



Prince George's County, Maryland
Inter-Office Memorandum
Office of Law

LEGISLATIVE COMMENT

DATE: March 2, 2026
TO: David Murray, Council Administrator
THRU: Anthony D. Jones, County Attorney
THRU: Jason A. Alston, Deputy County Attorney
FROM: Terry L. Bell, Associate County Attorney
RE: CB-5-2026

The Office of Law has reviewed the above referenced emergency bill as it was presented February 17, 2026, and finds that there could potentially be a challenge to the bill based on a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

The bill provides that no appointing authority shall fill or request to fill any vacant position in the classified service or the exempt service with a candidate who was employed by the U.S. Custom and Border Protection and the U.S. Immigration and Customs Enforcement (ICE) after June 30, 2025.

The Equal Protection Clause of the Constitution mandates that no state shall deny any person within its jurisdiction the equal protection of the laws. It requires the government to treat similarly situated people in a similar manner, prohibiting unjust discrimination based on race gender or other classifications.

Here, CB-5-2026 treats Custom and Border and ICE employees who were employed before June 30, 2025, different than those employed after June 30, 2025. If you were hired after June 30, 2025, there is a blanket prohibition that “No appointing authority shall fill or request to fill any vacant position in the classified service or the exempt serve with a candidate who was employed by the following federal agencies...”. However, if you were hired prior to June 30, 2025, there is

no prohibition in hiring. Further, the *blanket* prohibition of hiring employees previously employed by the Custom and Border Protection and ICE includes all previous employees, irrespective of their previous position, title or duties. This could lead to a challenge by an employee denied consideration for County employment if they were employed after June 30, 2025, based on a violation of the Equal Protection Clause.

Delegate Adrian Boafo sponsored a similar bill in the Maryland General Assembly - House Bill 832, entitled “Public Safety – State Law Enforcement Agencies – Hiring Restriction (ICE Breaker Act),” which prohibits State law enforcement agencies from hiring individuals who were hired as *sworn officers* by the United States Immigration and Customs Enforcement after January 20, 2025. The current status of the bill is that it has been referred to a committee in the General Assembly.

In the interim, Delegate Boafo requested an analysis of the constitutionality of HB 832 from the Attorney General Office. On February 18, 2026, an opinion was issued by Natalie Bilbrough, Assistant Attorney General, in which there was an analysis of the applicability of the Equal Protection Clause among other claims addressed in the opinion. (See attached)

Here, the Office of Law further aligns its opinion regarding the Equal Protection Clause discussion with the findings of the Attorney General’s Office as noted below:

If HB 832 is challenged under the Equal Protection Clause or its State Constitution Counterpart, a reviewing court would first ask whether the law treats similar people differently, e.g., ICE officers hired after January 20, 2025 versus those hired before that date. If the court finds unequal treatment, it decides what standard of scrutiny to apply. Strict scrutiny—the toughest standard—applies only if the law affects fundamental rights or targets a protected group. House Bill 832 does neither, so normally it would receive rational basis review, meaning the classification must rationally relate to a legitimate government interest.

However, under Maryland case law interpreting Article 24 of the Maryland Declaration of Rights, laws that entirely deny a class the ability to pursue their livelihood receive “heightened rational basis review.” *Moore v. Maryland Hemp Coal.*, 267 Md. App. 169, 228 (2025). This means that courts “will only uphold a statute if it bears a real and substantial relation to the problem addressed by the statute.” *Id.* (cleaned up). When analyzing the challenged law, courts will consider “only those purposes that are obvious from the text or legislative history of the enactment, those plausibly identified by the litigants, or those provided by some authoritative source.” *Id.* (citation omitted).

Since House Bill 832 appears to leave open some opportunity for the covered former ICE officers to pursue law enforcement positions in local government, a court might not apply heightened rational basis review. See *id.* at 230 (declining to apply heightened rational basis review because the law did not impose a blanket ban on participating in the cannabis market). If heightened rational basis review was applied, then for House Bill 832 to survive, the legislative record would need to provide a clear, rational basis demonstrating why all sworn ICE officers hired after January 20, 2025 must be excluded from State law

enforcement employment in any capacity, and why other, potentially similarly-situated individuals need not be included in the bill's scope to accomplish the bill's objective. This is not an impossible standard to meet, but the outcome would ultimately depend on the facts and evidence in the record before the court.

Again, in CB-5-2026, based on the aforementioned analysis, there could be a challenge to the bill, as it treats candidates who started employment after June 30, 2025, different than those who started prior to June 30, 2025, if they were employed by the Customs and Border Protection or ICE. Also, there is a blanket prohibition for an appointing authority to fill or request to fill any vacant position in the classified service or the exempt service. Although the reviewing Court may use the rational basis standard, the potential for a challenge under the Equal Protection Clause still exist.