

October 28, 2009

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Krystal Paris  
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed a proposed initiative (A.G. File No. 09-0035) that would (1) make changes to the application process for federal, state, and local public benefits; (2) provide for the identification on birth certificates of foreign parents of children born in California; and (3) eliminate cash benefits for low-income children not living with a cash-aided adult.

## **Background**

***Federal, State, and Local Benefits.*** Under federal law, public benefits are generally defined to include grants, contracts, loans, professional licenses, or commercial licenses. The definition also includes any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefits, or any other similar benefits provided to an individual, household, or family with public funds.

***Immigration Status and Program Eligibility.*** United States citizens, also known as U.S. nationals, are typically eligible for all public benefits. Legal noncitizens, sometimes referred to as qualified aliens, are barred from receiving certain federal benefits and may be barred from receiving state and local benefits. Undocumented persons, also known as illegal aliens, are generally ineligible for public benefits with certain exceptions, such as emergency medical services.

***Systematic Alien Verification for Entitlements (SAVE) Program.*** The SAVE Program operated by U.S. Citizenship and Immigration Services is an automated system designed to aid federal, state, and local agencies to verify the immigration status of applicants for governmental benefits.

***Birth Certificates.*** Birth certificates are issued by local registrars in each county generally based on birth registration information submitted by hospitals and birthing centers or by parents after a home birth. Under current law, the parents of a child are not required to provide proof of their citizenship status in order to register a birth and birth certificates do not provide for the identification of foreign parents.

***California Work Opportunity and Responsibility to Kids (CalWORKs).*** The CalWORKs program provides cash assistance and welfare-to-work services to low-income families with children. A parent may be found to be ineligible for CalWORKs for various reasons. That could be because it was determined that the parent is undocumented, has failed to comply with certain program requirements, or had reached the five-year time limit allowed for benefits. In such cases, cash aid is nonetheless provided to their children. These are commonly known as child-only cases.

## **Proposal**

Some of the major provisions of this initiative could be subject to challenge in the courts and found unconstitutional and thus may not go into effect. The description below assumes that these provisions would be upheld in the courts if there was such a court challenge.

***Changes in Application Process for Public Benefits.*** This measure makes changes to the application process for public benefits. Specifically, persons applying for public benefits would be required to execute an affidavit under penalty of perjury declaring themselves a U.S. citizen or qualified alien who was lawfully present in the country. Filing a fraudulent affidavit would be a felony punishable by a term of five years in state prison or a fine of \$25,000. An officer or employee of a state or local agency who provided public benefits in violation of the measure would be guilty of a misdemeanor.

Whenever an applicant stated that he or she was a qualified alien, state or local agencies would be required under this measure to verify this claim through SAVE or any equivalent program. Until such verification was made, an applicant would be presumed eligible for public benefits. However, under certain circumstances, if an application for public benefits were approved for a person who did not satisfy the application requirements, a copy of the application would have to be provided to the U.S. Department of Homeland Security.

The proposed affidavit requirement applies to a wide variety of public benefits for which citizenship status affects eligibility. There are, however, specified exceptions, such as emergency medical care and soup kitchens, for which affidavits would not be required.

***Changes in Birth Certificates.*** This measure changes the procedures for obtaining birth certificates in California, including a change in the format of birth certificates to provide for the identification of foreign parents of children born in the state.

Effective December 1, 2010, parents registering the birth of their child would generally be required to (1) state their Social Security number and (2) sign an affidavit stating that they were a citizen or a national of the United States or were an alien lawfully admitted for permanent residence who maintains his or her residence in the United States. The local registrar for birth certificates would be required to verify the affidavits of any alien claiming legal permanent U.S. residence with U.S. Citizenship and Immigration Services.

Under this measure, a birth certificate would be required to provide a space for the words "Foreign Parent" whenever neither parent provided the required affidavit. Prior to issuance of such a birth certificate, the birth mother would be required to appear in person and provide the local registrar with the following information: (1) either a document with a photograph issued by the United States proving lawful status in the United States or an identification document with a photograph issued by a foreign government, (2) documentation proving their current U.S. address, (3) documentation of all hospital birth delivery costs paid with public funds, (4) a fingerprint, and (5) an additional fee of \$50 dollars. The birth certificate application and the above information would in turn have to be provided by the local registrar to the U.S. Department of Homeland Security and to any state or federal agency upon request.

***Eligibility Changes for Children in CalWORKs.*** This measure would eliminate cash benefits for all children residing in households in which the parents are not eligible to receive CalWORKs benefits, commonly known as child-only cases. If child-only benefits were eliminated, some of these children would be eligible for aid through state- and county-supported Foster Care or county general assistance programs. Federal law does not require states to aid children whose parents are not receiving assistance under CalWORKs. The measure specifically states that, if this elimination of child-only benefits is not upheld in court, child-only benefits shall be limited to five years.

## **Fiscal Effects**

We have identified several potential major fiscal effects of this measure, which we describe below.

***State and Local Government Administrative Costs.*** If upheld in the courts, the provisions of this measure making changes to the application process for federal, state, and local public benefits could result in unknown significant *ongoing* costs to state and local governments. These costs would be incurred to (1) collect, process, and store affidavits; (2) verify the eligibility of persons applying for certain benefits using the SAVE Program; and (3) transmit certain approved applications for benefits to the U.S. Department of Homeland Security. The measure would also result in unknown significant *one-*

*time* costs for modifications to existing benefit application processing systems in order to comply with the new requirement that applicants submit affidavits.

This measure would result in unknown local government costs, potentially in the tens of millions of dollars annually, to administer the changes in the way birth certificates are issued. These increased costs would include (1) additional personnel and facility space, (2) additional workload to verify birth certificate data, and (3) data storage services. These costs would be offset to an unknown extent by the additional revenues from fees paid by persons obtaining a birth certificate who do not meet certain documentation requirements.

***Law Enforcement Costs.*** This measure could result in unknown, but probably minor, state and local law enforcement costs to the extent that persons were charged with any of the new crimes created by this measure, such as executing a false affidavit to obtain a public benefit.

***Reduction in Public Benefit Costs.*** The prohibition in this measure on child-only cash assistance would likely result in state savings of over \$1 billion annually in the CalWORKs program if it was upheld in the courts. These savings would be partially offset by increased state and county costs for children who shifted into state- and county-supported Foster Care or into county-run general assistance programs.

The provisions changing the processes for applying for public benefits could also reduce state and local costs. Some persons who might otherwise apply for public benefits would likely decide not to do so because of the requirement that they execute an affidavit regarding their citizenship status. Also, some persons who would otherwise receive public benefits under the current application processes might not be approved under the new procedures required by this measure. The amount of savings from these provisions is unknown but is likely to be significant.

***Summary of Fiscal Effects.*** This measure would have the following fiscal effects on state and local governments:

- If upheld in the courts, unknown significant one-time and ongoing costs to state and local governments due to changes in the application process for public benefits as well as unknown but likely significant savings from decreased use of public benefits.
- Unknown potential one-time and ongoing costs due to changes in the way birth certificates are issued. These costs would be offset to an unknown extent by additional new fees for certain birth certificates.
- Unknown, but probably minor, state and local law enforcement costs due to provisions in the measure creating new crimes, such as for the filing of false affidavits to obtain public benefits.

- If upheld in the courts, state savings of over \$1 billion annually from prohibiting child-only CalWORKs cases, partially offset by state and county costs for children who shifted to Foster Care or county general assistance programs. Further unknown savings from the provisions changing the application processes for public benefits.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael C. Genest  
Director of Finance