

**Members**

Sen. Dennis Kruse, Co-Chairperson  
Sen. Ed Charbonneau  
Sen. Michael Delph  
Sen. Timothy Skinner  
Sen. Richard Young  
Sen. Frank Mrvan  
Rep. Scott Pelath, Co-Chairperson  
Rep. Vern Tincher  
Rep. Mara Candalaria-Reardon  
Rep. Eric Koch  
Rep. Timothy Harris  
Rep. Jackie Walorski



# INTERIM STUDY COMMITTEE ON IMMIGRATION ISSUES

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Authority: Legislative Council Resolution 08-01

## MEETING MINUTES<sup>1</sup>

**Meeting Date:** September 9, 2008  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington  
St., Room 404  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Sen. Dennis Kruse, Co-Chairperson; Sen. Ed Charbonneau;  
Sen. Michael Delph; Sen. Richard Young; Sen. Frank Mrvan;  
Rep. Scott Pelath, Co-Chairperson; Rep. Vern Tincher; Rep.  
Mara Candalaria-Reardon; Rep. Eric Koch; Rep. Timothy Harris;  
Rep. Jackie Walorski.

**Members Absent:** Sen. Timothy Skinner.

Senator Kruse and Representative Pelath, Chairpersons, called the first meeting of the Interim Study Committee on Immigration Issues (Committee) to order at 1:05 P.M. Senator Kruse and Representative Pelath provided introductory remarks, and the Committee members introduced themselves.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## **The federal government's powers and responsibilities for immigration enforcement**

\_\_\_\_ Professor John Scanlan discussed his background as a professor of law at Indiana University School of Law--Bloomington. He provided Committee members with a handout<sup>2</sup> on federal immigration law, entitled: Federal and State Measures Directed at Immigrants and Immigrants: Historical Basis of Modern Concerns. Professor Scanlan provided testimony concerning the history of immigration legislation and case law. In response to questions from Committee members, Professor Scanlan indicated that states have the right to grant licenses and revoke licenses, but he declined to comment on how he believed the case in Arizona would be determined. He noted Constitutional issues with the Arizona law and that there is some additional room regarding licenses. However, he stated that the appropriate reading of the parenthetical clause in the Immigration and Reform Control Act of 1986 (IRCA) regarding licenses is unclear.

\_\_\_\_ Professor Linda Kelly Hill, a professor of law at Indiana School of Law--Indianapolis, provided a handout<sup>3</sup> of her testimony to the Committee members. She discussed Constitutional issues and other concerns with SB 335 and SB 345 from the 2008 legislative session. Professor Hill agreed that concerns with E-Verify involved more technical rather than legal barriers. However, she noted that the ability of states to mandate the use of the E-Verify system is controversial and there are preemption issues. In response to Representative Pelath's question about what improvements could be made to the system, she indicated that the federal government already had the I-9 system in place. When asked if it was her expert opinion that a state could not mandate an employment verification system, she noted preemption issues but explained that the courts are split on the preemption issue and that until the U.S. Supreme Court provides an opinion, there is no definitive answer.

In response to further questions by Committee members, she stated that she thought it best to address all her concerns with SB 335 and SB 345 and that while the use of E-Verify may have protected employers in SB 335 and SB 345, it did not protect lawful employees. In response to Professor Hill's discussion regarding a 2007 report released by U.S. Citizenship and Immigration Services on findings from an evaluation of E-Verify, Senator Delph provided other Committee members with a 2008 letter<sup>4</sup> from the U.S. Department of Homeland Security discussing the E-Verify system.

Professor Bernard Trujillo, a professor of law at Valparaiso University School of Law, discussed: (1) the issue of preemption; (2) the two strategies or approaches by states; (3) the supremacy clause; (4) costs of being wrong; and (5) conclusions. In addressing these points, he testified that the federal government has sole and exclusive authority to regulate immigration, preemption is not an issue where federal provisions allow the federal government to share enforcement, and the courts have split on the issue of revocation of licenses. He asked what would be the downside of the Indiana state legislature waiting to find out a clean legal answer. He stated that there are costs to being an early actor and that if Indiana waits, the legislature can move towards a lawful action.

In response to a question by Representative Pelath about costs associated with early action, including costs of a lawsuit, Professor Trujillo indicated that he may be able to

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<sup>2</sup> Exhibit 1

<sup>3</sup> Exhibit 2

<sup>4</sup> Exhibit 3

get some information on costs but did not have the information at this time. In response to a question from Senator Mrvan, Professor Trujillo clarified that he was not saying that the Indiana legislature should wait for Congress to act, but instead, wait for the U.S. Supreme Court to resolve the court split.

Professor John Hill, professor of law at Indiana University School of Law--Indianapolis, provided a handout<sup>5</sup> to the Committee members regarding his testimony on general considerations on the preemption doctrine. Professor Hill discussed the supremacy clause of the U.S. Constitution, the three different situations where federal law preempts state laws, and three cases that focus on whether the IRCA preempts state licensing laws. Professor Hill concluded the following: "(1) the licensing provisions are not pre-empted and that Gray and Arizona Contractors represent the better reasoning concerning whether states are preempted from regulating in the area of immigration, but (2) the proposed criminal sanctions for transporting and harboring undocumented aliens are pre-empted by federal law." See Exhibit 4. In response to questions from Committee members, Professor Hill indicated that fining businesses for hiring unauthorized aliens would likely be preempted.

Mr. Jeffrey Robbins, a practicing attorney and Chair of the Indiana Chapter of the American Immigration Lawyers Association, provided testimony on immigration legislation and discussed reasons why state legislation should be avoided in favor of addressing immigration on a national scale. He explained that the legislative history of the provision of IRCA concerning "licensing" refers to revoking a local license only after a federal violation has occurred. He also discussed concerns with the E-Verify system and said that he currently advises his clients not to use the system. He indicated that employers have to waive their Fourth Amendment rights when entering into a memorandum of understanding to use the E-Verify system. Mr. Robbins provided a copy of his testimony.<sup>6</sup>

With respect to use of E-Verify and employers waiving Fourth Amendment rights, Mr. Robbins indicated that he could not define the distinctions concerning when the federal government is allowed to come into a business to enforce I-9 provisions and E-Verify provisions but that E-Verify would be adding another layer on waiving an employer's Fourth Amendment rights. In response to a question from Representative Koch about whether an employer who received the same social security number from various employees would have constructive knowledge of hiring an unauthorized alien, Mr. Robbins stated that yes, the employers may be considered to have knowledge because employers only have a safe harbor as long as they have a good faith belief that the documentation is valid. Mr. Robbins indicated that obtaining citizenship may take anywhere from six to ten years and could cost tens of thousands of dollars.

Senator Kruse showed a chart and provided a handout<sup>7</sup> to other Committee members on legal immigration. Representative Pelath provided a copy of the Pew Hispanic Center's mission statement.<sup>8</sup>

### **The origin and demographics of undocumented aliens in Indiana**

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<sup>5</sup> Exhibit 4

<sup>6</sup> Exhibit 5

<sup>7</sup> Exhibit 6

<sup>8</sup> Exhibit 7

Mr. Rakesh Kocchar, Associate Director of Research for the Pew Hispanic Center, provided data on United States immigration trends, characteristics of the United States foreign-born population, undocumented migration into the United States, characteristics of undocumented migrants in the United States, and immigrants and Hispanics in Indiana. Mr. Kocchar provided a copy of his presentation<sup>9</sup> to the Committee. In response to questions from Representative Pelath and Senator Delph, Mr. Kocchar indicated that the data presented was drawn from information from the U.S. Census Bureau and that more than 80% of the individuals migrating from Mexico are undocumented.

The Office of the Indiana Attorney General provided a memorandum<sup>10</sup> to Committee members on the estimated cost of illegal employment enforcement by the Indiana Attorney General's Office.

Ms. Ann Houseworth, Legislative Liaison for the Department of Child Services (DCS), indicated that the DCS computer database does not collect any information about the country from which the people that DCS serves come. She stated that the information on ethnicity is collected, but the information does not include whether the individual is legally or illegally in the United States.

Mr. G. Herb Hernandez, a member of the Commission on Hispanic/Latino Affairs, provided a handout<sup>11</sup> of his testimony on the origin and demographics of undocumented aliens in Indiana to Committee members. Mr. Hernandez discussed the origin of undocumented aliens, the Hispanic/Latino population, illegal immigration to Indiana, employment of the foreign-born population, and where the foreign-born population live. Mr. Hernandez indicated that he had some concerns with the numbers from the Pew Hispanic Center indicating that there are approximately 100,000 undocumented aliens in Indiana.

There being no further business to conduct, Senator Kruse and Representative Pelath adjourned the meeting at 5:00 P.M.

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<sup>9</sup> Exhibit 8

<sup>10</sup> Exhibit 9

<sup>11</sup> Exhibit 10