

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/13
 SPONSOR Pacheco LAST UPDATED 03/07/13 HB 606
 SHORT TITLE Two-Tiered Driver's Licenses SB _____
 ANALYST Trowbridge/Boerner

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	\$416.5	\$416.5	Recurring	See Distribution Chart Below

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$205.0	\$0.0	\$0.0	\$205.0	Nonrecurring	TRD-MVD Operating Budget
	\$0.0	(\$432.5)	(\$432.5)	(\$865.0)	Recurring	TRD-MVD Operating Budget
	\$71.5	\$0.0	\$0.0	\$71.5	Nonrecurring	TRD-MVD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Department of Homeland Security and Emergency Management (DHSEM)

Department of Finance and Administration (DFA)

Taxation and Revenue (TRD)

SUMMARY

Synopsis of Bill

House Bill 606 (HB 606) proposes to establish a two tiered driver's license issuance system, one that would purportedly comply with the federal Real ID Act and another for citizens who would

not be able to obtain a license that would meet the Real ID requirements. The bill does so by amending the current application for license statute 66-5-et al, to include the issuance of two distinct drivers licenses, each unique in appearance, for each type of self-identified applicant: one for those who believe they meet the requirements of the Real ID Act and one for those who do not. Applications for the federally-compliant license must include the applicant's social security number, or in the case of foreign nationals, the unique identifying number of the applicant's valid visa, passport, or other arrival-departure record. Applications for the second tier of licenses may only be granted to applicants who have been granted "deferred action for childhood arrivals;" have resided in New Mexico for six months; have completed a driver's education course; and who can provide proof of identity.

Subject to certain exceptions, federally-compliant licenses issued to foreign nationals will expire on the date that the foreign national's period of authorized admission in the United States expires. For the other tier of licenses, expiration is the earlier of one year from the date the license is effective or the date of the applicant's termination of deferred action for childhood arrivals.

Finally, the bill provides a new provision providing a felony penalty for fraud and mandates that a license that does not comply with the Real ID Act shall not be "valid for identification purposes outside the exterior boundaries of New Mexico."

The effective date of this legislation is July 1, 2013.

FISCAL IMPLICATIONS

Fiscal impact to MVD in FY13 for full compliance would include:

- Design and production of the new license - \$200,000
- Training and administrative expenses - \$5,000
- **Total - \$205,000**

(MVD does not have fund availability in its current FY13 budget)

Implementation of this bill will also have an impact for the Information Technology Division. Listed are the affected programs and the estimated times:

MVD 2.0 480 hours

License Printing Batch Program – 60 hours

Modify Digital Image Access and Exchange Program – 90 hours

Implement Systematic Alien Verification Program – 640 hours

Testing – 160 hours

Total Hours: 1,430 hours @ \$50/hour = **\$71,500**

Foreign National Driver License (FN DL) average cost is based on 80% 4-yr DLs at \$34 and 20% 2-yr DLs at \$18.

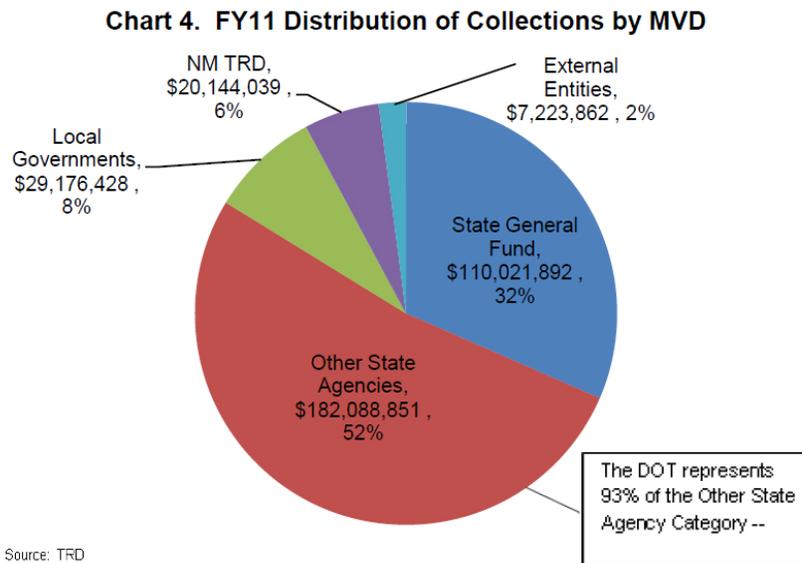
House Bill 606 – Page 3

Budget impact:

Estimated annual FNDL transactions	15,000	
MVD overall cost per transaction		13.50
FNDL overhead per TFID	230,000	
FNDL overhead per transaction		15.33
Average FNDL cost per transaction		28.83
Total cost (saved if no) FNDL transactions	\$432,450	Annual FY14 and beyond
	\$865,000	Total FY13-15

Revenue impact:	Average Cost	Estimated Number	Total Cost/Yr
1st time FNDLs	30.78	12,710	391,220
1st time Provisionals	18.00	491	8,840
Permits	7.00	514	3,600
IDs	10.00	1,285	12,850
Total		15,000	416,510

Distribution of specific MVD fee revenues is determined by a complex statutory formulaic system established in Section 66-6-23 (Disposition of Fees) and Section 66-6-23.1 (Formulaic Distribution). The chart below illustrates the overall distribution of all fees collected by MVD:



SIGNIFICANT ISSUES

The Attorney General’s Office (AGO) indicates that REAL ID establishes mandatory standards governing state issuance of secure driver’s licenses and identification cards. Residents of states that fail to comply with REAL ID will 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 not in compliance with REAL ID and many of the state's provisions governing the issuance of driver's licenses and identification cards are at odds with REAL ID.

The AGO observes that there is currently no deadline by which states must come into compliance with REAL ID and the law is not currently in effect, although it is scheduled to take effect on December 1, 2014 (6 CFR Part 37.5(b)). Only 13 states are currently in compliance, and the Department of Homeland Security and Emergency Management (DHSEM) has issued compliance "deferments" to the remaining states, including New Mexico. (See DHS Press Release, "DHS Determines 13 States Meet REAL ID Standards," Dec. 20, 2012). DHSEM expects to issue a compliance schedule in the fall of 2013. Thus, although the timeline is uncertain, REAL ID is still the law and will take effect barring action by Congress.

The AGO states that the changes proposed in HB 606 addressing the issuance of licenses to foreign nationals conform to certain general standards set forth in the REAL ID Act for secure licenses. Like REAL ID, HB 606 imposes the requirement that secure licenses be issued only to a person able to evidence lawful presence in the United States, and that such licenses and identification cards be valid only for a period that conforms to the person's period of lawful presence in the United States. (See 6 CFR Parts 37.11 and 37.21).

However, for a state to issue licenses that are acceptable for federal purposes, all REAL ID provisions must be satisfied, and HB 606 does not address a number of provisions set forth in the federal law. To be clear, under REAL ID, states must comply with all substantive provisions of the federal law to achieve "full compliance." 6 CFR Part 37.51. Any identification card issued by a state that falls short of full compliance "is not in compliance with [REAL ID]...and is not acceptable as identification by Federal agencies for official purposes" (6 CFR Part 37.65).

The AGO provided the following examples of the inconsistencies between the rubric set forth in HB 606 and REAL ID:

1. REAL ID requires that the state "must" take and maintain photographs of every applicant for a REAL ID card, regardless of whether the card is issued (6 CFR Part 37.11). HB 606 contains no such provision.
2. REAL ID requires that states verify documents submitted by applicants used to establish identity (6 CFR Part 37.13). HB 606 contains no such provisions.
3. REAL ID requires REAL ID cards to include extensive security features. (6 CFR Part 37.15). No mention is made of card security characteristics in HB 606.
4. REAL ID requires states to implement a security plan for state motor vehicle facilities (6 CFR Part 37.41). No mention is made of such a plan in HB 606.
5. The enumeration of documents in HB 606 that is proposed to establish a person's identity and lawful status varies from that set forth in REAL ID (See 6 CFR Part 37.11).
6. HB 606 does not address the issuance of (non-driver's license) identification cards.

The AGO reports that while many of these issues may be within the scope of the TRD's rulemaking authority, more clarity in the legislation may aid in eliminating doubt with respect to the wishes of the Legislature and provide the agency with clear authority to promulgate appropriate and necessary rules.

Finally, the AGO states it should be noted that REAL ID does authorize states to issue licenses and identification cards that are not compliant with the Act. Thus, as proposed in HB 606, states may have tiers of drivers licenses, based upon whether a given license is in compliance with REAL ID. As this legislation requires, under REAL ID, non-compliant cards must be clearly identified as such and feature a design distinctive from compliant cards.

The DHSEM reports that while it appears the intention of this bill is to bring the state into compliance with the Real ID Act, the bill is missing one of the minimum requirements of the Act: that the cards include “a common machine-readable technology, with defined minimum elements” (The REAL ID Act, Pub. L, 109-13, Div. B, Title II section 202 (a) (1)).

The DHSEM also states that it is not obvious how the state will enforce the non-use of the license outside the boundaries of the state (66-8-1.1. Section 6).

ADMINISTRATIVE IMPLICATIONS

The TRD-MVD notes that it would be difficult to begin issuing a REAL ID-compliant driver’s license on July 1, 2013. New Mexico would have to be deemed certified to be in compliance from the Department of Homeland Security before it would be able to issue the compliant driver’s licenses.

The MVD could, however, begin limiting issuance of new foreign national DLs and IDs to DACA-qualifying individuals and/or to others who are lawfully present in the U.S. effective July 1, 2013.

COMPANIONSHIP

This bill conflicts with HB-132, HB-144, HB-161, HB-425, SB-95 and SB-578. HB-132 would provide for immediate cessation of DL issuance to any foreign national whose presence in the U.S. is not authorized by DHS. HB-144 would establish an alternative REAL ID card, separate from and in addition to current New Mexico drivers’ licenses and IDs. HB-161 would require cancellation by the end of 2013 of existing licenses issued to individuals without Social Security Numbers. SB-578 would provide for both a REAL ID driver’s license and for retention of the current license, with current eligibility requirements, as a noncompliant alternative license.

TECHNICAL ISSUES

The TRD notes that there is no provision in this bill for identification cards. Language matching the requirements and limitations for drivers’ licenses should be added for IDs.

The DHSEM recommends HB 606 include language requiring the cards include “a common machine-readable technology, with defined minimum elements.” so that the State of New Mexico will meet the minimum document requirements. The DFA states that re-engineering the existing MVD system to incorporate the requirements of this legislation could be costly. It notes that the system is already experiencing problems with the current workload.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The agencies report that New Mexico will continue to not be in full compliance with the federally mandated Real ID Act of 2005.