

June 30, 2005

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 constitutional and statutory initiative related to border police (File No. SA2005RF0079).

Background

Immigration Laws. The federal government is 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.

Undocumented Immigrants. It is estimated that California currently has over two million undocumented immigrants living in the state. In addition, according to some estimates, about 75,000 undocumented immigrants enter California every year. Under the U.S. Constitution, children born in this country to undocumented immigrant parents are U.S. citizens.

Cost of Services to Undocumented Immigrants. A number of state and local government agencies provide services or benefits to undocumented immigrants and their children. For example:

- In the CalWORKs program, the state provides cash assistance to the citizen children of undocumented individuals. Also, undocumented abused and neglected children may be placed in foster care.
- K-12 students who are not citizens may attend public schools.
- When attending the state's public universities and colleges, state law waives the nonresident tuition charge for students who meet certain criteria,

including having attended a California high school for at least three years and having graduated from a California high school. Many nonresident waivers are provided to undocumented immigrants.

- Prisons and jails house undocumented immigrants who have been arrested or convicted of crimes in California.
- Medi-Cal provides coverage for emergency services, including child delivery services for undocumented persons.

In total, it is estimated that state and local agencies spend in the billions of dollars annually on these types of services to undocumented immigrants and their children.

Major Provisions of the Initiative

Establishment of the California Border Police. The measure establishes, within the Office of Emergency Services, the California Border Police (CBP), which would be responsible for enforcing federal immigration laws. The CBP would be (1) overseen by a CBP commissioner appointed by the Governor, (2) based upon the California Highway Patrol's personnel benefits and organizational structure, and (3) trained in federal immigration laws and procedures. The CBP could also establish branch offices and detention facilities.

CBP's Authorities. The measure authorizes CBP to enter into an agreement with the federal government to enforce federal immigration laws. The extent of CBP's law enforcement duties and activities primarily would depend on this federal agreement. The measure, however, does authorize CBP to arrest, based on probable cause, individuals suspected of criminal violation of federal immigration laws. The measure also provides CBP with the authority to use state and local prisons and jails to incarcerate detainees until they are transferred to federal immigration authorities.

CBP's Annual Budget. On an annual basis, the measure requires the Governor to request an appropriation from the Legislature for CBP's operations. If the Governor finds that the Legislature did not provide adequate CBP funding, then the measure allows the Governor to declare a state of emergency and access other budget appropriations for CBP operations without legislative approval.

Fiscal Effect

The fiscal effect of this measure would depend on a number of factors. For example, the Governor and the Legislature would decide on the size of the CBP, which would then affect the measure's annual costs and savings. In addition, the agreement with the federal government would determine the CBP's duties and activities. A number of other factors would also affect the measure's costs and savings—such as how CBP is

deployed, CBP's approach to law enforcement activities, and CBP's effectiveness in arresting undocumented persons and deterring others from entering the state.

Costs

CBP Costs. The state would experience increased costs for the operation of the CBP. Depending on decisions by the Governor and the Legislature, these costs could total in the hundreds of millions of dollars annually. For instance, for every 1,000 uniformed officers, we estimate that it would cost almost \$200 million annually to support CBP. There likely would also be one-time start-up costs to recruit and train officers, set up offices, and purchase equipment and vehicles. These one-time costs could total in the tens of millions of dollars.

Other State and Local Costs. We estimate that state and local law enforcement agencies would also experience additional costs to incarcerate detainees until they are transferred to federal authorities. The amount of these costs is unknown and would depend on several factors, including the number of detainees incarcerated and the length of time they are held in state and local facilities. The measure requires the CBP commissioner to seek reimbursements from the federal government for these costs. These reimbursements could potentially offset some or all of these costs.

Savings

If the CBP significantly reduced the number of undocumented immigrants living in or entering the state, the measure could result in net savings to state and local agencies in the various programs noted above. While the amount of any such savings would depend on a variety of factors, they could be significant. In addition, any such savings would grow substantially over time in many instances. For example, if the number of immigrants entering the state annually was reduced, the number of new undocumented immigrant children entering public schools each year would also be reduced. If the CBP significantly reduced the number of undocumented immigrants in California, over time, the savings could total in the hundreds of millions of dollars annually. In some circumstances, however, the measure could result in some offsetting costs. For example, this could occur to the extent that undocumented immigrants for fear of deportation did not seek out certain preventive health care services. By not receiving these services, these undocumented immigrants could increase longer-term state and local health care costs.

Revenues

The measure would affect economic activity in the state, which—in turn—would affect governmental revenues. For instance, if the CBP's efforts resulted in a significant decline in the number of undocumented immigrants in the state, this would 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 could vary widely and would depend in large part on how the measure is implemented. The net impact of the measure, however, could be a significant reduction in state and local revenues—potentially in the hundreds of millions of dollars annually in the longer term.

Summary

The measure could have the following major fiscal effects:

- Potential annual costs in the hundreds of millions of dollars to create and operate a border police agency, with one-time costs in the tens of millions of dollars.
- Potential net savings to state and local governments over time in the hundreds of millions of dollars annually due to reduced expenditures for certain public services.
- Potential net reductions in state and local revenues over time in the hundreds of millions of dollars annually due to impacts on the state's economy.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance