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FISCAL AND POLICY NOTE

Senate Bill 676

(Senator Brinkley, *et al.*)

Education, Health, and Environmental Affairs

County Boards of Education - Alien Students

This bill requires each local board of education to, by March 1 of each year, make a good faith effort to provide its county governing body with the number of students enrolled in the local public school system for the school year whose lawful presence in the United States cannot be reasonably documented. The bill prohibits a local board of education from associating a student's race, appearance, language, or name with citizenship or immigration status.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: None.

Local Effect: Administrative activities required by the bill may result in additional personnel and other expenditures for some local school systems, especially in the first year of implementation. **This bill may impose a mandate on a unit of local government**

Small Business Effect: None.

Analysis

Current Law: Immigration status is only required to be collected regarding foreign exchange students attending secondary school. These students are given permission to enter the United States specifically to study in public schools and must pay tuition to attend the public school as a condition of entry.

A child age 5 to 15 must attend public school regularly unless the child is otherwise receiving regular, thorough instruction at an alternative setting (*i.e.*, a private or home school). The Code of Maryland Regulations (COMAR) requires local school systems to have systems of information on enrollment, attendance, and promotion. COMAR specifies the minimum of information that must be collected or verified, allowing each local school system to collect additional information.

The Maryland Student Records System Manual, which is incorporated into COMAR by reference, specifies a list of items, one of which may be presented as evidence of a student's date of birth: a birth certificate; a birth registration; passport/Visa; a physician's certificate; a hospital certificate; baptismal or church certification; or a parent's affidavit.

Background: Maryland is a leading state for immigrants, due to proximity to the nation's capital and the relatively strong business climate in past years. International immigration added nearly 200,000 people to the State's population between 2000 and 2009, according to the U.S. Census Bureau. This was the thirteenth largest gain from immigration among all states during that period. From 2000 to 2009, Maryland accounted for 2.1% of the total national population gain from international immigration. Another measure of immigration to Maryland is the number of residents who were born in another country. The U.S. Census Bureau indicates that 12.3% of Maryland residents are foreign-born compared to 12.5% at the national level. Among the states, Maryland had the twelfth highest percentage of residents who are foreign-born.

The vast majority of foreign-born residents in Maryland are of working age with only a small percentage being of school age. According to the 2006-2008 American Community Survey, 70.1% of foreign-born residents in Maryland are between the ages of 18 and 54 years, while only 7.2% are within the ages of 5 and 17 years. Statewide, it is estimated that only 5.6% of school age children are foreign-born with only 4.1% being non-U.S. citizens. The share of school age children that are foreign-born is higher in the national capital region which includes Montgomery and Prince George's counties. In Montgomery County, 13.2% of school age children are foreign-born while 9.8% are non-U.S. citizens. In Prince George's County, 8.2% of school age children are foreign-born while 6.9% are non-U.S. citizens. **Exhibit 1** shows the number of school age children in Maryland by native- and foreign-born status.

Another measure that can depict the impact of immigration on student enrollment is the number of children enrolled in limited English proficiency programs. In September 2010, almost 48,000 public school students in Maryland were identified as limited English proficient. This represented an 8.7% increase over the prior year. Statewide, limited English proficient students comprised 5.8% of total student enrollment; however, the share was much higher in both Montgomery and

Prince George's counties. **Exhibit 2** shows the number of students identified as limited English proficient in each public school system in Maryland. Limited English proficiency, however, is not an indication of a child's lawful presence in the United States. Children born in the United States to immigrant parents may reside in households where English is not the primary language spoken. U.S. Census data indicate that children of foreign-born parents represent a sizeable and growing portion of the State's population. In Maryland, 18% of children under the age of six years have foreign-born parents; in Montgomery County, the share is 39%.

A significant portion of Maryland's immigrants are unauthorized, according to estimates made by private research organizations. The Pew Hispanic Center, which does not take positions on policy issues, estimated that there were 250,000 unauthorized immigrants in the State in 2009, with a range of between 210,000 and 300,000. Based on this estimate, approximately 65% of the foreign-born noncitizen population in Maryland could be unauthorized. Extrapolating this estimate to the school-age population, approximately 2.5% of public school students could be unauthorized.

Federal Requirements under Plyler v. Doe

Under *Plyler v. Doe*, a 1982 U.S. Supreme Court decision, a state may not deny undocumented school-age children a free public elementary and secondary school education. In its decision, the court contended that denying education to the children of unauthorized immigrants would be inconsistent with the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and would "foreclose any realistic possibility that they will contribute ... to the progress of our Nation."

However, since 1996, federal law has prohibited unauthorized immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain. In Maryland, postsecondary students who are unauthorized are not currently eligible to receive in-state tuition and must pay nonresident tuition and fees. In addition, State institutions of higher education follow federal guidelines prohibiting unauthorized immigrants from obtaining financial aid.

In January 2009, the Maryland Attorney General's Office, advised that unless there is a "valid public purpose articulated to explain the need to count [unauthorized] immigrants" a court may likely find that legislation requiring such a count is "intended to intimidate and harass these children, perhaps to the point that they will choose not to attend school. If that is the case, the legislation will be unconstitutional under the 14th Amendment." The advice specifically cites *Plyler v. Doe* and also indicates such a bill may also be preempted by federal immigration law. The advice was in regard to possible legislation specific to Frederick County.

In October 15, 2008, the Frederick County Commissioners filed a petition with the Maryland State Board of Education for a declaratory ruling concerning “whether a local school system has the legal authority and ability to collect data that would tend to support whether a student is lawfully present in the United States.” In late November, the Frederick County Board of Education filed a motion to dismiss or for summary decision; in January 2009, the county commissioners filed an opposition to the local board’s motion. The State board determined that it had jurisdiction to hear the case. In its opinion, the State board expressed agreement with the advice from the Attorney General’s Office. The opinion indicated that the State regulations, including the Student Records Manual (SRM), when read in the context of federal law would:

- prohibit a local school system’s student record card from including a request for information or documents that would tend to support the proposition that a student is lawfully present in the United States; and
- prohibit a local school system from requesting that a student, or the student’s parent or guardian, provide information or documents that would tend to support the proposition that a student is lawfully present in the United States.

The State board’s opinion also indicates that any concern for the impact of unauthorized immigrant students on the schools system’s budget does not constitute a valid public purpose under the ruling and reasoning of the *Plyler v. Doe* decision, which centered on a Texas law that in part would have withheld State funding to local school systems enrolling children not “legally admitted” to the United States.

Federal Family Education Rights and Privacy Act

The federal Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. Under FERPA, schools generally must have written permission from the parent or eligible student in order to release any information from a student’s education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- school officials with legitimate educational interest;
- other schools to which a student is transferring;
- specified officials for audit or evaluation purposes;
- appropriate parties in connection with financial aid to a student;
- organizations conducting certain studies for or on behalf of the school;
- accrediting organizations;
- to comply with a judicial order or lawfully issued subpoena;

- appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, “directory” information such as a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA.

Federal Privacy Act of 1974

The Privacy Act of 1974 requires agencies that maintain a system of records to maintain only such information about an individual as is relevant and necessary to accomplish a required purpose of the agency. The Privacy Act included uncodified language prohibiting a federal, state, or local agency from denying to any individual any right, benefit, or privilege provided by law because of an individual’s refusal to disclose his or her social security number, unless:

- the disclosure is required by federal law; or
- the disclosure requirement was made by statute or regulation adopted before 1975 and applies to a system of records in existence and operating prior to 1975.

The Act also requires that the individual whom it asks to supply information be informed whether the information requested (including social security number information) is mandatory or voluntary.

Motor Vehicle Administration Lawful Status Documentation

Pursuant to the federal REAL ID Act, Maryland must verify the identity and lawful status of each applicant for a driver’s license or identification card in accordance with regulations adopted by the U.S. Department of Homeland Security (DHS). Under the Act, as part of the driver’s license application process, all applicants are required to establish their lawful presence in the United States by producing one of the following identity documents: valid U.S. passport; certified copy of a birth certificate; Consular Report of Birth Abroad issued by the U.S. Department of State; Permanent Resident Card issued by DHS; employment authorization document issued by DHS; foreign passport with valid U.S. visa affixed; Certificate of Naturalization; Certificate of Citizenship issued by DHS; or such other documents as DHS may designate. Chapter 390 of 2009 altered Maryland law, largely in response to the REAL ID Act.

Local Fiscal Effect: The bill does not specify how a local school system is to reasonably document the lawful presence of an enrolled student. The 14th Amendment to the U.S. Constitution states that all “persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside....” Therefore, presumably, presentation of a U.S. birth certificate would be one means of documenting lawful presence. A local school system may also consider the use of documents used by the Motor Vehicle Administration to verify lawful presence.

Counties with relatively large student populations and with relatively large immigrant populations (*e.g.*, Montgomery and Prince George’s counties) may need to increase staffing levels in order to determine the number of enrolled students whose lawful presence cannot be reasonably documented. According to MSDE, the average salary as of June 2010 for a pupil personnel worker/school social worker is \$112,760 in Montgomery County and \$85,247 in Prince George’s County. Local school systems with relatively low student populations and low immigrant populations (*e.g.*, Garrett County) can handle the bill’s requirements with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany, Frederick, Harford, Montgomery, Prince George’s and Talbot counties; Office of the Attorney General; Maryland State Department of Education; Department of Legislative Services

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mc/mwc

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Exhibit 1
Number of School Age Children in Maryland

Jurisdiction	Native-born Number	Native-born Percent	Foreign-born Number	Foreign-born Percent	Foreign-born – Noncitizen Number	Foreign-born – Noncitizen Percent	Total
Anne Arundel	85,950	96.6%	2,906	3.3%	1,622	1.8%	89,001
Baltimore City	108,371	97.5%	2,665	2.4%	1,783	1.6%	111,162
Baltimore	120,298	94.6%	6,783	5.3%	4,963	3.9%	127,186
Montgomery	143,287	86.8%	21,700	13.2%	16,167	9.8%	164,998
Prince George's	136,029	91.8%	12,134	8.2%	10,268	6.9%	148,104
Maryland	925,762	94.4%	54,516	5.6%	40,678	4.1%	980,607
United States	50,580,779	94.7%	2,855,701	5.3%	2,228,222	4.2%	53,418,890

Source: 2006-2008 American Community Survey, U.S. Census Bureau

Exhibit 2
Students Identified as Limited English Proficient
Fiscal 2011 and 2012

County	Fiscal 2011	Fiscal 2012	Percent Difference	LEP Students as Percent of Total Enrollment		Change in LEP Students	
				1. Montgomery	13.4%		
Allegany	25	15	-40.0%	1. Montgomery	13.4%	1. Garrett	33.3%
Anne Arundel	2,452	2,723	11.1%	2. Prince George's	11.9%	2. Talbot	19.1%
Baltimore City	1,825	2,167	18.7%	3. Talbot	4.5%	3. Baltimore City	18.7%
Baltimore	3,365	3,466	3.0%	4. Howard	4.2%	4. Cecil	17.5%
Calvert	173	143	-17.3%	5. Frederick	3.8%	5. Charles	16.2%
Caroline	173	184	6.4%	6. Anne Arundel	3.7%	6. Frederick	15.1%
Carroll	167	171	2.4%	7. Caroline	3.6%	7. Montgomery	13.6%
Cecil	126	148	17.5%	8. Baltimore	3.4%	8. Wicomico	12.0%
Charles	173	201	16.2%	9. Kent	3.1%	9. Anne Arundel	11.1%
Dorchester	79	67	-15.2%	10. Somerset	3.0%	10. Kent	6.8%
Frederick	1,305	1,502	15.1%	11. Wicomico	2.8%	11. Caroline	6.4%
Garrett	3	4	33.3%	12. Baltimore City	2.7%	12. Prince George's	4.5%
Harford	445	423	-4.9%	13. Worcester	2.2%	13. Washington	4.4%
Howard	2,082	2,078	-0.2%	14. Washington	1.9%	14. Baltimore	3.0%
Kent	59	63	6.8%	15. Queen Anne's	1.6%	15. Carroll	2.4%
Montgomery	16,531	18,779	13.6%	16. Dorchester	1.5%	16. Somerset	0.0%
Prince George's	13,681	14,291	4.5%	17. Harford	1.1%	17. Howard	-0.2%
Queen Anne's	127	119	-6.3%	18. Cecil	1.0%	18. St. Mary's	-1.4%
St. Mary's	139	137	-1.4%	19. Calvert	0.9%	19. Worcester	-2.1%
Somerset	81	81	0.0%	20. St. Mary's	0.8%	20. Harford	-4.9%
Talbot	162	193	19.1%	21. Charles	0.8%	21. Queen Anne's	-6.3%
Washington	389	406	4.4%	22. Carroll	0.6%	22. Dorchester	-15.2%
Wicomico	359	402	12.0%	23. Allegany	0.2%	23. Calvert	-17.3%
Worcester	141	138	-2.1%	24. Garrett	0.1%	24. Allegany	-40.0%
Total	44,062	47,901	8.7%	Statewide	5.8%	Statewide	8.7%

LEP = Limited English Proficient