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FISCAL IMPACT REPORT

SPONSOR Payne DATE TYPED 2/7/05 HB 537

SHORT TITLE Proof of Citizenship for Driver's Licenses SB _____

ANALYST Rosen

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Department of Public Safety (DPS)
 Attorney General's Office (AGO)

No Responses Received From
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill:

House Bill 537 amends the Motor Vehicle Code to require proof of U.S. citizenship for any person who applies for a driver's license, temporary license, or provisional license, or instruction permit. This bill also removes the option of providing an individual tax identification number in lieu of a social security number when applying for a driver's license, temporary license, or provisional license, or instruction permit. This bill adds a new type of driver's license to the Motor Vehicle Code, a "certificate for driving" that can be issued to applicants who do not have a social security number or cannot show proof of US citizenship. A certificate for driving is only valid for one year and the certificate shall state: "FOR DRIVING PURPOSES ONLY –NOT VALID FOR IDENTIFICATION."

Significant Issues:

According to AGO, the certificate for driving is expressly not to be used for purposes of identification. However, it is not clear what can be used for identification purposes if a person has only a valid certificate for driving and an officer needs to verify his or her identification.

AGO reports the State of Kentucky issues a driver's license to non-U.S. citizens upon a showing of certain documentation, including a social security card or a letter of ineligibility from the Social Security Administration. The license expires at the same time the holder's Bureau of Citizenship and Immigration Services documents expire, or 4 years, whichever is shorter.

AGO indicates other states and the federal government have attempted to pass laws regarding non-citizens obtaining a driver's license. Most of these laws have been passed or advocated as a matter of public safety and national security to prevent non-citizen terrorists from obtaining a valid driver's license and driving freely around the U.S. So far a law at the federal level has not been successfully passed.

AGO indicates this bill is similar to a law passed in the State of Tennessee wherein eligible non-U.S. citizens are issued a "certificate for driving" that identifies the holder as a non-U.S. citizen and states "For driving purpose only – not valid for identification." It has been said that Tennessee's law is a means of licensing, which includes mandatory insurance requirements, illegal immigrants without granting them a state-issued driver's license.

AGO notes states that single out non-U.S. citizens as a group for licensing purposes must justify their actions with a showing that the "state's purpose or interest is both constitutionally permissible and substantial and that it's use of the classification is 'necessary ... to the accomplishment' of its purpose or the safeguarding of its interest.'" In *Re Griffiths*, 413 U.S. 717 (1973). Similar enactments of "certificates for driving" in other states have been criticized as unfairly marking the holder as inferior and as discrimination based on national origin.

PERFORMANCE IMPLICATIONS

Indeterminate

ADMINISTRATIVE IMPLICATIONS

Indeterminate

TECHNICAL ISSUES

AGO reports the enactment of a "certificate for driving" needs to be considered with respect to all other provisions of the Motor Vehicle Code that may also have to be amended, such as Section 66-5-18 regarding an altered or forged license and the definitions section of the Motor Vehicle Code. Other provisions of the Motor Vehicle Code that are affected by the enactment of a new type of license (certificate for driving) need to be specifically amended so that the Act is consistent throughout.

OTHER SUBSTANTIVE ISSUES

DPS indicates this bill will not directly affect law enforcement; however, the “Certificate of Driving” should be in the form of an I.D. that has the necessary security safeguards to prevent the forging or alteration of the certificate. The certificate should also have a picture of the individual.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The status quo will be maintained. Currently, provided they meet all other application criteria, non-US citizens can obtain a valid New Mexico driver’s license that is valid for both identification and driving purposes.

POSSIBLE QUESTIONS

What is acceptable for purposes of identification for a person who only has a certificate for driving?

What can a non-US citizen obtain to enable him or her to lawfully drive in New Mexico once his or her certificate for driving expires after one year? Can a certificate for driving be renewed?

JR/njw