

Members

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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 Candelaria-Reardon
Rep. Eric Koch
Rep. Timothy Harris
Rep. Jackie Walorski



INTERIM STUDY COMMITTEE ON IMMIGRATION ISSUES

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MEETING MINUTES¹

Meeting Date: September 16, 2008
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Dennis Kruse, Co-Chairperson; Sen. Ed Charbonneau;
Sen. Michael Delph; 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; Sen. Richard Young; Sen. Frank Mrvan.

Representative Pelath and Senator Kruse, Co-Chairpersons, called the second meeting of the Interim Study Committee on Immigration Issues to order at 1:00 P.M.

¹ 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

_____Mr. Louis Moffa, an attorney, provided a handout² to Committee members on his testimony. Mr. Moffa discussed: (1) federal immigration law; (2) the Supremacy clause and federal preemption; and (3) the Due Process clause in relation to SB 335 and SB 345 from the 2008 Indiana legislative session. Mr. Moffa stated that he believes that "(1) the U.S. Constitution and federal immigration law severely restrict the ability of state and local governments to enact laws that impose sanctions on employers for knowingly hiring 'unauthorized aliens,' and (2) the factual premise underlying the call for state and local action - that undocumented/unauthorized aliens are a net financial burden - is seriously flawed." See Exhibit 1. Mr. Moffa also discussed the four cases pending in federal courts of appeals that involve state immigration legislation and the financial impact of state and local action. He provided additional handouts to the Committee members, including: (1) a report entitled An Essential Resource: An Analysis of the Economic Impact of Undocumented Workers on Business Activity in the United States with Estimated Effects by State and by Industry,³ (2) a report by the United States Government Accountability Office entitled Challenges Exist in Implementing a Mandatory Electronic Employment Verification System⁴; and (3) information on legal immigration.⁵

In response to a question from Representative Pelath, Mr. Moffa indicated that people believe that Congress will re-authorize E-Verify as a voluntary program before E-Verify expires. Mr. Moffa discussed the statute in Illinois that prohibits the use of E-Verify and indicated that the United States government filed a lawsuit claiming that the statute is preempted. Mr. Moffa indicated that a state would most likely not be preempted for revoking or suspending a license of an employer who had been sanctioned by the federal government for violating the employer provisions of the Immigration and Reform Control Act of 1986. In response to a question from Representative Koch about whether sanctuary cities would be preempted by federal law, Mr. Moffa explained that it depended on whether cities were using discretion in reporting or not reporting an unauthorized alien or whether the cities were interfering or refusing to cooperate with a federal law or regulation.

The actual, quantifiable costs of illegal immigration to public services

_____Mr. Mitch Roob, Secretary of the Office of the Secretary of Family and Social Services (FSSA), provided two handouts to Committee members. The first handout⁶ included information on public services for undocumented aliens, and the second handout⁷ contained information concerning undocumented alien enrollment, utilization, and expenditures for public services. Secretary Roob indicated that undocumented aliens were prohibited from receiving benefits under TANF and Food Stamp rules. However, he noted that only citizenship of the child was considered during eligibility determinations. He stated that all individuals, including undocumented aliens, receive emergency care and that

² Exhibit 1

³ Exhibit 2

⁴ Exhibit 3

⁵ Exhibit 4

⁶ Exhibit 5

⁷ Exhibit 6

health care must be provided to women in labor. He indicated that the costs associated with emergency room care for uninsured individuals are paid by cost shifting to the insured and paid by governments through direct patient care (i.e. Medicaid) and institutional entitlements (i.e. Disproportionate Share Hospital (DSH) funding). See Exhibit 5.

____ Secretary Roob indicated that a birth certificate is prima facie evidence that a person is a citizen of the United States. He further stated that if the individual does not have a birth certificate, the individual must provide documentation requested by FSSA in order to receive Medicaid. In response to a question from Representative Harris, Secretary Roob indicated that there is a formula applied to calculate DSH reimbursement to hospitals. He stated that some providers do not receive DSH reimbursement.

Mr. James Payne, Director of the Department of Child Services (DCS), described the responsibilities of DCS to include assessing and determining whether the government should offer safety to a child and family. He indicated that the actual and quantifiable expenses of public services provided by DCS to undocumented aliens could not be determined at this time. He stated that many states' child protection agencies use the same computer system, ICWIS, to gather and input data. He indicated that using ICWIS allows for consistent information and reporting, which is necessary to receive reimbursement from the federal government. Director Payne explained that with the passage of HB 1001--2008, DCS is in the process of modifying ICWIS. He asserted that because of these modifications DCS will have a system in place by January 2009 that will allow DCS to begin collecting information concerning public services provided to undocumented aliens. In response to a question from Representative Pelath about how DCS becomes aware of the immigration status of families, Director Payne said DCS becomes aware through language barriers and names of family members. He indicated that a person must provide a birth certificate to obtain services. He also expressed that many of the people DCS serves are children and that many of the children are citizens of the United States.

Mr. Brian Carnes, Director of Legislative Affairs of the Indiana State Department of Health (ISDH), discussed the public health system, the need based programs run by ISDH, and the amount of dollars that the federal government spends on public health in Indiana. Mr. Carnes provided a handout⁸ of his testimony and an article⁹ entitled Health Care Expenditures of Immigrants in the United States: A Nationally Representative Analysis. He noted that Indiana spends about \$105 million state dollars and about \$210 million federal dollars per year on public health in Indiana. He explained that the federal government does not allow the state to make citizenship a requirement for services. See Exhibit 7. He concluded that to measure how many undocumented aliens benefit from the public health system is impossible, but as a whole, undocumented aliens share in the protection that the public health system provides to the entire state.

____ Ms. Lauren Harvey, Assistant Director of the Office of English Language Learning & Migrant Education at the Indiana Department of Education (IDOE), provided a handout¹⁰ to Committee members that included the following: (1) Her testimony. (2) A letter discussing attendance in public school and immigration status. (3) The United States Supreme Court case Plyler v. Doe. (4) Information on the Indiana compulsory school

⁸ Exhibit 7

⁹ Exhibit 8

¹⁰ Exhibit 9

attendance law. (5) Information on the Non-English Speaking Program. Ms. Harvey indicated that IDOE does not have data on the number of undocumented aliens attending public schools in Indiana because in compliance with Plyler v. Doe data may not be collected. She provided information on the number of students currently in English as a Second Language (ESL) programs in Indiana public schools and the average cost to educate a student in Indiana. In response to a question from Representative Candelaria-Reardon, Ms. Harvey stated that over 200 different languages are represented in the ESL program student population. She indicated that over 80% are Spanish speakers and the second largest percentage of ESL students are German speakers-- Amish German.

_____ Mr. Tim Kennedy, Legal Counsel for the Indiana Hospital Association, stated that hospitals are not able to provide accurate information on whether the individuals treated at the hospitals are undocumented aliens. He indicated that even if the hospitals asked patients for information, the information would most likely not be accurate. He also discussed the health policy issue that hospitals must consider, which is whether it is better to treat an individual or ask questions that would push ill individuals away from receiving health care. He explained that federal law requires hospitals to provide emergency care to stabilize a patient. Mr. Kennedy offered to provide the Committee members with anecdotal information concerning health care and undocumented aliens. Upon Senator Kruse's request, Mr. Kennedy stated that he could try to get some anecdotal information together for the Committee's meeting on October 14, 2008. He indicated that he saw providing anecdotal information as an ongoing process over time.

In response to a question by Representative Walorski about whether there is a cost shift to taxpayers and insured individuals, Mr. Kennedy stated that there is a cost shift. In response to Senator Delph's question about whether the hospitals could quantify and provide a range of the costs associated with healthcare treatment of undocumented aliens, Mr. Kennedy stated that the hospitals could ask questions to provide rough estimates and anecdotal information but that there is a concern that this information will be taken as fact. He indicated that it is up to the policymakers to determine what to do with anecdotal information. In response to further questions by Committee members, Mr. Kennedy indicated that the Indiana Hospital Association could try to provide an estimated range of the health care costs for undocumented aliens in certain areas in Indiana.

The actual, quantifiable costs of illegal immigration to public services and immigration related difficulties faced by state and local law enforcement officials

_____ Mr. Randy Koester, Deputy Commission of Administration of the Indiana Department of Corrections (IDOC), provided a handout¹¹ to Committee members on the number of foreign nationals that are incarcerated in Indiana. Mr. Koester stated that of the total 27,632 incarcerated offenders, 504 are foreign nationals. He indicated that it will cost approximately \$9.89 million to incarcerate the foreign nationals this year and discussed other costs associated with foreign nationals. He explained that some of the costs are offset by funds from the State Criminal Alien Assistance Program Grants (SCAAP). Mr. Koester asserted that IDOC provides a list of all foreign nationals to the United States Immigration and Customs Enforcement (ICE), Social Security Administration, and Department of Veterans Affairs. He said that deportation hearings take place about every three months and discussed the deportation process. In response to questions, Mr. Koester indicated that IDOC has more latitude with juveniles and starts working almost immediately to get the juveniles back to their country of origin.

¹¹ Exhibit 10

Representative Harris and Senator Kruse requested the Legislative Services Agency staff to obtain information on how many undocumented individuals are incarcerated in county jails.

Mr. Kevin Mulroony, Administrative Assistant of the Plainfield Correctional Facility, discussed the process for deportation hearings. He indicated that offenders are assessed as to whether they are legal or not when the offenders are sentenced. Mr. Mulroony asserted that with transportation and staff costs Indiana spends approximately \$10,000 per year on deportation hearing expenses. In response to a question by Senator Charbonneau, Mr. Mulroony explained that if the federal government wants to take an offender into custody, the offender will be released early into the federal government's custody. In response to Representative Walorski's question about funding, Mr. Mulroony indicated that some of the money from SCAAP is used for reimbursement.

Captain Sherry Beck of the Indiana State Police (ISP) stated that it was extremely difficult to get statistical information on illegal immigrants and explained the difficulties. She indicated that ISP could identify more Hispanic/Latino gangs, has made drug arrests that tie back to Mexico, are seeing human trafficking and smuggling, and are seeing an increase in murders. She explained that she could not tell Committee members that all these problems were related to illegal immigration but that everything is tied together. She stated that there have been more incidents of identity theft. Captain Beck provided her testimony¹² to the Committee.

Captain Todd Smith of the ISP stated that ISP had gone to Arizona to see how the training of law enforcement officials under a memorandum of understanding (MOU) entered into under section 287(g) of the Immigration and Nationality Act (287(g) program) was working at three Arizona police agencies. He provided a PowerPoint presentation¹³ that describes the apprehension and deportation taking place in Arizona. He also discussed the training and certification of law enforcement officers and said that Indiana would be responsible for the costs associated with enforcing federal immigration laws.

In response to a question from Senator Delph, Captain Smith stated that ISP does not have the solution for illegal immigration but that law enforcement through the 287(g) program is not the best answer. Captain Smith indicated that it was his understanding that undocumented aliens were leaving Arizona because of the law concerning revocation of business licenses. In response to a question from Representative Pelath, Captain Beck stated that funds would be diverted from various other operations if the General Assembly, without allocating extra funding, requires ISP to train police employees to enforce federal immigration law through a MOU with the federal government. Captain Beck explained that each law enforcement department would have to enter into a MOU with the federal government and the ISP could not enter a MOU for training and enforcement by local law enforcement. Captain Smith stated that ISP has concerns with the amount of time it would take to process undocumented aliens and with requiring ISP to enter into a MOU to enforce federal immigration law.

Immigration related difficulties faced by state and local law enforcement officials

Mr. Stephen Johnson, Executive Director of the Indiana Prosecuting Attorney's Council, discussed the difficulties that law enforcement officials face regarding

¹² Exhibit 11

¹³ Exhibit 12

undocumented aliens. He stated that the first issue is the language barrier. Few law enforcement officers are trained in Spanish, and therefore, are not able to read rights to someone in another language. He provided an information packet¹⁴ on speedy Spanish for police personnel. Mr. Johnson explained that a common citation by law enforcement is operating a motor vehicle while having never received a license. He suggested changing the statute regarding operating a motor vehicle while having never received a license to be consistent with penalties for operating a motor vehicle with a suspended or revoked license. He also discussed the number of interpreters that are needed when an offender goes to court. In response to a question about preemption, Mr. Johnson indicated that he believed the state could legislate in the area of criminal law without preemption concerns.

Mr. Kenneth Fries, the Sheriff of Allen County, provided a handout¹⁵ of his testimony and data concerning undocumented aliens in Allen County. Sheriff Fries indicated that his department has applied for the 287(g) program. However, he stated that the department does not have the funding for training, and therefore, will not be part of the 287(g) program at this time. In response to a question from Senator Delph about legislation requiring training under the 287(g) program statewide, Sheriff Fries said it would be better to let individual law enforcement departments apply for participation in the 287(g) program rather than require participation.

Mr. Gary Leatherman, Sheriff of Noble County, provided a handout¹⁶ to Committee members that included information on minority statistics and the impact on local law enforcement in Noble County. Sheriff Leatherman discussed problems that law enforcement officials confront with accurately identifying certain Hispanics/Latinos who are arrested and problems encountered by the courts and law enforcement officials upon the release of certain Hispanics/Latinos from jail. He stated that his department had worked with ICE effectively until the ICE agent the department had been working with was hurt and absent for a time. He indicated that since that time the department has had trouble getting ICE to return the department's faxes and telephone calls. In response to a question from Representative Pelath about how the department determines an individual is Hispanic/Latino, Sheriff Leatherman indicated the department employees take their best guess based on the name on the file. In response to a question from Senator Delph about whether the department had contacted Congress about ICE, Sheriff Leatherman stated that he had sent a letter to Congressman Souder.

Mr. Joe Pitcher, Greenwood Police Chief, discussed the estimated number of undocumented aliens that are residing in the Greenwood area. He stated that ICE would not return his telephone calls. He indicated that the 287(g) program was cost prohibitive for small police departments and requested that the legislature not pass any unfunded mandates for the police departments. In response to a question from Representative Tinchler, Chief Pitcher asserted that many undocumented aliens residing in one particular apartment complex worked in the food service industry near Greenwood Mall. He explained that the department did not have a record of who was undocumented in the community but by seeing things over and over again and through anecdotal patterns the department believed certain individuals to be undocumented aliens.

Mr. Gary Penland, Goshen Police Chief, discussed the estimated numbers

¹⁴ Exhibit 13

¹⁵ Exhibit 14

¹⁶ Exhibit 15

regarding undocumented aliens residing in the Goshen area. However, he indicated that his department does not know for sure how many or which individuals are undocumented. He stated that one difficulty law enforcement officials face with undocumented aliens is false driver's licenses and other multiple forms of identification. He explained that many of the children are legal citizens and many of the children act as the adults of the family because they speak English and are legal. He stated that his department had spent \$30,000 for part-time Spanish speaking employees and \$28,000 for translation services. Chief Penland asserted that his department called to make inquiries about the 287(g) program but have never had the calls returned.

There being no further business, Representative Pelath and Senator Kruse adjourned the meeting at 5:40 P.M.