



Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

H.B. 605

130th General Assembly
(As Introduced)

Reps. J. Adams and Retherford, Beck, Becker, Buchy, Hood, Lynch, Maag

BILL SUMMARY

- Prohibits state agencies, including state institutions of higher education and other instrumentalities of the state, from entering into an agreement with the federal government to provide temporary housing for illegal aliens.
- Makes a political subdivision and its agencies or a person that enters into an agreement with the federal government to provide temporary housing for illegal aliens ineligible to receive state funds while the agreement is in effect.

CONTENT AND OPERATION

Temporary housing for illegal aliens

Prohibition

The bill prohibits any state agency, including state institutions of higher education and other instrumentalities of the state,¹ from entering into an agreement with the federal government, or with a person with which the federal government has entered into an agreement, to provide temporary housing for aliens who are not legally present in the United States (see **COMMENT**, below).² The bill defines a "person" as including an individual, corporation, business trust, estate, trust, partnership, association, and limited liability corporation.³ A "state institution of higher education" is any state university or college, community college, state community college, university

¹ R.C. 9.05(A)(3); R.C. 3345.011, not in the bill.

² R.C. 9.05(B)(1).

³ R.C. 9.05(A)(1); R.C. 1.59, not in the bill.

branch, or technical college. The state universities are: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University. The bill also includes in the term the Northeast Ohio Medical University and its board of trustees.⁴

Ineligible for state funds

Under the bill, if a political subdivision, including any agency of a political subdivision, or a person, enters into an agreement with the federal government, or with a person with which the federal government has entered into an agreement, to provide temporary housing for aliens who are not legally present in the United States, the political subdivision or person is not eligible to receive state funds from any source, including local government funds, while the agreement is in effect.⁵

COMMENT

The bill may be questionable under the principle of conflict preemption. The United States Supreme Court has ruled that although the federal government cannot regulate state or local government officers or compel them to enact or administer a federal regulatory program,⁶ the federal government nonetheless can seek voluntary cooperation from state and local governments. The bill prohibits voluntary cooperation with the federal government and might be questioned under the principle of conflict preemption.

Conflict preemption arises from Congress' constitutional power to preempt state law.⁷ Even without an express provision for preemption, state law must yield to a congressional act when Congress intends federal law to occupy the field. And even if Congress has not occupied the field, state law is preempted to the extent of any conflict with a federal statute. The United States Supreme Court held that it would find conflict preemption where it is impossible for a private party to comply with both state and federal law, and where under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes

⁴ R.C. 9.05(A)(3); R.C. 3345.011 and 3345.12, not in the bill.

⁵ R.C. 9.05(A)(2) and (B)(2).

⁶ *Printz v. United States*, 521 U.S. 898 (1997).

⁷ United States Constitution, art. VI, cl. 2.



and objectives of Congress.⁸ Because the bill also applies to a private person who enters into an agreement with the federal government for temporary housing of illegal aliens, a court could find that federal law preempts the bill because the person could not comply with both the bill and federal law.

HISTORY

ACTION	DATE
Introduced	08-05-14

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⁸ *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

