

SB 132-FN - AS AMENDED BY THE SENATE

03/16/2023 0800s

2023 SESSION

23-0905

04/08

SENATE BILL

132-FN

AN ACT

prohibiting cities and towns from adopting sanctuary policies.

SPONSORS:

Sen. Gannon, Dist 23; Rep. Notter, Hills. 12; Rep. Potucek, Rock. 13; Rep. Piemonte, Rock. 9; Rep. T. Dolan, Rock. 16

COMMITTEE:

Election Law and Municipal Affairs

ANALYSIS

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

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT prohibiting cities and towns from adopting sanctuary policies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Short Title. This act shall be known as the Anti-sanctuary Act.

2 2 New Subdivision; Anti-sanctuary Act. Amend RSA 7 by inserting after section 48 the
3 following new subdivision:

4 Anti-sanctuary Act

5 7:49 Definitions. In this subdivision:

6 I. "Federal immigration agency" means the United States Department of Justice, the United
7 States Department of Homeland Security, and any division, agency or other component of either of
8 those departments, including but not limited to: United States Immigration and Customs
9 Enforcement, United States Customs and Border Patrol, United States Citizenship and Immigration
10 Services, and any successor department, division, agency, or other component. The term shall
11 include officials, officers, representatives, agents, and employees.

12 II. "Immigration detainer" means a facially sufficient written or electronic request issued by
13 a federal immigration agency using that agency's official form to request that another law
14 enforcement agency detain a person based on probable cause to believe that the person to be
15 detained is a removable alien under federal immigration law, including detainers issued pursuant to
16 8 U.S.C. Sections 1226 and 1357 along with a warrant described in subparagraph (c). For the
17 purpose of this section, an immigration detainer shall be deemed facially sufficient if:

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

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

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

1 III. “Immigration law” means a law of this state or a federal law relating to aliens,
2 immigrants, or immigration, including but not limited to the federal Immigration and Nationality
3 Act, 8 U.S.C. Section 1101 et seq.

4 IV. “Law enforcement agency” means an agency of the state or of a political subdivision
5 thereof charged with enforcement of state, county, city, municipal, or federal laws, or with managing
6 or maintaining custody of detained, arrested, or sentenced persons in the state, and includes but is
7 not limited to city and town police departments, sheriffs’ offices, county departments of corrections,
8 the department of corrections, the department of justice, the fish and game commission, the liquor
9 commission, and campus police. The term shall include officials, officers, representatives, agents,
10 and employees.

11 V. “Local government entity” means any county, city, municipality, town, village, village
12 district, special district, or other political subdivision of this state, including law enforcement
13 agencies. The term shall include officials, officers, representatives, agents, and employees.

14 VI. “Policy” means, but is not limited to, a rule, directive, policy, procedure, regulation,
15 motion, order, ordinance, resolution, amendment, practice, or custom, whether written or unwritten
16 and whether formally enacted, informally adopted, or otherwise effectuated.

17 VII. “Sanctuary policy” means any policy that prohibits the state of New Hampshire, a
18 political subdivision of this state, or any person acting under the color of the state, county, or
19 municipal law from cooperating with the enforcement of federal immigration laws, including, but not
20 limited to, 8 U.S.C. 1373 with respect to a person who has been detained by, or is already in the
21 lawful custody of, the state, county, or local law enforcement agency for a suspected violation of state
22 law to include the enforcement of arrest warrants issued by the courts.

23 VIII. “State government entity” means any public agency, bureau, commission, council,
24 department, public postsecondary educational institution, or other office, body, or entity established
25 under the laws of the state, including law enforcement agencies. The term shall include officials,
26 officers, representatives, agents, and employees.

27 7:50 Prohibition of Sanctuary Policies. No state government entity, local government entity, or
28 law enforcement agency shall knowingly enact, issue, adopt, promulgate, enforce, permit, endorse,
29 maintain, or have in effect any sanctuary policy.

30 7:51 Complaint Process; Penalties.

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

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 government entity, local government entity, or law
5 enforcement agency is 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 government entity, local government entity, or law
8 enforcement agency is in violation of this subdivision, the court shall issue a writ of mandamus
9 against that entity ordering it to comply, enjoin it from further noncompliance, and take any other
10 action to ensure compliance as 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. In complying with the requirements of this chapter, a state or local government entity
18 shall not consider an individual's race, color, religion, language, or national origin, except to the
19 extent permitted by the Constitution of the United States or the constitution of the state of New
20 Hampshire or federal law.

21 7:53 Severability. It is the intent of the legislature that every provision, section, paragraph,
22 subparagraph, sentence, clause, phrase, or word in this chapter, and every application of the
23 provisions in this chapter to any person or entity, are severable from each other. If any part or
24 provision of this chapter is in conflict or inconsistent with applicable provisions of federal law, or
25 otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or
26 provision shall be suspended and superseded by such applicable laws or regulations, and the
27 remainder of this chapter shall not be affected thereby.

28 3 Effective Date. This act shall take effect upon its passage.

SB 132-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-0800s)

AN ACT prohibiting cities and towns from adopting sanctuary policies.

FISCAL IMPACT: ☒ State ☐ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

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

The Judicial Branch indicates the fiscal impact on the Branch is indeterminable. Violations of the bill would be enforced by the Attorney General, and the bill provides for an award of costs and attorney's fees to the prevailing party. While the Branch expects the bill could result in an increase in civil case filings in the Superior Court and associated case filings, hearings and trials, the Branch is unable to determine how many such cases would be filed.

The Department of Justice states this bill requires the Attorney General to receive and enforce complaints for any violation of its provisions, including complaints from anonymous sources. The Attorney General may file a writ of mandamus or other appropriate judicial relief to compel compliance. The Department indicates it is likely that the bill will require additional investigative and litigation resources at the Department, but since the number of complaints that will be referred to the Attorney General cannot be determined, it is not possible to estimate the additional cost of the additional resources.

The New Hampshire Municipal Association assumes the bill may result in additional expenditures at the municipal level if the Attorney General commences an enforcement action

against a municipality that the Attorney General deems not to be in compliance with the law. Such an enforcement action would occur in Superior Court and would require retention of counsel by the municipality and result in those associated legal costs and fees.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

Judicial Branch, Department of Justice and New Hampshire Municipal Association