

December 18, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to immigration (A.G. File No. 15-0099).

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, and (3) authorizes the arrest and detention of individuals who are illegally present in the U.S.

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 state or local government agencies' enforcement duties and activities. (Currently, the Orange County Sheriff's Department is the only local law enforcement agency in California with an active agreement.) Officers from the participating state and local law enforcement agencies are trained by the U.S. Department of Homeland Security (DHS), which pays for some of the costs associated with the training. In addition, subject to the availability of funds, U.S. DHS may also pay for some of the technology required to support state and local immigration investigations.

Immigration Detainers. Under current federal law, U.S. DHS can issue an immigration detainer for an individual in state or local custody. An immigration detainer can be (1) a request to hold an individual beyond his or her scheduled release date (generally up to 48 hours) to facilitate transfer to U.S. DHS or (2) a request for notification of an individual's release date. The current policy of U.S. DHS is to only issue detainers for individuals who meet certain conditions, such as an individual who has participated in gang activity or poses a threat to national security.

Under current California law, state and local agencies cannot comply with federal immigration detainer requests, except under certain circumstances. Specifically, state law gives such agencies discretion to comply with detainers if the offender is in custody for certain eligible crimes, such as a prison-eligible felony. The list of eligible crimes excludes most less serious offenses, such as traffic infractions. Currently, some counties do not comply with any immigration detainers, while others only do so when a court issues a warrant to establish probable cause for the detention of the offender (such as being wanted in connection with a crime).

PROPOSAL

This measure seeks to increase the extent to which state and local government agencies assist the federal government in enforcing immigration laws. We describe its major provisions in greater detail below.

Verification of Immigration Status. The measure requires state and local government agencies to provide U.S. DHS with identifying information for individuals who are in custody and believed to be in the country illegally. In addition, the measure states that, during a lawful encounter, a law enforcement official may ask about an individual's immigration status. If "reasonable suspicion" about that individual's immigration status exists, the measure requires that the law enforcement agency make an attempt to verify the individual's status with U.S. DHS.

Immigration Detainers. The measure requires that an arresting agency, upon notification that an arrested individual is unlawfully present in the country, immediately verify with U.S. DHS whether an immigration detainer is to be issued for that individual. The measure also prohibits state and local law enforcement agencies from releasing individuals for whom detainers have been issued and requires these agencies to detain them to facilitate their transfer to federal custody (generally up to 48 hours beyond their release date under federal law).

Federal Agreements With State and Local Law Enforcement Agencies. The measure requires the state Department of Justice (DOJ) to sign an agreement with U.S. DHS for law enforcement officers to perform certain duties of federal immigration officers within California, such as serving warrants of arrest for immigration violations or issuing immigration detainers. In addition, the measure instructs the state Attorney General to request federal funding for the training of law enforcement officers.

Policies Limiting Enforcement of Federal Immigration Laws. The measure makes it illegal for state and local government agencies and officials to prohibit or restrict in any way a government entity or official from (1) verifying the immigration status of a person, (2) assisting with enforcement of federal immigration law, or (3) exchanging immigration-related information for specified purposes, such as determining eligibility for public benefits. If a state or local

agency is found to be in violation of the above, the measure allows for the courts to fine the entity responsible.

FISCAL EFFECTS

The provisions of this measure could have various fiscal effects on both state and local governments. The magnitude of these effects would depend on (1) the number of detainers issued by the federal government, (2) the number of such detainers requesting local and state law enforcement to hold an individual beyond his or her scheduled release date, and (3) how frequently local law enforcement agencies decide to verify an individual's immigration status. Thus, the potential effects of this measure described below are subject to considerable uncertainty.

Impact on State and Local Law Enforcement and Corrections. The provisions of this measure would likely increase workload for state and local law enforcement and corrections. First, the measure could result in increased state prison and county jail workload. This would occur if law enforcement officials detain more individuals beyond their release date to facilitate their transfer to federal custody. In addition, state and local law enforcement agencies could experience additional workload related to verifying individuals immigration status and providing the federal government with immigration-related information. Finally, state and local law enforcement could also experience additional workload to comply with the agreement required by this measure between the state DOJ and the federal government. The fiscal impact associated with the above workload would depend on the terms specified in the agreement (such as training requirements and the number of officers that state and local agencies determine are necessary to carry out the agreement), and how law enforcement agencies choose to implement the provisions of the measure (such as the extent to which existing resources are reprioritized to accommodate the required workload). Collectively, we estimate that the total statewide cost of the above enforcement workload could reach several millions of dollars annually, a portion of which could be offset if the state receives additional federal funds to support the increased workload related to officer training. These costs could vary by local law enforcement agency based on how each managed the additional workload.

Effects of a Potential Increase in Deportations. To the extent that the measure results in an increase in the number of deportations, it could have a number of fiscal effects on state and local governments. For example, if such deportations prevent unlawfully present criminals from reentering the criminal justice system, this measure could help reduce state and local law enforcement agencies workload associated with such offenders. In addition, it could result in deported individuals paying fewer taxes and using fewer government services. The net effect of the above factors on state and local costs is unknown.

Summary of Fiscal Effects. We estimate that this measure could have the following major fiscal effect on state and local governments:

- Increased state and local law enforcement and corrections costs that could potentially reach several millions of dollars annually, a portion of which could be offset by the potential receipt of additional federal funds for law enforcement training.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance