

Opposition Outweighs Support For Immigration Compliance Mandate

Because recent weather events caused postponements to scheduled public hearings and work sessions, this week's edition of the *Legislative Bulletin* includes just one update on a public hearing held Thursday. The bill, LD 1833, *An Act to Facilitate Compliance with Federal Immigration Law by State and Local Government Entities*, printed at the request of Governor LePage and sponsored by Rep. Lawrence Lockman of Amherst, proposes to place pressure on local enforcement officials to support the enforcement of federal immigration law.

As printed, the bill prohibits government entities, including municipalities and law enforcement agencies, from adopting policies or practices that restrict the sharing and use of immigration and citizenship information or the enforcement of federal immigration law, and establishes a complaint process, as well as a duty to report suspected violations. Under the terms of LD 1833, any government entity found to be in violation of the law would be subjected to a \$500 fine for each day the policy or practice remains in effect.

At the hearing, the sponsor was joined by the Maine State Police, Concerned Women for America of Maine, and one member of the public in support of LD 1833. Roughly one dozen entities and private citizens testified in opposition to the bill at the hearing, and over 750 signed on to a letter of opposition that was submitted to the committee for its consideration.

The sponsor's description of LD 1833 noted the bill requires all of

Maine's municipalities to comply with federal immigration law, and prohibits policies which keep police officers from initiating inquiries about a person's immigration status, and imposes fines on towns and cities that "continue to defy federal immigration law by harboring illegal immigrants." Rep. Lockman claims the provisions advanced in the bill are common sense measures that will save lives and money. The sponsor cited a case of murder in the City of Portland, which he believes would not have occurred if not for the city's "harboring haven" ordinance, which in his view, "muzzled" the city's law enforcement.

Concerned Women for America of Maine also looked to Portland, a city she called a "sanctuary city" although the municipality has not designated itself as such, as a draw for illegal immigrants. She claimed police are not allowed to arrest immigrants for murder, but did not provide any evidence to support that assertion. The sole private citizen who testified in support asked "how is failure to enforce federal law not dereliction of duty?", without citing any specific failures to enforce federal law.

The Maine State Police testified that there are commonly missed opportunities for governmental entities at all levels to share information with each other in order to help prevent crimes. In their view, the bill balances the need to safeguard the state with the needs of visitors and citizens.

The Maine Chiefs of Police Association testified in opposition to LD 1833 stating that they were unaware of circumstances where Maine law

enforcement officials had declined to work with federal law enforcement agencies, including the U.S. Department of Homeland Security, Immigration and Customs Enforcement, or Border Patrol. Instead, the Association described its departments' working relationships with federal agencies as positive. Noting budgets in many departments are strained, the Association took issue with the bill's mandate to expend resources on enforcing federal law, overriding local discretion to deploy resources in the manner that best serves to protect the public safety and welfare.

Cumberland County Sheriff Kevin Joyce also opposed the bill, focusing in part on the potential for significant costs to local taxpayers accruing from jails defending themselves against lawsuits filed as a result of Immigration and Customs Enforcement (ICE) "immigration detainers." The detainers are requests from ICE to jails asking they hold inmates up to 48 hours past their court mandated release dates while ICE determines if they have probable cause to arrest or deport them. Referencing federal court decisions, the county's attorney advised that there is a risk of litigation over these detainers, and courts have sided with the detained individuals who claimed their Fourth Amendment (e.g., protection against unreasonable searches and seizures) and Fourteenth Amendment (e.g., equal protection of the laws) rights under the U.S. Constitution had been violated.

The sheriff's testimony illustrated the reality that federal law is multi-

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layered, and law enforcement officials must act in a balanced way that ensures compliance with the requirements of the U.S. Constitution and enforcement of federal immigration laws. He asked the committee not to pass LD 1833 so as not to “put law enforcement professionals between the proverbial rock and a hard place [where they] will have to choose between violating state law and potentially violating an individual’s Constitutional rights.”

Acknowledging the irony of testifying on a proposal nearly identical to last year’s LD 366, which generated opposition from over 100 Mainers and was ultimately rejected by a majority of the Maine Legislature, the American Civil Liberties Union (ACLU) of Maine detailed three constitutional pitfalls of this legislation.

The first would be the bill’s undermining the Tenth Amendment (e.g. states’ rights) with respect to the state and local ability to determine their own law enforcement priorities, which is found in LD 1833’s requirement that government entities “shall fully comply with and to the full extent permitted by law support the enforcement of federal immigration law.” The ACLU claims

this provision “makes local governments accountable not to their citizens but to the Department of Homeland Security, and it penalizes those local governments that prioritize the public safety needs of Mainers over federal policy.” The second issue was the fourth and fourteenth amendment implications of ICE immigration detainers addressed by Sheriff Joyce. The third constitutional issue pertains to the bill’s requirements of the Maine Attorney General’s Office to be the arbiter of state and local compliance, which the ACLU claims violates separation of powers principles by removing the AG’s discretion to prioritize her resources.

Also opposing the bill, an attorney for Maine’s Immigrant Legal Advocacy Project (ILAP) pointed out that the federal Immigration and Nationality Act envisions federal enforcement of the Act and is silent with respect to local and state enforcement. Noting that LD 1833 does not contain any provision for training in complex federal immigration law, she expressed concern about the local costs of proper compliance. Joining ILAP in opposition, on similar grounds, were the Maine Equal Justice Partners, Maine Family Planning, Maine Center

for Economic Policy, and numerous private Maine residents.

MMA’s Legislative Policy Committee also opposed LD 1833 as a solution in search of a problem, raising two serious municipal objections. The first is that the bill’s proposed prohibition makes little sense. Town and city officials would be hard pressed to find a municipal attorney who believes they have the legal authority to, as the bill puts it, “prohibit or in any way restrict any other government entity from” undertaking that other entity’s activities. The second objection is requiring municipalities to support immigration law enforcement “to the full extent permitted by law.” The Association shared ILAP’s perspective that federal statute does not require local law enforcement agencies to engage in the enforcement of federal immigration law, and questioned what exactly is required by this mandate. To many, it seems nearly self-evident that state and local law enforcement agencies do not have the capacity to fully enforce federal law in addition to state law and municipal ordinances.

The work session on LD 1833 is scheduled for Tuesday, Mar. 20, at 1:00 p.m.

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Editorial Staff: Kate Dufour, Garrett Corbin, Rebecca Graham and Laura Ellis of the State & Federal Relations staff.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.

Monday, March 19

Education & Cultural Affairs
Room 202, Cross State Office Building, 10:00 a.m.
Tel: 287-3125

LD 1860 – An Act To Prepare All Students for Work and Life by Requiring that Students Receive Instruction in Vocational Preparation and Practical Life Skills.

11:00 a.m.

LD 1858 – An Act To Include Security Installations and Upgrades in Maine’s School Revolving Renovation Fund.

1:00 p.m.

LD 1843 – An Act To Amend Career and Technical Education Statutes.

Tuesday, March 20

Veterans & Legal Affairs
Room 437, State House, 1:00 p.m.
Tel: 287-1310

LD 1865 – An Act To Increase Transparency in the Direct Initiative Process.

Taxation

Room 127, State House, 1:00 p.m.
Tel: 287-1552

LD 1862 – An Act To Establish Municipal Cost Components for Unorganized Territory Services To Be Rendered in Fiscal Year 2018-19.

Wednesday, March 21

State & Local Government
Room 214, Cross State Office Building, 9:00 a.m.
Tel: 287-1330

LD 1853 – An Act To Ensure the Safe and Consistent Regulation of Pesticides throughout the State by Providing Exemptions to Municipal Ordinances That Regulate Pesticides.