

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 1232  
Judiciary

(Delegate McDonough, *et al.*)

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Citizens Rights Act

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This bill provides standing for a registered voter to file a complaint against • a civil officer or employee of a unit of State government or a political subdivision; and • an elected or appointed officer of the State subject to impeachment, alleging that the officer or employee acted or directed the actions of another, to violate federal immigration law, infringe on a privilege or immunity of a State domiciliary, or permit a noncitizen to vote.

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Fiscal Summary

**State Effect:** General fund, special fund, and Transportation Trust Fund expenditures could increase, perhaps significantly, to the extent that this bill requires State agencies to hire additional assistant Attorneys General, and to the extent necessary to reimburse complainants of the cost of attorney's fees and costs.

**Local Effect:** Local expenditures could increase significantly to the extent that the bill requires local government entities to hire additional attorneys or retain the assistance of outside counsel.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill authorizes a registered voter under the laws of the State to file a complaint for declaratory judgment and injunctive relief against an officer or employee described above alleging that the employee or officer • acted, or directed the actions of another, in a manner that violates, conflicts with, or is otherwise preempted by a federal

immigration law; • permitted or authorized a noncitizen to vote in violation of the Election Law Article; or • acted, or directed the actions of another, in a manner that infringes on a privilege or immunity of a citizen domiciled in the State.

Upon a finding that one of these provisions was violated, the registered voter may request that the court declare that an offending civil officer or employee be subject to suspension and removal sanctions, or that an offending elected or appointed officer be referred to the General Assembly for impeachment.

Upon finding a pattern or practice of violations, a court is authorized to direct the offending officer or employee to reimburse the complainant for reasonable attorney's fees and costs. A registered voter is only granted standing under this bill after exhausting all administrative remedies available.

**Current Law:** While the U.S. Constitution does not explicitly grant the federal government the authority to regulate immigration matters, the federal government has retained broad and exclusive power to regulate immigration laws and foreign nationals residing in the United States. The Supremacy Clause of the U.S. Constitution provides that federal law is the supreme law of the land and thus invalidates any state or local law that either interferes or is contrary to federal law. This invalidation is termed federal preemption. Courts have consistently noted that immigration constitutes a federal concern, not a state or local matter, and that the U.S. Congress had made clear its intent that federal law preempt state law in the area of immigration.

Article Four of the U.S. Constitution states that “the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” This clause has come to be generally associated with the protection of the basic rights of any U.S. citizen regardless of the state it is situated in or traveling through, and consequently, with the prohibition of disparate treatment by a state against persons of another state.

A more analogous protection of civil rights, privileges, and immunities is provided for by 42 U.S.C § 1983, a provision from what is commonly known as the federal Civil Rights Act of 1871. Section 1983 allows an individual to sue a state actor in a state or federal court for an alleged deprivation of any rights, privileges, or immunities secured by the U.S. Constitution. However, it is unclear to what extent the scope of a § 1983 action would overlap with that of an action filed under authority conferred by this bill.

Currently, under the State Government Article, only a member of a State board or commission is subject to suspension without pay, and only upon conviction, or entry of a plea of *nolo contendere*, to a felony, or certain specified misdemeanors.

**State Fiscal Effect:** General fund, special fund, and Transportation Trust Fund expenditures could increase by an indeterminate amount due to a potentially significant increase in filing of legal actions against State entities. For example, the Motor Vehicle Administration states that it would need to hire at least one additional assistant Attorney General V position at an estimated cost of over \$81,000 annually due to the cost of defending legal actions against MVA for issuing licenses to undocumented immigrants. Legislative Services advises that this cost could be substantially greater at MVA and other State agencies because the bill provides for a strict liability standard in which intent is not necessary to prove. Thus, declaratory or injunctive relief could be granted for each license issued to an undocumented immigrant, or for each vote cast by an undocumented immigrant. State expenditures could also increase due to the extent that the number of impeachment proceedings increases.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), State Board of Elections, Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2008  
mll/jr

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