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SENATE BILL DRS15043-MM-9A (01/13)

Short Title: Government Immigration Compliance.

(Public)

Sponsors: Senator Sanderson (Primary Sponsor).

Referred to:

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 Chapter
13 64 of the General Statutes.

14 **SECTION 1.(b)** G.S. 15A-311, as recodified by subsection (a) of this section, reads as
15 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 for
24 this purpose by the General Assembly.

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28 government policy or ordinance that contradicts this section is hereby repealed.

29 ~~(c) Notwithstanding subsection (a) of this section, documents described in subdivision (2)~~
30 ~~of subsection (a) of this section may be used by a law enforcement officer to assist in determining~~
31 ~~the identity or residency of a person when they are the only documents providing an indication of~~
32 ~~identity or residency available to the law enforcement officer at the time."~~
33

34 **PART II. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS**
35 **TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION**



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

3 "Article 3.

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

5 **"§ 64-49. Findings.**

6 The General Assembly finds the following:

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

20 **"§ 64-50. Definitions.**

21 The following definitions apply in this Article:

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

34 **"§ 64-51. Attorney General to prepare form.**

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

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

41 **"§ 64-52. Filing of statement alleging noncompliance with a State law related to**
42 immigration.

43 Any person with a good-faith belief that a city, county, or law enforcement agency is not in
44 compliance with a State law related to immigration may file a statement with the Attorney General
45 setting forth the basis for that belief. The statement may be on a form prescribed by the Attorney
46 General pursuant to G.S. 64-51 or may be made in any other form that gives the Attorney General
47 information sufficient to proceed with an investigation pursuant to G.S. 64-53. Nothing in this
48 section shall be construed to prohibit the filing of anonymous statements that are not submitted on
49 a prescribed form.

50 **"§ 64-53. Investigation.**

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

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

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

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

20 **"§ 64-54. Consequences of noncompliance with a State law related to immigration.**

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

24 (1) The affected local government shall be ineligible to receive distributions under
25 G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L, 105-187.16, and
26 136-41.1 for the fiscal year following the first date of noncompliance with the
27 State law related to immigration.

28 (2) If, within 60 days of the Attorney General's determination, the affected local
29 government fails to demonstrate to the Attorney General's satisfaction that it is
30 in compliance with all State laws related to immigration, the period of
31 ineligibility shall be extended for an additional fiscal year.

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

36 a. The affected local government.

37 b. The chairs of the Appropriations Committees of the Senate and House
38 of Representatives.

39 c. The chairs of the Joint Legislative Commission on Governmental
40 Operations.

41 d. The Office of State Budget and Management.

42 e. The Secretary of Revenue.

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

48 (5) The Department of Transportation, the State Controller, and the Secretary of
49 Revenue shall ensure that the funds described in subdivision (1) of this
50 subsection are not distributed to an affected local government and that the funds

1 are instead distributed to other local governments that are eligible for
2 distributions pursuant to the relevant statute.

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

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

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

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

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

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

20 **"§ 64-55. Attorney General to maintain copies of orders; reporting.**

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

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

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

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

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

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

33 **"§ 64-56. Appeal.**

34 A determination made by the Attorney General under this Article may be appealed only to the
35 extent and in the manner required by the United States and North Carolina Constitutions. The
36 imposition of consequences for noncompliance with a State law related to immigration pursuant to
37 G.S. 64-54 shall not occur until an appeal made under this section is complete. However, if an
38 appeal under this section is unsuccessful, the length of the period during which an affected local
39 government shall be ineligible to receive the funds described in G.S. 64-54(a)(1) shall be the same
40 as it would have been had no appeal been made, regardless of which fiscal year or years the
41 resulting period of ineligibility shall occur.

42 **"§ 64-57. Attorney General may designate appointed official to carry out duties.**

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

46 **"§ 64-58. Rules.**

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

48 **"§ 64-59. Private enforcement.**

49 In addition to any other remedies at law or in equity, any person who resides within the
50 jurisdiction of a city, county, or law enforcement agency that the person believes is not in
51 compliance with a State law related to immigration may bring an action for declaratory and

1 injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court
2 shall award the prevailing party in an action brought under this section reasonable attorneys' fees
3 and court costs as authorized by law."

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

5 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

6 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
7 the board or governing body of the State, or of any institution of the State government, or of any
8 political subdivision of the State, found to have committed the violation that the board or
9 governing body of the State, or of any institution of the State government, or of any political
10 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
11 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
12 government, or of any political subdivisions of the State, issued notices pursuant to this section
13 and shall make that list available on its Web site.

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

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

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

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

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

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

34"

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

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

41"

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

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

51"

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

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

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

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

17 18 **PART III. WAIVER OF LOCAL GOVERNMENT IMMUNITY**

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

20 "**§ 153A-145.5. Adoption of sanctuary ordinance ~~prohibited-prohibited; waiver of immunity.~~**

21 ...

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

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

26 "**§ 153A-435.1. Waiver of immunity; sanctuary status.**

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

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

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

33 "**§ 160A-205.2. Adoption of sanctuary ordinances ~~prohibited-prohibited; waiver of~~**
34 **immunity.**

35 ...

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

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

40 "**§ 160A-485.1. Waiver of immunity; sanctuary status.**

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

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

46 47 **PART IV. CREATION OF ADDITIONAL INCENTIVES FOR UNC CONSTITUENT** 48 **INSTITUTIONS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION**

49 **SECTION 4.** Article 3 of Chapter 116 of the General Statutes is amended by adding a
50 new section to read:

51 "**§ 116-40.13. Adoption of sanctuary status prohibited; investigation; penalties.**

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

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

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

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

8 (3) Prohibit the communication of such information to federal law enforcement
9 agencies.

10 (c) Within 45 days of receipt of a report that a constituent institution is in violation of
11 either or both subsection (a) or (b) of this section, the President shall commence an investigation.
12 The President shall conclude the investigation and make a determination within 60 days of the
13 investigation's commencement. Upon determining a constituent institution is in violation of either
14 or both subsection (a) or (b) of this section, the President shall immediately notify the Board of
15 Governors.

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

23

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

25 **SECTION 5.** The Secretary of the Department of Public Safety shall enter into a
26 Memorandum of Agreement (MOA) with the Director of U.S. Immigration and Customs
27 Enforcement (ICE) pursuant to Section 287(g) of the Illegal Immigration Reform and Immigrant
28 Responsibility Act of 1996, as amended, to permit designated State law enforcement officers to
29 perform immigration law enforcement functions. The designated State law enforcement officers
30 shall be required to receive appropriate training as provided by ICE and shall function under the
31 supervision of ICE officers when performing under the MOA.
32

33 **PART VI. EFFECTIVE DATE**

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