

November 5, 2010

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

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to immigration (A.G. File No. 10-0023).

Background

Immigration Laws. Federal law (1) specifies the conditions under which foreign nationals may be admitted to and remain in the United States, (2) establishes a registration system to monitor their entry and movement in the country, (3) prohibits the smuggling of “unauthorized aliens,” (4) requires the U.S. Department of Homeland Security (DHS) to respond to any inquiry from a government agency seeking to verify the citizenship status of an individual, and (5) prohibits employers from hiring individuals not authorized to work in the U.S. and establishes a series of escalating sanctions for violations.

Federal government agencies are responsible for enforcing immigration laws. Under agreements with the federal government, however, state or local government agencies may assist the federal government in its enforcement of those laws. An agreement with the federal government defines the extent of the state or local government agencies’ enforcement duties and activities.

Verifying Legal Status. Currently, the United States has no universal national identity card, so verifying 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 persons (especially children) do not have a driver’s license or other official photo identification. Documenting citizenship for these persons may involve additional steps, such as verifying the identity of a child’s parents.

Most legal immigrants have an identification card from the DHS to verify their status, such as a “green card” issued to immigrants who are granted permanent residence in our country. However, they are not required under federal law to have these documents in their possession at

all times. The DHS has developed a computer system that state and local government agencies can use to verify immigration status, depending on the types of immigration documents provided.

Undocumented Immigrants in California. The number of undocumented immigrants currently in California is somewhat uncertain but has been estimated by the DHS at more than two million. Under the U.S. Constitution, children born in this county to undocumented immigrant parents are deemed to be U.S. citizens.

Proposal

This measure (1) requires state and local law enforcement officers in California to verify the immigration status of certain individuals under certain circumstances and authorizes the transfer of undocumented persons to federal custody, (2) authorizes various state sanctions for employers who employ undocumented immigrants, (3) establishes state penalties for the smuggling or transporting of undocumented immigrants, and (4) prohibits state and local policies that would limit the enforcement of federal immigration laws. We describe these provisions in more detail below.

Verification of Immigration Status. Under the measure, when a California state or local law enforcement official has lawfully stopped, detained, or arrested an individual (for a matter unrelated to their immigration status), the official must make a “reasonable attempt” to verify the immigration status of the individual when “reasonable suspicion” exists that the individual is unlawfully present in the country. The measure specifies that the immigration status verification of an individual stopped or detained shall be made in a timely manner at the scene of the stop, except if the verification would hinder or obstruct an investigation or if the federal government cannot provide such verification in a timely manner. Similar exceptions would also apply to efforts that would be required by law enforcement officials to verify the immigration status of individuals who are arrested and taken into custody. This measure also authorizes, but does not require, law enforcement officials to transfer individuals who are determined to be unlawfully present in the United States to federal custody.

Sanctions for Employing Undocumented Immigrants. The measure makes it illegal under state law for an employer to employ an individual who is (1) unlawfully present in the United States or (2) lawfully present in the country but not authorized to seek or accept employment. Under the measure, county district attorneys (DAs) would be authorized—after receiving confirmation from the federal government regarding the employee’s immigration status—to bring criminal charges in superior court against employers found in violation of this prohibition. The measure authorizes the court to impose a series of penalties for employers found to have violated these provisions. These penalties would escalate depending on a variety of factors, such as the number of such previous violations. For example, depending on the circumstances, the court could (1) order the employer to terminate the employment of all unauthorized immigrants and place the employer on probationary status (including the temporary suspension of all business licenses) or (2) permanently revoke all business licenses held by the employer at the location of the business where the violation occurred and impose a fine of \$10,000. The measure

also requires the state Attorney General to maintain a publicly available database with information regarding compliance by businesses with the above provisions.

Penalties for Smuggling or Transporting Undocumented Immigrants. Under the measure, the smuggling of individuals for profit or commercial purposes would be a criminal felony under state law. The measure also makes it a misdemeanor to transport, conceal, harbor, or shield an undocumented immigrant if a person knows that the individual is in the United States illegally. It would likewise be a misdemeanor to encourage an individual to enter or reside in the state illegally. However, under this measure, such a violation would constitute a felony that could be punishable by 16 months to three years in state prison if ten or more undocumented immigrants are involved in the violations. In addition, the measure makes it a misdemeanor to (1) stop a motor vehicle on a street in a manner that impedes the normal movement of traffic for hiring and picking-up passengers, (2) enter such a stopped motor vehicle to be hired and transported to work at another location, and (3) conceal one's personal immigration status when applying for or performing work if the individual is an undocumented immigrant. Such a violation could result in incarceration in county jail for up to six months. According to the measure, a vehicle determined to have been used to transport persons unlawfully in the United States may be impounded by law enforcement authorities.

Prohibition on Policies Limiting Enforcement of Federal Immigration Law. The measure prohibits state and local governments from limiting or restricting the enforcement of federal immigration laws. Under the measure, a California resident could file a lawsuit in superior court against any state and local government agency that adopts or implements a policy limiting or restricting the enforcement of federal immigration laws. Entities found in violation of this provision would be subject to a civil fine of \$5,000 for each day the policy remains in effect after the violation is identified.

Fiscal Effects

This measure is very similar to a law recently enacted by the state of Arizona which is currently being challenged in federal court in several lawsuits on the grounds that it is preempted by federal immigration laws and violates the Fourth (unreasonable search and seizures) and Fourteenth (equal protection) Amendments of the U.S. Constitution. Recently, the court issued a preliminary injunction in one case preventing the implementation of several of the major provisions in the Arizona law. Some of the provisions of this proposed California measure could be subject to similar legal challenges. Thus, if voters enacted this measure in California, its fiscal impact would be subject to significant uncertainty. Even if this measure were found to be constitutional, there could be significant variations in how some of its provisions were implemented by law enforcement officers and county DAs across the state.

Assuming its provisions were fully implemented, the measure could have the following fiscal effects.

Possible Impacts on Public Services and the Economy. To the extent that the measure reduced the number of undocumented immigrants living or entering the state, it could result in significant savings to state and local governments for reduced services and benefits provided to un-documented immigrants. The measure could ultimately reduce costs for kindergarten through

twelfth grade and higher education, as well as for various health and social services administered at the state and local levels. This includes certain services provided through the Medi-Cal health care program for the poor. Eventually, costs might also decline for cash assistance provided to the citizen children of undocumented immigrants participating in the California Work Opportunity and Responsibility to Kids program. In addition, state prisons and county jails house un-documented immigrants who have been arrested or convicted of crimes in California, costs that might decline over time if this measure caused their numbers in the state to decline. Collectively, state and local government costs related to undocumented immigration range in the several billions of dollars annually.

A decline in the number of undocumented immigrants in the state would also have adverse impacts on the labor force, production, personal income, and other revenue-related economic variables, such as taxable sales. This would include the reduced employment of not only undocumented immigrants, but also of others whose employment is facilitated by such immigrants, such as wage earners who depend on child care and other services. This could be partially offset by other factors. For example, a reduction in the number of undocumented workers could have the effect of shifting some income from the “underground economy” to the regular economy, resulting in a larger share of activity that is taxed.

These impacts—both cost savings and reduced revenues—could be significant. The net fiscal effect of these various cost and revenue factors on the state and local agencies, however, is unknown.

Increase in State and Local Criminal Justice System Costs. The measure could increase criminal justice costs in a variety of ways. Most significantly, it could increase state and local costs for enforcement of immigration-related offenses and the handling of related cases in the court system. These would include costs to provide specific training to officers on what legally constitutes reasonable suspicion regarding an individual’s immigration status and how to verify the immigration status of individuals in such situations. In addition, to the extent that the measure resulted in additional felony and misdemeanor arrests, prosecutions, and convictions, it would increase costs for the state prison and parole systems, as well as for county jails and probation departments. The measure would also result in annual state costs for the state Attorney General to create and maintain the employer database required in this measure.

The overall impact on criminal justice costs is difficult to estimate as it would depend on future actions by state and local officials. These increased costs, however, could easily be in the tens of millions of dollars annually. It is also possible that state and local governments would redirect resources away from other activities to accommodate additional workload resulting from the measure.

Increase in State and Local Revenues. The measure could increase state and local revenues from the collection of the fines it establishes. The state and local agencies could also derive revenues from the impounding of vehicles used for smuggling. The magnitude of these potential revenues is unknown and cannot be estimated at this time.

Administrative Costs for Licensing Agencies. This measure would result in probably minor administrative costs for state and local agencies that license businesses. This would occur in

cases in which the courts ordered a state or local agency to suspend or permanently revoke the licenses of a business found under state law to have illegally hired undocumented persons.

Summary of Fiscal Effects

The measure could have the following major fiscal effects, depending on whether its provisions are upheld by the courts and how it is implemented:

- Potentially significant cost savings in services provided to undocumented immigrants by state and local governments and reductions in state and local revenue to the extent this measure reduces the number of undocumented immigrants in the state. The net impact of this factor is unknown.
- Increased costs to the state and local criminal justice system, potentially exceeding tens of millions of dollars annually, from the arrest, prosecution, and detention of violators of the provisions of the measure.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance