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Prime Sponsor: Rep. Welker, Dist. 51

Bill Status: House State, Veterans &

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Military Affairs

Title: Concerning Collection of Citizenship Data for Public School Students Enrolled in Kindergarten through 12th Grade

This bill represents a net opportunity loss for Colorado. School-age children have a right to an education, regardless of their immigration status.

along with citizenship, still stronger legal and logistical concerns could be raised.

Collecting the desired data could create a chilling effect on some students' school enrollment, due to concerns about being identified as undocumented, or having their parents identified as such.

Summary of Legislation

This bill directs school districts to require each enrolled student to provide at the time of registration for the 2006-07 academic year documentation of the student's country of citizenship. Acceptable documentation would include a birth certificate, passport or Social Security card.

This chilling effect could be felt by undocumented immigrant children and by children born in this country to undocumented parents, who are U.S. citizens. Such chilling effects are expressly prohibited by a U.S. Supreme Court decision.

If the student does not provide citizenship documents, the student may provide a statement identifying country of citizenship, or state that the documentation is not available.

Nationwide, estimates indicate that 3.1 million U.S. citizen children live in families with an undocumented parent, while 1.6 million children are undocumented themselves.¹

School districts would maintain this information in aggregate only, not in individual student records, and would report it to the State Board of Education by Oct. 10, 2006. The state board would report a summary of the data to the Joint Budget Committee and the education committees of the House and Senate by Nov. 15, 2006.

Implementing the bill's requirements could also create an administrative burden on school staff and detract from the primary focus on student learning and achievement.

The bill states that it is not the intent of the General Assembly to discourage students from attending school, to collect data on individuals, or to refer students or their parents for legal action based on the information collected. Rather, the intent is to "obtain a clearer understanding of the demographic makeup of the state's population in order to tailor the use of the state's resources to better meet the needs of the people of the state of Colorado."

As written, HB 06-1062 would fail to illuminate school demographic makeup, including the undocumented student population. The assumption of the bill appears to be that any non-citizen is an illegal immigrant. However, there are numerous ways to be present in the United States legally while maintaining foreign citizenship.²

If the bill were amended to require the collection of legal residence or visa information

The Bell Policy Center believes a top priority of the General Assembly should be to expand opportunities for Coloradans to achieve the American Dream. In that spirit, we offer Opportunity Notes on selected bills. Similar to Fiscal Notes, Opportunity Notes reflect our best analysis of whether a bill, if implemented, will expand opportunities for Coloradans.

A POSITIVE analysis means our research suggests a bill will expand opportunity in a cost effective manner.

A NEGATIVE analysis means our research suggests the measure will restrict opportunities or will not cost-effectively achieve its goals.

Background

The U.S. Supreme Court ruled in 1982 that undocumented school-age children have the same right to an education as U.S. citizens and permanent residents, regardless of their immigration status.³ Based on this ruling, public schools may not:

- Deny enrollment to undocumented students.
- Engage in practices that might “chill” undocumented students and their families from accessing educational services.
- Treat a student differently to determine residency.
- Require disclosure of the immigration status of a parent or child.
- Make inquiries of children or parents that might reveal their immigration status.
- Require Social Security numbers (or documents that can only be obtained by those with Social Security numbers) as a prerequisite to school enrollment.⁴

Good data are not currently available regarding the number of undocumented children in our nation’s public schools. The Census Bureau is working on a plan to develop indirect state-by-state estimates of the undocumented population by age. However, even if successfully implemented, the data would not be available before 2007-09.⁵

The Urban Institute estimates that undocumented children make up only a small share of students nationwide. In 2000, undocumented students were 1.5 percent of children in pre-kindergarten through fifth grades, and 3 percent of students in grades 6 to 12.⁶

Research / Evidence of Effectiveness

The California State Senate considered a bill similar to HB 06-1062 in 2005.⁷ The bill, which did not pass out of committee, sought to develop an accurate count of undocumented immigrant students by requiring schools to collect proof of students’ U.S. citizenship or legal residence.

The legislative analysis for the California bill noted that, based on the 1982 U.S. Supreme Court ruling, any means employed by schools to differentiate undocumented students would effectively act as a barrier to their right of access and would be prohibited. The analysis also questioned whether requiring the schools to collect and report these data would create an undue administrative burden on school personnel.⁸

Estimate of Impact and Benefits

Based on the potential chilling effect on students’ access to education, HB 06-1062 would deny opportunity. How widespread this impact would be is difficult to estimate.

Given current federal law and constitutional protections, determining the citizenship status of students in the public schools would serve a limited use, since schools are required to educate children regardless of their immigration status.

Further, as written, the bill would not lead to the development of useful data on the state’s undocumented student population, since citizenship information alone would be insufficient to provide a clear or accurate picture.

End Notes

¹ J.S. Passel, “Background Briefing Prepared for Task Force on Immigration and America’s Future,” Pew Hispanic Center, Washington, D.C. 2005. www.pewtrusts.org/pdf/PHC_immigrants_0605.pdf.

² “Immigration. Effects on Colorado and the nation: A review of research.” The Bell Policy Center. Dec. 29, 2005. www.thebell.org.

³ Plyler v. Doe, 457 U.S. 202 (1982); *Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs*. U.S. General Accounting Office. GAO-04-733. June 2004. www.gao.gov; “Immigrant Students’ Rights.” Illinois State Board of Education. www.isbe.net/homeless.

⁴ “Immigrant Students’ Rights.” Illinois State Board of

Education; “Immigrant Students’ Rights to Attend Public Schools,” Intercultural Development Research Association August 2005 Newsletter, School Opening Alert. www.idra.org/Newsletters/2005/Aug/students.htm#Art5

⁵ Plyler v. Doe.

⁶ “The New Demography of America’s Schools: Immigration and the No Child Left Behind Act.” Urban Institute, September 2005. www.urban.org/UploadedPDF/311230_new_demography.pdf.

⁷ Senate Bill No. 694, “School Districts: Report on Undocumented Alien Pupils,” California State Senate.

⁸ Senate Bill No. 694, “Bill Analysis.” California State Senate. <http://info.sen.ca.gov>.