

Senate Election Law and Municipal Affairs Committee
Tricia Melillo 271-3077

SB 132-FN, prohibiting cities and towns from adopting sanctuary policies.

Hearing Date: February 7, 2023

Members of the Committee Present: Senators Gray, Murphy, Abbas and Perkins Kwoka

Members of the Committee Absent : Senator Soucy

Bill Analysis: This bill prohibits any state or local government entity from establishing sanctuary policies.

Sponsors:

Sen. Gannon
Rep. Piemonte

Rep. Notter
Rep. T. Dolan

Rep. Potucek

Who supports the bill: 13 people signed in support. The full sign in sheet is available upon request.

Who opposes the bill: 118 people signed in opposed. The full sign in sheet is available upon request.

Summary of testimony presented in support:

Senator Gannon

- Over the last two years the United States has seen disastrous border policies.
- His constituents asked him to bring this bill forward so they can deal with border policies in New Hampshire before there is a problem.
- He is very much pro-immigration.
- His grandparents came from Ireland at a very young age looking for a better life.
- At the time the U.S. dealt with immigration responsibly and they had sponsors who took care of them.
- SB 132 does not force New Hampshire towns to do anything.
- It seeks a level of cooperation from municipalities when a federal agent wants to execute an immigration detainer.
- In 2020, a man named Carlos raped, kidnapped, and sexually assaulted women in New Hampshire and Massachusetts.
- He was on a deportation list in New Hampshire and there are other examples of people just like him.
- At New Hampshire's northern border encounters are up 197%.
- Coming in through the northern border is dangerous for immigrants that will face freezing weather conditions.
- Just last month 39 people were caught trying to sneak over the border.
- Believing there is sanctuary in New Hampshire exposes immigrants sneaking in, to starvation, freezing or heat exhaustion, or the possibility of being sold into slavery.
- In the last four months, New Hampshire saw 300lbs of cocaine, 500lbs of fentanyl, and 4500lbs of methamphetamine.
- A lot of that is carried in by unfortunate immigrants looking to come here but cannot afford it.
- Most people on the southern border are paying thousands of dollars to coyotes for passage in.
- Those that cannot pay are forced to work as sex slaves or drug runners.
- Governor Sununu has said he will use our police to help get done what is not getting done federally.

- This is not enforcing federal law, just cooperating with it.
- This legislation will encourage cooperation with the federal agents and discourage or limit communities from coming up with their own policies.
- There are other areas that municipalities cooperate with the federal agencies, for example the DEA.
- There are at least 12 communities in NH that currently have sanctuary policies and that needs to stop.
- The health, safety and welfare of our citizens are at risk.
- Most immigrants are well meaning and just want jobs like his grandparents.
- Last year, 3,000 criminals were apprehended at the border, 10 were murderers, 76 were sex offenders.
- If the federal government would like someone detained it is a 48-hour maximum hold.

Representative Notter

- The year that she sponsored a similar bill in the House, she spoke to retired Agent Michael Cutler of the Immigration and Naturalization Service.
- He told her that he borders of our country are supposed to protect our citizens.
- Sanctuary cities protect human traffickers and shield drug smugglers.
- Some take exception to the term alien, which was changed during the Carter administration to undocumented immigrant.
- As a consequence of that, over time, the nation's understanding of immigration laws has been seriously skewed.
- The term alien is defined by the Immigration and Nationality Act as, "any person not a citizen or a national of the United States."
- There is no insult in the term or its definition.
- The DREAM Act is an acronym that includes the term alien.
- It stands for, Development, Relief, and Education for Alien Minors.
- Our immigration laws make no distinction as to the race, religion, or ethnicity of any alien.
- This bill is not about those seeking political asylum.
- Agent Cutler said, "the only people that benefit from sanctuary policies are transnational criminals, international terrorists, human traffickers, and drug smugglers."
- Every other country in the world protects its borders and she questions why we shouldn't.

Shari Rendall – Federation for American Immigration Reform

- SB 132 will prohibit jurisdictions from employing dangerous policies that provide sanctuary in which illegal aliens can live without fear of apprehension by federal immigration authorities.
- Sanctuary policies shield criminal aliens who are public safety and national security threats.
- She recognizes that everyone who comes to this country illegally does not intend us harm.
- Those people who are coming through our back doors have not been vetted so their intentions are unknown.
- Even those who come in legally, on a student or tourist visa and overstay, do not go through the same background check as refugees who have been thoroughly vetted.
- Based on the policies of the current administration the borders are porous right now.
- In 2022, 98 individuals on the terror watch list were encountered at the southern border between ports of entry.
- Another 67 were encountered at our ports of entry.
- On the northern border, there were 313 individuals.
- In fiscal year 2023, which started October 1st, there have already been 775,000 encounters with people from 135 countries, trying to enter illegally.
- 3,000 of them have serious criminal convictions including 10 homicides.
- Most people do not talk about the 835 individuals who died crossing our borders.
- That is the human side to this issue, it impacts our communities as well as those coming across.
- An Arizona Sheriff has said women are getting raped coming across.

- Parents are giving young children drugs to prevent pregnancy because they know they will probably be sexually assaulted.
- They know that it costs between \$30,000 and \$50,000 dollars for the trip over.
- The cartels are controlling our borders with everyone getting across paying them in some form.
- Sanctuary policies masquerade as welcoming policies.
- They prohibit or discourage law enforcement from asking someone who is stopped or detained about their immigration status.
- They discourage cooperation with federal immigration officials.
- These policies put greater emphasis on the welfare of illegal aliens than the safety of citizens and residents of local communities.
- They have seen hundreds of cities and municipalities nationwide implementing these policies.
- Since 2017 there has been a proliferation including Cheshire County, Deerfield, Dublin, Durham, Hanover, Huntsville, Lebanon, Lyme, and Manchester.
- In most of these cases they are not calling themselves sanctuary cities, but their practices are making them function as one.
- SB 132 will ensure that these jurisdictions cannot prohibit or restrict communication.
- She wants to make it clear that the language in this bill states that discrimination is prohibited.
- Massachusetts is mostly a sanctuary state, and they are a gateway for drugs coming into New Hampshire.
- This bill will not require New Hampshire to enforce federal laws.
- Detainers are simply requests to law enforcement by another agency to hold an individual for up to 48 hours.
- Senator Abbas asked if this bill permits local or state police to detain or arrest someone because there is an outstanding detainer request.
 - Ms. Rendall replied that most of the time they will be arresting or booking someone for a state issue and then they will receive the detainer request. It is only a request to hold and does not mandate they do that.
- Senator Abbas asked if this would apply to people already in custody.
 - Ms. Rendall replied that not always but most of the time they are already in custody. The individual has been stopped or detained for another issue and then their status comes up.
- Senator Abbas asked if there is a detainer request can local law enforcement go and take someone into custody because of the detainer request.
 - Ms. Rendall replied no, ICE would do that.
- Senator Abbas asked if it permits local officials to use discretion.
 - Ms. Rendall replied that it does.

Representative Piemonte

- He supports the bill because of national security and public safety.
- Over 40,000 people have crossed our northern border.
- Some are going to the woods to avoid the checkpoints.
- If they go to the cities that will welcome them, they will be lost.
- He believes something has to be done and a lot of legislatures across the country are considering similar bills.
- He would like to pass this bill to protect New Hampshire citizens.

Representative Dolan

- In Londonderry they have had numerous discussions with the police chief
- They are dealing with the human trafficking issue more and more.
- He has heard of eleven- and twelve-year-old girls working in massage parlors, because of Coyotes.
- If they are there because of sanctuary policies those towns should be ashamed.
- Someone has to put a stop to it because those girls are somebodies child or grandchild.

- This legislation will make sure these handlers cannot hide behind sanctuary cities.

Kevin Williams

- He spent twenty-six years in law enforcement, twenty of which was spent with Immigration and Customs Enforcement and twelve of that here in New Hampshire.
- As of right now, as far as the last testimony, police are not reporting criminals to ICE.
- He was the ICE officer that responded that night when Mr. Bissonnette's client was detained.
- He is the one that asked the individual that interpreted for the Police Department where he was from.
- When he learned that the man had overstayed his visa, that is when he was detained.
- Local law enforcement cannot arrest someone on an immigration charge ever.
- When an immigration detainer is lodged, an immigration warrant goes with that detainer.
- A warrant of deportation can only be issued by a judge.
- USC 1325 very specifically makes it a crime to illegally enter the United States.
- If you are deported and come back illegally it is a felony under federal law USC 1326.
- He has prosecuted numerous cases under 1326 right here in Concord.
- There are very specific cases where immigration detainers were lodged and not honored, and that resulted in the murder of individuals.
- One of those murders was a 16-year-old girl who was murdered by MS-13 gang members.
- One had a very extensive criminal history and ICE had never been notified.
- In the 2015 murder of Kate Steinle, an immigration detainer had been lodged against the accused and not honored.
- In the Florez case, he was an individual with multiple felony convictions, in the country illegally and had been deported ten times.
- His crimes spanned thirty years here in the United States.
- There was a detainer in place, but he was released in spite of that and then became the prime suspect in the murder of Karen Ruiz.
- Here in New Hampshire, he arrested a gentleman who was formally the financier for a terrorist organization.
- He was living illegally here in Dover, had a job in Rochester and another job in Portsmouth.
- He has personally arrested many people here in New Hampshire that had gone to the DMV with fraudulent documents trying to apply for a license.
- Ninety percent of them had former drug convictions in Massachusetts and some in New Hampshire.
- Without the cooperation of law enforcement, those individuals would never have been caught.
- If there is no cooperation these individuals get released into the community.
- As far as breaking trust with the police, ICE does not arrest someone who is reporting a crime or is a victim of a crime.
- They have special visas for them if they cooperate with the police.
- They are good for two years, during which time they can apply to become permanent residents.
- Senator Gray asked if it is his testimony that when a detainer is issued a federal warrant is also issued.
 - Mr. Williams replied yes but local law enforcement cannot arrest a person on a federal warrant it has to be an ICE officer.
- Senator Abbas asked if he could site any communities in New Hampshire that have adopted sanctuary policies.
 - Mr. Williams replied that the Manchester Police Department, Strafford County, Dover, and Cheshire County are a few that do not cooperate with ICE. The NH State Police, Nashua Police, and Exeter Police have also adopted policies of not cooperating.

Summary of testimony presented in opposition:

Gilles Bissonnette – ACLU NH

- The inflation between immigration and criminal behavior can be rebutted with great data from the Cato Institute.
- He believes that this is mandated on page 2, lines 19, 20, 24-27.
- It states “any policy that in any way limits, prohibits or discourages cooperation with federal agencies” would be banned under this bill.
- It goes on with two more policy prohibitions.
- Discretion is cabined considerably in this bill.
- Under this bill, if local law enforcement get a detainer to hold a person and they do not comply, they will have limited cooperation a federal agency.
- He believes that this bill requires local officials engage in immigration enforcement.
- It is a significant intrusion on local control and in New Hampshire local towns are not forced to do the bidding of the federal government.
- The legislature took that position last year in HB 1178 with respect to firearms.
- He believes that this legislation will force state and local law enforcement to violate Fourth Amendment rights.
- ICE detainers are not criminal arrest warrants and are issued without the authorization of a judge.
- Immigration violations are generally civil not criminal.
- Many courts have decided that ICE detainers are not based on probable cause.
- Many courts have concluded that state and local enforcement officers may not detain or arrest an individual on their own initiative based on suspected civil violations of federal immigration law.
- Now, under this bill, when they do that, they run the risk of potential Fourth Amendment liability.
- He believes this bill will negatively affect public safety.
- It is important that everyone have access to police to report crimes.
- If a person fears that anytime they engage law enforcement their immigration status will come up, they will not engage with them.
- He litigated a case out of Exeter where his client was helping translate a conversation between a woman and the police.
- As a result of that interaction with police, his immigration status was questioned, and he ended up under ICE detention.
- Senator Perkins Kwoka asked if the language of this bill could put local law enforcement officers in a situation where they are detaining people without probable cause because it is not required for an immigration detainer.
 - Mr. Bissonnette replied yes it could. He believes, based on the concept that an immigration violation, an overstay for example, is not a criminal violation but a civil one. Detaining someone on a federal civil immigration violation creates some potential concerns.
- Senator Abbas asked if this bill permits law enforcement to take someone into custody that is not already in custody.
 - Mr. Bissonnette replied that he is not sure. The bill is just governing policies that municipalities may or may not enact.

Natch Greyes – NH Municipal Association

- They see this as a state mandate not local control.
- They have been put on notice, that in order to resolve this, there will be litigation.
- He believes that will be the ACLU that will sue municipalities if they take certain actions in response to passage of this legislation.
- The ACLU case in Northwood was settled for \$12,500 dollars.

- They do not want municipalities put in the middle of complex issues where their taxpayers are paying to resolve them.
- Senator Gray asked, since NH is not home rule, what gives the community the ability to enact one of these policies in the first place.
 - Mr. Greyes stated that it relates to how local law enforcement relate to federal law enforcement. In his experience as a prosecutor, they would always work with federal law enforcement whenever possible. There were situations where all they could do is provide information but all across the state, they get a lot of support from federal law enforcement.
- Senator Gray stated that in his answer he did not hear him say anything about a provision in either state law or policy that would allow one of these communities to enact a policy that ignores federal law or other state law.
 - Mr. Greyes replied that he does not believe that they are intentionally ignoring federal or state law. They are trying to clarify via local policy what the appropriate approach is when it is not clear what role local officials have.

Christine Wellington – Immigrants’ Rights Network

- They agree with everything in Gilles’s testimony.
- There are no sanctuary cities in New Hampshire.
- As far as she knows, there are no laws that mandate police officers cannot cooperate with federal agencies.
- Law enforcement has engaged with immigrant communities for the purpose of building trust.
- They believe that if SB 132 passes, it will damage a lot of work that has been done.
- The New Hampshire State Police have developed fair and impartial policing policies which specifically direct officers not to enforce civil immigration detainers because they are not judicial orders.
- The NH State Police, ACLU, and the Immigrants’ Rights Network work together on these issues.
- Those policies have been widely adopted by the Police Training Standards and the Attorney General’s office.
- It seems clear to her that the basis for this law is fear mongering.
- Most of the people that are here without permission of the United States government came in legally with a Visa and they overstayed.
- She believe there are about 14,000 people in New Hampshire that are undocumented.
- Most of them are members of communities and have family members that are legally present.

Eva Castillo

- She is a former alien and has been in New Hampshire since the 1980s.
- Part of her job is to build trust between the immigration community and the police.
- She has been a Manchester Police Commissioner for nine years.
- She has run monthly community meetings with the police since 2011.
- The idea is to help immigrants feel safe contacting the police.
- Some immigrants come from places where the police are crooked, bad, and mean.
- When they come to the U.S. that is what they fear the police will be like.
- She goes to immigrant communities to make sure they bridge the gap and change the mindset of people.
- It is a minority of immigrants that are criminals.
- Even police departments that have sanctuary policies report criminals to ICE.
- This bill will destroy the trust that she and others have worked hard for over twenty years to build.

Robert Dunn – Public Policy Director, Roman Catholic Diocese of Manchester

- He agrees with the testimony given by Gilles and Eva.
- There is a lot of rhetoric that surrounds this legislation.
- The Dept. of Safety, the NH Chiefs of Police and the State Police are not shy about asking the legislature for what they need in order to protect the people of New Hampshire.
- The fact that this proposal has not been initiated by those law enforcement agencies is a significant point to consider.
- He believes discretion is very important and this legislation removes all discretion from law enforcement relating to sanctuary policies.
- Law enforcement officials have clearly tried to strike the proper balance.
- They want to make sure that above all people are able to report crimes.
- He thinks that local law enforcement officials are the best people to determine what is best to protect their communities.
- Everyone knows that the U.S. immigration system is highly flawed.
- It is important to decide if this legislation makes New Hampshire safer or less safe.
- He believes that the fact that law enforcement officials did not come to testify means that they think this bill is unwise.

TJM

Date Hearing Report completed: February 13, 2023