

HOUSE BILL 1083<sup>1</sup>: CRIMINAL PROCEDURE; VERIFICATION OF IMMIGRATION STATUS; PROVISIONS

*Revising O.C.G.A § 36-80-23*

**First Signature:** Representative Jesse Petrea (166<sup>th</sup>)

**Co-Sponsors:** Representative Bruce Williamson (115<sup>th</sup>), Representative Ginny Ehrhart (36<sup>th</sup>), Representative Vernon Jones (91<sup>st</sup>), Karen Mathiak (73<sup>rd</sup>), Representative Jason Ridley (6<sup>th</sup>)

**Summary:** The purpose of this Bill is to revise “Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general provisions applicable to counties, municipal corporations, and other governmental entities, so as to revise the definition of "sanctuary policy"; to provide for a private civil cause of action for injury or death arising out of sanctuary policies; to provide for waiver of sovereign and governmental immunity under certain circumstances; to provide for trial by jury; to provide for reasonable costs and attorneys' fees; to provide for related matters; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** House Judiciary Non-Civil Committee Favorably Reported by Substitute, March 9, 2020.<sup>3</sup>

TEXT OF HOUSE BILL 1083<sup>4</sup>

**SECTION 1.**

Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general provisions applicable to counties, municipal corporations, and other governmental entities, is amended by revising paragraph (6) of subsection (a) of Code Section 36-80-23, relating to prohibition on immigration sanctuary policies by local governmental entities and certification of compliance, and by adding a new subsection to read as follows:

(6) ‘Sanctuary policy’ ~~means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials or employees from communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties~~ means a law, policy, practice, procedure, or custom, formal or informal, written or unwritten, adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. Section 1373 or which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such law enforcement agency in or prohibit the agency from:

<sup>1</sup> H.B. 1083, 155th Gen. Assemb., 2nd Reg. Sess. (Ga. 2020), available at <https://www.legis.ga.gov/api/legislation/document/20192020/192611> (last visited Dec. 17, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> 2019-2020 Regular Session - HB 1083, Criminal Procedure; Verification of Immigration Status; Provisions, GA GEN. ASSEMB., <https://www.legis.ga.gov/legislation/57938> (last visited May 13, 2021) [hereinafter H.B. 1083 Status Sheet].

<sup>4</sup> H.B. 1083.

(A) Complying with an immigration detainer, including, but not limited to, requiring a judicial warrant or other judicial order prior to complying with an immigration detainer;

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

(C) Providing a federal immigration agency access to an inmate for interview;

(D) Participating in any program or agreement authorized under Section 287 of the federal Immigration and Nationality Act, 8 105 U.S.C. Section 1357; or

(E) Providing a federal immigration agency with an inmate's incarceration status or release date.”

“(e)(1) An individual injured by the tortious acts or omissions of a person unlawfully present in the United States, or the personal representative of an individual killed by the tortious acts or omissions of a person unlawfully present in the United States, shall have a cause of action for damages against a local governing entity or law enforcement agency of a local governing entity upon proof by the preponderance of the evidence of:

(A) The existence of a sanctuary policy by such local governing entity or law enforcement agency of such local governing entity; and

(B) A failure to comply with this Code section resulting in such person having access to the individual injured or killed when the tortious acts or omissions occurred.

(2) Sovereign immunity and governmental immunity of local governing entities or law enforcement agencies of local governing entities is expressly waived to the extent of liability created by this Code section.

(3) Trial by jury shall be a matter of right in an action brought under this Code section.

(4) The court in an action brought under this Code section may award reasonable costs and attorneys' fees to the prevailing party.”

## SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

### SPONSOR'S RATIONALE

Representative Jesse Petrea is the author of House Bill 1083 (“HB 1083”), which would revise the definition of “Sanctuary Policy,” allowing individuals to bring civil actions for death or

injury arising out of the promulgation of sanctuary policies.<sup>5</sup> Representative Petrea’s motivation in authoring House Bill 1083 is to aid in “public safety” and compliance with federal law—such as ICE hold requests and Section 287(g) of the U.S. Immigration and Nationality Act.<sup>6</sup> Petrea stated that the proposed bill provides individuals injured or killed by someone who “has benefitted from a sanctuary policy where a local jurisdiction has refused to follow...federal law” with a path to bring civil action against government officials who promulgate the “Sanctuary Policies.”<sup>7</sup> Representative Petrea is advocating for parties injured by a person unlawfully present within the United States to have “recourse against...local jurisdiction[s] that willfully chose to not enforce [the United States’] immigration laws” by removing governmental immunity.<sup>8</sup>

Representative Petrea has emphasized that his bill pertains to public safety and not immigration.<sup>9</sup> Additionally, Representative Petrea has stated that as of 2018, there are seven cities that follow the sanctuary city policies that this bill aims to combat. Moreover, by passing HB 1083, these cities may become compliant with federal law—such as the 287(g) program, which has now been adopted under 8 U.S.C.S § 1357—by opening these cities up to civil litigation.<sup>10</sup> Section 287(g) was an added section to the Immigration and Nationality Act, which authorizes the Director of Immigration and Customs Enforcement (ICE) to enter into agreements with localities and local law enforcement.<sup>11</sup> These agreements would allow local law enforcement to perform limited actions on behalf of ICE and under the supervision of an ICE agent.<sup>12</sup> Furthermore, it would reduce the amount of time of unlawfully present individuals in custody and would alleviate the disconnect between state and federal authorities. Thus, HB 1083 would incentivize localities to retain their governmental immunity by participating in programs like 287(g).<sup>13</sup>

Representative Petrea has stated that HB 1083 does not take away peace officers’ discretion as to whether they wish to notify ICE of a hold on an unlawfully present individual; however, it would hold the local government liable for any death or injury caused by the unlawfully present individual.<sup>14</sup>

In summary, according to proponents of Representative Petrea’s proposed bill, HB1083 would allow injured citizens to bring suit against officials of locales that promulgate sanctuary policies, by removing governmental immunity, thereby pressuring locales promulgating Sanctuary Policies to follow federal law in order to preserve governmental immunity.

#### OPPOSITION’S RATIONALE

Project South opposes HB 1083, arguing that it would force local law enforcement to become entangled with ICE, thereby increasing racial profiling and targeting of communities of

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<sup>5</sup> *Id.*

<sup>6</sup> *House Judiciary Non-Civil Committee Hearing*, 155th Gen. Assemb., 2nd Reg. Sess. (Ga. Mar. 4, 2020), available at <https://livestream.com/accounts/25225474/events/8737131/videos/202539773> [hereinafter *House Judiciary Non-Civil Hearing*].

<sup>7</sup> *Id.*

<sup>8</sup> Ross Williams, ‘Sanctuary cities’ Could Face Legal Liability for Injuries Caused by Immigrants, GEORGIA RECORDER (Mar. 5, 2020), available at <https://georgiarecorder.com/2020/03/05/sanctuary-cities-could-face-legal-liability-for-injuries-caused-by-immigrants/>.

<sup>9</sup> *House Judiciary Non-Civil Hearing*, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> 8 U.S.C.S. § 1357(g)(1) (2020).

<sup>12</sup> *Id.*

<sup>13</sup> *House Judiciary Non-Civil Hearing*, *supra* note 6.

<sup>14</sup> *Id.*

color and people of immigrant descent.<sup>15</sup> Project South further argues that the bill “mandates cooperation with federal immigration authorities by holding individuals, sharing information on release dates of detained individuals, and sharing immigration status of individuals with local, state, or federal authorities.”<sup>16</sup> Project South has further stated that this sort of cooperation between local governments and ICE does not make communities safer because “immigrants who are survivors of domestic violence, sexual assault, and human trafficking may be deterred from accessing services.” Additionally, Project South argues that due to the fear HB 1083 may cause certain communities to experience a greater risk for crime, and therefore, HB 1083 would “undermin[e] public safety.”<sup>17</sup> Lastly, Project South has stated that HB 1083 would waste state and local municipalities’ resources because these municipalities would have to adhere to 287(g) in order to keep governmental immunity because 287(g) would require “resources, personnel, and training,” which would not be reimbursed by the federal government.<sup>18</sup>

The Asian American Advocacy Fund has echoed Project South’s arguments, stating that “[t]hese practices are not needed and do not improve safety, [rather] they seek to maximize deportations and arrests of unauthorized immigrants in the name of public safety.”<sup>19</sup> Moreover, the Asian American Advocacy Fund contends that adherence to the 287(g) program could cost taxpayers \$3.7 million due to the lack of reimbursement from the federal government.<sup>20</sup> Lastly, the organization argues that passing of this bill will cost the state of Georgia millions of dollars due to a shortage of migrant workers.<sup>21</sup>

In summary, opponents of HB 1083 contend that passage of this bill would negatively affect immigrant communities due to the fear that if crimes are reported by immigrants, they may be taken into custody and possibly face deportation—even after being victim to a crime. Moreover, opponents argue that there would be increased cost implications due to local authorities taking on the role of the federal government, without funding from the federal government.

#### IMPLICATIONS IN GEORGIA

If passed, this Bill will not only open up local municipalities to liability for civil cases but may also cost taxpayers if a Georgia resident is successful in their case against the local municipality. Additionally, by passing this Bill, immigrant communities may be more vulnerable due to the entanglement of ICE with the local municipalities.<sup>22</sup> However, this Bill would give victims and their families recourse against government officials who are promulgating sanctuary city policies.<sup>23</sup>

#### LEGISLATIVE GENEALOGY

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<sup>15</sup> Project South et. al, *HB 1083: Anti-Sanctuary Bill*, PROJECT SOUTH (Mar. 2020), available at <https://projectsouth.org/wp-content/uploads/2020/03/HB-1083.pdf> [hereinafter Project South Statement].

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Asian American Advocacy Fund Staff, *Immigration Enforcement Mandate, HB 1083*, ASIAN AMERICAN ADVOCACY (Apr. 27, 2020), available at <https://asianamericanadvocacyfund.org/advocacy/immigration-enforcement-mandate-hb-1083>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* See also WALB, *HB 87 is Costing Georgia Big Bucks*, WALB NEWS 10 (Oct. 5, 2011, 10:24 PM), <https://www.walb.com/story/15626967/hb-87-costing-georgia-big-bucks/> (updated June 25 at 3:28 PM).

<sup>22</sup> Project South Statement, *supra* note 15.

<sup>23</sup> *House Judiciary Non-Civil Hearing*, *supra* note 6.

This Bill was introduced in the House on February 28, 2020.<sup>24</sup> The Bill had its first reading on March 2, 2020, and its second reading on March 3, 2020.<sup>25</sup> The House Judiciary Non-Civil Committee favorably reported by substitute on March 9, 2020.<sup>26</sup>

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<sup>24</sup> H.B. 1083 Status Sheet, *supra* note 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Vangelis Zafiroulis is a third-year JD candidate at Atlanta's John Marshall Law School.