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FISCAL IMPACT REPORT

SPONSOR HFL **ORIGINAL DATE** 02/01/11 **CS/78/aSJC/aSFL#1,2,**
LAST UPDATED 03/14/11 **HB** & 3

SHORT TITLE Social Security Number For Drivers' License **SB**

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(minor amounts)	(minor amounts)	Recurring	Counties and Municipalities
	(\$117.0)	(\$149.0)	Recurring	TRD-MVD Operating Funds
	(\$540.0)	(\$666.0)	Recurring	State Road Fund
	(\$105.0)	(\$134.0)	Recurring	State equalization guarantee distribution (public schools)
Total	(\$762.0)	(\$949.0)	Recurring	

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
	\$23.0			\$23.0	Nonrecurring	TRD-MVD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Homeland Security and Emergency Management Department
 Taxation and Revenue Department (TRD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SFL 1, 2, & 3 Amendments

Senate Floor amendments 1, 2, & 3 to House Floor substitute for House Bill 78 as amended by the Sentate Judiciary Committee (SJC):

- SFL amendment #1 strikes and replaces SJC amendments 8 and 11. SFL amendment #1 would allow foreign nationals serving in the armed forces of the United States applying for a license without a social security number (SSN) or proof of authorized presence to use as proof of identity:
 - an individual tax identification number; or authorized substitute;
 - one proof of identity including:
 - a birth certificate – including a foreign birth certificate with a notarized English translation; or
 - a photo identification – passport from the applicant’s country or an ID card issued by the Mexican consulate in Albuquerque, El Paso, or Texas or other foreign consulate approved by TRD
 - two independent forms showing residency in New Mexico during the last three consecutive months including:
 - utility bills;
 - bank statements;
 - receipts for a mortgage or real estate contract;
 - rental agreements;
 - New Mexico school records; or
 - other documents authorized by the secretary of TRD
 - a signed and notarized declaration by the applicant that all documents provided are genuine and accurate.
- SFL amendment #1 amends Section 66-5-44 NMSA 1978 to allow a \$5.00 fee to be charged for the issuance of a 2 year license to a foreign national without a SSN. Section 66-5-44.1 NMSA 1978 is amended to allow a \$6.50 fee to be charged for the issuance of a provisional 2 year license to a foreign national without a SSN.
- SFL amendment #1 amends Section 66-8-1.1 NMSA 1978 is amended to provide that:
 - it is a third degree felony to issue a license to a person who is not lawfully entitled to such a document;
 - it is fourth degree felony to knowingly provide a signed declaration that documents submitted by an applicant for license, temporary license, or provisional license or instruction permit are not genuine and accurate; to transfer a license to another person; or induce or solicit another person, or conspire with an applicant, to violate provisions of licensing laws.
- Finally SFL amendment #1 would allow the department to cancel a driver’s license that was previously issued to person without a SSN if the person fails to, within 2 years, submit a SSN or reapplies for a license under the new law.
- SFL amendment #2 would allow any foreign nationals applying for a license without a social security number (SSN) or proof of authorized presence to use the same documentation as identified above. However, the residency requirement is increased to 6 consecutive months prior to being eligible for a license.
- SFL amendment #3 would require foreign nationals applying for a license without a social security number (SSN) or proof of authorized presence to use the same documentation as identified above; however, the applicant would be required to be fingerprinted.

Synopsis of SJC Amendment

Senate Judiciary Committee amendment to House Floor substitute for House Bill 78 restores portions of the current statute that were deleted in the original and substitute bill. The amendment would allow foreign nationals applying for a license without a social security number (SSN) or proof of authorized presence to use as proof of identity:

1. an individual tax identification number; or authorized substitute;
2. one proof of identity including:
 - a. a birth certificate – including a foreign birth certificate with a notarized English translation; or
 - b. a photo identification – passport from the applicant’s country or an ID card issued by the Mexican consulate in Albuquerque, El Paso, or Texas or other foreign consulate approved by TRD
3. two independent forms showing residency in New Mexico during the last three consecutive months including:
 - a. utility bills;
 - b. bank statements;
 - c. receipts for a mortgage or real estate contract;
 - d. rental agreements;
 - e. New Mexico school records; or
 - f. other documents authorized by the secretary of TRD
4. a signed and notarized declaration by the applicant that all documents provided are genuine and accurate.

The amendment clarifies that licenses issued to foreign nationals who don’t have a SSN are not valid for a period of more than 2 years.

Section 66-5-44 NMSA 1978 is amended to allow a \$5.00 fee to be charged for the issuance of the 2 year license to a foreign national without a SSN. Section 66-5-44.1 NMSA 1978 is amended to allow a \$6.50 fee to be charged for the issuance of a provisional 2 year license to a foreign national without a SSN.

Section 66-8-1.1 NMSA 1978 is amended to provide that:

- it is a third degree felony to issue a license to a person who is not lawfully entitled to such a document;
- it is fourth degree felony to knowingly provide a signed declaration that documents submitted by an applicant for license, temporary license, or provisional license or instruction permit are not genuine and accurate; to transfer a license to another person; or induce or solicit another person, or conspire with an applicant, to violate provisions of licensing laws.

Finally the amendment would allow the department to cancel a driver’s license that was previously issued to person without a SSN if the person fails to, within 2 years, submit a SSN or reapplies for a license under the new law.

Synopsis of Original Bill

House Floor substitute for House Bill 78 amends Section 66-5-9 NMSA 1978 of the Motor Vehicle Code to require a person applying for a driver’s license to provide a full “legal” name

and a social security number (SSN), except that applicants ineligible for a SSN or a foreign national shall provide the unique identifying number of the applicant’s valid passport, valid visa or other arrival-departure record or document issued by the federal Department of Homeland Security.

The SSN alternative documentation shall show the expiration date of the foreign national’s authorized period of admission or extension of stay. The Taxation and Revenue Department (TRD) is allowed to issue a foreign national driver’s license only for the duration of the foreign national’s authorized period of admission or extension of stay.

This substitute also provides similar requirements for the issuance of an identification card to foreign nationals, and requires that both drivers’ licenses and IDs contain the applicant’s full legal name. The substitute grants authority to promulgate rules related to these new provisions.

FISCAL IMPLICATIONS

The revenue estimate reflects the reduction in revenue associated with the reduced driver’s license fees in the SFL amendment.

Estimated Revenue Impact*					R or NR*	Fund(s) Affected
FY2011	FY2012	FY2013	FY2014	FY2015		
None	(***)	(***)	***	***	R	County and Municipal Fee Agents
None	(117)	(149)	(219)	(91)	R	TRD-MVD Operating Funds
None	(540)	(666)	(1,520)	(882)	R	State Road Fund
None	(105)	(134)	(247)	(127)	R	State equalization guarantee distribution (public schools)
None	(762)	(949)	(1,986)	(1,100)	R	Total

Source: TRD

(***) and *** Minor changes to County and Municipal Fee Agent amounts from administrative fees are included within TRD-MVD Operating Funds.

The revenue estimate reflects the reduction in revenue from driver’s license fees that would otherwise have come from individuals without a social security number, the reduced fee for the two-year license, and the refund provisions related to the cancellation of existing licenses after two years (FY2014).

SIGNIFICANT ISSUES

The SFL amendments 1, 2, & 3 builds on the SJC amendment by allowing foreign nationals serving in the U.S. armed forces to be issued licenses, increasing the residency requirement from 3 months to 6 months, and requiring the applicants to be fingerprinted.

The AGO notes that the SFL amendments appear to present significant policy as opposed to legal issues. Whether granting drivers’ licenses to foreign nationals as proposed in this bill will prevent New Mexico from complying with the federal REAL ID law remains to be seen. It may be that to comply with federal law and travel requirements on airplanes, etc., New Mexico will need to grant separate drivers’ licenses to citizens that are distinguishable from the driving

privileges provided to foreign nationals who comply with the provisions of this bill.

The SJC amendment restores the ability to use alternative documentation as proof of identity. The amendment provides the specific type, and combination of, documents that are allowable. The amendment would provide that licenses issued to foreign nationals without SSNs would only be valid for a period of not more than 2 years. The SJC amendment would also reduce the license fee to \$5.00 and a provisional license fee to \$6.50 resulting in reduced revenue for local governments, the state road fund, and the department.

The House substitute bill removed from current statute language allowing for the use of a tax identification number in lieu of a social security number. Also removed was the authority for the secretary of the Taxation and Revenue Department to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number. However, SFL and SJC amendments restored this authority.

According to TRD, the intent of bill is to prevent the issuance of New Mexico drivers' licenses to undocumented immigrants. Under this bill, immigrants without SSNs would be able to obtain a New Mexico license provided they supply a valid passport, valid visa, or other arrival-departure record which conforms to the Real ID Act of 2005; however, the other alternative documents do not conform to the Real ID Act including utility bills, bank statements, retail agreements, etc. Real ID Act allows legal immigrants who do not have a social security number to obtain a driver's license (6 CFR 37.11(c)(1)(iv) to legal immigrants to present documentation showing non-work authorized status in order to obtain a license).

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. MVD has engaged in extensive audit and compliance procedures and activities to identify nonresident applicants, and at a significant cost.

ADMINISTRATIVE IMPLICATIONS

TRD reports that implementation of the new two-year license period for foreign nationals who fail to provide a social security number has not yet been evaluated, but computer system changes would probably not be extensive. However, implementation of the refund provisions associated with the cancellation of licenses after a two-year period will impose a significant administrative burden on MVD in FY2014. The administrative cost has not yet been determined, as it is unclear what provisions might be designed into the new Milagro system.

TRD reports that implementation of the fingerprinting requirement may be problematic, as a) MVD currently has fingerprint machines in only a limited number of field offices; b) no funding is provided for expanded fingerprinting capacity; and c) to the degree that fingerprinting is done in the field offices there will be a significant adverse impact on field office wait times. If MVD relies on other entities to conduct the fingerprinting, consideration would have to be given to cost, time delays, and fraud avoidance. For example, MVD requires TSA results come in a sealed envelope to avoid tampering.

The SFL and SJC amendments would allow certain alternative documentation for license applicants who don't have SSNs. TRD would have to review and validate all the documents

authorized in the SJC amendment, as is currently the practice. With the SFL and SJC amendments, administrative costs would continue at the current level; however, revenues would decrease due to 2 year license fee being lower than the current 4 year and 8 year license currently being issues to foreign nationals.

The original bill would have had 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.

In the original bill the revenue lost from driver's license application fees would've been offset by operating budget savings within MVD and TFID as detailed below (**however, this is not the case with the SJC and SFL amendments**):

- 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 the SFL and SJC amendments will have a low impact for IT, including MVD 2.0 (140 hrs), MVD Point of Sale (POS) (60 hrs), Mainframe Batch (80 hrs), and User Acceptance Testing (120 hrs) for a total of 460 hours.

Total Hours: 460 @ \$50/hour = \$23,000

RELATIONSHIP

Relates to: Senate Bill 9 "License Requirements for Drivers Under 18"

TECHNICAL ISSUES

TRD reports the following issues:

- It is likely that a high proportion of current foreign national licenses that are cancelled because the cardholder does not appear to apply for a new replacement license within the two-year time period specified by the SJC amendment will be individuals who have provided a false address or who have failed to notify the department of their change of address. In that case, the reimbursement required by the amendment would never reach the individual for whom it is intended. Time and the state's money would be saved by adding a provision requiring that the reimbursement be contingent upon the applicant's submission of a formal claim for refund.
- There is no provision for a prorated fee adjustment for those individuals whose licenses are not cancelled but are rather replaced within two years, after a new application as required by the SJC amendment.

- The requirement that a foreign national provide proof of six months continuous residency in New Mexico conflicts with an attorney general opinion that a New Mexico resident must obtain a license within thirty days of becoming a resident. The six-month requirement also conflicts with Section 66-5-2 which requires New Mexico residents to obtain a New Mexico driver's license.
- Section 66-5-15 should also be amended to state that a driver's license shall include the person's full legal name.
- It is unclear why a foreign national must provide a fingerprint and what then happens to the fingerprint. Again, this is imposed upon both illegal immigrants and legal immigrants who do not have a social security number.
- When refunding a person the fee paid, the amount should only include the add-on fees that are for the actual license, such as the additional fee for EDL system and traffic safety fee, and not the administrative fee since that fee is for the actual transaction that occurred.
- The requirement that MVD renew a foreign national license for which we have already sent a cancellation notice is generally bad public policy. MVD should not renew a license if there is reason to believe a person has not complied with the law. Also, there is no valid public policy reason to reimburse money for the license if the license was cancelled because the person has not complied with the law. It would be more appropriate to provide for a pro rata refund or credit to those individuals who do comply within the two-year period and whose licenses are not canceled but are rather replaced with a new two-year license.

OTHER SUBSTANTIVE ISSUES

The federal Department of Homeland Security (DHS) has recently extended the deadline for states to be in full compliance with the provisions of the REAL ID Act to January 15, 2013. The bill as amended will result in the issuance of New Mexico licenses and IDs that do not comply with the requirements of the federal REAL ID Act. As a result, upon implementation of the REAL ID Act, driver licenses and identification cards issued by NM MVD will not be accepted as proof of identity for the purposes of travel, to enter a federal building or to access a nuclear facility.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Foreign nationals will continue to be able to apply for a driver's license by using a taxpayer identification number or other documents as authorized by the TRD secretary as a substitute for a social security number regardless of immigration status.

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