

Legislative Analysis



LOCAL UNIT OF GOVERNMENT & COUNTY SANCTUARY POLICY PROHIBITION ACTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4105 (proposed H-1 substitute)
Sponsor: Rep. Pamela Hornberger

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4334 (proposed H-1 substitute)
Sponsor: Rep. Beau Matthew LaFave

Committee: Local Government
Complete to 5-23-17

SUMMARY:

The bills would prohibit a local unit of government or county from enacting or enforcing any law which limits coordination and cooperation with federal officials concerning the immigration status of an individual in Michigan. It would also provide that any law, ordinance, policy, or rule that violates either act is void and unenforceable. (For the sake of brevity, this summary will simply refer to a "law" instead of "law, ordinance, policy, or rule.")

House Bill 4105 would create a "Local Government Sanctuary Policy Prohibition Act" and House Bill 4334 would create a "County Sanctuary Policy Prohibition Act." (The two bills have identical wording except for reference to a "local unit of government" in HB 4105 and a "county" in HB 4334, as well as their respective applicable definitions, below.)

Bring laws into compliance within 60 days

The bills would require the local unit of government or county to bring any existing law that violates either act into compliance with the acts within 60 days of their effective date.

Once 61 or more days have passed since the acts have taken effect, if a local unit of government or county has, enacts, or enforces a law that violates either act, an individual who is a resident of that local unit or county may either:

- Bring an action to enforce this act in the circuit court in the judicial district in which that local unit of government or county is located, or
- File a complaint with the attorney general (AG).

The AG may receive and investigate these complaints at any time, and the local unit or county must cooperate with that investigation. Beginning 61 days after the acts' effective date, the AG must bring an action to enforce the act in circuit court if the local unit or county enacts or enforces a law that violates either act.

Process and penalty for violation

If an individual or the AG brings an action, as described above, and the court determines that the law in question violates one of the acts, the court must do all of the following:

- Issue an injunction restraining the local unit or county from enforcing the law;

- Order the local unit or county to amend or repeal the law; and
- Award actual damages, costs, and reasonable attorney fees to the party challenging the law.

Additionally, if the court determines that an elected or appointed official knowingly and willfully enacted or enforced the violative law, the court must assess a civil fine of no less than \$2,500 or more than \$7,500 against the elected or appointed official, in addition to any other penalty provided by law.

Definitions

As used in HB 4105, a *local unit of government* means any of the following:

- A city, village, township, or charter township.
- A board, department, commission, council, agency, or body that is created or primarily funded by a city, village, township, or charter township.
- An officer or official of a city, village, township, or charter township.

As used in HB 4334, a *county* includes any of the following:

- The county board of commissioners of a county.
- A board, department, commission, council, agency, or body that is created or primarily funded by a county.
- An officer or official of a county.

[Note: including an officer or official in the definition of "local unit of government" or "county" could lead to difficulties in interpretation or application. For instance, Section 13 (2) of HB 4105 provides that "if the court determines that an elected or appointed official of the local unit of government knowingly or willfully enacted or enforced a law..." Because "local unit of government" can also mean an officer or official of the county, that provision could result in the awkward reading that "if the court determines that an elected or appointed official of the officer or official of the county knowingly or willfully enacted or enforced a law..."

Although officer and official are not defined in the bill, "public officer" is defined in PA 566 of 1978, for example, as "a person who is elected or appointed to any of the following: an office established by the State Constitution of 1963; a public office of a city, village, township, or county in this state; a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, or any other public entity of this state or a city, village, township, or county in this state." A county or local unit of government is not typically a person.]

BACKGROUND INFORMATION:

These bills are understood to be aimed at preventing units of government from becoming so-called sanctuary cities, and to penalize those that do. In recent years, some cities have declined to enforce federal immigration laws, with some even holding themselves out as "sanctuaries" to illegal immigrants. Several cities in Michigan have declared themselves to be "welcoming" cities, and have directives for police not to inquire about an individual's

immigration status. Lansing briefly declared itself to be a sanctuary city by council resolution on April 3, 2017, but rescinded the resolution on April 12. An estimated 200 cities across the country, including New York, Los Angeles, and Chicago, have declared themselves to be sanctuary cities. President Trump has warned that sanctuary cities could lose federal funding for failing to comply or cooperate with immigration authorities.

FISCAL IMPACT:

Judiciary: The bills would have an indeterminate fiscal impact on the state and on local court funding units. Costs would be incurred depending on how the provisions of the bills affected caseloads in the courts and related administrative costs. If civil fines are assessed by the courts, an increase in civil fine revenue would occur; however, the bill does not specify where the revenue would be dedicated. Typically, the fund to receive the civil fine revenue would be specified in the legislation. In this case, it could, by default, be an increase to the state's General Fund. Or, it might be subject to the discretion of the court imposing the fine, in the absence of statutory direction.

Local law enforcement: House Bills 4105 and 4334 would likely have no fiscal impact on local law enforcement agencies operating under local units of government that have established a rule or ordinance that conforms with a sanctuary policy as described in these bills, to the extent that the local unit of government conforms with the policies set forth in these bills and would not be subject to legal action.

Attorney General: The bills' fiscal impact to the Department of the Attorney General would depend on the number of complaints submitted to the Attorney General and the number of investigations initiated as a result. If the number of investigations exceeds the case load capacity of the investigators currently staffed by the Attorney General and additional investigators are needed, the Attorney General would incur costs of additional hires. The full-time equivalent cost of an investigator is \$110,000 a year.

Local units of government:

The bills would create minimal administrative costs for those local units of government that were not in compliance with the provisions of the bill upon enactment. Any administrative actions taken to bring the local unit of government into compliance would likely be absorbed under their current appropriation levels and in the normal course of business. Local units of government already in compliance with the provisions of the bill would realize no fiscal impact. Local units of government that were deemed to be in violation of the provisions of the bill could face increased costs if actions were brought against them for noncompliance with the provisions of the bill. Costs could include legal costs, damages, and fines.

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