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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
BILL ANALYSIS



2011 MAY -5 PM 6:51
Date: May 19, 2011

Bill Number: AB 1081 (as amended)

Bill Author: Ammiano

DEPARTMENT INFORMATION

Contact: Claudia Burgos, District 5, 238-7051
cburgos@oaklandnet.com

RECOMMENDED POSITION: SUPPORT

Summary of the Bill:

Assembly Bill 1081 (Ammiano), *Transparency and Responsibility Using State Tools Act* "TRUST Act" would give local governments the right to opt-out of immigration and customs enforcement's "Secure Communities" program. The TRUST Act would improve a controversial agreement between the State of California and hmigrations and Customs Enforcement (ICE) so as to honor the right of local governments to opt out of the troubled S-Comm or "Secure Commnities" immigration program.

Existing law, setting forth the findings and declarations of the Legislature, provides that all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, within the state, and further provides that, for purposes of enforcing specified state laws, a person's immigration status is irrelevant to the issue of liability, and prohibits, in proceedings or discovery undertaken to enforce those state laws, an inquiry into a person's immigration status except where the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

This bill would state the findings and declarations of the Legislature with respect to a memorandum of agreement with the United States Department of Homeland Security, regarding the implementation of the Immigration and Customs Enforcement's Secure Communities program, that the Bureau of Criminal Identification and Information within the Department of Justice entered into on *April 10, 2009*.

The bill would require the bureau to modify that agreement, according to specified requirements, or to exercise its authority under the agreement to terminate the agreement.

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Positive Factors for Oakland

The City of Oakland has been on record since July 8 1986 as a City of Refuge and we have a strong tradition of embracing and valuing diversity and respecting the civil and human rights of all residents regardless of their immigration status. The Secure Communities Program forces local law enforcement agencies to become an arm of the federal government's Immigration and Customs Enforcement (ICE) division by requiring the sharing of information. Participation in the Secure Communities Program is in direct contrast to our city policy that states that all departments and employees of the City of Oakland shall refrain from assisting or cooperating in their official capacity with any INS investigation, detention, or arrest procedures.

AB 1081 would allow us the opportunity to Opt-out of the secure communities program.

The controversial Secure Communities program enables U.S. Immigration and Customs Enforcement, or ICE, to tag arrests and travel to all of the state's county jails to pick up immigrants accused of committing crimes. The fingerprints of everyone arrested by local police are now sent automatically to an electronic database reviewed by ICE, whose agents go to county jails to pick up immigrants thought to be deportable, including illegal immigrants and legal immigrants who may have committed a crime.

A Freedom of Information Act Lawsuit by the National Day Laborer Organizing Network and other civil rights groups has shown that 13 California counties rank among the nation's top 38 in terms of *non-criminal* deportations under the program. On May 4th, Illinois Gov. Pat Quinn became the latest to indicate that his state will pull out of the Secure Communities Program.

Cities and Counties all over the Country are questioning the effectiveness of the Secure Communities Program and several studies have shown that the majority of individuals that are being deported as a result of Secure Communities have not committed serious crimes. According to federal government statistics, about 29 percent of the 102,000 immigrants deported under the program since it began in 2008 have no criminal conviction. Roughly 197,000 were identified as suspected illegal immigrants, and nearly 40 percent of those were in California, according to statistics provided by ICE.

The continued enforcement of the Secure Communities Program without the option to Opt-out of the program will continue to negatively impact our community by separating families as a result of deportations and will negatively impact relations between law enforcement and our immigrant communities.

Negative Factors for Oakland

NONE

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical (top priority for City lobbyist, city position required ASAP)**
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or None (do not review with City Council, position not required)

Known support:

Asm. Gil Cedillo (D-LA), Asm. Bill Monning (D- Carmel) and Sen. Leland Yee (D-SF). Santa Clara and Santa Cruz County Boards, San Francisco Sheriff Michael Hennessey; the California Partnership to End Domestic Violence; the California Labor Federation and various unions; and the San Bernardino Catholic Diocese, National Center for Lesbian Rights, PICO National Network, Oakland Community Organizations (OCO), National Day Laborer Organizing Network, Alameda Labor Council, AFL-CIO, Asian Law Caucus, co-sponsor, California Immigrant Policy Center

Known Opposition:

No Known Opposition

Respectfully Submitted,
Councilmember De La Fuente,



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AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1081

Introduced by Assembly Member Ammiano
(Coauthor: Assembly Member Cedillo)
(Coauthor: Senator Yee)

February 18, 2011

An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title 1 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1081, as amended, Ammiano. State government: federal immigration policy enforcement.

Existing law, setting forth the findings and declarations of the Legislature, provides that all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, within the state, and further provides that, for purposes of enforcing specified state laws, a person's immigration status is irrelevant to the issue of liability, and prohibits, in proceedings or discovery undertaken to enforce those state laws, an inquiry into a person's immigration status except where the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

This bill would state the findings and declarations of the Legislature with respect to a memorandum of agreement with the United States Department of Homeland Security, regarding the implementation of

the Immigration and Customs Enforcement's Secure Communities program, that the Bureau of Criminal Identification and Information within the Department of Justice entered into on ~~May 8~~ April 10, 2009. The bill would require the bureau to modify that agreement, according to specified requirements, or to exercise its authority under the agreement to terminate the agreement.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *The Legislature finds and declares all of the*
2 *following:*
3 (1) *Washington, Pennsylvania, and Washington, D.C. have all*
4 *refused to enter into a memorandum of agreement with the United*
5 *States Department of Homeland Security regarding the*
6 *Immigration and Customs Enforcement's Secure Communities*
7 *program because the program undermines community policing,*
8 *public safety, and protections against racial profiling. Pursuant*
9 *to the program, federal officials have claimed the authority to use*
10 *state and local law enforcement resources for the purpose of*
11 *channeling individuals into federal civil immigration enforcement*
12 *based on minimal contact with law enforcement*
13 (2) *Immigrant residents who are victims or witnesses to crime,*
14 *including domestic violence related crimes, are less likely to report*
15 *the crime or cooperate with law enforcement because any contact*
16 *with law enforcement could result in deportation, without regard*
17 *to whether the arrest or the result of a mistake, or merely a routine*
18 *practice of questioning individuals involved in a dispute without*
19 *pressing charges. Victims or witnesses to crimes may have recourse*
20 *to lawful status (such as U-visas or T-visas) that detention resulting*
21 *from Secure Communities obstructs.*
22 (b) *It is the intent of the Legislature that the Bureau of Criminal*
23 *Identification and Information within the Department of Justice*
24 *modify the memorandum of agreement with the United States*
25 *Department of Homeland Security, regarding the implementation*
26 *of the Immigration and Customs Enforcement's Secure*
27 *Communities program, it entered into on April 10, 2009, as*
28 *specified in this act, thereby paying respect to the wishes of several*
29 *local jurisdictions that have actively worked for decades to build*

1 *community trust in law enforcement and have expressed concern*
2 *that the Secure Communities program has been deployed without*
3 *adequate notice and without their consultation or consent.*

4 SECTION 1.

5 SEC. 2 Chapter 17.1 (commencing with Section 7282) is added
6 to Division 7 of Title 1 of the Government Code, to read:

7
8 CHAPTER 17.1. FEDERAL IMMIGRATION POLICY ENFORCEMENT

9
10 ~~7282. (a) The Legislature finds and declares all of the~~
11 ~~following:~~

12 ~~(1) Both the State of Washington and Washington, D.C., have~~
13 ~~refused to enter into a memorandum of agreement with the United~~
14 ~~States Department of Homeland Security regarding the Immigration~~
15 ~~and Customs Enforcement's Secure Communities program because~~
16 ~~the program undermines community policing and public safety.~~

17 ~~(2) Pursuant to the program, federal officials have claimed the~~
18 ~~authority to enforce federal immigration laws, and in particular,~~
19 ~~the authority to detain individuals based on minimal contact with~~
20 ~~law enforcement.~~

21 ~~(3) Immigrant residents who are victims or witnesses to crime,~~
22 ~~including domestic violence-related crimes, are less likely to report~~
23 ~~the crime or cooperate with law enforcement because any contact~~
24 ~~with law enforcement could result in deportation, without regard~~
25 ~~to whether the arrest was wrongful or the result of a mistake.~~

26 ~~(b) It is the intent of the Legislature that the Bureau of Criminal~~
27 ~~Identification and Information within the Department of Justice~~
28 ~~modify the memorandum of agreement with the United States~~
29 ~~Department of Homeland Security, regarding the implementation~~
30 ~~of the Immigration and Customs Enforcement's Secure~~
31 ~~Communities program, it entered into on May 8, 2009, as specified~~
32 ~~in this act, thereby paying respect to the wishes of local~~
33 ~~jurisdictions, including San Francisco, Santa Clara, and Berkeley,~~
34 ~~which have actively worked for decades to build community trust~~
35 ~~in law enforcement and have expressed concern that the Secure~~
36 ~~Communities program has been deployed without adequate notice~~
37 ~~or consent.~~

38 ~~7282.1.~~

39 7282. (a) The Bureau of Criminal Identification and
40 Information within the Department of Justice shall modify the

1 memorandum of agreement with the United States Department of
2 Homeland Security, *which shall be referred to as the modified*
3 *regarding the implementation of the Immigration and Customs*
4 *Enforcement's Secure Communities program, entered into on May*
5 *8, 2009, in accordance with all of the following requirements:*

6 (1) The modified agreement shall authorize a local government
7 to participate in the Secure Communities program only upon the
8 passage of an ordinance or resolution authorizing participation by
9 the legislative body of the local government.

10 (2) The modified agreement shall require a local government
11 ~~that opts to participate in the program, as provided in paragraph~~
12 ~~(1), to submit to the Bureau of Criminal Identification and~~
13 ~~Information within the Department of Justice a plan to guard~~
14 ~~against, and monitor, racial profiling associated with the local~~
15 ~~government's participation in the program:~~

16 (3) ~~The modified agreement shall authorize local governments~~
17 ~~to adopt reasonable exceptions to the implementation of the~~
18 ~~program with respect to all of the following:~~

19 ~~(A) Protections for domestic violence victims:~~

20 ~~(B) Protections for juveniles: that opts to participate in the~~
21 ~~program, as provided in paragraph (1), to prepare a plan to~~
22 ~~monitor and guard against racial profiling, discouraging reporting~~
23 ~~by domestic violence victims, and harming community policing~~
24 ~~overall. This plan shall be deemed a public record for purposes~~
25 ~~of the California Public Records Act (Chapter 3.5 (commencing~~
26 ~~with Section 6250) of Division 7 of Title 1 of the Government~~
27 ~~Code). The plan shall include provisions for the monthly release~~
28 ~~of data that address all of the following topics:~~

29 ~~(A) Stop and arrest data broken down by race, ethnicity,~~
30 ~~nationality, gender, arresting charge, booking charge, and ultimate~~
31 ~~disposition of booking charge.~~

32 ~~(B) The number of individuals identified for transfer to~~
33 ~~Immigration and Customs Enforcement officials through Secure~~
34 ~~Communities and a break down of the demographics and criminal~~
35 ~~history of those individuals by race, ethnicity, nationality, gender,~~
36 ~~booking charge, ultimate disposition of booking charge, Secure~~
37 ~~Communities offense level, and most serious prior conviction, if~~
38 ~~any.~~

39 ~~(C) The number of individuals held on Immigration and Customs~~
40 ~~Enforcement detainers and the length of those detentions.~~

1 (D) Number of 911 calls with victim data broken down by race,
2 ethnicity, and gender

3 (3) The modified agreement shall include all of the following
4 exemptions and limitations to the Secure Communities program:

5 (A) A requirement that local law enforcement agencies shall
6 not share the fingerprints of domestic violence victims with
7 Immigration and Customs Enforcement officials.

8 (B) A requirement that local law enforcement agencies shall
9 not share the fingerprints of juveniles with Immigration and
10 Customs Enforcement officials.

11 (C) An explicit limitation on the sharing of fingerprints under
12 the program to those of with Immigration and Customs
13 Enforcement officials to only those individuals convicted, rather
14 than merely accused, of a crime.

15 (4) The modified agreement shall include, but not be limited
16 to, all of the following safeguards against racial profiling:

17 (A) A prohibition against the use of driver's license checkpoints
18 to obtain fingerprints for the purposes of the Secure Communities
19 program:

20 (A) A prohibition against obtaining fingerprints for the purposes
21 of the Secure Communities program through the use of checkpoints,
22 and the stopping of individuals solely based on perceived
23 immigration status.

24 (B) A requirement that the Immigration and Customs
25 Enforcement establish a complaint mechanism process that allows
26 for expedited review of claims by those put into immigration
27 removal proceedings prior to conviction as a result of the program.

28 (5) The modified agreement shall include a requirement that
29 Immigration and Customs Enforcement make available to the
30 public on its Internet Web site quarterly statistics on the Secure
31 Communities program in this state that include the following metric
32 criteria:

33 (A) Number of searches to IDENT.

34 (B) Number of matches to IDENT data.

35 (C) Number of detainers issued by Immigration and Customs
36 Enforcement based on Level 1, Level 2, and Level 3 offense
37 categories.

38 (D) Number of detainers issued by Immigration and Customs
39 Enforcement where charges are never filed, are later dismissed,
40 or where there is ultimately no conviction.

- 1 (E) Number of Level 1, Level 2, and Level 3 arrestees who are
2 transferred into Immigration and Customs Enforcement custody
3 after being subjected to an Immigration and Customs Enforcement
4 detainer, where charges are never filed, are later dismissed, or
5 where there is ultimately no conviction.
- 6 (F) Number of identified detainees prosecuted criminally in
7 federal court.
- 8 (G) Number of identified detainees removed from the United
9 States.
- 10 (H) Number of identified United States citizens and persons
11 with lawful status identified through the Secure Communities
12 program.
- 13 (I) Nationality, age, and gender of individuals identified and
14 removed through the Secure Communities program.
- 15 (b) If the bureau is unable to fulfill the requirements of
16 subdivision (a), it shall exercise its authority under the agreement
17 to terminate the agreement.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

City Attorney

2011 MAY -5 PM 6:54 **OAKLAND CITY COUNCIL**

DRAFT

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER IGNACIO DE LA FUENTE

Resolution Supporting Assembly Bill 1081 (Ammiano) "TRUST Act" Which Would Give Local Governments The Right To Opt-Out Of Immigration And Customs Enforcement's Secure Communities Program.

WHEREAS, The Transparency and Responsibility Using State Tools *Act* "TRUST Act" would give local governments the right to opt-out of immigration and customs enforcement's "Secure Communities" program; and

WHEREAS, Under the Secure Communities Program the fingerprints of everyone arrested by local police are now sent automatically to an electronic database reviewed by ICE, whose agents go to county jails to pick up immigrants thought to be deportable, including illegal immigrants and legal immigrants who may have committed a crime; and

WHEREAS, A Freedom of Information Act Lawsuit by the National Day Laborer Organizing Network and other civil rights groups has shown that 13 California counties rank among the nation's top 38 in terms of *non-criminal* deportations under the program; and

WHEREAS, According to federal government statistics, about 29 percent of the 102,000 immigrants deported under the program since it began in 2008 have no criminal conviction; and

WHEREAS, The continued enforcement of the Secure Communities Program without the option to Opt-out of the program will continue to negatively impact our community by separating families as a result of deportations and will negatively impact relations between law enforcement and our immigrant communities; and

WHEREAS, The TRUST Act would improve the agreement between the State of California and Immigrations and Customs Enforcement (ICE) so as to honor the right of local governments to opt out of the S-Comm or "Secure Communities" immigration program; now, therefore be it

RESOLVED: The City of Oakland declares its support for AB 1081; and be it

FURTHER RESOLVED: That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION-

Attest: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California