

Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 452 (Gonzalez) – As Amended June 14, 2021

SENATE VOTE: 30-8

SUBJECT: STATE GOVERNMENT: IMMIGRANT AND REFUGEE AFFAIRS AGENCY:
OFFICE OF IMMIGRANT AND REFUGEE AFFAIRS

KEY ISSUES:

- 1) SHOULD A CABINET-LEVEL STATE AGENCY TASKED WITH COORDINATING AND IMPROVING EXISTING AND FUTURE PROGRAMS TO ASSIST IMMIGRANTS AND REFUGEES BE CREATED IN STATE GOVERNMENT?
- 2) WOULD THE POWERS EXERCISED BY SUCH A CABINET-LEVEL STATE AGENCY BE PREEMPTED BY THE FEDERAL GOVERNMENT'S PLENARY POWERS IN THE AREAS OF IMMIGRATION AND FOREIGN RELATIONS?

SYNOPSIS

This bill, sponsored by the Coalition for Humane Immigration Rights, would establish a new Cabinet-level agency in state government, entitled the Immigrant and Refugee Affairs Agency. The agency's responsibilities would include coordinating immigrant and refugee services among state agencies; assisting state agencies in evaluating the effectiveness and reach of their services; making policy recommendations to the Governor and Legislature; and coordinating with local immigrant affairs offices to maximize the impact of the services they provide.

In our system of federalism, state governments are generally free to exercise their powers in support of the health, safety, and welfare of their residents, unless the federal government has reserved such an area to itself, has regulated that area so pervasively that there is no room for state action in the area, or has rendered it impossible to comply with both state and federal mandates in the area, or if state law would create an obstacle to the achievement of the federal government's objectives. Here, the powers to be exercised by the proposed agency are meant to enhance the welfare of immigrants and refugees in California and thus fall squarely within the scope of California's authority. As a result, there appears to be no basis for arguing that the proposed agency's powers are preempted by the federal government's supreme authority in the areas of immigration and foreign relations.

This well-intentioned bill has a wide variety of supporters, including local governments (City of Long Beach; Santa Clara County), labor unions (SEIU California; UFCW Western States), and nonprofit organizations (Latino Community Foundation; PICO California). The measure has no opposition on file.

SUMMARY: Establishes the Immigrant and Refugee Affairs Agency as a new Cabinet-level agency in state government. Specifically, **this bill:**

- 1) Creates an agency in state government, entitled the Immigrant and Refugee Affairs Agency (Agency).
- 2) Provides that the Agency is headed by a Secretary, who is appointed by the Governor, subject to Senate confirmation, and that the Secretary serves at the pleasure of the Governor.
- 3) Provides that the Secretary may appoint two Chief Deputy Secretaries, subject to Senate confirmation, and that these Chief Deputy Secretaries hold office at the pleasure of the Secretary.
- 4) Amends existing law establishing a Statewide Director of Immigrant Integration, a position already filled by gubernatorial appointment, to add refugee services to the position's portfolio. Renames the position the "Statewide Director of Immigrant and Refugee Integration" (Director).
- 5) Establishes, within the Agency, the Office of Immigrant and Refugee Affairs (Office), to be headed by the Director.
- 6) Defines "immigrant integration" as the process of improving economic mobility for, enhancing civic participation by, and improving the openness of the receiving society to, immigrants.
- 7) Finds and declares that immigrant integration requires an intentional process that incorporates the needs of immigrants, their families, and their communities into policies governing our cities, regions, and states.
- 8) Finds and declares that because immigrants make significant contributions to their regions, immigrant integration is a dynamic, two-way process in which newcomers and the receiving society both have a responsibility for integration, and both benefit as they work together to build secure, vibrant, and cohesive communities.
- 9) States that it is the Legislature's goal, in enacting this bill, to both incorporate existing programs to assist immigrants and refugees within the Office and to place future such programs within the Office.
- 10) Transfers to the Office all property of any office, agency, or department that relates to functions concerning immigrant and refugee affairs.
- 11) Delegates to the Department of General Services the responsibility of determining whether a transfer of property to the Office should be made, if there is doubt over the question.
- 12) Establishes the Immigrant and Refugee Integration Fund in the State Treasury, the moneys in which are available to the Secretary, upon appropriation by the Legislature, for the Office to expend to defray its expenses.
- 13) States that the agency's purpose shall be to enhance, and reduce obstacles to, immigrant integration into the social, cultural, economic, and civic life of the state.

- 14) Transfers to the Fund the balance of any appropriation and any other funds available for use in connection with any function, or the administration of any law, that is assigned to the Office, so long as the transferred funds are used for the purpose for which they were originally made available.
- 15) Delegates to the Department of Finance the responsibility of determining whether a transfer of funds to the Office should be made, if there is doubt over the question.
- 16) Transfers to the Office every officer and employee of any office, agency, or department who is performing a function transferred to the Office. Preserves the status, position, and rights of any such officer or employee, unless the position is exempt from the State Civil Service Act.
- 17) Sets forth the following duties for the Director:
 - a) Developing a mission statement, strategic plan, and matrix of success for the Office.
 - b) Establishing a permanent structure within the State to serve immigrants and refugees.
 - c) Assisting other state agencies in evaluating their programs for accessibility and effectiveness in providing services to immigrants and refugees.
 - d) Coordinating integration efforts among state agencies and recommending policy and budget mechanisms for meeting immigrant and refugee integration goals.
 - e) Engaging stakeholders inside and outside of government to identify key integration opportunities and challenges, and to communicate the critical importance of immigrant and refugee integration for the success of immigrants, refugees, their children, the communities in which they settle, and of the nation as a whole.
 - f) Developing and executing grant programs that directly support capacity building and training among state agencies and state and local communities through technical assistance, training, organizing, and other programs.
 - g) Identifying effective practices and successful modes of delivering services to immigrant and refugee communities.
 - h) Evaluating the need for improvements in the implementation and coordination of public policies relating to immigrant and refugee communities.
 - i) Coordinating with local immigrant affairs offices to streamline services and maximize their impact.
 - j) Creating a clearinghouse of information and referral systems for services available to immigrants.
 - k) Monitoring the implementation of statewide legislation and regulation relating to, or intended to serve, immigrants and refugees.
 - l) Engaging the federal government and federal agencies, when appropriate, to maximize effectiveness of services provided to immigrants and refugees.

- m) Making policy recommendations to the Governor and Legislature, with express authorization provided to the Office to (1) inform the Legislature of its position on any legislative proposal pending before the Legislature and to urge the introduction of legislative proposals, and (2) state its position and viewpoint on issues developed in the performance of its specified duties and responsibilities.
- 18) Restricts interagency sharing of information to demographics only. Prohibits the sharing outside the Agency of immigrants' and refugees' personal information that is obtained under this measure.
- 19) Requires the Agency to adhere to all applicable data protection laws in order to protect the information of immigrants and refugees, including, but not limited to, the California Values Act, the California Religious Freedom Act, and designated provisions of the Vehicle Code.
- 20) Forbids the Agency from using any of its resources, including, but not limited to, funds, personnel, and infrastructure, to directly or indirectly participate or assist in immigration enforcement activity.
- 21) Requires the Director to report to the Legislature on a biannual basis regarding successes and challenges in meeting immigrant and refugee integration goals.
- 22) Changes the date on which the Director must provide a comprehensive report regarding (1) programs and services that serve immigrants, and (2) a plan for better implementation and coordination of immigrant and refugee assistance policies and programs, from January 1, 2022 to January 1, 2023.
- 23) Specifies that this bill shall only become operative if an appropriation is made in the annual Budget Act or another statute.
- 24) Sunsets the provisions of this bill as of January 1, 2029.
- 25) Finds and declares that the provisions of this bill summarized in 18) – 20) above impose a limitation on the public's right of access. Finds, in order to demonstrate the interest protected by this limitation and the need to protect that interest, that in order to protect the privacy interests of immigrants and refugees, it is essential to maintain the confidentiality of the specified records.

EXISTING LAW:

- 1) Establishes the position of Statewide Director of Immigrant Integration, appointed by the Governor, to serve as the statewide lead for the planning and coordination of immigrant services and policies in California. (Government Code Section 65050.)
- 2) Requires the Director to develop a comprehensive statewide report on programs and services that serve immigrants, develop an online clearinghouse of immigrant services, resources, and programs, and monitor the implementation of statewide laws and regulations that service immigrants. (*Ibid.*)

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

COMMENTS: This bill, sponsored by the Coalition for Humane Immigration Rights, would establish a new Cabinet-level agency in state government entitled the Immigrant and Refugee Affairs Agency. The agency's proposed responsibilities include coordinating immigrant and refugee services among state agencies; assisting state agencies in evaluating the effectiveness and reach of their services; making policy recommendations to the Governor and Legislature; and coordinating with local immigrant affairs offices to maximize the impact of the services they provide.

Background and justification for this bill. California state government agencies currently administer a number of programs directed at securing the welfare of immigrant and refugees in the State. The theory underlying this bill is that creating a new Cabinet-level agency to coordinate these disparate programs would enhance their overall effectiveness.

The author writes:

California openly welcomes immigrants and refugees by providing needed support for immigrants to successfully integrate and establish themselves into our state. Many California cities and counties such as Los Angeles, San Francisco, and Santa Clara have already created a local office of immigrants in order to advance the well-being of all immigrants. These local offices provide and connect our immigrant communities to services that foster their full participation in civic life and build stronger opportunities; however, there is a lack of coordination at the state level. [...] California lacks a centralized entity with a holistic strategy that is dedicated to address the unique needs of immigrant and refugee communities.

Furthermore, the election of President Joe Biden and new leadership in the U.S. Senate [will] likely bring immigration relief to the undocumented population in our state. In the first one-hundred days, President Biden has issued a number of executive orders reversing the previous draconian policies from his predecessor, and Congress has introduced four proposals to provide a path to citizenship to eleven million undocumented immigrants. These prospects bring challenges and opportunities for the state and the establishment of this Agency is critical to make sure the state is ready.

In order to wholly welcome immigrants to California and achieve full integration of this population, the state must take a proactive approach in offering direct services and addressing rapid policy changes impacting our immigrant and refugee population. SB 452 would establish the California Immigrant and Refugee Affairs Agency. This agency would help streamline immigrant and refugee programs run by state and local offices that offer resources such as: educational opportunities, legal services, job training, and placement assistance. With more than 11 million immigrants and refugees comprising nearly one quarter of the state's population and 34% of the labor force, the new agency would be a critical asset in supporting many people who are highly underserved and disproportionately impacted by the COVID-19 pandemic, and who, nonetheless, significantly contribute to economic growth, business, and innovation in California.

The only aspect of this bill that lies within the jurisdiction of this Committee is the relation between state and federal immigration law, and therefore, that issue is the only aspect of the bill this analysis addresses.

The Immigrant and Refugee Affairs Agency would exercise powers within the State's traditional police powers. California state agencies provide numerous services, both direct and indirect, for immigrants and refugees. To take only a few examples:

- The Immigration Services Unit of the California Department of Social Services (CDSS) “ensures the effective development and implementation of programs and funding initiatives necessary to support legal services, outreach, community education, and other immigrant integration efforts...includ[ing] services to increase access to Deferred Action for Childhood Arrivals (DACA), Other Immigration Remedies (OIR), naturalization, removal defense, and immigration protection for Unaccompanied Undocumented Minors (UUMs).” (See <https://www.cdss.ca.gov/inforesources/Immigration>)
- The Refugee Programs Bureau, also part of CDSS, “oversees culturally-sensitive and linguistically-appropriate services that helps [refugees] attain the skills needed to achieve self-sufficiency and a successful integration... by partnering with counties, resettlement agencies, school districts, and community based organizations.” (See <http://www.cdss.ca.gov/inforesources/Refugees>)
- The “California Dream Act” enables undocumented immigrants who are eligible for in-state tuition to obtain financial aid to attend the California Community Colleges, the California State University, and the University of California. (Education Code Sections 66021.6, 66021.7, 69508.5, 76300.5.)
- The Secretary of State requires immigration consultants to register with it; these consultants are regulated by the Department of Consumer Affairs. (Business and Professions Code Sections 22440 *et seq.*)

All of these services fall squarely within California's police powers. “[T]he structure and limitations of federalism . . . allow the States great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.” (*Gonzales v. Oregon* (2006) 546 U.S. 243, 270 (internal quotation marks omitted).) “[Police] regulations may validly be imposed if they constitute a reasonable exertion of governmental authority for the public good.” (*In re Fuller* (1940) 15 Cal. 2d 425, 428.) The successful integration of immigrants and refugees into California communities, the provision of higher education to immigrant populations, and the supervision of professionals who provide immigration-related services are all legitimate ends to which the state's police powers may be exercised. As this bill proposes to centralize the coordination and management of such programs in order to increase the state's effectiveness in providing services to immigrants and refugees, the bill would appear to also be a valid exercise of the state's police power.

The powers delegated to the Immigrant and Refugee Affairs Agency appear not to be preempted by federal law. There is nevertheless the issue of whether California's power to create an Immigrant and Refugee Affairs Agency is preempted by the federal government's power over immigration and foreign policy. The federal government has power under the United States Constitution to “establish a Uniform Rule of Naturalization[.]” (United States Constitution, Article I, Section 8, Clause 4). The federal government also has inherent authority as a sovereign to conduct relations with foreign nations. (*United States v. Curtiss-Wright Export Corp.* (1936) 299 U.S. 304, 318 [“The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the

Constitution, would have vested in the federal government as necessary concomitants of nationality.”].)

Courts have generally recognized three forms of federal preemption of state law: express preemption, field preemption, and conflict preemption. Express preemption occurs when a federal statute contains a provision that explicitly “withdraw[s] specified powers from the States.” (*Arizona v. United States* (2012) 567 U.S. 387, 399.) Field preemption occurs when the “intent to displace state law altogether can be inferred from a framework of [federal] regulation so pervasive [...] that Congress left no room for the States to supplement it or where there is a federal interest [...] so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” (*Ibid.*, internal quotations omitted.) “In rare cases, the [Supreme] Court has found that Congress has legislated so comprehensively in a particular field that it left no room for supplementary state legislation.” (*Kansas v. Garcia* (2020) 589 U.S. ___, 140 S. Ct. 791, 804 [internal quotations omitted].) Conflict preemption generally occurs in situations where it is physically impossible to comply with both federal and state regulations, or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” (*Arizona, supra*, 567 U.S. at 399.) “The mere fact that state laws...overlap to some degree with federal [law] does not even begin to make a case for conflict preemption.” (*Kansas, supra*, 140 S. Ct. at 806.)

This bill does not appear to run afoul of any of these three forms of preemption. There is no express federal preemption of the types of immigration and refugee services that the Immigrant and Refugee Affairs Agency would coordinate. While the Supreme Court has long held that immigration policy is the exclusive domain of the federal government (*Chy Lung v. Freeman* (1876) 92 U.S. 275), this bill does not contemplate regulating immigration (which could result in a finding of field preemption) or setting up any legal framework in which federal immigration law cannot be complied with (which might trigger conflict preemption). As a result, neither field preemption, nor conflict preemption appear to be implicated. The bill also appears not to infringe on the United States’ power to conduct relations with other nations.

Moreover, the Supreme Court has recognized that “[t]he pervasiveness of federal regulation does not diminish the importance of immigration policy to the States.” (*Arizona, supra*, 567 U.S. at 397.) It is critically important for California to successfully integrate immigrants and refugees, and to give these populations the tools they need to enhance their well-being. The benefits of California doing so inure not only to these groups, but to the state as a whole. (*See, e.g.*, Assembly Joint Resolution No. 1 (Daly, Chap. 8, Stats. 2019.) [“Vietnamese Americans have enhanced California’s culture through the establishment of vibrant Little Saigon communities throughout the state that ... allow all Californians to be immersed in the richness of Vietnamese culture[.]”]).

The Supreme Court has made it clear that “[f]ederalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect.” (*Arizona, supra*, 567 U.S. at 398.) Based on the legal principles outlined above, and the fact that none of the services that would be coordinated by the contemplated Agency have been found to be preempted, it appears sufficiently clear that the powers that the Agency would exercise are squarely within the California’s sovereignty and do not run afoul of the federal government’s plenary power over immigration and foreign affairs.

To sum, enactment of the Immigrant and Refugee Affairs Agency under this bill does not present federal preemption concerns.

ARGUMENTS IN SUPPORT: Coalition for Humane Immigrant Rights (CHIRLA), the bill's sponsor, contends that California, by failing to establish a single agency to coordinate statewide immigrant and refugee policy, is lagging other states:

Despite the fact that California has the largest population of immigrants and refugees and enacted landmark legislation to support these populations, it has not created a comprehensive approach to ensure that they are fully integrated as a part of the civic and economic life of our state. Furthermore, California is behind states like Massachusetts, Nevada, and New York[, which] have established statewide offices to create a comprehensive and long-term plan to integrate immigrants in those states.

The UCLA Latino Policy and Politics Initiative (LPPI) provides empirical evidence to support the creation of the Immigrant and Refugee Affairs Agency:

LPPI researchers ... found that undocumented Californians [had] the highest rate of unemployment of any demographic group between February and April in 2020, that during COVID-19 their wages fell by more than 18% in California, and yet, this demographic generates an estimated \$63 billion to the state's economy. In fact, LPPI's report, "Undocumented During COVID-19: Essential for the Economy but Excluded from Relief," found the exclusion of undocumented residents and their families from the \$1,200 given to taxpayers under the CARES Act resulted in a loss of \$10 billion in potential economic output in the U.S., and an estimated loss of 17,000 jobs in California alone. This adds to a growing body of research from LPPI that suggests mixed status families and immigrant Californians are being left behind in relief and recovery efforts, from unemployment insurance benefits to the ability to comply with shelter in place/stay at home orders and equitable vaccine access. Yet, these communities are integral to California's recovery and have shouldered a significant burden in maintaining the state's standing as the world's fifth largest economy.

Ultimately, California requires evidence-based policy solutions to expand opportunity and ensure dignity for the state's almost 11 million immigrants, and one in four native-born citizens with at least one immigrant parent. California has the nation's largest population of immigrants and refugees, but lacks a comprehensive approach to integrate the policies and programs that currently exist to serve this population. Ultimately, SB 452 is a necessary intervention, and will centralize services for this demographic and ensure accountability to outcomes at a time when providing relief to undocumented workers outweighs the costs, ultimately generating more revenue for the state.

Prior Related Legislation: AB 2973 (Santiago, 2020), a substantially similar measure to this bill, would have established the Office of Immigrant and Refugee Affairs as a new Cabinet-level agency in state government. AB 2973 passed out of this Committee, but was placed on the suspense file by the Assembly Appropriations Committee.

AB 1113 (Chiu, 2019) was substantially similar to both this bill and AB 2973. AB 1113 passed out of this Committee, but was placed on the suspense file by the Assembly Appropriations Committee.

SB 84 (Budget and Fiscal Review, Chap. 25, Stats. 2015) established a Statewide Director of Immigrant Integration to serve as the statewide lead for the planning and coordination of immigrant services and policies in California.

SB 10 (Lara, Chap. 22, Stats. 2015), as introduced, would have established the California Office of New Americans to create a centralized office to lead and assess challenges and opportunities to coordinate the implementation of immigrant integration legislation. The bill was later amended to authorize the State to apply for a waiver from federal authorities in order to permit individuals previously ineligible because of their immigration status to obtain health coverage through the California Health Benefit Exchange.

SB 1 (Cedillo, 2007), as introduced, would have created the Office of Immigrant Affairs within the Department of Community Services & Development in order to ensure the integration and civic participation of new citizens in the State. The bill was later amended to address financial aid for higher education. In that form, it passed the Legislature, only to be vetoed by then-Governor Schwarzenegger.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Humane Immigrant Rights (CHIRLA) (sponsor)
California Faculty Association
City of Long Beach
County of Santa Clara
Latino Community Foundation
Mayor Eric Garcetti, City of Los Angeles
National Association of Social Workers, California Chapter
National Partnership for New Americans
PICO California
SEIU California
UCLA Latino Policy and Politics Initiative
UFCW Western States Council
World Education Services

Opposition

None on file

Analysis Prepared by: Jith Meganathan / JUD. / (916) 319-2334