State Refugee Resettlement Bills

Tennessee Senate Bill 1325 (2013)

Tennessee Senate Bill 1325

SB 1325 amends current Tennessee law, the “Refugee Absorptive Capacity Act.” Basically, this bill adds new, onerous reporting requirements and charges resettlement agencies in Tennessee for costs associated with the resettlement of refugees in the state.

Current Law in Tennessee

In 2011, Tennessee passed a law entitled, “Refugee Absorptive Capacity Act.” In general, this law regulates the resettlement of refugees in Tennessee. Among other things, it requires the state office that administers refugee resettlement (the Tennessee Office for Refugees) to plan and coordinate with local governments for the resettlement of refugees. It also mandates that certain reports be filed with the state legislature.

To understand the law, it is necessary to comprehend the statutory definitions of “absorptive capacity,” and the “Tennessee office of refugees.”

“Absorptive capacity” is defined by the statute to mean:

a determination made by a local government evaluating, for a host community within that jurisdiction: (A) [t]he capacity of the community’s social service and healthcare agencies to meet the needs of the community’s current residents; (B) [t]he availability of affordable housing, low-cost housing, or both, and existing waiting lists for such housing in the community; (C) [t]he capacity of the local school district to meet the needs of the existing or anticipated refugee student population; and (D) [t]he ability of the local economy to absorb new workers without causing competition with local residents for job opportunities, displacing exiting local workers or adversely affecting the wage or working conditions of the local workforce. Tenn. Code Ann. Section 4-38-102(1).

The statute defines “Tennessee [O]ffice for [R]efugees” as “the state office which administers the refugee program for this state, or the entity or agency to whom the state has delegated such functions and that has been designated and recognized by the federal government to administer such program.” Tenn. Code Ann. Section 4-38-102(3).

The Refugee Absorptive Capacity Act requires the Tennessee Office for Refugees to collect data about refugees and share it with the state legislature and local governments. The Tennessee Office for Refugee’s reporting requirements include:

1. Provide a quarterly report to representatives of local government to plan and coordinate the appropriate placement of refugees in advance of their arrival, and appear before the local government to provide additional information if requested.
2. Ensure that representatives from local resettlement agencies meet with local social service agencies, and other publicly-funded or tax-exempt agencies that serve refugees
and, upon request, meet with representatives of local government to plan and coordinate the placement of refugees in the host community in advance of the refugees’ arrival.

(3) Execute a letter of agreement with each refugee resettlement agency in the state.

(4) At least quarterly, provide to various members of the state legislature, and to the chairman of the budget committee of either the city council or the county legislative body regulating the host community copies of: (A) the letters of agreement; (B) any initial refugee placement plans prepared pursuant to letters of agreement; and (C) any communications received and responded to pursuant to subdivision (5).

(5) Ensure that residents of host communities and representatives of local governments are aware that any and all concerns regarding local refugee resettlement activities in the host community shall be filed with the Tennessee Office for Refugees and, further, that the Tennessee Office for Refugees shall respond timely in writing to all such communications. Tenn. Code Ann. 4-38-103.

The final section of the Refugee Absorptive Capacity Act allows a local government to request a moratorium of one year on any new refugee resettlement. Tenn. Code Ann. Section 4-38-104. For a moratorium, the local government must document that the host community lacks absorptive capacity and that further resettlement of refugees in the host community would result in adverse impact to existing residents.

**Tennessee Senate Bill 1325**

SB 1325 amends the Refugee Absorptive Capacity Act in significant ways. Along with adding a new definition -- “refugee resettlement agency” -- to the current statute, it mandates a new reporting requirement for the Tennessee Office for Refugees. Pursuant to the bill, the Tennessee Office for Refugees must collect on a quarterly basis: (A) The total number of refugees resettled by the agency as well as the total number of refugees resettled in specific age groups; (B) the public assistance benefit programs that refugees have applied for or enrolled into; and (C) the number of refugee minors enrolled in the public school systems and whether such minors access English language learner services.

In addition, SB 1325 compels the Tennessee Office for Refugees to compile this information into an annual report and provide it to the representatives of affected local governments, various committees in the Senate and House of Representatives, and the Commissioner of Finance and Administration.

Moreover, based upon this information provided to the state, SB 1325 obliges the Commissioner of Finance and Administration to determine the costs associated with resettling refugees and must charge the refugee resettlement agency for those costs. The refugee resettlement agency must pay the invoice within one month of the date on the invoice. SB 1325 places a cap on the amount that the refugee resettlement agency must pay to the state – it can pay up to and including the entire amount it receives from the U.S. government for refugee reception and

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1SB 1325 defines “refugee resettlement agency” to mean any agency or organization that “receives federal funding for refugee reception and placement resettlement services or other federal grants intended to support refugee resettlement activities.”
placement services. Along with the payment, the refugee resettlement agency must send documentation of the amount of funds it obtained from the U.S. government, the state of Tennessee or any political subdivision of Tennessee.

Further, SB 1325 directs how the funds collected from the resettlement agencies will be distributed. For instance, the funds that are Medicaid funds must be allocated to the Department of Intellectual and Developmental Disabilities. According to SB 1325, all other funds collected must be allocated to various affected state agencies and political subdivisions in the state to reimburse the agencies and subdivisions of expenses associated with refugee resettlement. A fund called the “Reimbursement for Refugee Resettlement Fund” is designated to hold the moneys collected until reimbursement is made.

Lastly, SB 1325 allows the Commissioner of Finance and Administration to promulgate rules and regulations to effectuate the purposes of the bill. The effective date of the bill is July 1, 2013.

**Legal and Policy Analysis**

Two over-arching concerns exist with SB 1325. The first concern involves the additional reporting obligations that the Tennessee Office for Refugees must undertake to comply with the bill. The second concern is the requirement that the Commissioner of Finance and Administration charge the resettlement agencies for the costs associated with resettling refugees in the state and the responsibility of the resettlement agencies to pay these costs.

It seems likely that most of the reporting requirements do not violate the U.S. Constitution or federal or state law. However, this particular issue may be best addressed by the United States Conference of Catholic Bishops (USCCB) as it is most familiar with the federal and state laws involving refugee resettlement.

The section of the bill that forces the Commissioner of Finance and Administration to bill the resettlement agencies for costs associated with resettling refugees in the state is much more problematic for the reasons set forth below.

**Public elementary and secondary education is not a reimbursable expense.**

It is unlikely that Tennessee can request reimbursement from resettlement agencies for the cost associated with refugee children attending public schools and accessing English language learner services. Indeed, every state, including Tennessee, requires children to enroll in public or private education or to be home-schooled. Tenn. Code Ann. 49-6-3001. While the age-requirement differs by state, all children are required to continue their education into their high school years.\(^2\) In addition, Tennessee’s statute explicitly provides that elementary and secondary education is free -- “[t]he public schools shall be free to all persons residing within the state above five (5) years of age or who will become five (5) years of age on or before September 30.” Tenn. Code Ann. 49-6-3001(a) (emphasis added). Refugee children who are resettled in Tennessee

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clearly reside in the state and by law are entitled to a free public education in elementary and secondary school.

Along with state law, federal law too provides for free public school education for students residing in the U.S. Indeed, children, regardless of their immigration status, have a right under the U.S. Constitution and federal law to an elementary and secondary education in public schools. School Districts across the nation were recently reminded of this right of equal access to public education by the U.S. Department of Justice and the U.S. Department of Education in a Memorandum dated May 6, 2011. “Under federal law, State and local educational agencies (hereinafter ‘districts’) are required to provide all children with equal access to public education at the elementary and secondary level.” Immigrant children do not need a green card, visa, passport, alien registration number, social security number or any other proof of citizenship or immigration status in order to register for school. They also do not need to pay for their education in the public schools.

The right to a free public education was established in 1982 with the U.S. Supreme Court’s decision in Plyler v. Doe. In this case, the Supreme Court struck down a Texas state statute that barred undocumented children from public education. According to the majority opinion, the Texas statute was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. (The Equal Protection Clause provides that no State shall “deny to any person within its jurisdiction the equal protection of the law.”)

In the decision, Justice Brennan, writing for the majority, notes the importance of education in preventing an underclass and in promoting integration into society. The court stated, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” It also pointed out that America has long recognized public schools as “a most vital civic institution for the preservation of a democratic system of government” and “as the primary vehicle for transmitting ‘the values on which our society rests.’” The court held that, “In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”

In summary, both state and federal law have recognized that states are required to provide all children with equal access to public education at the elementary and secondary school level. The Commissioner of Finance and Administration cannot charge a refugee resettlement agency for the costs of educating refugee children enrolled in public elementary or secondary schools as this policy/practice would likely violate the U.S. Constitution, federal law and Tennessee law.

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6 Plyler v. Doe, 457 U.S. at 223.
8 Id. at 221.
Additionally, the requirement that the Tennessee Office for Refugees report “the number of refugee minors enrolled in the public school systems and whether such minors access English language learner services,” may conflict with federal privacy laws. In general, refugee resettlement agencies do not routinely capture information about school and class enrollment of their clients. This type of information is normally found at individual schools and school districts.

Under federal law, if a school official learns about a child’s immigration status, he/she cannot disclose that information to a third party. The federal Family Education Rights and Privacy Act (FERPA) protects the privacy of student education records. FERPA applies to any educational institution that receives funds under any program administered by the U.S. Department of Education. The law defines education records broadly to include both academic and personal information. Under FERPA, schools must obtain written permission from a student’s parents prior to disclosing education records. There are limited exceptions, including providing records to a student’s new school, in order to comply with a judicial order or a lawfully issued subpoena, and to appropriate authorities in a health or safety emergency. Thus, SB 1325’s requirement that the resettlement agency report the number of refugee children enrolled in public school and whether they access English language learner services may violate federal privacy laws.

**SB 1325 is an unnecessary bill. The federal government, by law, must consult and work directly with state and local governments as well as private nonprofit agencies and their affiliates in the resettlement of refugees.**

Refugee resettlement involves a public-private partnership. The U.S. resettles refugees through the U.S. Refugee Admissions Program. This program is run by the U.S. Department of State (DOS) in concert with the U.S. Department of Homeland Security (DHS) and with the U.S. Department of Health and Human Services (HHS). These three federal agencies work with nine national organizations that operate a network of over 350 affiliates that work in all 50 states. (USCCB is one of these national organizations.) The local affiliates of these nine organizations provide initial services with DOS funding and then longer-term services, between 8 months and 5 years, with funding from HHS.

SB 1325 is superfluous because the federal government, by statute, must consult with state and local governments and private nonprofit agencies regarding the resettlement of refugees. Specifically, the Office of Refugee Resettlement at HHS and the Reception and Placement Program at DOS are obligated by law to “consult regularly … with State and local governments and private nonprofit voluntary agencies concerning … the intended distribution of refugees among the States and localities.” 8 U.S.C. Section 1522(a)(2)(A). Additionally, as the Congressional Research Service points out, the Office of Refugee Resettlement director at HHS “is further directed to develop and implement, in consultation with voluntary agencies and state

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9 20 U.S.C. § 1232(g); 34 C.F.R. Part 99.
10 34 CFR § 99.1(a).
and local governments, policies for the placement and resettlement of refugees in the United States.”  

Moreover, in its vetting process for resettlement grant recipients, the federal government seeks to partner with voluntary agencies that work closely with state and local governments and other stakeholders. For instance, the DOS grant proposal requires participating voluntary organizations, like USCCB, as well as new grant applicants to provide extensive data and information about their agency and affiliates. In 2011, each grant applicant had to justify in its proposal why the community in question was a good place for resettling refugees. Below is one question:

“Include an assessment of the availability of appropriate housing, public transportation, and employment opportunities. List other short-and long-term resettlement and integration services available at this site and in this community. If this site is able to serve special needs cases, describe what types of special needs cases it can serve and how it is able to do so. If the site expects to resettle refugee groups from nationalities/ethnicities new to the resettlement location, please provide an assessment of the site’s capacity for resettlement of the anticipated new groups.”

Furthermore, DOS required each grant applicant to describe the consultations that occurred between the affiliates of the voluntary agency and state and local governments as well as other stakeholders.

“Describe the date, content, and result of consultative discussions undertaken by the affiliate with state and local officials and stakeholders in preparing this proposal, including the response of the state refugee coordinator and state refugee health coordinator. For new sites, include evidence of the above consultation and support of local affiliates, other service providers, and the state refugee coordinator of your plans.”

Given the consultation that occurs by law and by design between the federal government, state and local governments, voluntary agencies and the affiliates with respect to refugee resettlement in Tennessee, SB 1325 is redundant.

**SB 1325 could negatively impact economics in the state.**

SB 1325 could negatively impact Tennessee’s economy. First, the refugee resettlement program in Tennessee brings millions of federal dollars into the state because the federal government offers refugee assistance to individuals and families. The assistance comes in a variety of forms – cash and medical assistance, social services, and targeted assistance. Regrettably, SB 1325 discourages refugee resettlement. If the refugee resettlement program decreases in size or is terminated, the state will lose millions of dollars of federal money.

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15 Id.
Second, refugees are taxpayers, consumers, and entrepreneurs. They help bolster the economy in Tennessee by (among other things) paying rent and utilities, purchasing food and clothes and other necessary items, and using public transportation and/or buying cars and gas. Importantly, refugees work and pay income and social security taxes. They also grow the local economy by starting their own businesses and hiring local workers.

Third, refugee resettlement in Tennessee boosts the economy through employment. The Tennessee Office for Refugees employs over 50 staff members who assist refugees and communities throughout the state. These individuals are consumers and taxpayers and their work and spending contributes to communities throughout Tennessee.

**SB 1325 may alienate the immigrant communities within Tennessee.** Immigrants (the foreign-born) represent an important part of Tennessee’s labor force, tax base, and business community. The Immigration Policy Center reported that 4.5% of Tennesseans are foreign born and one-third of them are naturalized U.S. citizens who are eligible to vote. Additionally, the Immigration Policy Center has shown that the 2010 purchasing power of Latinos in Tennessee totaled $6.1 billion—an increase of 1,435.3% since 1990; Asian buying power totaled $3.4 billion—an increase of 620.1% since 1990. Further, Tennessee’s 11,178 Asian-owned businesses had sales and receipts of $3.6 billion and employed 26,402 people in 2007, the last year for which data is available. The state’s 8,700 Latino-owned businesses had sales and receipts of $1.8 billion and employed 12,074 people in 2007, according to the U.S. Census Bureau’s Survey of Business Owners. Given the growth of the economic and political power of immigrants, including refugees, it does not make sense to alienate this important constituency through laws that are unnecessary and draconian.

**SB 1325 represents an unfunded mandate requiring the state to expend considerable resources.**

SB 1325 burdens the Department of Finance and Administration. The bill requires the Commissioner of Finance and Administration to assume a myriad of new responsibilities. These include: (1) determine the cost associated with resettling the refugees, (2) charge the refugee resettlement agency for those costs, (3) review the documentation from resettlement agencies, (4) distribute the funds to various agencies and political subdivisions, and (5) promulgate rules and regulations to effectuate the purposes of the bill. Not only do these additional duties burden taxpayers, but they take away from other important work carried out by the Commissioner of Finance and Administration.

This document was prepared by Karen Herrling, CLINIC’s State and Local Advocacy Attorney in February 2013. This document is for informational purposes only and is not intended as legal advice. For questions, please contact Karen Herrling at kherrling@cliniclegal.org or (717) 396-3893.

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