



IOWA HOUSE DEMOCRATS

BILL & AMENDMENT SUMMARY

Sanctuary Cities SF 481

Status of Bill: House Floor

Committee: Public Safety (11-10), Senate (32-15)

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Lead Democrat: Representative Breckenridge

Floor Manager: Representative Holt

Short Summary

- This bill requires Iowa law enforcement agencies having custody of a person subject to an immigration detainer request to fully comply with any federal agency's written instructions and legal documents;
- Requires court action relating to a defendant who is subject of an immigration detainer request at the time of sentencing;
- Prohibits a local entity from taking any action discouraging or prohibiting the enforcement of immigration laws, including adopting or enforcing a policy;
- Requires each State or local law enforcement agency to have policies formalized in writing relating to enforcement of federal immigration laws by January 1, 2018;
- Specifies a process for any person to file a complaint with the Iowa Attorney General (AG) or County Attorney alleging a local entity is in violation of this code;
- After an investigation, if the AG or County Attorney determines the complaint valid, the local entity (and any entity under that jurisdiction) would be denied State funds for the subsequent fiscal year and indefinitely until the entity is judicially granted reinstatement;
- The AG's office must create and maintain a searchable database listing the denial of state funds to every local entity;
- Estimated marginal cost for county jails of each additional prisoner is \$50 per day;
- Estimated cost to the AG's office to maintain searchable database and handle complaints would be \$12,000 to \$24,000 annually;
- Local Education Agencies (LEA's) and Area Education Agencies (AEA's) may potentially be implicated under this bill, and could be denied State supplemental aid and categorical aid if a local entity, LEA or AEA do not comply with the bill's requirements;
- Based on the structure of the school aid formula under Iowa Code, school districts may be able to levy property taxes to supplant a portion of the withheld State supplemental aid, but not categorical State aid. Districts may replace a portion of withheld State aid through Management Levy (unlimited, but may only be used for limited purposes) and Cash Reserve Levy (limited to 20 percent of the district's general fund, but can be used for any general fund purpose);
- Overall, levied property taxes could significantly impact the total property tax cost of school funding in a school district;
- Denial of State funding based on violation of the new code could also potentially impact: Road Use Tax Fund allocations, grants, and reimbursements; State property tax replacements, tuition replacement, flood mitigation projects, community college funding, grants made by the Iowa Economic Development Authority, and many other areas.

Background

An immigration detainer is a notice to local law enforcement that U.S. Immigration and Customs Enforcement (ICE) seek custody of an alien not legally residing in the United States. The document tells law enforcement that ICE intends to assume custody of the alien, requests information about the alien's impending release, and requests local law enforcement to maintain custody of an alien who would otherwise be released for up to 48 hours, not including weekends or holidays. When determining whether to issue a detainer, ICE weighs evidence received from law enforcement and the individual, paying special attention to an individual's social security number, date and place of birth, and other identifying information. ICE often uses the Law Enforcement Service Center (LESC) to run database checks should an agent not have access to necessary databases. According to Pew Research Center, there were an estimated 40,000 undocumented immigrants of all ages living in Iowa in 2014.

In 2014 and 2016, federal judges ruled that local law enforcement agencies are not legally obligated to honor ICE detainers unless accompanied by a warrant with probable cause. In 2017, the Eighth Circuit Court of Appeals ruled under *Mendoza v. US Immigration and Customs Enforcement* that government officials are generally immune from civil liability as long as their conduct does not violate clearly established statutory or constitutional rights. The court concluded that officials were allowed to make reasonable but mistaken judgments, and all but the plainly incompetent officials or officials who knowingly violate the law should be protected. Government officials are personally liable for their own misconduct. However, as long as government officials are not found directly participating in the alleged violation, they are entitled to qualified immunity. As a result, *Mendoza v. US Immigration and Customs Enforcement* is the main precedent used to argue that local law officials have protection from potential liability when enforcing federal immigration requests.

Bill Summary

Senate File 481 establishes new Iowa code relating to the enforcement of immigration laws and defines immigration law as a law of Iowa or the federal government relating to aliens, immigrants or immigration. This includes the federal Immigration and Nationality Act.

The bill defines an immigration detainer request as a written federal government request to a local entity to maintain temporary custody of an alien, including a US Department of Homeland Security (DHS) I-247 form. The detainer must be accompanied by a DHS I-200 form or I-205 form that is properly completed and signed by an authorized ICE officer. The language of the bill requires Iowa law enforcement agencies that have custody of a person subject to a detainer request to comply with any federal written instruction. The bill also prohibits local entities from taking any action that discourages federal immigration enforcement, including adopting or enforcing certain administrative policies. Iowa state and local law enforcement agencies must formalize immigration enforcement policies in writing no later than January 1, 2018.

The bill also establishes a procedure allowing any person to file a complaint with the Iowa Attorney General (AG) alleging a local entity is in violation of the new code. After an investigation, if the AG's office determines that the complaint is valid, the local entity would be denied all state funding for the subsequent fiscal year and indefinitely until the local entity has been judicially granted reinstatement. Any entity under the violating local entity's jurisdiction will also be denied state funding and will remain ineligible for state funds until the court grants reinstatement. However, the denial does not apply to state funds meant for the purchase of law enforcement's wearable body protective gear.

The AG is required to provide the local entity written notification of the alleged complaint within ten days of the AG's determination, containing the following: (1) grounds for the complaint; (2) the determination that the complaint is valid; (3) the AG's authorization to file civil action in district court to enjoin the violation within forty days of the notification if the local entity remains noncompliant; and (4) denial of state funding to the local entity and any entity under its jurisdiction as a result of the violation. If the local entity continues

violating this code, the AG must file a civil action in district court against the local entity within forty days of the notification receipt.

After receiving the AG 's written notification, any local entity allegedly violating this code must comply with all AG document requests within thirty days of the receipt, including: (1) copies of all the local entity's written immigration enforcement policies; (2) copies of received federal immigration detainer requests; (3) copies of the local entity's response to each federal immigration detainer request; (4) description of the local entity's actions taken to remedy any violations; and (5) any evidence that refutes the complaint's allegations.

SF 481 also requires the Department of Management (DOM) to adopt rules that uniformly implement the bill's funding distribution requirements amongst state agencies. A local entity must petition the district court for a declaratory judgment of full compliance in order to receive reinstatement of funds. However, the earliest a local entity may file a petition is either after the removal or resignation of the violating entity's director or twelve months after the judicial determination date. If the court declares the local entity in compliance, then the entity's state funding eligibility will be reinstated starting the first day of the following month. However, a local entity is prohibited from petitioning the court for reinstatement more than twice within a twelve-month period. Additionally, all parties are prohibited from recovering any attorney fees in the civil action. The language of the bill requires the AG to develop and maintain a searchable database listing each local entity that has been denied state funding on the AG's website.

Assumptions

The marginal cost for county jails of each additional prisoner is estimated \$50.00 per day. The estimated cost for the AG to maintain the searchable database and handle complaints would be \$12,000 to \$24,000 annually. However, the AG's FY 2018 overall general fund's budget was cut by \$2.45 million dollars, and the AG anticipates further budget cuts based on Governor Reynolds' FY 2019 budget recommendations. The denial of state funds would potentially impact a wide range of funding, including: Road Use Tax Fund allocations, grants, and reimbursements; state property tax replacements, tuition replacement, flood mitigation projects, community college funding, grants made by the Iowa Economic Development Authority, and many other areas.

Fiscal Impact

Section 4 of the bill may potentially implicate local education agencies (school districts) and Area Education Agencies (AEAs) under section 9 of the bill, as any entity under the jurisdiction of a local entity will be ineligible to receive state funds if the local entity intentionally violates this bill. Additionally, if it is determined that LEAs or AEAs meet the qualifications of a 'local' entity with a governing board, and if a LEA or AEA does not comply with Section 4's requirements, the LEA or AEA may be denied State supplemental aid and categorical State aid. As a result, school districts would be able to levy property taxes to supplant a portion of the withheld State supplemental aid using property taxes based on the structure of the school aid formula under Iowa code. Districts would be allowed to replace a portion of the withheld State aid through the Management Levy, which is unlimited but only used for limited purposes. Districts would also be permitted to use the Cash Reserve Levy, which is limited to 20 percent of the district's general fund, but can be used for any general fund purpose. Overall, levied property taxes would significantly impact the total property tax cost the school district's funding.

Amendment Summary

H-8202 (Public Safety)

H-8202 alters the bill's original definition of 'Immigration detainer request' to include only a written federal government request instead of permitting the federal government to make verbal and written requests to local entities. The amendment also requires the written request to include a US Department of Homeland Security I-247 form and be accompanied by a DHS I-200 form or I-205 form that is properly completed and signed by an authorized ICE officer.

H-8240 to H-8202 Amendment (Breckenridge)

Representative Breckenridge's secondary amendment strikes the Public Safety Committee's amended definition of 'Immigration Detainer Request' and creates an immigration enforcement work group amongst legislators, Iowa law enforcement officials, and the Division of Criminal and Juvenile Justice Planning (CJJC)'s designees. The goal of the work group is to accomplish the following objectives: (1) ensure the public safety of all Iowa communities; (2) enforce existing state and federal immigration law; and (3) identify educational opportunities within Iowa communities that balance compliance of immigration law with ensuring rights of all immigrants residing in the state are respected.

The workgroup will consist of members or designees from the following agencies: the Department of Public Safety; the Attorney General; the Iowa County Attorney's Association; the Iowa State Police Association; the Iowa Police Chief's Association; the Iowa State Sheriff's and Deputies' Association; and the CJJCP. Additionally, both the Iowa House and Senate's majority and minority leaders will appoint four members of the General Assembly (GA) to serve as ex officio nonvoting members of the work group.

The amendment takes effect upon passing and the workgroup will report their recommendations to Governor Reynolds and the GA no later than January 4, 2019.

H-8319 to SF 481 (Holt)

Representative Holt's amendment alters the date for administrative agencies to finalize policies from 2018 to 2019.

H-8336 to SF 481 (Holt)

This amendment shortens the length of time a local entity must wait to petition for reinstatement to 90 days. The bill's current language states a local entity must wait 12 months prior to petitioning for reinstatement.

H-8321 to SF 481 (Isenhart)

This amendment states a local entity is required to enforce federal immigration law only if the following requirements are met: (1) a federal agency has agreed to fully reimburse a county or city for any expenditures incurred (including legal costs) due to the local entity's enforcement of federal immigration law; and (2) a federal agency has agreed to defend a local entity in any legal action taken against the entity as a result of enforcing federal immigration law and will fully indemnify for any resulting liability. This would not apply to any local entity action that complies with a court order or federal arrest warrant.

Any local entity may submit a reimbursement claim for any expenditure incurred through enforcing federal immigration to the Department of Management (DOM). DOM must adopt rules regarding the following: (1) procedures for submission, verification and payment claims for reimbursement; (2) expenditure documentation incurred through enforcing federal immigration law; and (3) an appeals process for DOM determinations regarding reimbursement claims. Ver Schuer, Alison [LEGIS]G:\Caucus Staff\AVS\Public Safety\SF481.docx|March 28, 2018|8:44 AM