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SENATE BILL DRS45470-MDfa-119 (02/05)

Short Title: Local Government Immigration Compliance. (Public)

Sponsors: Senators Sanderson and Newton (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE STATUTE THAT PROHIBITS THE USE OF CERTAIN FORMS OF IDENTIFICATION BY STATE AND LOCAL OFFICIALS; TO REPEAL A STATUTORY EXCEPTION TO THAT STATUTE; AND TO CREATE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION.

The General Assembly of North Carolina enacts:

PART I. RECODIFICATION OF STATUTE AND REPEAL OF STATUTORY EXCEPTION

SECTION 1.(a) G.S. 15A-311 is recodified as G.S. 64-6 under Article 1 of Chapter 64 of the General Statutes.

SECTION 1.(b) G.S. 15A-311, as recodified by Section 1(a) of this act, reads as rewritten:

"§ 64-6. Consulate Certain documents not acceptable as identification.

(a) The following documents are not acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:

- (1) A matricula consular or other similar document, other than a valid passport, issued by a consulate or embassy of another country.
- (2) An identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly.

(b) No local government or law enforcement agency may establish, by policy or ordinance, the acceptability of any of the documents described in subsection (a) of this section as a form of identification to be used to determine the identity or residency of any person. Any local government policy or ordinance that contradicts this section is hereby repealed.

~~(c) Notwithstanding subsection (a) of this section, documents described in subdivision (2) of subsection (a) of this section may be used by a law enforcement officer to assist in determining the identity or residency of a person when they are the only documents providing an indication of identity or residency available to the law enforcement officer at the time."~~

PART II. CREATION OF ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO COMPLY WITH STATE LAWS RELATED TO IMMIGRATION

SECTION 2.(a) Chapter 64 of the General Statutes is amended by adding a new Article to read:



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"Article 3."Local Government Noncompliance with State Laws Related to Immigration."§ 64-49. Findings.

The General Assembly finds the following:

- (1) That the policy objectives it seeks to further by enacting State laws applicable to cities, counties, and law enforcement agencies are frustrated when those entities do not uniformly comply with State law.
- (2) That Section 7(1) of Article V and other sections of the North Carolina Constitution grant the General Assembly supreme power and complete discretion over the appropriation of State funds.
- (3) That the General Assembly's power over the appropriation of State funds can be used to create additional incentives for cities, counties, and law enforcement agencies to comply with duly enacted laws.
- (4) That statutorily setting forth the manner in which the General Assembly elects to exercise its discretion with respect to appropriations provides cities, counties, and law enforcement agencies with a measure of predictability that can be useful to those entities in planning and carrying out their functions and duties.

"§ 64-50. Definitions.

The following definitions apply in this Article:

- (1) Affected local government. – Any of the following:
 - a. A municipality found to be not in compliance with a State law related to immigration.
 - b. A municipality in which a municipal law enforcement agency has been found to be not in compliance with a State law related to immigration.
 - c. A county found to be not in compliance with a State law related to immigration.
 - d. A county in which a county law enforcement agency has been found to be not in compliance with a State law related to immigration.
- (2) Law enforcement agency. – A municipal police department, a county police department, or a sheriff's office.
- (3) State law related to immigration. – G.S. 64-6(b), 153A-145.5, or 160A-499.4.

"§ 64-51. Attorney General to prepare form.

(a) Preparation of Form. – The Attorney General shall prescribe a form for a person to allege that a city, county, or law enforcement agency is not in compliance with a State law related to immigration. The form shall clearly state that completed forms shall be sent to the Attorney General and the form shall be made available to the public on the Attorney General's Web site.

(b) Certain Information Not Required. – A person shall not be required to list the person's Social Security number on the complaint form or to have the form notarized.

"§ 64-52. Filing of statement alleging noncompliance with a State law related to immigration.

Any person with a good-faith belief that a city, county, or law enforcement agency is not in compliance with a State law related to immigration may file a statement with the Attorney General setting forth the basis for that belief. The statement may be on a form prescribed by the Attorney General pursuant to G.S. 64-51 or may be made in any other form that gives the Attorney General information sufficient to proceed with an investigation pursuant to G.S. 64-53. Nothing in this section shall be construed to prohibit the filing of anonymous statements that are not submitted on a prescribed form.

"§ 64-53. Investigation.

(a) Investigation. – Within 45 days of receipt of a statement filed in accordance with G.S. 64-52, the Attorney General shall commence an investigation of whether the city, county, or law enforcement agency is in fact not in compliance with a State law related to immigration. The

1 Attorney General shall make a determination and conclude an investigation commenced pursuant
2 to this subsection within 60 days of the investigation's commencement.

3 (b) Assistance by Law Enforcement. – The Attorney General may request that the State
4 Bureau of Investigation assist in an investigation under this section, and the State Bureau of
5 Investigation shall assist in the investigation when it receives such a request.

6 (c) Production of Documents. – A local government shall produce records or documents
7 related to alleged noncompliance with a State law related to immigration within 10 business days
8 of a request by the Attorney General to do so.

9 (d) Confidentiality. – Statements filed with the Attorney General pursuant to G.S. 64-52
10 and reports and other investigative documents and records of the Attorney General connected to an
11 investigation under this section shall be confidential and not matters of public record, except when
12 the local government under investigation requests in writing that these documents be made public.
13 Once an investigation under this section is complete, or once 60 days have elapsed since the
14 investigation was commenced, whichever is earlier, the statement and all other reports and other
15 investigative documents and records of the Attorney General connected to an investigation under
16 this section, not otherwise privileged or confidential under law, shall be public records.

17 **"§ 64-54. Consequences of noncompliance with a State law related to immigration.**

18 (a) Consequences of Noncompliance Generally. – If, after an investigation pursuant to
19 G.S. 64-53, the Attorney General determines that a city, county, or law enforcement agency is not
20 in compliance with a State law related to immigration:

21 (1) All affected local governments shall be ineligible to receive distributions under
22 G.S. 115C-546.2 and G.S. 136-41.1 for the fiscal year following the first date of
23 noncompliance with the State law related to immigration. If within 60 days of
24 the Attorney General's determination, the city, county, or law enforcement
25 agency fails to demonstrate to the Attorney General's satisfaction that the city,
26 county, or law enforcement agency is in compliance with all State laws related
27 to immigration, the period of ineligibility shall be extended for an additional
28 fiscal year.

29 (2) The Attorney General shall notify the following entities of the Attorney
30 General's determination that the city, county, or law enforcement agency is not
31 in compliance with a State law related to immigration and of the duration of the
32 period of ineligibility to receive funds determined pursuant to subdivision (1) of
33 this subsection:

34 a. Affected local governments.

35 b. The chairs of the Appropriations Committees of the Senate and House
36 of Representatives.

37 c. The chairs of the Joint Legislative Commission on Governmental
38 Operations.

39 d. The Office of State Budget and Management.

40 (3) The Office of State Budget and Management shall notify the Departments of
41 Public Instruction and Transportation and the State Controller of affected local
42 governments' ineligibility to receive the funds described in subdivision (1) of
43 this section. The Departments of Public Instruction and Transportation and the
44 State Controller shall ensure that these funds are not distributed to affected
45 local governments.

46 (b) Consequences of Noncompliance with E-Verify Statutes. – When the Attorney General
47 receives a notification from the Commissioner of Labor pursuant to G.S. 64-33.1(b), the Attorney
48 General, the Office of State Budget and Management, the State Controller, and the Departments of
49 Public Instruction and Transportation shall take all of the actions described in subsection (a) of
50 this section except that those actions shall be taken with respect to only the following entities, as
51 applicable:

- 1 (1) A municipality found by the Commissioner of Labor to have violated
2 G.S. 143-133.3.
3 (2) A municipality in which all or part of a local school administrative unit
4 governed by a local board, as those terms are defined in G.S. 115C-5, found by
5 the Commissioner of Labor to have violated G.S. 143-133.3 is located.
6 (3) A county found by the Commissioner of Labor to have violated G.S. 143-133.3.
7 (4) A county in which all or part of a local school administrative unit governed by a
8 local board, as those terms are defined in G.S. 115C-5, found by the
9 Commissioner of Labor to have violated G.S. 143-133.3 is located.

10 (c) Exceptions. – In exercising its discretion over the appropriation of State funds, the
11 General Assembly may create exceptions to subsections (a) and (b) of this section. However, no
12 enactment by the General Assembly shall be construed as an exception to those subsections unless
13 it specifically mentions this section.

14 **"§ 64-55. Attorney General to maintain copies of orders; reporting.**

15 (a) Database. – The Attorney General shall maintain a database of the local governments
16 and law enforcement agencies that are ineligible to receive the funds described in G.S. 64-54(a)(1)
17 and shall make the database accessible to the public through the Attorney General's Web site.

18 (b) Reporting. – The Attorney General shall report quarterly to the Joint Legislative
19 Commission on Governmental Operations on all of the following:

- 20 (1) The number of statements received by the Attorney General pursuant to
21 G.S. 64-52.
22 (2) The number of investigations performed pursuant to G.S. 64-53.
23 (3) The number of times consequences for noncompliance with a State law related
24 to immigration were imposed pursuant to G.S. 64-54.
25 (4) The names of cities, counties, and law enforcement agencies found not to be in
26 compliance with a State law related to immigration.

27 **"§ 64-56. No appeal.**

28 The General Assembly finds that the Attorney General's determination that a city, county, or
29 law enforcement agency is not in compliance with a State law related to immigration is a sufficient
30 basis for exercising its appropriations power discretion by withholding the funds described in
31 G.S. 64-54(a)(1) to affected local governments for the period determined pursuant to that
32 subdivision. Accordingly, notwithstanding any other provision of law, there shall be no appeal
33 from a determination made by the Attorney General under this Article.

34 **"§ 64-57. Attorney General may designate appointed official to carry out duties.**

35 The Attorney General may designate a person to carry out the Attorney General's duties under
36 this Article. The designee shall be an individual appointed by the Attorney General and shall not
37 be a member of the Council of State or any other elected official.

38 **"§ 64-58. Rules.**

39 The Attorney General shall adopt rules needed to implement this Article.

40 **"§ 64-59. Article does not require action that is contrary to federal or State law.**

41 This Article shall not be construed to require a local government or law enforcement agency to
42 take any action that the local government or law enforcement agency believes in good faith would
43 violate federal or State law.

44 **"§ 64-60. Private enforcement.**

45 In addition to any other remedies at law or in equity, any person who resides within the
46 jurisdiction of a city, county, or law enforcement agency that the person believes is not in
47 compliance with a State law related to immigration may bring an action for declaratory and
48 injunctive relief. Such an action shall be filed in the Superior Court of Wake County. The court
49 shall award the prevailing party in an action brought under this section reasonable attorneys' fees
50 and court costs as authorized by law."

51 **SECTION 2.(b)** G.S. 64-33.1 reads as rewritten:

1 **"§ 64-33.1 Consequences of violation of G.S. 143-133.3.**

2 (a) All Violations. – For any violation of G.S. 143-133.3, the Commissioner shall notify
3 the board or governing body of the State, or of any institution of the State government, or of any
4 political subdivision of the State, found to have committed the violation that the board or
5 governing body of the State, or of any institution of the State government, or of any political
6 subdivision of the State, is in violation of the applicable statute. The Department of Labor shall
7 maintain a list of any boards or governing bodies of the State, or of any institutions of the State
8 government, or of any political subdivisions of the State, issued notices pursuant to this section
9 and shall make that list available on its Web site.

10 (b) Violations by Certain Local Entities. – For a violation of G.S. 143-133.3 by a political
11 subdivision of the State, the Commissioner shall immediately notify the Attorney General of the
12 violation so that the Attorney General can take action in accordance with G.S. 64-54(b).
13 Additionally, the Commissioner shall notify the Attorney General if within 60 days of the
14 Commissioner's determination that there has been a violation, the political subdivision fails to
15 demonstrate to the Commissioner's satisfaction that the political subdivision is in compliance with
16 G.S. 143-133.3. The Commissioner may hold additional hearings as needed to implement this
17 subsection."

18 **SECTION 2.(c)** The Attorney General's Office, in conjunction with the Departments
19 of Transportation and Public Instruction, shall take reasonable steps to notify local governments of
20 the provisions of this act so that the local governments can take appropriate steps to comply with
21 this act's requirements.

22 **SECTION 2.(d)** G.S. 115C-546.2 is amended by adding a new subsection to read:

23 "(f) No county may receive any allocation under this section for any period during which it
24 is ineligible to receive those funds under G.S. 64-54."

25 **SECTION 2.(e)** G.S. 136-41.1 is amended by adding a new subsection to read:

26 "(e) No city or town shall receive any allocation under this section for any period during
27 which it is ineligible to receive those funds under G.S. 64-54."

28 **SECTION 2.(f)** G.S. 7A-305(a)(2) reads as rewritten:

29 **"§ 7A-305. Costs in civil actions.**

30 (a) In every civil action in the superior or district court, except for actions brought under
31 Chapter 50B of the General Statutes, shall be assessed:

32 ...

33 (2) For support of the General Court of Justice, the sum of one hundred eighty
34 dollars (\$180.00) in the superior court and the sum of one hundred thirty dollars
35 (\$130.00) in the district court except that if the case is assigned to a magistrate
36 the sum shall be eighty dollars (\$80.00). If a case is designated as a mandatory
37 complex business case under G.S. 7A-45.4, upon assignment to a Business
38 Court Judge, the party filing the designation shall pay an additional one
39 thousand one hundred dollars (\$1,100) for support of the General Court of
40 Justice. If a case is designated as a complex business case under Rule 2.1 and
41 Rule 2.2 of the General Rules of Practice for the Superior and District Courts,
42 upon assignment to a Business Court Judge, the plaintiff shall pay an additional
43 one thousand one hundred dollars (\$1,100) for support of the General Court of
44 Justice. If a case is brought under G.S. 64-40, the party filing the designation
45 shall pay an additional seventy-five dollars (\$75.00) for support of the General
46 Court of Justice. Sums collected under this subdivision shall be remitted to the
47 State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty
48 cents (\$1.50) of each fee collected under this subdivision to the North Carolina
49 State Bar for the provision of services described in G.S. 7A-474.4, and
50 ninety-five cents (\$.95) of each fee collected under this subdivision to the North
51 Carolina State Bar for the provision of services described in G.S. 7A-474.19."

1 **SECTION 2.(g)** There is appropriated from the General Fund to the Department of
2 Justice the sum of twenty thousand dollars (\$20,000) for the 2016-2017 fiscal year to pay for the
3 costs of developing the form required by G.S. 64-51, as enacted by subsection (a) of this section,
4 and making it available on the Attorney General's Web site, as required by that subsection.
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6 **PART III. EFFECTIVE DATE**

7 **SECTION 3.** This act becomes effective August 1, 2016.