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FISCAL IMPACT STATEMENT

LS 7546

BILL NUMBER: SB 590

NOTE PREPARED: May 4, 2011

BILL AMENDED: Apr 29, 2011

SUBJECT: Illegal Immigration Matters.

FIRST AUTHOR: Sen. Delph

FIRST SPONSOR: Rep. Koch

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill makes various changes concerning enforcement of federal immigration laws, illegal immigration, and related criminal matters, including the following:

- (1) Requiring the Office of Management and Budget (OMB) to calculate the costs of illegal aliens to Indiana and to make a written request to the Congress of the United States to reimburse the state for those costs.
- (2) Prohibiting governmental bodies from limiting or restricting: (a) certain actions by other governmental bodies with regard to information of the citizenship or immigration status of an individual; and (b) the enforcement of federal immigration laws to less than the full extent permitted by federal law.
- (3) Allows certain persons to bring an action to compel a governmental body to comply with these provisions.
- (4) Prohibiting a law enforcement agency or law enforcement officer from requesting verification of the citizenship or immigration status of an individual from federal immigration authorities if the individual has contact with the agency or officer only as a witness to or a victim of a crime or for purposes of reporting a crime.
- (5) Disallowing certain state income tax credits and deductions for individuals who are prohibited from being hired as employees, unless the employer participated in the E-Verify program.
- (6) Requiring the Department of Correction (DOC) to verify the citizenship or immigration status of criminal offenders.
- (7) Requiring an agency or political subdivision to verify the eligibility of an individual who applies for federal, state, or local public benefits.
- (8) Requiring the Department of Workforce Development (DWD) to verify the status of an individual as a qualified alien through the Systematic Alien Verification for Entitlements (SAVE) program to determine the individual's eligibility for unemployment compensation benefits.

- (9) Authorizing DWD to file civil actions to obtain the reimbursement of amounts paid as unemployment insurance benefits from employers that knowingly employed unauthorized aliens.
- (10) Requiring state agencies, political subdivisions, contractors with public contracts for services with the state or a political subdivision, and certain business entities to use E-Verify. Additionally, certain subcontractors to certify that they use E-Verify.
- (11) Allowing a state agency or political subdivision to terminate a public contract for services with a contractor for breach of the public contract for services if the contractor knowingly employs an unauthorized alien.
- (12) Prohibiting individuals from commencing day labor without completing an attestation required under federal law.
- (13) Requiring probable cause before a law enforcement officer may submit a complaint to the United States Customs and Immigration Enforcement (ICE) office concerning violations of required federal attestations related to day labor.
- (14) Establishing certain state crimes, including: (a) offenses related to Consular Identification; (b) false identity statement; (c) knowingly or intentionally transporting or moving an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law; and (d) knowingly or intentionally concealing, harboring, or shielding from detection an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.
- (15) Requiring law enforcement officers to impound motor vehicles for violations of crimes related to moving, transporting, concealing, harboring, or shielding from detection aliens.
- (16) Allowing a law enforcement officer to arrest a person if the officer has a certain removal order, detainer, or notice of action issued for the person or if the officer has probable cause to believe the person has been indicted for or convicted of one or more certain aggravated felonies.
- (17) Requiring a judicial officer in setting bail to consider that the defendant is a foreign national who has not been lawfully admitted to the United States as relevant to the risk of nonappearance.
- (18) Establishing certain bond requirements if bail is set for a defendant who is a foreign national unlawfully present in the United States.
- (19) Urging the Legislative Council to: (a) assign to an existing study committee certain topics concerning immigration; and (b) urge the study committee to consult with the Lieutenant Governor on the topics.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Summary:*

Contracting Provisions: Requiring contracted employers to verify the work eligibility status of employees may impact state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. The impact on contracting expenses to the state are indeterminable.

Penalty Provisions: The bill also establishes new penalty provisions. To the extent these changes increase the number of offenders held in state correctional facilities, state expenditures will increase.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on state expenditures.]

Additional Information:

Office of Management and Budget (OMB): This bill will require the OMB to calculate an estimate of the total cost of illegal aliens to the state of Indiana and make a written request for reimbursement of these costs from the U.S. Congress by July 1, 2012. The OMB reports this requirement is expected to have no fiscal impact.

Indiana State Board of Accounts: The bill requires the State Board of Accounts to adopt rules that will govern political subdivision administration of public benefits. The increase in workload is expected to be minimal.

Study of Immigration Laws Enforcement: The bill urges the Legislative Council to assign the study of state and local enforcement of immigration laws and the feasibility of entering into a memorandum of understanding with the U.S. Department of Homeland Security. This is to be performed in consultation with the Lt. Governor. This provision is expected to have a minimal impact.

Restrictions on Public Benefits: The bill provides that individuals who are not lawfully present in the United States are ineligible for any federal, state, or local public benefit, which also includes (1) the resident tuition rate, and (2) a post-secondary award, scholarship, grant, or financial aid from a state educational institution. As a requirement of receiving a public benefit, an applicant would be required to execute a verification stating the individual is a United States citizen or a qualified alien, and the filed affidavit is to be maintained for at least 5 years.

Indiana Code currently specifies that illegal immigrants are not eligible for Temporary Assistance for Needy Families (TANF), Medicaid, and Unemployment Insurance. Currently, for any benefit administered by the state but funded in full or in part by the federal government, the SAVE program is used to verify the lawful presence of benefit applicants.

The bill could potentially reduce the number of persons in the state who are eligible for state or local benefits that do not receive any federal funding (including education benefits administered by the State Student Assistance Commission of Indiana). This could result in savings for the state or allow the state to redirect the funds to other persons needing services within a program for which services were not provided under the bill.

Systematic Alien Verification for Entitlements (SAVE) System Use for Unemployment Benefits: Under the bill, the Department of Workforce Development (DWD) is required to use the SAVE program to verify individuals who are not citizens or nationals of the United States as a condition of receiving unemployment benefits. Currently, DWD processes all applicants for unemployment benefits through the SAVE program. Fees associated with SAVE verification are paid by DWD.

The bill also will allow the DWD to file civil actions against employers to obtain reimbursement for unemployment insurance benefits paid to unauthorized aliens. However, as the DWD currently utilizes the SAVE program to verify an applicant's eligibility for unemployment benefits, this provision is expected to have no fiscal impact, either in increasing reimbursement provided to the DWD or civil court cases to collect reimbursement. Further, the ability of the DWD to file civil suits to collect reimbursement of unemployment benefits would require federal approval.

Department of Correction (DOC): Currently, DOC verifies the legal status of offenders committed to their facilities. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance

Program (SCAAP). DOC currently notifies the U.S. Immigration and Customs Enforcement (ICE) and the U.S. Social Security Administration (SSA) when an offender is determined to be illegally present in the United States.

DOC reports there were 442 suspected unauthorized aliens in DOC facilities in FY 2008. As of November 2, 2009, 93 of these offenders were still held in DOC facilities. The per diem cost to house these individuals was calculated at \$55.33. Total annual costs to DOC to house the 442 unauthorized aliens during FY 2008 were approximately \$8.9 M. The cost of maintaining the remaining 93 unauthorized alien criminal offenders is approximately \$1.9 M per year.

State Contractor E-Verify Requirement: The bill states that for contracts entered or renewed after July 1, 2011, contractors are liable to the contract-issuing state agency or political subdivision for any damages that may result from a contract cancellation due to the illegal employment of unauthorized aliens. This provision will minimize any increase in expenditures that may result from the cancellation of a contract. To the extent that a contractor challenges the contract cancellation, the workload of the respective state agency and the Attorney General may increase to defend the state.

Additionally, as a condition of receiving a state grant or award in excess of \$1,000, businesses would be required to participate in the E-Verify program for legal residence verification. This provision may impact state expenditures to the extent some businesses elect not to participate in the E-Verify. The actual impact on state expenditures is indeterminable.

The E-Verify program is a free, Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure all employees hired after the effective date are processed. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Penalty Provisions: The bill creates the following penalty provisions:

- (1) Knowingly or intentionally transporting or moving an alien for commercial advantage or financial gain, a Class A misdemeanor, and if involving 9 or more aliens, a Class D felony.
- (2) Knowingly or intentionally concealing, harboring, or shielding an alien from detection, a Class A misdemeanor, and if involving 9 or more aliens, a Class D felony.
- (3) Knowingly or intentionally offering, accepting, or recording a consular identification as a valid form of identification for any public purpose commits a Class C infraction, but this offense can be a Class B infraction for a second offense or a Class A infraction for a third or subsequent offense.
- (4) False identity statement, a Class A misdemeanor.
- (5) Knowingly or intentionally making a false, fictitious, or fraudulent statement in an affidavit required for public benefits (federal, state, or locally funded in whole or in part), a Class D felony.

Depending on mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average length of stay in DOC facilities for Class D felony offenders, is approximately 10 months.

The average expenditure to house an adult offender was \$20,194 in FY 2009. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner.

Background Information:

SAVE Program and Associated Fees: In 2003, under the Immigration Reform and Control Act of 1986 (IRCA), the U.S. Department of Homeland Security was required to establish a system for verifying the immigration status of noncitizen applicants for certain types of federally funded benefit programs (including Unemployment Compensation), and to make this system available to federal, state, and local benefit-issuing agencies and institutions that administer such benefits. IRCA mandates overseeing agencies to participate in the verification of an applicant's immigration status.

As enacted by the federal government, effective October 1, 2008, a uniform rate of \$0.50 will apply to each SAVE request submitted electronically with an additional \$0.50 charge if the case is referred for additional verification. A rate of \$2.00 will apply to each initial manual verification request submitted via the paper-based form.

Restrictions on Public Benefits: Currently, the Division of Family Resources (DFR) requires a declaration of citizenship and immigration status during the application process for public benefits. Individuals undergo an interview with program administrators to determine legal status of the applicant. Applicants are required to sign an Application for Assistance Client Certification form that certifies under penalty of perjury that all information about citizenship status is complete and accurate to the best of the applicant's knowledge. Any inability or unwillingness to complete the application results in the individual being considered an undocumented immigrant for public benefits.

Explanation of State Revenues: This bill has the following provisions.

Office of Management and Budget: Under the bill, the OMB is required to calculate the total costs of illegal aliens in the state of Indiana and request reimbursement for these costs from the United States Congress. It is unknown if this request will yield any federal revenue for reimbursement. However, to the extent it does, state revenue will increase. Currently, reimbursement for some of the costs of illegal aliens is provided from the State Criminal Alien Assistance Program (see *Background Information*, below).

E-Verify Requirement: For the purposes of calculating Indiana Individual and Corporate Adjusted Gross Income (AGI) tax and Financial Institutions Tax (FIT) liabilities, this bill requires taxpayers to add back the amounts of any trade or business deductions allowed under the Internal Revenue Code for wages, reimbursements, or other payments made for services provided in Indiana by an employee if the employee was prohibited from being hired under 8 U.S.C. 1324a. However, the add back would not apply to businesses enrolled and participating in the E-Verify program. The impact of these changes is indeterminable and would depend upon the extent that these amounts are being excluded from federal taxable income. These changes are effective for taxable years beginning July 1, 2011, so the fiscal impact could commence in FY 2012. Revenue from the AGI tax and the FIT is deposited in the state General Fund.

The bill also provides that individuals who are prohibited from being hired under 8 U.S.C. 1324a cannot be included for the purposes of determining a business's Economic for a Growing Economy (EDGE) tax credit amount. However, this would not apply to businesses enrolled and participating in the E-Verify program. Under current statute, businesses that create new investment and jobs in Indiana or undertake projects to retain existing jobs in Indiana are eligible for EDGE tax credits. EDGE tax credit amounts are determined by the IEDC and awarded for up to 10 years. EDGE tax credits may be taken against a taxpayer's AGI tax, Insurance Premiums Tax, or FIT liabilities. Individual and corporate taxpayers claimed about \$45 M in

EDGE tax credits for tax year 2008.

Civil Court Fee Revenue: The bill provides court actions where contractors and subcontractors feel their contracts have been wrongfully terminated must proceed through civil court. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. Judgments for infractions are deposited into the state General Fund.

The maximum fines by offense are as follows: (1) a Class A misdemeanor is \$5,000, (2) a Class D felony is \$10,000, (3) a Class C infraction is \$500, (4) a Class B infraction is \$1,000, and (5) a Class A infraction is \$10,000.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on state revenue.]

Background Information: Under the federal State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. For FFY 2009, the DOC received a total of \$1,148,637 in SCAAP funds.

Explanation of Local Expenditures: *E-Verify Requirement:* As a condition of receiving a local grant or award in excess of \$1,000 or a property tax exemption, businesses would be required to participate in the E-Verify program. This provision may impact local expenditures to the extent that some businesses elect not to participate in the E-Verify program. The actual impact on local expenditures is indeterminable.

Day Labor Employment: Law enforcement officers would be required to submit a complaint to the U.S. ICE regarding individuals who violate provisions regarding the employment of day laborers. This is expected to increase the workload of local law enforcement officers.

Bail Requirement: Under the bill, unauthorized aliens that are apprehended would be required to provide 100% of the bail requirement created by the court. Depending on the number of felony defendants, their legal status, and their ability to pay any additional fees that this bill requires, this provision could increase the number of defendants who are held in county jails awaiting trial. The percentage of felony defendants who are unable to pay the higher fees and be required to remain in jail prior to trial is not known. The average cost per day for incarceration is approximately \$44. Any increase in local detention expenses may partially be offset by the federal SCAAP program (see *Explanation of Local Revenue*, below). For FFY 2009, nine counties in Indiana received approximately \$184,000 in reimbursement from the federal government for the local costs of detaining criminal unauthorized immigrants. The net impact on local detention costs is indeterminable.

Any effect on jail populations will depend on the following factors: (1) each county's jail population and existing capacity, (2) the current policies that each court with a criminal jurisdiction has concerning pretrial release (since defendants might be detained anyway if the crime is violent), and (3) the financial status of the criminal defendants. LSA could not find any information on the financial status of defendants awaiting trial.

Court Caseload: Court caseload will increase to the extent that local prosecuting attorneys seek action against employers who have employed unauthorized aliens. The bill also establishes court procedures and requirements for cases involving the employment of unauthorized aliens. Increases in court caseload are indeterminable.

Safe Harbor: This bill will increase court workload as well as the workload of local government officials to defend their respective government units against court action for enacting a safe harbor policy. Actual increases are indeterminable.

Public Employer and Public Contractor Provision: (See also *Explanation of State Expenditures*, above.) To the extent that contractors and subcontractors feel a contract was wrongfully terminated and seek civil redress, local expenditures would increase to defend their interests in court.

Restrictions on Public Benefits: The bill provides that individuals who are not lawfully present in the United States are ineligible for any local public benefit. As a requirement of receiving a public benefit, an applicant would be required to execute a verification stating the individual is a United States citizen or a qualified alien and the filed verification is to be maintained for at least 5 years. The bill could potentially reduce the number of persons in the state who are eligible for local benefits. This could result in savings for the unit or allow the unit to redirect the funds to other persons needing services within a program for which services were not provided under the bill.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on local expenditures.]

Explanation of Local Revenues: *Court Fee Revenue:* If additional court actions occur, local governments would receive revenue from a portion of the \$100 civil costs fee that is assessed in a court of record and additional fees which may be collected at the discretion of the judge and depending upon the particular type of case.

Bail Requirement: Under the bill, unauthorized aliens that are apprehended would be required to provide 100% of the bail requirement created by the court. If persons who are on pretrial release escape the country, then local funds could receive additional revenue depending on the conditions of pretrial release and a portion would be deposited into the state Common School Fund. Some additional fees may also be collected by local governments, depending on the form of pretrial release.

Full Cash Bond – Depending on the arrangements that were made at the time of release, if the defendant deposits the full cash value of the bail amount, then the bail amount would be forfeited and deposited into the state Common School Fund after a bond administration fee is assessed. The bond administration fee is deposited into the local general fund. [For CY 2009, Indiana counties collected approximately \$1.5 M in full cash bonds.]

Surety Bond – Late surrender fees are charged to surety or bail bond agents when the surety or bail bond agent is not able to produce the defendant when the court requests the defendant to appear in court.

The amount of the Late Surrender Fee depends on how many days it takes for the surety agent to make the

defendant appear in court according to the following table.

Late Surrender Fees	
Number of Days Before Bail Bond Agent Is Able to Produce Defendant After Notice by the Court	Late Surrender Fee as Percentage of Face Value of Bond
Between 120 and 180 days	20%
Between 181 and 210 days	30%
Between 211 and 240 days	50%
Between 241 and 365 days	80%

Proceeds from the Late Surrender Fee are split evenly between the Police Pension Trust Fund and the County Extradition Fund. [According to the *Indiana Judicial Report*, in CY 2009, counties reported collecting approximately \$560,000 from the Late Surrender Fee.]

E-Verify Requirement: Some of this bill’s provisions may impact taxable income. The impact on counties imposing local option income taxes is indeterminable and would vary.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on local revenue.]

Background Information: Under the federal State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction’s general fund.

The counties that received payments from the SCAAP program in FFY 2009 and the total amounts received are shown in Table A. For FFY 2008, Indiana counties received \$196,332 from the SCAAP program.

County	Amount Received
Allen	\$38,592
Cass	\$7,854
Grant	\$6,420
Hamilton	\$24,030
Hendricks	\$10,502
Johnson	\$7,719
Marion	\$75,402
Noble	\$11,340
Porter	\$2,486
Total	\$184,345

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; Joshua Richardson, DWD; Anthony Hahn, ISDA; Eric Shields, IEDC; Chris Atkins, OMB; OFMA Income Tax Databases; *Indiana Judicial Reports*, 2005 through 2009; Danielle Chrysler, Lt. Governor's Office.

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