

# State of Outrage: Immigrant-Related Legislation and Education in Arizona

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## Abstract

In April 2010, Arizona made national headlines when Governor Jan Brewer signed SB 1070, the “Support Our Law Enforcement and Safe Neighborhoods Act” which was aimed at deterring illegal immigration to Arizona. SB 1070 is the most prominent of a series of laws and other state policies targeting immigrants in Arizona that date back to the late 1990s. This period of active legislating coincides with a dramatic increase in the state’s Hispanic population. In this paper, we provide an analysis of the state laws that have influenced the educational experiences of immigrants in Arizona passed during this period: Proposition 203 and HB 2064 (Bilingual Education), HB 2281 (Ethnic Studies Courses), and Proposition 300 (Higher Education and Adult Education).

## Introduction

In April 2010, Arizona made national headlines when Governor Jan Brewer signed SB 1070, the “Support Our Law Enforcement and Safe Neighborhoods Act” which was aimed at deterring illegal immigration to Arizona. As enacted, the bill’s most controversial provisions: a) require immigrants to carry documentation of their legal status; b) criminalizes the work activities of illegal immigrants; and c) empowers law enforcement officials to detain anyone they suspect is an illegal immigrant (Archibold, 2010; Order, 2010). In July 2010, these provisions were enjoined by a federal court and have not taken effect.<sup>1</sup> Yet SB 1070 is best understood as the latest, and arguably the most prominent of a series of laws and other state policies targeting immigrants in Arizona that date back to the late 1990s.<sup>2</sup>

This period coincides with a dramatic increase in the state’s Hispanic population. Population estimates from the 2010 Census indicate that between 2000 and 2010 the Hispanic population in Arizona has increased 46 percent; 30 percent of Arizona’s residents in 2010 were Hispanic (Passell, Cohn, & Lopez, 2011). The vast majority of Arizona’s Hispanic residents (87 percent) reported that they were Mexican (U.S Census Bureau, 2010a).<sup>3</sup> While Census data does not allow cross-tabulations across categories, other Census estimates indicate that thirteen percent of the state’s residents are foreign-born; of these 64 percent are not United States citizens, and 68 percent were born in Latin America (U. S. Census Bureau, 2010b). Additionally, while most Arizona residents ages five and older (73 percent) speak English at home, 76 percent of those that do not speak English at home are Spanish speakers (U. S. Census Bureau, 2010b).

<sup>1</sup> The lower court’s ruling was affirmed by the Ninth Circuit Court of Appeals. The Supreme Court will hear oral arguments on the merits of the injunction in April 2012.

<sup>2</sup> After SB 1070 was passed in Arizona, similar laws were proposed in other states. In September 2011, a federal district court upheld provisions in the Alabama law that: a) requires law enforcement officials to check a person’s immigration status during routine traffic stops; b) nullifies contracts entered into by illegal immigrants; c) forbids illegal immigrants from engaging in transactions with state agencies; and d) requires public elementary and secondary schools to assess the immigration status of their students. Emboldened by their success, some Arizona lawmakers attempted to pass more drastic laws aimed at illegal immigrants, including a law that denied automatic citizenship to children born in the United States, and laws requiring hospitals and schools to report illegal immigrants seeking their services (“Arizona Senate Rejects,” 2011). We discuss one of these, SB 1611, in more detail below. Subsequent political developments have been mixed. In June 2011 the Alabama legislature approved legislation widely considered tougher than Arizona’s SB 1070 (Robertson, 2011).

<sup>3</sup> While they do not provide figures for individual states, Passell and Cohn (2010) estimate that 60% of all of the unauthorized immigrants living in the United States in 2009 were from Mexico. Passell and Cohn’s estimates also indicate that the vast majority of foreign-born residents of the United States (72 percent) are legal immigrants.

In this paper, we focus on the state laws that have influenced the educational experiences of immigrants in Arizona passed during this period because a large percentage of the state's Hispanic population are children under the age of 18 (Lacey, 2011) and public education is a central institution in young people's lives. To frame our discussion we begin with a brief historical overview of the racialization of illegal immigration and language.

### Conceptual Framework and Historical Context

We use Omi's (2001) conceptualization of racialization, the process by which social groups come to be understood in racial terms, as a starting point for our analysis. We also draw from Critical Race Theory analyses that highlight how policies and practices that are neutral on their face perpetuate existing patterns of racial inequality (Gunter & Torres, 2002). In the United States, race and immigration have been deeply intertwined and must be understood against a backdrop of white domination. That is, immigrant experiences reveal both the malleability and stability of whiteness as a social category, the centrality of whiteness to American national identity, and the privileges associated with whiteness (Haney López, 2006; Pérez Huber et al., 2008). The Naturalization Act of 1790 limited the right to naturalization to "free white person[s]" and thus citizenship to whites. Over time, the linked categories of white and citizen came to include European immigrants, not all of whom were considered white at first arrival (Jacobsen, 1998). When immigrants from Asia and India challenged naturalization laws in the early twentieth century by arguing that they were white and eligible for citizenship, the courts rejected both claims (Haney López, 2006).

The experiences of Mexican immigrants complicate the immigrant story in a number of ways. First, Mexican citizens living in the former Mexican territories that were incorporated into the United States under the terms of the Treaty of Guadalupe Hidalgo and the Gadsden Purchase retained their property rights and were granted the right to United States citizenship. Despite these provisions, in the racial Anglo-Saxonism that fueled Manifest Destiny and continued to shape the American West in the late nineteenth and early twentieth centuries, Mexicans were viewed as racially inferior and unassimilable (Acuña, 2000; Camarillo, 1979; Horsman, 1981; Montejano, 1987; Perea, 2003). Second, in the decades after World War I, immigration laws and policies created a new social category, the illegal immigrant (Benton-Cohen, 2009; Ngai, 2003). Immigration restrictions passed in 1921 and 1924 included provisions for deporting immigrants who entered the United States without a visa and created the Border Patrol. In 1929, Congress passed legislation that criminalized unlawful entry to the United States.

In this context, the United States-Mexico border posed a dilemma for immigration officials. In first decades of the twentieth century, Mexican migration to the United States grew dramatically, fueled by the economic policies of the Porfirio Diaz regime, the Mexican Revolution, and the employment opportunities created by economic development in the U.S. Southwest (Gutierrez, 1995). Many politicians from border states viewed Mexican migration as a public problem, but immigration officials had no legal grounds to deny Mexicans citizenship (Ngai, 2004). As a result, federal officials began to use administrative polices including deportation, head taxes, visa fees, literacy tests, and humiliating delousing and medical line inspection procedures to control Mexican immigration and construct "a barrier where, in a practical sense, none had existed before" (Ngai, 2003, p. 85; see also Sanchez, 1993).

Other administrative policies fostered the racialization of the illegal immigrant as non-white. When policies criminalizing illegal entry began to penalize illegal immigrants from Eastern Europe and Canada, federal officials who viewed the deportation of Europeans as unjust instituted administrative reforms that allowed these immigrants to legalize their status and become citizens. According to Ngai (2004) in the period between 1925 and 1965, as lower status European groups came to be viewed as white and citizens, and the boundaries of whiteness were expanded and reinforced. Ngai (2004) observed, "[b]y contrast, [for Mexicans] walking (or wading) across the border emerged as the essential act of illegal immigration, the outermost point in a relativist ordering of illegal immigration" (p. 89).

Like immigrant status, language is another racialized social category,<sup>4</sup> and, as Sanchez (1997) points out,

<sup>4</sup> For an analysis of how language and national origins were used to denote racial boundaries in mid-twentieth century Arizona, see Powers and Patton (2008).

has been a perennial element of anti-immigrant debates. Perea (1992) argued that a key strain in American political thought has been a demand for cultural homogeneity and assimilation to the beliefs, values, and practices of white, Protestant, English-speaking, Anglo-Saxons. Throughout American history, laws and legal rules have been potent tools used by the majority to promote and enforce the dominant culture. A key example of this phenomenon are laws aimed at declaring English the official language of the state or, as we discuss below, the primary language of instruction in public schools. Likewise, as we noted above, literacy tests were one of the administrative measures used by immigration officials to regulate entry into the United States at the U.S.-Mexico border.

If we consider the demographic trends we described at the outset of the paper in the context of this brief historical overview of the assumptions, rhetoric, and policies aimed at containing Mexican migration in the early twentieth century, it suggests that immigration policies and language policies are forms of racist nativism that target Latina/os regardless of citizenship status (Pérez Huber, et al., 2008). In the section that follows, we turn to contemporary immigration related policies in Arizona. The first of these, Proposition 203, was passed by voters in 2000. We analyze the texts of state statutes, other government documents, and newspaper articles when relevant.

### **Anti-Immigrant Legislation in Arizona**

We begin our analysis in 2000 when Proposition 203, English for the Children, was passed by voters. According to Zatz and Rodriguez (2009), between 2000 and 2009, the Arizona legislature enacted 65 bills related to immigration or targeted at immigrants. Among these bills were changes in state statutes that: required individuals applying for driver licenses to provide proof of citizenship or legal residency, expanded the definition of human trafficking, increased the power of law enforcement agencies to ascertain the citizenship status of detainees, empowered the National Guard to enforce immigration laws, created penalties for employers that hire undocumented workers, and prohibited cities from establishing day labor centers that assist undocumented immigrants. Seventy-eight percent of these bills were signed into law; Governor Napolitano (a Democrat) used her authority to veto 14 of the 65. Governor Jan Brewer, a Republican, has approved all of the immigration-related bills passed by the legislature during her tenure. Brewer's support for SB 1070 was widely understood as the key to her re-election in November 2010.

According to *The Arizona Republic*, the 2004 election was a key turning point in this period ("Immigration and Arizona", 2010). Moderate Republicans lost primary elections to their more conservative counterparts. As a result, the Republican-controlled legislature became more conservative and was able to pass a greater number of immigration-related laws. In addition, between 2000 and 2009, Arizona voters considered eight ballot propositions related to immigration (Zatz & Rodriguez, 2009). Only one—a law requiring employers to verify the immigration status of their employees—was not passed by voters. In addition to the education-related ballot propositions we discuss below, Arizona voters approved measures that made undocumented immigrants ineligible for public benefits or services, bail, and punitive damages in civil cases.<sup>5</sup>

We highlight the broader political climate for immigrants because there is some evidence that the policy context for immigrants is associated with educational outcomes for the children of immigrants. Filindra, Blanding, and Garcia Coll (2011) found that the graduation rates of the children of immigrants were higher in states where immigrants had access to the welfare system and where Democrats were in control of the state political system. About the latter, Filindra et al. (2011) suggest that Republicans tend to promote anti-immigrant policies and "this hostility may have affected immigrant families' sense of belonging in states dominated by the Republican party" (p. 430). In the sections that follow, we detail the legislation, ballot propositions, and Arizona Department of Education policies that have shaped the educational experiences of immigrant students in Arizona. Our primary goal is to analyze the key provisions of these laws, although we also address some of the outcomes of these laws when relevant.

<sup>5</sup> These long-term trends in Arizona are consistent with the national trends documented by the Immigrant Policy Project of the National Conference of State Legislatures ([www.ncsl.org](http://www.ncsl.org)).

## K-12 Education

Unlike higher education, immigration-related laws and policies aimed at K-12 education in Arizona tend to be focused on the curricula offered in K-12 schools. We also address some of the possible spillover effects of other immigration-related laws on public schools.

**Bilingual education.** In 2000, Arizona's voters overwhelmingly approved Proposition 203, entitled English for Children, which fundamentally changed the educational experiences of English language learners in Arizona public schools. According to the 2000 Census, when Proposition 203 was passed, 26 percent of the population five years and older spoke a language other than English at home. Approximately 75 percent of this group was Spanish speakers (U.S. Census Bureau, 2000). While 86 percent of Arizona's residents in 2000 were born in the United States, 70 percent of the foreign-born residents were not citizens. As we explain below, while the title and provisions of Proposition 203 do not address a specific group, the demographics of the state's population and the proposition's statement of purpose suggest that the bill was aimed at Spanish-speaking immigrants.

Proposition 203 was part of a multi-state campaign against bilingual education spearheaded by multi-millionaire Ron Unz in the late 1990s and early 2000s. After California voters passed Proposition 227 by a wide margin (Wiley, 2004), Unz and his supporters began a similar campaign in Arizona. Proposition 203's findings and declarations raised the specter of uneducated immigrant children who have not learned English: "The public schools of Arizona do an inadequate job of educating immigrant children, wasting financial resources on costly experimental programs whose failure over the past two decades is demonstrated by the current high drop-out rates and low English literacy levels of many immigrant children" (Arizona Secretary of State, 2000, p. 1).<sup>6</sup> Proposition 203 required students who were classified as English language learners to participate in English immersion, a educational program designed for English language learners but taught in English, "for a temporary transition period not normally intended to exceed one year" (Arizona Secretary of State, 2000, p. 1). All of the books and instructional materials used in immersion classrooms have to be in English; teachers can use only minimal amounts of the students' native language while speaking with students.

A parent who does not want her child to participate in the English immersion program can request a waiver for one of three reasons: a) her child is proficient enough in English that she/he did not need the immersion program, b) her child is 10 years old or older and would learn English more effectively in an another educational program, or c) her child has special needs. The law also stipulates that teachers and school districts could reject waiver requests without explanation. Proposition 203 also contains provisions that grant parents or legal guardians the legal right to sue their local schools if the schools do not comply with Proposition 203. School officials found to be out of compliance with Proposition 203 can be removed from office and prohibited from holding positions in the public school system for five years. While Proposition 203 did not completely remove bilingual programs from public schools, it made English immersion programs the default choice for families unless parents requested waivers and their waivers were approved.<sup>7</sup>

In 2006, the Arizona legislature passed House Bill 2064 which expanded the provisions of Proposition 203.<sup>8</sup> HB 2064 requires school districts to assess the English proficiency of students whose primary or home language was not English. Students whose test results indicate that they are not proficient in English must be classified as "English language learners" and enrolled in a "research-based" structured English immersion (SEI) program (Arizona Revised Statutes, § 15-756). HB 2064 also requires school districts and charter schools to reassess the English proficiency of students classified as English language learners annually. Students whose test results indicate that they are English proficient must be transferred from the immersion program to mainstream

<sup>6</sup> Wright (2005) noted that at the time Proposition 203 was passed, more than 70 percent of ELL students in Arizona were being educated in English-only programs, which suggests that bilingual education was not the cause of these problems. Likewise, this sweeping statement is not supported by the findings of meta-analyses evaluating the effectiveness of bilingual programs (i.e. Greene, 1998; Rolstad, Mahoney, & Glass, 2005a, 2005b).

<sup>7</sup> See Wright and Choi (2006) for some evidence that suggests that students' access to bilingual classrooms declined precipitously after Proposition 203 was implemented.

<sup>8</sup> While beyond the scope of the discussion, HB 2064 was passed by the legislature in an effort to comply with the federal district court's 2000 decision in *Flores v. Arizona* (Wightman, 2010).

classrooms. Reclassified students must be re-assessed a year after their exit from the immersion program. If reclassified students fail to test as proficient, they can be re-enrolled in the immersion program with parental consent.

HB 2064 also created the Arizona English Language Learners Task Force, charged with identifying the “research-based” SEI models that districts could implement. The law also outlined parameters for the models the Task Force was charged with developing: students should only be placed in an SEI classroom for one year and instruction in SEI classrooms must include a minimum of four hours of English language development. In September 2007, the Task Force developed a model for the four-hour block based on the STAR English Language Acquisition program which is primarily focused on developing discrete language skills with little emphasis on academic content (Gándara & Orfield, 2010; for a detailed analysis of the academic content of SEI classes, see Martinez, 2010). ELL students placed in the four-hour block receive instruction largely separate from their English-speaking peers for a year or more.

Gándara and Orfield (2010) argued that the four-hour ELD block is a form of within-school segregation and highlighted some of the negative outcomes of segregating language learners from native English speakers documented in the research literature. First, English language learners placed in separate classrooms often feel stigmatized as less intelligent and inferior compared to their English-speaking peers (see also Benz, 2009). Second, English language learners are often tracked into remedial or non-college preparatory courses. Finally, some preliminary evidence from Arizona suggested that large percentages of students were not exiting SEI classrooms after one year; the longer students remained in the SEI classroom, the less likely they were exposed to academic content that would allow them to catch up to their peers in mainstream classrooms (Gándara & Orfield, 2010).

**Ethnic studies courses in high schools.** In May 2010, a few weeks after it passed SB 1070, the Arizona legislature passed HB 2281. HB 2281 was the culmination of a three-year campaign by State Superintendent of Education Tom Horne. School districts and charter schools are prohibited from offering courses that “1. Promote the overthrow of the United States Government. 2. Promote resentment toward a race or a class of people. 3. Are designed primarily for pupils of a particular ethnic group. 4. advocate ethnic solidarity instead of the treatment of pupils as individuals” (Arizona Revised Statutes, § 15-112). School districts that are out of compliance with the law can have up to 10 percent of their state aid withheld each month until they comply, after which their funding will be restored.

While the law is framed in largely race-neutral terms, Horne’s efforts were specifically aimed at the Mexican-American history courses offered by the Tucson Unified School District (Pitzl, 2010). We discuss HB 2281 here because the period this bill was moving through the legislature overlaps with SB 1070. Moreover, Horne’s public statements about the TUSD program have highlighted the immigrant status of teachers and students involved with the program and political debates about border control. One of the features of these courses is that they use texts written by prominent Chicano historians as part of an effort to place Chicano/Latino experiences and history at the center of the curriculum (TUSD website). The TUSD Mexican American Studies Department described its educational model as consistent with the work of prominent Latino/a educational scholars including Sonia Nieto, Angela Valenzuela, and Luis Moll, to name a few.

Horne viewed the classes as racially divisive because they teach “a radical ideology in Raza, including that Arizona and other states were stolen from Mexico and should be given back” (Lewin, 2010, p. A13). While the law drafted by Horne that was passed by the Senate does not specifically mention immigration, Horne has invoked political debates about immigration in his public statements. For example, in a 2007 open letter to the Tucson Unified School District, Horne described being troubled by a statement in one of the textbooks used in the course “paid for by American taxpayers used in American public schools” that he read as “gloating over the difficulty we are having in controlling the border” (Horne, 2007). He also raised questions about the legal status of some of the students’ family members (and perhaps by extension, the students themselves) noting that “[m]ost of these students parents’ and grandparents came to this country, legally, because this is the land of

opportunity.”<sup>9</sup> Finally, the length and vehemence of Horne’s campaign and the national and local news coverage it has engendered might suggest that a large proportion of TUSD high school students are participating in these courses. In 2010, 1,400 students enrolled in these courses, an increase of 45% from the 781 enrolled the prior academic year (Zehr, 2010). By way of comparison in 2008-2009, approximately 15,000 students were enrolled in the district’s regular high schools.<sup>10</sup> These figures suggest that approximately five to 10 percent of TUSD high school students took these courses. The new State Superintendent of Instruction, John Huppenthal, found that the program was out of compliance with state law, although an audit commissioned by the ADE reviewed the program favorably (Gersema, 2011). The district unsuccessfully appealed Huppenthal’s decision. As a result, the school board voted to suspend the program in January 2012 and removed all of the texts taught in the program from classrooms (“Tucson School District,” 2012).

**Spillover effects.** In addition to the policies described above, we believe that a compelling case can be made that other immigration-related legislation, coupled with the state’s economic downturn, can have a spillover effect on public schools. Since 2007, metropolitan Phoenix school districts with large Hispanic populations have experienced decreases in enrollment. While this could be due to the decline in the construction and tourist industries, school district officials attributed some of the decline in student enrollment to SB 1070 and a 2007 law that penalized employers that hired undocumented workers (McCullough, 2011). The drops in enrollment resulted in a loss of state and federal dollars for these districts, which in turn led to cuts in staffing and services. One of the unintended consequences of these policies may be an increase in the class sizes for English speakers in these districts. The English Language Learners Task Force requires classes for English language learners to be capped at 23 or 28 students, depending on students’ English proficiency. When districts do not have the funds to hire extra teachers, they have to increase the class size of the classes for English-speaking students. Moreover, all students in these districts—fluent English speakers and English language learners—are affected by programmatic cuts that result from revenue shortfalls. Some projections of the financial impact of SB 1070 suggested a net savings to public education in the aggregate if substantial percentages of undocumented students leave public schools (“Arizona Immigration Law,” 2010). Yet these projections do not account for the possibility that in districts with declining enrollment, the fixed costs of providing services to their remaining students may not decrease as sharply as the reduction in state and federal dollars they receive that are tied to enrollment.

Likewise, one of the policies in the omnibus immigration bill rejected by the Arizona legislature in March 2011 would have created significant additional administrative costs for K-12 schools if the bill had passed and the policy had gone into effect. SB 1611 would have required parents enrolling their children in public schools to provide a birth certificate from the United States or one of its territories, a United States passport, or a certificate of naturalization; schools would have been required to notify immigration authorities if parents could not produce documentation of their children’s legal presence. Some administrators expressed concern that if school officials had to implement this law, these requirements would burden school employees already struggling with staffing and budget cuts and turn schools into enforcement agencies (Doan, 2011; Stephenson, 2011).

## Higher Education

In contrast to K-12 education, anti-immigrant legislation in Arizona focused on higher education is aimed at restricting undocumented students’ access to higher education and other educational services. In the early 2000s, the Arizona legislature made several unsuccessful attempts to limit undocumented immigrants access to state-funded educational services outside of K-12 education. For example, HB 2030, which restricted undocumented immigrants’ access to adult education classes, ESL instruction, in-state tuition, and financial aid was passed by the legislature in 2005 and vetoed by then-Governor Napolitano (Dougherty, Neinhusser, & Vega, 2010). In 2006, Arizona voters approved Proposition 300, which contained many of the same provisions

<sup>9</sup> While Horne used the term “legally,” the punctuation draws attention to the term and indexes debates about illegal immigration in a way that a more neutral term such as second or third generation immigrants might not. Horne makes a similar statement in Lewin (2010).

<sup>10</sup> Authors’ calculations from CCD data.

as HB 2030. To be eligible for in-state tuition, or receive access to adult education (which includes ESL classes for adults), and child care services, students have to provide documentation that they are legal residents of the United States. While Proposition 300 did not formally restrict undocumented students' access to higher education institutions, students who cannot provide documentation of legal residency must pay out-of-state tuition to attend Arizona's community colleges and state universities, making the cost of higher education prohibitive for many (McKinley, 2008). Approximately one year after Proposition 300 was enacted, Arizona's colleges and universities reported that 3,850 students did not receive in-state tuition because they could not prove they were legal residents (Ryman, 2008). Likewise, as of December 2010, over the four years since Proposition 300 was enacted, approximately 4.5 percent of the applicants for Adult Education Services classes were denied instruction because they could not document their legal status.<sup>11</sup>

Finally, some state lawmakers view Proposition 300 as insufficient because it does not prevent undocumented students from enrolling in state colleges and universities (Fischer, 2011). SB 1611, the omnibus immigration bill rejected by the Arizona Senate in March 2011, also contained a provision that would accomplish this goal.

### Conclusion

As Census figures suggest, this period of active lawmaking coincides with a dramatic expansion of the Hispanic population in Arizona. This ongoing legislative activity has contributed to a climate where the public debates about immigration in Arizona have focused largely on the negative costs of illegal immigration. Research that suggests that immigrants regardless of status contribute substantially to the state economy through the taxes they pay net of the cost of the services they use (e.g., education, health care, and law enforcement) has had very little traction (Gans, 2008). A recent national survey of Latino adults suggests that what is now a national campaign fueled by the success of Arizona lawmakers has had a collateral effect on the Latino population well beyond Arizona's borders (Lopez, Morin, & Taylor, 2010). Sixty-one percent of the Latinos surveyed by the Pew Hispanic Center in 2010 reported that discrimination against Latinos was a "major problem," an increase of 14 percent since 2002.

Our goal in this paper was to highlight the policies that have had a direct impact on Arizona's public educational institutions. While we see some striking parallels between the early twentieth century immigration debates and policies described at the outset of the paper and the contemporary period, there are also some important differences. While symbolically important, these early immigration policies were often sporadically enforced and focused largely on the border region (Benton-Cohen, 2009). In contrast, these contemporary policies can be viewed as part of a sustained campaign to continually expand border enforcement well beyond the geographic site of the U.S.-Mexico Border and into immigrants' communities and the public institutions that serve them. While the education policies described here are one part of a broader array of policies, they are significant because young people comprise the largest segment of Latino immigrant communities and public education is a central part of their daily lives and a key influence on their life chances. We hope that the tide will shift and that political debates and our state policies will begin to reflect a more welcoming and expansive rather than exclusionary vision of community and the contributions of immigrants, legal or otherwise.

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<sup>11</sup> Authors' calculations based on information reported in Liersch (2011).

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