Date of Hearing: July 5, 2017

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 54 (De León) – As Amended June 19, 2017

SENATE VOTE: 27-12

SUBJECT: LAW ENFORCEMENT: SHARING DATA

KEY ISSUES:

1) SHOULD STATE LAW PRIORITIZE THE USE OF STATE AND LOCAL LAW ENFORCEMENT RESOURCES FOR STATE AND LOCAL LAW ENFORCEMENT PURPOSES BY LIMITING THE USE OF THOSE PUBLIC RESOURCES FOR IMMIGRATION ENFORCEMENT PURPOSES?

2) SHOULD REPORTS ABOUT STATE AND LOCAL LAW ENFORCEMENT PARTICIPATION IN JOINT LAW ENFORCEMENT TASK FORCE OPERATIONS, WHERE STATE OR LOCAL LAW ENFORCEMENT MAY INCIDENTALLY PARTICIPATE IN IMMIGRATION ENFORCEMENT, BE SUBJECT TO THE CALIFORNIA PUBLIC RECORDS ACT?

SYNOPSIS

It is a fundamental principle of federalism that state governments—as partners with the federal government in the system of "dual sovereignty" created by the U.S. Constitution in order to "reduce the risk of tyranny and abuse" (Gregory v. Ashcroft (1991) 501 U.S. 452, 457-58)--may allocate their public resources as they see fit. As a result, states may prioritize the use of such resources on activities which serve the greatest need and further the most pressing interests of the state and its residents. The federal government cannot force states to further its priorities in place of the state's. In fact, case law makes it clear that the federal government cannot do either of the following: (1) "commandeer" local officials by making them enforce federal laws (Printz v. U.S. (1997) 521 U.S. 898); or (2) force participation in a federal program by threatening to cut off federal funds, unless the funds are directly earmarked for that program. (NFIB v. Sibelius (2012) 132 S. Ct. 2566 (federal government cannot cut off all Medicaid funding for refusal to participate in Medicaid expansion under the Affordable Care Act).)

Nevertheless, as candidate for U.S. President, Donald Trump pledged to strip "all federal funding to sanctuary cities." On January 25, 2017, the president issued an Executive Order that makes sweeping changes to immigration enforcement in the interior of the United States, significantly broadening the categories of unauthorized immigrants who are priorities for removal, reviving the controversial Secure Communities program, and reinvigorating a federal-local partnership under which state and local law enforcement agencies can sign agreements and enforce certain aspects of federal immigration law. Whereas prior administrations had authorized immigration authorities to focus on priority groups (such as those with serious criminal histories), the present administration has directed federal authorities to employ "all lawful means" to enforce immigration laws against "all removable aliens." In a statement made on March 27, 2017, Attorney General Jeff Sessions condemned cities that refuse to honor

detainer requests and warned that such jurisdictions are "at risk of losing valuable federal dollars."

In response to such threats to both the state and its residents, this bill seeks to further the priorities of the State of California by prohibiting public resources, specifically law enforcement resources, from being used to further the federal government's recently heightened interest in more widespread and indiscriminate immigration enforcement. Specifically, this bill would prohibit state and local law enforcement (including school security) from doing any of the following: (1) using resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes that are specified in the bill, including entering into agreements authorized by federal law to delegate immigration powers to local police, and accepting designation as "immigration officers" pursuant to federal law; (2) making agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein other than information within those databases regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement; (3) placing peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies; (4) using federal immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody; and (5) transferring an individual to federal immigration authorities unless authorized by a judicial warrant or judicial probable cause determination.

This bill does not appear to run afoul of federal law. Federal law provides that a state law "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." (8 U.S.C. 1373.) It does not interfere with or obstruct the enforcement of federal immigration programs by federal law enforcement officers. Nothing in federal law requires state and local law enforcement officials to assist federal immigration enforcement efforts, or prohibits state and local officials from refusing to do so. Given that federal law only authorizes, but does not require, state and local officers to act as immigration officers, SB 54 does not conflict with federal law and can appropriately determine that such cooperation is not in the state's best interests. Finally, the bill is not otherwise preempted by federal immigration law.

The author proposes a number of amendments, most of which are technical and clarifying. As proposed to be amended, the bill would retain current law that provides public access to public records and remove confusing language about the California Public Records Act. Other amendments do the following: (1) ensure that confidential information in state databases remains confidential; and (2) clarify that all actions of law enforcement agencies relating to immigration which are specifically authorized under the bill must comply with local laws and policies of the jurisdiction in which an agency operates. These amendments are reflected and discussed in this analysis. The bill, which is author-sponsored, is supported by a very long list of immigrant and civil rights advocates; health organizations; labor unions; local governments; victim advocacy organizations; and elected officials. It is opposed by a number of local governments; a number of county sheriffs; and law enforcement organizations, including the California State Sheriffs Association and the California Police Chiefs Association. It was previously approved by the Public Safety Committee and, should it pass this Committee, it will be referred to the Appropriations Committee.

SUMMARY: Prioritizes the use of public resources by law enforcement agencies in California for the enforcement of state laws by limiting the use of those resources for purposes of immigration enforcement. Specifically, **this bill**:

1) States that law enforcement agencies shall not do any of the following:

   a) Use agency or department moneys, facilities, property, equipment, or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including, but not limited to, doing any of the following:

      i) Inquiring into an individual's immigration status;

      ii) Detaining an individual on the basis of a hold request;

      iii) Responding to requests for notification by providing release dates or other information unless that information is available to the public;

      iv) Providing information regarding a person's release date unless that information is available to the public;

      v) Providing personal information about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public;

      vi) Making, assisting, or participating in arrests based on civil immigration warrants;

      vii) Giving federal immigration authorities access to interview an individual in agency or department custody, except pursuant to a judicial warrant, and in accordance with this bill;

      viii) Assisting federal immigration authorities in the specified activities allowed under federal immigration law; and

      ix) Performing the functions of an immigration officer, as specified, whether formal or informal.

   b) Make agency or department databases, including databases maintained for the agency or department by private vendors, or the information within those databases regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement.

   c) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies except to the extent those peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.

   d) Use federal immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

   e) Transfer an individual to federal immigration authorities unless authorized by a judicial warrant, or for a violation of the federal crime of illegal reentry after removal subsequent

to conviction of an aggravated felony if the individual has been previously convicted of a specified violent felony.

2) Makes void any agreements in existence on the operative date of this chapter that conflict with the terms of this bill and requires all persons and entities provided access to agency or department databases to certify in writing that the database will be kept confidential and will not be used for the immigration purposes prohibited by this bill.

3) Specifies that this bill does not prevent any California law enforcement agency from doing any of the following that does not violate any local law or policy of the jurisdiction in which the agency is operating:

   a) Responding to a request from federal immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, and similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS), where otherwise permitted by state law;

   b) Participating in a joint law enforcement task force, so long as the primary purpose of the joint law enforcement task force is not immigration enforcement;

   c) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa, as specified, or to comply with specified federal laws regarding sale of firearms to non-citizens; or

   d) Responding to a notification request from federal immigration authorities for a person who is serving a term for the conviction of a misdemeanor or felony offense and has a current or prior conviction for a violent felony, as specified, or a serious felony.

4) Requires a California law enforcement agency that chooses to participate in a joint law enforcement task force, to submit a report every six months to the Department of Justice, as specified by the Attorney General, detailing each task force operation, the purpose of the task force, the federal, state, and local law enforcement agencies involved, the number of California law enforcement agency personnel involved, a description of arrests made for any federal and state crimes, and a description of the number of people arrested for immigration enforcement purposes.

5) Clarifies that all records described in 4), above, are public records for purposes of the California Public Records Act, including the exemptions provided by that act and, as permitted under that act, allows personal identifying information to be redacted prior to public disclosure.

6) Requires the Attorney General, by March 1, 2019, and twice a year thereafter, to report on the types and frequency of joint law enforcement task forces; requires the report to include a list of all California law enforcement agencies that participate in joint law enforcement task forces, a list of joint law enforcement task forces operating in the state and their purposes, the number of arrests made associated with joint law enforcement task forces for the violation of federal or state crimes, and the number of arrests made associated with joint law enforcement task forces for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies; and requires the Attorney General to post the reports required by this bill on the Attorney General's Internet Web site.

7) Specifies that to the extent disclosure of a particular item of information reported to the Attorney General in the report described in 6), above, would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in the Attorney General's report.

8) States that notwithstanding any other law, in no event shall a California law enforcement agency transfer an individual to federal immigration authorities for purposes of immigration enforcement or detain an individual at the request of federal immigration authorities for purposes of immigration enforcement absent a judicial warrant, except as specified in the bill.

9) States that this bill does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to specified federal law.

10) States that the Attorney General shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, and shelters, and ensuring that they remain safe and accessible to all California residents, regardless of immigration status.

11) Requires all public schools, health facilities operated by the state or a political subdivision of the state, and courthouses to implement the model policy, or an equivalent policy.

12) Encourages all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California, to adopt the model policy.

13) Repeals existing law which required law enforcement to notify federal authorities when a person has been arrested for specified drug related offenses, and there is reason to believe the arrestee may not be a U.S. Citizen.

14) Defines "California law enforcement agency" as "a state or local law enforcement agency, including school police or security departments."

15) Defines "Civil immigration warrant" as "any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database."

16) Defines "Federal immigration authority" as any officer, employee, or person otherwise paid by or acting as an agent of United States Immigration and Customs Enforcement or United States Customs and Border Protection, or any division thereof, or any other officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security who is charged with immigration enforcement.

17) States that "Hold request," "notification request," "transfer request," and "local law enforcement agency" have the same meaning as provided in elsewhere in this bill.

18) Specifies that hold, notification, and transfer requests include requests issued by United States Immigration and Customs Enforcement or United States Customs and Border Protection as well as any other federal immigration authorities.

19) Specifies that "Immigration enforcement" includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.

20) States that "Immigration enforcement" does not include either of the following:

   a) Efforts to investigate, enforce, or assist in the investigation or enforcement of a violation of the federal crime of illegal reentry to the U.S. and that is detected during an unrelated law enforcement activity; or

   b) Transferring an individual to federal immigration authorities for a violation of the federal crime of illegal reentry after removal subsequent to conviction of an aggravated felony if the individual has been previously convicted of a specified violent felony.

21) Defines "Joint law enforcement task force" as "at least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes."

22) Defines "Judicial warrant" as "a warrant based on probable cause and issued by a federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant."

23) Specifies that "School police and security departments" includes "police and security departments of the California State University, the California Community Colleges, charter schools, county offices of education, schools, and school districts."

EXISTING FEDERAL LAW:

1) Provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. (8 CFR Section 287.7(a).)

2) States that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the DHS. (8 CFR Section 287.7(d).)

3) Authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements

between ICE and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. Section 1357(g).)

4) States that 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. (8 U.S.C. 1373(a).)

5) States that notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8 U.S.C. 1644.)

EXISTING STATE LAW:

1) Defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual." (Government Code Section 7282 (c).)

2) Defines "Notification request" as an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N. (Government Code Section 7283 (f).)

3) Defines "Transfer request" as an Immigration and Customs Enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X. (Government Code Section 7283 (f).)

4) States that a law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under the following circumstances:

   a) The individual has been convicted of a serious or violent felony;

   b) The individual has been convicted of a felony punishable by imprisonment in the state prison;

   c) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony, or has been convicted at any time of a specified felony;

   d) The individual is a current registrant on the California Sex and Arson Registry;

   e) The individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, a felony punishable by imprisonment in state prison, or other specified

felonies, and the magistrate makes a finding of probable cause as to that charge after a preliminary hearing; *and*

The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified, or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant. (Government Code Section 7282.5 (a).)

5) States that if none of the conditions listed above is satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody. (Government Code Section 7282.5 (b).)

6) Requires that upon receiving any ICE hold, notification, or transfer request, the law enforcement agency must provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request. (Government Code Section 7283.1 (b).)

7) States that if a local law enforcement agency provides ICE with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency must promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate. (Government Code Section 7283.1 (b).)

8) Makes all records relating to ICE access provided by local law enforcement agencies, including all communication with ICE, public records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), including the exemptions provided by that act and, as permitted under that act, personal identifying information may be redacted prior to public disclosure. (Government Code Section 7283.1 (c).)

9) Clarifies that records relating to ICE access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means. (*Ibid.*)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: It is a fundamental principle of federalism that state governments—as partners with the federal government in the system of "dual sovereignty" created by the U.S. Constitution in order to "reduce the risk of tyranny and abuse" (*Gregory v. Ashcroft* (1991) 501 U.S. 452, 457-58)--may allocate their public resources as they see fit. As a result, states are allowed to prioritize the use of such resources on activities which serve the greatest need and further the most pressing interests of the state and its residents. The federal government cannot force states to further its priorities in place of the state's. In fact, case law makes it clear that the federal government cannot do either of the following: (1) "commandeer" local officials by making them enforce federal laws (*Printz v. U.S.* (1997) 521 U.S. 898); or (2) force participation in a federal program by threatening to cut off federal funds, unless the funds are directly earmarked for that program. (*NFIB v. Sibelius* (2012) 132 S. Ct. 2566 (federal government cannot cut off *all* Medicaid funding for refusal to participate in Medicaid expansion under the Affordable Care Act).)

Nevertheless, as candidate for U.S. President, Donald Trump pledged to strip "all federal funding to sanctuary cities." As president, he signed three executive orders the week of January 23, 2017 that threaten the rights of immigrants and refugees both in the United States and globally. On January 25th, at the Department of Homeland Security (DHS), Trump signed executive orders on border security and interior enforcement. On January 27th, he signed an executive order at the Pentagon on refugees and visa holders from designated nations.

Executive Order 13768 (E.O. 13768, 82 Fed. Reg. 8799), entitled Enhancing Public Safety in the Interior of the United States and signed on the 25th of January, makes sweeping changes to immigration enforcement in the interior of the United States, significantly broadening the categories of unauthorized immigrants who are priorities for removal, reviving the controversial Secure Communities program, and reinvigorating a federal-local partnership under which state and local law enforcement agencies can sign agreements and enforce certain aspects of federal immigration law. Whereas prior administrations had authorized immigration authorities to focus on priority groups (such as those with serious criminal histories), the present administration has directed federal authorities to employ "all lawful means" to enforce immigration laws against "all removable aliens." The Order also declared "sanctuary jurisdictions" that "willfully refuse to comply" with federal immigration enforcement efforts would be ineligible to receive federal grants at the discretion of the Attorney General or Secretary of the United States Department of Homeland Security:

> [J]urisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

A February 25, 2017 story in The New York Times reported that government agents report that they are "thrilled" and having "fun" in their jobs since, as press secretary Sean Spicer said, Trump has "taken the shackles off." Officers told reporters how ecstatic they were to be free to deport any undocumented immigrant they come across:

> [F]or those with ICE badges, perhaps the biggest change was the erasing of the Obama administration's hierarchy of priorities, which forced agents to concentrate on deporting gang members and other violent and serious criminals, and mostly leave everyone else alone. (Kulish, Nicholas, New York Times, February 25, 2017, *available at* https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0)

Reports of parents being arrested at their children's schools; restaurant operators having to bring meals in "to go" containers to customers in the parking lots who are too afraid of arrest to get out of their cars; and ICE agents trolling halls of courthouses have created fear and apprehension among those in the country without legal status, as well as their friends, families, and employers.

In a statement made on March 27, 2017, Attorney General Jeff Sessions condemned cities that refuse to honor detainer requests and warned that such jurisdictions are "at risk of losing valuable federal dollars." Furthermore, he threatened that "The Department of Justice will also

take all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates Section 1373." (Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions, Washington, DC, Monday, March 27, 2017, available at https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions.)

Need for the bill. According to the author:

> When local police enforce immigration laws, they rapidly lose the trust of the undocumented community. Crimes go unreported for fear of deportation. The perpetrators roam free to strike again. Our communities become less – not more – safe.
> . . .
> Senate Bill 54, the California Values Act, will prevent state and local law enforcement agencies from acting as agents of Immigration and Customs Enforcement. Instead, it will keep them focused on community policing, rather than rounding up hardworking, honest immigrants who in many instances assist police in solving crimes rather than committing them.

This bill seeks to further the priorities of the State of California by prohibiting public resources, specifically law enforcement resources, from being used to further the federal government's recently heightened interest in more widespread and indiscriminate immigration enforcement. Specifically, this bill would prohibit state and local law enforcement (including school security) from doing any of the following: (1) using resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes that are specified in the bill, including entering into agreements authorized by federal law to delegate immigration powers to local police, and accepting designation as "immigration officers" pursuant to federal law; (2) making agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein other than information within those databases regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement; (3) placing peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies; (4) using federal immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody; and (5) transferring an individual to federal immigration authorities unless authorized by a judicial warrant or judicial probable cause determination.

This bill does not appear to run afoul of federal law. Federal law provides that a state law "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." (8 U.S.C. 1373.) Section 1373 does not require an agency to voluntarily share information about anyone's citizenship or immigration status with federal authorities. Nor does it prohibit laws of general application that protect personal information, which could include information about immigration status and nationality, from public disclosure. Section 1373 does not require California, or any state, to collect information about an individual's immigration status, to arrest individuals who are present in violation of immigration laws, or to hold individuals in custody based on requests from federal immigration officials. Most importantly, it does not prohibit a state from determining that state and local law enforcement engagement in such acts is not in the best interests of the state.

Section 1357 of Title 8 of the United States Code addresses the "performance of immigration officer functions by state officers and employees" and authorizes state and local officials to perform such functions, subject to a host of restrictions, upon approval of federal authorities. (8 U.S.C. Section 1357(g).) For example, Section 1357(g)(1) authorizes the Attorney General to "enter into a written agreement with a State" or political subdivision, under which its employees "may carry out [the] function" of "an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States," *if* the Attorney General determines that the particular employee is qualified. (8 U.S.C. Section 1357(g)(1).) Furthermore, such authority may only be exercised "to the extent consistent with State and local law," implying that state and local laws can prohibit such conduct and reiterating that the authority is purely voluntary on the part of the state or local entity and under the ultimate control and authority of the federal government. (*Ibid.*)

This bill does not interfere with or obstruct the enforcement of federal immigration programs by federal law enforcement officers. One of this bill's most important (and controversial) provisions prohibits state and local law enforcement agencies from "making any database that contains information about an individual's citizenship or immigration status available to any person or entity for the purpose of immigration enforcement." At first blush this provision may appear to violate Section 1373. But such a conclusion would be erroneous. Federal law only prevents a state or local government from *prohibiting* its agencies or officials from "*sending to*" federal immigration authorities information about an individual's immigration or citizenship status. This bill, on the other hand, limits agencies from granting *access* to state databases. The bill would not prevent an agency or official from sending information to the federal immigration authorities upon request, but those authorities could not have direct access to the state database itself. In fact, the bill specifically states that its provisions do "not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to specified federal law."

Nothing in federal law requires state and local law enforcement officials to assist federal immigration enforcement efforts, or prohibits state and local officials from refusing to do so. As explained above, federal law authorizes states to perform immigration officer functions upon approval of federal authorities. Performing such functions is not required, however. Section 1357(g)(9) states that, "Nothing shall be construed to require any State . . . to enter into an agreement" with the federal government to have its officers perform immigration officer functions. Nor are states or local governments required by federal law to perform immigration enforcement functions, such as detaining immigrants upon the request of federal immigration authorities, collecting immigration information, or affirmatively sharing immigration information with federal authorities. A recent guidance from the United States Department of Justice explained to state and local government recipients of Department of Justice funding that "Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information." (Dep't of Justice, Office of Justice Programs, Guidance Regarding Compliance with 8 U.S.C. § 1373, *available at* https://www.bja.gov/funding/8uscsection1373.pdf.)

Given that federal law only authorizes, but does not require, state and local officers to act as immigration officers, SB 54 does not conflict with federal law and can appropriately determine that such cooperation is not in the state's best interests. According to the author:

> California is familiar with the harmful effects of entangling local law enforcement agencies with immigration enforcement. Prior to its termination, the discredited "Secure Communities" program (S-Comm) operated in California as an indiscriminate mass deportation program at great cost to California both financially and otherwise. According to a report prepared by Justice Strategies in 2012, when the Secure Communities program was still active, California taxpayers spent an estimated $65 million annually to detain people for ICE. (*See* Judith Greene, "The Cost of Responding to Immigration Detainers in California," Justice Strategies Report, August 22, 2012.)

The federal government has limited ability to withhold funds to, or otherwise financially punish, sanctuary jurisdictions. Despite Attorney General Session's threat to "claw back" all federal funds paid to "sanctuary jurisdictions," the federal government has limited ability to punish state and local governments for non-cooperation and generally cannot withhold or withdraw federal funds as long as a state or local government is not in violation of the law. Significantly, a district court recently granted a nationwide injunction against the Executive Order 13768, *supra*, on the ground that it purported to condition all federal funds on compliance with Section 1373. (See *Cty. of Santa Clara v. Trump*; *City and Cty. of San Francisco v. Trump*, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017).) In that case, the federal district court ruled that plaintiffs were likely to succeed on their claims that the Order violated the Separation of Powers, Spending Clause, Tenth Amendment, and Fifth Amendment. (*Ibid.*) Following that preliminary injunction, the United States Attorney General issued a memorandum, which clarifies that compliance with Section 1373 is tied "solely to federal grants administered by the Department of Justice or the Department of Homeland Security, and not to other sources of federal funding." (*Implementation of Executive Order 13768*, Memo. from U.S. Att'y General to All Department Grant-Making Components (May 22, 2017), *available at* https://www.justice.gov/opa/press-release/file/968146/download.) Even more importantly, the memorandum clarified that "for purposes of enforcing the Executive Order, the term "sanctuary jurisdiction" will refer only to jurisdictions that "willfully refuse to comply with 8 U.S.C. 1373." A jurisdiction that does not willfully refuse to comply with section 1373 is not a "sanctuary jurisdiction." (*Ibid.*) Under SB 54, there is no reason to think that California would meet the definition of a "sanctuary jurisdiction."

The bill is not otherwise preempted by federal immigration law. When Congress acts under its constitutional powers, it may preempt state law through (1) an express preemption provision that "withdraw[s] specified powers from the States"; (2) by "preclud[ing] [States] from regulating conduct in a field that Congress . . . has determined must be regulated by its exclusive governance"; or (3) through conflict preemption when "compliance with both federal and state regulations is a physical impossibility," or the "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Arizona v. United States* (2012) 567 U.S. ___, 132 S. Ct. 2492, 2500-01 [internal quotation marks omitted].)

The Supreme Court and other courts have held that state laws, like those at issue in *Arizona v. United States*, were preempted by federal immigration law when the States attempted to regulate immigration themselves and intruded on the federal government's authority.

This bill, unlike the Arizona law, has no similar risk of preemption because it leaves federal immigration enforcement to federal officials. Far from being preempted, SB 54 reinforces the federal framework set forth in Section 1357 that leaves the determination of whether to have their employees function as immigration officers to the states. Because States need not

participate in federal immigration enforcement, and because of the explicit non-preemptive text and structure of Section 1357, the bill clearly does not conflict with federal law.

As proposed to be amended, the bill appropriately retains current law that provides public access to public records. As currently in print, the bill gives the reporting agency that sends task force information to the Attorney General, or the Attorney General himself, to do the following:

> [D]etermine a report, in whole or in part, shall not be subject to disclosure pursuant to subdivision (f) of Section 6254, the California Public Records Act to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

This language is confusing because the task force information reported to the Attorney General would not seem to contain such information. The confusion is compounded by the fact that Government Code Section 6254 (f) itself is very confusing. It establishes a rule that investigative reports are not *required* to be disclosed, but then gives a series of exceptions and alternative rules for disclosure and non-disclosure of information within investigative reports. In order to clarify that reports of task force information made by state and local law enforcement agencies (and school security) to the Attorney General are public records (which they are, according to the CPRA's definition of that term in Government Code Section 6252 (e), because they are records possessed by a public agency) and are subject to the exemptions provided by that act, the author proposes to amend the bill to say just that. The author's proposed amendments also appropriately clarify that "personal identifying information may be redacted prior to public disclosure" of task force information provided to the Attorney General. Regarding the information reported *by the Attorney General* about task force information, the bill also requires the Attorney General to omit from his report any "particular information [that] would endanger the safety of a person involved in an investigation" or otherwise hinder an ongoing investigation. This provision is consistent with existing law, including Government Code Section 6255, which gives a public agency authority to withhold "any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Other proposed author's amendments and other minor ambiguities that the author may wish to clarify in the future. The author proposes to make a number of clarifying amendments to the bill's language, including changes to provide more guidance to law enforcement agencies about how to comply with the requirements of the bill. Among other things, the amendments will do both of the following: (1) ensure that confidential information in state databases remains confidential; and (2) clarify that all actions of law enforcement agencies relating to immigration which are specifically authorized under the bill must comply with local laws and policies of the jurisdiction in which an agency operates.

Ambiguity about when reports about task force operations are required to be submitted to the Attorney General and what period of time they are required to cover. As currently in print, the bill requires law enforcement agencies that choose to participate in a joint law enforcement task force to "submit a report **every six months** to the Department of Justice" detailing the task force operation, including the following about each operation: the purpose of the task force, the federal, state, and local law enforcement agencies involved, the number of California law

enforcement agency personnel involved, a description of arrests made for any federal and state crimes, and a description of the number of people arrested for immigration enforcement purposes. The bill also requires the Attorney General, by March 1, 2019, and **twice a year thereafter**, to report on the types and frequency of joint law enforcement task forces. But the bill does not clarify when task force reports must be submitted to the Attorney General, or what time period the reports must cover.

Ambiguity about law enforcement operations that do not constitute "immigration enforcement" but could fail in the catch-all category of prohibited "immigration enforcement" activities. The bill broadly prohibits the use of law enforcement resources "to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes" including "but not limited to" a list of specific examples for how resources cannot be used. Because the list is non-exhaustive, presumably other uses of resources for immigration enforcement purposes are also prohibited.

The bill defines "immigration enforcement" as follows:

> "Immigration enforcement" includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.

The bill then goes on to specify that "Immigration enforcement" does not include either of the following, which otherwise would clearly qualify as immigration enforcement under the bill's definition:

> (1) Efforts to investigate, enforce, or assist in the investigation or enforcement of a violation of Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated law enforcement activity.
>
> (2) Transferring an individual to federal immigration authorities for a violation of Section 1326(a) of Title 8 of the United States Code that is subject to the enhancement specified in Section 1326(b)(2) of that title if the individual has been previously convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code.

The bill also has a list of specific activities that state and local law enforcement agencies may perform, despite the fact that they may meet the definition of "immigration enforcement." The fact that these two activities that would otherwise meet the definition of "immigration enforcement" are exempted from the definition, while other similar activities are specifically allowed to be performed, despite meeting the definition could possibly create confusion among law enforcement agencies and officials about whether certain conduct is authorized.

The author may wish to consider clarifying the dates on which task force reports must be submitted to the Attorney General and what time period the reports must cover. The author may also wish to consider consolidating either the exemptions from the definition of "immigration enforcement," or the law enforcement activities that are authorized, despite meeting the definition of that term.

ARGUMENTS IN SUPPORT: The Mario G. Obledo National Coalition of Hispanic Organizations writes in support of the bill that "using local police resources to support immigration law enforcement detracts from their primary goal of preserving the public order and ensuring that violent felons are apprehended and incarcerated in a timely manner." SB 54, it continues, "properly ensures that state and local law enforcement agencies, including school police agencies, will not engage in immigration enforcement. Further, SB 54 requires that California courts health facilities and schools remain safe and accessible regardless of immigration status. It is a compassionate bill designed to afford human rights to all of California's inhabitants." Similarly, Asian Americans Advancing Justice, write that "SB 54 would disentangle local law enforcement from the business of deportations" and as a result will "create safer spaces at schools, libraries, courthouses, shelters, DLSE facilities, and health care facilities, by limiting immigration enforcement at these locations." The ACLU of Northern California observes that "SB 54 upholds California's core values of equal treatment, community, family unity, and common humanity by ensuring that California's police departments, schools, healthcare facilities and courts remain accessible to Californians from all walks of life."

ARGUMENTS IN OPPOSITION: Peace Officers Research Association of California writes that it opposes SB 54 for "three critical reasons" which it identifies as the requirement to report task force operations to the Attorney General; the unintended impact of detained immigrants likely being taken outside the state "thereby separating them from their families, communities and networks" and "the breakdown of local, state, and federal partnerships [that]will prevent our officers from being able to do their jobs; consequently, violent criminals will remain on the streets and our families will be in danger." The California State Sheriffs Association writes that although "Sheriffs do not wish to act as immigration police.. . .we need to continue to cooperate with our law enforcement partners to ensure that those who victimize our communities are not given unnecessary opportunities to do more harm." The association continues that "The bill, with limited exception, precludes law enforcement from sharing information that is not publicly available about persons in custody with federal authorities" so that "sheriffs would still be precluded from relaying information about people convicted of crimes like domestic violence and drunk driving unless they also had current or prior convictions for serious or violent felonies." The California Police Chiefs Association also opposes the bill, for the same general reasons as expressed by other law enforcement groups, and concludes about the bill that "SB 54 will make it more difficult to work with our federal law enforcement partners in apprehending dangerous criminals, and threatens to create more fear in our communities by forcing federal immigration operations out of our jails and into our communities."

REGISTERED SUPPORT / OPPOSITION:

Support

Abriendo Puertas / Opening Doors
ACLU of California
Advancement Project
Alliance San Diego
American Academy of Pediatrics, California
American Friends Service Committee's US-Mexico Border Program
Anti-Defamation League
Asian Americans Advancing Justice – California
Asian & Pacific Islanders Equality-LA

Asian Pacific Islander Forward Movement
Asian Pacific Policy & Planning Council
Bay Area Community Resources
CalAsian Chamber
California Association for Bilingual Education
California Calls
California Conference for Equality and Justice
California Chapters of the American Immigration Lawyers Association
California Immigrant Policy Center
California Latinas for Reproductive Justice
California Partnership
California Partnership to End Domestic Violence
California School-Based Health Alliance
Californians for Safety and Justice
Californians Together
Canal Alliance
Center for Gender & Refugee Studies – California
Central American Resource Center-LA
Central Coast Alliance United for a Sustainable Economy
Central Valley Children's Services Network
Centro Laboral de Graton
Child Care Law Center
Children's Defense Fund
Community Initiatives for Visiting Immigrants in Confinement
CLEAN Car Wash Campaign
CLUE: Clergy and Laity United for Economic Justice
Ventura County Clergy and Laity United for Economic Justice
Community Coalition
Courage Campaign
CREDO
Day Worker Center in Santa Cruz County
Day Worker Center of Mountain View
Defending Rights and Dissent
Dream Team – Los Angeles
Dolores Huerta Foundation
EBASE
Employee Rights Center
Empowering Pacific Islander Communities
Environmental Center of San Diego
Equal Justice Society
Equal Rights Advocates
Equality California
Escondido Indivisible
Esperanza Community Housing
Evergreen Teachers Association
Faith in the Valley
Filipino Advocates for Justice
Friends Committee on Legislation of California
Garment Worker Center

IKAR
Immigrant Defenders Law Center
Immigrant Legal Resource Center
Indivisible Conejo
Indivisible Ventura
Inland Coalition for Immigrant Justice
Inland Empire – Immigrant Youth Collective
Instituto de Educacion Popular del Sur de California
Intercity Struggle
Iranian American Bar Association
Jus Semper Global Alliance
Justice for Immigrants of the Diocese of San Bernardino
Khmer Girls in Action
Korean Resource Center
Koreatown Immigrant Worker's Alliance
La Raza Centro Legal
Latino and Latina Roundtable
Latino Coalition for a Healthy California
Little Tokyo Service Center
Long Beach Immigrant Rights Coalition
Los Angeles LGBT Center
Loyola Law School Immigrant Justice Clinic
Mexican American Legal Defense and Education Fund
Mi Familia Vota
Mom's Rising
Monument Impact
Mujeres Unidas y Activas
National Asian Pacific American Families Against Substance Abuse
National Center for Lesbian Rights
National Council of Jewish Women
National Day Laborer Organizing Network
National Domestic Workers Alliances
Native Hawaiian & Pacific Islander Alliance
Nikkei for Civil Rights & Redress
Nikkei Progressives
North Bay Jobs with Justice
North County Immigration Task Force
OCA – GLA
OneJustice
Orange County Immigrant Youth United
Our Family Coalition
Our Revolution
Parent Voices CA
People Organizing to Demand Environmental and Economic Right
PICO California
Pilipino Workers Center
Public Counsel
Restaurant Opportunities Center of Los Angels
Root & Rebound

Sacred Heart
San Diego Immigrant Rights Consortium
Social Action Committee of the Unitarian Universalist Fellowship of Redwood City
Somos Mayfair
South Asian Network
South Bay People Power
Strategic Concepts in Organizing and Policy Education
Stronger California
Tahirih Justice Center
Thai Community Development Center
UDW/AFSCME Local 3930
UNITE HERE Local 30
UPLIFT
Vigilant Love
Vital Immigrant Defense Advocacy and Services
Warehouse Worker Resource Center
YWCA
Numerous Individuals

Opposition

Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California Police Chiefs Association
California State Sheriffs Association
City of Camarillo
City of Glendora
City of Torrance
Kern County Board of Supervisors
Los Angeles Police Protective League
Peace Officers Research Association of California
Shasta County Board of Supervisors
The Remembrance Project
We the People
West Covina City Council
Numerous individuals

Analysis Prepared by: Alison Merrilees / JUD. / (916) 319-2334