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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 169
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 169's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Keller and Antani

Local Impact Statement Procedure Required: Yes

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Highlights

- Annually, the Department of Public Safety will incur indeterminate costs to receive and investigate complaints in accordance with the bill. It is unclear as to what extent the Department's existing resources, staff, and funding would be, or could be, reallocated to pay for the performance of required duties.
- As a result of the bill's requirement that local law enforcement agencies comply with U.S. Immigration and Customs Enforcement (ICE) detainers, certain offenders may spend up to an additional 48 hours in the custody of a locally operated jail than they otherwise would have under current law. The bill does not provide for local incarceration expenses or any cost-sharing agreement that may already be in place.
- The bill potentially increases the amount of tax revenue retained in the GRF annually. The amount of the increase depends (inversely) on compliance with the requirement that political subdivisions cooperate in enforcing federal immigration law.
- The bill potentially decreases direct and indirect payments from the state Local Government Fund to any municipality, county, or township that the Director of Public Safety determines is not complying with the requirement to cooperate in enforcing federal immigration law.
- Courts of common pleas, courts of appeal, county prosecutors, and, in some instances, the Attorney General could incur costs to perform duties associated with the process of removing a public official from office.
- In certain cases, political subdivisions would experience additional costs for conducting special elections to replace an individual removed from office under the bill.

- Any government entity that determines public assistance benefits that does not use the Systemic Alien Verification for Entitlements (SAVE) Program could experience an increase in administrative costs to utilize SAVE.

Detailed Analysis

The bill requires state and local authorities to cooperate with the federal government in the enforcement of immigration laws and provides sanctions for those that fail to do so.

Department of Public Safety

The Department of Public Safety will incur additional costs to receive and investigate complaints from Ohio residents alleging noncompliance with the bill's provisions by a county, township, or municipal corporation, or the law enforcement agency that serves a county, township, or municipal corporation, and to prepare and submit a report detailing the findings of its investigation to specified recipients. In the event that a political subdivision or law enforcement agency is not found to be compliant and becomes ineligible to receive homeland security funding and any Local Government Fund (LGF) distributions from the state, the Department will need to establish a process to verify and certify compliance once it is achieved so funding can resume. The frequency with which the Department may receive complaints of noncompliance and the resources necessary for the Department to carry out its duties under the bill is uncertain.

The bill does not appropriate any funding for this purpose. As such, it is unclear as to what extent the Department's existing resources, staff, and funding would be, or could be, reallocated to pay for the bill's additional required duties.

Local law enforcement agencies

Under federal law and current administrative policies, when a local law enforcement agency arrests a person and submits their fingerprints to the Federal Bureau of Investigation (FBI) under standard booking procedures, the FBI notifies U.S. Immigration and Customs Enforcement (ICE) of the person's identity. If ICE determines that the person appears to be in the U.S. unlawfully and decides to pursue their removal, ICE submits a detainer request to the local law enforcement agency, asking them to maintain the person in custody for up to 48 hours after their scheduled release from local custody, so that ICE can arrange to take them into federal custody.

The bill will require local law enforcement agencies to comply with all ICE detainer requests, which they are not currently required to do. As a result, certain offenders may spend up to an additional 48 hours in the custody of a locally operated jail than they otherwise would have under current law. The impact of extending the incarceration period of individuals suspected of being in the U.S. unlawfully by up to 48 hours will depend upon the number of ICE detainer requests received by a local law enforcement agency, the number of ICE detainer requests that would otherwise have been denied under current law, and how quickly the individuals are taken into federal custody.

The Ohio Department of Rehabilitation and Correction (DRC) reports that the current average cost for an inmate in Ohio's jails at \$64.35 per bed per day for full-service jails. This number is based on an average of the self-reported cost per bed provided to DRC by the jails and there is no statewide standard for what each jail may or may not include in these cost

estimates. The bill does not provide for local incarceration expenses or any cost-sharing agreement that may already be in place.

In the event that a court later finds that a detainer was not constitutionally valid, the local officials, not ICE, may be held liable for wrongfully imprisoning the person.

Local Government Fund distributions

The bill specifies that, if the Director of Public Safety determines that a county, township, or municipal corporation is not in compliance with the bill's requirements regarding the enforcement of federal immigration laws, then the county, township, or municipal corporation is ineligible to receive any distributions from the LGF until such designation is rescinded by the Director of Public Safety. The bill defines a county, township, or municipal corporation that does not comply with the bill's requirements as a "sanctuary subdivision."

Under codified law, 1.66% of total GRF tax revenue is credited to the LGF in each month.¹ Subsequently, the state allocates monthly distributions from the LGF to each county undivided local government fund (CULGF). Moneys in a CULGF are distributed to each political subdivision in the county, including county government itself, based on the county's own determination. In addition, each municipality levying an income tax in the preceding year receives direct distributions from the LGF. LGF distributions to each county and municipality are currently made by the Department of Taxation through an electronic funds transfer (EFT).

Upon receiving notification of a sanctuary subdivision from the Director of Public Safety, the bill requires the Tax Commissioner to (1) stop any payments to municipal corporations that receive direct distributions from the LGF, beginning with the next required payment, and (2) notify the county auditor and county treasurer of the sanctuary subdivision that they must cease payments from its CULGF to such sanctuary subdivision. Upon receiving notice from the Commissioner, the bill requires the county treasurer to suspend payments from the CULGF to the sanctuary subdivision beginning with the next required payment. The bill specifies that payments can resume after the Commissioner provides a notice indicating that the subdivision is no longer listed as a sanctuary subdivision. The bill requires the Commissioner to certify to the Director of Budget and Management monthly the total amount of LGF funding that was not paid to sanctuary subdivisions and requires the Director to transfer an equal amount from the LGF to the GRF.

The estimated amount of LGF funding that would be withheld from counties, townships, and municipal corporations associated with this bill is undetermined. Actual amounts would depend on the number of counties, townships, and municipal corporations that are listed as "sanctuary subdivisions" and the amounts of their LGF allocations. Any decrease in LGF funding would have the effect of increasing GRF revenue by the same amount. In calendar year (CY) 2019, the state distributed a total of \$400.1 million from the LGF to counties, townships, and municipal corporations. LGF allocations to a county, township, or municipal corporation range between several thousand dollars per year to a number of small villages and townships,

¹ An uncodified provision of H.B. 166 of the 133rd General Assembly provides that the LGF should receive 1.68% of GRF tax revenue during the FY 2020-FY 2021 biennium, i.e., until June 30, 2021.

to over \$10 million per year for each of Cincinnati, Cleveland, Columbus, and Cuyahoga, Franklin, and Hamilton counties. The bill may also increase the Department of Taxation's administrative expenses related to LGF distributions. If there were any increase in such costs, it would likely be minimal.

Removal of elected officials

There would appear to be potential additional costs to political subdivisions should the removal of elected official provisions of the bill be needed. The bill establishes procedures for removing a public official in the legislative or executive branch of a county, township, or municipal corporation by allowing victims of crimes committed by a person who was unlawfully in the United States at the time of the offense to file a complaint in a relevant court of common pleas.

A judge of the court of common pleas is to try the case unless the public officer demands a jury trial, in which case, nine of 12 jurors must agree to return a finding for the removal. The outcome of the proceedings in the court of common pleas may be appealed by either party to the court of appeals, whose decision is final. Both courts may subpoena witnesses and compel their attendance in the same manner as in a civil case. Fees are to be the same as in civil cases and the county is required to pay the expenses incurred in the proceedings out of its general operating fund.

Courts of common pleas, courts of appeal, county prosecutors, and, in some instances, the Attorney General could incur costs stemming from the additional caseload. For each of these entities, the costs will depend on the frequency in which a complaint for removal is filed and the nature of the individual cases. While the number of qualifying complainants may be low due to the low number of illegal immigrants relative to the overall population, a single incident could result in complaints against a significant number of public officials depending on the circumstances in a locality.

Special elections

In addition to the costs associated with the removal of elected officials, political subdivisions could also experience additional costs for conducting special elections under the bill. The costs of conducting special elections vary and depend on several factors, including the number of political subdivisions impacted, the number of precincts that are required to be open within those subdivisions, the total number of poll workers needed, as well as whether these precincts are located in urban or rural areas. As an example, the Congressional special election for the vacancy of Representative to Congress from the 8th Congressional District was held on June 7, 2016. This special election encompassed six total counties and 578 total precincts. The total cost of the special election was \$505,796, or approximately \$875 per precinct. According to a July 2018 estimate produced by the Secretary of State, the costs for conducting elections can range from \$800 to \$1,500 per precinct, dependent on the factors listed above. The special election costs to fill vacancies because of the bill would be paid by the political subdivision that needs to fill that vacancy.

Personal Responsibility and Work Opportunity Reconciliation Act

The bill requires state and local government entities to verify if a public assistance recipient is ineligible for benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 by using the Systemic Alien Verification for Entitlements (SAVE) Program. The Ohio Department of Job and Family Services, along with the county departments of job and family services, currently comply with PRWORA and use SAVE when determining benefits for applicants, so the provision should pose no additional cost to these entities. However, if other government entities administer qualifying benefits and do not currently use SAVE for eligibility determinations, their administrative costs would increase. Section 411 of PRWORA generally specifies that only “qualified aliens” are eligible to receive benefits, which excludes individuals residing in the country illegally and those that have been living in the country for less than five years (with limited exceptions).