

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Smith, C. offered the following:

Amendment to Amendment (159253) (with title amendment)

Remove lines 63-401 and insert:

procedure, or custom adopted or permitted by a local governmental entity or law enforcement agency which contravenes 8 U.S.C. s. 1373(a) or (b) or which knowingly prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency with respect to federal immigration enforcement, including, but not limited to, limiting a law enforcement agency in, or prohibiting such agency from:

(a) Complying with an immigration detainer;

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14 (b) Complying with a request from a federal immigration
15 agency to notify the agency before the release of an inmate or
16 detainee in the custody of the law enforcement agency;

17 (c) Providing a federal immigration agency access to an
18 inmate for interview;

19 (d) Participating in any program or agreement authorized
20 under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s.
21 1357; or

22 (e) Providing a federal immigration agency with an
23 inmate's incarceration status or release date.

24 (7) "Sanctuary policymaker" means a local elected official
25 or an appointed official of a local governmental entity
26 governing body who has voted for, allowed to be implemented, or
27 voted against repeal or prohibition of a sanctuary policy, or
28 who willfully engages in a pattern of noncooperation with a
29 federal immigration agency.

30 PART II

31 DUTIES

32 908.201 Sanctuary policies prohibited.—A law enforcement
33 agency or local governmental entity may not adopt or have in
34 effect a sanctuary policy.

35 908.202 Cooperation with federal immigration authorities.—

36 (1) A law enforcement agency shall use best efforts to
37 support the enforcement of federal immigration law. This
38 subsection applies to an official, representative, agent, or

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39 employee of the entity or agency only when he or she is acting
40 within the scope of his or her official duties or within the
41 scope of his or her employment.

42 (2) Except as otherwise expressly prohibited by federal
43 law, a local governmental entity or law enforcement agency, or
44 an employee, an agent, or a representative of the entity or
45 agency, may not prohibit or in any way restrict a law
46 enforcement agency from taking any of the following actions with
47 respect to information regarding a person's immigration status:

48 (a) Sending the information to or requesting, receiving,
49 or reviewing the information from a federal immigration agency
50 for purposes of this chapter.

51 (b) Recording and maintaining the information for purposes
52 of this chapter.

53 (c) Exchanging the information with a federal immigration
54 agency or another local governmental entity, or law enforcement
55 agency for purposes of this chapter.

56 (d) Using the information to comply with an immigration
57 detainer.

58 (e) Using the information to confirm the identity of a
59 person who is detained by a law enforcement agency.

60 (3) (a) For purposes of this subsection the term
61 "applicable criminal case" means a criminal case in which:

62 1. The judgment requires the defendant to be confined in a
63 secure correctional facility; and

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64 2. The judge:
65 a. Indicates in the record under s. 908.203 that the
66 defendant is subject to an immigration detainer; or
67 b. Otherwise indicates in the record that the defendant is
68 subject to a transfer into federal custody.
69 (b) In an applicable criminal case, when the judge
70 sentences a defendant who is the subject of an immigration
71 detainer to confinement, the judge shall issue an order
72 requiring the secure correctional facility in which the
73 defendant is to be confined to reduce the defendant's sentence
74 by a period of not more than 12 days on the facility's
75 determination that the reduction in sentence will facilitate the
76 seamless transfer of the defendant into federal custody. For
77 purposes of this paragraph, the term "secure correctional
78 facility" means a state correctional institution as defined in
79 s. 944.02 or a county detention facility or a municipal
80 detention facility as defined in s. 951.23.
81 (c) If the information specified in sub-subparagraph
82 (a)2.a. or sub-subparagraph (a)2.b. is not available at the time
83 the sentence is pronounced in the case, but is received by a law
84 enforcement agency afterwards, the law enforcement agency shall
85 notify the judge who shall issue the order described by
86 paragraph (b) as soon as the information becomes available.
87 (4) When a county correctional facility or the Department
88 of Corrections receives verification from a federal immigration

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89 agency that a person subject to an immigration detainer is in
90 the law enforcement agency's custody, the agency may securely
91 transport the person to a federal facility in this state or to
92 another point of transfer to federal custody outside the
93 jurisdiction of the law enforcement agency. The law enforcement
94 agency may transfer a person who is subject to an immigration
95 detainer and is confined in a secure correctional facility to
96 the custody of a federal immigration agency not earlier than 12
97 days before his or her release date. A law enforcement agency
98 shall obtain judicial authorization before securely transporting
99 an alien to a point of transfer outside of this state.

100 (5) This section does not require a local governmental
101 entity or law enforcement agency to provide a federal
102 immigration agency with information related to a victim of or a
103 witness to a criminal offense if the victim or witness timely
104 and in good faith responds to the entity's or agency's request
105 for information and cooperation in the investigation or
106 prosecution of the offense.

107 (6) A local governmental entity or law enforcement agency
108 that, pursuant to subsection (5), withholds information
109 regarding the immigration information of a victim of or witness
110 to a criminal offense shall document the victim's or witness's
111 cooperation in the entity's or agency's investigative records
112 related to the offense and shall retain the records for at least

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113 10 years for the purpose of audit, verification, or inspection
114 by the Auditor General.

115 908.203 Duties related to immigration detainers.—

116 (1) A law enforcement agency that has custody of a person
117 subject to an immigration detainer issued by a federal
118 immigration agency shall:

119 (a) Provide to the judge authorized to grant or deny the
120 person's release on bail under chapter 903 notice that the
121 person is subject to an immigration detainer.

122 (b) Record in the person's case file that the person is
123 subject to an immigration detainer.

124 (c) Upon determining that the immigration detainer is in
125 accordance with s. 908.102(2), comply with the requests made in
126 the immigration detainer.

127 (2) A law enforcement agency is not required to perform a
128 duty imposed by paragraph (1)(a) or paragraph (1)(b) with
129 respect to a person who is transferred to the custody of the
130 agency by another law enforcement agency if the transferring
131 agency performed that duty before the transfer.

132 (3) A judge who receives notice that a person is subject
133 to an immigration detainer shall cause the fact to be recorded
134 in the court record, regardless of whether the notice is
135 received before or after a judgment in the case.

136 908.204 Reimbursement of costs.—Each county correctional
137 facility shall enter into an agreement or agreements with a

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138 federal immigration agency for temporarily housing persons who
139 are the subject of immigration detainers and for the payment of
140 the costs of housing and detaining those persons. A compliant
141 agreement may include any contract between a correctional
142 facility and a federal immigration agency for housing or
143 detaining persons subject to immigration detainers, such as
144 basic ordering agreements in effect on or after July 1, 2019,
145 agreements authorized by s. 287 of the Immigration and
146 Nationality Act, 8 U.S.C. s. 1357, or successor agreements and
147 other similar agreements authorized by federal law.

148 PART III

149 ENFORCEMENT

150 908.301 Complaints.—The Attorney General shall prescribe
151 and provide through the Department of Legal Affairs' website the
152 format for a person to submit a complaint alleging a violation
153 of this chapter. This section does not prohibit the filing of an
154 anonymous complaint or a complaint not submitted in the
155 prescribed format. Any person has standing to submit a complaint
156 under this chapter.

157 908.302 Enforcement; penalties.—

158 (1) The state attorney for the county in which a local
159 governmental entity or law enforcement agency is located has
160 primary responsibility and authority for investigating credible
161 complaints of a violation of this chapter. The results of an

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162 investigation by a state attorney shall be provided to the
163 Attorney General in a timely manner.

164 (2) (a) A local governmental entity or law enforcement
165 agency for which the state attorney has received a complaint
166 shall comply with a document request from the state attorney
167 related to the complaint.

168 (b) If the state attorney determines that a complaint
169 filed against a local governmental entity or law enforcement
170 agency is valid, the state attorney shall, not later than the
171 10th day after the date of the determination, provide written
172 notification to the entity that:

173 1. The complaint has been filed.

174 2. The state attorney has determined that the complaint is
175 valid.

176 3. Any executive or administrative state, county, or
177 municipal officer who violates his duties under this chapter may
178 be subject to actions taken by the Governor in exercise of his
179 authority under the State Constitution and Florida law. As
180 provided in s. 1(b), Art. IV, of the State Constitution, the
181 Governor may, in his discretion, initiate judicial proceedings
182 in the name of the state against such officers to enforce
183 compliance with any duty under this chapter or restrain any
184 unauthorized act contrary to this chapter.

185 4. In addition, the state attorney or Attorney General may
186 file suit against any local government entity or law enforcement

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187 agency for declaratory and injunctive relief caused by a
188 violation of this chapter.

189 (c) No later than the 30th day after the day a local
190 governmental entity receives written notification under
191 paragraph (b), the local governmental entity shall provide the
192 state attorney with a copy of:

193 1. The entity's written policies and procedures with
194 respect to federal immigration agency enforcement actions,
195 including the entity's policies and procedures with respect to
196 immigration detainers.

197 2. Each immigration detainer received by the entity from a
198 federal immigration agency in the current calendar year-to-date
199 and the two prior calendar years.

200 3. Each response sent by the entity for an immigration
201 detainer described by subparagraph 2.

202 (3) As provided in s. 1(b), Art. IV, of the State
203 Constitution, the Governor may, in his discretion, initiate
204 judicial proceedings in the name of the state against such
205 officers to enforce compliance with any duty under this chapter
206 or restrain any unauthorized act contrary to this chapter. The
207 Attorney General, the state attorney who conducted the
208 investigation, or a state attorney ordered by the Governor
209 pursuant to s. 27.14 may institute proceedings in circuit court
210 to enjoin a local governmental entity, or law enforcement agency
211 found to be in violation of this chapter. Venue of an action

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212 brought by the Attorney General may be in Leon County. The court
213 shall expedite an action under this section, including setting a
214 hearing at the earliest practicable date.

215 (4) Upon adjudication by the court or as provided in a
216 consent decree declaring that an officer, local governmental
217 entity or law enforcement agency has violated this chapter, the
218 court shall enjoin the unlawful sanctuary policy and order that
219 such entity or agency pay a civil penalty to the state of at
220 least \$1,000 but not more than \$5,000 for each day that the
221 sanctuary policy was in effect commencing on October 1, 2019, or
222 the date the sanctuary policy was first enacted, whichever is
223 later, until the date the injunction was granted. The court
224 shall have continuing jurisdiction over the parties and subject
225 matter and may enforce its orders with imposition of additional
226 civil penalties as provided for in this section and contempt
227 proceedings as provided by law.

228 (5) An order approving a consent decree or granting an
229 injunction or civil penalties pursuant to subsection (4) must
230 include written findings of fact that describe with specificity
231 the existence and nature of the sanctuary policy in violation of
232 s. 908.201 and that identify each sanctuary policymaker who
233 voted for, allowed to be implemented, or voted against repeal or
234 prohibition of the sanctuary policy, or who willfully engaged in
235 a pattern of noncooperation with a federal immigration agency.
236 The court shall provide a copy of the consent decree or order

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237 granting an injunction or civil penalties that contains the
238 written findings required by this subsection to the Governor
239 within 30 days after the date of rendition. Any executive or
240 administrative state, county, or municipal officer who violates
241 his duties under this chapter may be subject to actions taken by
242 the Governor in exercise of his authority under the State
243 Constitution and Florida law.

244 (6) A local governmental entity or law enforcement agency
245 ordered to pay a civil penalty pursuant to subsection (4) shall
246 remit payment to the Chief Financial Officer, who shall deposit
247 such payment into the General Revenue Fund.

248 (7) Except as required by law, public funds may not be
249 used to defend or reimburse a sanctuary policymaker or an
250 official, representative, agent, or employee of a local
251 governmental entity or law enforcement agency who knowingly and
252 willfully violates this chapter.

253 908.303 Civil cause of action for personal injury or
254 wrongful death attributed to a sanctuary policy; trial by jury;
255 required written findings.-

256 (1) A person injured in this state by the tortious acts or
257 omissions of an alien unlawfully present in the United States,
258 or the personal representative of a person killed in this state
259 by the tortious acts or omissions of an alien unlawfully present
260 in the United States, has a cause of action for damages against
261 a local governmental entity or law enforcement agency in

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262 violation of ss. 908.201 and 908.202 upon proof by the greater
263 weight of the evidence of:

264 (a) The existence of a sanctuary policy in violation of s.
265 908.201; and

266 (b)1. A failure to comply with a provision of s. 908.202
267 resulting in such alien's having access to the person injured or
268 killed when the tortious acts or omissions occurred; or

269 2. A failure to comply with a provision of s.
270 908.203(1)(c) resulting in such alien's having access to the
271 person injured or killed when the tortious acts or omissions
272 occurred.

273 (2) A cause of action brought pursuant to subsection (1)
274 may not be brought against a person who holds public office or
275 who has official duties as a representative, agent, or employee
276 of a local governmental entity or law enforcement agency,
277 including a sanctuary policymaker.

278 (3) Trial by jury is a matter of right in an action
279 brought under this section.

280 (4) A final judgment entered in favor of a plaintiff in a
281 cause of action brought pursuant to this section must include
282 written findings of fact that describe with specificity the
283 existence and nature of the sanctuary policy in violation of s.
284 908.201 and that identify each sanctuary policymaker who voted
285 for, allowed to be implemented, or voted against repeal or
286 prohibition of the sanctuary policy, or who willfully engaged in

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287 a pattern of noncooperation with a federal immigration agency.
288 The court shall provide a copy of the final judgment containing
289 the written findings required by this subsection to the Governor
290 within 30 days after the date of rendition. A sanctuary
291 policymaker identified in a final judgment may be suspended or
292 removed from office pursuant to general law and s. 7, Art. IV of
293 the State Constitution.

294 (5) Except as provided in this section, this chapter does
295 not create a private cause of action against a local
296 governmental entity or law enforcement agency that complies with
297 this chapter.

298 908.304 Ineligibility for state grant funding.-

299 (1) Notwithstanding any other provision of law, a local
300 governmental entity or law enforcement agency shall be
301 ineligible to receive funding from non-federal grant programs
302 administered by state agencies that receive funding from the
303 General Appropriations Act for a period of 5 years from the date
304 of adjudication that such local governmental entity, or law
305 enforcement agency had in effect a sanctuary policy in violation
306 of this chapter.

307 (2) The Chief Financial Officer shall be notified by the
308 state attorney of an adjudicated violation of this chapter by a
309 local governmental entity or law enforcement agency and be
310 provided with a copy of the final court injunction, order, or
311 judgment. Upon receiving such notice, the Chief Financial

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312 Officer shall timely inform all state agencies that administer
313 non-federal grant funding of the adjudicated violation by the
314 local governmental entity or law enforcement agency and direct
315 such agencies to cancel all pending grant applications and
316 enforce the ineligibility of such entity for the prescribed
317 period.

318 (3) This subsection does not apply to:

319 (a) Funding that is received as a result of an
320 appropriation to a specifically named local governmental entity
321 or law enforcement agency in the General Appropriations Act or
322 other law.

323 (b) Grants awarded before the date of adjudication that
324 such local governmental entity or law enforcement agency had in
325 effect a sanctuary policy in violation of this chapter.

326 PART IV

327 MISCELLANEOUS

328 908.401 Education records.—This chapter does not apply to
329 the release of information contained in education records of an
330 educational agency or institution, except in conformity with the
331 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s.
332 1232g.

333 908.402 Discrimination prohibited.—A local
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Remove line 427 and insert:

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local governmental entities, and law

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