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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/11

SPONSOR Ryan **LAST UPDATED** _____ **HB** _____

SHORT TITLE Driver's License Issuance Requirements **SB** 518

ANALYST Haug

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2011	FY2012	FY2013	FY2014	FY2015		
None	(\$35.0)	(\$43.0)	(\$54.0)	(\$67.0)	Recurring	Counties and Municipalities
None	(\$226.0)	(\$282.0)	(\$354.0)	(\$445.0)	Recurring	TRD-MVD Operating Funds
None	(\$462.0)	(\$578.0)	(\$727.0)	(\$915.0)	Recurring	State Road Fund
None	(\$157.0)	(\$196.0)	(\$247.0)	(\$311.0)	Recurring	Local Government Road Funds
None	(\$188.0)	(\$235.0)	(\$295.0)	(\$372.0)	Recurring	State equalization guarantee distribution (public schools)
None	(\$1,067.0)	(\$1,335.0)	(\$1,676.0)	(\$2,109.0)	Recurring	Total

* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Nonrecurring (NR).

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2011	FY2012	FY2013	FY 11-13		
\$8.0	(\$1,296.0)	(\$1,646.0)	(\$2,942.0)	Recurring	TRD-MVD Operating Budget
\$0.0	(\$228.0)	(\$289.0)	(\$517.0)	Recurring	TRD-TFID Operating Budget
\$8.0	(\$1,524.0)	(\$1,935.0)	(\$3,449.0)	Recurring	TRD Total (including IT)

* In thousands of dollars. Parentheses () indicate a cost saving. ** Recurring (R) or Nonrecurring (NR).

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 518 would require applicants for a driver's license to have a social security number, limits the duration of driver's licenses and identification cards issued to foreign nationals and provides for the cancellation of driver's licenses issued to a person without a social security number.

FISCAL IMPLICATIONS

The revenue estimate reflects the reduction in revenue from driver's license fees that would have come from individuals without a Social Security number. Note that the revenue loss is less than the savings from decreased operating costs, resulting in a net overall savings to the State. Detail is discussed in the Administrative Implications below for both revenue and operating budget impacts.

SIGNIFICANT ISSUES

The TRD states:

The bill puts New Mexico in compliance with the Real ID Act of 2005. Compliance with Real ID results in NM residents being able to use a NM license or ID for federal purposes such as boarding an airplane.

This bill may have the unintended consequence of increasing the number of unlicensed drivers and uninsured vehicles in New Mexico, as illegal immigrants will no longer be able to obtain a license. If the bill provided for a driving permit (allowable under Real ID) MVD would be able to issue a driving permit to an illegal alien and would check for vehicle insurance. A driving permit would also allow MVD to track that person in the system for any revocation/suspension actions and MVD would have an address if needed by law enforcement.

The AGO comments:

SB 518 eliminates the language in NMSA 1978, Section 66-5-9(B) which allows applicants for a drivers license to present an individual tax identification number (ITIN) in lieu of a social security number (SSN). An ITIN is a tax processing number issued by the Internal Revenue Service to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain a SSN. ITINs are issued regardless of immigration status.

SB 518 adds a new Subsection C which requires that foreign nationals present a valid passport number and a valid visa or other arrival-departure record issued by the U.S. Department of Homeland Security. Some of the terminology in Subsection C is technically incorrect. The U.S. Department of State issues non-immigrant visas i.e. tourist, exchange visitors etc. DHS through U.S. Citizenship and Immigration Services issues "green cards" i.e. documentation providing for lawful permanent residency. DHS through U.S. Customs and Border Protection issues form I-94 which is an arrival and departure record.

SB 518 raises the issue of federal preemption as to whether the check of immigration documentation by state authorities amounts to an impermissible encroachment by the state into federal authority. *See U.S. v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010) (The influx of requests for immigration status determination directed to the federal government or federally-qualified officials would impermissibly burden federal priorities).

SB 518 amends NMSA 1978, Section 66-5-21 to add a new Subsection E which calls for the expiration of on the earliest of 1 of 4 occasions. The enumerated occasions appear complicated and may conflict with each other. In addition, this provision would presumably conflict with the expiration date as printed on a foreign national’s actual license. It would seem more appropriate to have licenses already issued expire and not allow for renewal to avoid further legal confusion.

SB 518 adds new material calling on the Motor Vehicle Division to identify those persons who hold licenses and do not have a social security number. Those persons are to be sent notice to submit their social security number. They may request a hearing on the matter. If a social security number is not produced or a hearing not requested the MVD may cancel the license. The hearing on the social security raises serious issues of encroachment into federal authority as the MVD would basically be holding a hearing on someone’s immigration status, a power reserved exclusively to the federal government.

In New Mexico, a license to operate a motor vehicle is a mere privilege, and not a property right, and is subject to reasonable regulation under the police power in the interest of public safety and welfare. *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960). The issue of cancellation of existing licenses may also invite litigation as whether the early termination of such a privilege is a reasonable regulation.

SB 518 applies similar amendments to the issuance of identification cards and the issues in relation to those amendments need not be repeated here.

Finally, SB 518 raises significant policy issues such as whether the Bill will have a chilling effect on those seeking a driver’s license and thus unnecessarily impede State and local law enforcement of motor vehicle regulation.

ADMINISTRATIVE IMPLICATIONS

Detailed Revenue Estimate:

The number of 4-year drivers’ licenses (DLs) issued to individuals without a SSN has remained level at approximately 4,000 per year. However, the number of 8-year DLs issued to individuals with no SSN increased by 20% from calendar year 2008 to 2009 and by and 34% from 2009 to 2010. The numbers below are current for calendar years 2009 and 2010 and assume an average 27% annual increase in 8-year DLs going forward to fiscal years 2012 to 2015. The first increase (from calendar year 2010 to FY 2012) is 40% to reflect the extra six months of growth from calendar 2010 to FY2012.

Year	4-yr DLs Issued	Cost per DL	Total	8-yr DLs Issued	Cost per DL	Total	Total 4yr + 8yr DLs
2008	4,069			13,059			
2009	3,969			15,611			
2010	3,933			20,894			
FY2012	4,000	18	72,000	29,252	34	994,554	1,066,554
FY2013	4,000	18	72,000	37,150	34	1,263,084	1,335,084
FY2014	4,000	18	72,000	47,180	34	1,604,117	1,676,117
FY2015	4,000	18	72,000	59,918	34	2,037,228	2,109,228

Administrative & Compliance Impact: This proposal would have a positive impact to the Department's Motor Vehicle Division (MVD) and Tax Fraud Investigations Division (TFID) by reducing the cost of administering and monitoring foreign national driver's license applications.

The lost revenue from DL application fees would be offset by operating budget savings within MVD and TFID as detailed below, based on reports from the individual units:

- MVD Call Center staffing, including scheduling of foreign national appointments and responding to questions from foreign national applicants, annual: \$211,739.
- MVD field office staff processing foreign national applications, estimated at 5% of the 357 current state field office FTEs x \$40,000 per FTE = annual: \$714,000
- Total annual MVD: \$925,739
- Adjusted upward (consistent with increasing assumed numbers of foreign national licenses issued) by 40% for FY12 = \$1,296,035, and by an additional 27% for FY13 = \$1,645,964.
- TFID staff reviewing all foreign national applications, annual: \$74,914.
- TFID staff pursuing specific fraudulent foreign national applications, annual: \$87,644.
- Total annual TFID: \$162,558
- Adjusted upward by 40% for FY12 = \$227,581, and by an additional 27% for FY13 = 289,028.

Implementation of this bill will have a low impact for IT, including MVD 2.0 (80 hrs), MVD Mainframe Batch (40 hrs), and User Acceptance Testing (40 hrs) for a total of 160 hours.

Total Hours: 160 @ \$50/hour = \$8,000.

RELATIONSHIP

Senate Bill 518 is related to House Bill 78, House Bill 261, House Bill 346 and House Bill 401.

TECHNICAL ISSUES

The TRD notes for compliance with the REAL ID Act, Section 66-5-15 should also be amended to require that a driver's license include the applicant's full legal name. Section 66-5-15 NMSA 1978 is not included in the bill.

OTHER SUBSTANTIVE ISSUES

The TRD states the Motor Vehicle Division suspects that much of the recent growth in applications for drivers licenses from persons not having a social security number results from New Mexico being one of only three states to issue licenses regardless of immigration status. The Division has engaged in extensive audit and compliance procedures and activities to identify nonresident applicants.

GH/svb