



Ohio Legislative Service Commission

Bill Analysis

Wendy H. Gridley

Am. S.B. 35

128th General Assembly
(As Passed by the Senate)

Sens. Stewart, Seitz, Cates, Faber, Gibbs, Harris, Niehaus, Patton, Schaffer, Schuring

BILL SUMMARY

- Directs the Ohio Attorney General to pursue a memorandum of agreement with the United States Attorney General concerning the enforcement of federal immigration laws in Ohio.
- Requires the Ohio Attorney General to designate the appropriate law enforcement officers to be trained, as specified in the memorandum, in the enforcement of the relevant federal immigration laws.

CONTENT AND OPERATION

State enforcement of immigration laws

The federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorizes the United States Attorney General to enter into a written agreement with a state or political subdivision of a state that allows a qualified state or political subdivision officer or employee to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States, including the transportation of aliens across state lines to detention centers, at the expense of the state or political subdivision and to the extent consistent with state and local law (8 U.S.C. 1357(g)(1)). The IIRIRA specifies requirements for an agreement and provisions that must be included in an agreement (8 U.S.C. 1357(g)(2) to (10)) (see **COMMENT**).

The bill directs the Ohio Attorney General to pursue a memorandum of agreement under the IIRIRA between the state of Ohio and the United States Attorney General, or the appropriate federal agency the United States Attorney General designates, to permit the enforcement of federal immigration laws in Ohio, both criminal and civil, including the apprehension, detention, and investigation of illegal

aliens located in Ohio. (R.C. 109.45(A).) Once a memorandum of agreement is entered into, it must be signed on behalf of Ohio by the Ohio Attorney General or as otherwise required by the memorandum. (R.C. 109.45(B).)

Any memorandum of agreement entered into under the bill would enable designated and specially trained Ohio law enforcement officers to enforce federal immigration laws in Ohio. The bill directs the Ohio Attorney General to designate appropriate law enforcement officers to be trained in the enforcement of the relevant federal immigration laws as specified in the memorandum of agreement. (R.C. 109.45(C)(1).) A law enforcement officer who is certified as trained to enforce the federal immigration laws would enforce those laws while performing within the scope of the officer's authorized duties. (R.C. 109.45(C)(2).) The bill specifies that no law enforcement officer may enforce the federal immigration laws unless that officer has received the requisite training.

The bill states that the participation of any local law enforcement agency in a memorandum of agreement entered into by the Attorney General is permissive.

COMMENT

8 U.S.C. 1357(g)(2) to (10) provides as follows:

"(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set

forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code [[5 USCS §§ 8101](#) *et seq.*] (relating to compensation for injury), and sections 2671 through 2680 of title 28, United States Code (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State--

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States."

HISTORY

ACTION	DATE
Introduced	02-10-09
Reported, S. State & Local Gov't & Veterans' Affairs	03-24-10
Passed Senate (21-11)	03-24-10

s0035-ps-128.docx/kl

