

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 744

(Delegate McDonough, *et al.*)

Judiciary

Citizens Rights Act

This bill requires law enforcement agencies in the State to enter into agreements with the federal government in order to assist in immigration efforts. The bill also establishes procedures in order for the Department of Public Safety and Correctional Services to assist the U.S. Immigration and Customs Enforcement Agency (ICE) in the deportation of persons who are unlawfully present in the United States. All officials, personnel, and agents of a county or municipality are required to fully comply with and support the enforcement of federal law prohibiting the entry into or presence or residence in the United States of unauthorized immigrants. The bill prohibits State agencies and local governments from providing unauthorized immigrants with specified public benefits unless the benefits are required under federal law. The bill also establishes new State crimes relating to an individual's unlawful presence in the United States and provides standing for registered voters to file complaints against specified employees or officers alleging that the employee or officer acted in violation of federal immigration law. The bill also alters the date on which the Motor Vehicle Administration (MVA) must cease issuing specified documents that are not acceptable by federal agencies for official purposes.

Fiscal Summary

State Effect: Potential significant increase in expenditures for State agencies to participate in immigration efforts and to verify lawful presence prior to issuing public benefits.

Local Effect: Potential significant increase in expenditures to comply with the bill's provisions. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires State and local governments to enforce federal immigration laws and establishes new State crimes for persons who may be unlawfully present in the county. Major provisions of the bill are summarized below.

Unlawful Presence in the United States

The bill establishes new State crimes for persons who may be unlawfully present in the United States. A person is prohibited from willfully failing to complete or carry an alien registration card. A violator is guilty of a misdemeanor and subject to maximum penalties of 20 days imprisonment and/or a \$100 fine. Subsequent violations are punishable by up to 30 days imprisonment and/or a maximum \$150 fine.

A person convicted and sentenced under this provision must serve the sentence imposed, is not eligible for a suspension of the sentence, probation before judgment, pardon, or any other provision of law that might release the person from serving the sentence imposed, and must pay the costs of confinement as provided by law.

The bill also prohibits a person unlawfully present in the United States to knowingly apply for work, solicit work in a public location, or perform work as an independent contractor or employee. Violators are guilty of a misdemeanor and subject to maximum penalties of 30 days imprisonment and/or a \$100 fine.

In enforcing these new crimes, the determination of immigration status must be made by ICE or a law enforcement officer authorized by the federal government to verify a person's immigration status. A law enforcement officer may not consider race, color, or national origin in enforcing these provisions except to the extent authorized by the U.S. Constitution and the Maryland Constitution. Any records certified by the government agency as authentic that relate to the immigration status of a person are admissible in courts without further foundation or testimony from the custodian of the records. Persons who maintain authorization from the federal government to remain in this country are not subject to these provisions.

Detention of an Undocumented Alien

The bill also requires a police officer who encounters and detains in the normal course of the officer's duties an individual who is determined to be "an undocumented alien" to inform ICE of the detention as soon as possible after the detention. An officer may not consider race, color, or national origin except to the extent authorized by the U.S. Constitution and the Maryland Constitution. The bill specifies that a police officer is not required to search for an individual for the sole purpose of detaining an undocumented alien.

A police officer may arrest without a warrant a person who commits a felony or misdemeanor in public that makes the person removable from the United States. The bill also prohibits a District Court commissioner from authorizing the pretrial release of a defendant who cannot provide satisfactory documentation of lawful presence in the United States.

Civil Cause of Action

The bill provides standing for a registered voter to file a complaint against (1) a civil officer or employee of a unit of State government or a political subdivision; and (2) 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. The bill authorizes a complaint for declaratory judgment and injunctive relief against the specified officers or employees.

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 the bill after exhausting all administrative remedies available.

Other Provisions

The bill also requires law enforcement entities, including correctional facilities and the Division of Parole and Probation to assist in immigration efforts. The bill prohibits local governments from restricting their officials, personnel, or agents from communicating information regarding an individual's immigration status and establishes a penalty for noncompliance. State agencies and local governments are prohibited from providing unauthorized immigrants with specified public benefits unless the benefits are required under federal law. Finally, the bill establishes procedures for MVA in regards to specified documents for individuals who do not have satisfactory evidence of lawful status in the United States. More detail regarding these provisions can be found in **Appendix A-E**.

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 program 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: Immigration policy has become a topic of intense interest throughout the country. Comprehensive immigration reform has stalled on the federal level, and state and local officials are being asked to address various issues relating to immigration. While the U.S. Constitution does not explicitly grant the federal government the sole 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. Courts consistently note that immigration constitutes a federal concern, not a state or local matter, and Congress has made clear its intent that federal law preempts state law in the area of immigration. Nonetheless, state legislatures, including the Maryland General Assembly, continue to tackle the issue of immigration, most recently with a focus on the issue of unauthorized immigrants.

State laws related to immigration have increased dramatically in recent years. According to the National Conference of State Legislatures, 300 immigration-related bills were introduced in the states in 2005. In 2010, that number increased to more than 1,400 bills introduced, as every state in regular session considered such bills. The states enacted 208 new laws and adopted 138 resolutions involving immigrants and refugees.

This bill contains a number of provisions that have been introduced this session as well as in prior years. Other provisions in the bill closely mirror a controversial Arizona bill that was enacted in 2010 and is discussed below.

Arizona's Experience

The U.S. Department of Homeland Security estimates that Arizona has one of the fastest growing unauthorized immigrant populations in the United States, increasing from 330,000 in 2000 to 560,000 by 2008. As a result, Arizona has been at the forefront of state efforts to curb unauthorized immigration. In 2007, Arizona enacted the Legal Arizona Workers Act prohibiting employers from knowingly employing unauthorized immigrants, imposing penalties for violations, and requiring employers to use the federal E-Verify system to verify employment eligibility of new hires. Most recently, Arizona passed a controversial omnibus law addressing unauthorized immigration.

In April 2010, Arizona's legislature passed, and the governor signed, the "Support our Law Enforcement and Safe Neighborhoods Act," commonly referred to as SB 1070. Among other provisions, SB 1070 (1) creates a state trespassing misdemeanor for unlawful presence; (2) adds penalties for harboring and transporting unauthorized immigrants; (3) requires law enforcement to check the legal residency of persons stopped

for other offenses; and (4) authorizes an officer to make a warrantless arrest if probable cause exists to believe the person has committed a deportable offense. SB 1070 also creates or amends crimes for the smuggling of persons, failure of an alien to apply for or carry registration papers, and the performance of work by unauthorized aliens. In the civil arena, SB 1070 authorizes legal residents to sue a state official or agency for adopting a policy restricting enforcement of federal immigration laws to less than the full extent permitted by federal law, and prohibits state officials from limiting the enforcement of federal immigration laws.

In the last week of its 2010 session, Arizona's legislature amended SB 1070 to address racial profiling concerns expressed about the original language. The amendments specified that a law enforcement officer may not consider race, color, or national origin when implementing the law, except as permitted by the U.S. or state constitution. The amendments also clarified the original language regarding "reasonable suspicion" by requiring law enforcement to reasonably attempt to determine the immigration status of a person only while in the process of a lawful stop, detention, or arrest made in the enforcement of any other state or local law.

In advance of the July 29, 2010 effective date of SB 1070, citizens and organizations filed legal challenges to the Act based on equal protection and due process rights and federal preemption of immigration law. In early July, the U.S. Department of Justice filed a lawsuit stating that SB 1070 was preempted by federal law and U.S. foreign policy, and that the state law violated the Supremacy Clause and the Commerce Clause of the U.S. Constitution. On July 28, 2010, a federal district judge issued a partial preliminary injunction enjoining the enforcement of sections relating to (1) determining immigration status during a lawful stop; (2) the crime of failing to carry federally issued registration documents; (3) warrantless arrest on probable cause that a person has committed an offense for which the person could be deported; and (4) the crime of an unauthorized immigrant knowingly applying for work.

The enjoined sections of SB 1070 are now under appeal before the Ninth Circuit Court of Appeals. The Ninth Circuit heard oral arguments on November 1, 2010, but has not yet issued its decision. In February 2011, Arizona filed a countersuit against the federal government in the *United States v. Arizona* case, accusing it of failing to secure the Mexican border against large numbers of unauthorized immigrants.

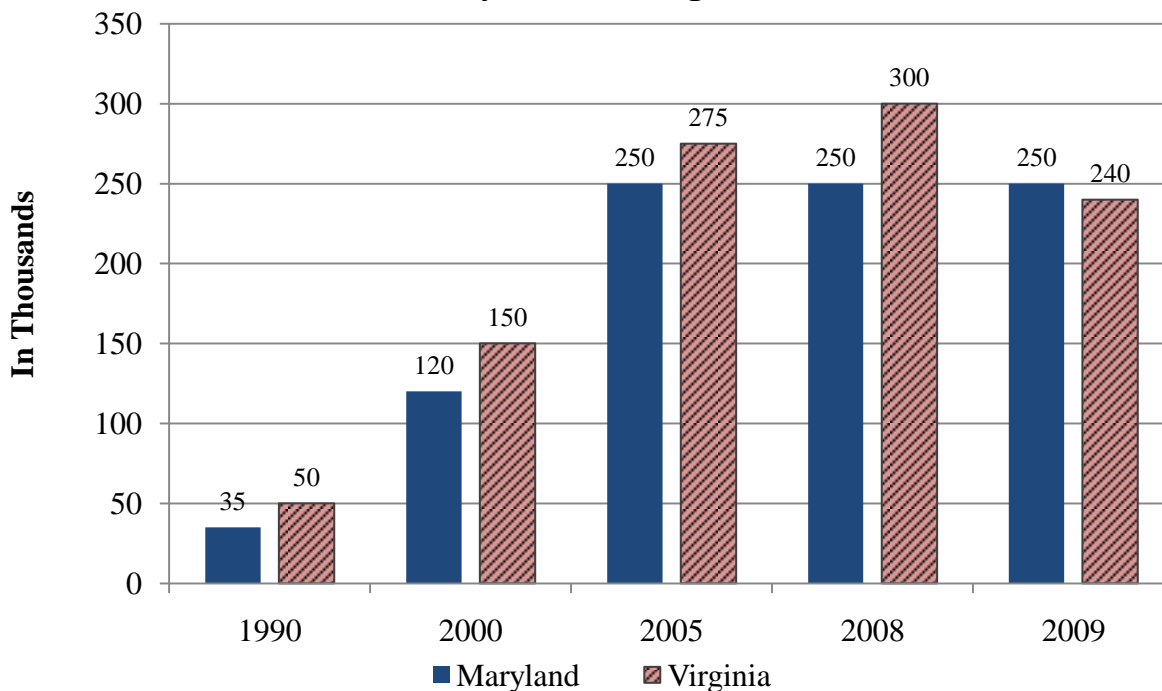
Extent of Unauthorized Immigration to Maryland

A significant portion of Maryland's immigrants are unauthorized, according to estimates made by private research organizations. The Pew Hispanic Center, which does not take positions on policy issues, estimated that there were 250,000 unauthorized immigrants in the State in 2009, with a range of between 210,000 and 300,000 (**Exhibit 1**). Based on this estimate, Maryland had the tenth highest number of unauthorized immigrants among the states that year. Over the last two decades, the presence of unauthorized immigrants in Maryland has increased dramatically, from an estimated population of 35,000 in 1990

and 120,000 in 2000. Today, unauthorized immigrants account for 6.3% of the State's labor force and 4.5% of the State's population. Nationally, unauthorized immigrants account for 5.1% of the labor force and 3.7% of total population.

Estimates from the Pew Hispanic Center are in line with projections made by other private research organizations. The Center for Immigration Studies, which advocates reducing immigration, estimated that there were 268,000 unauthorized immigrants in Maryland in 2007. This estimate was based on an analysis of data from the U.S. Census Bureau's *2007 Current Population Survey*. The U.S. Department of Homeland Security, which provides projections on unauthorized immigrants at the national level and for selected states, has not prepared projections at the state level for Maryland.

Exhibit 1
Unauthorized Immigrant Population in
Maryland and Virginia



Source: Pew Hispanic Center

The extent to which unauthorized immigrants in Maryland are eligible to receive certain types of public benefits is illustrated in Appendix F. The number of foreign-born residents in Maryland is shown in Appendix G.

State Fiscal Effect: State expenditures increase significantly due to several of the bill's provisions. Although a more detailed analysis of the fiscal effect can be found in the Appendix, the primary expenditures associated with this bill are due to:

- the purchase of livescan machines for local detention centers in order to track data relating to individuals committed to a correctional facility who are unauthorized (see Appendix A);
- personnel expenditures and computer modifications in order to verify the lawful presence of individuals applying for public benefits (see Appendix C);
- training expenses for law enforcement agencies and associated overtime costs; (see Appendix D); and
- personnel and mailing costs for MVA to process new identification documents and provide required notification (see Appendix E).

In addition, expenditures may increase by an indeterminate amount due to a potentially significant increase in filing of legal actions against State entities. Legislative Services notes that 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 example, for each vote cast by an unauthorized immigrant. State expenditures may also increase due to the extent that the number of impeachment proceedings increases.

General fund expenditures increase as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. General fund expenditures may also increase due to cases filed in the District Court.

General fund expenditures may decrease to the extent that local governments are certified as noncompliant with specified provisions of the bill and consequently lose funds associated with police protection grants (see Appendix B). Since unauthorized immigrants are currently not eligible to receive most federal and State public benefits, any decrease in State expenditures from the proposed proof of lawful presence requirement is not expected to be significant.

General fund revenues increase as a result of the bill's monetary penalty provision from cases heard in the District Court. However, general fund revenues also decrease due to fewer documents being issued by MVA (see Appendix E).

Local Fiscal Effect: Local government expenditures increase due to the bill's requirements for law enforcement agencies to participate in immigration enforcement efforts and for local jurisdictions to verify lawful presence prior to providing public benefits. Expenditures also increase as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have

ranged from \$57 to \$157 per inmate in recent years. Further detail on the fiscal impact for specific jurisdictions can be found in Appendix A-E.

Additional Comments: Although the estimate above is derived from an analysis of specified provisions of the bill, the collateral consequences of implementing such comprehensive legislation related to unauthorized immigrants could have a significant fiscal impact on the State. Because many of the bill's provisions mirror the controversial new law in Arizona, there is the potential that Maryland will experience similar consequences. As with the immigrant population in Arizona, there is a potential that the population of unauthorized immigrants in Maryland could decrease, ultimately reducing State and local revenues and expenditures. For example, tax revenues attributable to immigrant workers will decrease, while costs associated with providing certain required services to the immigrant population (such as education and health care) will also decrease.

In addition, after Arizona's law was passed, numerous states, organizations, and cities boycotted Arizona. For example, the Mayor of Phoenix estimates the loss of convention revenue to the state will be at least \$90 million over the next five years due to cancelled events. According to the Maryland Office of Tourism and the Comptroller, revenue directly attributed to tourism exceeded \$328 million in fiscal 2010. To the extent that Maryland experiences boycotts similar to Arizona, revenues will decrease.

Small Business Effect: Potential meaningful to the extent that the bill has a similar effect to that of Arizona's experience, which led to boycotts and a departure of immigrants from the State.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Frederick, Kent, Montgomery, Prince George's, St. Mary's, and Worcester counties; Town of Bel Air; Town of Leonardtown; City of Salisbury; Office of the Attorney General; Department of Budget and Management; Department of Human Resources; Department of Natural Resources; Maryland State Department of Education; Department of General Services; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Energy Administration; Maryland Municipal League; Department of State Police; Maryland Department of Aging; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Maryland Department of Transportation; University System of Maryland; Comptroller's Office; Department of Legislative Services

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Appendix A

Immigration Status of Prisoners

Provisions in the Bill: This provision requires an individual committed to a “correctional facility” to provide information as to his/her immigration status. If it is determined that the individual is unlawfully present in the United States, the correctional facility must send an immigration alien query to the U.S. Immigration and Customs Enforcement Agency (ICE) for information relating to the individual’s immigration status. If the results of the query indicate that the individual is unlawfully present in the United States, the managing official of a correctional facility must report that fact to the Central Repository, the Division of Correction (DOC), and the Division of Parole and Probation (DPP).

DOC must maintain in its offender management systems a specific data field for the entry of reports received regarding individuals committed to a correctional facility who are unlawfully present in the United States. DOC must also assist ICE with information leading to the deportation of individuals committed to a correctional facility who are unlawfully present in the United States. DPP must also maintain in its offender management system a specific data field for this information and assist ICE in the deportation of persons unlawfully present in the United States who may be considered for probation or parole.

The central repository must (1) record information regarding an individual’s unauthorized immigration status in the individual’s criminal history record; and (2) report to ICE the identity and release dates of all convicted offenders in the custody of a correctional facility who are unlawfully present in the United States.

“Correctional facility” includes local correctional facilities and correctional facilities in DOC.

These provisions are similar to HB 1061 of 2010.

Current Law/Background: The Department of Public Safety and Correctional Services (DPSCS) attempts to identify citizenship status for any individual sentenced to DOC during the intake process. ICE is notified via fax when foreign birth is suspected by way of an inmate’s own admission, criminal history check, and/or interviewer suspicion. Upon notification, ICE agents (1) come to the facility to interview the inmate; (2) indicate, without seeing the inmate, if a detainer will be lodged; or (3) wait to dispose of the case once the inmate is transferred to a designated institution, primarily the Maryland Correctional Institution in Hagerstown or the Maryland Correctional Institution for Women in Jessup. DOC attempts to house all criminal aliens at either of these facilities because of the proximity to federal judges responsible for hearings regarding immigration issues. In most cases, ICE lodges a detainer against the criminal alien and, once the inmate’s sentence has been completed or the inmate is paroled, ICE takes custody of the inmate. In federal fiscal 2010, DOC released 128 inmates to an ICE detainer.

In May of 2009 the Maryland Parole Commission, DOC, and ICE finalized a memorandum of understanding to implement the “Rapid Removal of Eligible Parolees Accepted for Transfer” (Rapid REPAT) program. Under the program, eligible foreign born offenders agree to deportation and are granted parole for that purpose. Only offenders with a final deportation order, serving sentences for nonviolent offenses are eligible for this program. A similar program was implemented in New York in 1995, with savings of over \$140 million reported since that time.

A majority of jurisdictions in Maryland have entered into agreements with the federal government under the Secure Communities program by which “criminal aliens” are identified and referred to ICE for possible deportation. The Secure Communities program is a comprehensive the Department of Homeland Security initiative to modernize the criminal alien enforcement process, by increasing and strengthening efforts to identify and remove criminal aliens deemed as “most dangerous” from the United States. As part of the Secure Communities strategy, ICE utilizes a federal biometric information sharing capability to quickly and accurately identify criminal aliens in law enforcement custody. According to ICE, since this capability was first activated in 2008, biometric information sharing has helped the agency identify and remove more than 62,000 convicted criminal aliens from the United States. As of March 1, 2011, 13 counties in Maryland participate in the program – Anne Arundel, Baltimore, Carroll, Caroline, Dorchester, Frederick, Kent, Prince George’s, Queen Anne’s, St. Mary’s, Somerset, Talbot, and Worcester.

State/Local Effect: DPSCS estimates that full implementation will cost a minimum of \$1 million in fiscal 2012. This estimate assumes that live scan machines will be installed at local detention centers in order to allow data capture and subsequent communication with the Criminal Justice Information System in order to meet the reporting requirements and to handle the additional volume of inmates that other provisions of this bill may generate. The cost of the machines is estimated at \$920,000 (\$40,000 x 23 machines) in fiscal 2012 only. Annual maintenance costs are estimated at \$115,000. Programming costs are not included in this estimate, but will be required.

Local jurisdictions that have responded to requests for information on prior introductions of this provision in other bills have indicated that there would be a fiscal impact. Anne Arundel County advised that it already processes approximately 60 names for ICE review per month at an estimated cost of \$45,000 annually and anticipates that the bill’s requirement may double that number. Accordingly, Anne Arundel County expenditures increase by approximately \$45,000 annually to reflect the additional names that will be processed. Howard County estimated that county expenditures would increase by \$100,000 annually to reflect the costs of additional staff (a correctional officer and a clerical support position). Baltimore, Garrett, and Montgomery counties indicated that there will be no fiscal impact. Montgomery County indicates that it already submits names to ICE on a weekly basis and Baltimore County indicates that its correctional staff already performs a similar function.

Appendix B

Establishment of Sanctuary Laws

Provisions in the Bill: The 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 unauthorized immigrants. A county or municipality is prohibited from restricting its officials, personnel, or agents from requesting, obtaining, sending, or otherwise transmitting 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 certify 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.

These provisions are similar to HB 677 of 2011.

Current Law/Background: Local officials in some communities across the nation have adopted "sanctuary" policies. These policies prohibit city employees and police officers from asking individuals about their citizenship or immigration status. In these communities, public services are provided to individuals regardless of their immigration status; local officials, including law enforcement officers, are not permitted to use funding or resources to assist the federal government with enforcing immigration laws. According to the Congressional Research Service, both Oregon and Alaska have adopted statewide sanctuary policies. In Maryland, two jurisdictions have adopted sanctuary policies: Baltimore City and Takoma Park.

Baltimore City Policy

Baltimore City is the only large jurisdiction in Maryland that has adopted a sanctuary-type resolution that specifically urges the city police department to refrain from enforcing federal immigration laws. In addition, the resolution states that no city service will be denied based on citizenship. The resolution, a criticism of the broader surveillance powers granted to law enforcement by the U.S. Patriot Act, was adopted in May 2003.

Baltimore City adopted another resolution in May 2010 in response to legislation enacted in Arizona that criminalizes unauthorized immigration. The resolution specifies that the Baltimore City Council “opposes the introduction of anti-immigration law in Maryland that criminalizes immigration and encourages racial profiling; requests the Baltimore City Senate and House Delegations to the 2011 Maryland General Assembly to oppose the legislation if introduced; and urges the Governor to veto this legislation, or similar measures, if passed by the Maryland State Legislature.”

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. In October 2007, the city’s sanctuary law was unanimously reaffirmed by the city council.

According to city officials, the Takoma Park Police Department neither inquires nor records information about an individual’s immigration status. Police officers do not serve federal immigration orders, detainers, or warrants for violations of immigration or naturalization laws. Police officers, however, are not restricted from arresting someone who is suspected of criminal activity or who is subject to an outstanding nonimmigration-related criminal warrant. The city’s sanctuary law, however, is not binding on State or county police officers. The Montgomery County Police Department advises that it closely coordinates investigations with the city police department and provides assistance when requested. If a county level investigation requires county police officers to enter Takoma Park, the county department has the authority to do so and to conduct the investigation in a way that is consistent with county policy, as well as State and federal law.

State/Local Effect: To the extent that the Executive Director of GOCCP or the Secretary of Budget and Management certify that local governments have not complied with the provisions of this bill, the Comptroller will 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. Although Chapter 484 of 2010 (the Budget Reconciliation and Financing Act of 2010) included a provision that level funded State Aid for Police Protection grants (police aid formula) at \$45.4 million in fiscal 2011 and 2012, beginning in fiscal 2013, any local government that is certified as noncompliant with the provisions of the bill will lose any funding increase that would have otherwise been provided. There will be a corresponding savings in general fund expenditures.

Appendix C

Eligibility for Public Benefits

Provisions in the Bill: State agencies and local governments are prohibited from providing unauthorized immigrants with specified public benefits unless the benefits are required under federal law. Each State unit or political subdivision must verify the lawful presence status of an adult before providing most benefits.

“State or local public benefits” is a term defined by federal law to include:

- any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
- any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

Certain public benefits are exempted by the bill from this verification process, including: (1) emergency health care services not related to organ transplantation; (2) prenatal care; (3) short-term, noncash, in-kind disaster relief; (4) immunizations and treatment of communicable disease symptoms; and (5) assistance necessary for the protection of life or safety delivered through in-kind services at the community level regardless of wealth or income.

Proof of lawful presence must be in the form of (1) a valid Maryland driver’s license or identification card; (2) a U.S. military card; (3) a U.S. merchant marine card; or (4) a Native American tribal document. State units and political subdivisions must verify lawful presence through the federal Systematic Alien Verification for Entitlements (SAVE) Program or any successor program designated by the U.S. Department of Homeland Security. State units are authorized to require additional documentation; while State units and political subdivisions are authorized to develop a waiver process through regulations, and may adopt a modification to the verification process if necessary to reduce delays or improve efficiency as long as the modification is no less stringent than the process established in the bill. Individual adjudication of lawful presence is also authorized to avoid undue hardship on a legal resident of the State.

In addition to the documentation requirement, the applicant must also execute an affidavit stating that the person is a U.S. citizen, legal permanent resident, or is otherwise lawfully present pursuant to federal law. The affidavit is presumed proof of lawful presence pending completion of a verification check.

Anyone who knowingly makes a false, fictitious, or fraudulent statement or affidavit is guilty of a misdemeanor and is subject to imprisonment of up to one year, and/or a fine of up to \$1,000.

Each State unit that provides public benefits must report to the Governor and General Assembly annually on compliance with the bill's requirements, and to the U.S. Department of Homeland Security as to any errors or significant delays caused by the SAVE Program.

These provisions are similar to HB 28, HB 380, and SB 585 of 2011.

Current Law/Background: Unauthorized immigrants are not eligible to receive most federal and State public benefits due in part to federal legislation enacted in 1996. However, certain fundamental services, most notably emergency medical care and public elementary and secondary education, are available to unauthorized immigrants. In addition, children of unauthorized immigrants who are born in the United States, and are therefore U.S. citizens, may qualify for Medicaid or the Maryland Children's Health Program based on household income. Qualified children of unauthorized immigrants can enroll in these programs if the children's citizenship can be documented.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) significantly reduced the ability of unauthorized immigrants to receive federal and State public benefits. Denied public benefits include retirement, welfare, health, disability, housing, food stamps, unemployment, and postsecondary education. In addition, unauthorized immigrants are not eligible for the federal Earned Income Tax Credit, Social Services Block Grants, federal grants, contracts, loans, licenses, and services through migrant health centers. PRWORA does include certain exemptions from these exclusions.

Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept unauthorized immigrants. In its decision, the court contended that denying an education to the children of unauthorized immigrants would "foreclose any realistic possibility that they will contribute ... to the progress of our Nation." However, since 1996, federal immigration law has prohibited unauthorized immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain. In response to the federal law, states that have passed in-state tuition benefits for unauthorized immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status. In Maryland, students who are unauthorized are not currently eligible to receive in-state tuition and must pay nonresident tuition and

fees. In addition, State institutions of higher education follow federal guidelines prohibiting unauthorized immigrants from obtaining financial aid.

In regards to labor benefits, Maryland law expressly disallows unemployment benefits for workers who cannot provide proof of legal residence. In addition, to be eligible for Unemployment Insurance (UI), a claimant must prove he or she is available for work, which would not apply to an unauthorized worker. However, unauthorized workers who are injured on the job are eligible for medical payments and lost income. While the State statute is silent on the subject, the Court of Appeals ruled in 2005 that a worker does not have to be legally employed for workers' compensation eligibility if the injury otherwise meets the test for compensation.

State Effect: A majority of State agencies responding to an information request for this legislation or for a prior introduction indicated that the bill will have minimal or no impact on their operations or finances (**Exhibit 2**). However, the Department of Health and Mental Hygiene, the Department of Human Resources, and the Department of Labor, Licensing, and Regulation indicate that the legislation will have a significant fiscal impact. To implement the proposed verification measures, State expenditures at these three agencies increase by approximately \$565,000 in fiscal 2012 and by \$650,000 annually thereafter.

Local Effect: Local government expenditures in certain jurisdictions may increase by a significant amount to handle the additional documentation required under the bill, most notably in Montgomery and Prince George's counties where a large portion of the State's foreign-born population resides.

Montgomery County indicates that an additional 19 positions at a cost of \$2.2 million will be needed to implement the proposed verification measures. The additional cost reflects both the large number of foreign-born residents living in Montgomery County and the county's current policy of not requiring proof of lawful presence to receive county funded services. The Public Health Services in Montgomery County indicates that county staff verifies the proof of lawful presence for all federal and State programs that require such verification (*i.e.*, Medical Assistance); however, such verifications are not conducted on county funded programs.

Prince George's County previously reported for a prior introduction of this provision that it would need 12 additional full-time staff employees to handle the proposed verification measures.

Jurisdictions that do not provide county funded public benefits and those with a limited foreign-born population are less likely to be impacted by the bill's proposed verification measures. For example, Kent and Worcester counties indicate that the legislation will have no impact since public benefits are not provided to unauthorized immigrants.

Exhibit 2
Potential Fiscal Impact on State Agencies

<u>State Agency</u>	<u>Impact</u>	<u>Comments</u>
Attorney General	None	
Baltimore City Community College (BCCC)	None	Legislation reflects current practices. Proof of lawful residence in the United States is currently required for both employees and students.
Business and Economic Development (DBED)	None	No operational impact.
Disabilities (DOD)	Minimal	Services governed by federal law.
Health and Mental Hygiene (DHMH)	Significant	No impact on Medical Assistance as the program is governed by federal law. New verification requirements for the Developmental Disabilities Administration will require an additional two positions at a cost of approximately \$115,000 in fiscal 2012 and \$150,000 annually thereafter.
Higher Education Commission (MHEC)	None	Legislation reflects current practices.
Housing & Community Development (DHCD)	None	Services governed by federal law.
Human Resources (DHR)	Significant	Services governed by federal law. New verification requirements will increase processing time for certain programs which will require an additional 2.5 positions at a cost of approximately \$100,000 in fiscal 2012 and \$150,000 annually thereafter.
Labor, Licensing, and Regulation (DLLR)	Significant	New verification requirements will require an additional six positions at a cost of approximately \$350,000 annually. Minimal impact on revenues.
Morgan State University (MSU)	None	Legislation reflects current practices.
Motor Vehicle Administration (MVA)	Minimal	Lawful presence already required to obtain drivers' license.
Natural Resources (DNR)	Minimal	Must develop verification system.
Public Defender	None	No operational impact.
University of Maryland System (UMS)	Minimal	Legislation reflects current practices.

Appendix D

Enforcement by Law Enforcement Agencies

Provisions in the Bill: The bill requires each law enforcement agency in the State to enter into a written agreement with the federal government whereby the agency may enforce federal immigration laws by investigating, apprehending, or detaining aliens 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. A law enforcement agency is authorized to transport an alien who is unlawfully present in the United States to a point of transfer into federal custody that is outside the jurisdiction of the agency but still inside the State. Before transporting an alien outside the State to a point of transfer, the agency must have authorization from the court.

These provisions are similar to HB 276 of 2011.

Current Law/Background: 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 program authorizes state and local law enforcement agencies to enter into an agreement with U.S. Immigration and Customs Enforcement Agency (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.

While immigration is controlled by federal law, the U.S. Department of Homeland Security (DHS) and ICE have begun to look to state and local law enforcement agencies as allies and additional resources. While federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts, the U.S. Supreme Court has ruled that state and local law enforcement officers may question criminal suspects about their immigration status. Local law enforcement agencies throughout the nation have often expressed reluctance in becoming involved in federal immigration enforcement because of a lack of resources and the need to maintain open relationships with members of the community so that they may effectively carry out their policing duties.

Section 287(g) of the Immigration and Nationality Act authorizes DHS to create voluntary cooperative agreements between the federal government and state and local law enforcement agencies on immigration enforcement. While the agreements contain two models for immigration enforcement (task force and correctional-detention), the correctional-detention model is the one focused primarily on identifying immigrant felons within the prison system. Under the agreements, designated local officers receive training and function under the supervision of ICE officers. On July 10, 2009, DHS

announced a new standardized memorandum of agreement for 287(g) participants that shifts the focus of these partnerships to “the identif[ication] and remov[al] of dangerous criminal aliens.” A “criminal alien” is a noncitizen who is residing in the United States lawfully or unlawfully and is convicted of a crime.

The new agreements provide guidelines for supervision, reporting information, and complaint procedures. The new agreements require that interpretation services be made available and state that civil rights laws and regulations pertaining to nondiscrimination apply to the agreements. As a result, all existing agreements must be negotiated and new agreements sunset every three years. The Frederick County Sheriff’s Office is the only Maryland law enforcement agency that has entered into a 287(g) agreement with DHS. The agreement was signed in February 2008.

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.

State Effect: Each law enforcement agency will initially be required to send officers to a four-week training program in Charleston, South Carolina. Until this federal fiscal year, ICE provided 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. Currently, the attendees are responsible for room, board, and travel expenses. Of the 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 the remainder 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. Under the bill, the officer will be sent to the required four-week training program. Although DNR has indicated that this requirement would not have a fiscal impact on the agency, Legislative Services advises that expenses for travel, lodging, and meals would be incurred for that officer, which would be similar to those expressed by the State Police (below). DNR does note that the loss of a number of officers to attend the out-of-state training course would create a significant operational impact.

The Department of Labor, Licensing, and Regulation (DLLR) indicated in 2010 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. This does not include travel, lodging, and meal costs for attendees. Based on an average cost of \$4,775 per officer, out-of-state training costs will total \$43,000 for the nine officers selected to participate in the program.

The Department of General Services indicates that there would be no fiscal impact. Although the agency indicates that the training would be handled at mandated annual in-service training. Legislative Services advises that such in-service training would not meet the federal training standards to enforce federal immigration law.

Significant Fiscal Impact

Maryland State Police (MSP) will incur significant expenditures associated with training and overtime for periods when officers are away in out-of-state training. MSP has 22 barracks statewide and assumes that 5 sworn officers at each barracks, or a total of 110 troopers, would require training in fiscal 2012 for participation in the federal program. However, participation in this training means that, even with advance notice, 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. MSP also anticipates additional overtime costs resulting from the 287(g) trained troopers participating in immigration-related law enforcement activities with ICE that are not now performed. Out-year annual expenditures are anticipated to train additional individuals due to transfers, reassignments, and promotions. **Exhibit 3** shows the estimated training and overtime costs for MSP in fiscal 2012 through 2016 arising from these provisions.

Exhibit 3
Estimated Training and Overtime Cost for MSP

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Training Costs	\$525,250	\$210,100	\$219,800	\$229,900	\$240,500
Overtime – During Training	176,000	70,400	73,600	77,000	80,600
Overtime – 287(g)	140,800	147,300	154,100	161,100	168,600
Operations					
Total	\$842,050	\$427,800	\$447,500	\$468,000	\$489,700

The Maryland Department of Transportation (MDOT) indicated that it would incur significant additional expenditures, including four new law enforcement officers for the Maryland Transit Administration (MTA). The Maryland Transportation Authority

(MDTA) would incur increased overtime costs for its existing law enforcement unit. MDOT's estimated fiscal 2012 costs total \$406,200, which includes salaries and benefits for the new hires, overtime, equipment, and other operating expenses. Out-year costs grow to \$557,000 by fiscal 2016. None of these expenses reflect travel costs related to out-of-state training or the purchase of new vehicles for the officers. MTA is funded through special and federal funds. MDTA operates on nonbudgeted funds (toll collection revenue).

The University System of Maryland, without addressing training costs, reports that overtime costs may run from \$10,000 to \$50,000 annually depending on the size of each campus police force.

Legislative Services advises that while the memorandum of understanding required by this bill stipulates 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 for training and overtime will occur, law enforcement agencies can send fewer officers to training, thus reducing these expenditures, while still being in compliance with the bill's provisions. It is also estimated that the required training would be staggered over several years.

Local 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 for this provision, as well as for prior introductions, as to the impact on their agencies varied.

- Montgomery County Police Department indicated that if all sworn officers received ICE training in fiscal 2012, training and overtime costs would total about \$18.3 million.
- Charles County advises that, based on information transmitted from the Frederick County Sheriff's Office, additional detention center costs, at per diem rate of \$100 per detainee, may total \$1.0 million in fiscal 2012, and annualize to \$1.4 million thereafter. Charles County did not provide an estimate of training costs for law enforcement officers.
- Baltimore County indicated that two additional detectives (\$123,200) would be needed on the county police force and that detention center costs would also increase. Baltimore County did not estimate training costs.
- City of Havre de Grace indicated additional annual costs of \$10,000 related to apprehension and transport of "criminal aliens," but did not consider the required out-of-state ICE training. Havre de Grace also advised that if dedicated officers were needed under the program, two additional officers would need to be employed.

- Frederick County indicated no impact because the county sheriff's office is already a program participant.
- Carroll County advised, for prior introductions, 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, for prior introductions, that the bill would increase expenditures associated with salaries and fringe benefits.

Appendix E

REAL ID Program Amendments

Provisions in the Bill: Chapter 390 of 2009 authorized the Motor Vehicle Administration (MVA) to issue certain documents, namely, a driver's license, identification card, or moped operator's permit that is not acceptable by federal agencies for official purposes, to an individual (1) whose identity does not match records checked by MVA in its verification process but who resolves the "nonmatch" by meeting certain federal regulatory standards and is otherwise eligible; or (2) who held the document sought for renewal on April 18, 2009 (the date Chapter 390 was signed into law), but does not possess satisfactory evidence of lawful status or a valid Social Security number. Chapter 390 provided that no MVA document issued to, or renewed by, an applicant who cannot provide satisfactory evidence of lawful status or a valid Social Security number is valid beyond July 1, 2015. Any of these three documents issued or renewed on or after July 1, 2010, must expire on July 1, 2015.

This bill accelerates the expiration date for the temporary license, permit, or identification card to January 1, 2012. MVA is also required to notify by certified mail any person holding one of these temporary licenses issued between July 1, 2010, and the effective date of the bill, October 1, 2011, that the nonfederally compliant identification card, moped operator's permit or license to drive will expire on January 1, 2012. The holder of one of these documents is required to appear at an MVA office to receive a substitute identification card, moped operator's permit, or driver's license that will expire on January 1, 2012.

State Effect: General fund expenditures increase by \$89,000 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring eight temporary employees to process the notifications that MVA is required to send under the bill's provisions and to handle additional volume expected at offices due to the requirement for substitute credentials. The estimate also includes costs associated with computer software, supplies, certified mailings, and printing. MVA estimates that any computer programming can be handled with existing budgeted resources.

The bill requires MVA to issue substitute documents to individuals who currently hold nonfederally compliant documents. Although MVA typically charges a \$20 for a *duplicate or corrected* license, no fee is specified for a substitute credential; therefore MVA's response to a request for a fiscal estimate for this bill is based on the assumption that there is no fee for the substitute credential. Because under current law MVA would have continued to issue documents through July 1, 2015, MVA also anticipates revenue loss from documents that will not be issued due to the accelerated timeframe under this bill's provisions. Based on the number of documents that have been issued in prior years, MVA estimates a revenue loss of \$168,400 in fiscal 2012 and \$224,900 in fiscal 2013-2015. No impact is projected beyond fiscal 2015 because under current law the documents would not have been issued after July 1, 2015.

Appendix F
Unauthorized Immigrants Are Not Eligible for Many Programs in Maryland

<u>Program/Service</u>	<u>Eligibility Status</u>	<u>Comments</u>
Unemployment Insurance	No	State law requires proof of legal residence.
Workers' Compensation	Yes	State court ruling indicates that State law broadly defines a covered employee to include an unauthorized worker.
Social Security	No	
Food Stamps	No	Federal law requires that immigration status be verified for noncitizen applications.
WIC Nutrition Program	Yes	
Medical Assistance	No	Unauthorized immigrants can receive Medicaid-funded emergency medical care. Also, U.S. born children of unauthorized immigrants are eligible for Medical Assistance and other public assistance programs.
Temporary Cash Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Energy Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Public Schools	Yes	U.S. Supreme Court ruling guarantees access to free public and primary secondary education to unauthorized children.
School Breakfast/Lunch Programs	Yes	
Higher Education – In-state Tuition	No	Unauthorized students must pay out-of-state tuition.
Language Assistance Programs	Yes	

Appendix G
Foreign-born Population in Maryland
2006-2008 American Community Survey

County	Total Population	Foreign-born Population	Percent Foreign Born	State Ranking	Share of State Total	State Ranking
Allegany	72,419	856	1.2%	23	0.1%	23
Anne Arundel	510,778	33,578	6.6%	6	4.9%	6
Baltimore City	639,343	38,270	6.0%	7	5.5%	5
Baltimore	785,549	73,078	9.3%	4	10.6%	3
Calvert	88,126	2,654	3.0%	21	0.4%	14
Caroline	32,715	1,687	5.2%	8	0.2%	16
Carroll	168,773	5,623	3.3%	17	0.8%	10
Cecil	99,271	2,370	2.4%	22	0.3%	15
Charles	140,032	5,830	4.2%	11	0.8%	9
Dorchester	31,734	1,017	3.2%	19	0.1%	20
Frederick	223,787	18,797	8.4%	5	2.7%	7
Garrett	29,647	64	0.2%	24	0.0%	24
Harford	239,650	9,887	4.1%	12	1.4%	8
Howard	272,412	44,076	16.2%	3	6.4%	4
Kent	19,943	944	4.7%	9	0.1%	21
Montgomery	942,747	279,841	29.7%	1	40.5%	1
Prince George's	825,924	154,512	18.7%	2	22.3%	2
Queen Anne's	46,475	1,442	3.1%	20	0.2%	18
St. Mary's	100,117	3,955	4.0%	13	0.6%	13
Somerset	26,014	888	3.4%	16	0.1%	22
Talbot	36,127	1,291	3.6%	14	0.2%	19
Washington	144,343	5,047	3.5%	15	0.7%	11
Wicomico	93,120	4,010	4.3%	10	0.6%	12
Worcester	49,204	1,624	3.3%	18	0.2%	17
Maryland	5,618,250	691,341	12.3%		100.0%	

Source: U.S. Census Bureau, 2006-2008 American Community Survey