

SESSION OF 2016

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2587

As Amended by House Committee on Judiciary

Brief*

HB 2587 would prohibit municipalities and state agencies from enacting or adopting a “sanctuary policy,” which the bill would define as any order, ordinance, resolution, or law enforcement policy, whether formally enacted or informally adopted, that:

- Limits or prohibits any municipality official or person employed by a municipality from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien within such municipality;
- Grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of a municipality in violation of federal law;
- Violates federal law governing communication between government agencies and U.S. Immigration and Customs Enforcement (ICE);
- Restricts in any way, or imposes any conditions on, a municipality’s cooperation or compliance with detainers or other requests from ICE to maintain custody of any alien or to transfer any alien to the custody of ICE;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Requires ICE to obtain a warrant or demonstrate probable cause before complying with detainers or other requests to maintain custody of any alien or to transfer any alien to the custody of ICE; or
- Prevents a municipality's law enforcement officers from inquiring as to the citizenship or immigration status of any person.

The bill would require the governing body of each municipality, or the chief law enforcement officer thereof, to provide each law enforcement officer with a copy of the bill's provisions and written notice of such officer's duty to cooperate with state and federal agencies and officials on matters pertaining to the enforcement of state and federal immigration laws. Similarly, each state agency vested with law enforcement authority would be required to provide each law enforcement officer employed by such agency with a printed copy of the bill's provisions and written notice of such officer's duty to cooperate with state and federal agencies and officials on matters pertaining to the enforcement of state and federal immigration laws.

The bill would provide that any municipality that does enact or adopt such a policy would be ineligible to receive any moneys that otherwise would be remitted to such municipality by a state agency. The bill would designate the Attorney General to receive complaints regarding any violation of the provisions of the bill. Complaints could be submitted in writing in such form and manner as prescribed by the Attorney General by any resident, or at any time a legislator could request that the Attorney General investigate and issue an opinion as to whether a municipality has violated the provisions of the bill. Upon receiving a complaint or request, the bill would require the Attorney General to investigate and determine whether a violation has occurred and issue an opinion stating the conclusion of that investigation.

A municipality's ineligibility would commence on the date such opinion is issued and would remain ineligible until such time as the Attorney General certifies that the sanctuary policy is repealed or is no longer in effect. The bill also would require the Attorney General to send a copy of any opinion or certification to the municipality that was the subject of the investigation and to the Director of Accounts and Reports. Further, the bill would require the Attorney General to adopt rules and regulations necessary to implement the bill.

The bill would require the Attorney General to defend cities and counties, at their request, in litigation arising from enforcing federal immigration laws to the full extent permitted. All costs incurred by the Attorney General to defend a city or county, including payment of court costs, would be paid from the State General Fund. Further, the bill would provide that if a city or county incurs liability for enforcing federal immigration laws to the full extent permitted, the city or county responsible for the costs incurred would be reimbursed for such costs by filing a claim against the State.

Background

In the House Committee on Judiciary, Representative Hildabrand, the Secretary of State, and other private citizens provided testimony in support of the bill. Representatives of the American Civil Liberties Union, American Immigration Lawyers Association, Kansas Appleseed Center for Law and Justice, and Unitarian Fellowship of Lawrence and several attorneys and private citizens were opponents of the bill. The Johnson County Sheriff and a representative of the Kansas Business Coalition on Immigration offered neutral testimony.

The House Committee adopted an amendment requiring the Attorney General to defend cities and counties in litigation arising from enforcing federal immigration laws.

The fiscal note prepared by the Division of the Budget indicates passage of the bill, as introduced, could result in

costs for the Office of the Attorney General ranging from \$151,674 to \$176,674 from the State General Fund in FY 2017, including \$84,157 to hire an additional Assistant Attorney General plus related expenses of \$17,517 for workstation setup, travel, and other costs.

Additionally, the Office indicates there likely would be litigation between affected municipalities and the State over the application of this bill. As the Office would be responsible for investigating and determining if a municipality enacted sanctuary policies, the Office would most likely be named as one of the defendant parties to any legal action by the affected municipality. As a result, outside counsel would be needed to defend the Office, as well as any other state defendants. The Office notes there also could be implications of constitutional issues, which may result in litigation proceeding to the appellate level in either state or federal court. This scenario would entail a multi-year and costly process. The Office estimates costs of defense would be a minimum of \$50,000 to \$75,000 per year. This expense would be ongoing until a ruling is issued.

The fiscal note also indicates local governments could incur expenses from litigation and providing documents and information for any investigations. Additionally, local governments could lose funding from the State if it is found that a municipality adopted a sanctuary policy. The precise fiscal effect for cities is unknown. According to *The FY 2017 Governor's Budget Report*, \$5.1 billion from all funds, including \$3.4 billion from the State General Fund, is budgeted for statewide aid to local government expenditures in FY 2017. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.