

North Carolina and Immigration Reform
Policy Options To Address Omnibus Immigration Legislation
in the North Carolina General Assembly

for

Hon. Deborah K. Ross
House of Representatives
North Carolina General Assembly

by

R. Jason Miller
Master of Public Policy Candidate
Sanford School of Public Policy
Duke University

Faculty advisor: Professor Thomas W. Taylor

April 9, 2012

Sanford School of Public Policy
Box 90239
Durham, NC 27708

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Hon. Deborah K. Ross
House of Representatives
North Carolina General Assembly
16 West Jones Street, Room 1023
Raleigh, NC 27601-1096

Dear Rep. Ross:

This report presents my findings in response to the following policy question: What policy should North Carolina adopt regarding state-level enforcement of immigration law?

Thank you for the opportunity to work on this project. Please contact me at 770.634.6731 or rjm30@duke.edu if you have any questions.

Sincerely,

R. Jason Miller

EXECUTIVE SUMMARY*

Despite no significant movement toward comprehensive federal immigration reform since 2007, stakeholders from virtually all points on the political spectrum continue to call for an overhaul. In the meantime, states have increasingly come to participate in enforcing federal immigration law. One program advancing this trend is 287(g), under which state and local law-enforcement authorities—including several in North Carolina—partner with U.S. Immigration and Customs Enforcement in order to help enforce federal immigration law. Another is E-Verify, a federally administered program that allows employers to use certain identifying documents to verify the residency status of employees; many states—including North Carolina—have made use of the E-Verify program mandatory for public employers, private employers, or both.

Many state legislatures have recently gone one step further in the direction of enforcing immigration law by enacting a wave of major state immigration laws. Arizona led the charge with its 2010 Support Our Law Enforcement and Safe Neighborhoods Act (popularly known as “SB 1070”); Utah, Georgia, Indiana, Alabama, and South Carolina soon followed suit. These laws have proven controversial, and challenges in the federal court system have so far met mixed results. The major common provisions require law-enforcement officers to determine the immigration status of anyone involved in a lawful stop, detention or arrest or anyone about whose immigration status a reasonable suspicion exists; create a presumption of lawful presence upon presentation of an identification card; and prohibit state and local law enforcement from interfering with federal enforcement of immigration. These and other provisions of these laws are discussed in Part II.B of this report.

The Utah law includes several unique provisions. One creates a new temporary–guest-worker program in which currently unauthorized residents can, among other requirements, pay a fine and stay legally in the state. The law also creates two pilot programs, one allowing current citizens to sponsor immigrants for residency and another creating a partnership between Utah and the Mexican state of Nuevo León to facilitate migrant laborers filling jobs in Utah.

Part III discusses immigration in North Carolina and recent legislation addressing it. The population of North Carolina grew by 1.3 million people between 2000 and 2009. Sixteen percent of this population growth is attributable to immigration from other countries, and these immigrants are overwhelmingly Hispanic. Between 2000 and 2010, the number of Hispanic North Carolina residents more than doubled to 800,120 (8.4 percent of the population). Recent North Carolina legislation on immigration has both mandated the use of E-Verify by all employers and extended in-state community-college tuition rates to certain U.S. nonresidents. With the new Republican majority in both houses of the North Carolina General Assembly and the formation of the House Select Committee on the State’s Role in Immigration Policy, serious

* The author is solely responsible for the content of this report, which fulfills the requirement of a Master of Public Policy degree at the Sanford School of Public Policy at Duke University. The research, analysis, policy options and recommendations contained in this paper are not necessarily endorsed by the Sanford School, Duke University, or Representative Deborah K. Ross. Without the specific permission of its author, this paper may not be used or cited for any purpose other than to inform Representative Ross and her staff. The author relied in some instances on data provided by other sources and makes no independent representations as to their accuracy.

consideration of omnibus immigration legislation seems likely, leading to the question addressed by this report:

What policy should North Carolina adopt regarding state-level enforcement of immigration law?

Part V of this report outlines four responsive policy options:

- A. Pass a law similar to Arizona’s Support Our Law Enforcement and Safe Neighborhoods Act or Alabama’s Beason-Hammon Alabama Taxpayer and Citizen Protection Act;
- B. Pass a law similar to Utah’s provisions for a guest-worker program and migrant-worker and sponsorship pilot programs;
- C. Require or encourage increased participation in the 287(g) program and greater enforcement under the current state-law framework; and
- D. Require a study on the state-level effects of immigration and accompanying recommendations, potentially leading to a long phase-in process for any new immigration laws.

Part IV discusses the four criteria against which each of these options should be measured:

- A. Political feasibility;
- B. Effect on labor pool;
- C. Monetary cost; and
- D. Fairness.

Part VI analyzes each of the four policy options numerically and descriptively according to the four criteria and includes a table compiling the scores.

Part VII includes the report’s recommendations:

Oppose any legislation similar to Arizona’s Support Our Law Enforcement and Safe Neighborhoods Act or Alabama’s Beason-Hammon Alabama Taxpayer and Citizen Protection Act;

If such a bill is passed, support the addition of Utah-style labor provisions and study provisions potentially leading to a long phase-in; and

If such a bill is not passed, support independent legislation including Utah-style labor provisions.

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I. POLICY QUESTION

What policy should North Carolina adopt regarding state-level enforcement of immigration law?

II. BACKGROUND

A. *Federal Immigration Law and State Involvement*

1. *Comprehensive Immigration Reform*

Despite no significant movement toward comprehensive federal immigration reform since 2007,¹ stakeholders from virtually all points on the political spectrum continue to call for an overhaul.² Some advocate a dramatic decrease in the number of immigrants allowed into the United States,³ while others seek greater rights and protections for undocumented residents.⁴ President Obama's campaign promise to provide a path to amnesty for undocumented immigrants has not yet materialized into legislation; however, despite record numbers of deportations—over 400,000 in each of the last two years⁵—the Obama administration has exercised its discretion to suspend deportation proceedings against low-threat immigrants, a

¹ *Immigration and Emigration*, N.Y. TIMES, <http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration-and-emigration/index.html> (last updated Sept. 29, 2011).

² See Erik Wasson, *Bloomberg Calls for Four-Part Immigration Reform*, THE HILL (Sept. 28, 2011, 01:38 PM ET), <http://thehill.com/blogs/on-the-money/801-economy/184401-bloomberg-calls-for-four-part-immigration-reform> (“Right now, the two parties—to the extent they talk at all about immigration—play to their base. Democrats say we need comprehensive immigration reform—and I agree we do. Republicans say we need to tighten the border—and I agree with that as well. But unfortunately that is where the national conversation ends” (quoting New York Mayor Michael Bloomberg) (internal quotation marks omitted)).

³ See *About FAIR*, FED’N FOR AM. IMMIGRATION REFORM, <http://www.fairus.org/site/PageNavigator/about.html> (last visited Oct. 22, 2011) (“[The Federation for American Immigration Reform (FAIR)] seeks to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest—more traditional rates of about 300,000 a year.”). *But cf. Federation for American Immigration Reform*, S. POVERTY LAW CTR., <http://www.splcenter.org/get-informed/intelligence-files/groups/federation-for-american-immigration-reform-fair> (last visited Oct. 22, 2011) (documenting FAIR founder Dr. John Tanton’s “view that for European-American society and culture to persist requires a European-American majority, and a clear one at that” (quoting Dr. Tanton) (internal quotation marks omitted), and FAIR president Daniel Stein’s statement that many immigrants “hate America” (quoting Stein)).

⁴ See *Immigration Reform*, NAT’L COUNCIL OF LA RAZA, http://www.nclr.org/index.php/issues_and_programs/immigration/immigration_reform (last visited Oct. 22, 2011) (“[The National Council of La Raza] believes that we have a moral imperative to put hate in check by addressing immigration effectively and humanely and that we have an urgent policy need to fix a system that tramples our values and fosters illegality and exploitation.”).

⁵ Julia Preston, *Latinos and Democrats Press Obama To Curb Deportations*, N.Y. TIMES, Apr. 20, 2011, <http://www.nytimes.com/2011/04/21/us/politics/21immigration.html>.

policy decision expected to affect many who illegally came to the United States as children and plan to attend college or join the military.⁶

2. 287(g) and Federal-State Interaction

Despite no comprehensive reform of the substance of federal immigration law, the federal government has significantly altered the framework of its enforcement by authorizing, as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,⁷ state and local authorities to enforce both civil and criminal immigration law through “287(g) agreements.”⁸ Under the 287(g) program, state and local law-enforcement authorities execute agreements with U.S. Immigration and Customs Enforcement (ICE) identifying “personnel eligibility standards, training requirements, . . . complaint-reporting procedures,”⁹ and “the scope and limitations of the delegation of authority.”¹⁰ Under these agreements, local authorities are empowered to perform certain immigration-law-enforcement functions.¹¹ Sixty-nine law-enforcement agencies in twenty-four states currently have 287(g) agreements with ICE.¹²

Frustrated by inaction on the part of the federal government, many state legislatures have recently enacted a wave of major state immigration laws. Arizona led the charge with its 2010 Support Our Law Enforcement and Safe Neighborhoods Act¹³ (popularly known as “SB 1070”); Utah,¹⁴ Georgia,¹⁵ Indiana,¹⁶ Alabama,¹⁷ and South Carolina¹⁸ soon followed suit. These laws

⁶ Robert Pear, *Fewer Youths To Be Deported in New Policy*, N.Y. TIMES, Aug. 18, 2011, <http://www.nytimes.com/2011/08/19/us/19immig.html>.

⁷ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009-546.

⁸ IIRIRA § 133. Named after its enumeration under the Immigration and Nationality Act, 8 U.S.C. §§ 1101–1537 (2006 & Supp. IV 2010), section 287(g) is codified at 8 U.S.C. § 1357(g).

⁹ OFFICE OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-10-63, THE PERFORMANCE OF 287(G) AGREEMENTS 2 (2010).

¹⁰ *Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <http://www.ice.gov/news/library/factsheets/287g.htm> (last updated Sept. 2, 2011).

¹¹ *Id.*

¹² *Id.*

¹³ Support Our Law Enforcement and Safe Neighborhoods Act, ch. 113, 2010 Ariz. Sess. Laws 450 (codified in scattered sections of ARIZ. REV. STAT. ANN. tits. 11, 13, 23, 28, and 41), *as amended by* Act of Apr. 30, 2010, ch. 211, 2010 Ariz. Sess. Laws 1070.

¹⁴ Illegal Immigration Enforcement Act, ch. 21 (Utah 2011), 2011 Ut. ALS 21 (LEXIS) (to be codified in scattered sections of UTAH CODE ANN. tits. 76 and 77), *as amended by* Act of Mar. 15, 2011, ch. 18 (Utah), 2011 Ut. ALS 18 (LEXIS).

¹⁵ Illegal Immigration Reform and Enforcement Act of 2011, No. 252 (Ga.), 2011 Ga. ALS 252 (LEXIS) (to be codified in scattered sections of GA. CODE ANN. tits. 13, 16, 17, 35, 36, 42, 45, and 50).

¹⁶ Act of May 5, 2011, Pub. L. No. 171 (Ind.), 2011 Ind. ALS 171 (LEXIS) (to be codified in scattered sections of IND. CODE tits. 4, 5, 6, 11, 12, 22, 34, and 35).

¹⁷ Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Pub. Act No. 535 (Ala. 2011), 2011 Al. ALS 535 (LEXIS).

¹⁸ Act of June 27, 2011, No. 69 (S.C.), 2011 S.C. ALS 69 (LEXIS) (to be codified in scattered sections of S.C. CODE ANN. tits. 6, 8, 16, 17, 23, and 41).

have proven controversial,¹⁹ and challenges in the federal court system have so far met mixed results.²⁰

3. *Economy*

Of course, the immigration debate and all other significant policy discussions now occur against the backdrop of the worst economic contraction since the Great Depression.²¹ As the poor economic climate—marked by persistently high unemployment²²—drags on into its fifth year, the economy and jobs are shaping up to be the key issues in the 2012 presidential campaign²³ and, consequently, throughout the policymaking universe.

4. *Employment of Unauthorized Aliens and E-Verify*

Immigration regulation and employment issues intersect in the illegality of hiring undocumented workers and the federal E-Verify program. In 1986, the U.S. Congress passed the Immigration Reform and Control Act of 1986²⁴ (IRCA), which “‘forcefully’ made combating the employment of illegal aliens central to ‘[t]he policy of immigration law.’”²⁵ Federal law continues to prohibit knowingly employing unauthorized aliens²⁶ as well as hiring anyone without examining one (or two) of the enumerated documents and verifying the examination via

¹⁹ See, e.g., Editorial, *It’s What They Asked for*, N.Y. TIMES, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/opinion/its-what-they-asked-for.html> (“Alabama’s new anti-immigrant law, the nation’s harshest, went into effect last month . . . , and it is already reaping a bitter harvest of dislocation and fear.”).

²⁰ See *United States v. Alabama*, 813 F. Supp. 2d 1282 (N.D. Ala. 2011) (partially enjoining the Alabama law); *Ga. Latino Alliance for Human Rights v. Deal*, 793 F. Supp. 2d 1317 (N.D. Ga. 2011) (enjoining the Georgia law); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905 (S.D. Ind. 2011) (enjoining the Indiana law); *United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010) (partially enjoining the Arizona law), *aff’d*, 641 F.3d 339 (9th Cir.), *cert. granted*, 123 S. Ct. 845 (2011). The U.S. Supreme Court is expected to hear oral arguments in a challenge to the Arizona law on April 25, 2012. *For the Session Beginning April 16, 2012*, Supreme Court of the U.S. (Feb. 3, 2012), http://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalApr2012.pdf.

²¹ Bob Willis, *U.S. Recession Worst Since Great Depression, Revised Data Show*, BLOOMBERG (Aug. 1, 2009, 12:00 EDT), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aNivTjr852TI> (“The world’s largest economy contracted 1.9 percent from the fourth quarter of 2007 to the last three months of 2008, . . . indicating the worst slump since the Great Depression.”).

²² See David Leonhardt, *The Depression: If Only Things Were That Good*, N.Y. TIMES, Oct. 8, 2011, <http://www.nytimes.com/2011/10/09/sunday-review/the-depression-if-only-things-were-that-good.html> (“Almost 6.5 million people have been officially unemployed for at least six months, and another few million have dropped out of the labor force—that is, they are no longer looking for work—since 2008.”).

²³ See Binyamin Appelbaum, *Employment Data May Be the Key to the President’s Job*, N.Y. TIMES, June 1, 2011, <http://www.nytimes.com/2011/06/02/business/economy/02jobs.html> (“No American president since Franklin Delano Roosevelt has won a second term in office when the unemployment rate on Election Day topped 7.2 percent. Seventeen months before the next election, it is increasingly clear that President Obama must defy that trend to keep his job.”).

²⁴ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

²⁵ *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002) (alteration in original) (quoting *INS v. Nat’l Ctr. for Immigrants’ Rights, Inc.*, 502 U.S. 183, 194 n.8 (1991)).

²⁶ 8 U.S.C. § 1324a(a)(1)–(2) (2006).

Department of Homeland Security Form I-9.²⁷ Noncompliance is punishable by fines as high as \$10,000²⁸ and prison sentences as long as six months.²⁹

Accompanying (but not replacing) the requirements of the IRCA is the E-Verify program, described by the U.S. Department of Homeland Security as “an Internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment authorization of their newly hired employees” using the information collected for Form I-9.³⁰ Congress created E-Verify as a pilot program in 1996³¹ and authorized its expansion into all fifty states in 2003;³² the program is currently set to expire on September 30, 2012.³³ With the exception of federal agencies³⁴ and federal contractors and subcontractors,³⁵ use of E-Verify by employers is not federally mandated.³⁶

One point of controversy over the E-Verify program has been its accuracy—specifically, the rate at which it returns “erroneous tentative nonconfirmations (TNCs)” for authorized workers—i.e., false negatives.³⁷ Although the accuracy of the E-Verify program has steadily

²⁷ *Id.* § 1324a(a)(1), (b); *Leading Cases: 2. Immigration Law*, 125 HARV. L. REV. 291, 292 (2011). Form I-9 requires a new “employee’s name and date of birth; social security number; citizenship status; an A number or I-94 number if applicable; documentation to establish work authorization; and proof of identity and expiration date, if applicable.” Ann Morse, *E-Verify*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=13127> (last updated Nov. 4, 2011).

²⁸ 8 U.S.C. § 1324a(e)(4).

²⁹ *Id.* § 1324a(f)(1).

³⁰ *Questions and Answers*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=51e6fb41c8596210VgnVCM100000b92ca60aRCRD&vgnnextchannel=51e6fb41c8596210VgnVCM100000b92ca60aRCRD> (last updated June 6, 2011). U.S. Citizenship and Immigrations Services (USCIS) is part of the U.S. Department of Homeland Security.

³¹ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, div. C, §§ 401–05, 110 Stat. 3009-546, 3009-655 to -666. E-Verify was originally called the “Basic Pilot” program. *See* Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, § 551(a), 123 Stat. 2142, 2177 (2009).

³² Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, § 3, 117 Stat. 1944, 1944–45.

³³ Department of Homeland Security Appropriations Act, 2010 § 547, 123 Stat. at 2177. Given its history, the program will almost certainly be renewed again.

³⁴ IIRIRA § 402(e)(1), 110 Stat. at 3009-658 to -659.

³⁵ Exec. Order No. 13,465, 3 C.F.R. 192 (2009), *reprinted in* 8 U.S.C. § 1324a app. at 671 (Supp. II 2008).

³⁶ IIRIRA § 402(a), 110 Stat. at 3009-656.

³⁷ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-146, EMPLOYMENT VERIFICATION: FEDERAL AGENCIES HAVE TAKEN STEPS TO IMPROVE E-VERIFY, BUT SIGNIFICANT CHALLENGES REMAIN 3 (2010); *see also* Marc R. Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform*, MIGRATION POLICY INST. 7–8 (Feb. 2011), <http://www.migrationpolicy.org/pubs/E-Verify-Insight.pdf> (criticizing the inaccuracy of the program and describing the resulting problems).

improved since its inception,³⁸ up to 22 percent of all TNCs remain erroneous,³⁹ a problem that disproportionately affects foreign-born workers.⁴⁰

Seventeen states have made use of the E-Verify program mandatory for public employers, private employers, or both,⁴¹ requirements to which farmers in particular have expressed strong opposition.⁴² For example, a 2007 Arizona law requires all employers in that state to use the E-Verify program⁴³ and authorizes “Arizona courts to suspend or revoke the licenses necessary to do business in the State if an employer knowingly or intentionally employs an unauthorized alien.”⁴⁴ A challenge to the Arizona law, filed by “various business and civil rights organizations,”⁴⁵ reached the U.S. Supreme Court, which upheld the law as not preempted by the federal IRCA.⁴⁶

5. *Temporary-Worker Visas*

Another federal program focused on the intersection of immigration and employment is the temporary-worker program, which allows employers to sponsor employees for temporary

³⁸ See U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 37, at 16 (“USCIS has reduced TNCs from 8 percent during the time period June 2004 through March 2007 to almost 2.6 percent in fiscal year 2009 . . .”).

³⁹ See Rosenblum, *supra* note 37, at 16 n.6 (“According to [Westat’s] analysis, 3.6 percent of all queries produced [TNCs], including 0.8 percent that were erroneous TNCs, meaning 22 percent of TNCs were for legal workers, and 78 percent were for unauthorized workers.” (citation omitted) (citing WESTAT, FINDINGS OF THE E-VERIFY PROGRAM EVALUATION 50, 17 (2009), available at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%202012-16-09_2.pdf)).

⁴⁰ See *id.* at 6 (“[I]n 2008, error rates were at least 30 times higher for naturalized citizens and 50 times higher for legal nonimmigrants (temporary workers) than for native-born citizens.” (citing WESTAT, *supra* note 39, at 208–11)).

⁴¹ Morse, *supra* note 27.

⁴² See *E-Verify*, AM. FARM BUREAU FED’N (Oct. 2011), <http://www.fb.org/issues/docs/everify11.pdf> (“Requiring agricultural employers to use E-Verify without assuring that a workable guest worker program is in place could have a significant, negative impact on U.S. farm production, threatening the livelihoods of many farmers and ranchers in labor intensive agriculture.”); see also Jesse McKinley & Julia Preston, *Farmers Oppose G.O.P. Bill on Immigration*, N.Y. TIMES, July 30, 2011, <http://www.nytimes.com/2011/07/31/us/politics/31verify.html> (“[F]armers say [mandating use of E-Verify] could cripple a \$390 billion industry that relies on hundreds of thousands of willing, low-wage immigrant workers to pick, sort and package everything from avocados to zucchini.”)

⁴³ ARIZ. REV. STAT. ANN. §§ 23-214(A) (2009).

⁴⁴ Chamber of Commerce of the U.S. v. Whiting, 131 S. Ct. 1968, 1976 (2011); see ARIZ. REV. STAT. ANN. §§ 23-211 to -212.01.

⁴⁵ *Whiting*, 131 S. Ct. at 1977.

⁴⁶ *Id.* at 1987.

residence in the United States.⁴⁷ The H-2A visa in particular allows for temporary residence in order to perform agricultural work,⁴⁸ a labor source some farmers deem essential to their work.⁴⁹

B. Omnibus Immigration Legislation in Other States

1. Arizona

The Arizona Support Our Law Enforcement and Safe Neighborhoods Act, the first in the latest wave of omnibus immigration laws, contains many provisions requiring and encouraging increased state-level enforcement of immigration laws.

One of the more controversial provisions requires law-enforcement officers to “reasonably attempt to determine the immigration status” of anyone involved in a lawful stop, detention, or arrest if a “reasonable suspicion” exists that the person is an unlawfully present alien.⁵⁰ The law creates a presumption of lawful presence upon presentation of a federal-, state-, or local-government-issued identification card for which proof of legal presence is required.⁵¹ The law also prohibits state and local law enforcement from interfering with federal enforcement of immigration laws and allows legal residents to sue state or local governments restricting enforcement of federal immigration law.⁵² Violating entities are liable for up to \$500 per day of the restricting policy, but the law officers are indemnified absent bad faith.⁵³

The law also creates a state violation mirroring federal requirements that all aliens register and carry proof of registration.⁵⁴ Additionally, the Arizona law makes it criminal to “[t]ransport or move” an alien while committing another crime; “[c]onceal, harbor or shield” an

⁴⁷ *Temporary (Nonimmigrant) Workers*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=13ad2f8b69583210VgnVCM100000082ca60aRCRD&vgnnextchannel=13ad2f8b69583210VgnVCM100000082ca60aRCRD> (last updated Sept. 7, 2011).

⁴⁸ *H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/200bportal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD#> (last updated Jan. 14, 2011). North Carolina has more H-2A guest workers than any other state. *New Report Documents Abuses in Agricultural Guest Worker Program*, N.C. JUSTICE CTR., <http://www.ncjustice.org/?q=node/948> (last visited Nov. 17, 2011).

⁴⁹ See, e.g., Chris Burritt & Timothy R. Homan, *North Carolina Shows how Small-Town America Is Absorbing Hispanic Surge*, BLOOMBERG (Mar. 3, 2011, 12:00 AM ET), <http://www.bloomberg.com/news/2011-03-03/north-carolina-shows-small-town-america-absorbs-hispanic-surge.html> (“Without a growing Hispanic population in the rolling hills of rural North Carolina, Bottomley Evergreens & Farms Inc., a provider of Christmas trees to Wal-Mart Stores Inc. and Home Depot Inc., would be out of business. ‘If it weren’t for the Hispanic people, I couldn’t farm, couldn’t do nothing,’ said Blan Bottomley, 64, who has 4.5 million firs planted this year and fields of pumpkins, cabbage and sweet corn taking root nearby.”)

⁵⁰ Ann Morse, *Arizona’s Immigration Enforcement Laws*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=20263> (last updated July 28, 2011).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

alien; or “[e]ncourage or induce” an alien to come to Arizona if the person “knows or recklessly disregards” the fact that the alien would be an unlawful resident.⁵⁵

The Arizona law makes it a misdemeanor to employ someone from a motor vehicle (or likewise to be employed) and for an unauthorized alien to apply for or solicit work in a public place;⁵⁶ entrapment provides an affirmative defense to these crimes.⁵⁷ It also requires employers to keep a record of the verification of an employee for three years or the duration of the employment, whichever is longer.⁵⁸

Finally, the Arizona law includes a number of provisions prohibiting law-enforcement officers from considering race, color, or national origin when implementing the provisions of the law.⁵⁹

2. *Utah, Alabama, Georgia, Indiana, and South Carolina*

Five other states have followed Arizona, and the laws in those states have largely taken the Arizona legislation as a template, often additionally making the use of E-Verify mandatory.⁶⁰ The Utah, Georgia, and Indiana laws also increase documentation requirements for aliens seeking public benefits while the Alabama and South Carolina laws ban them from receiving any state benefits (with exceptions for, e.g., emergency, prenatal, and child- and adult-protective services).⁶¹

The Utah law included a number of provisions supporting integration of immigrants into the state and their employment. One of these provisions authorizes a temporary–guest-worker program.⁶² To be eligible for a guest-worker permit, an individual must have worked or lived in Utah prior to May 11, 2011; provide proof of work; not have pled guilty to or been convicted of a serious felony; have health insurance; hold a driving-privilege card; and meet a number of other requirements.⁶³ Application for the two-year permit requires paying a fine: \$1000 for individuals who lawfully entered the state but are no longer in compliance with federal immigration law and \$2500 for individuals who entered Utah illegally.⁶⁴ Permit-holders must also make a good-faith effort to learn the English language.⁶⁵

⁵⁵ ARIZ. REV. STAT. ANN. § 13-2929 (Supp. 2011).

⁵⁶ Morse, *supra* note 50.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ann Morse, April Carter, Marie Lawrence & Joy Segreto, *State Omnibus Immigration Legislation and Legal Challenges*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?TabId=22529> (last updated Mar. 9, 2012). Arizona had made E-Verify mandatory prior to its 2010 omnibus law. *See supra* text accompanying notes 43–46.

⁶¹ Morse et al., *supra* note 60.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Unfortunately for proponents of this guest-worker program, the federal government must provide a waiver for this provision of Utah's law to go into effect,⁶⁶ a waiver that Utah's Senator Mike Lee, among others, sees as unlikely to be granted: "I know of no provision of federal law that suggests such a waiver could even be granted. Nor do I know of any political inclination in Washington to allow that to happen."⁶⁷

The Utah law also established a study commission and two new pilot programs. The law created a twenty-seven-member Commission on Immigration and Migration to review current federal and state immigration laws and the impact of illegal immigration; the commission will develop a state immigration plan and present recommendations to the legislature and governor.⁶⁸ The first pilot program authorizes Utah to work with the Mexican State of Nuevo León to fill jobs in Utah with migrant workers.⁶⁹ The second allows a U.S. citizen to sponsor a foreign national to reside, work, and study in the state.⁷⁰ While the first pilot program works within the federal visa framework, the second, like the guest-worker program, faces the issue of potential conflict with federal law.⁷¹

The Utah law also bans knowingly hiring an undocumented worker without a permit.⁷² Employers with more than fifteen employees must use the E-Verify program or an equivalent verification system for all new hires.⁷³

The Georgia and Indiana laws are substantially similar to Arizona's and also include E-Verify requirements for state agencies, contractors, and subcontractors.⁷⁴ The Indiana law additionally requires the state Office of Management and Budget to calculate the costs to the state of illegal immigration and to request reimbursement from the U.S. Congress.⁷⁵

The Alabama and South Carolina laws add to the Arizona framework a requirement that all public contractors and subcontractors use E-Verify.⁷⁶ Both laws also ban entering into a rental agreement with knowledge of or reckless disregard for whether the renter is an unlawful resident and requires presenting proof of citizenship and residence before voting.⁷⁷ The Alabama

⁶⁶ Mara Liasson, *Utah's New Immigration Law: A Model for America?*, NPR (Mar. 18, 2011), <http://www.npr.org/2011/03/18/134626178/utahs-new-immigration-law-a-model-for-america>.

⁶⁷ Billy Hesterman, *Lee: Utah Immigration Waiver Unlikely*, DAILY HERALD (Mar. 23, 2011, 12:20 AM), http://www.heraldextra.com/news/local/govt-and-politics/legislature/article_2d40d02b-994d-5c88-8d5f-8a6d7dd0480a.html.

⁶⁸ Morse et al., *supra* note 60.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See David Montero, *Herbert Signs 'Utah Solution' on Immigration*, SALT LAKE CITY TRIB., Mar. 16, 2011, <http://www.sltrib.com/sltrib/home/51437254-76/bill-immigration-utah-bills.html.csp>.

⁷² Morse et al., *supra* note 60.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

law additionally requires all public schools to determine all students' immigration statuses and submit annual reports to the state.⁷⁸

3. *Theoretical Debate*

While scholarly literature on the topic is largely supportive of state and local involvement in contemporary immigration law, the specific actions states should take is hotly debated. One vocal advocate of using state laws to reduce the immigrant population is Kris Kobach, Kansas Secretary of State, former law professor, and intellectual architect of the recent wave of state immigration laws.⁷⁹ Kobach has championed the idea that states can themselves enforce federal immigration standards.⁸⁰ Noting that “every state is a border state now,” Kobach argues that “the single largest factor motivating state governments to enact legislation discouraging illegal immigration is the fiscal burden that it imposes upon the states.”⁸¹ Kobach suggests state action in eight specific areas:

- A. Denying public benefits to illegal aliens;
- B. Denying resident tuition rates to illegal aliens;
- C. Prohibiting the employment of unauthorized aliens;
- D. Enacting state-level crimes that mirror federal immigration crimes;
- E. Enacting state-level crimes against identity theft;
- F. Providing state and local law enforcement assistance to ICE;
- G. Presuming illegal aliens to be flight risks for bail purposes; [and]
- H. Denying driver licenses to illegal aliens.⁸²

The influence of these ideas on recent immigration laws is clear.

Professor Cristina M. Rodríguez, on the other hand, also advocates for greater state involvement in immigration regulation but with a different “modus vivendi”: integration.⁸³ According to Professor Rodríguez, the immigration regulatory regime should “help[] the country as a whole to absorb immigration flows and manage the social and cultural change that immigration inevitably engenders. The primary function states and localities play in this

⁷⁸ *Id.*

⁷⁹ See Tony Dokoupil, *America's Deporter in Chief*, NEWSWEEK (Jan. 30, 2011, 10:00 AM EST), <http://www.thedailybeast.com/newsweek/2011/01/30/america-s-deporter-in-chief.html> (profiling Kobach).

⁸⁰ *Id.*

⁸¹ Kris W. Kobach, *Reinforcing the Rule of Law: What States Can and Should Do To Reduce Illegal Immigration*, 22 GEO. IMMIGR. L.J. 459, 459–60 (2008).

⁸² *Id.* at 465.

⁸³ Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 570–71 (2008).

structure is to integrate immigrants, legal and illegal alike, into the body politic.”⁸⁴ Professor Rodríguez approvingly notes the Hispanic Initiative of the University of North Carolina’s Center for International Understanding, which “encourages policymakers and agency officials to understand the reasons for immigration to North Carolina and develops a network of interdisciplinary professionals who can act on that understanding to help immigrants integrate.”⁸⁵ One project of the Initiative is, for example, to sponsor trips to Mexico for state and local officials.⁸⁶

One recurring concern about state-level enforcement of immigration laws is a danger of increased civil-rights violations. As Judge Linda Reyna Yanez and Alfonso Soto write, “The lack of knowledge, training, and experience in dealing with immigration issues heightens the potential for civil rights violations when immigration enforcement is placed in the hands of local police.”⁸⁷ Given that Judge Yanez and Soto advocate “protection against stopping, arresting, and questioning individuals to ascertain their immigration status,”⁸⁸ the recent omnibus laws likely exacerbate such worries.

4. *Effects*

i. Empirical evidence

While this wave of state laws is too recent for full quantitative analysis, at least one manuscript has tried to measure the effects on population and employment of restrictive state immigration laws (although not the specific laws discussed above).⁸⁹ Reviewing state immigration laws focusing on employment, Professors Steven Raphael and Lucas Ronconi found

significant declines in state employment, population, and in many instances, employment rates for Hispanics in states that pass such legislation. The adverse impacts of these laws are generally concentrated on non-citizens from Latin American countries of all education levels, a group that loses both employment as well as population in adopting states relative to non-adopting states. We also observe relative employment declines among foreign-born Hispanic citizens with a high school degree or less, but no corresponding population loss. . . . [W]e find little evidence of an adverse impact of these laws on the employment, population, and employment rates of non-Latino racial/ethnic groups.⁹⁰

⁸⁴ *Id.* at 571.

⁸⁵ *Id.* at 585.

⁸⁶ *Id.*

⁸⁷ Linda Reyna Yanez & Alfonso Soto, *Local Police Involvement in the Enforcement of Immigration Law*, 1 HISP. L.J. 9, 12–13 (1994).

⁸⁸ *Id.* at 51.

⁸⁹ Stephen Raphael & Lucas Ronconi, *The Labor Market Impact of State-Level Immigration Legislation Targeted at Unauthorized Immigrants* (Jan. 2009) (unpublished manuscript).

⁹⁰ *Id.* at 3.

Decreased unemployment of Hispanic citizens may be the result of “probabilistic assessments of legal status” by employers,⁹¹ a type of discrimination discussed at least since the debate surrounding the original 1986 IRCA.⁹²

ii. Media coverage

National media sources, however, have covered the effects of these laws extensively. The Alabama law has received significant national media attention. The *New York Times* reported on the immediate “exodus” following the Alabama law going into effect: “Statewide, 1,988 Hispanic students were absent [two days after the law went into effect], about 5 percent of the entire Hispanic population of the school system.”⁹³ Noting that “[c]ritics of the law, particularly farmers, contractors and home builders, say the measure has already been devastating, leaving rotting crops in fields and critical shortages of labor,” the article goes on to quote a Republican state senator: “It’s going to take some time for the local labor pool to develop again”⁹⁴ As evidence that the law was increasing employment of citizens and authorized workers, the senator

point[ed] out that the work-release center in Decatur, [Alabama], was not so long ago unable to find jobs for inmates with poultry processors or home manufacturers. Since the law was enacted in June, he said, the center has been placing more and more inmates in these jobs, now more than 150 a day.⁹⁵

In Georgia, restaurateurs, a group that “had been particularly critical” of Georgia’s new immigration law, reported significant labor shortages in the wake of the law.⁹⁶ Georgia farmers told a similar story,

complain[ing] of severe labor shortages following the passage of [the law]. They say the new law is scaring away the migrant Hispanic workers they depend on to pick their fruits and vegetables, potentially putting hundreds of millions of dollars in crops at risk. A state survey of farmers released last month showed they had 11,080 jobs open.⁹⁷

Arizona has experienced significant backlash, both economic and political, in the wake of its immigration law. After a boycott of the state was declared because of the new law, “musicians canceled Arizona concerts, tourists canceled Arizona vacations and convention

⁹¹ *Id.* at 6.

⁹² *Id.* at 7.

⁹³ Campbell Robertson, *After Ruling, Hispanics Flee an Alabama Town*, N.Y. TIMES, Oct. 3, 2011, <http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html>.

⁹⁴ *Id.* (quoting Sen. Arthur Orr) (internal quotation mark omitted).

⁹⁵ *Id.*

⁹⁶ Jeremy Redmon, *Georgia Restaurants Report Labor Shortages After Passage of Anti-Illegal Immigration Law*, ATLANTA J.-CONST. (July 20, 2011, 5:04 PM), <http://www.ajc.com/news/georgia-politics-elections/georgia-restaurants-report-labor-1030243.html>.

⁹⁷ *Id.*

organizers bypassed Arizona in favor of less politically toxic states.”⁹⁸ In the wake of a “drastic decline” in the state’s convention and tourism industries⁹⁹—estimates range from \$15 million to \$150 million in lost business—the Arizona legislature in March 2011 rejected five new anti-immigration measures.¹⁰⁰ Just this month, “Russell Pearce, Arizona’s most powerful legislator and the architect of its tough immigration law,” was recalled and replaced by a more moderate Republican.¹⁰¹

⁹⁸ Marc Lacey, *Immigration Advocates Split over Arizona Boycott*, N.Y. TIMES, Sept. 14, 2011, <http://www.nytimes.com/2011/09/15/us/immigration-advocates-are-split-over-arizona-boycott.html>.

⁹⁹ *Id.* (quoting Kristen Jarnagin, vice president of communications for the Arizona Hotel and Lodging Association) (internal quotation mark omitted).

¹⁰⁰ *Id.*

¹⁰¹ Marc Lacey & Katharine Q. Seelye, *Recall Election Claims Arizona Anti-Immigration Champion*, N.Y. TIMES, Nov. 10, 2011, <http://www.nytimes.com/2011/09/15/us/immigration-advocates-are-split-over-arizona-boycott.html>.

III. PROBLEM STATEMENT

A. Demographic Change

The population of North Carolina is growing rapidly—specifically, by 1.3 million people between 2000 and 2009.¹⁰² Sixteen percent of this population growth is attributable to immigration from other countries,¹⁰³ and these immigrants are overwhelmingly Hispanic. In 2000, North Carolina had 378,963 Hispanic residents (4.7 percent of the total population);¹⁰⁴ in 2010, that number had more than doubled to 800,120 (8.4 percent of the population).¹⁰⁵

B. Economy

The economy of North Carolina is transitioning from “traditional labor-intensive industries (e.g. textiles, furniture, etc.) to knowledge-based or service-related industries,” a move accelerated by the recent recession.¹⁰⁶ Throughout the economic crisis, North Carolina’s unemployment rate has been higher than the national average, peaking in February 2010 at 11.4 percent;¹⁰⁷ in February 2012, North Carolina’s unemployment rate was 9.9 percent.¹⁰⁸ The percentage of tax returns filed by people in the lowest income category in North Carolina between 2004 and 2008 (68.8 percent) was higher than the percentage for the nation as a whole (65.7 percent).¹⁰⁹ In 2010, an average of 29,194 people were employed in the “[a]griculture, [f]orestry, [f]ishing & [h]unting” sector,¹¹⁰ in which average wages were \$542 per week.¹¹¹

¹⁰² KRISTIN BUNN & DEREK RAMIREZ, POLICY, RESEARCH & STRATEGIC PLANNING DIV., N.C. DEP’T OF COMMERCE, 2011 NORTH CAROLINA ECONOMIC INDEX: A SUMMARY OF NORTH CAROLINA’S ECONOMIC STRENGTHS, CHALLENGES AND OPPORTUNITIES 12 (Jared Wiener ed., 2011), available at <http://www.nccommerce.com/Portals/0/Research/EconIndex/2011%20Economic%20Index.pdf>. North Carolina’s total population in 2010 was 9,535,483. *State & County QuickFacts: North Carolina*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/37000.html> (last updated Oct. 13, 2011).

¹⁰³ *Id.* Fifty percent is due to interstate migration. *Id.*

¹⁰⁴ *Profile of General Demographic Characteristics: 2000: North Carolina*, U.S. CENSUS BUREAU, http://factfinder.census.gov/servlet/QTTTable?_bm=n&_lang=en&qv_name=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=04000US37 (last visited Nov. 12, 2011).

¹⁰⁵ *Profile of General Population and Housing Characteristics: 2010: North Carolina*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/200bfaces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table (last visited Nov. 12, 2011).

¹⁰⁶ BUNN & RAMIREZ, *supra* note 102, at 1.

¹⁰⁷ *Id.* at 5.

¹⁰⁸ *Economy at a Glance: North Carolina*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/eag/eag.nc.htm> (last updated Apr. 6, 2012).

¹⁰⁹ BUNN & RAMIREZ, *supra* note 102, at 56.

¹¹⁰ *Demand Driven Data Delivery System*, N.C. DEP’T OF COMMERCE DIV. OF EMP’T SEC., <http://esesc23.esc.state.nc.us/d4> (last visited Nov. 12, 2011).

¹¹¹ *Demand Driven Data Delivery System: Quarterly Census Employment and Wages (QCEW)*, N.C. DEP’T OF COMMERCE DIV. OF EMP’T SEC., <http://esesc23.esc.state.nc.us/d4/QCEWSelection.aspx> (select “Sector (2 digit),” “11 - Agriculture, Forestry, Fishing & Hunting,” “Average Weekly Wage,” “Aggregate of all types,” “2010,” and “Annual”; then select “View”) (last visited Nov. 12, 2011).

C. Recent Immigration Legislation

Recent North Carolina legislation on immigration has both mandated the use of E-Verify and extended in-state community-college tuition rates to certain U.S. nonresidents. In 2006, the state enacted a requirement that each state “agency, department, institution, university, community college, and local education agency” use the E-Verify program to verify the legal status of all new hires;¹¹² in 2011, the requirement was extended to all employers, including all counties and municipalities.¹¹³ Also in 2011, the state explicitly extended in-state community-college tuition rates to nonresidents of the United States who have resided in North Carolina for at least twelve months and have filed an immigrant petition with the U.S. Department of Homeland Security.¹¹⁴ With the new Republican majority in both houses¹¹⁵ and formation of the House Select Committee on the State’s Role in Immigration Policy,¹¹⁶ serious consideration of omnibus immigration legislation seems likely.

¹¹² Act of July 27, 2006, No. 2006-259, § 23.1, 2006 N.C. Sess. Laws 1234, 1250 (codified at N.C. GEN. STAT. § 126-7.1(f)).

¹¹³ Act of June 18, 2011, No. 2011-263 (N.C.), 2011 N.C. ALS 263 (LEXIS) (codified in scattered sections of N.C. GEN. STAT. chs. 64, 153A, and 160A). The law includes exceptions for entities with fewer than twenty-five employees, *id.* sec. 3, § 64-25(4), and for “seasonal temporary” employees, *id.* sec. 3, § 64-26(c).

¹¹⁴ Act of June 14, 2011, No. 2011-183, § 80 (2011), 2011 N.C. ALS 183 (LEXIS) (codified at N.C. GEN. STAT. § 115D-39(a)).

¹¹⁵ See *infra* note 117 and accompanying text.

¹¹⁶ *Select Committee on the State’s Role in Immigration Policy*, N.C. GEN. ASSEMBLY, http://www.ncleg.net/gascritps/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=House%20Select_143 (last visited Mar. 31, 2012).

IV. CRITERIA

A. *Political feasibility*

Any successful proposal must be politically feasible—i.e., it must be palatable enough to the General Assembly and the governor to be passed and not vetoed. Because Republicans constitute the majority in both houses of the General Assembly (for the first time since 1870)¹¹⁷ and Governor Bev Perdue is a Democrat, a successful measure must meet some level of bipartisan support. Particularly because immigration is a relatively high-profile issue, North Carolina citizens will likely take notice of any legislative proposal, which must therefore be palatable to the general public as well. The business community is another group whose support will be important, particularly for a bill that would directly address employment and, therefore, directly affect North Carolina businesses.

B. *Effect on labor pool*

A successful proposal must also satisfy the state's employment requirements, specifically the need for a healthy labor pool. Citizens and lawful residents of Hispanic descent face the greatest risk of increased unemployment and relative political unpopularity; disproportionate effects on their employment is therefore a serious risk. Any effects on employment will likely occur through the proxy of North Carolina businesses—i.e., their employment of more or fewer people based on the changing costs of hiring new employees. The opinion of the business community on the employment effects of any new proposal is therefore also important in this context.

C. *Monetary cost*

Any new immigration measure must also take into account its costs, both to state and local governments and to businesses. Particularly in light of the severe fiscal crisis North Carolina—and all states—have faced in the last few years,¹¹⁸ a significant increase in governmental costs may render any proposal infeasible. For Fiscal Year 2011, North Carolina closed a \$5.8 billion state-budget gap—30.6 percent of the total FY2011 General Fund.¹¹⁹ The Center on Budget and Policy Priorities projects a \$2.4 billion (12.1 percent) shortfall for Fiscal Year 2012¹²⁰ and a \$2.0 billion (10.0 percent) shortfall for Fiscal Year 2013.¹²¹ Local governments face similar budget problems.¹²² Increasing the costs of law enforcement, for example, could affect both state and local spending. Additionally, any new immigration law

¹¹⁷ Barry Smith, *Republican Majority Takes Center Stage as General Assembly Convenes*, SHELBY STAR (Jan. 26, 2011, 5:27 PM), <http://www.shelbystar.com/articles/center-53082-stage-convenes.html>.

¹¹⁸ Elizabeth McNichol, Phil Oliff & Nicholas Johnson, *States Continue To Feel Recession's Impact*, CTR. ON BUDGET & POLICY PRIORITIES 1, <http://www.cbpp.org/files/9-8-08sfp.pdf> (last updated June 17, 2011).

¹¹⁹ *Id.* at 9 tbl.3.

¹²⁰ *Id.* at 5 tbl.1.

¹²¹ *Id.* at 6 tbl.2.

¹²² Jim Johnson, Interview, *Dealing with a State Budget Crisis*, 2 SANFORD J. PUB. POL'Y 79, 83–85 (2011) (discussing the effect on the budgets of North Carolina local governments resulting from decreasing state spending on education and falling property values).

could cost North Carolina businesses by, for example, requiring additional background checks for new employees. Finally, potential reputational harm from what some may consider an overly harsh immigration law may dampen future investment in the state. In the current economic and fiscal climate, sensitivity to both public and private costs is critical.

D. Fairness

Finally and most abstractly, any proposal should strive to treat all North Carolina residents, legal or illegal, fairly. The potential for racial profiling of lawful residents of Hispanic descent is ever present, as is the danger of discouraging all Hispanic residents from reporting crimes, particularly domestic abuse. More-aggressive enforcement of immigration laws by local law-enforcement officers (who are often less trained in handling unlawful immigrants than federal authorities) could lead to unnecessarily harsh treatment of lawful and unlawful residents during arrest or while in detention, potentially to the degree of being considered violations of human rights. North Carolina should strive to avoid endorsing an attitude of indifference—or animus—toward people of Hispanic descent.¹²³

¹²³ Cf. Susan Saulny, *On Taxes and Fences, Cain Stumbles a Bit*, N.Y. TIMES, Oct. 16, 2011, <http://www.nytimes.com/2011/10/17/us/politics/on-taxes-and-fences-herman-cain-stumbles-a-bit.html> (reporting Republican presidential candidate Herman Cain’s “saying he was only joking about killing people trying to cross the border from Mexico with an electrified fence”).

V. POLICY OPTIONS

A. *Pass a law similar to Arizona's Support Our Law Enforcement and Safe Neighborhoods Act or Alabama's Beason-Hammon Alabama Taxpayer and Citizen Protection Act*¹²⁴

The provisions of the Arizona law and its counterparts are discussed in more detail in Part II.B. A similar law could be considered by the North Carolina legislature in the near future.¹²⁵ To reiterate, the major common provisions require law-enforcement officers to determine the immigration status of anyone involved in a lawful stop, detention or arrest or anyone about whose immigration status a reasonable suspicion exists; create a presumption of lawful presence upon presentation of an identification card; and prohibit state and local law enforcement from interfering with federal enforcement of immigration.¹²⁶ The laws also criminalize a number of activities: concealing, harboring, or shielding an alien; encouraging or inducing an unlawful alien to come to Arizona; employing someone from a motor vehicle (or being employed by someone in a vehicle); and, for undocumented immigrants, applying for or soliciting work in a public place.¹²⁷ The laws additionally include provisions prohibiting law-enforcement officers from considering race, color, or national origin when implementing the provisions of the law.¹²⁸

The Alabama law includes additional provisions preventing undocumented immigrants from receiving any state benefits (with some exceptions); banning entering into a rental agreement with knowledge of or reckless disregard for whether the renter is an unlawful resident; and requiring all public schools to determine all students' immigration statuses and submit annual reports to the state.¹²⁹

B. *Pass a law similar to Utah's provisions for a guest-worker program and migrant-worker and sponsorship pilot programs*

Part II.B.2 discusses a number of provisions included in Utah's bill to support integration of immigrants into the state and their employment; enacting a North Carolina law with similar provisions is one potential approach to immigration issues. One of the Utah provisions created a temporary-guest-worker program open to undocumented immigrants who meet a number of requirements (including having health insurance and not having been convicted of a serious felony).¹³⁰ In order to apply, a potential participant must pay a fine of either \$1000 or \$2500.¹³¹ This provision, however, depends on a federal waiver, which has not been forthcoming in Utah's

¹²⁴ Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Pub. Act No. 535, 2011 Al. ALS 535 (Ala. 2011) (LEXIS).

¹²⁵ See *supra* Part III.C.

¹²⁶ See *supra* Part II.B.

¹²⁷ See *supra* Part II.B.

¹²⁸ See *supra* Part II.B.

¹²⁹ See *supra* Part II.B.2. South Carolina also includes the first two of these three provisions. See *supra* Part II.B.2.

¹³⁰ See *supra* Part II.B.2.

¹³¹ See *supra* Part II.B.2.

case; the chief sponsor of the Utah legislation notes, however, that multiple states seeking such a waiver may force the question with the federal government.¹³²

The Utah law also established two new pilot programs. The first, which operates within the current federal visa framework, authorizes Utah to work with the Mexican State of Nuevo León to fill jobs in Utah with migrant workers.¹³³ The second, which also faces potential conflict with federal law, allows a U.S. citizen to sponsor a foreign national to reside, work, and study in the state.¹³⁴

C. Require or encourage increased participation in the 287(g) program and greater enforcement under the current state-law framework

Expanding the use of 287(g) agreements in North Carolina is another alternative for altering the state's immigration-law-enforcement framework. Local-federal partnerships under 287(g) take two primary forms: jail-enforcement and task-force agreements. Six North Carolina law-enforcement organizations currently have jail-enforcement agreements with ICE.¹³⁵ In a participating jurisdiction, a local law-enforcement officer can access an ICE database to check the immigration status of anyone being admitted into jail.¹³⁶ If an arrestee is found to be unlawfully present in the country, an officer may refer the immigrant to ICE for deportation processing.¹³⁷ In North Carolina, only the Durham Police Department has a task-force agreement with ICE.¹³⁸ Under a task-force agreement, which is significantly more expansive than a jail-enforcement agreement, local law-enforcement officers can interrogate anyone about his or her immigration status; arrest without a warrant anyone whom the officer believes to be unlawfully present in the country; and bring anyone so arrested directly to ICE detention centers.¹³⁹

Immigrants processed through North Carolina's 287(g) programs are deported at high rates. For example, from January 2007 to February 2009, 287(g)-trained officers interviewed 9866 Mecklenburg County inmates, 5925 (60 percent) of whom were processed for

¹³² Hesterman, *supra* note 67.

¹³³ *See supra* Part II.B.2.

¹³⁴ *See supra* Part II.B.2.

¹³⁵ *Fact Sheet, supra* note 10. The six organizations are the sheriffs' offices in Alamance, Cabarrus, Gaston, Henderson, Mecklenburg, and Wake counties. *Id.*

¹³⁶ Emily F. Kirby, 287(g) in North Carolina: Policy Options To Address Local Immigration Enforcement Agreements 16 (Apr. 10, 2010) (unpublished MPP master's project, Sanford School of Public Policy, Duke University) (on file with Duke University Libraries).

¹³⁷ *Id.*

¹³⁸ *Fact Sheet, supra* note 10.

¹³⁹ Kirby, *supra* note 136, at 16.

deportation.¹⁴⁰ In Wake County, 1585 (65 percent) of the 2435 inmates interviewed from July 2008 to March 2009 were processed for deportation.¹⁴¹

The 287(g) agreements in North Carolina operate against the backdrop of a state law¹⁴² requiring jails to determine whether anyone charged with a felony or with driving while intoxicated is legally resident in the United States.¹⁴³ If unable to determine an inmate's status, an officer is required to refer the inmate to ICE.¹⁴⁴ Law-enforcement organizations without 287(g) agreements may not access the ICE database in complying with this state law.¹⁴⁵

D. Require a study on the state-level effects of immigration and accompanying recommendations, potentially leading to a long phase-in process for any new immigration laws

This option would only apply in conjunction with another. Both Utah and Indiana included provisions in their omnibus immigration laws requiring legal and financial surveys on immigration topics.¹⁴⁶ A longer phase-in process is also a possibility; the General Assembly included such a phase-in provision as part of its 2011 E-Verify law.¹⁴⁷

¹⁴⁰ MAI THI NGUYEN & HANNAH GILL, LATINO MIGRATION PROJECT, UNIV. OF N.C. AT CHAPEL HILL, THE 287(G) PROGRAM: THE COSTS AND CONSEQUENCES OF LOCAL IMMIGRATION ENFORCEMENT IN NORTH CAROLINA COMMUNITIES 36, 37 tbl.8 (2010), available at http://cgi.unc.edu/uploads/media_items/287g-report-final.original.pdf.

¹⁴¹ *Id.*

¹⁴² N.C. GEN. STAT. § 162-62 (Supp. 2011).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Kirby, *supra* note 136.

¹⁴⁶ See *supra* Part II.C.

¹⁴⁷ See *supra* note 113 and accompanying text.

VI. ANALYSIS

This section rates the strength of each of the four options discussed in Part V under each of the criteria in Part IV on a scale of one to five. Five represents the most favorable score in a given category; for example, an option with the lowest possible costs would receive a five in that category. The section ends with a table summarizing these numerical scores.

A. *Pass a law similar to Arizona's Support Our Law Enforcement and Safe Neighborhoods Act or Alabama's Beason-Hammon Alabama Taxpayer and Citizen Protection Act*

1. *Political feasibility: 4*

A law similar to those in Arizona and Alabama may have a good chance of passage in the General Assembly. For the Republican majorities in both houses, the law presents an opportunity to act on a high-profile issue with which conservative voters are particularly concerned; the benefits of appealing to voters from the conservative base therefore seem to outweigh the risks of alienating independent voters. In an election season dominated by economic considerations, independent voters could be particularly receptive to arguments that pushing undocumented immigrants out of North Carolina would create jobs for citizens.

Governor Perdue seems somewhat willing to exercise her veto power on controversial issues,¹⁴⁸ but in the 2008 election she supported the use of the 287(g) program and opposed allowing undocumented immigrants to attend community college.¹⁴⁹ She therefore seems unlikely to take such a strong stand against any omnibus anti-immigration legislation. In any event, with Governor Perdue's announcement that she is not seeking reelection,¹⁵⁰ her individual views will not play a significant role in any debate after this summer's legislative session.

Although some legislators who supported the Arizona law suffered severe political consequences,¹⁵¹ much of that backlash may be attributed to Arizona's being the first state to enact such legislation and the attendant economic and public-opinion effects of such notoriety. Jack Holtzman of the North Carolina Justice Center noted, however, that long-term political consideration may weigh against support for such a bill: as citizens with undocumented parents become old enough to vote, they may keep in mind which politicians and party were "friends" to their families.¹⁵²

¹⁴⁸ See, e.g., Bev Perdue, *Gov. Perdue Vetoes Budget*, OFFICE OF GOVERNOR BEV PERDUE (June 12, 2011), <http://www.governor.state.nc.us/eTownhall/Blog/post/2011/06/12/Gov-Perdue-vetoes-budget.aspx>; Bev Perdue, *Gov. Perdue Vetoes House Bill 2*, OFFICE OF GOVERNOR BEV PERDUE (Mar. 5, 2011), <http://www.governor.state.nc.us/eTownhall/Blog/post/2011/03/05/Gov-Perdue-vetoes-House-Bill-2.aspx>.

¹⁴⁹ *Bev Perdue*, NEWS 14 CAROLINA, http://charlotte.news14.com/content/2008_elections/bev_perdue/600841/bev-perdue (last visited Mar. 16, 2012).

¹⁵⁰ See

¹⁵¹ See *supra* notes 98–101 and accompanying text.

¹⁵² Interview with Jack Holtzman, Senior Attorney, N.C. Justice Ctr. (Feb. 23, 2012).

2. *Effect on labor pool: 1*

Given the experience in other states that have passed omnibus anti-immigration laws, such a law in North Carolina would almost certainly reduce the number of workers, leaving a shortage in areas that account for significant portions of the state's economy, particularly agriculture and construction. Despite arguments that citizens would do such jobs if they were not filled by undocumented immigrants,¹⁵³ the experience of states that have passed such laws has not borne that out. Even if, as some have argued, the labor pool would simply take time to redevelop,¹⁵⁴ the immediate harm to the economy would be significant. In Georgia, for example, a 2012 Department of Agriculture survey found that 56.4 percent of respondent farmers had difficulty hiring qualified workers in 2011¹⁵⁵ and that this difficulty caused them more than \$10 million in losses.¹⁵⁶

One frequently expressed concern is that only immigrant workers are willing and able to do some of the required labor, particularly in agriculture.¹⁵⁷ Dave Simpson of Carolinas AGC noted “extremely good reputations” of Latino workers in the North Carolina construction industry: “They’re known for being hardworking; they have a very good work ethic.”¹⁵⁸ Even if native-born workers filled the jobs vacated by undocumented workers fleeing the state, the native-born workers may not have the skills or work habits employers have come to expect.

3. *Monetary cost: 1*

The ultimate effect of such a law on public and private finances is unclear. On one hand, advocates argue that these omnibus laws “are saving taxpayers money by freeing jobs for Americans,” thereby reducing unemployment benefits; “driving up wages”; and “reducing the financial burden undocumented immigrants place on public resources.”¹⁵⁹ One cosponsor of the Alabama legislation noted the costs to the state of illegal immigration in the form of “unemployment benefits for pushed-aside legal residents, health care costs, education, and lost tax revenue.”¹⁶⁰ Kris Kobach asserts, “There is absolutely no credible dispute to the fact that illegal immigration costs government a lot in terms of public benefits, in terms of incarceration costs, in terms of costs borne by government.”¹⁶¹ Reducing the number of undocumented immigrants should alleviate some of these costs.

On the other hand, opponents of such laws argue that new laws relying on increased enforcement and interactions with undocumented immigrants would necessarily raise enforcement costs—or not be enforced due to lack of resources. Police Chief Steven Anderson of Tuscaloosa, Alabama, has found support for enforcing Alabama's law lacking: “You just had

¹⁵³ See, e.g., *supra* text accompanying notes 94–95.

¹⁵⁴ See, e.g., *supra* text accompanying note 94.

¹⁵⁵ GA. DEPT. OF AGRIC., REPORT ON AGRICULTURE LABOR AS REQUIRED BY HOUSE BILL 87, at 46 (2012), available at <http://agr.georgia.gov/AgLaborReport.pdf>.

¹⁵⁶ *Id.* at 56. The losses to the 80 percent of farmers who didn't respond, *see id.* at 10, are unknown.

¹⁵⁷ See, e.g., *id.* at 50.

¹⁵⁸ Interview with Dave Simpson, Bldg. Dir., Gov't Relations, Carolinas AGC (Feb. 17, 2012).

¹⁵⁹ Paul Reyes, *Help Not Wanted*, MOTHER JONES, Apr. 2012, at 24, 32.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* (quoting Kobach) (internal quotation marks omitted).

a group of people who wanted a bill passed, and they did it. No guidance, no training, no funding.”¹⁶² Chief Anderson also noted the city’s already overcrowded jails. More significantly, according to Chief Anderson, the threat of potential lawsuits by private citizens for nonenforcement essentially forces the department to investigate even clearly frivolous reports: “You’ll have racist people that decide they’re just going to pick up the phone and make a call.”¹⁶³ The additional arrests, legitimate or not, would also lead to significantly more cases in the state’s criminal-justice system, incurring additional costs. Such frivolous investigations could lead to “profiling and harassment,” triggering “a host of lawsuits.”¹⁶⁴ The costs of defending such laws from legal challenges have also been significant—Farmers Branch, Texas, which prohibited landlords from renting to undocumented immigrants, has spent almost \$4.3 million.¹⁶⁵

The costs to industry also have been significant, from boycotts of Arizona in response to its law to reports of farmers unable to harvest crops due to labor shortages. While the risk to North Carolina of the former effect may be mitigated by it not enacting the first such law, the latter poses a significant economic threat.

4. *Fairness: 1*

The negative effects of these laws for undocumented residents are not heavily disputed. One of the cosponsors of the Alabama law stressed its “‘Alabama flavor’ in that it ‘attacks every aspect of an illegal immigrant’s life.’”¹⁶⁶ Such effects are indeed the point of such laws, which assume that undocumented residents will make “rational calculation[s]” to leave.¹⁶⁷

These laws certainly accomplish the goal of negatively affecting the lives of undocumented immigrants. The high rate of absenteeism in Alabama schools following the enactment of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act¹⁶⁸ is evidence of the potential effects on the children of undocumented parents. Jack Holtzman noted that many families in North Carolina are of “mixed-immigrant status,” i.e., either parents or children but not everyone is undocumented;¹⁶⁹ for these families, an omnibus bill would create the very difficult choice of deciding whether to stay or leave as a family or whether to split up.¹⁷⁰ Holtzman also feared that anti-immigrant “hysteria” and “prejudice” could lead violent interactions among private citizens deciding to take enforcement into their own hands.¹⁷¹

One Alabama farmer offered a broader critique:

¹⁶² *Id.* (quoting Anderson) (internal quotation mark omitted).

¹⁶³ *Id.* (quoting Anderson) (internal quotation marks omitted).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 29 (quoting Rep. Micky Hammon).

¹⁶⁷ *Id.* at 32 (quoting Immigration Law Reform Institute director Michael Hethmon).

¹⁶⁸ See *supra* note 93 and accompanying text.

¹⁶⁹ Interview with Jack Holtzman, *supra* note 152.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

The way this bill is now, . . . if you have anything to do with [undocumented residents] whatsoever, you're breaking the law. If you see 'em and they're hungry, or if they're out here run over by an automobile layin' in a ditch, and you help 'em, you're breakin' the law. . . . It's just not right.¹⁷²

B. Pass a law similar to Utah's provision for a guest-worker program and migrant-worker and sponsorship pilot programs

1. Political feasibility: 2 (3 with a federal waiver)

Measures similar to the Utah provisions, as part of the debate over omnibus legislation, could prove popular. While it would undercut the employment-based argument for such laws in the first place, affected industries would probably strongly approve and certainly let their voices be heard. Provisions such as these based on employment would be a relatively small concession with a potentially large impact for the agriculture and construction industries. Both Dave Simpson of Carolinas AGC and Republican Representative Sarah Stevens indicated interest in such programs.¹⁷³

On the other hand, the general unpopularity of “amnesty” among Republican legislators may be enough to prevent widespread support for such provisions. Perhaps more importantly, implementation of two of the measures—the guest-worker program and the pilot sponsorship program—would depend on a yet-to-come federal waiver; those provisions, then, would be primarily symbolic, and many legislators may not be willing to adopt such symbolism without concrete results. The remaining pilot program, partnership with a Mexican state, would not require such a waiver.

2. Effect on labor pool: 3 (5 with a federal waiver)

Such provisions, if the programs they created were allowed by the federal government, adequately funded, and used, could significantly alleviate the labor shortages that omnibus anti-immigration laws have created in other states. A sponsorship program in particular could help significantly—employers would presumably not participate unless they found the labor provided by citizens insufficient. A program facilitating temporary guest workers would be particularly beneficial to agricultural producers, for whom labor-intensive work is often seasonal. Even without a federal waiver, such provisions could signal to undocumented immigrants that the state is willing to accept their residence in the future, which may prevent a large exodus.

3. Monetary cost: 4 (3 with federal waiver)

The administrative costs of these programs must be considered, but they should be relatively low. Processing applications for guest-worker and sponsorship programs would be mostly clerical work, and the Department of Commerce likely already contains most of the expertise necessary to implement a partnership program with a Mexican state. Even these

¹⁷² Reyes, *supra* note 159, at 28 (quoting Keith Smith) (internal quotation marks omitted).

¹⁷³ Interview with Dave Simpson, *supra* note 158; Interview with Rep. Sarah Stevens, N.C. House of Representatives (Feb. 29, 2012).

costs—or at least some portion of them—could be covered by application fees for the new programs.

4. *Fairness: 4 (5 with federal waiver)*

Programs encouraging authorized employment for noncitizens could provide significant opportunities for currently undocumented residents. Authorizing residency for a significant number of Hispanic workers could also help to prevent a significant increase in prejudice against them, both within law enforcement and in the general public. With a higher likelihood of any given Hispanic immigrant being a lawful resident, frivolous calls to police and perceptions of illegality could be alleviated. Additionally, as long as the temporary–guest-worker and sponsorship programs are awaiting federal approval, their effect would be largely symbolic of a more-accepting attitude toward undocumented immigrants, which could further mitigate prejudice against them.

C. *Require or encourage increased participation in the 287(g) program and greater enforcement under the current state-law framework*

1. *Political feasibility: 3*

Increased participation in the 287(g) program could be politically popular; in fact, the House of Representatives in 2006 passed a resolution urging just that.¹⁷⁴ Because enforcement is the gist of the new wave of omnibus laws, increasing actual on-the-ground enforcement of the current legal framework could provide a substitute for an overhaul of the law. One potential issue is that this would not allay concerns that current state and federal law, however enforced, is not adequate. Representative Stevens noted the complaints of sheriffs' departments that the 287(g) program alone is ineffective because the laws in place allow deported immigrants to return too easily.¹⁷⁵

2. *Effect on labor pool: 1*

If used effectively, increased enforcement via 287(g) agreements could lead to the same type of exodus as an omnibus law, thereby causing a similar labor shortage. The knowledge of such a law's passage as well as the high deportation-processing rates associated with the 287(g) program would very likely quickly spread among the state's immigrant population, which would likely react similarly to immigrants in states that passed omnibus immigration laws.¹⁷⁶

3. *Monetary cost: 1*

The cost of increased enforcement through 287(g) agreements—if properly funded—would be significant. ICE currently pays for officer training and for installation and maintenance of computers to access the ICE database; ICE also reimburses local participants a per diem

¹⁷⁴ See H.R. Res. 2692, 2005 Gen Assemb., Reg. Sess. § 1 (N.C. 2006) (enacted) (urging DHS “to designate six additional North Carolina counties in its program under section 287(g)”).

¹⁷⁵ Interview with Rep. Sarah Stevens, *supra* note 173.

¹⁷⁶ For a discussion of the effects of omnibus immigration laws on the labor pools of states that have passed them, see *supra* Part VI.A.2.

amount for each night an inmate stays in a local jail after being flagged for removal to an ICE facility.¹⁷⁷ The remaining costs—including salaries for 287(g)-trained staff, additional training materials, and the additional costs of detaining potentially illegally present immigrants—largely fall to local law-enforcement agencies.¹⁷⁸ One 2010 report found that the average annual cost of participation for Mecklenburg County is \$5.3 million, and the average cost for Alamance County is \$4.8 million.¹⁷⁹ The General Assembly could divide these remaining costs between the state and localities any number of ways, but without additional funds or the threat of suit, local law enforcement may decide to focus their energies elsewhere.

Another key expense would be increased jail space. At least fourteen North Carolina counties seeking jail-enforcement agreements with ICE have been turned down due to lack of adequate jail space.¹⁸⁰ Assuming ICE doesn't lower its requirements for future applications to the 287(g) program, increasing jail space to adequate levels could be a very significant expense.

If properly funded, this strategy would likely still be less expensive than an Alabama-style omnibus law because law-enforcement resources would have fewer laws to enforce and because the state should incur little additional judicial costs since the federal court system would handle any increase in deportation processing.

4. *Fairness: 1*

Although societal skepticism toward Hispanic residents likely would not be reduced through increased enforcement, some of the more-negative effects of the omnibus bills could be avoided. For example, the Alabama farmer's concern about the illegality of helping hungry or injured undocumented immigrants would not be a factor. On the other hand, because local law-enforcement officers often receive less training in and have less experience with undocumented immigrants, the risk of racial discrimination in immigration-law-enforcement would be even more significant than it currently is if the local role is increased. An association of police chiefs and sheriffs serving the nation's largest communities found that local enforcement of immigration laws "would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities."¹⁸¹

D. Require a study on the state-level effects of immigration and accompanying recommendations, potentially leading to a long phase-in process for any new immigration laws

1. *Political feasibility: 2*

Requiring a study may be an unpopular prospect with Republican legislators, who may worry about losing their control of the General Assembly. If that control is lost, so might be the

¹⁷⁷ Kirby, *supra* note 128, at 18–19.

¹⁷⁸ *Id.* at 18

¹⁷⁹ NGUYEN & GILL, *supra* note 140, at 32–33.

¹⁸⁰ *Id.* at 16.

¹⁸¹ MAJOR CITIES CHIEFS POLICE ASS'N, RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES 3–4 (2006).

window for passing an Arizona- or Alabama-style immigration bill.¹⁸² Some states have included study provisions within broader immigration bills, which may be more palatable, but the Georgia study provision, for one, led to the report attributing at least \$10 million in losses to the bill.¹⁸³ The danger of criticism—particularly criticism from the state government—may provide a cautionary lesson for supporters of an omnibus law.

Including phase-ins with any omnibus law may prove more palatable. The General Assembly's willingness to include phase-in provisions with the increased E-Verify requirements gives some indication of its willingness to consider such proposals in the context of immigration, particularly proposals to help small businesses.

2. *Effect on labor pool: 2*

Commissioning a study should not affect the labor pool.

Establishing long phase-ins could smooth out what has been a precipitous drop in available labor in other states that have passed omnibus bills. On the other hand, as long as the core provisions go into effect, undocumented immigrants still have similar incentives to leave the state immediately. Phase-ins therefore would likely not significantly ameliorate the impact on labor.

3. *Monetary cost: 4*

The cost of a study would likely be minimal. The state government should already have employees with sufficient expertise to conduct such a project so the additional resources necessary would likely not be significant. The House Select Committee on the State's Role in Immigration Policy, in fact, seems already to be taking on a similar role, scheduling and hearing presentations from interested parties.¹⁸⁴

Any delay in implementation should save the cost of enforcement during the period of delay. Another potential cost benefit is that implementation could be delayed until after completion of the inevitable challenge in the federal courts. If a court enjoins the law or if the U.S. Supreme Court finds the Arizona law unconstitutional, then delayed implementation would reduce the amount of any costs outlaid for elements of the law that never go into effect.

4. *Fairness: 2*

Requiring a study would not immediately affect the treatment of undocumented immigrants.

¹⁸² *See id.* (noting that the discussion of immigration reform was enabled by the new House majority leader).

¹⁸³ *See supra* notes 155–156 and accompanying text.

¹⁸⁴ For materials presented at the committee's meetings, see *House Select Committee on the State's Role in Immigration Policy*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=172> (last visited Mar. 16, 2012).

A phase-in period could ameliorate the negative effects of an omnibus bill but perhaps not significantly. Delay provisions may not abate the potential “hysteria” and “prejudice”¹⁸⁵ engendered by the very passage of the bill and popular understanding of it.

Table: Individual and total numerical scores

Option	Political feasibility	Effect on labor pool	Monetary cost	Fairness	Total
A. Pass a law similar to Arizona’s or Alabama’s	4	1	1	1	7
B. Pass a law similar to Utah’s labor provisions	2	3	4	4	13
(with a federal waiver)	3	5	3	5	16
C. Require or encourage increased participation in 287(g)	3	1	1	1	6
D. Require a study, potentially leading to a long phase-in period	2	2	4	2	11

¹⁸⁵ Interview with Jack Holtzman, *supra* note 152.

VII. RECOMMENDATIONS

I recommend opposing Option A. The remainder of my recommendations are dependent on whether a bill in the vein of Arizona's Support Our Law Enforcement and Safe Neighborhoods Act or Alabama's Beason-Hammon Alabama Taxpayer and Citizen Protection Act makes its way through the General Assembly.

If such a bill is passed, I recommend supporting the addition of Option B, the Utah-style labor provisions, and Option D, study provisions potentially leading to a long phase-in.

If such a bill is not passed, I recommend Option B; the case for this option is particularly strong if Utah (or another state) receives a federal waiver, indicating the potential for a similar waiver for North Carolina.

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