

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



INTERIM STUDY COMMITTEE ON IMMIGRATION ISSUES

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Eliza Houston Stephenson, Attorney for the
Committee
Bill Brumbach, Fiscal Analyst for the Committee
Al Gossard, Fiscal Analyst for the Committee

Authority: Legislative Council Resolution 08-01

MEETING MINUTES¹

Meeting Date: November 10, 2008
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 5

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

Members Absent: Sen. Timothy Skinner; Sen. Richard Young; Rep. Timothy
Harris.

Senator Kruse and Representative Pelath, Co-Chairperson, called the fifth meeting of the Interim Study Committee on Immigration Issues to order at 1:05 P.M. Representative Pelath indicated that the Committee would hear presentations from members of the General Assembly and would discuss whether the Committee members had reached a broad consensus on some items regarding immigration.

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.

Presentations by members of the General Assembly.

_____ Representative Murphy stated that he had tried to attend all of the meetings of the Committee and had learned a lot. He indicated the surest way to predict the effect that public policy would have is to look at other states that have enacted similar legislation. He indicated that Senator Pierce from Arizona who authored the legislation revoking licenses of employers who knowingly hired undocumented immigrants had said in an interview that Arizona now needs undocumented immigrants in order to keep the state's economy going, at least in agriculture. Representative Murphy indicated that he had a transcript of the interview and offered to provide a copy of the transcript to the Committee members upon request. He also said that undocumented workers once made up approximately 11% of Arizona's workforce and thousands of the undocumented workers had left after the law cracking down on illegal immigration passed. He indicated that business owners in Arizona now say that the law has backfired and the lack of workers is costing businesses money.

Representative Murphy indicated that prior to the Arizona law regarding illegal immigration taking effect, the unemployment rate in Arizona was under 4%. He indicated that as evidenced by the low unemployment rate, undocumented immigrants were not taking citizens' jobs. He stated that Senator Pierce of Arizona is now suggesting a guest worker agreement or treaty with the consulate of Mexico.

Representative Murphy discussed issues and concerns relating to the application and enforcement of section 287(g) of the Immigration and Nationality Act (287(g) program) in Arizona, such as funding issues and racial profiling. He stressed that he was not criticizing the 287(g) program. He stated that it is the potential abuse of the authority in the hands of individuals who are intent on racial profiling that could present a problem. Representative Murphy indicated that the 287(g) program in Alabama is an exemplary program. He said that if the state is going to use traffic stops to catch undocumented persons, then every person who is stopped for a traffic violation should be required to prove their citizenship - not just people with dark skin or an accent.

Representative Murphy discussed concerns with some of the statements made by legislators in Arizona and legislation introduced by an Arizona legislator regarding immigrants and individuals from different ethnic backgrounds. He also stated that Governor Napolitano of Arizona ended a \$1.6 million contract with the Maricopa County Sheriff's Department for immigrant sweeps so that she can use that money to track down the nearly 59,000 wanted felons in Maricopa County. Representative Murphy also discussed legal issues surrounding the court cases regarding illegal immigration legislation. He noted that a federal court of the Western District of Oklahoma has enjoined the state of Oklahoma from enforcing certain provisions of the Oklahoma Taxpayer and Citizen Protection Act of 2007 and that it was substantially likely that those particular provisions were preempted by the federal government. He also discussed: (1) language from the United State Court of Appeals Ninth Circuit court opinion that left open future challenges by businesses facing actual punishment that could prove that the law as being applied is unfair or illegal; and (2) a University of Notre Dame study regarding the potential impact of undocumented immigration legislation.

Representative Murphy concluded that in considering the options he hoped the Committee members would consider the following: (1) appropriating money for the 287(g) program; (2) aggressively prosecuting identity theft; (3) reversing the trend of decreasing funding for English language learner programs; (4) strictly enforcing all labor laws; (5) waiting for the United States Supreme Court to rule on the constitutional issues concerning state immigration law, particularly to how it relates to Arizona, Missouri, and the state of Pennsylvania; and (6) sending a resolution to Congress imploring them to act on

immigration issues.

In response to a question from Representative Walorski about how to address identity theft and counterfeiting that is happening on the Internet, Representative Murphy responded that he has worked with the Attorney General's office in the past to try to pass laws in Indiana that parallel federal laws so that the Attorney General or local prosecutors can prosecute criminals. He also discussed the misconception that undocumented immigrants are going to receive benefits for which they have not paid. He stated his concern that there is one part of the federal government that says undocumented immigrants should not be here and another part of the federal government telling undocumented immigrants to pay the government money.

In response to questions from Representative Tincher, Representative Murphy indicated that economists would argue for the most part that jobs that are being taken by undocumented immigrants are jobs that are not easily filled by American citizens. Representative Tincher responded that many undocumented immigrants work in construction, which are jobs that American citizens would perform. Representative Murphy stated that if Committee members had concerns about this, the Committee could consider recommending a Hoosier first employment preference. In response to questions from Representative Tincher concerning increasing penalties for identity theft and the cost of housing criminal undocumented immigrants, Representative Murphy indicated that any attempt at greater enforcement comes with costs and that legislators have to consider the cost versus the benefit.

In response to questions from Senator Delph, Representative Murphy indicated that the charge of the Committee to consider the costs of illegal immigration was a little one-sided, as the other side was to look at how much money is coming in to the state as a result of illegal immigration. He added that there are two criteria that have to be met before he would vote for legislation -- the legislation has to be: (1) constitutional; and (2) humane.

Representative Pelath noted that the Committee interpreted the charge to the Committee as looking at net costs as opposed to gross costs associated with illegal immigration.

Representative Candelaria-Reardon discussed the testimony that the Committee heard from the following:

- (1) The State Police on the concerns that law enforcement has about assuming federal law enforcement responsibility and the unintended consequences that officers face.
- (2) Law professors who are as split in their opinions as the federal district courts that have issued contradictory opinions about the federal preemption of state statutes that attempt to address illegal immigration.
- (3) State agencies that have assured the Committee that undocumented immigrants do not receive public assistance except in exigent circumstances as mandated by the federal government.
- (4) A health care representative who could not separate the uninsured citizenry from the uninsured undocumented immigrant.
- (5) Indiana businesses about the challenges that some industries face in the recruitment and retention of employees.
- (6) The Federation for American Immigration Reform (FAIR), a group that has received over \$1 million from the Pioneer Fund, which is a group that the Wall Street Journal classifies as a white supremacist outfit devoted to racial purity through eugenics.

She further indicated that the most important thing that the Committee has heard is that no

one in this debate supports illegal immigration. Representative Candelaria-Reardon indicated that she believes the Committee should look very closely at the costs of any enforcement measures. She stated that enforcement action can create a situation where state agencies and police departments are overly burdened and do not have the money or manpower to properly enforce such policies. She said that Indiana should limit its actions to those within the state's jurisdiction while demanding that Congress fix the broken federal immigration system. She discussed the underground economy, costs associated with illegal immigration laws in other states, and the items that she believed were within the state's jurisdiction.

Senator Delph stated that if people believe in the power of a nation state and that one of the fundamental pillars of a democracy is the respect for the rule of law, then people believe that nations have a right to have laws and rules, and therefore, to enforce those laws and rules. He indicated that what he has been hearing from his constituents in the area of illegal immigration is that the government is not getting the job done. He further stated that the United States is either a nation that upholds the rule of law or it is not. He noted that illegal immigration is a tough issue for the agricultural and farming communities. He discussed the testimony that the melon growers provided and said that a subservient class of human beings is being created because government is not addressing the problem at the federal level. He indicated that illegal immigrants cannot engage in the same activities as citizens and that is not freedom and not what this country is about. He stated that by tolerating the existence of a shadow world that goes outside of the rule of law, a whole group of people is being entrapped in a subservient system. He said that he does not think it is right, and it is not living the American dream. He asked if you go down the road that there is a greater good or a greater benefit to turning a blind eye to the rule of law in allowing illegal immigration to take place, where is the line drawn--do you allow other unlawful activity?

Discussion of possible legislation.

Representative Pelath provided Preliminary Draft 3544² (PD 3544) to Committee members. He discussed the provisions of PD 3544, which would do the following:

Requires the department of workforce development to determine and file an annual report on the number, industries of employment, and wage rates of unauthorized aliens. Requires public employers and public contractors to use E-Verify to verify the work eligibility status of all newly hired employees. Requires the department of correction (department) to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and work with the United States Department of Homeland Security to deport offenders who are in the United States unlawfully. Requires the attorney general to: (1) verify quarterly whether an order has been issued or a criminal penalty has been imposed under a federal law regarding the employment of unauthorized aliens against a person or other entity doing business in Indiana; and (2) order the appropriate agencies to permanently revoke all licenses held by any such person or entity. Provides that a person who counterfeits or falsely reproduces a driving license with intent to use the license or to permit another person to use the license commits a Class D felony (instead of a Class B misdemeanor). Provides that a person who knowingly or intentionally produces or distributes a document not issued by a

² Exhibit 1

government entity that purports to be a government issued identification commits a Class C felony (instead of a Class A misdemeanor). Provides that making or distributing a forged instrument is a Class B felony.

_____ He stated that the provisions in PD 3544 are just suggestions that he thinks the Committee might be able to agree on. He stated that these provisions are some items that he picked out and discussed with Senator Kruse, and that he and Senator Kruse thought the Committee might be able to recommend them to the General Assembly in part or in their entirety. Senator Kruse indicated that PD 3544 may be a starting point.

Representative Walorski discussed her concerns with requiring the Indiana Department of Workforce Development (Department) to gather information and report to the Legislative Council. She asked how the Department was going to get that information and whether the Committee was passing the Committee's responsibility on to a state agency.

Representative Candelaria-Reardon stated that one of the recommendations that she would like to see come out of the Committee involves strengthening existing labor laws concerning wage enforcement and misclassification of workers. Senator Kruse noted that there is a work group that has been meeting since the end of the 2008 session dealing with these labor issues. He indicated that there will be legislation introduced dealing with those issues in the next legislative session.

_____ Senator Delph indicated he believes that the Committee is deceiving the public if the Committee does not have a strong recommendation that once and for all solves the problem of illegal immigration in the state of Indiana. Representative Pelath stated that the Committee and the meetings have been open, he had made it clear what he was attempting to accomplish with PD 3544, and that he did not say in any way that he was doing comprehensive immigration reform with PD 3544. Representative Pelath said that he understood that people will want to do more but that, if the General Assembly does not agree on certain things, it does not mean the General Assembly should be stopped from doing some common sense things. Representative Pelath withdrew PD 3544 from consideration.

Approval of final report.

_____ Senator Delph discussed the procedure for submission of study committee minority reports. The Committee approved the draft final report³ with the inclusion of the testimony and the action of the November 10 meeting by a vote of 9-0.

There being no further business, Senator Kruse and Representative Pelath adjourned the meeting at 2:40 P.M.

³ Exhibit 2