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December 10, 1999

Hon. Bill Lockyer  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Diane Calkins  
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative constitutional amendment entitled "The Save our State Amendment" (File No. SA1999RF0059). This measure amends the California Constitution to prohibit the state and local governments from providing many types of public benefits to "nonqualified aliens," as defined in federal law—primarily undocumented immigrants. The measure also requires state and local agencies to verify the identity of applicants for public benefits and determine whether they meet the measure's eligibility requirements for those benefits.

**BACKGROUND**

The U.S. has no universal national identity card, so documenting citizenship or legal immigration status can be complex, even for native-born citizens. Generally, several documents are needed (for example, a U.S. birth certificate to establish the basis for citizenship and a driver's license with a photo to establish identity). However, many people (especially children) do not have a driver's license or other official photo identi-

fication. Documenting citizenship for these people may involve additional steps, such as verifying the identity of a child's parents.

Most legal immigrants have an identification card from the U.S. Immigration and Naturalization Service (INS) to verify their status, such as a "green card" issued to immigrants who are granted permanent residence in our country. The INS has developed a computer system that government agencies and employers can use to check the validity of most types of immigration documents. No similar nationwide automated system exists to check the validity of birth certificates, which are issued by thousands of local agencies throughout the country.

Under the U. S. Constitution, children born in this country to undocumented immigrant parents are U.S. citizens—just like any other child born here. Many undocumented immigrant families in California have citizen children, who have the same rights and are entitled to the same benefits as any other citizen.

**Proposition 187.** As approved by the voters in 1994, Proposition 187 prohibited state and local government agencies from providing publicly funded education, health care, welfare benefits, and social services to any person that they do not verify as either a U.S. citizen or a person legally admitted to the U.S. However, most of Proposition 187 was found unconstitutional because it was deemed to conflict with federal authority under immigration law. All that remains of Proposition 187 are two provisions that establish state and criminal penalties for the manufacture and use of false documents to conceal undocumented immigration status. However, the state *may* enforce any restrictions that have been adopted under other federal laws, such as welfare reform in 1996.

**Federal Law.** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the 1996 federal welfare reform law) defines nonqualified aliens and makes them ineligible for federal public benefits. Qualified aliens include immigrants who are permanent residents, asylees, refugees, and certain other groups of immigrants who have been granted the legal right to remain in the U.S. Nonqualified aliens include undocumented immigrants and some types of nonresident aliens, such as tourists.

The welfare reform law also prohibits state and local governments from providing public benefits to nonqualified aliens without state enactment of subsequent authorizing legislation. Examples of programs where the state has passed legislation to provide benefits to nonqualified aliens include prenatal care and long-term care benefits in the Medi-Cal program.

## PROPOSAL

### Key Provisions

***Changes in Eligibility Requirements.*** This measure would eliminate the state and local governments' option that currently exists under federal law to provide public benefits to nonqualified aliens. For example, the state could no longer provide prenatal care or long-term care to nonqualified aliens.

***Verification of Eligibility.*** This measure requires that all state and local government entities shall verify the identity and eligibility of each applicant for state and local public benefits, as defined by federal law. Federal law defines "public benefits" that are provided by a state or local government as follows:

- Any grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government.
- Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a state or local government.

***Document Verification Bureau.*** The measure establishes a Document Verification Bureau within the Department of Justice (DOJ). This bureau would serve as an information resource to all other state and local governmental entities, providing the information necessary to verify the identity of any applicant or recipient of a state or local public benefit.

Given that the U.S. has no national identity card, the measure does not explicitly specify *how* the Document Verification Bureau should verify the authenticity of applicants' documents, or which documents are deemed acceptable as proof of citizenship or legal residence. For instance, documents satisfying the requirement might possibly include:

- A birth certificate issued in the U.S.
- A valid U.S. passport.
- An INS document.

- A court document establishing citizenship or legal residence status.
- A Bureau of Indian Affairs document that indicates place of birth.
- An INS or state department document that identifies a U.S. citizen born in a foreign country.

### **Other Provisions of the Measure**

*Driver's Licenses.* The measure requires the verification of all applicants for California driver's licenses and identification cards, and that each applicant's presence in the U.S. is authorized under federal law. Any violations of federal immigration law are to be reported to the federal government.

*Law Enforcement.* The measure requires all state and local law enforcement agencies to verify the identity of each person who is arrested and taken into custody, and that each arrestee's presence in the U.S. is authorized under federal law. Any violations of federal immigration law are to be reported to the federal government.

*K-12 Education.* The measure requires that any school which receives an allocation from a specified state fund shall determine the number of students enrolled at the school whose presence in the U.S. is not authorized under federal law. All such enumerations shall be reported quarterly to the State Board of Education, which shall in turn compile the data into an annual report to the Legislature.

*Recovery of Benefit Costs From Sponsors of Legal Noncitizens.* The measure requires that any state or local government agency which provided a means-tested public benefit to a sponsored alien (as defined in federal law) shall recover the cost of such benefit from the sponsor, using procedures provided under federal law.

### **FISCAL EFFECT**

If this measure is approved by the voters, we estimate that it would have the following fiscal effects.

#### **Costs**

*Document Verification Bureau Costs.* The DOJ would incur unknown one-time costs to implement the Document Verification Bureau. Ongoing annual costs could vary substantially because the number of information requests from governmental entities is

unknown. The DOJ estimates that these ongoing costs are potentially in the tens of millions of dollars (probably less than \$100 million).

***Other State and Local Costs.*** The measure places additional requirements on state and local governments, as identified above. Whenever a person applies for a public benefit, as defined by the measure, the associated government entity must verify the applicant's identity and eligibility for benefits. Any violation of federal immigration law would be reported to the federal government. Consequently, nearly every state and local governmental entity that interacts with the public would experience unknown increased administrative costs to comply with the measure's verification requirement. For example:

- Public postsecondary education institutions must confirm the eligibility of each student.
- The state and counties must determine the eligibility of applicants for various health-related public benefits.
- The state must verify the eligibility of bidders before awarding various construction contracts. Construction costs to the state might be higher if the lowest bidders for construction projects are deemed not to be eligible.
- County recorders and the Department of Health Services must authenticate birth certificates upon request from the Document Verification Bureau.
- The Department of Motor Vehicles (DMV) must determine whether the presence in this country of each applicant for California driver's licenses and identification cards is authorized under federal law. Although the department already follows this practice, it would face increased costs from the measure's requirement that the federal government be notified of violations of federal immigration law.

***K-12 Education Costs Dependent on Measure's Legality.*** The measure requires that K-12 school districts determine whether the presence in this country of every enrolled student is authorized under federal law. This requirement would probably be subject to legal challenge.

If the K-12 provisions of the measure are invalidated by the courts, these provisions would have no ongoing impact. On the other hand, if upheld, the measure would result in increased administrative costs to school districts in the tens of millions of dollars annually. These costs could potentially exceed \$100 million annually. However, because

overall K-12 education spending is set by the requirements of Proposition 98, total spending need not increase; that is, the increased K-12 education costs could be offset by reduced spending on other K-12 activities.

We note that some parents might withdraw their children from public schools in order to avoid the school district determination required by this measure. This could result in a reduction in enrollment, which could reduce the Proposition 98 funding guarantee by an unspecified amount.

***Reduced Fee-Related Revenues.*** Because the measure's definition of "public benefit" includes professional and commercial licenses, the measure would have an additional fiscal impact. The measure requires that governmental entities that issue professional licenses (for example, cosmetology licenses) and commercial licenses verify the eligibility of each applicant. To the extent that ineligible individuals apply for and are denied such licenses, fee-related revenues could decline. The amount of the reduction is unknown, but probably minor.

***Summary of State and Local Costs.*** The total state and local government costs of these requirements is unknown, but would potentially be in the tens of millions of dollars to over \$100 million annually.

## Savings

***Savings Resulting From Reduced Public Benefits to Nonqualified Aliens.*** This measure would result in savings because it (1) eliminates the option of state and local governments to provide public benefits to nonqualified aliens and (2) requires state and local governments to verify the identity and eligibility of each applicant for public benefits. The magnitude of these savings to state and local governments is unknown, but could exceed \$100 million annually.

***Savings From Sponsor-Recovery Provisions.*** The measure requires public agencies to recover means-tested public benefits paid to sponsored aliens from their sponsors. This would result in unknown savings.

***Other Potential Savings.*** Additional savings could potentially result if persons who qualify for benefits under the law do not apply for them because they are unable to obtain verification documents, fail to understand the requirements, or choose to no longer seek benefits. The magnitude of such savings is also unknown.

*Denying Some Services May Increase Future Costs.* Denying some services to undocumented immigrants could result in future increased state and local health-care costs. For example, eliminating prenatal services to undocumented immigrant women could result in higher Medi-Cal costs to their infants, who would be citizens. In addition, failure to treat and control serious contagious diseases—such as tuberculosis—among undocumented immigrants could increase future costs to treat the disease in the general population.

#### SUMMARY OF FISCAL EFFECTS

The measure could have the following major fiscal effects:

- Increased costs to state and local governments (including schools) to verify citizenship or immigration status of students, parents, persons seeking health care and social services, and persons who are arrested. Annual costs could be in the tens of millions of dollars to over \$100 million.
- Program savings to state and local governments (primarily counties) due to reduced expenditures for certain public benefits. These savings could be over \$100 million annually.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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B. Timothy Gage  
Director of Finance