

Rep. Pauer, Hills. 36
Rep. Aylward, Merr. 5
June 5, 2023
2023-2118h
07/10

Floor Amendment to SB 132-FN

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT prohibiting cities and towns from adopting restrictive policies.

4
5 Amend the bill by replacing sections 1-2 with the following:

6
7 1 Short Title. This act shall be known as the Secure New Hampshire Communities Act.

8 2 New Subdivision; Secure New Hampshire Communities Act. Amend RSA 7 by inserting after
9 section 48 the following new subdivision:

10 Secure New Hampshire Communities Act

11 7:49 Definitions. In this subdivision:

12 I. "Federal immigration agency" means the United States Department of Justice, the United
13 States Department of Homeland Security, and any division, agency or other component of either of
14 those departments, including, but not limited to: United States Immigration and Customs
15 Enforcement, United States Customs and Border Patrol, United States Citizenship and Immigration
16 Services, and any successor department, division, agency, or other component.

17 II. "Immigration detainer" means a facially sufficient written or electronic request issued by
18 a federal immigration agency using that agency's official form to request that another law
19 enforcement agency detain a person based on probable cause to believe that the person to be
20 detained is a removable alien under federal immigration law, including detainers issued pursuant to
21 8 U.S.C. Sections 1226 and 1357 along with a warrant described in subparagraph (c). For the
22 purpose of this section, an immigration detainer shall be deemed facially sufficient if:

23 (a) The federal immigration agency's official form is complete and indicates on its face
24 that the federal immigration official has probable cause to believe that the person to be detained is a
25 removable alien under federal immigration law; or

26 (b) The federal immigration agency's official form is incomplete and fails to indicate on
27 its face that the federal immigration official has probable cause to believe that the person to be
28 detained is a removable alien under federal immigration law, but is supported by an affidavit, order,
29 or other official documentation that indicates that the federal immigration agency has probable
30 cause to believe that the person to be detained is a removable alien under federal immigration law;
31 and

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1 (c) The federal immigration agency supplies with its detention request a Form I-200
2 Warrant for Arrest of Alien or a Form I-205 Warrant of Removal/Deportation or a successor warrant
3 or other warrant authorized by federal law.

4 III. "Immigration law" means a law of this state or a federal law relating to aliens,
5 immigrants, or immigration, including, but not limited to the federal Immigration and Nationality
6 Act, 8 U.S.C. Section 1101 et seq.

7 IV. "Law enforcement agency" means an agency of the state or of a political subdivision
8 thereof charged with enforcement of state, county, city, municipal, or federal laws, or with managing
9 or maintaining custody of detained, arrested, or sentenced persons in the state, and includes, but is
10 not limited to city and town police departments, sheriffs' offices, county departments of corrections,
11 the department of corrections, the department of justice, the fish and game commission, the liquor
12 commission, and campus police.

13 V. "Local government" means any county, city, municipality, town, village, village district,
14 special district, or other political subdivision of this state, including law enforcement agencies.

15 VI. "Policy" means a rule, directive, policy, procedure, regulation, motion, order, ordinance,
16 resolution, amendment, practice, or custom.

17 VII. "Restrictive policy" means any policy that prohibits:

18 (a) The state of New Hampshire, a political subdivision of this state, or any person
19 acting under the color of the state, county, or municipal law from communicating with federal
20 immigration agency officials pursuant to 8 U.S.C. Sections 1226 and 1373 with respect to an
21 individual detained by, or in lawful custody of, a state, county, or local law enforcement agency for a
22 suspected violation of state law; or

23 (b) Law enforcement agency personnel from cooperating with an immigration detainer
24 request pursuant to 8 U.S.C. section 1357(d).

25 VIII. "State government" means any public agency, bureau, commission, council,
26 department, public postsecondary educational institution, or other office, body, or entity established
27 under the laws of the state, including law enforcement agencies.

28 7:50 Prohibition of Restrictive Policies. No state government, local government, or law
29 enforcement agency shall knowingly enact, issue, adopt, promulgate, enforce, permit, maintain, or
30 have in effect any restrictive policy.

31 7:51 Complaint Process; Penalties.

32 I. The attorney general shall receive and enforce complaints regarding any possible violation
33 of this subdivision. Any person may file such a complaint. The person shall include with the
34 complaint any evidence the person has in support of the complaint. Such complaints shall be
35 submitted in writing in such form and manner as prescribed by the attorney general. This section
36 shall not prohibit the filing of an anonymous complaint or a complaint not submitted in the
37 prescribed format.

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1 II. If the attorney general determines that a complaint filed under this section establishes
2 probable cause that a violation of this subdivision has occurred, the attorney general shall file a
3 petition for a writ of mandamus or apply for other appropriate equitable relief in the superior court
4 in the county where the allegedly violating state or local government, or law enforcement agency is
5 located to compel compliance.

6 III. If the court in a proceeding filed under paragraph II of this section finds by a
7 preponderance of the evidence that a state or local government, or law enforcement agency is in
8 violation of this subdivision, the court shall issue a writ of mandamus against that entity ordering it
9 to comply, enjoin it from further noncompliance, and take any other action to ensure compliance as
10 is within the jurisdiction of the court.

11 IV. The court may award court costs and reasonable attorney fees to the prevailing party in
12 a proceeding brought pursuant to this section.

13 7:52 Implementation; Discrimination Prohibited.

14 I. This chapter shall be implemented in a manner consistent with federal laws and
15 regulations governing immigration, protecting the civil rights of all persons, and respecting the
16 privileges and immunities of United States citizens.

17 II. Nothing in this act shall be construed to direct the prioritization of law enforcement
18 agency resources.

19 III. In complying with the requirements of this chapter, a state or local government, or law
20 enforcement agency shall not consider an individual's race, color, religion, language, or national
21 origin, except to the extent permitted by the Constitution of the United States or the constitution of
22 the state of New Hampshire or federal law.

23 7:53 Severability. It is the intent of the legislature that every provision, section, paragraph,
24 subparagraph, sentence, clause, phrase, or word in this chapter, and every application of the
25 provisions in this chapter to any person or entity, are severable from each other. If any part or
26 provision of this chapter is in conflict or inconsistent with applicable provisions of federal law, or
27 otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or
28 provision shall be suspended and superseded by such applicable laws or regulations, and the
29 remainder of this chapter shall not be affected thereby.

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AMENDED ANALYSIS

This bill prohibits any state or local government, or law enforcement agency from establishing policies that prohibit law enforcement agencies from cooperating with federal officers on immigration law enforcement.