

# Assessing the Economic Effects of State Laws Addressing the Employment of Foreign-Born Unauthorized Workers



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A Report to the  
United States Chamber of Commerce  
National Association of Home Builders  
National Roofing Contractors Association

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By

Peter A. Creticos, Ph.D.

## PREFACE

The United States Chamber of Commerce, the National Association of Home Builders and the National Roofing Contractors Association requested a report to establish the basis for assessing the economic consequences of state laws addressing the employment of foreign-born workers who are unauthorized to



live and work in the United States. Inasmuch as these laws are recently enacted, it is too early to measure their effects directly, but it is not too early to begin the discussion as to where and how these effects may be manifested. This report outlines the areas and possible measures for making such assessments.

There is great breadth in the diversity of states and the strategies that they employ with respect to unauthorized immigrants. Being that our purpose is to lay the framework for a detail analysis at a later time, we focus on five states that, together, are representative of the range of immigrant employment policies that are being considered and adopted. These states – Arizona, Colorado, Illinois,

Oklahoma and Pennsylvania - are politically, geographically and economically diverse and have different histories with respect to immigration.

In the course of doing this report, we interviewed many business and civic leaders as a means of gaining a broader sense of how the laws might have an effect on economic conditions. We are careful, however, to neither take these ideas as conclusive nor draw any opinions as to whether these effects are occurring. We view these as simply suggestive and our aim was simply to get a better idea as to the roles that immigrants generally, and unauthorized immigrants in particular, play in the economies of these states.

We gratefully acknowledge the cooperation and support of Angelo I. Amador, Director of Immigration Policy for the U.S. Chamber of Commerce, for bringing this report from concept to completion and for sharing his insightful legal expertise on immigration law and federalism issues.

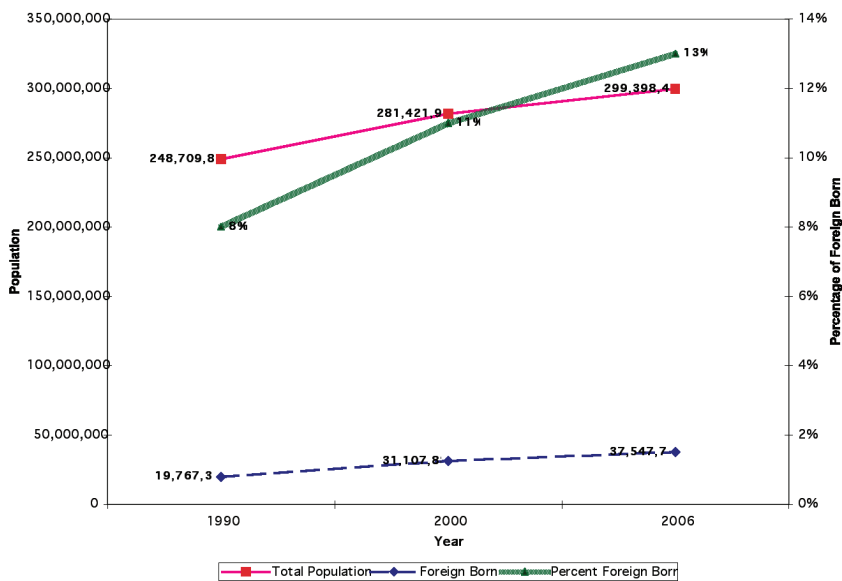
Finally, the ideas, opinions, observations, conclusions and recommendations expressed in this report are solely those of the author and do not represent those of the United States Chamber of Commerce, the National Association of Home Builders, the National Roofing Contractors Association, or any institution with which the author is associated. In addition, the ideas and opinions expressed in this report are arrived at independently.

## INTRODUCTION

As Congress and the White House wrestle with immigration reform legislation, states and communities have acted to fill the void with laws aimed at bringing order to what is perceived as chaos. The rush of media events causes many to believe that this is without precedent. However, a long view of U.S. political history reveals an ambivalence towards immigrants.

Currently, 12.4 percent of the U.S. population is foreign-born, up from 7.9 percent in 1990. No longer confined to traditional gateway cities where manufacturing was once concentrated, immigration – legal or otherwise - over the last two decades has touched communities in every region of the country.

**Figure 1: Percent of Foreign Born in the United States**



Source: Migration Policy Institute from U.S. Census Bureau data

While it is a normal part of life for a resident of Chicago, Los Angeles, or New York to hear many languages while shopping at the local grocery store, people who were born and raised in Tulsa, Charlotte, or Salt Lake City are experiencing this phenomenon for the first time in recent memory. As one businessman in Tulsa noted, people who have shopped at the same Wal-Mart for many years are feeling that they are foreigners in their own country since the dominant language now seems to be Spanish.

Although the issue of immigration was an important plank in the Declaration of Independence, federal supremacy was not established clearly until 1819. States nevertheless have responded to local concerns many times since then, enacting various provisions regulating the participation of immigrants in local matters ranging from suffrage to employment to land ownership. States are once again acting with respect to the foreign-born who are not authorized to reside or work in the U.S. This comes at a time of unprecedented change due to globalization, coinciding with the greatest period of immigration to the U.S. in one hundred years.

The stated motivations found frequently in the preambles of many new statutes generally argue for greater order and a well-functioning society. The question that we begin to address with this study is: What are the economic and associated social consequences, both intentional and not, of such laws? This report is a step towards understanding the impacts of such laws by examining the actions taken in five states that, together, represent a broad range of diverse political, economic and social conditions, immigration

histories, and statutory strategies and objectives. Our objective is to set forth where we may look for answers to questions on their consequences and how we may measure them – good or bad. Inasmuch most of these laws were enacted in only the past eighteen months – and Arizona’s and Illinois’ laws have yet to take effect – it is impossible to measure their results. Therefore, we draw no conclusions about their effects.

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## CONTEXT

The National Conference of State Legislatures (NCSL) has chronicled the introduction and actions taken on proposed state laws and policies addressing the consequences of increasing diversity. While much attention is paid towards paving the pathway to greater integration, the reports reveal that states split on the status and treatment of foreign-born residents who are not authorized to be in the United States. For example, some states extend in-state tuition to those who can prove that they meet residency requirements irrespective of immigration status. For these states, state residency policy trumps immigration status as determined by federal law. Other states regard such residency as being unlawful and cannot be counted for the purposes of in-state tuition.

The five states that we examine in this report – Arizona, Colorado, Illinois, Oklahoma and Pennsylvania – have many differences. Illinois trails the U.S. in some key economic measures, while Arizona is regarded as a leader. Oklahoma has a very small immigrant population, while Arizona and Illinois are within the top ten nationally in terms of percent. Chicago is a traditional gateway city for immigrants and the metropolitan area is very diverse, drawing people from around the world. The foreign-born population in Arizona, Colorado and Oklahoma are predominately Latino, and most are from Mexico. Pennsylvania draws immigrants from primarily Europe and Asia, and the Latinos are generally from parts of Latin America other than Mexico.

It is not surprising then that each state employs a different strategy in an effort to regulate the employment of foreign-born unauthorized workers:

- Arizona puts the onus on employers to employ only those individuals who are authorized to work in the U.S. and imposes significant penalties on those who violate the law
- Colorado discourages employers from hiring unauthorized workers by requiring employers to affirm that all newly hired workers are authorized to work in the U.S. and subjects employers to random audits of required documentation by the Colorado Department of Labor of Employment. It also prohibits public contracts to contractors who knowingly employ, contract with, or sub-contract with an unauthorized person
- Illinois prohibits employers from enrolling in an employment eligibility program, including E-Verify, until such time as the Social Security Administration (SSA) and the Department of Homeland Security (DHS) are able to make a determination on 99 percent of the tentative non-confirmation notices issued to employers within 3 days and then regulates employer participation once DHS and SSA are able to meet the threshold performance test
- Oklahoma takes a very broad approach. Subject to some exceptions with respect to emergency health care, essential human services and private charity services, Oklahoma makes it felony to transport, move or attempt to transport, conceal, harbor or shelter from detection, any unauthorized person in reckless disregard of the fact that the person entered or remained in the U.S. in violation of the law; prohibits identification cards (including student IDs) issued by public entities for unauthorized persons; prohibits public contracts or subcontracts to employers who do not participate in E-Verify or the equivalent; establishes that it is a discriminatory practice to continue employing someone who is not authorized while discharging someone in the same job category who is authorized to work; permits state and local enforcement of federal immigration laws and prohibits local governments from enacting laws to the contrary; prohibits in-state tuition at public post-secondary education institutions for unauthorized persons; and, requires the use by public agencies of the Systematic Alien Verification for Entitlements (SAVE) Program for certain services
- Pennsylvania prohibits knowingly employing or permitting the labor services of any unauthorized person on any publicly-supported project and requires that as a condition of a grant or loan. The state agency making the grant or loan will require full repayment if a violation is found.

## Economics and Demographics

The states vary significantly in terms of their economies, their historic experience with immigration and in terms of general demographics.

As Table 1 shows, the foreign-born comprise a greater percentage of the population in Arizona and Illinois than the country as a whole. In Colorado, Oklahoma and Pennsylvania the foreign-born make up a smaller proportion of the population than they do for the country as a whole. Ranked on the basis of percentage, Arizona moved up five places from 13<sup>th</sup> in 1990 to 8<sup>th</sup> in 2006. Illinois also moved up into the top ten from 12<sup>th</sup> place to 10<sup>th</sup> place. At the other end of the spectrum, Oklahoma and Pennsylvania are well below the median for all states and the overall national percentage of foreign-born.

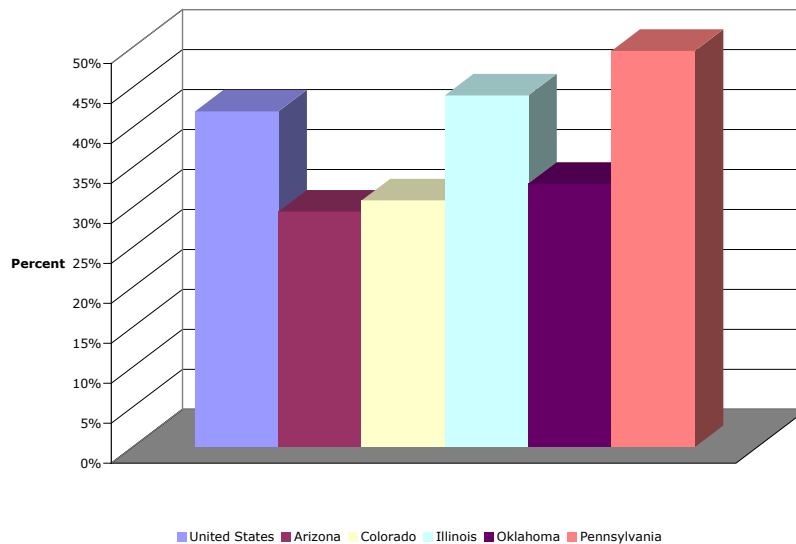
**Table 1**

Geographic area	1990		2000		2006	
	Percent	Rank	Percent	Rank	Percent	Rank
United States	7.9%		11.1%		12.5%	
Arizona	7.6%	13	12.8%	9	15.1%	8
Colorado	4.3%	20	8.6%	16	10.3%	16
Illinois	8.3%	12	12.3%	10	13.8%	10
Pennsylvania	3.1%	26	4.1%	31	5.1%	31
Oklahoma	2.1%	34	3.8%	32	4.9%	32

Source: Migration Policy Institute from U.S. Census Bureau data

As Figure 2 shows, Illinois has a higher percentage of naturalized citizens than the U.S. as a whole, while Arizona has the highest overall percentage of non-citizens. Arizona, Colorado and Oklahoma have the highest percentages among the five states of foreign born who are not naturalized citizens – and they exceed the national average.

**Figure 2: Naturalization of Foreign Born**



Source: 2006 American Community Survey

One explanation for the differences in citizenship rates for Arizona, Colorado and Oklahoma relative to Illinois, Pennsylvania and the U.S. as a whole is related to the timing of immigration to these states. As Table 2 illustrates, much of the immigration experienced by Arizona, Colorado and Oklahoma has occurred in the period since 1990 to 2006 – much more so than the rest of the country. Illinois actually had fewer immigrants percentage-wise entering after 1999 than the country as a whole. Pennsylvania had proportionately more than the U.S., but both Illinois and Pennsylvania saw higher rates of naturalization of those arriving after 1999 than the country as a whole or as any of the other three states. In fact, Illinois and Pennsylvania saw higher rates of naturalization than the country as a whole for all periods.

**Table 2: Naturalization by period of entry**

Geographic area	Percent foreign born entering U.S. 2000 and later	Naturalized arriving 2000 or later	Percent foreign born entering U.S. 1990-1999	Naturalized arriving 1990-1999
United States	25.3%	7.2%	30.5%	32.5%
Arizona	30.8%	4.4%	32.0%	20.7%
Colorado	30.4%	5.8%	35.4%	20.8%
Illinois	23.2%	10.2%	34.0%	34.0%
Oklahoma	31.9%	4.8%	33.2%	26.8%
Pennsylvania	28.3%	9.5%	29.4%	46.2%
Geographic area	Percent foreign born entering U.S. 1980-1989	Naturalized arriving 1980-1989	Percent foreign born entering U.S. prior to 1980	Naturalized arriving prior to 1980
United States	21.1%	57.9%	23.1%	78.2%
Arizona	17.6%	43.6%	19.5%	70.5%
Colorado	17.0%	51.0%	17.2%	75.9%
Illinois	18.0%	59.2%	24.7%	78.4%
Oklahoma	16.5%	48.2%	18.4%	79.1%
Pennsylvania	17.1%	68.6%	25.1%	85.6%

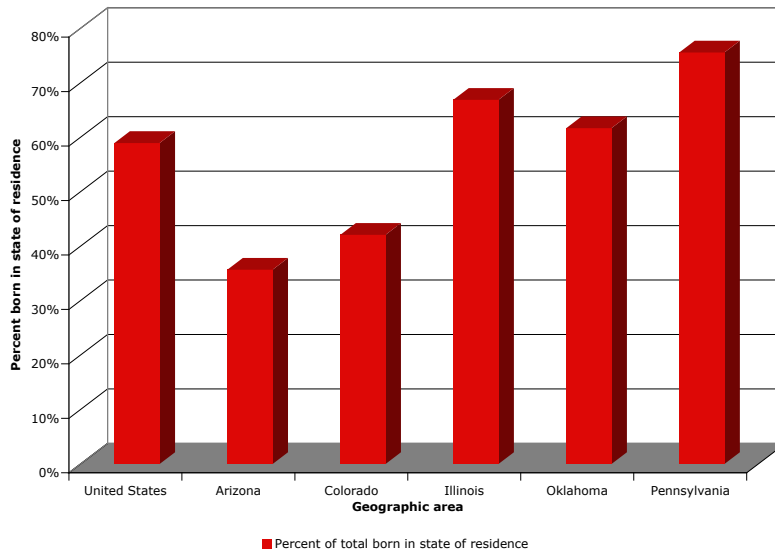
Source: 2006 American Community Survey

The states are somewhat different in terms of the transient characteristics of their respective populations (Figure 3). In Pennsylvania, Illinois and Oklahoma, a higher percentage of total population is comprised of those who were born in these respective states than all states on average. Proportionally fewer residents in Colorado and Arizona are native to those states than all states on average.

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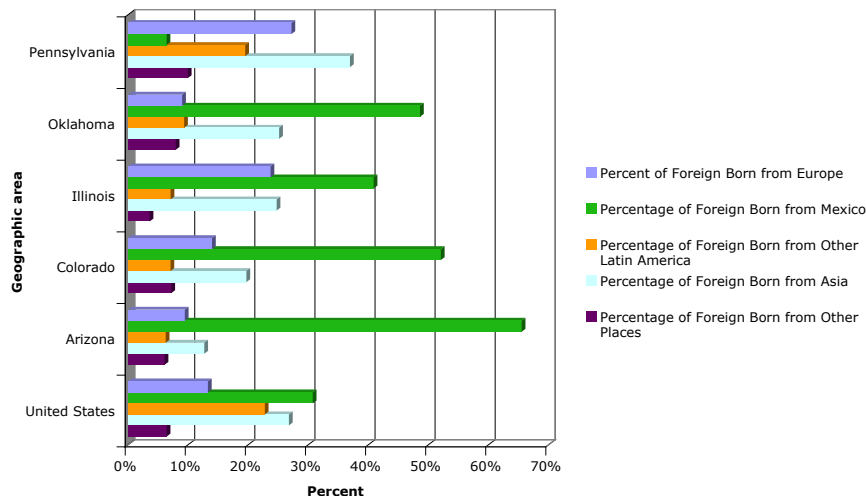
**Figure 3: Homegrown residents**



Source: 2006 American Community Survey

The states also differ somewhat on the regions of origin for their international populations (Figure 4). The foreign born in Illinois and Pennsylvania mirrors the nation as a whole with a large proportion coming from Europe. Furthermore, Pennsylvania also draws many of its foreign born from Asia. Except for Pennsylvania, people originating from Mexico comprise a larger proportion of the foreign-born population than for any other region of the world. More than twice the percentage of foreign-born in Arizona originates from Mexico (66 percent) than the United States as a whole (31 percent). A majority of the foreign-born in Colorado (52 percent) also come from Mexico. In Oklahoma (49 percent) and Illinois (41 percent), Mexicans comprise a disproportionately large share of the foreign-born population when compared to the United States as a whole. Illinois and Colorado also attract a disproportionate large share of immigrants from Europe. In the case of Illinois, this stands to good reason given the very large Eastern European immigrant communities in the Chicago metropolitan area. Pennsylvania attracts a disproportionately large share of immigrants from Europe and Asia and other regions such as Oceania.

**Figure 4: Region of origin for foreign-born**



Source: 2006 American Community Survey

The states vary with respect to the overall educational attainment of adults 25 and older and with respect to foreign born (Table 3). This suggests that the sets of available skills – and the types of jobs that can be performed – vary from state to state. Generally, the states follow the same pattern as the United States as a whole: large concentrations of foreign-born workers at the two ends of the skills spectrum with some thinning in the middle. There are some differences in terms of proportionality. The foreign born with less than a high school education are represented to a disproportionately greater degree in Arizona, Colorado and Oklahoma than the country as a whole and in comparison to Illinois and Pennsylvania. They each hover around the national average with respect to adults with a high school education or the equivalent. At the bachelor degree level, Arizona, Colorado and Oklahoma tend to be below the U.S. average for foreign-born with bachelor degrees, but Arizona and Pennsylvania exceed the national average with respect to foreign-born with graduate or professional degrees.



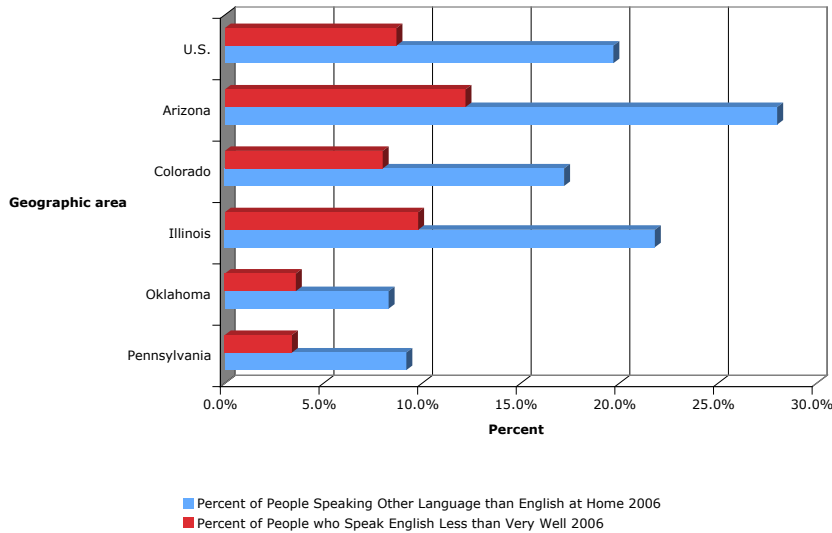
**Table 3: Educational attainment for population as a whole and for foreign born**

Geographic area	Percent of total 25 and older with less than high school education	Percent of total 25 and older with high school or equivalent	Percent of total 25 and older with some college or associate degree	Percent of total 25 and older with bachelor degree	Percent of total 25 and older with graduate degree
United States	15.9%	30.2%	26.9%	17.1%	9.9%
Arizona	16.2%	26.7%	31.6%	16.3%	9.2%
Colorado	12.0%	24.6%	29.1%	22.0%	12.4%
Illinois	15.0%	28.9%	27.3%	18.1%	10.8%
Oklahoma	15.7%	33.9%	28.2%	14.9%	7.2%
Pennsylvania	13.8%	38.9%	21.9%	15.8%	9.6%
Geographic area	Percent of foreign born 25 and older with less than high school education	Percent of foreign born 25 and older with high school or equivalent	Percent of foreign born 25 and older with some college or associate degree	Percent of foreign born 25 and older with bachelor degree	Percent of foreign born 25 and older with graduate degree
United States	32.0%	23.8%	17.5%	15.9%	17.5%
Arizona	41.2%	24.4%	17.2%	10.0%	17.2%
Colorado	38.1%	23.5%	15.5%	13.5%	15.5%
Illinois	30.9%	24.9%	16.8%	16.1%	16.8%
Oklahoma	38.6%	24.5%	14.8%	12.9%	14.8%
Pennsylvania	21.1%	24.5%	17.6%	18.9%	17.6%

Source: 2006 American Community Survey

Finally, only Arizona and Illinois exceeded the national average with respect to people who speak a language other than English at home (Figure 5). Likewise, both states exceed the national average of those who speak English less than very well.

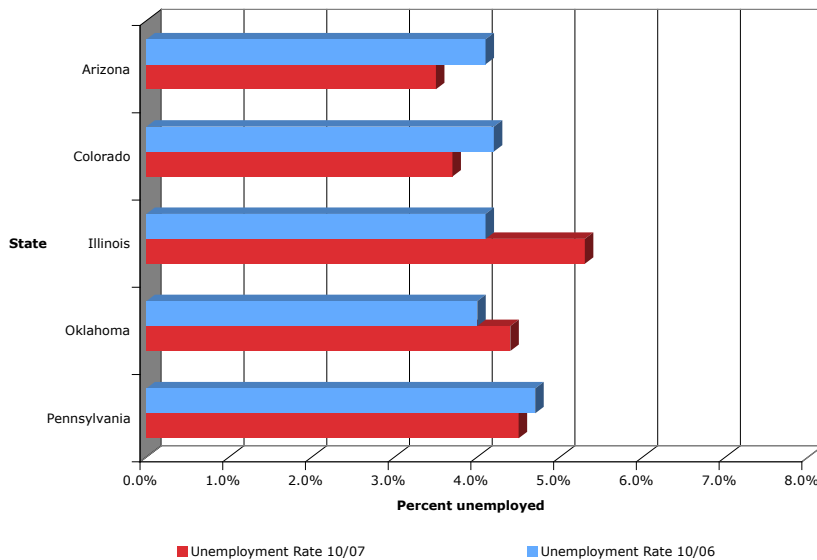
**Figure 5: English language proficiency**



Source: 2006 American Community Survey

In terms of economic performance, the states, except for Illinois and Oklahoma, experienced declining year-to-year, seasonably adjusted unemployment All, except Illinois, were below the national unemployment rate of 4.7 percent for October 2007 (Figure 6).

**Figure 6: Unemployment rate, October 2006 and October 2007 (seasonably adjusted)**



Source: Regional and State Employment and Unemployment: October 2007, Bureau of Labor Statistics

Total employment (seasonally adjusted) was higher in October 2007 when compared to the same month in 2006 for each of the five states (Table 4). The three-month trend from August to October showed a month-to-month decline for Arizona and Illinois. Employment in construction for October 2007 was lower than for October 2006 for Arizona, Colorado and Pennsylvania. Illinois showed no change between October 2006 and the same month in 2007, but showed a steady decline from August to October in 2007. Oklahoma showed higher totals for October 2007 versus October 2006 and when compared to August 2006. Manufacturing showed declines for all states (seasonal adjustments in manufacturing cannot be applied to Oklahoma). Employment in leisure and hospitality and in education and health services grew across the board. Employment in trade, transportation and utilities was significantly higher in Arizona when totals for October 2007 and October 2006 are compared, and increased for all states for the same period. Only Illinois showed consistent growth over the three months of August through October 2007. Employment in financial services was relatively stable.



**Table 4: Employment - Total and by selected industry sector**

Employees on non-farm payrolls (seasonally adjusted)								
(October 2007 preliminary, in thousands)								
Geographic area	Total							
	Oct-06	Aug-07	Sep-07	Oct-07				
Arizona	2,675.6	2,736.4	2,735.2	2,720.3				
Colorado	2,290.0	2,330.3	2,334.5	2,337.3				
Illinois	5,943.1	5,988.7	5,987.5	5,980.5				
Oklahoma	1,561.7	1,579.5	1,580.3	1,583.5				
Pennsylvania	5,763.3	5,802.6	5,806.8	5,811.1				
Geographic area	Construction				Manufacturing			
	Oct-06	Aug-07	Sep-07	Oct-07	Oct-06	Aug-07	Sep-07	Oct-07
Arizona	251.6	240.4	238.3	232.7	187.5	185.9	186.3	185.9
Colorado	167.2	165.3	165.9	165.7	148.6	144.7	144.3	144.2
Illinois	273.5	277.3	274.0	273.5	684.7	679.7	678.3	674.6
Oklahoma	70.9	72.0	71.8	72.7	N/A	N/A	N/A	N/A
Pennsylvania	261.2	260.9	260.1	259.9	670.2	658.5	657.7	657.5
Geographic area	Trade, Transportation, and Utilities				Financial Activities			
	Oct-06	Aug-07	Sep-07	Oct-07	Oct-06	Aug-07	Sep-07	Oct-07
Arizona	515.5	531.8	534.1	530.6	185.9	186.1	186.2	185.6
Colorado	421.6	426.7	428.8	429.3	161.1	162.2	161.7	162.1
Illinois	1,195.7	1,198.7	1,198.6	1,196.7	406.8	411.6	410.7	409.5
Oklahoma	286.5	287.6	287.2	286.7	84.0	83.3	83.5	83.7
Pennsylvania	1,126.6	1,136.0	1,135.4	1,134.5	334.3	333.6	333.1	333.5
Geographic area	Education and Health Services				Leisure and Hospitality			
	Oct-06	Aug-07	Sep-07	Oct-07	Oct-06	Aug-07	Sep-07	Oct-07
Arizona	294.7	302.6	303.2	303.8	269.8	281.1	283.3	282.6
Colorado	233.4	241.9	242.4	243.1	266.1	273.1	274.6	273.8
Illinois	769.8	778.6	779.0	780.8	530.3	538.6	540.2	540.2
Oklahoma	189.2	191.4	191.5	192.9	137.2	137.7	139.4	139.7
Pennsylvania	1,064.2	1,087.2	1,091.2	1,094.0	489.3	497.4	497.3	498.9

Source: *Regional and State Employment and Unemployment: October 2007*, Bureau of Labor Statistics

## STATE PROVISIONS AND AREAS OF STUDY REGARDING POSSIBLE ECONOMIC EFFECTS

In general, each of the laws examined in this report is an effort to regulate the behavior of employers. In the case of Oklahoma, the law also regulates the behavior of others to prevent them from providing certain services to unauthorized foreign-born persons and outlaws fraudulent use of identification documents. Our approach, therefore, is to anticipate how employers and workers may respond. Do employers change whom they hire and from where they hire? Do they change their staffing patterns? Do they leave jobs open, mechanize them, or off-shore them? Do they change their product and service mix? Do they experience new costs, such as the cost of compliance or new litigation? Do immigrants relocate or go “underground?” Do consumer markets change? Are there changes in the use of public services or in school enrollments? Do business-to-business practices change? Does the social cohesion of the community change? These and other questions all are based on the fundamental assumptions that behaviors will change and that the presence of unauthorized workers in the state’s labor market is sufficiently large that policies that affect that market will have economic consequences.

In this section, we will examine the laws of each of the five states that are part of this study and set forth our ideas as to where the effects of each law may be seen.

### ARIZONA

The Legal Arizona Workers Act, Arizona House Bill 2779, was enacted on July 2, 2007 and goes into effect on January 1, 2008. The key provisions of HB 2779 include:

- Creates a new crime of aggravated taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of another person, including a real or fictitious person, with the intent to obtain employment
- Establishes new sanctions for employers who “intentionally employ an unauthorized alien or knowingly employ an authorized alien.” The term “intentionally employ” has the same meaning as prescribed by pertinent Arizona statute. The term “knowingly employ” has the same meaning as prescribed by pertinent United States Code
- On a finding of the first violation during a three year period that the employer knowingly employed an unauthorized alien:
  - The employer must terminate the employment of all unauthorized aliens
  - The employer is placed on probation for three years, during which time the employer must file quarterly reports with the county attorney of each new employee who is hired by the employer at the specific location where the unauthorized alien performed work
  - The employer must file a signed sworn affidavit with the county attorney within three business days after the court decision stating that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien
  - The employer may, under certain conditions and at the discretion of the court, suffer the suspension of all business licenses that are held by the employer for a period not to exceed ten business days.

- On a finding of the first violation during a five year period that the employer intentionally employed an unauthorized alien:
  - The employer must terminate the employment of all unauthorized aliens
  - The employer is subject to a five year probationary period and must file quarterly reports with the county attorney with respect to each new employee
  - The employer will suffer the loss of all business licenses held by the employer for a minimum of ten days
  - The employer must file a signed sworn affidavit that all unauthorized aliens have been terminated and that no others will be employed.
- On a finding of the second violation during the probationary period, all of the business licenses of the violating business are to be revoked
- The attorney general or county attorney, upon receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien, shall investigate whether the employer has violated the law by verifying the work authorization of the alleged unauthorized alien with the federal government. Those filing frivolous complaints are guilty of a misdemeanor
- After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the basic pilot program (E-Verify).

Clearly, how the law is implemented will play a considerable role as to its effects, especially with respect to the definition of “knowingly” as it pertains to the employer’s understanding of the status of the newly hired worker. In “The Meaning of ‘Knowing’ in ‘Knowingly Employ an Unauthorized Alien’ and Other Relevant Definitions,” by Julie A. Pace, David A. Selden, and Heidi Nunn-Gilman at the firm of Ballard Spahr Andrews & Ingersoll, LLP, the authors conclude that:

Knowingly under the Arizona Act includes both actual and constructive knowledge and the knowledge of the managers and supervisors of the company can be imputed to the company, whether the owner and upper management have knowledge or do not have knowledge. There is no safe harbor provided by the Legal Arizona Workers Act if it turns out that employees were using falsified papers and identities and were not authorized to work in the United States.

Should this opinion be proven true in subsequent court actions, employers cannot be assured that reasonable actions taken to comply with the law will be sufficient to prevent a violation of the law.

Although the Arizona legislature has appropriated additional money for enforcement, it is not clear how county attorneys will choose to receive complaints and whether they will vigorously investigate such complaints in light of other priorities. The county attorney for Maricopa County, Arizona’s most populous, recently announced a partnership with the Maricopa County Sheriff to field and investigate complaints received by phone, e-mail or regular mail. The Arizona Republic reported that both the Sheriff and the County Attorney said that enforcement will be “complaint driven” and carefully investigated (September 21, 2007).

## Possible Economic Effects

We believe that there will be many firm level effects that will ultimately be aggregated up to broader industry and community wide changes. Small employers who do not have human resources departments and who only occasionally bring on new workers may be more vulnerable to error and may therefore be at higher risk of violating the law. Compliance may add extra costs that, depending on the market, may not be recoverable or passed along. All employers may experience increases in the time and expense of hiring and qualifying new workers, and in the availability of authorized workers (e.g., workers who are authorized to work may hesitate to seek work because members of their families may be out of status). Some workers who speak in accented English or may appear to be Latino or some other visible ethnic group may experience discrimination simply because an employer may not be sure that any document it receives is authentic. Ultimately, we believe that these micro-effects, while discoverable through surveys, will also be seen as aggregate effects.

First, using secondary data reported by the Arizona Department of Economic Security and other public sources, the employment effects may include:

- An increase in voluntary separations, especially in those industry sectors employing a high proportion of immigrants
- An increase in involuntary separations, especially in those industry sectors employing a high proportion of immigrants
- A short term increase in average hourly wages, especially in those industry sectors employing a high proportion of immigrants.

Second, we recognize that other economic events may contribute to employment changes and must be controlled for in any statistical analysis. Overall, Arizona's employment picture is robust, despite the downturn in housing, and below national average unemployment rates suggest that there is very little slack in the labor pool. Any changes in the supply of workers due to the immigration law may be accommodated by the migration of other workers from other states, substitution of some work through automated processes, increase use of overtime, shifting work to operations outside of Arizona (including off-shore), a decline in overall output, and a change in the product and service mix of the business. These changes may be assessed through business surveys used in conjunction with publicly available reports and secondary data that address:

- Changes in output and prices for industries employing a high proportion of immigrants, including construction and manufacturing
- Changes in the mix of agricultural products and outputs and the consequential changes in energy and resources consumption, including water consumption
- Changes in inputs for industries where the Arizona-based producers of such inputs employ a high proportion of immigrants, including construction subcontracting, transportation, wholesale distribution.

Third, there may be a downward push in the value of goods and services purchased by immigrants vis-à-vis other state residents. Some methods for detecting these changes are to:

- Track sales tax revenues by community and, using census data to establish the location of high concentrations of likely immigrant populations, determine whether those areas behave differently from other communities, controlling for economic status, employment changes due to exogenous factors, and others



- Track changes in the purchase or rental of affordable housing by community
- Track changes in the utilization of emergency and indigent health care facilities.

Fourth, some employers reported that banks have expressed uncertainty as to the security of loans supporting business expansions and new operations. If banks and other investors determine that the new Arizona law changes the level of risk, including interruption or termination of a business license, that change should be reflected in interest rates and lending rules. In addition, businesses that have not violated the law, but are supplied by businesses that incur a license suspension or revocation, may suffer business interruptions. These interruptions may lead to an increase in business interruption claims and may affect underwriting rules of insurers. At this point, it is not clear whether banks, insurers and investors view the new law as adding risk, however, it is a matter that can be assessed through a survey of the financial sector. We must be mindful that any assessment of risk will be affected by the law's implementation and the success of county attorneys and the state's attorney general in securing judgments against employers that violate the law.

In a related management issue, multi-state businesses and businesses relocating or establishing operations in a new state have learned to accommodate to each state's unique amalgam of employment and business laws. The Arizona law poses a rather different twist since it interjects state policy in an area where only federal law counted. All employers will have to address an added level of oversight, but multi-state employers may have to establish a new array of systems to comply with Arizona's law. In the cases of businesses in the process of making a decision to expand or relocate operations to Arizona, the cost of compliance and the possible added risk that is special to the state may factor into their final decisions.

Fifth, the law may have a chilling effect on competition as complaints are received and investigated. This is especially problematic given the possibility that a business may put a competitor effectively out of business. In light of how the law is written, a business following all the rules may still be found to be knowingly employing unauthorized workers. Businesses that are investigated as a result of a complaint and found to not be in violation of the law may incur significant expenses to defend themselves against such allegations.

Finally, the law may prompt immigrants to leave Arizona or "go underground," even if only one member of the family is not authorized to be in the United States. This may be a desired effect for supporters of the legislation. At the same time, it may have negative consequences for school districts losing school aid and local tax support, but do not have the flexibility to downsize facilities and operations. Legal residents and citizens in families where some member is not legally present may be more reluctant to report crimes against persons or property for fear that their family members may be discovered in the process. This may contribute to change in some crime rates both for both immigrant and non-immigrant neighborhoods.

## COLORADO

The Colorado Employment Verification Law (8-2-122, C.R.S., HB 06S-1017) required that on and after January 1, 2007, within hiring a new employee, each employer in Colorado must keep a written or electronic copy of an affirmation for the term of employment for each employee. The affirmation must state that the:

1. Employer has examined the legal work status of the newly-hired worker
2. The employer has retained file copies of the I-9 identity documents
3. The employer has not altered or falsified the employee's identification documents
4. The employer has not knowingly hired an unauthorized alien.

The Division of Labor of the Colorado Department of Labor and Employment may conduct random audits of employers in Colorado to obtain the required documentation. When the Director believes that an employer has not complied with the employment verification and examination requirements, the Division may request the employer to submit the required documentation. Failure to submit the proper documentation or submits false or fraudulent documentation with reckless disregard subjects the offending employer to a fine of not more than \$5,000 on the first offense and not more than \$25,000 on the second offense.

The Colorado Illegal Aliens and Public Contracts for Services Law (8-17.5-101 & 102, C.R.S., HB 06-1343) requires that no state agency or political subdivision may enter into or renew a public contract for services with a contractor who:

1. Knowingly employs or contracts with an illegal alien to perform work under the contract, or
2. Knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification:

1. It does not knowingly employ or contract with an illegal alien, and
2. That the contractor has participated or attempted to participate in the basic pilot program (E-Verify) in order to confirm the employment eligibility of all employees who are newly hired for employment.

Each public contract for services shall include specific provisions that recognize these requirements. Each public contract must also prohibit the use of E-Verify for pre-employment screening, while the public contract for services is being performed. It must also require a contractor who obtains actual knowledge that a subcontractor is knowingly employing or contracting with an illegal alien to notify both the subcontractor and the contracting agency and terminate the contract with the subcontractor, if the subcontractor does not stop employing or contracting with the illegal alien.

The Department of Labor and Employment may investigate complaints of suspected violations through on-site inspections, document reviews, and through other reasonable steps. A violation of this act may result in the termination of the contract and possible liability for actual and consequential damages to the state agency or political subdivision.

## Possible Economic Effects

Colorado's law has considerably less reach than the Arizona law. It adds an additional layer of compliance by employers to federal verification laws by creating an audit trail for inspection by Division of Labor inspectors. Although the penalties for violating the law are not trivial, they do not, in themselves, result in the suspension or termination of business operations. In addition, the law governing public contracts establishes that employers cannot be paid for doing the work of the state or local authorities while employing unauthorized workers or subcontractors who employ unauthorized workers. The penalties for a violation may result in the loss of the contract and immediate termination of those workers or subcontractors, but again, does not, per se, terminate business operations. Public projects, however, may represent a large percentage of the revenues of some companies. In such cases, the loss of these projects will have the practical effect of putting them out of business.



Some businesses have reported a reduction in the available pool of workers and losses in sales of products and services geared to Colorado's largely immigrant Latino population. The general sense is that some Latino families have "gone underground" or have left the state for more immigrant-friendly areas. Contractors who have the resources to check I-9 forms or who use E-Verify believe that they are complying with the law. Some believe that small sub-contractors are able to avoid detection and are less diligent in applying the law. As we have seen in other areas, this may lead to possible distortions, including payment of sub-market wages since unauthorized workers or workers who have family members who are unauthorized are less likely to complain about such treatment under such a hostile environment.

Given that Colorado's laws appear to be less punitive than Arizona's, the direct effects also may be more subtle. On the other hand, these laws were enacted during a time of heightened tensions and growing media attention regarding illegal immigration. As a result, the symbolic effect of these laws may have exceeded the specific provisions. If true, it is possible that some corresponding economic effects may be detected, including

changes in the available labor pool, changes in consumer sales in predominantly immigrant communities or in consumer products that target immigrant markets. Consequently, we believe that many of the same methods described for Arizona can be used in the context of Colorado.

In addition, it may be possible to detect changes in state and local government contracting by reviewing the incidence of violations and subsequent changes in procurement practices. It raises the possibility that the cost of public contracts may increase at a rate that exceeds the rate of price increases in the general market for comparable services.

## ILLINOIS

Illinois takes a tack that is opposite to the other states in this study. Instead of requiring employers to step up verification of workers, Public Act 095-0138 (HB 1744) prohibits employers from enrolling in any Employment Eligibility Verification System until such time as the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases are able to make a determination on 99 percent of the tentative nonconfirmation notices issued to employers within three days, unless otherwise required by law. Subject to the provisions of this law, an employer who enrolls in the Basic Pilot Program cannot use the system until the employer has met certain training and posting requirements and provide certain assistance to employees who receive a tentative nonconfirmation. The law prohibits pre-emption of the state law by any home rule government. The law takes effect on January 1, 2008.

Within a few weeks of the Governor signing the law, the U.S. Attorney filed suit in the federal district court for the Central District of Illinois to declare the law invalid and to enjoin the state from enforcing it. The suit charges that the law conflicts with federal law and that it presents an obstacle to U.S. efforts to prohibit the employment of unauthorized workers.

### Possible Economic Effects

By itself, the law may create conflicts for multi-state employers who may be participating in E-Verify as a result of another state's law (e.g., Arizona, Colorado), as a result of being a contractor to a public agency that requires that all contractors or subcontractors verify eligibility by means of E-Verify, or who is domiciled in another state and voluntarily participates in E-Verify, but employs some people in Illinois. The consequences of these conflicts may be seen in a reduction or change in Illinois business operations or challenges to the state law. Inasmuch as employers are not required by federal law to participate in E-Verify, the employment effects are likely to be limited. It is possible that this law, along with other state policies and initiatives, may create a more favorable atmosphere for immigrants, authorized and unauthorized. This may be seen in terms of changes in migration to Illinois, changes in the rate of growth of migrant communities, consumption in migrant communities, increase housing sales and rentals, and other economic indicators. Any increase rate of migration may also result in changes in employment and possibly wages, although the literature on the effects of migration suggests that such changes, if any, are temporary and might lead to increased wages in the long term.

## OKLAHOMA

House Bill 1804 created the Oklahoma Taxpayer and Citizen Protection Act of 2007 and took effect on November 1, 2007. Subject to some exceptions with respect to emergency health care, essential human services and private charity services, Oklahoma makes it a felony to transport, move or attempt to transport, conceal, harbor or shelter from detection, any unauthorized person in reckless disregard of the fact that the person entered or remained in the U.S. in violation of the law; prohibit identification cards (including student IDs) issued by public entities for unauthorized persons; prohibits public contracts or subcontracts to employers who do not participate in E-Verify or its equivalent; establishes that it is a discriminatory practice to continue employing someone who is not authorized while discharging someone in the same job category who is authorized to work; permits state and local enforcement of federal immigration laws and prohibits local governments from enacting laws to the contrary; prohibits in-state tuition at public post-secondary education institutions for unauthorized persons; and, requires the use by public agencies of the Systematic Alien Verification for Entitlements (SAVE) Program for certain services.

### Possible Economic Effects

Given the broad sweep of the law, the effects of the Act are likely to be widespread if there is a serious attempt to implement its provisions. Various community and human services organizations have reported that use of their services has declined significantly. In their view, immigrants appear to be dropping out of sight – either by moving to another state or by simply withdrawing as much as possible to their homes.

Anecdotally, home building contractors, many of who are very dependent on foreign-born workers, are experiencing significant changes that are coincidental to the enactment of the law and to the run-up to its implementation. This comes at a time when housing starts continue to grow, albeit slowly, in Tulsa, for example. Some report a significant rise in sub-contractor charges for certain construction jobs, such as dry walling and roofing, that attracted a high proportion of immigrant workers. This appears to be the result of both a decline in the supply of available workers – some contractors said that they have lost as much as 40 percent of their crews – and an attempt by some sub-contractors to take advantage of the tight labor situation. If true, construction costs, which are affected highly by labor costs, will rise and may add to the final cost of a dwelling or office. Of course, other factors affect the cost of construction. For example, the cost of energy affects both the cost of materials as well as that of construction operations, and will also have an effect on overall costs. Sorting out the effects of labor and these other factors will add to the complexity of the analysis.

The methods proposed for Arizona are applicable to Oklahoma. Although Oklahoma has a small immigrant population when compared to the other states in this report, they are concentrated into discrete communities. This phenomenon will help in the analysis on the effects on consumer consumption, investment and the use of public services. In the cases of industries that disproportionately employ immigrants, we should be able to track changes in employment (voluntary and involuntary separations), wages, and workforce composition. Also, some employers were reporting changes in the cost of services and that these changes are leading to reduced profits or escalating costs to the consumer.

In light of the law's provisions targeting all services to unauthorized persons, an assessment of its effect must also take into account the organizations that serve low income households, the disabled, and those with low skills and poor literacy. Given the education mix of the immigrant population, immigrants are more likely to depend on such services than the general population. As a result, these organizations – often not-for-profit and operating on very small margins – will likely incur additional expenses to assure compliance. These costs include more comprehensive screening of prospective clients, longer waiting times for clients, increased legal costs, additional staff training, and greater supervision of frontline staff. Support for these organizations may change – although that change may swing either up or down

depending on how supporters of a given service organization view the issue of unauthorized immigrants. The law also may create conflicts with the missions of these service organizations and thereby divert the attention of their leadership as they try to sort matters out. The mitigating offsets stemming from a decrease in the numbers served and in the complexity of these cases (e.g., less reliance on interpreters and/or greater homogeneity in the client population) may not be sufficient and may result in real operating losses.

Finally, the law's provisions prohibiting the transportation of unauthorized persons present some unique possibilities. Conceivably, commuting patterns may change, although it is not apparent how that change may be manifested. It is possible that drivers with a legal license will deny others with unknown status from sharing a ride. It is not too hard to imagine a scenario where someone will go through a mental checklist trying to figure out whether a possible rider is authorized to be in the country. This may put more illegal drivers on the road, force some to use public transportation and force others to quit their jobs.

## PENNSYLVANIA

Pennsylvania, on May 3, 2006, passed House Bill 2319. The bill prohibited the use of illegal immigrant labor on state government projects. Under the provisions of the law, it is a violation if a person had the active knowledge of or had reason to know that illegal labor had been used on the state government project. A violation of this act may result in the repayment of all grants and loans made pursuant to the project. Unlike the Colorado law, there are no specific enforcement provisions. It does not appear that the agency providing the funds for the grant or loan is given any new monitoring powers.

### **Possible Economic Effects**

As in the case of Illinois, the law takes a fairly narrow approach. Consequently, the effects may be difficult to see. An initial approach to assessing the effects of the law is to determine whether and to what extent it has been applied to a specific state government project grant or loan. An example may have a chilling effect on other projects and on the composition of the contractors and sub-contractors who are engaged to perform the work. A diminution of competition may affect project costs. This may be learned through a survey of current and former contractors who are asked to report on whether they have elected to not bid on projects or submit proposals as a result of the law and on whether the law has caused them to make any changes in their bids, project design, implementation and wage structure.

## CONCLUSION

The lack of a coherent comprehensive federal policy on immigration has resulted in many states taking on the issue. What is striking by the breadth of actions and by the variation of approaches, even within a given policy area such as employment policy, is that each state sees the issues differently. States with relatively few immigrants, such as Oklahoma, act vigorously and focus on the services that unauthorized immigrants may be receiving. Other states, with very large immigrant populations, such as Illinois, are putting themselves into the middle of the fray by loosening restriction on immigrants. In the case of the state law stopping employers from using E-Verify, the state is essentially saying that a federal program that it deems unreliable is actually harmful. One factor that seems to be somewhat telling, at least among the five states that we examine, is that states that have experienced a recent, relatively rapid increase in the number foreign-born settling in their area have also responded forcefully. If this bears out across the country, it suggests that the problem may not simply be with the status of the new immigrants, but may also have something to do with the preparedness of these new gateway areas to deal constructively with greater diversity. It may not be sufficient to have new immigration laws. They may also need to be accompanied by a new community-level focus on effective integration.



## ABOUT THE AUTHOR

Peter Creticos is President and Executive Director of the Institute for Work and the Economy, a think tank on workforce development. He is Visiting Fellow at the Institute for Latino Studies at the University of Notre Dame and a member of the adjunct faculty at Roosevelt University in Chicago. He also is an independent consultant on workforce development policies and programs.

Among his many projects, Mr. Creticos was the principal on a yearlong project on the integration of immigrants in the workplace, and recently finished a report on employment challenges and solutions for foreign-educated immigrants. He is launching an initiative to establish a regional workforce development policy center that will examine jobs and employment in metropolitan Chicago from the perspectives of workers, the community and business. He is developing an initiative with policy researchers in Mexico to establish a bi-national dialogue on the mutual interests of the two countries with respect to education and training. He has written articles for the Institute's website on the workforce challenges faced by people displaced by Hurricane Katrina, on the workforce implications of proposed immigration legislation, and on how communities may partner with big-box stores as transitional employers to move people from low-skilled, low wage jobs to family-sustaining work ([www.workandeconomy.org](http://www.workandeconomy.org)). In 1983, he wrote the law for the first publicly-sponsored, lifelong learning account program.

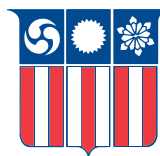
Prior to establishing the Institute in 2000, Mr. Creticos served as the Vice President for the Midwest Regional Office in Chicago of the National Alliance of Business. Previously he served as Assistant to the President at the Illinois State Chamber of Commerce and President of the for-profit subsidiary, Center for Business Management. Through the 1980s and into the early 1990s, he served as lead staff on economic and workforce development for the Illinois State Senate President and consulted privately on projects examining the economic and workforce contributions of various sectors, including the arts, health care, financial and legal industries. He also has led or co-authored economic impact studies of selected local ordinances and of proposed large-scale developments in the Chicago metropolitan.

Mr. Creticos has a Ph.D. from the Graduate School at Northwestern University. He did his dissertation on task and skill based matching at the Industrial Engineering and Management Science department at the McCormick School of Engineering and Applied Sciences. He also has a Master of Management at Northwestern's Kellogg Graduate School of Management, a Master of Arts in Political Science from the University of Missouri at St. Louis and a Bachelor of Arts in Philosophy from Washington University in St. Louis. Mr. Creticos was a Coro Foundation Fellow in St. Louis.

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