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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11

SPONSOR Chavez, D. LAST UPDATED _____ HB 401

SHORT TITLE Guest Driver's License Permits SB _____

ANALYST Haug

REVENUE (dollars in thousands)

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2011	FY2012	FY2013	FY2014	FY2015		
\$0.0	\$1,827.0	\$2,794.0	\$3,747.0	\$4,681.0	Recurring	TRD-MVD Operating Funds
\$0.0	(\$434.0)	(\$542.0)	(\$681.0)	(\$857.0)	Recurring	State Road Fund
\$0.0	(\$147.0)	(\$184.0)	(\$231.0)	(\$291.0)	Recurring	Local Governments
\$0.0	(\$148.0)	(\$178.0)	(\$220.0)	(\$278.0)	R	State Equalization Guarantee (public schools)
\$0.0	(\$31.0)	(\$38.0)	(\$47.0)	(\$59.0)	R	County and Municipal MVD Agents
\$0.0	\$1,067.0	\$1,852.0	\$2,568.0	\$3,196.0	R	TOTAL

(Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Revenue table provided by TRD – See Attachment for detail

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2011	FY2012	FY2013	FY 11-13		
\$0.0	\$48.0	\$0.0	\$48.0	Nonrecurring	TRD-ITD operating budget
\$0.0	\$65.0	\$0.0	\$65.0	Nonrecurring	TRD-MVD operating budget

Parentheses () indicate a cost saving. ** Recurring (R) or Non-Recurring (NR)

Operating impact table provided by TRD – See Narrative

Conflicts with HB 78, HB 261, SB 9 and SB 345

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 401 adds a new section to the Motor Vehicle Code that would allow the Motor Vehicle Division (MVD) of the Taxation and Revenue Department (TRD) to issue a guest driver's permit to an "undocumented guest" who applies for the permit and who meets all of the requirements for the issuance of a driver's license. TRD will be required to conduct a criminal background check on all applicants to verify that they have not been convicted of a felony. By October 1, 2011, TRD will also be required to promulgate rules to carry out the provisions of this section. A guest driver's permit will need to conspicuously state: "This permit is only valid for driving privileges in New Mexico and is not proof of valid presence in the United States". These permits will only be valid for one year from the date of issuance and may be renewed for one-year terms. The fee for issuance or renewal of a guest driver's permit would be \$200, and the fee would be appropriated to TRD to defray the expenses associated with the issuance/renewal of these permits. See attachment for definition of "undocumented guest."

FISCAL IMPLICATIONS

TRD states:

The Estimated Revenue Impact is comprised of two components:

- increased revenue to TRD-MVD from the new \$200 guest driver's permit fee and to other entities from various associated fees; and
- the loss to all other current distributees of otherwise current and prospective foreign national driver's license fee revenues.

Information regarding the prospective number of guest driver's permits issued under the new law is particularly difficult to forecast, and the revenue impact should be viewed as only approximate.

The overriding administrative/compliance issue for TRD-MVD is that the agency is now in the process of designing and implementing a new drivers system ("Milagro"). Any change as substantial as that contemplated by this bill could not, as a practical matter, be implemented prior to the effective date of Milagro, currently scheduled for fall of 2011. The design and implementation cost of the new guest driver's permit card is estimated to be \$65,000.

This bill has moderate impact on the distribution process. Once programming changes are made to MVRO and POS by IT, FDB staff will need to verify the changes by performing selected tests of data and functionality, prior to authorizing IT to move changes into production. Programming changes and testing would need to be completed by June 30, 2011. New revenue codes for the guest driver's permit would require FDB staff to reformat the distribution worksheet to calculate the distribution to the Department.

Implementation of this bill will also have a high impact for TRD-ITD, including modifications to MVD 2.0 (600 hrs), MVD Mainframe Batch (200 hrs), and User Acceptance Testing (160 hrs), for a total of 960 hours @\$50/hour = \$48,000.

NOTE: Operating budget impact does **not** include the cost (if any, to be determined) of running criminal background checks through NCIC

SIGNIFICANT ISSUES

The TRD states:

There is nothing in this bill that would require the cancellation or exchange of current licenses held by foreign nationals without legal presence in the U.S. Those licenses would continue to be valid until their expiration date, at which time a license holder who does not have valid legal presence documentation could qualify for and receive a guest driver's permit.

There is a conflict between the guest driver's permit and the statutes allowing for an identification card. An illegal immigrant could forgo the driver's permit and obtain an identification card which could be used for identification purposes. NMSA 1978, §§ 66-5-401 through 409 should be amended to prohibit issuance of an identification card to an illegal immigrant.

The bill does not address or allow a guest driver's permit for those under 18 years of age.

The \$200 fee for a guest driver's permit may be considered excessive for some.

The Equal Protection Clause of the US Constitution does not apply to illegal immigrants. However, the New Mexico Constitution could be interpreted to provide greater protection and might result in an equal protection challenge to the different criteria imposed upon an illegal immigrant who wants to obtain a NM driver's license.

MVD does not currently have the ability to conduct criminal background checks, as required by this bill, through the National Crime Information Center (NCIC). Such ability would be dependent on authorization by the FBI. Without such authorization, MVD would have to depend on the ability and willingness of the Department of Public Safety to run the required checks.

According to the AGO significant legal issues include:

1. Whether the Bill merely confirms the constitutional limits on what State and local law enforcement officials may do in immigration matters, on the basis that the regulation of immigration issues is a matter that belongs exclusively in the province of the federal government.
2. Other significant issues raise policy as opposed to legal questions, e.g., whether the Bill will have a chilling effect on those seeking a driver's license and thus unnecessarily impedes State and local law enforcement of motor vehicle regulation.

CONFLICT

House Bill 401 conflicts with House Bill 78, House Bill 261, Senate Bill 9 and Senate Bill 345 all of which would amend Section 66-5-9.

TECHNICAL ISSUES

The AGO notes:

Section 1(A)(3) provides a requirement "passed a drug and alcohol test" in a narrative definitional section. Perhaps it would be better in a requirement section?

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Section 1(B) uses the phrase “except as otherwise provided by this section” but it is difficult to understand what is otherwise provided.

Section 1(C) uses the phrase valid “presence” in the United States. Does “presence” have a legal meaning in INS law?

Section 1(E) states a person may renew the license provided that all of the “requirements” are met—see comment on Section 1(A)(3)

TRD states;

The amendment to Section 66-5-9(B) (page 4, line 17 through page 5 line 2) does not make it clear that the substitute for a social security number or individual tax identification number only applies to foreign nationals lawfully in the United States. At the end of line 2 on page 5 language should be added to make this clear -- strike the period and add “*for an applicant who is not a citizen of the United States but who has documentation issued by the federal government authorizing the applicant’s presence in the United States.*”

GH/mew:svb

Description - Detailed Discussion: “Undocumented guest” means a person who: (1) is a resident of New Mexico; 2) is eighteen years of age or older; 3) has passed a drug and alcohol test administered and certified at the person’s expense by a facility authorized by the department in the same manner as for a safety-sensitive driving position; 4) is free of a felony conviction; 5) is not a United States citizen and who does not possess a social security number or valid documentation issued by the United States that authorizes the person’s presence in the United States; and 6) possesses an individual taxpayer identification number or other documentation that the secretary may accept as a substitute for an individual taxpayer identification number.

Estimated Revenue Impact – Detailed Discussion: The number of 4-year drivers’ licenses (DLs) issued to individuals without a social security number (SSN) has remained level at approximately 4,000 per year. However, the number of 8-year DLs issued to individuals with no SSN increased by 20% from calendar year 2008 to 2009 and by and 34% from 2009 to 2010. The numbers below are current for calendar years 2009 and 2010 and assume an average 27% annual increase in 8-year DLs going forward to fiscal years 2012 to 2015. The first increase (from calendar year 2010 to FY 2012) is 40% to reflect the extra half year from calendar 2010 to FY2012.

year	4-yr DLs issued	cost per DL	Total	8-yr DLs issued	cost per DL	Total	total 4yr + 8yr DLs
2008	4,069			13,059			
2009	3,969			15,611			
2010	3,933			20,894			
FY2012	4,000	18	72,000	29,252	34	994,554	1,066,554
FY2013	4,000	18	72,000	37,150	34	1,263,084	1,335,084
FY2014	4,000	18	72,000	47,180	34	1,604,117	1,676,117
FY2015	4,000	18	72,000	59,918	34	2,037,228	2,109,228

Assuming a 95% reduction (from otherwise projected figures) in new foreign national licenses:

year	4-yr DLs issued	cost per DL	Total	8-yr DLs issued	cost per DL	Total	Total 4yr + 8yr DLs
FY2012	-3,800	18	-68,400	-27,789	34	-944,827	-1,013,227
FY2013	-3,800	18	-68,400	-35,292	34	-1,199,930	-1,268,330
FY2014	-3,800	18	-68,400	-44,821	34	-1,523,911	-1,592,311
FY2015	-3,800	18	-68,400	-56,923	34	-1,935,367	-2,003,767

This 4-year + 8-year total is the annual estimated general fund revenue decrease if DLs are no longer issued to any but a relatively few individuals without SSNs.

Some of that lost revenue will be replaced by new revenue from issuance of the new 1-year guest driver’s permits authorized by HB-401. Because the new permit will have no legal value other than as a permit to drive, and because of the high cost of the permit, it is assumed that a reduced and level number of 10,000 new permits will be issued each year, with half of those renewing from year to year at a price per permit of \$208.00 (the \$200 statutory permit fee + \$2.00 administrative fee + \$3 EDL fee + \$3 driver safety fee).

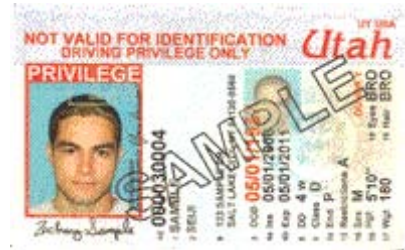
year	Permits issued or renewed	cost per permit	Total
FY2012	+10,000	208	+2,080,000
FY2013	+15,000	208	+3,120,000
FY2014	+20,000	208	+4,160,000
FY2015	+25,000	208	+5,200,000

Of the guest driver's permit fees of \$208 for an annual license, the revenue distributions are as follows:

- \$200 driving permit fee: \$200 to TRD-MVD.
- \$2 Administrative fee: for each license issued by a county-municipal office, \$1.50 to the county or municipality; for each license issued by a state office, \$1.25 to TRD-MVD. With the balance divided 74.65% to the state road fund and 25.35% to local government.
- \$3 EDL fee to TRD-MVD for licensing system
- \$3 driver safety fee to state equalization guarantee fund for schools.

Administrative & Compliance Impact – Detailed Discussion:

This bill would require issuance of a new “guest driver’s permit” to a foreign national who does not have valid legal-presence documentation. The cost for the design of the new permit (assuming something similar to Utah’s “driving privilege card” described at <http://publicsafety.utah.gov/dld/drivingprivilegecard.html>) and shown here is estimated to be \$65,000.



The bill requires the permit applicant to pass a drug and alcohol test. This is outside of the department's experience, and the bill does not provide any real guidance as it simply uses the phrase “in the same manner as for a safety-sensitive driving position”, perhaps referring to standards for commercial truck drivers. The bill does not state when this test must be done in relation to when the person applies for the permit.

An applicant for the permit cannot have any felony convictions and the bill requires the department to check for felony convictions through the national crime information center (NCIC). This requirement is problematic. It presumes that the applicant provided correct identifying information when convicted and that the applicant provides the same information when applying for the permit. It may be that the only information is the person's name and date of birth. There is no realistic method to distinguish between a felon and a non-felon with the same name and date of birth.