

LD 1340 An Act to Ensure Municipal Compliance with Federal Immigration Laws

To: Members, Joint Standing Committee on State and Local Government
From: Lynne Caswell, Esq., Legislative Analyst
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*electronic
record*

<http://legislature.maine.gov/ctl/SLG/05-03-2021?panel=0&time=0&sortdir=0&sortby=2>

SUMMARY

This bill adds a new section to Title 30-A that revokes general purpose aid for local schools, municipal general assistance funds and state-municipal revenue sharing funds to any municipality that has a law, policy or procedure, formal or informal that:

- Violates 8 USCA §1373; or
- Prohibits local law enforcement from gathering information on the citizenship or immigration status of an individuals.

TESTIMONY*

Sponsor: Representative Greenwood

- Nation of laws
- Local units should not disregard laws
- Not an ant-immigration bill

Opponents: Mayor Kate Snyder; Mark Dion, former sheriff & Senator; Laurent Gilbert, former US Marshall; Immigrant Legal Advocacy Project by Julia Brown; ACLU of Maine by Michael Kebede; Maine Municipal Association by Rebecca Graham; De-ICE Maine by Kelly Merrill; Maine Business Coalition by Julia Brown

- Contrary to home rule concept
- Local law enforcement limited resource – don't add responsibility to enforce federal laws
- No restriction on federal agencies enforcing federal laws
- Immigration status is irrelevant to local law enforcement – immigration status not a local law matter
- Threatens law enforcements ability to be trusted
- Local law enforcement required to have probably cause to detain – not required of ICE
- Chilling effect on reporting crimes / assisting police
- Other examples of state-federal law conflict – marijuana
- §1373 is unconstitutional
- ICE detention does not require probably cause

Proponents: none

NFNA: none

written only: Caleb Burges; David Tracy; Ella Tabasky; Linda Reardon; Maine Association of Broadcasters by Joanne Goucher; Mark Chasse; Michelle Peacock; Deborah Bridges

* The section is not intended to reflect all comments and may include unintentionally errors.

PRIOR SESSIONS

<i>Session</i>	<i>LD</i>	<i>Proposal</i>	<i>Outcome</i>
128 th	1833	<ul style="list-style-type: none"> – Prohibited restrictions on the sharing and use of immigration and citizenship information; – Established a complaint process – Duty to report – OAG may investigate; Court may enjoin entity 	ONTP (7) / OTPA (6)
	366	<ul style="list-style-type: none"> – prohibited restrictions on the sharing and use of immigration and citizenship information; – prohibited restrictions on enforcement of federal immigration law; – authorized law enforcement transport of unlawful aliens to federal facility; and – established a complaint process; private right of action and duty to report. 	ONTP (7) / OTPA (6)
129 th 1 st Regular	1449	<ul style="list-style-type: none"> – Prohibits governmental entities from restricting the use and sharing of citizenship and immigration status information; – Prohibits restrictions on enforcement of federal immigration laws 	died in committee
	1589	<ul style="list-style-type: none"> – Maine Liberty Act (among other provisions) – Prohibits stopping, investigating, interrogating, arresting or detaining – May arrest and detain for nonimmigration status federal offenses 	died in committee

INFORMATION

8 USCA §1373 ***COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE***

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

Found to be unconstitutional under the anti-commandeering doctrine in *Oregon v. Trump*, 406 F. Supp. 3d 940, 971 (D. Or. 2019). Appeal before the 9th Circuit Federal Court of Appeals

ANTI-COMMANDEERING DOCTRINE

Congress may not require the States to govern according to its instructions (*New York v. United States*, 112 S.Ct. 2408 (1992))

The anti-commandeering doctrine applies with equal force to federal statutes which tell states to “enact” certain types of laws and federal statutes which tell states to “refrain” from enacting certain types of laws. (*Murphy v. NCAA*, 138 S.Ct. 1461 (2018)).

GENERAL PURPOSE AID FOR LOCAL SCHOOLS / MUNICIPAL GENERAL ASSISTANCE / STATE-MUNICIPAL REVENUE SHARING

See attached

MATTERS FOR CONSIDERATION

This bill references a federal law that has been challenged as unconstitutional infringement on a state’s rights.

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.