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HIGH COSTS TO LOCAL COMMUNITIES WITH FEDERAL IMMIGRATION ENFORCEMENT

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The RECLAIM NC ACT, or House Bill (HB) 786, being considered by the House is an immigration bill that establishes state authority to enforce federal immigration law.¹ It creates expanded enforcement protocols for people suspected of being undocumented immigrants at a potentially high cost to local governments. It also allows for a restricted driver's permit for undocumented immigrants, but with eligibility criteria and costs that will be nearly impossible for undocumented immigrants to meet.

The enforcement provisions in the bill will likely result in increased detentions and higher costs to local jails for three reasons. First, the United States Immigration and Customs Enforcement (ICE) typically does not reimburse local jails or the state for costs associated with detaining immigrants at ICE's request, before they are in ICE custody; they are even less likely to reimburse local jails for holds ICE does not request.² Second, the bill could lead to an increase in the number of immigrants detained. Third, the bill presumes that immigrants are a flight risk, making it more difficult for them to obtain bail and likely lengthening their pretrial stay in local jails. These added costs will likely divert scarce taxpayer dollars away from public schools, local economic development, parks, clean water, and other investments made at the local level.

The bill also contains a provision providing a process by which undocumented immigrants can get a driver's permit.³ Many in support of the bill point to the potential public safety benefits of such a provision. There would be definite public safety benefits to having more tested, insured and licensed drivers on the road. Such benefits, however, will be undermined by the "Arizona" provision providing for increased enforcement measures and cooperation between police and immigration authorities, which would likely make immigrants less likely to report crimes and cooperate with the police as has been demonstrated in Arizona.⁴

This brief outlines the potential drivers of local costs in the bill and shares experiences from other localities to show how these kinds of provisions can produce substantial added costs for local governments. It also highlights why the driver's permit provision is unlikely to produce the desired public safety benefits.

North Carolina's local communities already incur high costs for immigration enforcement

North Carolina's local communities already incur high costs for immigration detention because of the early and active participation of the state in the federal Secure Communities and 287(g) programs.⁵

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A key aspect of these existing programs is the relationship between local law enforcement and the U.S. ICE agency. Under the collaboration established through these programs, individuals who are detained can be checked for their immigration status. “ICE holds” or detainers can then be issued as a request that local law enforcement agencies hold a non-citizen for up to 48 hours beyond their release from custody. In practice, evidence suggests that local jails routinely fail to release immigrants held on detainers when the official hold period expires.⁶

ICE does not reimburse local law enforcement for the costs associated with holding a person of interest. In a letter to the County Counsel of Santa Clara County, California, ICE stated that they “do not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual.”⁷ ICE is even less likely to reimburse local jails for holds ICE does not request. The costs of transport, bed space, processing and all other aspects of custody will be borne fully by local governments.

HB 786 could increase number of those detained

HB 786 expands the authorization of immigration status checks for persons who are lawfully stopped, detained or arrested. Key provisions of the bill would give any law enforcement officer legal capacity to verify someone’s immigration status after any lawful stop, resulting in a potential expansion of the number of officers with such authorization, and thus expanding the universe of people who will be subject to status checks. (See Appendix comparison of HB 786 to existing federal Secure Communities and 287(g) programs).

Under current practice, any person who has been charged with a crime is checked against ICE databases when they are arrested and booked into a detention facility. Under the proposed legislation, any person stopped for a criminal offense, including both arrestable and non-arrestable offenses, can have their immigration status checked at the roadside. Because local law enforcement will have access to more information about immigration status of everyone they stop, including passengers, there will likely be an uptick in the number of people arrested and for whom ICE subsequently issues a hold.⁸

For those detained, many will not be convicted of a crime and fewer still will be deported. North Carolina’s experience with federal immigration enforcement to date has resulted in removal proceedings for just 1 percent of the total 785,264 individuals submitted for status verification under the Secure Communities program since November 2008. Of the 7,400 removed, a third were non-criminals and had an immigration offense only.⁹ Some North Carolina counties rank among the worst in the nation for deporting people without criminal records,¹⁰ with more than half of those deported being non-criminals.

HB 786 could increase arrests and lengthen time in local jails

For those who are taken into custody, the time spent in detention is likely to be extended. This is because the bill assumes undocumented immigrants detained on suspicion of certain crimes are a flight risk. Rebuttable presumption against bond for individuals suspected of being undocumented would exist—meaning said persons would be presumed to be a flight risk unless the immigrant can offer evidence to prove it to be untrue—and the likelihood of being held without bond until trial would be greater.

Already evidence abounds that individuals with an ICE hold experience longer pre-trial jail stays than those without. In California, researchers found that those with an ICE hold stayed in jail 20.6 days longer.¹¹ In Colorado, researchers found that figure to be 22 days.¹²

While the exact length of extended time in jail will depend on various factors, it is clear that more individuals with ICE holds will likely result in greater time in jail and therefore greater costs for local governments.

Counties that have been granted expanded authority to enforce immigration laws have frequently misused that authority, at a great cost to local budgets. In Maricopa County, Arizona, the sheriff’s department conducted sweeps of Latino neighborhoods and day labor gathering spots, arresting the majority of those stopped for civil immigration violations and not crimes.¹³ The sheriff’s department continued to conduct sweeps even after its “287 (g)” authority to enforce immigration law was revoked, claiming inherent authority to detain, arrest, and turn people over to ICE, and paying for those arrests and detentions with local funds. In Alamance, North Carolina where the sheriff’s department also operated under a 287(g) program, the U.S. Department of Justice found that Latinos were arrested rather than cited for traffic violations at higher rates than non-Latinos. The county incurred detention costs that would not have occurred if those persons had only received citations.¹⁴ Granting enhanced authority to local law enforcement to enforce federal immigration laws thus grants the patina of legitimacy to some law enforcement agencies’ misguided efforts to arrest and detain immigrants, efforts which both increase detention costs for local communities and decrease safety.¹⁵

Significant local resources could be drained by enforcement

It is impossible to know precisely what the costs of HB 786 would be, but they would be real and potentially substantial for North Carolina communities. The Fiscal Research Division estimated that the cost of incarceration alone will be on average \$2.5 million each year.¹⁶

FIGURE 1: Increased costs could be significant

AGGREGATE COST TO LOCAL JAILS BASED ON AVERAGE DAILY COST OF DETENTION	ASSUMES 48 HOUR HOLD	AVERAGE ADDITIONAL DETENTION ON ICE HOLD
2.5% of undocumented population held	\$1.2 million	\$12 million
5% of undocumented population held	\$2.4 million	\$24 million
10% of undocumented population held	\$4.8 million	\$48 million

Note: The authors assume the average cost of county jail per day is \$60 per day based on estimates of county jail costs for North Carolina, and assumes hold for 48 hours and 20 days based on average additional time people with detainers were held in California. Data on the share of North Carolina’s undocumented population held or detained in a given year are unavailable. A fiscal note for a similar bill in Kentucky estimated that about 33 percent of the undocumented adult males, 25 percent of undocumented adult females, and 25 percent of undocumented children would be detained and removed under that proposal. Here, the author presents rough estimates of what the range of costs for detention could be, assuming different percentages of the undocumented population were detained under HB 786.

These documented costs are limited to the provisions of the bill that change the category of crime related to the manufacture, sale or possession of fraudulent documents. Other provisions have been deemed of indeterminate cost including the costs resulting from car impoundment, issuing restricted driver’s licenses, training of personnel as to new procedures as well as other policy changes in the legislation.

With limited publicly available data, a definitive estimate of the costs to local jails is incalculable. That said, it is possible to present an “order of magnitude” estimate based on certain assumptions about the share of the undocumented population being detained and the length of their detention. The costs could be substantial and would reduce available resources for local investment in classroom supplies, teacher salaries and other critical supports (see Figure 1 for possible scenarios).

It is important to note, as in other parts of the country, the cost of local jail detention can vary widely. The average daily cost of holding someone in North Carolina ranges from a high of \$258 in Orange County to a low of \$31.94 in Hoke County, according to pre-trial data for misdemeanor cases.¹⁷ Potential costs are in line with previous data on the cost of 287(g) to counties. In a study of the 287 (g) program in North Carolina, Mecklenburg County was found to incur \$5.5 million in costs associated with their participation in the program while Alamance County incurred \$4.8 million.¹⁸

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The driver's permit provision is not all it's cracked up to be

One way in which the legislation is intended to improve public safety is by ensuring that all drivers have permission to operate a motor vehicle. However, it is unclear how many undocumented immigrants will be able to meet the eligibility criteria for a restricted drivers permit. To apply for the restricted drivers permit, a person must meet multiple eligibility criteria including provide proof of residence for each month in the past year. Residents who entered or who will enter the state after the cutoff date will be ineligible for the permit but would still be subject to the extensive enforcement measures provided under HB 786.

In addition, the financial costs to individuals could be substantial because the application fee must cover all costs to the Division of Motor Vehicles and applicants must pre-pay a full year of car insurance. The costs therefore could range from \$1,230 and \$1,400.¹⁹ This is roughly equivalent to two months rent for a family of four or six weeks of groceries.

Conclusion

HB 786 represents a potential high cost to local government to enforce federal immigration law at a time when federal immigration reform could lead to significant changes. By diverting resources from important community priorities, this legislation will also be unlikely to create the public safety outcomes that are promised.

- 1 This brief analyzes the proposed committee substitute to the second edition of HB 786—the version of the bill that was approved by the House Finance Committee in May 2013.
- 2 National Immigration Forum. "Immigrants Behind Bars: How, Why, and How Much?" March 2011. See footnote 49, letter from David Venturella, Secure Communities Assistant Director. Accessed at: http://immigrationforum.org/images/uploads/2011/Immigrants_in_Local_Jails.pdf
- 3 Part IX of HB 786 is entitled "Require Undocumented Alien Drivers to Obtain Restricted Drivers Permits." Although the word "require" is part of the title, there are no corresponding penalties for non-compliance.
- 4 Theodore, Nick. "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement." University of Illinois at Chicago. May 2013. See Figure 2. Accessed at: http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/INSECURE_COMMUNITIES_REPORT_FINAL.PDF
- 5 United States Department of Homeland Security. "Secure Communities: Monthly Statistics through May 31, 2013. IDENT/IAFIS Interoperability." May 2013. Accessed at: http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf
- 6 National Immigration Forum. "Immigrants Behind Bars: How, Why, and How Much?" March 2011. Accessed at: http://immigrationforum.org/images/uploads/2011/Immigrants_in_Local_Jails.pdf
- 7 National Immigration Forum. "Immigrants Behind Bars: How, Why, and How Much?" March 2011. See footnote 49, letter from David Venturella, Secure Communities Assistant Director. Accessed at: http://immigrationforum.org/images/uploads/2011/Immigrants_in_Local_Jails.pdf
- 8 Ortega-Melendres et. al. v. Arpaio, et. al., Not Reported in F.Supp.2d, No. PHX-CV-07-02513-GMS (D. Ariz. May 24, 2013). Accessed at: http://www.aclu.org/files/assets/arpaio_decision.pdf. United States Department of Justice. "Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff's Office." September 2012. Accessed at: <http://www.justice.gov/opa/pr/2012/September/12-crt-1125.html>
- 9 United States Department of Homeland Security. "Secure Communities: Monthly Statistics through May 31, 2013. IDENT/IAFIS Interoperability." May 2013. Accessed at: http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf
- 10 North Carolina Justice Center. "Media Release: New Numbers Demonstrated Persisting Problems with ICE's Controversial 'Secure Communities' Program." March 2011. Accessed at: <http://www.ncjustice.org/?q=media-release-new-numbers-demonstrate-persisting-problems-ice%E2%80%99s-controversial-%E2%80%9Csecure-communities%E2%80%9D>
- 11 Greene, Judith. "The Cost of Responding to Immigration Detainers in California." Justice Strategies. August 2012. Accessed at: <http://www.justicestrategies.org/publications/2012/cost-responding-immigration-detainers-california>
- 12 White, Kathy and Dwight, Lucy. "Misplaced Priorities: SB90 and the Costs to Local Communities." The Colorado Fiscal Institute and the University of Colorado. December 2012. Accessed at: <http://coloradomigrant.org/downloads/CO%20FISCAL%20INSTITUTE%20SB%2090%20REPORT%20DECEMBER%202012.pdf>
- 13 Ortega-Melendres et. al. v. Arpaio, et. al., Not Reported in F.Supp.2d, No. PHX-CV-07-02513-GMS (D. Ariz. May 24, 2013). Accessed at: http://www.aclu.org/files/assets/arpaio_decision.pdf.
- 14 United States Department of Justice. "Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff's Office." September 2012. Accessed at: <http://www.justice.gov/opa/pr/2012/September/12-crt-1125.html>
- 15 Theodore, Nick. "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement." University of Illinois at Chicago. May 2013. See Figure 2. Accessed at: http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/INSECURE_COMMUNITIES_REPORT_FINAL.PDF
- 16 Fiscal Research Division. "Fiscal Note for HB 786 (Second Edition)." May 2013. Accessed at: <http://ncleg.net/Sessions/2013/FiscalNotes/House/PDF/HIN0786v2.pdf>
- 17 Special data request from Action for Children NC, April 2013.
- 18 Nguyen, Mai Thi and Hannah Gill, February 2010. The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities. The Latino Migration Project: University of North Carolina, Chapel Hill, NC.
- 19 Based on public data request to the NC Division of Motor Vehicles and cost estimates for background checks and average auto insurance cost annually. Calculations of cost to a family of four according to the 2010 Living Income Standard.

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APPENDIX:

COMPARISON OF HB 786 TO EXISTING FEDERAL SECURE COMMUNITIES AND 287(G) PROGRAMS

	Secure Communities	287(g)	HB 786
Basic Explanation	All local county jails share fingerprint information with ICE, which checks it against an agency database of immigration history. Every person arrested, regardless of citizenship, is checked by ICE to see if he or she is undocumented or has any immigration violations.	Deputizes local law enforcement to enforce federal immigration laws.	Allows local law enforcement to verify the immigration status of any person for whom the officer has a “reasonable suspicion” is undocumented if they are already stopped on a lawful stop.
Is immigration law enforced “in the field” or only in the jail?	Secure Communities is a program that operates in the jails. People have to be brought into the jail first on some arrestable offense – such as no Operator’s License, DUI, etc, then they are run through Secure Communities. People are processed through the Secure Communities program at the point of arrest, so it doesn’t matter if the arrest was later found unconstitutional or the charges are dropped, the ICE process will continue.	287(g) initially had two models – the “jail model” in which arrestees’ status would be checked in the jail, and the “task force model” in which local law enforcement officers would enforce immigration law in the field, during checkpoints or traffic stops, for example. Now, only the “jail model” of 287(g) operates in North Carolina, so it is only applied to those already arrested on arrestable offenses.	HB 786 would allow immigration law to be enforced “in the field” by local law enforcement officers – during traffic stops, encounters on the street, etc. Under 786, individuals do not have to be stopped on an arrestable offense in order for immigration status to be verified—it can be a very minor infraction like a broken taillight. Law enforcement can check their immigration status in the field, which takes an average of 81 minutes and can be expedited at traffic stops (according to ICE), and which may be done with mobile fingerprint devices.
Are Local Law Enforcement Officers Trained on Immigration Law?	No. Because Secure Communities is just a link to federal databases, local law enforcement is not making judgments or determinations of whether immigration law has been violated.	Yes. Local law enforcement have to be trained on federal immigration law before they can participate.	No. No training is included at all for officers as to how they would form a reasonable suspicion that someone is undocumented.
How will ICE begin processing a person for deportation through each of these programs?	Those processed through Secure Communities are already in the jail. If ICE wishes to place a “detainer” on them, they may. Then if ICE wants to arrest that person, they come and pick them up and deliver them to an ICE detention facility, all of which are out-of-state.	Those processed through 287(g) jail models are already in the jail. If ICE wishes to place a “detainer” on them, they may. Then if ICE wants to arrest that person, they come and pick them up and deliver them to an ICE detention facility out-of-state.	Once a person is detained on “reasonable suspicion” they are undocumented, if they are arrested on the basis of another law, they will be run through Secure Communities. If ICE wishes to place a “detainer” on them, they may. Then if ICE wants to arrest that person, they come and pick them up and deliver them to an ICE detention facility out-of-state. Section 6 of the bill might permit law enforcement to transport immigrants to federal ICE detention facilities even if they are stopped on a non-arrestable offense.
Where?	All 100 Counties in NC	6 Counties, 1 City	All 100 Counties in NC