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HOUSE BILL NO. 138

Offered January 11, 2012

Prefiled January 4, 2012

A *BILL to amend the Code of Virginia by adding a section numbered 22.1-3.1:1, relating to public schools; impact of unlawful aliens; report.*

Patron—Cole

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 22.1-3.1:1 as follows:**

§ 22.1-3.1:1. *Unlawful aliens; invoice submitted to U.S. Department of Education; report.*

A. Every public elementary and secondary school, at the time of enrollment in kindergarten or any grade in such school, shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States and qualifies for assignment to an English as a Second Language class or other remedial program.

B. When making the determination required by subsection A, the public school shall rely upon presentation of the student's original birth certificate, or a certified copy thereof, as part of the process instituted by such public school to fulfill the obligations imposed by § 22.1-3.1. If, upon review of the student's birth certificate, it is determined that the student was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States, or where such certificate is not available for any reason, the parent, guardian, or legal custodian of the student shall notify the school within 30 days of the date of the student's enrollment of the actual citizenship or immigration status of the student under federal law. Notification shall consist of both of the following:

1. The presentation for inspection, to the school principal or his designee, of official documentation establishing the citizenship and, in the case of an alien, the immigration status of the student, or alternatively by submission of a notarized copy of such documentation to such official; and

2. Attestation by the parent, guardian, or legal custodian, under penalty of perjury, that the document states the true identity of the child. If the student or the student's parent, guardian, or legal representative possesses no such documentation but nevertheless maintains that the student is either a United States citizen or an alien lawfully present in the United States, the parent, guardian, or legal representative of the student may sign a declaration so stating, under penalty of perjury.

C. If no such documentation or declaration is presented, the principal or his designee shall presume for the purposes of reporting under this section that the student is an alien unlawfully present in the United States.

D. Each school division in this state shall collect and compile the data obtained pursuant to this section and submit such data to the Department of Education. The Board of Education shall, beginning in 2013, compile and submit an annual public report to the General Assembly by November 1. The report shall:

1. Provide data, aggregated by public school, regarding the numbers of United States citizens, of lawfully present aliens by immigration classification, and of aliens believed to be unlawfully present in the United States enrolled at all primary and secondary public schools in the Commonwealth;

2. Identify the number of students in each category participating in English as a Second Language Programs enrolled at such schools;

3. Analyze and identify the effects upon the standard or quality of education provided to students who are citizens of the United States residing in the Commonwealth that may have occurred, or are expected to occur in the future, as a consequence of the enrollment of students who are aliens not lawfully present in the United States. The State Board of Education shall prepare and issue objective baseline criteria for identifying and assessing the impacts and may contract with reputable scholars and research institutions to identify and validate such criteria; and

4. Analyze and itemize the fiscal costs to the state and localities attributable to providing educational instruction, computers, textbooks and other supplies, free or discounted school meals, and extracurricular activities to students who are aliens not lawfully present in the United States.

E. Simultaneous with its submission of the annual report to the General Assembly, the Board of Education shall remit an invoice to the U.S. Department of Education requesting reimbursement for all moneys identified in subdivision D 4.

F. Public disclosure by any person of information obtained pursuant to this section that personally identifies any student shall be unlawful, except for purposes permitted pursuant to 8 U.S.C. §§ 1373 and

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59 1644. Any person intending to make a public disclosure of information that is classified as confidential
60 under this section, on the ground that such disclosure constitutes a use permitted by federal law, shall
61 first apply to the Attorney General and receive a waiver of confidentiality from the requirements of this
62 section. A student whose personal identity has been negligently or intentionally disclosed in violation of
63 this section shall have a civil remedy for such violation against the agency or person that has made the
64 unauthorized disclosure.