

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 276
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 increase in overtime and training expenditures for State law enforcement agencies. Additional officers may need to be hired in order to enforce federal immigration law.

Local Effect: Potential significant increase in overtime and training expenditures for local law enforcement agencies. Several local governments may need to hire additional officers in order to enforce federal immigration law. **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 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: 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. As of October 29, 2010, 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.

A recent study by the Migration Policy Institute, *DELEGATION AND DIVERGENCE: A Study of 287(g) State and Local Immigration Enforcement* (January 2011), found that in Frederick County, as well as two Georgia study counties, the 287(g) program follows a "universal enforcement model" whereby detainees are placed on virtually all potentially removable immigrants encountered. In all three of these jurisdictions, this occurs at booking in the local correctional facility, although Frederick County immigration screening sometimes begins when persons are encountered by 287(g) officers on patrol. According to the study, 287(g) officers in the Frederick County Sheriff's Office issued 198 ICE detainees during the first 10 months of fiscal 2010. Traffic offenders comprised 120 of the detainees; 18 of the detainees were placed on individuals arrested for the most serious crimes (Level 1 offenses).

The Frederick County Sheriff's Office also participates in the detention center enforcement program which designates its detention center as an Intergovernmental Service Agreement (IGSA) facility. Once charges in Frederick County have been completed, deportation proceedings are started and the charged inmates then come under IGSA. Depending on the immigration violation, the individual may also be released on bond awaiting an immigration hearing and not retained at the detention facility after adjudication of the charges. ICE also may request the sheriff's office to temporarily house detainees if space permits. Under IGSA, when the detainees are housed under IGSA guidelines the detention center is paid an \$83 per diem for each detainee, which covers all expenses associated with their housing at the facility.

State Fiscal 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 \$42,975 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 five sworn officers at each barracks, or a total of 110 troopers, would require training in fiscal 2012 for participation in the federal program. Assuming travel, lodging, and meal costs of \$4,775 per officer, out-of-state training costs in fiscal 2012 total \$525,250.

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, which equates to 40 overtime hours (25% of 4 weeks at 40 hours/week). Based on an average overtime rate of \$40 per hour, expenditures increase by \$1,600 for each MSP officer sent

to training. Accordingly, assuming that MSP sends 110 sworn personnel for training in fiscal 2012, general fund expenditures arising from additional overtime costs increase by \$176,000 in the first year of implementation.

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. These overtime costs will total \$140,800 in fiscal 2012, and grow to \$168,550 by fiscal 2016.

Out-year annual expenditures are anticipated to train additional individuals due to transfers, reassignments, and promotions. MSP estimates that this would result in 44 troopers (2 per barracks) being sent to training annually at an estimated cost of \$210,100 with overtime costs totaling \$70,400 in fiscal 2013. **Exhibit 1** shows the estimated training and overtime costs for MSP in fiscal 2012 through 2016 arising from this bill.

Exhibit 1
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) Operations	140,800	147,300	154,100	161,100	168,600
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 non-budgeted 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 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 for this bill, 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.

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 law enforcement agencies of the seven largest jurisdictions in Maryland regarding their policies on immigration-related issues. Local responses to these interviews are included in the report.

In March 2008, DHS launched the Secure Communities program. Under the program, participating correctional facilities 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 indicates that the arrestee matches a record for an individual with an immigration violation, ICE and local law enforcement are automatically notified. ICE then reviews the case and the arrestee's immigration status and determines what action it wishes to take. In these cases, ICE will often issue a detainer, which is a notice by federal law enforcement requesting the detention of an individual to insure the individual's availability for any additional federal proceedings. As of February 8, 2011, 10 counties (Anne Arundel, Baltimore, Caroline, Carroll, Dorchester, Frederick, Prince George's, Queen Anne's, St. Mary's, and Talbot) participate in the Secure Communities program.

Additional Information

Prior Introductions: HB 866 of 2010 received an unfavorable report by the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of State Police; University System of Maryland; Department of Legislative Services

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