

November 12, 2003

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

Attention: Ms. Tricia Knight
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. SA2003RF0048).

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 identification. 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. Department of Homeland Security (DHS) to verify their status, such as a “green card” issued to immigrants who are granted permanent residence in our country. The DHS 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.

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

Changes in Eligibility Requirements. This measure eliminates 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.

The measure requires each state and local government entity to assist the others by providing the information necessary to verify the identity of any applicant or recipient of a state or local public benefit. For the purposes of verification, the measure also requires that all state and local governmental entities accept only documentation that is recognized by the federal government.

Given that the U.S. has no national identity card, the measure does not explicitly specify *how* state and local governmental entities 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.
- A DHS document.
- A court document establishing citizenship or legal residence status.
- A Bureau of Indian Affairs document that indicates place of birth.
- A DHS or state department document that identifies a U.S. citizen born in a foreign country.

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.

Written Notification of Federal Immigration Violations. The measure requires any detected violations of federal immigration law by applicants for public benefits be reported to federal immigration authorities. Failure to do so would result in a misdemeanor.

Fiscal Effect

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

Costs

State and Local Costs for Verification of Public Benefits. 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. Consequently, nearly every state and local governmental entity that interacts with the public would experience increased administrative costs to comply with the measure's verification requirement, and to share this information, as required. For example, under the measure:

- 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.

With regard to these costs, state and local governmental entities would incur unknown, but potentially major, one-time expenses to implement verification procedures. Ongoing costs could vary substantially because the number of information requests from one governmental entity to another is unknown. These ongoing costs are potentially in the tens of millions of dollars (probably less than \$100 million).

Department of Motor Vehicles (DMV) Costs. The measure requires the DMV to determine whether the presence in this country of applicants for California driver's licenses and identification cards is authorized under federal law. The DMV has followed this practice; however, after January 1, 2004, it will not, under the provisions of Chapter 326, Statutes of 2003 (SB 60, Cedillo). Thus, passage of this measure would increase annual costs to DMV by a few million dollars to resume this current verification practice.

Training and Federal Reporting Requirements. The measure's requirement that state and local governmental entities only accept documentation recognized by the federal government would result in increased costs to train staff. Additionally, the measure requires written notification to the federal government of any discovered violations of federal immigration law. The increased cost of these requirements is 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 annually.

Savings

Savings Resulting From Reduced Services 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 services. The magnitude of these savings to state and local governments is unknown, but could exceed \$100 million annually.

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 the state and local governments to verify citizenship or immigration status of persons receiving specified public services. Annual costs could be in the tens of millions of dollars.
- Program savings to the state and local governments (primarily counties) due to reduced expenditures for certain public services. These savings could be over \$100 million annually.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Steve Peace
Director of Finance