

BILL ANALYSIS

Senate Research Center
84R18608 SCL/ADM-D

C.S.S.B. 185
By: Perry et al.
Veteran Affairs & Military Installations-S/C Border Security
4/8/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many Texas cities adopt policies, commonly referred to as "sanctuary city" policies, that prohibit local law enforcement from inquiring about a person's immigration status. These policies often also prohibit the sharing of information regarding a person's immigration status with the federal government.

Opponents of such policies argue that the state should pass legislation that prohibits cities and other local government entities from the creation and enforcement of policies and ordinances that prohibit or impede the enforcement of state and federal immigration law.

C.S.S.B. 185 amends current law relating to the enforcement of state and federal laws governing immigration by certain governmental entities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 370.0031, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 370, Local Government Code, by adding Section 370.0031, as follows:

Sec. 370.0031. LOCAL GOVERNMENT POLICY REGARDING ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS. (a) Provides that this section applies to the following entities:

- (1) the governing body of a municipality, county, or special district or authority, subject to Subsections (b) and (c);
- (2) an officer, employee, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and
- (3) a district attorney or criminal district attorney.

(b) Provides that this section does not apply to a school district or open-enrollment charter school. Provides that this section does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c) Provides that this section does not apply to a hospital or hospital district created under Subtitle C (Local Hospitals) or D (Hospital Districts), Title 4 (Health Facilities), Health and Safety Code, or a hospital district created under a general or special law authorized by Article IX (Counties), Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering

medical or health care services as required under the following applicable federal or state laws:

- (1) 42 U.S.C. Section 1395dd;
- (2) 42 U.S.C. Section 1396b(v);
- (3) Subchapter C (Persons Who Reside in an Area Served by a Public Hospital or Hospital District), Chapter 61 (Indigent Health Care and Treatment Act), Health and Safety Code;
- (4) Chapter 81 (Communicable Diseases), Health and Safety Code; and
- (5) Section 311.022 (Discrimination Prohibited in Denial of Services; Criminal Penalties), Health and Safety Code.

(d) Provides that Subsection (c) does not exclude the application of this section to a commissioned peace officer employed by or commissioned by a hospital or hospital district subject to Subsection (c).

(e) Prohibits an entity described by Subsection (a) from adopting a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws of this state or federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

(f) Prohibits an entity described by Subsection (a), in compliance with Subsection (e), from prohibiting a person who is a commissioned peace officer described by Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, a corrections officer, a booking clerk, a magistrate, or a district attorney, criminal district attorney, or other prosecuting attorney and who is employed by or otherwise under the direction or control of the entity from doing any of the following:

(1) inquiring into the immigration status of a person lawfully detained for the investigation of a criminal offense or arrested;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person lawfully detained for the investigation of a criminal offense or arrested:

(A) sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services or United States Immigration and Customs Enforcement, including information regarding a person's place of birth;

(B) maintaining the information; or

(C) exchanging the information with another federal, state, or local governmental entity;

(3) assisting or cooperating with a federal immigration officer as reasonable and necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a municipal or county jail to enforce federal immigration laws.

(f-1) Provides that, for purposes of Subsection (f), a person is not considered lawfully detained if the sole reason for the detention is that the person is:

(1) a victim of or witness to a criminal offense; or

(2) reporting a criminal offense.

(g) Prohibits an entity described by Subsection (a) or a person employed by or otherwise under the direction or control of the entity from considering race, color, language, or national origin while enforcing the laws described by Subsection (e) except to the extent permitted by the United States Constitution or the Texas Constitution.

(h) Authorizes any citizen residing in the jurisdiction of an entity described by Subsection (a) to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the entity has adopted a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws described by Subsection (e) or that the entity, by consistent actions, prohibits the enforcement of those laws. Requires the citizen to include with the complaint the evidence the citizen has that supports the complaint.

(i) Requires the attorney general, if the attorney general determines that a complaint filed under Subsection (h) against an entity described by Subsection (a) is valid, to, not later than the 10th day after the date of the determination, provide written notification to the entity that:

(1) the complaint has been filed;

(2) the attorney general has determined that the complaint is valid;

(3) the attorney general is authorized to file an action to enjoin the violation if the entity does not come into compliance with the requirements of this section on or before the 90th day after the date the notification is provided; and

(4) the entity will be denied state funds for the state fiscal year following the year in which a final judicial determination in an action brought under Subsection (j) is made.

(j) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (h) against an entity described by Subsection (a) is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of an entity described by Subsection (a) is located to compel the entity that adopts a rule, order, ordinance, or policy under which the local entity prohibits the enforcement of the laws described by Subsection (e) or that, by consistent actions, prohibits the enforcement of those laws to comply with Subsection (e). Authorizes the attorney general to recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(k) Provides that an appeal of a suit brought under Subsection (j) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. Requires the appellate court to render its final order or judgment with the least possible delay.

(l) Provides that an entity described by Subsection (a) may not receive state grant funds if the entity adopts a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws described by Subsection (e) or, by consistent actions, prohibits the enforcement of those laws. Requires that state funds for the entity be denied for the state fiscal year following the year in which a final judicial determination in an action brought under Subsection (j) is made that the entity has intentionally prohibited the enforcement of the laws described by Subsection (e). Requires the comptroller of public accounts of the State of

Texas to adopt rules to implement this subsection uniformly among the state agencies from which state funds are distributed to a municipality or county.

(m) Prohibits an entity described by Subsection (a) that complies with this section from being denied state funds, regardless of whether the entity is a part of another entity that is in violation of this section.

SECTION 2. Amends the heading to Chapter 370, Local Government Code, to read as follows:

CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO HEALTH AND PUBLIC SAFETY APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

SECTION 3. Effective date: upon passage or September 1, 2015.