



HOUSE BILL 135: Government Immigration Compliance.

2019-2020 General Assembly

Committee: House State and Local Government. If **Date:** May 2, 2019
favorable, re-refer to Education - Universities.
If favorable, re-refer to Judiciary. If favorable,
re-refer to Rules, Calendar, and Operations of
the House

Introduced by: Reps. Cleveland, Presnell, Speciale, Brody **Prepared by:** Billy R. Godwin
Analysis of: PCS to First Edition Staff Attorney
H135-CSBD-3

OVERVIEW: *The proposed committee substitute to House Bill 135 would do all of the following:*

- *Make various changes to existing State law and would enact new State law relative to the ability of cities, counties, local law enforcement agencies including sheriff departments, and constituent institutions of the University of North Carolina to limit or prohibit law enforcement agencies from enforcing immigration laws.*
- *Direct the Attorney General to investigate reports of violation of State immigration laws by cities, counties, and local law enforcement agencies and would authorize the withholding of State revenue distributions to those cities, counties, and local law enforcement agencies determined to be in violation of State immigration law.*
- *Provide that upon a determination by the Commissioner of Labor of noncompliance with State E-Verify law by a local school administrative unit, no State funds shall be allocated to pay the local superintendent's salary for one year.*
- *Direct the President of the University of North Carolina to investigate reports of any constituent institution adopting a policy limiting or restricting enforcement of federal immigration laws and provide that upon a determination by the President that any constituent institution has adopted such a policy, require the Board of Governors to revoke that constituent institution's status as a special responsibility constituent.*
- *Require the Secretary of the Department of Public Safety to enter into a Memorandum of Agreement with the Director of U.S. Immigration and Customs Enforcement (ICE) to permit designated State law enforcement officers to perform immigration law enforcement functions.*

[As introduced, this bill was identical to S341, as introduced by Sens. Sanderson, Britt, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: North Carolina law prohibits cities (G.S. 160A-205.2) and counties (G.S. 153A-145.5) from having in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. Cities and counties are also precluded from doing any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- Prohibiting law enforcement officials or agencies from gathering such information.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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- Directing law enforcement officials or agencies not to gather such information.
- Prohibiting the communication of such information to federal law enforcement agencies.

State agencies, universities, counties, cities, and other political subdivisions of the State are prohibited from entering into a contract unless the contractor, and the contractor's subcontractors, comply with North Carolina's E-Verify hiring requirements of Article 2 of Chapter 64 of the General Statutes.

State law prohibits cities, counties, and law enforcement agencies from establishing by policy or ordinance the acceptance of any documents establishing the identify or residency of a person other than those documents authorized by State law.

BILL ANALYSIS: The PCS would do the following:

Section 1, effective July 1, 2019, would:

- Recodify G.S. 15A-311 as G.S. 64-6.
- Authorize a law enforcement officer to use any documentation or information provided by a person as proof of their identity or residency.
- Would authorize a law enforcement office to take a photograph of the person for purposes of identifying the person.

Section 2, effective July 1, 2019, would add a new Article 3 to Chapter 64 (Aliens) of the General Statutes that would establish a process to allow citizens to initiate an investigation into whether a county, city, or law enforcement agency has failed to comply with State immigration laws as follows:

- Direct the Attorney General to prescribe a form for persons to allege that a city, county, or a municipal or county police department or a sheriff's office is not in compliance with State immigration law and authorize the person to file the form with the Attorney General setting forth a good faith belief of that non-compliance.
- Would define "State law related to immigration" as those State laws pertaining to acceptable documents of identity or residency and those prohibiting cities and counties from adopting sanctuary ordinances.
- Direct the Attorney General to commence investigation within 45 days of receiving an allegation of non-compliance with State immigration laws by local governments and to conclude the investigation, with a determination, within 60 days of commencing the investigation.
- Provide that records of the Attorney General's investigation, not otherwise privileged or confidential under the law, shall be made public records at the earlier of completion of the investigation or 60 days after commencement of the investigation.
- Would make a local government determined by the Attorney General to be noncompliant with State immigration law or determined by the Commissioner of Labor to be non-compliant with E-Verify law, ineligible for one year to receive revenue distributions from:
 - Beer and wine sales.
 - Telecommunication services taxes,
 - Video programing service taxes.
 - Piped natural gas taxes.
 - Powell Bill funds.

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- Require the Attorney General to notify certain State officials of a local government's noncompliance with State immigration law.
- Require the Attorney General to maintain a database available on the Attorney General's Web site of those local governments and law enforcement agencies ineligible to receive funds.
- Provide that determinations of noncompliance by the Attorney General may be appealed as provided in the Constitutions of the United States and the State of North Carolina and would require the affected local government to appeal the Attorney General's determination through a contested case proceeding initiated under the Administrative Procedure Act.
- Authorize the Attorney General to designate a person to carry out the Attorney General's duties under the Article and to adopt rules needed to implement the Article.
- Authorize a citizen to bring a private cause of action in superior court against a city, county, or law enforcement agency (including the sheriff's office) that the person believes is not in compliance with State immigration law and would authorize a court to (i) impose a civil penalty of up to \$10,000 per day for each day a city, county, or law enforcement agency fails to comply with a court order issued pursuant to such action, and (ii) award court costs and reasonable attorney fees to the prevailing party in any such action.
- Require the Commissioner of Labor to:
 - Notify the Attorney General of a violation of State E-Verify law by a political subdivision of the State.
 - Notify the Superintendent of Public Instruction of a violation of State E-Verify law by a local school administrative unit.
- Provide that upon a determination by the Commissioner of Labor of noncompliance with State E-Verify law by a local school administrative unit, no State funds shall be allocated to pay the local superintendent's salary for one year.

Section 3, effective July 1, 2019, would be conforming changes.

Section 4, effective when the bill becomes law, would:

- Waive governmental immunity from tort liability for cities and counties who adopt sanctuary ordinances, whether or not insurance has been purchased.

Section 5, effective when the bill becomes law, would:

- Preclude any of the 16 public constituent institutions of the University of North Carolina from:
 - Adopting any policy or procedure limiting or restricting enforcement of federal immigration laws.
 - Prohibiting the:
 - Gathering of information regarding the citizenship or immigration status of an individual by law enforcement officials or agencies.
 - Directing of law enforcement officials to not gather immigration status information.
 - Communication of immigration status information to federal law enforcement agencies.
- Require the President of the University of North Carolina to conduct an investigation upon receipt of a report that any constituent institution has adopted a prohibited policy, limiting or restricting

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enforcement of federal immigration laws and provide that upon a determination by the President that the constituent institution has adopted such a policy, require the Board of Governors to revoke that constituent institution's status as a special responsibility constituent institution under Part 2A of Article 1 of Chapter 116 of the General Statutes.

Section 6, effective when the bill becomes law, would require the Secretary of the Department of Public Safety to enter into a Memorandum of Agreement with the Director of U.S. Immigration and Customs Enforcement (ICE) pursuant to section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as amended to permit designated State law enforcement officers to perform immigration law enforcement functions.

Section 7, effective when the bill becomes law, would require the Attorney General to take reasonable steps to notify local governments of the provisions of the act.

EFFECTIVE DATE: As noted above.