

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 866
Judiciary

(Delegate McDonough, *et al.*)

Public Safety - Enforcement of Federal Immigration Law by Law Enforcement Agencies

This bill requires each law enforcement agency in the State to enter into a “memorandum of understanding with the federal government concerning the enforcement of federal immigration laws.” A “memorandum of understanding” is a written agreement between the U.S. Attorney General and a state or political subdivision regarding the U.S. Immigration and Customs Enforcement (ICE) Agency’s 287(g) Delegation of Authority Program under the Immigration and Nationality Act. Under this program, State and local law enforcement officers may carry out the functions of an immigration officer as to the investigation, apprehension, or detention of individuals who are not lawfully present in the United States. Each law enforcement agency must provide appropriate training in federal immigration law to each law enforcement officer that will be performing immigration enforcement under a memorandum of understanding.

Fiscal Summary

State Effect: Potential significant increases in expenditures for State law enforcement agencies to provide coverage while officers are in training.

Local Effect: Potential increase in expenditures for local law enforcement agencies to comply with the bill’s provisions. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law: Federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts. The extent to which local law enforcement and the State police participate in immigration-related matters varies among jurisdictions.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act. This authorizes state and local law enforcement agencies to enter into an agreement with ICE to perform immigration law enforcement functions, provided that the local law enforcement officers receive appropriate training and function under the supervision of ICE officers.

Background: ICE is the primary federal agency charged with enforcement of federal immigration laws. ICE is the largest bureau within the Department of Homeland Security. The 287(g) program is one component of the ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) program, which provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities.

Law enforcement agencies participating in the 287(g) program enter into an agreement with ICE that (1) defines the scope and limitations of the authority to be designated; and (2) establishes the supervisory structure for the officers working under the cross-designation. Under the statute, ICE will supervise all cross-designated officers when they exercise their immigration authorities. The agreement must be signed by the ICE Assistant Secretary, and the Governor, a senior political entity, or the head of the local agency before trained local officers are authorized to enforce immigration law.

ICE offers a four-week training program at the Federal Law Enforcement Training Center ICE Academy in Charleston, South Carolina. The program is conducted by certified instructors.

Since January 2006, the 287(g) program is credited with identifying more than 130,000 individuals, mostly in jails, who are suspected of being in the country illegally. More than 1,075 officers nationwide have been trained and certified through the program under 67 active agreements. In 2008, Frederick County Sheriff's Office became the first local agency in Maryland to participate in the program.

State Fiscal Effect: Each law enforcement agency will initially be required to send officers to a four-week training program in Charleston, South Carolina. ICE provides materials, room, board, and travel related expenses of each attendee, but the attendee's

department is responsible for salary and benefits during the training period. Of the five State law enforcement agencies that provided a fiscal estimate for this bill or for a prior introduction of a similar bill, three indicated minimal or no impact and two indicated a significant fiscal impact.

Minimal or No Impact

The Department of Natural Resources (DNR) indicates that an officer is currently assigned to work with ICE on criminal enforcement cases. The officer will be sent to the required training and since ICE covers travel and other related costs, there will be no fiscal impact on the agency. DNR does note that even though there would not be a fiscal impact, the loss of a number of officers to attend an out-of-state training course would create a significant operational impact.

The Department of Labor, Licensing, and Regulation (DLLR) indicates that six police officers and three sergeants would be sent to the training. In order to minimize costs, the officers will be sent as scheduling permits, but some overtime will still be required to ensure security coverage. DLLR estimates that compliance with the bill will cost \$5,000 over a two-year period.

The Department of General Services indicates that there would be no fiscal impact.

Significant Fiscal Impact

Maryland State Police (MSP) will incur significant expenditures associated with overtime costs for times when officers are in training. Even with advance notice of training, scheduling deficiencies at the barracks will necessitate sworn personnel filling in on an overtime basis for each member attending training for approximately 25% of the time, which equates to 40 overtime hours (25% of 4 weeks at 40 hours/week). Based on an average overtime rate of \$45, expenditures increase by \$1,800 for each MSP officer sent to training. If each of the 22 MSP barracks send 15 personnel to be trained (representing one supervisor and two troopers in each shift), general fund expenditures would increase by \$594,000 in the first year of implementation. Annual expenditures of \$118,000 are anticipated to train additional individuals due to transfers, reassignments and promotions.

MSP also estimates additional expenditures to assist ICE in its 287(g) operations once trained State officers are available. It estimates an annual impact of \$36,000 based on the following assumptions:

- one MSP supported 287(g) operation per quarter;
- 20 personnel needed per operation;

- average overtime rate of \$45; and
- 10 hours needed per operation.

Although a response was not solicited for this note, the Maryland Department of Transportation had previously indicated on a similar prior introduction that it would incur significant expenditures relating to overtime expenditures to allow adequate coverage while staff were sent to the training.

Legislative Services advises that while the memorandum of understanding required by this bill would require enrollment in the 287(g) program, it does not include a specific number of personnel from each law enforcement agency who must participate. Accordingly, while expenditures will be necessary to cover overtime costs, law enforcement agencies can send fewer officers to training, thus reducing overtime expenditures, while still being in compliance with the bill's provisions. It is also estimated that the training would be staggered over several years.

Local Fiscal Effect: Local law enforcement agencies will also be required to send officers to training and to assist ICE in its operations. The responses from local law enforcement agencies as to the impact of implementing the bill's provisions varied. For example, the Montgomery County Police Department indicated it was unable to provide a definitive fiscal impact, however, it anticipated an increase in workload. The Maryland-National Capital Park and Planning Commission anticipated that the impact would be significant, based on the need for additional staff. Carroll County advises that the bill will have an indeterminate impact on local finances, as the increased responsibility in enforcing federal immigration matters will impact workload and increase expenditures related to enforcement. Cecil County indicated that the bill would increase expenditures associated with salaries and fringe benefits.

Additional Comments: Legislative Services prepared a report in January 2008 titled *International Immigration: The Impact on Maryland Communities* that provides an overview of the legal and fiscal issues surrounding immigration and the effects it has on State and local communities. In preparing the report, Legislative Services either interviewed or requested interviews with representatives of police departments of the seven largest jurisdictions in Maryland regarding their policies on immigration-related issues. Local responses to these interviews are included in the report.

Additional Information

Prior Introductions: SB 1000 of 2009, a similar bill, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Cross File: None.

Information Source(s): Carroll, Cecil, and Montgomery counties; Office of the Attorney General; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Municipal League; Department of State Police; Department of Legislative Services

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