

IMPACT STATEMENT

Legislation title: Authorize City Attorney to sue or join as a party in litigation challenging federal government's refusal to disburse certain statutorily mandated funds to Oregon jurisdictions. (Resolution)

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Purpose of proposed legislation and background information:

The City of Portland is a welcoming city, a sanctuary city, and an inclusive city for all. The City embraces, celebrates, and welcomes the collective contributions of all persons, cherishing and respecting people of every race, color, national origin, immigration or refugee status, heritage, culture, religion, sex, gender identity and gender expression, sexual orientation, ability, age, and economic status. The City, in a manner consistent with state and federal law, prohibits the use of City funds, personnel, or equipment to enforce federal immigration law.

Despite repeated court losses, the Trump administration has taken steps to deny certain federal grants to jurisdictions that do not share its immigration-enforcement priorities. One of those grants is the Byrne Justice Assistance Grant ("Byrne JAG"), which is appropriated by Congress for local law-enforcement purposes. The Trump administration requires any jurisdiction that wishes to receive the Byrne JAG funds to which it is entitled by statute to certify that it will comply with the federal government's interpretation of Section 1373, a federal immigration statute, and help the federal government enforce federal immigration laws.

Federal courts have held that Congress "did not impose any immigration enforcement conditions" on the receipt of Byrne JAG funds—"In fact, Congress repeatedly *refused* to approve of measures that would tie funding to state and local immigration policies"—that Section 1373 is unconstitutional under the Tenth Amendment, and that "the Attorney General has no authority to demand compliance with Section 1373 * * * under the Byrne JAG statute." *City of Chicago v. Sessions*, 888 F.3d 272, 277 (7th Cir. 2018) (emphasis added); *City of Chicago v. Sessions*, __ F. Supp.3d __, 2018 WL 3608564 (N.D. Ill. July 27, 2018). But the federal government has, up to now, ignored those adverse court rulings by continuing to impose or attempting to impose the unlawful conditions struck down by the courts to current Byrne JAG awards, and by imposing the same unlawful conditions to future Byrne JAG applications.

In October 2018, after more than a year of delay, the federal government issued its fiscal year 2017 Byrne JAG award to the City after the United States Conference of Mayors won a preliminary injunction barring the federal government from imposing those unlawful immigration conditions against members of the United States Conference of Mayors, which includes the City. But, despite issuing the City its 2017 Byrne JAG award, the federal government is still fighting that preliminary injunction and arguing that it can require the City

to comply with the federal government's interpretation of Section 1373 and help the federal government enforce federal immigration laws as a condition of receiving those Byrne JAG funds. The federal government has also failed to award the City the fiscal year 2018 Byrne JAG funds to which it is entitled by statute.

The 2017 Byrne JAG award totals \$385,515 that Congress has appropriated in law-enforcement funding for the City and its subgrantees. Of those funds, \$296,723 are to be retained by the City for its Police Bureau, and \$88,792 are to be passed on to subgrantee City of Gresham for its Police Bureau.

The 2018 Byrne JAG award should have totaled \$391,694 in Congressionally approved funding. Of those funds, \$189,585 were to be retained by the City for its Police Bureau, \$148,960 were to be passed on to subgrantee Multnomah County for its District Attorney's Office, and \$53,149 were to be passed on to subgrantee City of Gresham for its Police Bureau.

The proposed legislation would empower the City Attorney's Office to file a complaint or join as a co-plaintiff with the State of Oregon in a complaint against the federal government and its officials to secure the City's entitlement to Byrne JAG funds without being unlawfully required to collaborate with the federal government in enforcing federal immigration laws.

Financial and budgetary impacts:

There would be no direct financial and budgetary impact on the City from the conduct of the litigation itself. The litigation will be conducted using existing resources within the City Attorney's Office. However, if successful, the litigation, will secure \$296,723.00 in funding for the City of Portland Police Bureau for fiscal year 2017, and \$189,585 in funding for the City of Portland Police Bureau for fiscal year 2018.

Community impacts and community involvement:

This litigation would secure federal funding that is used to support select programs in the Portland Police Bureau, contributing to the safety of all Portland residents. In addition, this litigation will further the City's commitment to being a welcoming city, a sanctuary city, and an inclusive city for all, by vindicating the City's right to decline to use its funds, personnel, or equipment to enforce federal immigration law.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES:** Please complete the information below.
- NO:** Skip this section