



June 7, 2017

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to immigration (A.G. File No. 18-0002, Amendment No. 1).

OVERVIEW

This measure has four major provisions. It:

- Requires state and local law enforcement to cooperate with federal immigration officials.
- Eliminates existing state requirements that limit the ability of employers to cooperate with federal immigration officials.
- Requires proof of legal status for the issuance of driver's licenses and identification (ID) cards.
- Requires California voters provide proof of citizenship before voting.

Below, we discuss in greater detail each of these major provisions and then describe the overall fiscal effects of the measure.

LAW ENFORCEMENT COOPERATION WITH FEDERAL IMMIGRATION OFFICIALS

Background

Federal Immigration Laws. Federal law (1) specifies the conditions under which individuals born in other countries may be admitted to the U.S., (2) establishes a registration system to monitor their entry and movement, (3) specifies the process by which such individuals may legally remain, and (4) authorizes the arrest and detention of individuals who are illegally present in the U.S. (often referred to as undocumented individuals).

Federal Government Responsible for Enforcing Immigrations Laws. The federal government is responsible for enforcing federal immigration laws. One of the primary federal agencies responsible for such enforcement is the U.S. Immigration and Customs Enforcement (ICE) agency. For example, ICE has the authority to issue an immigration detainer request for state and local law enforcement agencies to hold an individual beyond his or her scheduled release date (generally up to 48 hours) to facilitate transfer to the federal government. ICE can also request: to be notified of an individual's release date from jail or prison or that an individual in jail or prison be transferred to federal custody.

Delegation of Federal Immigration Enforcement to State and Local Law Enforcement. Federal law authorizes ICE to delegate some authority to enforce federal immigration laws to state and local law enforcement agencies (including state prisons and county jails) through formal agreements. These agreements define the extent of a participating agency's enforcement duties and activities, such as serving arrest warrants for immigration violations and initiating immigration detainers.

State Law Limits Cooperation With Federal Immigration Enforcement. Existing state law includes various immigration-related requirements on state and local governments. Most recently, in 2017 the Legislature enacted Chapter 495 (SB 54, de León) to limit the ability of law enforcement to cooperate with federal immigration authorities. (Most of these limitations do not apply to state prisons.) For example, state and local law enforcement agencies can only comply with transfer and notification requests from ICE under certain circumstances, such as if the individual in question has been convicted of a serious or violent felony. Moreover, law enforcement agencies are prohibited from using their resources to inquire into an individual's immigration status, comply with an immigration detainer request, and enter into formal immigration enforcement agreements with the federal government.

Senate Bill 54 also requires the California Department of Justice (DOJ) to develop guidelines and audit criteria to limit the use of law enforcement databases for immigration enforcement while still complying with both federal and state law. In cases in which law enforcement agencies cooperate with federal immigration officials, they are required to collect and report certain data to DOJ, such as the number of transfers made to federal immigration officials and the justification for the transfer.

Proposal

Requires Law Enforcement to Cooperate With Federal Immigration Officials. This measure prohibits law enforcement and local government agencies from having regulations or policies that prevent or limit cooperation with federal immigration enforcement. It also repeals nearly all of the requirements in SB 54. The measure states that every California law enforcement agency shall "fully cooperate" with ICE and other federal agencies regarding any person who is arrested and suspected of being in the U.S. illegally, including making attempts to verify the person's legal status. The measure requires that final determination of an individual's legal status be made through the use of a "federally authorized database used for verification of an individual's citizenship or immigration status." In addition, the measure requires law enforcement to notify various federal, state, and local public entities of the undocumented status

of arrested individuals, their current county of residence, and any other requested information. Any individual or agency that fails to comply with these requirements would be guilty of either a misdemeanor or felony and subject to a fine of at least \$10,000 for each violation.

EMPLOYER COOPERATION WITH FEDERAL IMMIGRATION OFFICIALS

Background

Federal Law Prohibits Businesses From Employing Individuals Not Legally Allowed to Work. Federal law prohibits employers from hiring individuals who are not legally allowed to work in the U.S., such as undocumented individuals. Federal law requires that employers verify the identity, employment eligibility, and immigration status of new hires with federal verification forms. Federal immigration officials can perform workplace inspections to check that the employer has authentic verification forms for each employee, as well as arrest employees who are not authorized to work and employers who knowingly employ such individuals.

Recent State Legislation Limits Employer Cooperation With Federal Immigration Officials. Chapter 492 of 2017 (AB 450, Chiu) prohibits employers from allowing federal immigration officials to conduct a workplace inspection without a warrant or subpoena issued by a judge. Employers must also notify employees of upcoming workplace inspections. Assembly Bill 450 also prohibits employers from re-checking the employment status of employees when not required to do so under federal law. Employers who violate these provisions are subject to civil penalties of between \$2,000 and \$10,000 per violation, depending on the violation. DOJ and the California Department of Industrial Relations (DIR) are responsible for enforcing the above requirements.

Proposal

Eliminates Existing Law That Limits Employer Cooperation With Federal Immigration Officials. This measure repeals the provisions of AB 450.

PROOF OF LEGAL STATUS FOR DRIVER'S LICENSES AND ID CARDS

Background

Undocumented Individuals Authorized to Obtain California Driver's License. The Department of Motor Vehicles (DMV) issues driver's licenses or ID cards to California residents who submit satisfactory proof of being legally present in the U.S., as well as meet other requirements (such as passing certain tests for those seeking to drive). In order to demonstrate their legal status, applicants must present (1) a valid social security number, (2) evidence of California residency (such as a home utility bill), and (3) one of various official documents deemed acceptable in California to verify an applicant's identity and legal status (such as a birth certificate or a refugee travel document). For individuals who are unable to provide satisfactory proof of their legal status, existing state law allows them to obtain a driver's license if they meet all other application requirements (such as providing proof of identity and residency) and complete an interview with DMV. Such individuals, however, are not eligible for an ID card.

DMV annually issues about 7 million driver's licenses—including 120,000 driver's licenses to undocumented individuals—and 1.5 million ID cards. Application fees help offset DMV's administrative costs.

Proposal

Requires Proof of Legal Status for Driver's Licenses and ID Cards. The measure amends state law to change the types of documents that may be provided to verify the identity and legal status of an individual seeking a new or renewed driver's license or ID card. Specifically, the measure requires that individuals provide a valid U.S. passport, birth certificate, or other federal document demonstrating proof of being lawfully present in the United States. Accordingly, individuals could no longer use certain other documents to obtain a driver's license or ID card. The measure also authorizes DMV to verify an applicant's legal status obtained through any available federally authorized database. In addition, the measure prohibits the state from issuing or renewing driver's licenses to undocumented individuals.

PROOF OF CITIZENSHIP REQUIREMENTS FOR VOTING

Background

Federal and State Law Dictate Who Is Eligible to Vote. The U.S. Constitution guarantees U.S. citizens the right to vote, while federal and state laws provide guidelines for voter registration and the administration of elections. When registering to vote in California, individuals must attest—under penalty of perjury—that they are (1) a U.S. citizen, (2) at least 18 years old, (3) residing in California, (4) not currently in prison or on parole, and (5) not currently found mentally incompetent to vote by a court. Individuals are also asked to provide their driver's license number or the last four digits of their social security number. If new voters did not provide this information when they registered to vote, they might be required to show a form of identification or proof of residency the first time they vote. Individuals can register to vote online through the Secretary of State's website, through the local county elections office, or at the DMV. As of April 2018, the Secretary of State reports that about 19 million individuals are registered to vote in California. Approximately 2 million individuals register to vote annually.

Counties Primarily Responsible for Administering Elections. Federal and state law impose various requirements on the way elections are administered. The Secretary of State is the state's chief elections officer and oversees all federal and state elections in the state. However, county governments are primarily responsible for the administration of most local, state, and federal elections. Counties generally pay for the costs of administering elections.

Proposal

Requires Voters Prove Citizenship Before Voting. The measure requires that an individual provide proof of U.S. citizenship before he or she is permitted to vote in his or her first election. Proof can be provided through a valid federal document demonstrating citizenship (such as a valid U.S. passport or birth certificate) or through information obtained through any available federally authorized database. The measure requires that elections officials retain a copy of the

proof provided for at least four years. Finally, the measure also specifies that “no person shall be automatically registered to vote.”

FISCAL IMPACT

Potential Net Increased Costs for Law Enforcement This measure could both reduce and increase costs to state and local law enforcement. On the one hand, this measure could reduce workload and costs related to SB 54. For example, DOJ and local law enforcement would no longer be required to collect and report immigration-related data. On the other hand, this measure would likely increase enforcement workload and costs due to the measure’s requirements. For example, workload would likely increase related to the verification of the immigration status of arrestees, “full cooperation” with federal immigration officials regarding arrestees, and individuals staying longer in jail or prison than they otherwise would have. On net, we estimate that the measure would likely increase state and local law enforcement costs potentially reaching the low tens of millions of dollars annually.

We note, however, that the actual magnitude would depend primarily on (1) how this measure is interpreted by courts and implemented by the state and local governments and (2) how the federal government and undocumented individuals respond to the measure’s provisions. For example, it is unclear what specific activities (such as complying with immigration detention requests) law enforcement would be legally required to undertake in order to fully cooperate with federal immigration officials. Similarly, the extent to which law enforcement agencies would enter into agreements with the federal government to assist with federal immigration enforcement is uncertain.

Increased State and Local Elections Costs. This measure would increase costs to state and local elections officials related to the verification of citizenship and the retention of proofs of citizenship for at least four years. Because counties are primarily responsible for administering elections, local governments would generally incur most of the increased costs. Some of these costs, such as for equipment, would be one-time. Other costs, such as maintaining ongoing physical or digital storage to store and protect proof of citizenship, would be ongoing. In total, we estimate that one-time and ongoing costs could each reach several millions of dollars. The actual magnitude of these costs would depend primarily on how this measure is interpreted by courts and implemented.

Minor Impact Related to Employer Requirements and Driver’s Licenses. This measure would reduce workload and costs related to (1) DIR no longer enforcing state laws limiting employee cooperation with federal immigration officials and (2) DMV no longer processing driver’s licenses for undocumented individuals. Similarly, the amount of revenue generated from penalties or application fees related to this workload would be reduced. In total, we estimate that the net fiscal effect would be minor.

Other Fiscal Effects. This measure could result in various other fiscal effects. For example, to the extent that the measure results in more undocumented individuals being deported, state and local government tax revenues could decline. Additionally, undocumented residents (and potentially their documented family members) could choose to use fewer government services (such as Medi-Cal) to minimize interaction with government agencies. This would have the

effect of reducing state and local costs. The net impact of these and other potential fiscal effects on state and local government is unknown and would depend primarily on how undocumented individuals and various government entities respond to this measure.

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

- Net increase in state and local law enforcement costs, potentially reaching the low tens of millions of dollars annually, related to cooperation with federal immigration enforcement.
- One-time and ongoing costs—each potentially reaching several million dollars annually—to state and local governments for the verification and retention of proof of citizenship prior to individuals voting in their first election.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance