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FISCAL IMPACT REPORT

ORIGINAL DATE 1/20/2016
LAST UPDATED 2/13/2016 **HB** 99/aSPAC/aSFC

SPONSOR Pacheco/Nunez

SHORT TITLE Driver's License Issuance & Federal Real ID **SB** _____

ANALYST Malone

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$80.0	\$60.0	\$0.0	\$140.0	Non-recurring	TRD-MVD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 94, HB 123, HB 144, SB 174, SB 216, and SB 231. Duplicates SB 256.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General's Office (AGO)
- Taxation and Revenue Department (TRD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to House Bill 99 provides for driving authorization cards and non-REAL ID compliant IDs to be valid for two years upon first issuance and four years for subsequent renewals.

Additionally, the amendment introduces new material related to photographing and fingerprinting of applicants unable to prove lawful status and who does not possess a valid NM license or identification card (only new applicants or those who have allowed a credential to expire will be impacted). TRD will take a full-face, front-view photograph and the fingerprints of such applicants and is authorized to submit fingerprint data to DPS; DPS can in turn submit the data to the FBI for a criminal background check. The fingerprint data cannot be provided to any other federal agency.

The new material directs TRD not to issue a non-compliant credential to an applicant unable to demonstrate lawful status if the background check reveals the applicant has an outstanding valid criminal arrest warrant or the applicant's fingerprints are associated with any name, date of birth, or social security number other than those provided by the applicant in the application. Upon submission of evidence that the basis for ineligibility has been resolved, the applicant may receive a driving or identification credential.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to House Bill 99 essentially duplicates SB 256, with slight changes to language.

Specifically, the amended bill amends and enacts statutory sections of the Motor Vehicle Code to provide for the issuance of two tiers of licenses and ID cards by the Motor Vehicle Division (MVD) of the Taxation and Revenue Department (TRD). One tier is established 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 established for those not eligible for REAL ID licenses and ID cards or who choose to opt for non-REAL ID compliant driving or identification credentials.

The bill defines "driver's license" to mean "a license or a class of license that meets federal requirements to be accepted by federal agencies for official federal purposes" and introduces a definition of a "driving authorization card" as "a card not intended to be accepted by federal agencies for official purposes issued or recognized under the laws of New Mexico pertaining to the authorization of persons to operate motor vehicles." Additionally, the bill defines "license" to mean "any license, permit or card recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles."

For eligibility to receive a REAL ID compliant license or ID, applicants must provide documentation required by the federal government of the applicant's identity, date of birth, social security number, if applicable, address of current residence, and lawful status. An application by a foreign national for a REAL ID compliant credential must contain the unique identifying number and expiration date, if applicable, of the foreign national's valid passport, valid visa, employment authorization card issued under the applicant's approved deferred action status or other arrival-departure record or document issued by the federal government that conveys lawful status.

An applicant who does not provide proof of lawful status shall only apply for a driving authorization card or non-REAL ID compliant ID card. Lawful residents may opt for a non-compliant credential. For non-compliant credentials, applicants shall include in their application:

- A social security number or an individual tax identification number;
- A passport from the applicant's country of origin or an identification card issued by a foreign consulate with which TRD has a reliable method of verifying the authenticity of the identification card;
- A valid NM license or ID; or,
- A document that the secretary has authorized.

TRD is tasked with ensuring that driver's licenses and driving authorization cards are distinguishable in color and design. The latter will clearly state "not for federal purposes." Similarly, REAL ID compliant ID cards and non-compliant ID cards must be distinguishable,

with the latter stating “not for federal purposes.” REAL-ID compliant credentials will expire after four years, eight years, or when a foreign national’s lawful status expires. Non-compliant credentials will expire after four years if lawful status is demonstrated or two years if it is not.

Additionally, the bill replaces the current requirements for proof of age, changes some penalties for unlawful use of a license or ID, and adjusts the automatic expiration date of a license from seventy-five to seventy-nine.

The bill requires that TRD establish and begin to issue to qualified applicants REAL ID compliant licenses and IDs within six months of the effective date of the legislation. It requires the department to replace these licenses and IDs with identical expiration dates at no cost if an individual chooses to replace their credential before it expires. For non-compliant licenses and IDs, the secretary of TRD shall adopt regulations providing for the proration of a refund or credit towards a new credential for the remaining period that a person’s license or ID would have been valid.

Synopsis of Original Bill

House Bill 99 amends and enacts statutory sections of the Motor Vehicle Code to provide for the issuance of driver’s licenses and ID cards able to meet federal requirements and to be accepted by federal agencies for official purposes pursuant to the REAL ID Act of 2005 as well as a driving privilege card for foreign nationals without evidence of lawful presence in the United States. The bill provides that a “citizen or national” may only apply for a driver’s license or ID that meets federal standards. For eligibility to receive a REAL ID compliant license or ID, foreign nationals must demonstrate proof of authorized legal presence in the United States. A license or ID issued to a foreign national will expire on the date that proof of legal presence expires.

The bill makes “driving privilege cards” available to foreign nationals who cannot demonstrate proof of authorized legal presence in the United States. To be eligible for a driving privilege card, applicants must meet requirements in addition to those required for a REAL ID license or ID, however, the requirement for a social security member is not applicable. The applicant must submit an affidavit that they are a current resident in NM and proof of personal income tax return filing for the preceding year or proof that they have been a resident in NM for the preceding two years. They must also furnish evidence that they completed a driver’s education course and passed a written and driving examination, proof of their identity, and evidence of their unique identifying number, taxpayer identification number, or other acceptable document determined by the secretary. The driving privilege card will expire one year after the effective date of the card.

The new material enacted by the bill (Section 15), requires that an applicant for a driving privilege card submit fingerprints and a photograph provided by the Department of Public Safety (DPS) and “a signed waiver from the person whose fingerprints are being registered in the federal bureau of investigation’s next generation identification system’s rap back service.” DPS is tasked with checking the fingerprints against state and regional criminal records databases and maintaining a separate file of fingerprints for search by future submissions to the local and regional criminal records databases. The individual applicant is responsible for fees associated with fingerprinting. The new material also establishes that the driving privilege card is not valid for identification purposes outside the exterior boundaries of NM. No non-federal compliant ID option is created in this bill.

The bill requires the Motor Vehicle Division (MVD) to design driver's licenses and driving privilege cards so as to be distinguishable from one another, and to include in the driving privilege cards a clear indication that the cards are not sufficient for federal identification purposes.

Finally, the bill establishes that existing criminal sanctions applicable to the "unlawful use" of a driver's license are extended to the driving privilege card and several new felonies are created for crimes connected to the application issuance and use of driver's licenses, ID cards, and driving privilege cards.

This bill has an emergency clause.

FISCAL IMPLICATIONS

TRD anticipates that necessary changes associated with this bill's implementation would cost the department about \$140 thousand (see administrative implications below).

With regard to the cost of issuing driving authorization cards to foreign nationals, TRD estimates the cost at about \$432.5 thousand annually, which is roughly the same as the current costs to the department to issue driver's licenses to foreign nationals. The revenue to the department and other funds (counties and municipalities, state road fund, etc.) will remain similar to what it currently in the first year, and grow as more foreign nationals must renew their credential every two years.

If individuals choose to replace credentials before their expiration dates, there will be an additional cost to the department. However, if the bill is passed, the state will likely qualify for an extension for an extension and current licenses and IDs will be accepted for federal purposes until 2020, so many individuals will have the opportunity to wait until their credential expires before renewing.

There may be some small fiscal impact associated with the new fingerprinting requirements, although a small number of applicants will be impacted by the requirement, so it is unlikely to be substantial.

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. REAL ID establishes mandatory standards governing state issuance of secure driver's licenses and identification cards. Residents of states which fail to comply with REAL ID will ultimately 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 in the process of complying with the terms of REAL ID, but many of the state's provisions governing the issuance of driver's licenses and identification cards remain inconsistent with the requirements of the federal law.

According to the National Conference of State Legislatures, On Jan. 8, 2016 the U.S. Department of Homeland Security (DHS) released an updated timeline for the implementation of the final phase of REAL ID, which pertains to enforcement by the Transportation Security Administration (TSA) at airports regarding domestic air travel. Beginning Jan. 22, 2018, passengers with a driver's license issued by a state that is still not compliant with the REAL ID Act (and has not been granted an extension) will need to show an alternative form of acceptable identification for domestic air travel in order to board their flight. Passengers with driver's licenses issued by a state that is compliant with REAL ID (or a state that has been issued an extension) will be able to use their driver's licenses or identification cards. Starting on Oct. 1, 2020, every air traveler will need a REAL ID-compliant license, or another acceptable form of identification, for domestic air travel.

The Department of Homeland Security 18 point checklist for material compliance with the REAL ID Act is attached.

As amended, HB 99 appears to address most of the detailed requirements of the federal rule. It does not address the following, which may be able to be addressed by the department through internal policies:

- There is no provision expressly requiring confidentiality of personally identifying information obtained through the application process,
- There is no reference to American Association of Motor Vehicle Administrators (AAMVA) or equivalent fraudulent document recognition training, and
- There is no requirement in the bill for background checks of issuing staff.

ADMINISTRATIVE IMPLICATIONS

The implementation of HB 99 will have a moderate impact on TRD's IT Division and the MVD. The department anticipates that it would cost MVD \$80 thousand to design and produce a new driving card format for foreign nationals. The department estimates that 2 FTE will be necessary to manage cancellation letters and follow-up at a cost of \$50 thousand. Finally, the department anticipates a \$10 thousand need for training and administrative expenses. The department notes that implementation burdens on IT are included with Level 3 Support.

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, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 94, HB 123, HB 144, SB 174, SB 216, and SB 231, all conflict with HB 99 as they also make changes to the Motor Vehicle Code for REAL ID compliance. As amended, SB 256 is a near duplicate of HB 99.

CM/al/jle

Attachment: Driver's License issuance & Federal REAL ID

According to the National Conference of State Legislatures, On Jan. 8, 2016 the U.S. Department of Homeland Security (DHS) released an updated timeline for the implementation of the final phase of REAL ID, which pertains to enforcement by the Transportation Security Administration (TSA) at airports regarding domestic air travel. Beginning Jan. 22, 2018, passengers with a driver's license issued by a state that is still not compliant with the REAL ID Act (and has not been granted an extension) will need to show an alternative form of acceptable identification for domestic air travel in order to board their flight. Passengers with driver's licenses issued by a state that is compliant with REAL ID (or a state that has been issued an extension) will be able to use their driver's licenses or identification cards. Starting on Oct. 1, 2020, every air traveler will need a REAL ID-compliant license, or another acceptable form of identification, for domestic air travel.

The federal Department of Homeland Security has published a checklist for material compliance with the REAL ID Act that includes eighteen elements that a state law needs to include. The following are the elements. The citations to laws refer to 6 Code of Federal Regulations Part 37.

1. Subject each applicant to a mandatory facial image capture and retain such image even if a driver license (DL) or identification card "ID" is not issued.
2. Have each applicant sign a declaration under penalty of perjury that the information presented is true and correct, and the State must retain this declaration.
3. Require an individual to present at least one of the source documents listed in subsections (i) through (x) [of section 37.11(c)(1)] when establishing identity.
4. Require documentation of: Date of birth; Social Security Number; Address of principal residence; Evidence of lawful status.
5. Have a documented exceptions process that meets the requirements established in Section 37.11(h)(1)-(3) (if States choose to have such a process).
6. Make reasonable efforts to ensure that the applicant does not have more than one DL or ID already issued by that State under a different identity.
7. Verify lawful status through SAVE or another method approved by DHS.
8. Verify Social Security account numbers with the Social Security Administration or another method approved by DHS.
9. Issue DL and IDs that contain Level 1, 2 and 3 integrated security features.
10. Surface of cards include the following printed in formation in Latin alpha-numeric characters: Full legal name; Date of birth, Gender; Unique DL/ID number; Full facial digital photograph; Address of principal residence [with exceptions]; Signature [with exceptions]; Date of transaction.
11. Commit to marking fully complaint DL and IDs with a DHS-approved security marking.
12. Issue temporary or limited-term licenses to all individuals with temporary lawful status and tie license validity to the end of the lawful status.
13. Have a documented security plan for DMV operation in accordance with the requirements set forth in section 37.41.
14. Have protections in place to ensure the security of personally identifiable information.
15. Require all employees handling source documents or issuing DL or IDs to attend and complete the AAMVA approved (or equivalent) fraudulent document recognition

training and security awareness training.

16. Conduct name-based and fingerprint-based criminal history and employment eligibility checks on employees in covered positions or an alternative procedure approved by DHS.
17. Commit to be in full compliance with Subparts A through D on or before May 11, 2011.
18. Clearly state on the face of non-compliant DLs or IDs that the card is not acceptable for official purposes, except for licenses renewed or reissued under section 37.27.

Dep't of Homeland Security, Office of Inspector General, *Potentially High Costs and Insufficient Grant Funds Pose a Challenge to REAL ID*, OIG 9-36, p. 9 (March 2009)
(https://www.oig.dhs.gov/assets/Mgmt/OIG_09-36_Mar09.pdf)