

Legislative Analysis



LOCAL UNIT OF GOVERNMENT & COUNTY SANCTUARY POLICY PROHIBITION ACTS

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<http://www.house.mi.gov/hfa>

House Bill 4105 (reported from committee as H-1)
Sponsor: Rep. Pamela Hornberger

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

House Bill 4334 (reported from committee as H-1)
Sponsor: Rep. Beau Matthew LaFave

Committee: Local Government
Complete to 6-13-17

BRIEF SUMMARY: The bills would prohibit a local unit of government or county from enacting or enforcing any law which limits communication 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.

FISCAL IMPACT: The fiscal impact for House Bills 4105 and 4434 on the judiciary, local law enforcement, Attorney General, and local units of government is described below in *Fiscal Information*.

THE APPARENT PROBLEM:

These bills are understood to be aimed at preventing local 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 Lansing briefly declared itself to be a sanctuary city by council resolution on April 3, 2017, but rescinded the resolution on April 12.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.

THE CONTENT OF THE BILL:

House Bills 4105 and 4334 would prohibit a local unit of government or county, respectively, from enacting or enforcing laws that would limit communication or cooperation with federal officials regarding the immigration status of an individual in Michigan.

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 act within 60 days of their effective date.

Once 61 or more days have passed after the acts take 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.
- 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.

FISCAL INFORMATION:

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 on 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 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 deemed to be in violation of the provisions of the bill could face increased costs if actions were brought against them for noncompliance. Costs could include legal costs, damages, and fines.

ARGUMENTS:

For:

Proponents argue that their only goal is ensuring compliance with federal immigration law, and keeping cities and counties from violating that law. Police officers take an oath to uphold the law, and they may feel conflicted if their local unit of government or county has a policy or culture of noncompliance with federal immigration law. The committee heard

testimony from several communities with a "don't ask" policy regarding immigration. In these communities, an officer who believes a person may be an illegal immigrant may be placed in the difficult position of choosing whether to follow federal law or local policies.

The bills are intended to resolve that conflict, allow the police and others in law enforcement to do their jobs, help ensure that federal laws are not broken, investigate criminal conduct, and protect the public safety.

Against:

- One of the main concerns expressed in committee testimony by opponents was that the legislation is drafted too broadly, or in a way that could be applied more broadly than intended. By removing any barrier that limits communication or cooperation with the federal government about immigration, but failing to define "communication or cooperation," the bill is at risk of being misapplied in potentially damaging ways. One may interpret "communication and cooperation" to mean that any conversation with a resident that does not question the person's immigration status is a failure to cooperate with Immigration and Customs Enforcement (ICE) on immigration issues. A well-meaning person, seeking only to comply with the law, may fear a lawsuit for failure to cooperate with ICE, and may overstep.
- Moreover, opponents argued, the bills could drive a wedge between police and immigrant communities, or communities that seek to welcome immigrants. Even documented immigrants or the children of immigrants may be less likely to report crimes, volunteer information, or cooperate with police, if they believe communications with police result in themselves or loved ones being detained or deported. Surely local governments and law enforcement, knowledgeable of the communities they serve, are best equipped to keep their communities safe and ensure their policies comply with federal law.
- Opponents also argued that the bills represent a solution in search of a problem, and risk adopting a state policy that, at least in appearance, devalues the human dignity of immigrants and refugees. Enforcement action against immigration policies of local units of government should be left to the federal government; state government need not meddle. However, if this issue must be addressed, critics argued, it should mirror federal language, rather than creating new, vague language, which may introduce unnecessary confusion into an already fraught issue. In short, federal law prohibits restrictions on the sending, receiving, requesting, maintaining, or exchanging of information regarding immigration. HBs 4105 and 4334 instead refer to the undefined and potentially far broader "communication or cooperation." Opponents fear this could lead to significant unintended consequences. (See ***Background*** for current federal laws on federal-state relations.)

BACKGROUND:

On January 25, 2017, President Trump issued Executive Order #13768, which stated that sanctuary jurisdictions are "jurisdictions that willfully refuse to comply with 8 USC

1373[.]”¹ Title 8 of the U.S. Code, which governs Aliens and Nationality, provides the following:²

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) *In general*: Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) *Additional authority of government entities*: Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service. (2) Maintaining such information. (3) Exchanging such information with any other Federal, State, or local government entity.

(c) *Obligation to respond to inquiries*: The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information. [Emphasis added]

POSITIONS:

Representatives of the Michigan Municipal League and the Michigan Townships Association testified in opposition to House Bill 4105. (6-7-17)

Representatives of the following organizations testified in opposition to the bills:

- Michigan Coalition for Immigrant and Refugee Rights (5-24-17)
- Action of Greater Lansing (5-24-17)
- ACLU of Michigan (5-24-17)
- Lansing City Council (5-24-17)
- Washtenaw Immigrant Justice Coalition (5-24-17)
- Migrant Legal Aid (5-24-17)
- Stop Trump Ann Arbor (6-7-17)
- City of Ann Arbor (6-7-17)
- Washtenaw County Sheriff's Office (6-7-17)
- Indivisible Michigan 14th Congressional District (6-7-17)

¹ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

² <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title8/pdf/USCODE-2011-title8-chap12-subchapII-partIX-sec1373.pdf>

The following organizations indicated opposition to the bills:

- Michigan Sheriffs' Association (5-24-17)
- Moms Demand Action for Gun Sense (5-24-17)
- National Association of Social Workers of Michigan (5-24-17)
- Michigan League for Public Policy (5-24-17)
- League of Women Voters (6-7-17)
- Northwest Unitarian Universalist Church (Southfield) (6-7-17)
- Christ United Methodist Church (Battle Creek) (6-7-17)
- Detroit Quaker Meeting (6-7-17)
- Wayne County (6-7-17)
- Michigan United (6-7-17)
- Indivisible Michigan 9th Congressional District (6-7-17)
- Indivisible Detroit (6-7-17)
- Washtenaw Interfaith Coalition for Immigrant Rights (6-7-17)
- Edgewood United Church (East Lansing) (6-7-17)
- City of Ypsilanti (6-7-17)
- Central United Methodist Church (6-7-17)
- Take on Hate (6-7-17)
- Cristo Rey Church (Lansing) (6-7-17)
- Michigan Unitarian Universalist Social Justice Network (6-7-17)
- Hispanic/Latino Commission of Michigan (6-7-17)
- First Unitarian Universalist Church (Detroit) (6-7-17)
- Michigan Immigrant Rights Center (6-7-17)
- Advocates and Leaders for Police and Community Trust (6-7-17)
- Zingerman's Community of Businesses (6-7-17)
- Voces of Battle Creek (6-7-17)
- Voices for Health (6-7-17)
- Justice for Our Neighbors (6-7-17)
- American Immigration Lawyers Association (6-7-17)
- African Bureau for Immigration and Social Affairs (6-7-17)
- Christian Reformed Church in North America (6-7-17)
- West Michigan Coalition for Immigration Reform (6-7-17)
- One Michigan for Immigrant Rights (6-7-17)

The Michigan Catholic Conference is neutral on the legislation but expressed several concerns with the legislation during testimony (6-7-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.