As Introduced

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Representatives Keller, Antani
Cosponsors: Representatives Becker, Hood, Riedel, Jordan, Manning, D.,
Zeltwanger, Vitale, Schaffer, Dean, Lang, Plummer

A BILL

To amend sections 9.63 and 5747.502 and to enact sections 9.631, 9.632, and 9.633 of the Revised Code to require state and local authorities to cooperate with the federal government in the enforcement of immigration laws, to sanction those that fail to do so, and to declare an emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 9.63 and 5747.502 be amended and sections 9.631, 9.632, and 9.633 of the Revised Code be enacted to read as follows:

Sec. 9.63. (A) Notwithstanding any law, ordinance, or collective bargaining contract to the contrary, no state or local employee shall unreasonably fail to comply with any lawful request for assistance made by any federal authorities carrying out the provisions of the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the president of the United States pertaining to homeland security, to the extent that the request is consistent with the
doctrine of federalism.

(B) No municipal corporation shall enact an ordinance, policy, directive, rule, or resolution that would materially hinder or prevent local employees from complying with the USA Patriot Act or any executive order of the president of the United States pertaining to homeland security or from cooperating with state or federal immigration services and terrorism investigations.

(C)(1) Any municipal corporation that enacts any ordinance, policy, directive, rule, or resolution that division (B) of this section prohibits is ineligible to receive any homeland security funding available from the state.

(2) Whenever the director of public safety determines that a municipal corporation has enacted any ordinance, policy, directive, rule, or resolution that division (B) of this section prohibits, the director shall certify that the municipal corporation is ineligible to receive any homeland security funding from the state and shall notify the general assembly of that ineligibility. That municipal corporation shall remain ineligible to receive any homeland security funding from the state until the director certifies that the ordinance, policy, directive, rule, or resolution has been repealed.

(D)(1) If a state or local employee states disagreement with, or a critical opinion of, the USA Patriot Act, any federal immigration or terrorism policy, or any executive order of the president of the United States pertaining to homeland security, the statement of disagreement with or critical opinion of the act or order is not sufficient to qualify for purposes of this section as unreasonable noncompliance with a request for assistance of the type division (A) of this section describes.
(2) Any municipal corporation's ordinance, policy, directive, rule, or resolution that states disagreement with, or a critical opinion of, any state or federal immigration or terrorism policy, the USA Patriot Act, or any executive order of the president of the United States pertaining to homeland security is not sufficient to qualify as a "material hindrance or prevention" of local employees from cooperating with federal immigration services and terrorism investigations or from complying with the USA Patriot Act or any executive order of the president of the United States pertaining to homeland security for purposes of divisions (B), (C), and (D) of this section.


Sec. 9.631. (A) As used in this section and sections 9.632 and 9.633 of the Revised Code:

(1) "Law enforcement agency" means a municipal or township police department, the office of a sheriff, the state highway patrol, or any other state or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.

(2) "Political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(3) "State or local governmental entity" means any agency, board, bureau, commission, council, department, division,
office, or other organized body established by the state or a political subdivision for the exercise of any function of the state or a political subdivision.

(4) "State or local public benefit" has the same meaning as in division (c) of section 411 of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 8 U.S.C. 1621(c), as amended.

(B) A law enforcement agency shall do all of the following:

(1) Participate in any available program operated by the United States department of homeland security or its successor department that allows the law enforcement agency to submit to federal authorities information about an arrestee in order to enable those authorities to determine whether the arrestee is unlawfully present in the United States;

(2) Immediately report the identity of any arrestee whom a peace officer has reasonable cause to believe is unlawfully present in the United States to the appropriate office of the United States immigration and customs enforcement agency or its successor agency;

(3) Detain a person who is unlawfully present in the United States, upon receiving a lawful federal request or order to do so, until the person is transferred into federal custody;

(4) Otherwise cooperate and comply with federal officials in the enforcement of federal immigration law.

(2) Except as otherwise provided in division (C)(3) of this section, whenever a person who is not a United States citizen or national applies to a state or local governmental entity for a state or local public benefit, the state or local governmental entity shall verify whether the person is ineligible for the benefit under section 411 of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 8 U.S.C. 1621, as amended, using the systematic alien verification for entitlements (SAVE) program, or its successor program, operated by the United States department of homeland security or its successor agency.

(3) Division (C)(2) of this section does not apply when a person applies for a state or local public benefit described in division (b) of section 411 of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 8 U.S.C. 1621, as amended, or for a state or local public benefit for which the Revised Code affirmatively provides eligibility for persons described in division (a) of that section.

(D) No state or local government agency or political subdivision shall adopt an ordinance, policy, directive, rule, or resolution that prohibits or otherwise restricts a public official or employee from doing any of the following:

(1) Complying with the requirements of division (B) or (C) of this section;

(2) Inquiring about a person's name, birthdate, place of birth, or citizenship or immigration status in the course of investigating or prosecuting a violation of any law or ordinance;

(3) Maintaining information about a person's citizenship
or immigration status;

(4) Sending information to, or requesting or receiving information from, a federal, state, or local government agency or employee concerning a person's citizenship or immigration status or for the purpose of determining a person's citizenship or immigration status;

(5) Complying with any request by a federal agency engaged in the enforcement of federal immigration law for information, access, or assistance, regardless of whether the federal agency has obtained a warrant to compel the state or local government agency or political subdivision to comply with the request, unless federal law prohibits the state or local government agency or political subdivision from complying with the request.

Sec. 9.632. (A) Each law enforcement agency and each state or local governmental entity that administers a state or local public benefit shall notify its officers and employees of the requirements of sections 9.63 and 9.631 of the Revised Code.

(B)(1) A resident of this state who believes that a county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation is not complying with the requirements of section 9.631 of the Revised Code may file a complaint with the director of public safety. Upon receiving the complaint, the director shall investigate whether the county, township, municipal corporation, or law enforcement agency is complying with the requirements of that section and shall submit a report of the director's findings to the treasurer of state, to the tax commissioner, to the speaker and minority leader of the house of representatives, and to the president and minority leader of the senate.
(2) If the director determines that a county, township, municipal corporation, or law enforcement agency originally reported as failing to comply with the requirements of section 9.631 of the Revised Code is in compliance with those requirements, the director promptly shall issue an addendum to the director's original report concerning that county, township, municipal corporation, or law enforcement agency to the persons who received the original report.

(C) If the director of public safety determines that a county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation is not in compliance with the requirements of section 9.631 of the Revised Code, then the county, township, or municipal corporation is ineligible to receive homeland security funding and any local government fund distributions from the state until the director of public safety certifies in an addendum issued under division (B)(2) of this section that the county, township, municipal corporation, or law enforcement agency is in compliance with the requirements of that section.

Sec. 9.633. (A) A person who has suffered a personal injury, death, or property loss, the person's legal representative, or the administrator of the person's estate may file a complaint seeking the removal of a public officer in the legislative or executive branch of government of a county, township, or municipal corporation if all of the following apply:

(1) A criminal offense that occurred on or after the effective date of this section was a proximate cause of the person's personal injury, death, or property loss.

(2) A person who was unlawfully present in the United
States at the time of the offense has been convicted of the offense.

(3) The county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation was not in compliance with the requirements of section 9.631 of the Revised Code at the time of the offense.

(4) At the time of the offense, one of the following was true:

(a) The offender resided or worked in the county, township, or municipal corporation. For purposes of this division, a person resides in the place in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

(b) The offender spent time in the county, township, or municipal corporation because the offender received an actual or perceived benefit from the failure of the county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation to comply with the requirements of section 9.631 of the Revised Code.

(5) The public officer did any of the following:

(a) In the case of a member of the legislative authority of the county, township, or municipal corporation, voted in favor of a resolution, ordinance, order, rule, or policy that caused the county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation not to comply with the requirements of section 9.631 of the Revised Code;

(b) Issued or adopted an order, rule, or policy that
caused the county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation not to comply with the requirements of that section:

(c) Enforced or otherwise implemented a resolution, ordinance, order, rule, or policy that caused the county, township, or municipal corporation or the law enforcement agency that serves the county, township, or municipal corporation not to comply with the requirements of that section.

(B) A person who files a complaint under this section shall file the complaint in the court of common pleas of the county in which the public officer resides. The prosecuting attorney of the county shall prosecute the removal, except that if the prosecuting attorney is the subject of the complaint, the attorney general shall appoint a special prosecutor to prosecute the removal. The court shall hold a hearing on the complaint not later than thirty days after it is filed. Not later than ten days before the hearing, the court shall cause a copy of the complaint and a notice of the hearing to be served on the public officer and on the prosecutor. The court may suspend the officer pending the hearing.

(C)(1) A judge shall try the case, unless the public officer demands a jury trial under division (C)(2) of this section. If the judge determines that all of the elements described in division (A) of this section are true, the judge shall order that the public officer be removed from office and shall file a full, detailed statement of the reasons for the removal with the clerk of the court. The proceedings and the findings of the judge shall be matters of public record.

(2) If the public officer demands a jury trial, a jury
composed of twelve persons who satisfy the qualifications of a juror specified in section 2313.17 of the Revised Code shall hear the case. If nine or more members of the jury find that all of the elements described in division (A) of this section are true, the jury shall return a finding for the removal of the public officer, the judge shall order that the public officer be removed from office, and the finding and order shall be filed with the clerk of the court and made a matter of public record. If less than nine members of the jury find that all of the elements described in division (A) of this section are true, the jury shall return a finding that the complaint be dismissed, and the judge shall order that the complaint be dismissed.

(D)(1) The court of appeals may review the decision of the court of common pleas on appeal on questions of law. Not later than twenty days after the court of common pleas enters its decision, a party who seeks to appeal the decision shall request a hearing in the court of appeals in order to show good cause why the court of appeals should grant leave to appeal. The court of appeals shall hold the hearing not later than ten days after the hearing is requested and shall notify the public officer and the prosecutor of the hearing. If the court of appeals refuses to grant leave to appeal, the decision shall be final.

(2) If the court of appeals grants leave to appeal, the appellant shall file the transcript of the record and the notice of appeal in the court of appeals not later than ten days after the court of appeals grants leave to appeal. The court of appeals shall hear the case not later than thirty days after the filing of the notice of appeal. The decision of the court of appeals in passing upon the merits of the case in the appellate proceedings shall be final.
(E) The court of common pleas and the court of appeals may subpoena witnesses and compel their attendance in the same manner as in civil cases. The sheriff of the county in which a witness resides shall serve process upon the witness. The witness fees and other fees in connection with the removal proceedings shall be the same as in civil cases, and the county shall pay the expenses incurred in the proceedings out of its general fund.

Sec. 5747.502. (A) As used in this section:

(1) "Delinquent subdivision" means a municipal corporation, township, or county that has not filed a report or signed statement under section 4511.0915 of the Revised Code, as required under that section and that is not a sanctuary subdivision.

(2) "Noncompliant subdivision" means a municipal corporation, township, or county that files a report under division (A)(1) of section 4511.0915 of the Revised Code for the most recent calendar quarter and that is not a sanctuary subdivision.

(3) "Sanctuary subdivision" means a political subdivision that the director of public safety determines is not in compliance with the requirements of section 9.631 of the Revised Code and, pursuant to section 9.632 of the Revised Code, is ineligible to receive local government fund distributions.

(B)(1)(a) Upon receiving notification of a delinquent subdivision under division (C)(2) of section 4511.0915 of the Revised Code, the tax commissioner shall do both of the following:

(i) If the delinquent subdivision is a municipal
corporation, cease providing for payments to the municipal
corporation under division (C) of section 5747.50 of the Revised
Code, beginning with the next required payment;

(ii) Immediately notify the county auditor and county
treasurer required to provide for payments to the delinquent
subdivision from a county undivided local government fund that
such payments are to cease until the tax commissioner notifies
the auditor and treasurer under division (B)(3)(a)(ii) of this
section.

(b) A county treasurer receiving the notice under division
(B)(1)(a)(ii) of this section shall cease providing for payments
to the delinquent subdivision from a county undivided local
government fund, beginning with the next required payment.

(2)(a) Upon receiving notification that a county,
township, or municipal corporation is no longer a delinquent
subdivision under division (C)(3) of section 4511.0915 of the
Revised Code, the tax commissioner shall do both of the
following:

(i) Except as provided in division (B)(2)(c) of this
section, if the formerly delinquent subdivision is a municipal
corporation, begin providing for payments to the municipal
corporation as required under division (C) of section 5747.50 of
the Revised Code, beginning with the next required payment.

(ii) Immediately notify the county auditor and county
treasurer who ceased payments to the formerly delinquent
subdivision under division (B)(1)(b) of this section that the
treasurer shall begin providing for payment from a county
undivided local government fund to the formerly municipal
corporation, township, or county is no longer a delinquent
subdivision under section 5747.503, 5747.51, or 5747.53 of the Revised Code.

(b) Except as provided in division (B)(2)(c) of this section, a county treasurer receiving notice under division (B)(2)(a)(ii) of this section shall provide for payments to the formerly delinquent subdivision from a county undivided local government fund, beginning with the next required payment.

(c) If the formerly delinquent subdivision is a noncompliant subdivision, the commissioner and the county treasurer shall reduce payments as required under division (C) of this section.

(C)(1) Upon receiving notification of a noncompliant subdivision under division (C)(1) of section 4511.0915 of the Revised Code, the tax commissioner shall do both of the following:

(a) If the noncompliant subdivision is a municipal corporation, reduce the amount of each of the next three local government fund payments the noncompliant subdivision would otherwise receive under division (C) of section 5747.50 of the Revised Code in an amount equal to one-third of the gross amount of fines reported by the noncompliant subdivision on the report filed for the calendar quarter.

(b) If the reduction described in division (C)(1)(a) of this section exceeds the amount of money the noncompliant subdivision would otherwise receive under division (C) of section 5747.50 of the Revised Code, immediately notify the county auditor and county treasurer required to provide for payments to the noncompliant subdivision from a county undivided local government fund that each of the next three such payments
are to be reduced to that subdivision in an amount equal to one-third of that excess.

(2) A county treasurer receiving notice under division (C) (1)(b) of this section shall reduce the payments to the noncompliant subdivision from a county undivided local government fund as required by the notice.

(D)(1) The tax commissioner shall provide for payment of an amount equal to amounts withheld from municipal corporations under divisions (B)(1)(a)(i) and (C)(1)(a) of this section to the undivided local government fund of the county from which the municipal corporation receives payments under section 5747.503, 5747.51, or 5747.53 of the Revised Code. The county treasurer shall distribute that money among subdivisions that are not delinquent, noncompliant, or sanctuary subdivisions and that are entitled to receive distributions under those sections by increasing each such subdivision's distribution on a pro rata basis.

(2) A county treasurer shall distribute any amount withheld from a delinquent or noncompliant subdivision under division (B)(1)(b) or (C)(2) of this section among other subdivisions that are not delinquent, noncompliant, or sanctuary subdivisions by increasing each such subdivision's distribution from the county's undivided local government fund on a pro rata basis.

(E)(1) Upon receiving notification of a sanctuary subdivision from the director of public safety under section 9.632 of the Revised Code, the commissioner shall do both of the following:

(a) If the sanctuary subdivision is a municipal
corporation, cease providing for any payments to the sanctuary
subdivision under division (C) of section 5747.50 of the Revised
Code, beginning with the next required payment;

(b) If the sanctuary subdivision is a township, reduce
payments to the appropriate undivided county local government
fund under section 5747.503 of the Revised Code beginning with
an amount equal to the amount of such payments the sanctuary
subdivision would have otherwise received under section 5747.503
of the Revised Code and immediately notify the appropriate
county auditor and county treasurer that such payments are to
cease until the commissioner notifies the auditor and treasurer
that the township is no longer a sanctuary subdivision;

(c) For any sanctuary subdivision, reduce payments to the
appropriate undivided county local government fund under section
5747.50 of the Revised Code beginning with the next required
payment by an amount equal to the amount of such payments the
sanctuary subdivision would otherwise receive under section
5747.51 or 5747.53 of the Revised Code and immediately notify
the appropriate county auditor and county treasurer that such
payments are to cease until the commissioner notifies the
auditor and treasurer that the municipal corporation, county, or
township is no longer a sanctuary subdivision;

(d) A county treasurer receiving the notice under division
(E)(1)(b) or (c) of this section shall cease providing for
payments to the sanctuary subdivision from a county undivided
local government fund beginning with the next required payment.

(2) Upon receiving notification from the director of
public safety under section 9.632 of the Revised Code that a
county, township, or municipal corporation is no longer a
sanctuary subdivision the commissioner shall do both of the
following:

(a) Except as provided in division (E)(2)(c) of this section, if the former sanctuary subdivision is a municipal corporation, resume payments to the municipal corporation as required under division (C) of section 5747.50 of the Revised Code beginning with the next required payment:

(b) For any former sanctuary subdivision, notify the appropriate county auditor and county treasurer that the county, township, or municipal corporation is no longer a sanctuary subdivision.

Except as provided in division (E)(2)(c) of this section, a county treasurer receiving notice under division (E)(2)(b) of this section shall resume payments to the former sanctuary subdivision from a county undivided local government fund under section 5747.51 or 5747.53 of the Revised Code beginning with the next required payment. In addition, if the former sanctuary subdivision is a township, the county treasurer shall resume payments to the former sanctuary subdivision from the county undivided local government fund under section 5747.503 of the Revised Code beginning with the next required payment.

(c) If the former sanctuary subdivision is a delinquent or noncompliant subdivision, the commissioner and county treasurer shall continue to withhold or reduce payments as required under division (B) or (C) of this section, respectively.

(F) Each month, the commissioner shall certify to the director of budget and management the total amounts withheld from sanctuary subdivisions under division (E)(1) of this section, and the director shall transfer an equal amount from the local government fund to the general revenue fund.
(G) A county, township, or municipal corporation receiving an increased distribution under division (D) of this section shall use such money for the current operating expenses of the subdivision.

Section 2. That existing sections 9.63 and 5747.502 of the Revised Code are hereby repealed.

Section 3. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity does not affect any other provisions or applications of this act that can be given effect without the invalid provision or application.

Section 4. (A) The General Assembly finds that all of the following are true:

(1) Sanctuary policies that restrict, obstruct, or discourage cooperation with federal immigration authorities are prohibited by such federal laws as Section 642 of the "Omnibus Consolidated Appropriations Act of 1996," 8 U.S.C. 1373, which states that "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

(2) On January 25, 2017, the President of the United States issued an executive order, "Enhancing Public Safety in the Interior of the United States," that addresses sanctuary jurisdictions. The order states that it is the policy of the executive branch of the federal government to ensure that Section 642 of the "Omnibus Consolidated Appropriations Act of
1996," 8 U.S.C. 1373, is enforced to the fullest extent of the law and that the United States Attorney General and Secretary of Homeland Security must ensure that jurisdictions that willfully refuse to comply with that law are ineligible for federal grants, except as the Attorney General or the Secretary deem necessary for law enforcement purposes.

(3) In Arizona v. United States, 567 U.S. 387 (2012), the Supreme Court of the United States ruled that the United States Congress has the exclusive authority to legislate on immigration matters, that states may not augment the penalties for violating federal immigration laws, that "consultation between federal and state officials is an important feature of the immigration system," and that "Congress has encouraged the sharing of information about possible immigration violations."

(B) The General Assembly declares all of the following:

(1) Given the supremacy of all federal laws pertaining to immigration, including Section 274 of the "Immigration and Nationality Act," 8 U.S.C. 1324, as amended, which prohibits knowingly harboring persons who are unlawfully present in the United States, it is inappropriate and contrary to the public safety and welfare of this state for any public official to encourage, endorse, or otherwise support any public or private organization that seeks to offer so-called "sanctuary protection" to persons who are unlawfully present in the United States.

(2) Policies that direct state or local employees not to cooperate with federal immigration authorities or that protect persons who are unlawfully present in the United States are contrary to federal law, the interests of this state, and the safety and welfare of the people of this state.
(3) This act is necessary to ensure consistency and fairness in the enforcement of the laws of this state.

(4) The subject of this act is a matter of statewide concern.

Section 5. This act is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for that necessity is that government policies that prohibit cooperation with federal authorities in the enforcement of immigration laws endanger the public safety and welfare. Therefore, this act shall go into immediate effect.