



Immigration Reform

The National Conference of State Legislatures (NCSL) recognizes the challenges facing our country in matters related to immigration. Federal immigration policy must strike a balance among core principles of our democracy: preserving the safety and security of our nation, encouraging the economic strength of our states and communities, and recognizing our history as a nation of immigrants. The Constitution sets out the parameters of the federal government's jurisdiction over immigration policy. This traditionally has included admissions and terms and conditions for work and residence. However, the impact of the federal government's immigration policy decisions are directly felt by the states. States and localities implement programs required by federal law, provide services mandated by the courts, and initiate programs and policies to address the specialized needs of immigrants and encourage their integration into the economic, social and civic life of their adopted communities. States often bear the costs of immigration, especially in our education, health and law enforcement systems, with limited federal reimbursement.

State legislators call on Congress and the Administration to pursue comprehensive immigration reform that enhances our border security and addresses the inequities in the current system. Immigration reform and implementation requires true collaboration between state and federal leaders. Our nation's immigration laws must not contain unfunded mandates nor preempt areas of existing state authority. Federal immigration reform will not be comprehensive unless it addresses the impact of immigration on the states.

Border Security & Enforcement

Securing all of America's borders, ports, and airports, is essential to preserving our national security and maintaining the safety of all Americans. NCSL urges the federal government to fulfill its responsibilities with regard to border security and encourages a renewed state-federal cooperation in countering human trafficking and drug smuggling.

NCSL supports full, appropriate and necessary federal funding for increases in Department of Homeland Security border enforcement personnel and for improvements in technology and infrastructure. Investments in technology and infrastructure can effectively leverage manpower and maximize the capacity of federal border enforcement agents in securing the borders. Related to efforts against human trafficking and drug smuggling, states have been leaders in addressing these concerns. We encourage the federal government to increase its enforcement of these crimes. The federal government should plan and fully fund the required services and facilities related to these crimes.



State lawmakers are also concerned about interior enforcement. Employment verification is a critical component of enforcement requiring federal reforms. NCSL reaffirms that states have the right to provide incentives and sanctions to encourage compliance. State governments are also employers, and we oppose efforts to treat state governments differently from the private sector in meeting federal employment verification requirements.

The Role of State and Local Law Enforcement

NCSL has long-standing policy (“Immigration Law Enforcement”) related to the role of state and local law enforcement in immigration law. State legislators believe that enforcement of federal immigration laws is a federal responsibility. State involvement in enforcement of our nation’s immigration law should be at state option under the current Memorandum of Understanding (MOU) process provided for in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

NCSL holds firmly that states do not have “inherent authority” to enforce federal civil immigration law. We also oppose efforts to perpetuate this myth of “inherent authority” indirectly by shifting federal responsibility of immigration enforcement to state and local law officers through the criminalization of *any* violation of federal immigration law. State and local government law enforcement and public safety personnel are already asked, without the benefit of adequate federal assistance, to incarcerate, detain and transport illegal immigrants who have committed crimes. Making unlawful presence a crime would force state and local law enforcement agencies to educate themselves in the vast complexities of civil immigration law and regulation without the benefit of federal training and expertise, and with little, if any, likelihood of adequate federal funding. NCSL is strongly opposed to any efforts to shift enforcement of civil immigration laws to state and local law enforcement agencies.

State lawmakers do support the existing MOU process that gives states and localities the option to enter into a voluntary formal agreement with the U.S. Department of Justice and the U.S. Department of Homeland Security. When training under the MOU process is fully funded by the federal government, this is a viable way to give communities the choice of whether local enforcement of federal immigration laws is appropriate for them. NCSL supports efforts to provide adequate federal funding for training of law enforcement personnel in states who choose to enter MOUs.

NCSL strongly supports full reimbursement to states for the State Criminal Alien Assistance Program (SCAAP). The current SCAAP program only provides 25% reimbursement of current costs, according to a recent General Accountability Office study. NCSL also opposes any effort to coerce state participation in enforcement of federal immigration law by withholding SCAAP program funds.

Unfunded Mandates and Cost-Shifts to States

CBO has estimated significant costs to the states in education and health care systems. The 1996 federal welfare law established a five year bar on SCHIP/Medicaid, food stamps, TANF and SSI



for legal immigrants. Yet, state governments are still the providers of last resort, particularly in protecting public health and public safety and providing emergency health care. State governments also fund and provide critical English-language instruction and public education to newcomers that is essential for promoting public safety, reducing community tensions and integrating newcomers into our communities, including those who might be here on a temporary basis. Most immigration reform proposals in Congress would impose significant cost-shifts to state and local government. NCSL urges Congress to include in immigration reform a funding stream to address the entire fiscal impacts on state governments of any guestworker program, earned legalization and/or increases in the number of immigrants. Such funding should be subject to appropriation by state legislatures so that it can be best targeted to the state's individual needs including government, faith-based or non-profit institutions, most in need of the support.

Temporary Worker Program

NCSL supports the creation of a temporary worker program. It is our view that a temporary worker program goes hand-in-hand with achieving true border security. Providing a legal channel for those that want to come to our country for work will reduce illegal border crossings and enable our federal law enforcement agents to focus their efforts on individuals attempting to enter or already in the country for the purpose of doing our nation harm. A temporary worker program will also strengthen many sectors of our economy by providing a legal workforce.

With the creation of a temporary worker program, concerns arise about the provision of health and education services to the temporary workers. The idea of requiring sending countries to subsidize some of these costs should be further investigated. We encourage Congress to consider such ideas on a demonstration project level. We look forward to working with Congress and with the U.S. Department of Homeland Security to determine the best way to prevent cost-shifts to state government for these costs.

Earned Legalization

NCSL affirms the right and responsibility of the federal government to determine federal immigration policy, including the existence and form of any earned legalization program. NCSL reiterates our existing policy supporting the promotion of citizenship as a national priority. Efforts should be made and sufficient resources should be allocated to facilitate the naturalization process in a timely manner. NCSL supports the creation of an earned legalization program for illegal immigrants currently in the country. Illegal immigrants are living and working in our communities. They are our neighbors and as both workers and entrepreneurs they contribute to the economic vitality of our nation. Our schools are making investments in children from "mixed-status" households where the parents are illegal immigrants, yet the children are citizens. A mass deportation or crackdown on illegal immigrants currently in the country would have detrimental impacts on our communities.

An earned legalization program should not offer amnesty. Rather, it should offer a punishment that is proportional to the offense. Those immigrants who accept punishment and indicate their willingness to become full members of our society should have the opportunity to do so.



Encouraging immigrants to come out of the shadows will lead to safer and more secure communities, by allowing law enforcement officials to focus their efforts on those who wish to do the community harm.

* NCSL has many other policies related to immigration including:

Refugee Assistance and Immigration Reform

Nutrition Assistance

State Authority Over Drivers' Licensing and Birth Certificates

Federal Funding to Assist States with Health Profession Shortages

Medicare Prescription Drug Reform (Medicaid section and emergency health care)

SCHIP

Immigration Law Enforcement

Identity, Security, Driver's Licenses and State Identification Cards

Adopted NCSL Executive Committee Task Force on Immigration and the States May 5, 2006

Adopted NCSL Executive Committee May 6, 2006

Adopted NCSL Business Meeting August 17, 2006