of the institution.
- Transfer appropriations between budget codes.
- Carry forward up to 2.5% of General Fund appropriations into the next fiscal year for use on non-recurring expenditures.

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<sup>1</sup> G.S. 15A-311.

<sup>2</sup> G.S. 153A-145.5 (counties); G.S. 160A-205.2 (cities).

<sup>3</sup> G.S. 116-30.4. The following institutions are currently designated as special responsibility constituent institutions:

- East Carolina University
- Elizabeth City State University
- Fayetteville State University
- North Carolina School of the Arts
- North Carolina State University at Raleigh
- The University of North Carolina at Chapel Hill
- The University of North Carolina at Charlotte
- The University of North Carolina at Greensboro
- The University of North Carolina at Pembroke
- The University of North Carolina at Wilmington

UNC Policy Manual, Section 600.3.2.

<sup>4</sup> G.S. 116-30.1

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- Establish and abolish positions.<sup>5</sup>

## **Federal Authority for State and Local Enforcement of Immigration Laws**

Under federal law, state or local law enforcement entities can be delegated authority to enforce federal immigration laws by entering into a joint Memorandum of Understanding (MOU) with U.S. Immigrations and Customs Enforcement (ICE).<sup>6</sup> According to the Department of Homeland Security, ICE currently has such agreements with 37 law enforcement agencies in 16 states, and has trained and certified more than 1,822 state and local officers to enforce immigration law. The sheriff's offices in Cabarrus, Gaston, Henderson, Mecklenburg, and Wake counties comprise the North Carolina law enforcement agencies currently listed as participating in such agreements.<sup>7</sup>

## **BILL ANALYSIS:**

**Part I** of the bill would eliminate the exception under G.S. 15A-311 permitting a law enforcement officer to accept a prohibited form of identification and would recodify this section as G.S. 64-6, thereby moving it from the Criminal Procedure chapter of the General Statutes (Chapter 15A) to the Aliens chapter (Chapter 64).

**Part II** of the bill would add a new Article 3 to Chapter 64 of the General Statutes, entitled "Local Government Noncompliance with State Laws Related to Immigration," which would:

- Define "State law related to immigration" to include:
  - G.S. 64-6(b) (forbidding local government or law enforcement policies or ordinances establishing the acceptance of prohibited forms of identification)
  - G.S. 153A-145.5 and 160A-205.2 (prohibiting adoption of sanctuary policies or ordinances)
- Define "affected local government" as a municipality or county found to be noncompliant with a State law related to immigration or that has within it a law enforcement agency found to be noncompliant with a State law related to immigration.
- Require the Attorney General to investigate within 45 days any complaint alleging that a city, county, or a local law enforcement agency is not in compliance with a State law related to immigration, and to develop a complaint form for use by the public in alleging such non-compliance.
- Disqualify affected local governments from receiving appropriations from the State Highway Fund for street construction, maintenance and improvements otherwise due,<sup>8</sup> and from receiving distributions of certain taxes on beer and wine sales, telecommunications services, video programming services, piped natural gas, and scrap tire disposal otherwise due, for the fiscal year following the first date of noncompliance with the applicable State law related to immigration. If the violation is not cured within 60 days, affected local governments would lose these sources of funding for an additional fiscal year.
- Impose the same consequences for local governments that violate in violation G.S. 143-133.3 by enter into a contract when the contractor or its subcontractors are noncompliant with the State's E-Verify statutes.

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<sup>5</sup> G.S. 116-30.2; G.S. 116-30.3.

<sup>6</sup> Section 287(g) of the Immigration and Nationality Act, codified as 8 U.S.C. § 1357.

<sup>7</sup> Source: <https://www.ice.gov/factsheets/287g#wcm-survey-target-id>.

<sup>8</sup> These are so-called "Powell Bill funds" distributed to municipalities pursuant to G.S. 136-41.1.

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- Require the Attorney General to maintain certain information and to make various reports on the implementation of the act.
- Authorize an appeal of an Attorney General determination of noncompliance only when an appeal is required to be made available under the U.S. or North Carolina constitutions.
- Authorize actions by private parties to obtain declaratory and injunctive relief based on alleged non-compliance by a city, county, or law enforcement agency with a State law related to immigration.

**Part III** of the bill would provide that any city or county that adopts a sanctuary ordinance or policy waives its governmental immunity from civil liability in tort in the event an unauthorized alien commits a crime against a person or property within its corporate limit, regardless of whether the city or county has purchased insurance.

**Part IV** of the bill would forbid constituent institutions of the University of North Carolina from:

- Having in effect any policy or procedure limiting the enforcement of federal immigration laws.
- Prohibiting law enforcement officials or agencies from gathering information regarding the citizenship or immigration status of any individual.
- Preventing the communication of such information to federal law enforcement officials.

The UNC President would be required to investigate reported violations and report any confirmed violations to the Board of Governors, which would then immediately revoke the violating constituent institution's status as a special responsibility constituent institution effective for the current fiscal year. The revocation would be extended for an additional fiscal year if, within 60 days of the President's determination, the institution fails to satisfy the President that it is in compliance with the law.

**Part V** of the bill would direct the Secretary of the Department of Public Safety to enter into a Memorandum of Understanding with the Director of U.S. Immigration and Customs Enforcement (ICE) to permit designated State law enforcement officers to receive training by ICE and perform immigration law enforcement functions under the supervision of ICE officers.

**EFFECTIVE DATE:** Sections 1 and 2 of the act become effective August 1, 2017. The remainder of the act is effective when it becomes law.