

SUBJECT: Prohibiting local government entity policies that create “sanctuary cities”

COMMITTEE: State Affairs — committee substitute recommended

VOTE: *(After recommitted:)*
9 ayes — Cook, Craddick, Frullo, Geren, Harless, Hilderbran, Huberty,
Smithee, Solomons

3 nays — Menendez, Gallego, Oliveira

1 absent — Turner

WITNESSES: For — Timothy Lyng, The Remembrance Project; Maria Martinez, Immigration Reform Coalition of Texas; Elizabeth Theiss, Texans for Immigration Reform (TFIR); and 11 others representing themselves; *(Registered, but did not testify: Marvin Brooke, Immigration Reform Coalition of Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; Vicki Couch; Paul Hindelang)*

Against — Art Acevedo, Austin Police Department; Louis Barrios, San Antonio Hispanic Chamber of Commerce, Texas Restaurant Association; Bill Beardall, Equal Justice Center; Rebecca Bernhardt, Texas Criminal Justice Coalition; Julio Diaz, Jose Manuel Escobedo, Border Network For Human Rights; Luis Figueroa, Mexican American Legal Defense and Education Fund; Bobbi Kaye Jones, Bishops of the United Methodist Churches of Texas; Richard Jung, Korean American Association of Greater Austin; Stephanie Kolmar, American Gateways; Todd Landfried, Arizona Employees For Immigration Reform; Gary Lindsey, on behalf of Sheriff Lupe Valdez; Kelli Obazee, Dallas Peace Center; Elizabeth Riebschlaeger, Sisters of Charity of the Incarnate Word; Andrew Rivas, TX Catholic Conference; Jannell Robles, on behalf of Houston City Council Member Ed Gonzalez; Maria Robles, Coalition For Immigration Reform of DFW & North TX; Matthew Simpson, ACLU of Texas; T. Randall Smith, Texas Impact; Jan Soifer, Anti-Defamation League; Jacqueline Watson, American Immigration Lawyers Association Texas Oklahoma & New Mexico Chapter; Griselda Ponce; Esther Reyes; *(Registered, but did not testify: Kristian Aguilar, Mexican American Legal Defense & Education Fund; Andreyez Alvarado, Carlos Cardenas, Christina Rodriguez, University of Texas/Longhorn LULAC; Victor*

Andrade, Coalition for Immigration for North Texas; David Atwood, Houston Peace and Justice Center; Maria Barajas, Yasmin Juarez, Jessica Luna, Susana Ramirez, University Leadership Initiative; James Canup, American Gateways; Jennifer Daniels, Jose Moriel, North Texas Dream Team; Jean Thomas Dwyer, Daughters of Charity Advocacy & Social Justice Committee; Angelina Espinoza, Tomas Lobo, C.I.R. of North Texas; Michael Espinoza, Gloria Rubac, Luis Ruiz, Houston United; Tanya Garduno, Southwest Workers Union; Hooman Hedayati, Iranians for Peace & Justice; Shanna Igo, Texas Municipal League; Douglas Interiano, RITA- Reform Immigration for Texas Alliance; Celia Israel, Greater Austin Hispanic Chamber of Commerce; Martina Morales, Border Network for Human Rights and RITA (Reform Immigration for Texas Alliance); Jannell Robles, Central American Resource Center; Cecile Roerer, Dominican Sisters of Houston; Paul Saldana, Texas Association of Mexican American Chambers of Commerce; Margaret Snyder, Srs. of Charity of the Incarnate Word; Sandra Tovar, Council For Minority Student Affairs (CMSA); Celeste Villarreal, Mexican-American Bar Association of Texas; and 27 others representing themselves)

On — Ánggla-Jo Touza-Medina, Immigration Services Network of Austin; (*Registered, but did not testify*: Jackie Lain, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA))

DIGEST:

CSHB 12 would prohibit local government entities from adopting rules, orders, ordinances, or policies that prohibited the enforcement of state or federal immigration law.

The bill would apply to cities, counties, and special districts and authorities, and officers and employees and other bodies that were part of these entities, including sheriffs, city police departments, city and county attorneys, district attorneys, and criminal district attorneys. It would not apply in general to school districts, open-enrollment charter schools, or junior colleges, but would apply to commissioned peace officers employed by these education entities.

Entities to which CSHB 12 applied could not prohibit their employees from:

- inquiring into the immigration status of a person lawfully detained or arrested;

- sending immigration status information about someone lawfully detained or arrested to U.S. Citizenship and Immigration Services or U.S. Immigration and Customs Enforcement or requesting or receiving such information from those agencies;
- maintaining such information or exchanging it with another government entity;
- assisting a federal immigration officer as reasonable and necessary, including with enforcement assistance; or
- permitting a federal immigration officer to enter and conduct federal immigration law enforcement activities at a city or county jail.

Entities adopting a policy in violation of CSHB 12 or prohibiting the enforcement of state or federal immigration laws through consistent actions would not be able to receive state grant funds. The funds would be denied for the year after the policy was adopted or the violation occurred.

Any citizen living in a jurisdiction covered by CSHB 12 would be able to file a complaint about a violation with the attorney general if the citizen offered evidence of the violation. If the attorney general determined that a complaint was valid, he could sue for relief in a Travis County court or a court where the government entity was located to compel the alleged violator to comply with CSHB 12. An appeal of one of these suits would be governed by procedures for accelerated appeals in civil cases.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 12 is necessary to give law enforcement officers throughout Texas a uniform working standard for inquiries about the immigration status of persons they lawfully arrest or detain. It is rumored that some cities or other local entities – sometimes called sanctuary cities – have policies that prohibit law enforcement officers from asking about, or reporting on, the immigration status of a person. No Texas law enforcement officers should have to work under a policy that could interfere with their duty to uphold the law – including immigration law. CSHB 12 would solve this problem by barring local government entities from adopting policies prohibiting the enforcement of state or federal immigration laws or using consistent actions to do so.

CSHB 12 would ensure that all law enforcement officers in Texas worked under a consistent, statewide policy that did not restrict them from upholding all state and federal laws. Cities, law enforcement agencies, and other entities should not be able to pick and choose which laws they want to enforce. There should not be even a perception that Texas law enforcement officers are hamstrung from enforcing immigration law

Local control. CSHB 12 would not force a city or other local entity to take any action, and no entity would be forced to take over the enforcement of immigration law. Entities simply would have to refrain from adopting the policies described by the bill. CSHB 12 should not affect the vast majority of cities and other entities in Texas, since none report being a sanctuary city.

The bill would not take away local entities' control over their law enforcement officers. Peace officers would not be required to act as immigration agents, to investigate anyone's immigration status, or to detain or deport illegal immigrants. Instead, CSHB 12 would ensure that law enforcement officers were not restricted by local policies that prohibited them from enforcing the law or from using their discretion to ask about the immigration status of persons they lawfully detained or arrested. This would empower the officers to use their judgment when upholding the law, not infringe on their authority.

Any immigration inquiries that law enforcement officers chose to make of persons they had lawfully arrested or detained and actions taken after those questions could be seamlessly integrated into an officer's general duties. There is no reason to think that peace officers would focus on immigration issues to the exclusion of their general duties. Any officers who did so could be sanctioned for not doing their job, and such action by a city or other entity would not violate CSHB 12 since it would involve an isolated case, not a policy of the entity as the bill would require.

CSHB 12 would not take away prosecutors' discretion over which cases to pursue and would place no requirements upon them. Only prosecutors who enacted a policy prohibiting inquiries about the immigration status of a person lawfully detained or arrested would be subject to the bill.

Local resources. CSHB 12 would not cost local entities. Since no entities identify themselves as sanctuary cities, none should be affected by the bill.

The bill would not require any arrests and would not require verification of immigration status, so it should not place demands on local resources, including jails.

Comparison with Arizona. CSHB 12 would differ significantly from Arizona's immigration law, which *requires* law enforcement officers to ask about immigration status. Instead, this bill would *allow* peace officers to make inquiries at their own discretion but would not require anything of them. The bill simply would ensure that officers do not have to work under policies that prohibit them from making inquiries during lawful detentions or arrests.

The bill would not have a negative effect on the Texas economy. It would not create an atmosphere of heavy immigration enforcement because no one is required by the bill to enforce immigration law or take any specific actions.

School districts. CSHB 12 would not violate federal law requiring schools to educate all students. The bill would have no effect on teachers, principals, or other educational staff and would not require school districts to ask any questions of students or to take any action against undocumented students, who would continue to be educated.

The bill would include school district peace officers so that they would work under the same policies as all other peace officers in Texas. It would give school district officers the same discretion to ask about immigration status if a criminal infraction occurred and they arrested or detained someone. Excluding school district peace officers from the bill could prevent them from properly handling serious crimes, such as gang violence, that occurred on school grounds if school districts adopted a "sanctuary" policy prohibiting them from inquiring about the immigration status of persons arrested or detained.

Law enforcement and local communities. CSHB 12 would not harm law enforcement officers' relationships with communities. The bill would deal solely with inquiries made of persons lawfully detained or arrested. It would not apply to victims, witnesses, or other bystanders.

The bill could reinforce trust in law enforcement authorities by ensuring that there was a uniform, fair policy on certain inquiries. This would assure the public that officers were not picking and choosing which laws

to enforce but working under a consistent standard. Concerns that CSHB 12 would make communities unsafe fail to consider that law-abiding residents would benefit from the uniform enforcement of laws and from peace officers being able to use their discretion in enforcing the law.

Racial profiling. Concerns about racial profiling are unfounded. CSHB 12 would not require officers to stop persons on suspicion of being in the U.S. illegally or based on how they looked, and it would not authorize racial profiling. The bill would allow officers to ask questions about immigration only after a lawful arrest or detention for a crime. Under Texas law, all law enforcement agencies must have policies prohibiting officers from engaging in racial profiling, and that would not change.

Enforcement and penalties. Allowing the attorney general to sue entities that violated CSHB 12 would give the law some teeth and provide a way for it to be enforced consistently throughout the state.

The bill would establish a procedure for complaints from individuals to be funneled through the Attorney General's Office so that local prosecutors would not be burdened, and so that the same criteria could be applied to each complaint. CSHB 12 would reduce the likelihood of unfounded or frivolous suits being brought under the bill by requiring complaints to include evidence. In addition, the Attorney General's Office would use its general discretion about whether complaints were valid before bringing a suit.

The penalties in CSHB 12 would be easy for government entities to avoid. To avoid losing state grant funding, entities simply would have to refrain from adopting policies or actions that prohibited the enforcement of immigration laws.

OPPONENTS
SAY:

CSHB 12 would undermine local control of Texas law enforcement agencies, place demands on scarce local resources, and hurt efforts to build safe communities through community policing. CSHB 12 is not needed because Texas does not have a problem with so-called sanctuary cities.

Immigration law already is being appropriately and adequately addressed in Texas, and local law enforcement agencies already work with federal officials to handle undocumented persons accused of crimes. Texas jails

and state facilities participate in the federal Secure Communities program, under which U.S. Immigration and Customs Enforcement holds are placed on arrestees identified after their fingerprints are screened through a federal immigration and FBI database. Texas jails also participate in the federal Criminal Alien Program, under which certain persons have detainees placed on them so that when released from custody they are transferred to the U.S. Immigration and Customs Enforcement.

Local control. CSHB 12 would undermine local control by restricting the type of policies local entities can enact and by authorizing local law enforcement officers to act in ways that may conflict with the directives given to them by their supervisors. This would take away authority from local police chiefs, city officials, and heads of other local entities. Local officials should decide the priorities for local law enforcement officers.

For example, law enforcement agencies no longer could prevent officers from asking immigration status questions during traffic stops and street encounters or prevent them from assisting federal immigration officers, regardless of local needs or priorities. This could result in officers wasting time and being distracted from other crimes and could increase response times for emergency calls. If an officer decided to make an arrest based on some other violation in order to pursue someone who was undocumented, the officer could be tied up for hours with the arrest and booking procedures.

Local law enforcement officials should focus on crimes, not federal immigration law, much of which is civil. Federal immigration law should be uniformly enforced, which would not occur if local, untrained officials made immigration inquiries regardless of the policies of their departments.

Local resources. Local resources, including detention space, already are stretched thin, and CSHB 12 could lead to local resources being used to handle increased numbers of undocumented immigrants accused of petty crimes. Many Texas jails are full or overcrowded, and CSHB 12 could make matters worse. With the cost per day to house a person in a jail ranging from \$60 to \$70, each additional person jailed because of CSHB 12 could be costly.

Local law enforcement agencies also could incur costs if they felt it necessary to train local law enforcement officers to avoid violating federal immigration laws.

Comparison with Arizona. CSHB 12 could put the state on the path to becoming like Arizona, where heavy enforcement of immigration law has hurt tourism and caused workers to leave the state, affecting labor markets and industries such as agriculture.

School districts. CSHB 12 should not apply to any school district official, even school district peace officers. The bill could violate a U.S. Supreme Court ruling requiring public schools to educate all children, regardless of immigration status. School districts should be allowed to follow their own policies regarding the handling of students.

Under the bill, any student who violated the law could face questions about their status. Parents of undocumented students might keep kids out of school if they believed that school officials had authority to make immigration inquiries of students. School district funding could be reduced by students being kept out of schools or by students who dropped out of school because of the bill.

Law enforcement and local communities. CSHB 12 could harm the trust and good relationships necessary for law enforcement officers to operate successfully in the community. Crime victims and witnesses could be less likely to cooperate with police if they feared actions could be taken against them or their families for immigration violations. This, in turn, could endanger the community. For example, if a victim of domestic violence who was an illegal immigrant feared calling law enforcement, the perpetrator could go free and harm others.

Racial profiling. CSHB 12 could lead to racial profiling by law enforcement officers. Local law enforcement officers might need training in federal immigration law to prevent such profiling and other civil rights violations. This could lead to costly lawsuits if local officials tried to enforce federal law without the proper training.

Enforcement and penalties. The penalty of losing state grant funds for violating CSHB 12 would be too severe. Immigration law is complex and without the necessary expertise, cities, counties, and other entities could struggle to comply with the bill and be penalized with the loss of state funds for simple mistakes.

NOTES:

The committee substitute made several changes to the original bill, including:

- adding the limited exemptions for school districts;
- changing the timetable in which grant funds will be denied to be after a final judgment;
- removing authority for the governor to issue guidelines implementing the section concerning the denial of state grant funds;
- adding the sections allowing citizens to file complaints alleging violations of CSHB 12 with the attorney general and allowing the attorney general to file a suit in Travis County; and
- adding the provision making appeals of suits brought under CSHB 12 governed by the procedures for accelerated appeals.

The companion bill, SB 11 by Williams, was referred to the Senate Transportation and Homeland Security Committee on February 17.

HB 12 originally was set on the Major State Calendar for May 6. After floor consideration of several amendments, the bill was returned to committee after a point of order against the bill was sustained. The State Affairs Committee reported the bill again on May 6.