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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/13

SPONSOR Ingle LAST UPDATED _____ HB _____

SHORT TITLE Two-Tiered Drivers' Licenses SB 521

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown*	Unknown*	Unknown*	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications below

Duplicates HB 606, Companion to SB 578

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

New Mexico Department of Homeland Security and Emergency Management (DHS)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

SB 521 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

The Department of Finance and Administration (DFA) indicates that the Taxation and Revenue Department (TRD) would need additional funding to execute this legislation. The application process would need to be established and additional resources would have to be assigned for the validation of paperwork. The language distinguishes between an applicant who "meets federal purposes shall contain the unique identifying number of the foreign national's valid passport, valid visa or other arrival-departure record of document issued by the federal government and the expiration date of the foreign national's authorized period of admission or extension of stay as demonstrated on the foreign national's valid passport, valid visa or arrival departure record or other document issued by the federal government." The DFA states that the TRD's Motor Vehicle Division (MVD) IT system is unable to identify the authentication of such documents without having access to a federal database.

The DFA also notes that SB 521 states that "The department may issue to an eligible foreign national applicant a driver's license that is valid only for the duration of the foreign national's authorized period of admission or extension of stay and that shall state that it is term limited." This would require MVD to track the limited terms of applicants and or license holders which might require re-engineering of the existing MVD system, creating additional IT costs.

The DFA adds that the TRD will incur additional production costs for the requirement of having to produce two distinct driver's licenses that meet federal requirements. The license shall contain a unique color and design that is distinguishable and will be accepted by federal agencies for official federal purposes.

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 (“DHS”) 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). DHS 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 SB 521 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, SB 521 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 SB 521 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 SB 521 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). SB 521 contains no such provision.
2. REAL ID requires that states verify documents submitted by applicants used to establish identity (6 CFR Part 37.13). SB 521 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 SB 521.
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 SB 521.
5. The enumeration of documents in SB 521 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. SB 521 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 SB 521, 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 Department of Homeland Security and Emergency Management (DHS) 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).

DHS 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 DFA reports that the MVD will need additional resources to implement and administer this legislation. The department could need additional funding to re-engineer its existing system to allow for the tracking of the term dates of each type of license issued. The agency will need to implement a process for filing applications or open a separate office for these requests.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 521 duplicates HB 606 and relates to SB 578.

TECHNICAL ISSUES

The DHS recommends SB 521 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.

TT/blm