

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 145
Judiciary Committee Substitute Adopted 4/11/17

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28 local government policy or ordinance that contradicts this section is hereby repealed.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."~~
33

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



1 G.S. 64-53. Nothing in this section shall be construed to prohibit the filing of anonymous
2 statements that are not submitted on a prescribed form.

3 **"§ 64-53. Investigation.**

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

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

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

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

24 **"§ 64-54. Consequences of noncompliance with a State law related to immigration.**

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

28 (1) The affected local government shall be ineligible to receive distributions
29 under G.S. 105-113.82, 105-164.44F, 105-164.44I, 105-164.44L,
30 105-187.19(b), and 136-41.1 for the fiscal year following the first date of
31 noncompliance with the State law related to immigration.

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

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

40 a. The affected local government.

41 b. The chairs of the Appropriations Committees of the Senate and
42 House of Representatives.

43 c. The chairs of the Joint Legislative Commission on Governmental
44 Operations.

45 d. The Office of State Budget and Management.

46 e. The Secretary of Revenue.

47 (4) The Office of State Budget and Management shall notify the Department of
48 Transportation and the State Controller of an affected local government's
49 ineligibility to receive the funds described in subdivision (1) of this
50 subsection. The Secretary of Revenue shall withhold any distributions

1 otherwise due to the affected local government under subdivision (1) of this
2 subsection.

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

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

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

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

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

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

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

26 **"§ 64-55. Attorney General to maintain copies of orders; reporting.**

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

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

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

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

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

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

40 **"§ 64-56. Appeal.**

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

49 **"§ 64-57. Attorney General may designate appointed official to carry out duties.**

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

4 **"§ 64-58. Rules.**

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

6 **"§ 64-59. Private enforcement.**

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

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

14 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

15 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
16 the board or governing body of the State, or of any institution of the State government, or of
17 any political subdivision of the State, found to have committed the violation that the board or
18 governing body of the State, or of any institution of the State government, or of any political
19 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
20 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
21 government, or of any political subdivisions of the State, issued notices pursuant to this section
22 and shall make that list available on its Web site.

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

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

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

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

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

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

43 "

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

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

50 "

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

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

9 "

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

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

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

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

27 28 **PART III. WAIVER OF LOCAL GOVERNMENT IMMUNITY**

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

30 "**§ 153A-145.5. Adoption of sanctuary ordinance ~~prohibited~~prohibited; waiver of**
31 **immunity.**

32 ...
33 (c) A county in violation of this section shall have waived its governmental immunity
34 as provided in G.S. 153A-435.1."

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

37 "**§ 153A-435.1. Waiver of immunity; sanctuary status.**

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

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

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

44 "**§ 160A-205.2. Adoption of sanctuary ordinances ~~prohibited~~prohibited; waiver of**
45 **immunity.**

46 ...
47 (c) A city in violation of this section shall have waived its governmental immunity as
48 provided in G.S.160A-485.1."

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

51 "**§ 160A-485.1. Waiver of immunity; sanctuary status.**

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

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

6
7 **PART IV. CREATION OF ADDITIONAL INCENTIVES FOR UNC CONSTITUENT**
8 **INSTITUTIONS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION**

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

11 **"§ 116-40.13. Adoption of sanctuary status prohibited; investigation; penalties.**

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

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

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

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

20 (3) Prohibit the communication of such information to federal law enforcement
21 agencies.

22 (c) Within 45 days of receipt of a report that a constituent institution is in violation of
23 either or both subsection (a) or (b) of this section, the President shall commence an
24 investigation. The President shall conclude the investigation and make a determination within
25 60 days of the investigation's commencement. Upon determining a constituent institution is in
26 violation of either or both subsection (a) or (b) of this section, the President shall immediately
27 notify the Board of Governors.

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

36
37 **PART V. DPS/ICE MOA**

38 **SECTION 5.** The Secretary of the Department of Public Safety shall enter into a
39 Memorandum of Agreement (MOA) with the Director of U.S. Immigration and Customs
40 Enforcement (ICE) pursuant to section 287(g) of the Illegal Immigration Reform and
41 Immigrant Responsibility Act of 1996, as amended, to permit designated State law enforcement
42 officers to perform immigration law enforcement functions. The designated State law
43 enforcement officers shall be required to receive appropriate training as provided by ICE and
44 shall function under the supervision of ICE officers when performing under the MOA.
45

46 **PART VI. EFFECTIVE DATE**

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