



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 162**

132nd General Assembly  
(As Introduced)

Sen. Jordan

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### **BILL SUMMARY**

- Specifies that a municipal corporation that violates the continuing-law prohibition against enacting a local law that would materially hinder or prevent local employees from cooperating with state or federal immigration services is considered a sanctuary city and is ineligible for Local Government Fund (LGF) payments.
  - Requires municipal corporations to allow their employees to comply with any presidential executive order pertaining to immigration, subject to the bill's LGF penalty.
  - Adds a requirement that state and local employees comply with any presidential executive order pertaining to immigration to the continuing provision of law that prohibits any state or local employee from unreasonably failing to comply with certain federal programs.
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### **CONTENT AND OPERATION**

#### **Background and current law**

The term "sanctuary city" generally refers to a local government whose laws or policies limit its cooperation or involvement with the enforcement of federal immigration laws. A consideration of whether a local government is cooperating with federal immigration authorities typically involves the local government's information collection policies and whether its law enforcement agency complies with detainer requests submitted under the federal Secure Communities program.

## Information collection

Federal law requires state and local governments to allow their employees to exchange information about persons' citizenship or immigration status with federal agencies. Further, continuing Ohio law prohibits a municipal corporation from enacting an ordinance, policy, directive, rule, or resolution that would materially hinder or prevent local employees from cooperating with state or federal immigration services. A municipal corporation that violates that prohibition is ineligible for any state homeland security funding.<sup>1</sup>

Under those laws, if a local government receives information about the citizenship or immigration status of persons with whom it comes into contact, such as applicants for local services or crime victims or witnesses, and a person appears to be unlawfully present in the U.S., the local government could not prohibit its employees from reporting that fact to U.S. Immigration and Customs Enforcement (ICE) or another federal agency.

However, no law requires a local government to investigate or record a person's citizenship or immigration status, and local ordinances or policies sometimes prohibit government employees from collecting that information. As a result, a local government's employees might not have any information to share with federal agencies as contemplated under the law.

## Secure Communities

A local government also must decide how to respond to detainer requests it receives under Secure Communities, which is a program operated by ICE. Under the program, when a law enforcement agency arrests and fingerprints a person and submits the fingerprints to the Federal Bureau of Investigation under standard booking procedures, the fingerprints also are sent to an ICE database. If ICE determines that an arrestee is unlawfully present in the U.S., ICE then decides whether to submit a "detainer" to the agency, requesting that the agency maintain custody of the arrestee for up to 48 hours after the arrestee's scheduled release in order to facilitate a transfer to ICE custody.

Federal law allows a law enforcement agency to choose whether to grant an ICE detainer request.<sup>2</sup> But, under continuing Ohio law, a state or local employee must comply with any lawful request for assistance from federal immigration authorities, "to

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<sup>1</sup> 8 United States Code (U.S.C.) 1373 and 1644 and R.C. 9.63(B).

<sup>2</sup> 8 U.S.C. 1357(d) and 8 Code of Federal Regulations 287.7. See also U.S. Customs and Immigration Enforcement, *Secure Communities*, available at [ice.gov/secure-communities](https://ice.dhs.gov/secure-communities), accessed November 26, 2018.



the extent that the request is consistent with the doctrine of federalism," and a municipal corporation must not materially hinder or prevent its employees from cooperating with federal immigration services.<sup>3</sup> These provisions might be interpreted to require a local law enforcement agency to grant all ICE detainer requests.

## **Operation of the bill**

### **Generally**

Under the bill, if a municipal corporation violates the continuing-law prohibition against enacting an ordinance, policy, directive, rule, or resolution that would materially hinder or prevent local employees from cooperating with state or federal immigration services, the municipal corporation is considered a sanctuary city and is ineligible to receive payments from the Local Government Fund (LGF), as is discussed below in more detail. The bill also adds a requirement that municipal corporations allow their employees to comply with any presidential executive order pertaining to immigration, subject to the bill's LGF penalty (see **COMMENT**).

Similarly, the bill adds a requirement that state and local employees comply with any presidential executive order pertaining to immigration to the continuing provision of law that prohibits any state or local employee from unreasonably failing to comply with any lawful request for assistance made by any federal authorities carrying out the provisions of the USA Patriot Act, any federal immigration or terrorism investigation, or any presidential executive order pertaining to homeland security, to the extent that the request is consistent with the doctrine of federalism. (The bill's LGF penalty does not apply to a violation of this provision, to the extent that the violation is not also covered by the prohibition discussed in the previous paragraph.)

### **Local Government Fund penalty**

If the Director of Public Safety determines that a municipal corporation is a sanctuary city for purposes of the bill, the Director must notify the Tax Commissioner, and the Commissioner must stop making LGF payments to that municipal corporation. The cessation of payments applies to payments made directly to the sanctuary city and indirectly through the appropriate undivided county local government fund. The LGF suspension period continues until the Director determines that the sanctuary city has repealed any ordinance, policy, rule, or resolution that prevents or interferes with local employees cooperating with state or federal immigration services or from complying with all presidential executive orders pertaining to immigration, and notifies the Commissioner.

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<sup>3</sup> R.C. 9.63(A).

For each sanctuary city whose LGF payments are suspended, the Commissioner must establish a "municipal compliance fund" to which withheld payments are credited. A sanctuary city will receive the money from its compliance fund only if it is found to again be eligible to receive LGF payments. However, if a sanctuary city does not again become eligible to receive payments within two years of a deposit to the municipal compliance fund, an amount equal to that deposit is forfeited to the General Revenue Fund (GRF).<sup>4</sup>

Under continuing law, 1.66% of General Revenue Fund tax receipts are credited monthly to the LGF to provide revenue to political subdivisions and other local taxing units. About 92% of the money is divided between the undivided local government funds of each county and distributed to the county and subdivisions in that county under a formula either prescribed by state law or adopted by the county budget commission; the remaining money currently is divided among townships and less populous villages (under 1,000) and the Targeting Addiction Assistance Fund. Distributions are made monthly.<sup>5</sup>

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## COMMENT

The bill might be vulnerable to a challenge on the ground that it violates municipal corporations' constitutional home rule powers. Under the Ohio Constitution, municipal corporations have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general laws.<sup>6</sup>

Because federal law allows a municipal corporation to decline to participate in voluntary federal immigration enforcement programs, such as by denying ICE detainer requests, and that decision typically involves a municipal corporation's internal procedures, a court might find that the bill violates a municipal corporation's home rule power to decline to assist the federal government. Although the LGF penalties prescribed by the bill are similar to provisions in continuing law that reduce or withhold LGF distributions to local authorities that operate traffic cameras, Ohio's courts have not directly addressed whether the General Assembly may use punitive funding measures to compel municipal corporations to comply with state mandates that might otherwise violate home rule principles.

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<sup>4</sup> R.C. 5747.502.

<sup>5</sup> R.C. 131.51(A) and 5747.503, not in the bill; Section 757.20 of H.B. 49 of the 132nd General Assembly.

<sup>6</sup> Ohio Const., art. XVIII, sec. 3.



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## HISTORY

ACTION

DATE

Introduced

06-13-17

