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FISCAL IMPACT REPORT

SPONSOR Brandt **ORIGINAL DATE** 2/2/16
LAST UPDATED 2/5/16 **HB** _____

SHORT TITLE Driver's License Issuance & Federal Real ID **SB** 216

ANALYST Malone

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	(\$416.5)	(\$416.5)	Recurring	Various

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$75.0	\$4,033.0- \$4,873.0	\$1,600.0	\$5,633.0- \$6,473.0	Nonrecurring	TRD-MVD Operating Budget
		(\$432.5)	(\$432.5)	(\$865)	Recurring	TRD-MVD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 174, SB 231, SB 256, HB 94, HB 99, HB 123, and HB 144

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Taxation and Revenue Department (TRD, on related bills)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

SB 219 amends and enacts sections for the Motor Vehicle Code to conform to the requirements for state issuance of driver's licenses and identification cards set out in the Federal Real ID Act

of 2005. The bill does not provide for licenses or IDs for individuals unable to demonstrate lawful status and defines “lawful status” as the legal right to be present in the United States as that phrase is used in the federal REAL ID Act of 2005.

A person applying for or renewing a license or identification card that meets federal standards must provide, in addition to the information required of all applicants, proof of the following supported by documentation that meets federal standards:

- Identity
- Birthdate
- Social security number, if applicable
- Address of current residence
- Lawful status.

TRD must verify the applicant’s lawful status and social security number, if applicable, by means approved by the federal government.

Basic requirement for a New Mexico driver’s license no longer includes the provision requiring the secretary of TRD to accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status. The secretary is authorized to establish by regulation the documents that may be accepted as evidence of residency.

Foreign nationals lawfully in the U.S. may apply for a REAL ID Applications for REAL ID compliant driver’s licenses and identification must contain the unique identifying number and expiration date, if applicable, of the foreign national’s valid passport, valid visa, employment authorization card or other arrival-departure record or document issued by the federal government that confers lawful status. The bill establishes expiration dates for driver’s licenses and IDs issued to foreign nationals that conform to the Real ID Act requirements.

The bill establishes as felonies, rather than misdemeanors, the failure to surrender a driver’s license or permit which has been suspended, revoked or canceled, knowingly or willfully providing a false or fictitious name or document or making a false statement or otherwise committing a fraud in the application for a driver’s license or ID card, and inducing, soliciting or conspiring with another person to violate provisions of law in the application for an ID card.

TRD is tasked with cancelling all licenses and IDs issued prior to the effective date of the bill that are held by individuals who did not demonstrate lawful status in their application. The department will provide 30 days notice before the cancellation and individuals may provide proof of lawful status to prevent cancellation. In the event of cancellation, the department must reimburse individuals for the amount of the credential, prorated for the remaining period that the license or ID would have been valid.

The bill also requires that TRD establish and issue to qualified applicants REAL ID compliant licenses and IDs within six months of the effective date of the legislation and requires the department to replace these licenses and IDs with identical expiration dates at no cost. For non-compliant licenses and IDs, the secretary of TRD shall adopt regulations providing for the proration of a refund or credit towards a new credential for the remaining period that a person’s license or ID would have been valid.

This bill has an emergency clause.

FISCAL IMPLICATIONS

On similar legislation introduced during the 2015 session, TRD anticipated that necessary changes related to design and production of new REAL ID compliant credentials as well as training would cost the department between \$75 thousand and \$140 thousand (see administrative implications below).

Due to the emergency clause and requirement that the department establish and issue REAL ID compliant credentials within six months of the effective date of the legislation, TRD anticipated on similar legislation (SB 256 and SB 174) that the costs for overtime to issue an estimated 500 thousand credentials would be \$2.1 million. Additionally, with the provision that replaces current licenses at no cost would cost the department an anticipated \$3 per credential, totaling \$1.5 million for the estimated 500 thousand replacement credentials. Finally, the department calculates the cost for prorated cancellation refunds at \$972.8 thousand and the need for 2 additional FTE at about \$100 thousand.

The provisions in SB 216 requiring the department to cancel any credential issued to an individual who did not provide proof of legal status in their initial application and to reimburse individuals after cancelling their license at a prorated amount will likely be very costly. TRD reports that there are about 120 thousand active credentials without proof of lawful status. Assuming the department has to pay back, on average, between \$8 and \$15 for each of those, it poses a potential \$960 thousand to \$1.8 cost. It is likely that the department may also need additional FTE to implement this component of the bill.

In analysis on HB 32 from the 2015 legislative session, the recurring impact of ceasing to issue credentials to individuals unable to demonstrate lawful status was estimated at a revenue loss of \$416.5 thousand annually in revenue from issuing credentials and at a cost savings of \$432.4 thousand annually at TRD from stopping operations to issue credentials. Essentially the two net in out years.

SIGNIFICANT ISSUES

This bill seeks to create driver's licenses that meet the requirements of the federal REAL ID Act of 2005. DHS explains that REAL ID is a coordinated effort by the states and the Federal Government to improve the reliability and accuracy of state issued identification documents. REAL ID establishes mandatory standards governing state issuance of secure driver's licenses and identification cards. Residents of states which fail to comply with REAL ID will ultimately be unable to utilize their state-issued identification cards to board airplanes, enter federal buildings, or for a range of other "official [federal] purposes." REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 312 (May 11, 2005). New Mexico is currently in the process of complying with the terms of REAL ID, but many of the state's provisions governing the issuance of driver's licenses and identification cards remain inconsistent with the requirements of the federal law.

According to the National Conference of State Legislatures, on Jan. 8, 2016 DHS released an updated timeline for the implementation of the final phase of REAL ID, which pertains to enforcement by the Transportation Security Administration (TSA) at airports regarding domestic air travel. Beginning Jan. 22, 2018, passengers with a driver's license issued by a state that is still not compliant with the REAL ID Act (and has not been granted an extension) will need to

show an alternative form of acceptable identification for domestic air travel in order to board their flight. Passengers with driver's licenses issued by a state that is compliant with REAL ID (or a state that has been issued an extension) will be able to use their driver's licenses or identification cards. Starting on Oct. 1, 2020, every air traveler will need a REAL ID-compliant license, or another acceptable form of identification, for domestic air travel.

The Department of Homeland Security 18 point checklist for material compliance with the REAL ID Act is attached.

SB 256 appears to address most of the detailed requirements of the federal rule. It does not address the following, which may be able to be addressed by the department through internal policies:

- There is no provision expressly requiring confidentiality of personally identifying information obtained through the application process,
- There is no reference to AAMVA or equivalent fraudulent document recognition training, and
- There is no requirement in the bill for background checks of issuing staff.

The federal rule does not require that states only issue credentials to lawful residents, but only that credentials issued to those not able to demonstrate lawful status be clearly identified as “not for federal purposes.”

ADMINISTRATIVE IMPLICATIONS

TRD notes that the requirement that NM begin issuing REAL ID compliant credentials within six months is impossible, would put enormous strain on MVD, and would incur a significant cost to New Mexicans. Furthermore, the agency notes that is unnecessary to petition for an extension with DHS and that the state must be certified in compliance before issuing REAL ID compliant credentials.

TRD anticipates on similar legislation that implementation would take about 14 weeks, not accounting for the amount of time for MophoTrust (the state's license provider) to make appropriate changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 174, SB 231, SB 256, HB 94, HB 99, HB 123, and HB 144 all conflict with SB 216 as they also make changes to the Motor Vehicle Code for REAL ID compliance.

TECHNICAL ISSUES

TRD notes that the emergency clause is not necessary. If the bill passes and is signed by the governor, NM can get an extension from DHS.

American Association of Motor Vehicle Administration (AAMVA).

Attachment: Driver's License Issuance and Federal REAL ID

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The federal Department of Homeland Security has published a checklist for material compliance with the REAL ID Act that includes eighteen elements that a state law needs to include. The following are the elements. The citations to laws refer to 6 Code of Federal Regulations Part 37.

1. Subject each applicant to a mandatory facial image capture and retain such image even if a driver license (DL) or identification card "ID" is not issued.
2. Have each applicant sign a declaration under penalty of perjury that the information presented is true and correct, and the State must retain this declaration.
3. Require an individual to present at least one of the source documents listed in subsections (i) through (x) [of section 37.11(c)(1)] when establishing identity.
4. Require documentation of: Date of birth; Social Security Number; Address of principal residence; Evidence of lawful status.
5. Have a documented exceptions process that meets the requirements established in Section 37.11(h)(1)-(3) (if States choose to have such a process).
6. Make reasonable efforts to ensure that the applicant does not have more than one DL or ID already issued by that State under a different identity.
7. Verify lawful status through SAVE or another method approved by DHS.
8. Verify Social Security account numbers with the Social Security Administration or another method approved by DHS.
9. Issue DL and IDs that contain Level 1, 2 and 3 integrated security features.
10. Surface of cards include the following printed in formation in Latin alpha-numeric characters: Full legal name; Date of birth, Gender; Unique DL/ID number; Full facial digital photograph; Address of principal residence [with exceptions]; Signature [with exceptions]; Date of transaction.
11. Commit to marking fully complaint DL and IDs with a DHS-approved security marking.
12. Issue temporary or limited-term licenses to all individuals with temporary lawful status and tie license validity to the end of the lawful status.
13. Have a documented security plan for DMV operation in accordance with the requirements set forth in section 37.41.
14. Have protections in place to ensure the security of personally identifiable information.
15. Require all employees handling source documents or issuing DL or IDs to attend and complete the American Association of Motor Vehicle Administrators (AAMVA)

approved (or equivalent) fraudulent document recognition training and security awareness training.

16. Conduct name-based and fingerprint-based criminal history and employment eligibility checks on employees in covered positions or an alternative procedure approved by DHS.
17. Commit to be in full compliance with Subparts A through D on or before May 11, 2011.
18. Clearly state on the face of non-compliant DLs or IDs that the card is not acceptable for official purposes, except for licenses renewed or reissued under section 37.27.

Dep't of Homeland Security, Office of Inspector General, *Potentially High Costs and Insufficient Grant Funds Pose a Challenge to REAL ID*, OIG 9-36, p. 9 (March 2009) (https://www.oig.dhs.gov/assets/Mgmt/OIG_09-36_Mar09.pdf)