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Bill Analysis
Legislative Service Commission

Am. S.B. 260
127th General Assembly
(As Passed by the Senate)

Sens. Cates, Mumper, Seitz, Schuring, Faber, Spada, Austria, Fedor, Wagoner, Buehrer, Carey, Harris, Niehaus, Padgett, Schaffer, Stivers

BILL SUMMARY

- Authorizes a county sheriff, at the direction of the board of county commissioners and upon the request of federal immigration officials, to take custody of persons being detained for deportation or who are charged with civil violations of federal immigration law.
- Authorizes a county sheriff to render assistance to federal immigration officials, upon the request of those officials, in matters (1) related to the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law and (2) related to the investigation of businesses suspected of employing aliens who violate criminal or civil provisions of federal immigration law.
- Clarifies that state and local employees, when rendering assistance to federal immigration officials, may assist in the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law.

CONTENT AND OPERATION

Background

Ohio law generally provides that no state or local employee shall unreasonably fail to comply with any lawful request for assistance made by federal authorities carrying out the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the President pertaining to homeland security. (R.C. 9.63.) Although this provision evidences a state-wide policy requiring state and local officials to cooperate with federal immigration officials

who request assistance during a federal immigration investigation,¹ it does not confer any express enforcement authority on a county sheriff. A county sheriff, among other duties, has express authority to preserve the public peace within a county. (R.C. 311.07.) As explained in 2007 Op. Att'y Gen. No. 2007-018, a county sheriff's duty to preserve the public peace includes the concomitant authority to arrest and detain aliens who violate a *criminal* provision of federal immigration law.² Certain provisions of federal immigration law may subject an alien to criminal prosecution,³ but other provisions involve civil penalties and civil administrative processes. Because civil violations of federal immigration law historically do not constitute a breach of the peace, a county sheriff's duty to preserve the peace has been construed to apply only to the enforcement of criminal immigration laws rather than civil immigration laws. (See 2007 Op. Att'y Gen. No. 2007-018; 2007 Op. Att'y Gen. No. 2007-029.)

The bill

The bill, therefore, authorizes a county sheriff, upon the request of federal immigration officials, to render assistance to those officials (1) related to the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law and (2) related to the investigation of businesses suspected of employing aliens who violate criminal or civil provisions of federal immigration law. (R.C. 311.07(A).) A federal immigration investigation, under the bill, includes all activities of federal immigration officials related to the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law. (R.C. 9.63(A).)

A board of county commissioners is authorized by current law to direct the sheriff to take custody of prisoners charged with or convicted of federal crimes. The bill expands this authority to include, upon the request of federal immigration

¹ See generally, Ohio Legislative Service Commission Final Analysis of S.B. 9 of the 126th General Assembly at p.19.

² A board of county commissioners may direct the sheriff to take custody of prisoners charged with or convicted of federal crimes. Contractual arrangements may be made between the county and the United States for the use of the jail at the expense of the federal government. (R.C. 341.21.)

³ For example, under 8 U.S.C. § 1304(e), failure to carry a certificate of alien registration or alien registration receipt card may subject an alien to criminal sanctions. In addition, 8 U.S.C. § 1325 authorizes the imposition of criminal penalties when an alien has entered or attempted to enter the U.S. at any time or place other than as designated by immigration officials.

officials, those persons being detained for deportation or charged with a civil violation of immigration law by federal immigration officials. (R.C. 341.21(A).)

Although state or local employees have general authority under current law to assist federal immigration authorities, the bill clarifies that they, in addition to county sheriffs, may assist in the investigation, apprehension, and detention of aliens who violate criminal or civil provisions of federal immigration law. (R.C. 9.63.)

HISTORY

ACTION	DATE
Introduced	11-21-07
Reported, S. State & Local Gov't & Veterans Affairs	04-15-08
Passed Senate (31-0)	04-16-08

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