



**MSBA Main Office**  
520 West Fayette Street  
Baltimore, MD 21201  
410-685-7878 | msba.org

**Annapolis Office**  
200 Duke of Gloucester Street  
Annapolis, MD 21401  
410-269-6464 | msba.org

**To:** Members of House Judiciary Committee

**From:** Immigration Law Section Council

**Date:** February 19, 2025

**Subject:** **Bill HB85** – State and Local Government – Sanctuary Policies and Enforcement of Federal Immigration Law

**Position:** **Oppose**

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Good Afternoon, Chairman Clippinger, Vice Chair Bartlett and Members of the Judicial Proceedings Committee.

My name is Sheri Hoidra. I am here today on behalf of the Maryland State Bar Association Immigration Law Section, which officially opposes HB 85. Our section is comprised of hundreds of private attorneys, judges and immigration officials who are members of our association.

I am an attorney practicing in the Maryland Bar for more than 12 years. My office is in Baltimore County, Maryland, and I reside in Howard County, Maryland. I practice primarily in immigration law matters. I am the Chair of the Maryland State Bar Association Immigration Law Section. I have presented seminars to attorneys through venues such as the Maryland State Bar Association, the Maryland Association for Justice, and AILA.

I am here today to provide testimony regarding the defects of H.B. 85, which seeks to turn Maryland law enforcement into federal immigration agents in violation of existing state law and at odds with federal law. Our bar section supports ensuring that the

federal government carries out its proper immigration law functions and Maryland carries out its separate law enforcement functions. **The bill does not work with current immigration law and may create unintended violations of state law and the Constitution.**

**House Bill 85 is not enforceable due to the impossibility to carry out the bill's requirements under the federal Immigration and Nationality Act.** This federal statute is a complex set of laws that governs who can enter and remain in the United States, the decision to detain or release a person without status, and when a non-resident violates immigration law.

**HB 85 attempts to punish Maryland counties and municipalities based on a serious misunderstanding of federal immigration law.** HB 85 uses defective terminology in proposing a new subtitle of the Local Government Article. Proposed Subsections I-1601 (F)(2) and I-1602 (B) use the terms "unlawfully present" and "lawful presence." The federal immigration statute does not define or use the term "lawful presence," so it is impossible to sanction a state or municipality for granting "lawful presence within state boundaries in violation of federal law." Likewise, the federal statute only uses the term "unlawfully present" for the purposes of a single paragraph at 8 INA 212(a)(9)(B) to describe a condition of inadmissibility that occurs after a person has actually departed the United States and then seeks readmission to the United States. There is no such thing in the federal statute as "unlawful presence" and there is no sanction for a person being "unlawfully present" who is merely in the United States. It is thus impossible to sanction a state or municipality for failing "to cooperate with federal immigration authorities regarding any individual unlawfully present in the United States."

**HB 85 further seeks to violate the separation of powers mandated by the U.S. Constitution, which places federal law functions such as immigration within the powers of the federal government and not within the purview of state government.** The Tenth Amendment in particular constrains the federal government's ability to require particular actions by state and local jurisdiction in such areas of federal government responsibility. The federal government simply cannot demand that state and local employees participate in carrying out federal immigration functions. There is no sanction in federal law for declining to assist federal immigration enforcement. Maryland's Criminal Procedure Article Section 5-104 makes clear that the state does not carry out such federal functions. HB 85 erroneously seeks to cross the line of separation of powers by requiring state actors to take on such federal responsibilities.

For these reasons, on behalf of the Maryland State Bar Association Immigration Law Section, I ask that the committee issue an unfavorable report on H.B. 85.

END OF TESTIMONY