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FISCAL IMPACT REPORT

ORIGINAL DATE 3/10/15

SPONSOR Ingle LAST UPDATED _____ HB _____

SHORT TITLE Two-Tiered Driver's Licenses SB 653

ANALYST Malone

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15/FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$180.0	\$0.0	\$0.0	\$180.0	Nonrecurring	TRD-MVD Operating
	\$32.0	\$0.0	\$0.0	\$32.0	Nonrecurring	TRD-ITD Operating

(Parenthesis () Indicate Expenditure Decreases)

This bill conflicts with HB 32 and HB 79 as all three bills attempt compliance with Real ID in conflicting ways. This bill also relates to SB 1, SB 269 and HB 153 as all the bills amend Section 66-5-21 NMSA 1978.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Law Offices of the Public Defender (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 653 amends and enacts statutory sections of the Motor Vehicle Code to establish a two-tiered system for the issuance of driver's licenses and ID cards. One tier is for applicants able to meet federal requirements and to be accepted by federal agencies for official purposes pursuant to the REAL ID Act of 2005. The other tier is for applicants seeking a license or ID card not intended to be accepted by federal agencies for official federal purposes. The bill requires an applicant who is a foreign nation without a social security number or other proof of lawful presence in the United States to apply for a driver's license or ID not intended to be accepted by federal agencies for official federal purposes.

SB 653 requires TRD to establish two distinct driver's licenses by December 1, 2015: 1) meeting federal requirements and to be accepted by federal agencies for official federal purposes and

containing a color and design to distinguish is from a driver's license not intended for federal purposes; and 2) not intended to be used for official federal purposes or be accepted by federal agencies, clearly stating "Not for Federal Purposes" and otherwise maintaining the color and design of licenses in effect prior to January 1, 2015.

The bill also requires creating two distinct IDs, one of which is acceptable for federal purposes and the other which is not and clearly states that it is not.

To be eligible for a license or ID for federal purposes, an applicant must have a social security number, or in the case of foreign nationals, the unique identifying number of the applicant's valid visa, passport, employment authorization card, or other arrival-departure record or document issued by the federal government that conveys lawful presence in the U.S.. Applications for second tier licenses or IDs must include an individual tax identification number, a passport or ID from the individual's country of origin, or other documentation that the secretary of TRD has authorized as an acceptable substitute.

Expiration dates for licenses and IDs issued to foreign nationals are established in accord with duration of lawful presence.

The bill also increases penalties and adds additional penalties for unlawful use of an identification card and fraud related to the issuance of documents.

FISCAL IMPLICATIONS

TRD anticipates that necessary changes associated with this bill's implementation would cost the department about \$210 thousand (see administrative implications below).

SIGNIFICANT ISSUES

This bill seeks to create driver's licenses that meet the requirements of the federal REAL ID Act of 2005. The Department of Homeland Security (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.

Implementation and enforcement of the REAL ID Act has been postponed on multiple occasions. According to the National Conference of State Legislatures, on December 29, 2014, DHS announced that residents who currently use a non-compliant license or ID card from a state either deemed in compliance with REAL ID or granted an extension for compliance will have until October 1, 2020 before their current license or ID has to be upgraded to be REAL ID compliant. Although NM is not in compliance with the act, the state has received an extension. If New Mexico fails to become compliant, federal enforcement of the REAL ID Act would mean that a New Mexico license or ID could not be used for federal purposes. As a result, New Mexico residents would need a passport, passport card or other acceptable documentation in order to fly perhaps as early as 2016.

The changes proposed in SB 653 addressing the issuance of licenses and identification cards to foreign nationals and others conform to certain standards set forth in the REAL ID Act for secure licenses. However, AGO observes that in order for a state to issue licenses that are acceptable for federal purposes, all REAL ID provisions must be satisfied, and SB 653 does not address a

number of provisions set forth in the federal law (although these issues may be within the scope of TRD’s rulemaking authority), including:

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.
2. REAL ID requires that states verify documents submitted by applicants used to establish identity. 6 CFR Part 37.13.
3. REAL ID requires states to implement a security plan for state motor vehicle facilities. 6 CFR Part 37.41.

Finally, it should be noted REAL ID does authorize states to issue licenses and identification cards that are not compliant with REAL ID. Thus, as proposed in SB 653, states may have tiers of driver’s licenses, based upon whether a given license is in compliance with REAL ID.

ADMINISTRATIVE IMPLICATIONS

The implementation of SB 653 will have a moderate impact on TRD’s IT Division and the MVD. The department anticipates that it would cost MVD \$180 thousand to design and produce two new licenses and provide for associated training and administrative costs. The department estimates that necessary IT changes will take a total of about 640 hours of work, which at \$50 per hour would cost about \$32 thousand.

Importantly, TRD has already developed REAL ID processing which is currently being tested, and will not be forced to start this process from scratch.

CONFLICT

This bill conflicts with HB 32 and HB 79 as all three bills attempt compliance with Real ID in conflicting ways. This bill also relates to SB 1, SB 269 and HB 153 as all the bills amend Section 66-5-21 NMSA 1978.

TECHNICAL ISSUES

TRD notes that the bill would not put New Mexico in compliance with Real ID. Title 6 CFR § 37.25(a)(3) requires that a foreign national renewing a driver’s license or ID provide evidence that the applicant is still legally present in the United States. The bill lacks this language. Title 6 CFR § 37.11(c) & (d) specifies documents that can be used to establish an applicant’s age. Our law, Section 66-5-47 NMSA 1978, allows documents that are not permissible under the federal regulation.

OTHER SUBSTANTIVE ISSUES

AGO notes that because the legislation may result in the enactment of distinctions in legal rights based upon the alienage (or nationality) of the applicant, it potentially runs afoul of state and federal constitutional provisions that demand equal treatment of people by the government. See N.M. Const. art. II, § 18; U.S. Const. amend. XIV; see generally Alexander L. Mounts, Note, A Safer Nation? How Driver’s License Restrictions Hurt Immigrants & Noncitizens, Not

Terrorists, 37 Ind. L. Rev. 247 (2003). It is well-settled that non-citizens enjoy constitutionally-granted equal protection rights. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). In New Mexico, where the people are afforded heightened constitutional equal protection rights, disparate treatment of a disfavored group potentially gives rise to especially searching scrutiny by the judiciary. See, e.g., Breen v. Carlsbad Mun. Schools, 2005-NMSC-028, 138 N.M. 331.

CEM/bb/je