

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 158

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

SB 158 would prohibit municipalities and state agencies from adopting a “sanctuary policy.” Any municipality that enacted or adopted a sanctuary policy would be deemed ineligible to receive any moneys from a state agency it is otherwise entitled to and would remain ineligible until the sanctuary policy was repealed or no longer in effect.

Definitions

The bill would provide definitions for several terms.

A “sanctuary policy” would be defined in the bill 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;

*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>

- Violates any provision of 8 USC § 1373 [related to prohibiting restrictions on government officials transmitting information about the citizenship and immigration status of any individual to the Federal Immigration and Naturalization Service];
- Restricts in any way, or imposes any conditions on, a municipality's cooperation or compliance with detainers or other requests from U.S. Immigration and Customs Enforcement (ICE) to maintain custody of any alien or to transfer any alien to the custody of ICE;
- Requires ICE to obtain a warrant or demonstrate probable cause before complying with detainers or other request from ICE 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 also provide definitions for law enforcement officer, municipality, municipality official, and state agency.

Complaints and Investigations

Pursuant to the bill, the Attorney General would receive complaints regarding violations of the bill's provisions and would be required to investigate and determine whether such a violation occurred. Complaints could be submitted by any resident of the state and would have to be in writing and be submitted in the form and manner prescribed by the Attorney General. Any member of the Kansas Legislature, in lieu of submitting a complaint, could request the Attorney General to investigate and issue an opinion as to whether a municipality has enacted or adopted a sanctuary policy.

Upon receiving such a complaint or request, the Attorney General would be required to investigate, determine whether a violation has occurred, issue an opinion stating whether the municipality in question has violated provisions of the bill, and send a copy of the opinion to the municipality investigated as well as the Director of Accounts and Reports.

Any municipality determined to have committed a violation would become ineligible to receive moneys from state agencies upon the issuance of the Attorney General's opinion. The municipality would remain ineligible to receive such moneys until the Attorney General certifies the sanctuary policy has been repealed or is no longer in effect. Any certification that a sanctuary policy is no longer in effect must also be sent to the municipality investigated and the Director of Accounts and Reports.

Notice to Law Enforcement

The bill would require the governing body or chief law enforcement officer of each municipality and each state agency with law enforcement authority to provide each law enforcement officer with a copy of the bill. Municipalities and state agencies would also be required to provide written notice of such officer's duties to cooperate with state and federal officials to enforce immigration laws.

Immigration Law Litigation and Defense Costs

Under the bill, if a city or county is a defendant in litigation arising from enforcing federal immigration laws, the Attorney General would be required to defend the city or county. All costs to defend such litigation, including court costs, would be paid from the State General Fund.

Costs incurred by a city or county based on liability for enforcing federal immigration laws would be reimbursed by

filing a claim against the State as provided in KSA 46-901 through 46-925.

Rule and Regulation Authority

The Attorney General would be required to adopt rules and regulations necessary to implement the provisions of the bill on or before January 1, 2018.

Background

The bill was introduced in the Senate Committee on Federal and State Affairs at the request of Senator Tyson. In the Senate Committee hearing, representatives of the Secretary of State's Office, Kansans for Conservative Values, and a private citizen appeared in support of the bill.

Representative Victors, as well as representatives the American Civil Liberties Union, the Kansas Association of Counties, the Kansas Business Coalition for Immigration Reform, the Kansas Chamber of Commerce, Kansas Interfaith Action, and Sunflower Community Action appeared in opposition to the bill. Written-only opponent testimony was provided by the Dominican Sister Ministry of Presence, the Kansas Appleseed Center for Law and Justice, and two private citizens.

Neutral testimony on the bill was provided by representatives of the Kansas Sheriffs Association, the League of Kansas Municipalities, and a private attorney.

According to the fiscal note prepared by the Division of the Budget, the Office of the Attorney General (Office) has indicated the costs for implementing the bill could range from \$251,032 to \$326,032 from the State General Fund in FY 2018 and FY 2019. The total amount includes \$83,532 to hire a new Assistant Attorney General plus related expenses of

\$17,500 for workstation setup, travel and other costs. The new hire would fill an existing position.

The Office has indicated it would also incur costs from using outside counsel. Outside counsel would be needed for cases in which the Office has to defend itself or another agency from a municipality that has sanctuary policies. Since 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. The Office notes that there 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 defending the Office or other state agencies would be a minimum of \$50,000 to \$75,000 per year. This expense would be ongoing until a ruling is issued.

Outside counsel would also have to be used for cases in which the Office is required to defend a city or county for enforcing federal immigration laws. Again, this would include multi-year litigation for each case. The Office estimates defending cities and counties would require a minimum of \$100,000 to \$150,000 per year. This estimate assumes there would be two cases initially at a cost of \$50,000 to \$75,000 per case. The costs would be incurred for the next three fiscal years. If the action were to occur in federal court, the trial and appeal process could extend to five years. The fiscal effect estimates are based on two suits initially.

The fiscal note also indicates local governments could incur additional expenditures from any additional law enforcement efforts that may be required and from holding individuals who might be arrested and held under the bill. However, expenditures by local governments related to enforcing federal immigration laws could be reimbursed by the State through the state claims process. There may also be additional costs related to litigation and providing documents and information for any investigations by the

Attorney General. Also, local governments could lose funding from the State if it is found that a municipality adopted a sanctuary policy. However, the total fiscal effect for local governments cannot be estimated. According to *The FY 2018 Governor's Budget Report*, \$5.0 billion from all funds, including \$3.2 billion from the State General Fund, is budgeted for statewide aid to local government expenditures in FY 2018 and FY 2019. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.