

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 598 (Delegate W. Miller, *et al.*)
Judiciary and Appropriations

Counties and Municipal Corporations - "Sanctuary Laws" for Illegal Aliens -
Prohibition

This bill requires all officials, personnel, and agents of a county or municipality to fully comply with and support the enforcement of federal law prohibiting the entry into or presence or residence in the United States of illegal aliens.

Fiscal Summary

State Effect: Potential reduction in general fund expenditures to the extent that police aid is withheld from jurisdictions certified as not complying with the bill's provisions.

Local Effect: Potential reduction in police aid to the extent that jurisdictions are certified as not complying with the bill's provisions. **This bill imposes a mandate on local governments.**

Small Business Effect: None.

Analysis

Bill Summary: A county or municipality is prohibited from restricting its officials, personnel, or agents from requesting, obtaining, sending, receiving, exchanging, or maintaining information on an individual's immigration status. Counties and municipalities must comply with the bill's requirements in a manner that is fully consistent with federal law and that protects the civil rights of U.S. citizens and aliens. The bill may not be construed to prevent a county or a municipality from rendering emergency medical care or any other benefit required by federal or State law or from reporting criminal activity to a law enforcement agency.

If the Executive Director of the Governor's Office of Crime Control and Prevention (GOCCP) finds that a county or municipality is not complying with the bill's provisions, the executive director must notify the jurisdiction of noncompliance. If a jurisdiction disputes the finding within 30 days of the issuance of the notice, the dispute must then be referred to the Secretary of Budget and Management, who must make a final determination. Once either the executive director or Secretary of Budget and Management certifies noncompliance, the Comptroller is required to suspend the amount of police aid in the current fiscal year which exceeds what was paid to the jurisdiction in the prior fiscal year.

Current Law/Background:

Immigration Enforcement Efforts

While immigration is controlled by federal law, the Department of Homeland Security (DHS) and the U.S. Immigration, Customs, and Enforcement Division (ICE) have initiated numerous programs that involve state and local law enforcement agencies as allies and additional resources. For example, DHS's Priority Enforcement Program (PEP) was established in 2014 to enable DHS to work with state and local law enforcement to take custody of individuals who pose a danger to public safety before those individuals are released. Under the PEP program, after an individual was arrested and booked for a criminal violation, state and local law enforcement officers would send data to ICE so that ICE could determine whether the individual was a priority for removal, consistent with the DHS enforcement priorities. Under PEP, ICE would seek the transfer of a removable individual when that individual had been convicted of a specified offense, had intentionally participated in an organized criminal gang to further the illegal activity of the gang, or posed a danger to national security.

Pursuant to an Executive Order dated January 25, 2017, President Trump directed the Secretary of Homeland Security to immediately take all appropriate action to terminate PEP and instead reinstitute the Secure Communities Program. Under this program, launched in March 2008, participating correctional facilities would submit the fingerprints of arrestees into traditional criminal databases and immigration databases, such as the U.S. Visitor and Immigrant Status Indicator Technology Program and the Automated Biometric Identification System. If the database indicated that the arrestee matched a record for an individual with an immigration violation, ICE and local law enforcement would automatically be notified. ICE would then review the case and the arrestee's immigration status and determine what action it wished to take. In some instances, ICE would issue a detainer.

Another initiative, authorized under Section 287(g) of the Immigration and Naturalization Act, allows the Secretary of Homeland Security to enter into written agreements to delegate

limited immigration enforcement authority to state and local law enforcement officers. In Maryland, the 287(g) program has been established in two jurisdictions – Frederick and Harford counties. In 2008, the Frederick County Sheriff’s Office entered into a partnership with ICE to begin the 287(g) Criminal Alien Program within the county. This partnership entailed training office personnel from both the county detention center and law enforcement operations to become authorized to identify and begin deportation proceedings against undocumented immigrants. The Frederick County Sheriff’s Office is one of the few law enforcement offices nationwide that participate in both the jail enforcement program and the law enforcement task force program. In addition, the local detention center in Harford County participates in the 287(g) program.

Despite the President’s increased focus on undocumented immigrants, federal law still does not mandate that state and local law enforcement agencies become involved in immigration efforts.

Sanctuary Laws

“Sanctuary city” is a term applied to municipalities that have adopted policies limiting local cooperation with federal immigration authorities. Sanctuary cities and local adoption of sanctuary policies have made recent headlines in light of a January 25, 2017 federal Executive Order addressing immigration enforcement issues, including the use of state and local law enforcement. Among other things, the order would withhold funds from sanctuary jurisdictions. According to the National Conference of State Legislatures, cities began adoption of sanctuary policies in 1989, with San Francisco being the first to enact such an ordinance. In 2016, at least 18 states considered legislation that would prohibit adoption of sanctuary policies or require noncompliance with immigration detainers. No State law specifically addresses the authority of Maryland local governments to adopt or reject sanctuary status.

On February 6, 2017, the Howard County Council passed a bill that prohibits county employees, including police, from engaging in the enforcement of federal immigration laws. This includes assisting in immigration enforcement in the investigation or arrest of a person for a civil or criminal violation of federal immigration laws during the performance of their official duties, except as specified. The bill also contains provisions regarding inquiries into and disclosures of a person’s immigration status. The County Executive vetoed the bill on February 9, 2017.

Takoma Park Policy

Takoma Park, located in Montgomery County, enacted a sanctuary law in 1985 to protect numerous refugees from El Salvador and Guatemala from being deported to their homelands, which were in a state of civil war at the time. Three main components of the

city's sanctuary law include (1) prohibiting city officials from enforcing federal immigration laws; (2) prohibiting inquiries into an individual's citizenship status; and (3) prohibiting the release of information pertaining to an individual's citizenship status. The city's sanctuary law, however, is not binding on State or county police officers.

State and Local Fiscal Effect: To the extent that the Executive Director of GOCCP or the Secretary of Budget and Management certifies that local governments have not complied with the provisions of this bill, the Comptroller would be required to withhold the increase in police aid that otherwise would have been allocated to the jurisdiction in the fiscal year that the certification takes place. The police aid appropriated to local governments in fiscal 2017 was \$73,714,998. Although the fiscal 2018 allowance is \$74,180,140, an increase of \$465,142, the Budget Reconciliation and Financing Act (BRFA) of 2017 (Senate Bill 172/House Bill 152) reduces the total amount of grants provided under the State Aid for Police Protection formula to the fiscal 2017 funding level. Assuming enactment of this provision in the BRFA, any potential fiscal impact for a noncompliant local government will not be realized until fiscal 2019 at the earliest. There would be a corresponding savings in general fund expenditures.

The Department of Legislative Services notes that this estimate does not take into account any potential changes at the federal level with respect to immigration policy. As noted above, state and local law enforcement agencies are currently not required to participate in immigration enforcement efforts. However, should federal law change to require participation by state and local law enforcement agencies, significant costs could incur depending on the actions required in order for jurisdictions to be deemed as fully compliant with and supporting the enforcement of federal immigration law.

Additional Information

Prior Introductions: HB 677 of 2011 received an unfavorable report from the House Judiciary Committee. HB 486 of 2009 received an unfavorable report from the House Judiciary Committee. Similar bills were also introduced in the 2008 session.

Cross File: None.

Information Source(s): Baltimore City; Caroline, Frederick, and Montgomery counties; cities of College Park and Takoma Park; Maryland Municipal League; Comptroller's Office; Governor's Office of Crime Control and Prevention; Department of Budget and Management; Department of Public Safety and Correctional Services; Department of State Police; National Conference of State Legislatures; Department of Legislative Service

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