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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/13
LAST UPDATED _____ **HB** 161

SPONSOR Rehm

SHORT TITLE Driver's Licenses For Foreign Nationals **SB** _____

ANALYST Trowbridge

Estimated Revenue Impact*					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
(\$104.1)	(\$416.5)	(\$416.5)	(\$416.5)	(\$416.5)	Recurring	Various

* In thousands of dollars. Parentheses () indicate a revenue loss.

Note: See chart below (Estimated Revenue Impact – Detailed Discussion) for approximate distribution of revenues. Though difficult to measure with precision, the biggest impact would be to the Road Fund.

Estimated Additional Operating Budget Impact*				Recurring or Nonrecurring	Fund or Agency Affected
FY13	FY14	FY15	FY13-15		
\$0.0	\$27.0	\$0.0	\$0.0	Nonrecurring	ITD Operating Budget
(\$108.1)	(\$432.5)	(\$432.5)	(\$973.1)	Recurring	MVD Operating Budget
\$0.0	\$939.6	\$0.0	\$939.6	Nonrecurring	MVD Operating Budget

* In thousands of dollars. Parentheses () indicate a cost saving.

Note: MVD operating budget impacts reflect: first, savings of the costs of issuing foreign national licenses and IDs; second, the cost of FNDL cancellations and refunds.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Taxation and Revenue Department (TRD)

SUMMARY

Summary of Bill

House Bill 161 amends several provisions of the Motor Vehicle Code effecting provisions related to driver's license and state identification cards. The bill requires a person applying for a driver's license to provide a social security number (SSN) or, if the applicant is a foreign national and ineligible for a SSN, the unique identifying number of the applicant's valid passport, valid visa or other arrival-departure record or document issued by the federal Department of Homeland Security and the expiration date of the foreign national's authorized period of admission or extension of stay. The Taxation and Revenue Department (TRD) is

allowed to issue a foreign national driver’s license only for the duration of the foreign national’s authorized period of admission or extension of stay. The bill removes from current law language allowing for the use of a tax identification number in lieu of a social security number. Also removed from current law is the authority for the Secretary of the TRD to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number. The bill provides similar requirements for the issuance of an identification card to foreign nationals; requires that both drivers’ licenses and IDs contain the applicant’s full legal name; and removes the option of including the cardholder’s mailing address (instead of physical residence address) on a license or ID. The bill also makes it a felony for an applicant to provide a false or fraudulent document or to induce, solicit or conspire with another person to do so. Finally, this bill requires the Motor Vehicle Division (MVD) to cancel by December 31, 2013 all instruction permits, provisional licenses and drivers’ licenses currently held by individuals who did not provide a SSN as part of their application, unless the cardholder submits his or her SSN or submits a new application. Notification and hearing requirements are included, and MVD is required to refund to the individual whose license or permit is canceled the fee paid for the license or permit prorated for the remaining period that the card would otherwise have been valid. Similarly, the bill clarifies that criminal sanctions related to fraud in the issuing of licenses and cards apply to both the state and private contractors. In addition, the bill addresses the contents of licenses and identification cards and the applications therefore, specifying the contents for both.

HB 161 contains an emergency clause; effective upon signing by the Governor.

FISCAL IMPLICATIONS

TRD states that the budget impact for MVD falls into two separate categories:

Budget impact of FNDL cancellations and refunds:

Estimated cost of letters, hearings and FNDL cancellations \$100,000

Estimated cost of refunds, cards expiring after 12/31/13

issue year	number issued	4-year FNDLs			amt to refund	8-year FNDLs			Total amt to refund
		cost per DL	average yrs left	amt to refund		number issued	cost per DL	average yrs left	
2006	4,666	18.00	0.0	0	7,315	34.00	0.5	15,544	15,544
2007	5,638	18.00	0.0	0	11,082	34.00	1.5	70,648	70,648
2008	4,069	18.00	0.0	0	13,059	34.00	2.5	138,752	138,752
2009	3,969	18.00	0.0	0	15,611	34.00	3.5	232,214	232,214
2010	3,933	18.00	0.5	8,849	20,894	34.00	4.5	399,598	408,447
2011	3,886	18.00	1.5	26,231	13,413	34.00	5.5	313,529	339,759
2012	4,526	18.00	2.5	50,916	11,182	34.00	6.5	308,907	359,823
2013	1,131	18.00	3.1	15,911	2,796	34.00	7.1	84,652	100,564
Total	31,818			101,907	95,352			1,563,843	1,665,750

reduced to reflect actual current number of active FNDLs (71,729 = active end 2011 + issued 2012)

Adj total	17,947			57,480	53,782			882,071	939,550
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SIGNIFICANT ISSUES

1. The Attorney General's Office (AGO) indicates that **REAL ID**: The federal REAL ID Act of 2005 ("REAL ID") has implications for the changes proposed in HB 161. 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 be unable to utilize their state-issued identification cards to board airplanes, enter federal buildings, or for a range of other "official 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.

There is currently no deadline by which states must come into compliance with REAL ID and the law is not currently in effect. 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 changes proposed in HB 161 addressing the issuance of licenses and identification cards to foreign nationals conform to certain general standards set forth in the REAL ID Act for secure licenses. Like REAL ID, HB 161 imposes the requirement that secure licenses and identification cards 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, much of the minutia set forth in HB 161 is at odds with REAL ID's secure license standards. This includes the enumeration of documents in HB 132 that is proposed to establish a person's identity and lawful status, see 6 CFR Part 37.11, the physical requirements for the license or identification card, see 6 CFR Parts 37.15, 37.17 & 37.19, etc.

Finally, it should be noted REAL ID authorizes states to issue cards that are not compliant with the Act. Thus, states may have "tiers" of cards, based upon whether a given card is in compliance with REAL ID. Non-compliant cards must be clearly identified as such and feature a design distinctive from compliant cards.

2. **Due Process and the Cancellation Provision:** The provision requiring the cancellation of certain licenses implicates the due process rights of license-holders. While the bill does include certain due process protections for license-holders, there is no opportunity for a person affected by a cancellation to seek a hearing. See Maso v. State Taxation & Rev. Dep't, 2004-NMSC-28, ¶ 10, 136 N.M. 161, 164 ("Due process requires notice and an opportunity for a hearing before the State can suspend or revoke a person's driver's license."). However, given the straightforward basis for cancellation in HB 161 (i.e. whether a person has a valid social security number), the protections set forth in the bill may be adequate. See generally Mills v. New Mexico State Bd. of Psychologist Exam'rs, 123 N.M. 421, 426 (N.M. 1997) ("The specific requirements of procedural due process depend on the facts of each case.").

As our Supreme Court has counseled,

[T]hree factors [are] to be considered in determining what [due process] procedures are required: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Bd. of Educ. v. Harrell, 118 N.M. 470, 478 (N.M. 1994).

ADMINISTRATIVE IMPLICATIONS

TRD indicates implementation of this bill will have a moderate impact for TRD-ITD. Listed are the affected programs and time estimates:

- MVD 2.0 - 280 hours
- Point of Sale – 60 hours
- MVD Batch Programs – 100 hours
- MVD Financial (MVRO) Programs – 60 hours
- Testing – 40 hours

Total Hours – 540 @ \$50/hr = \$27,000.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

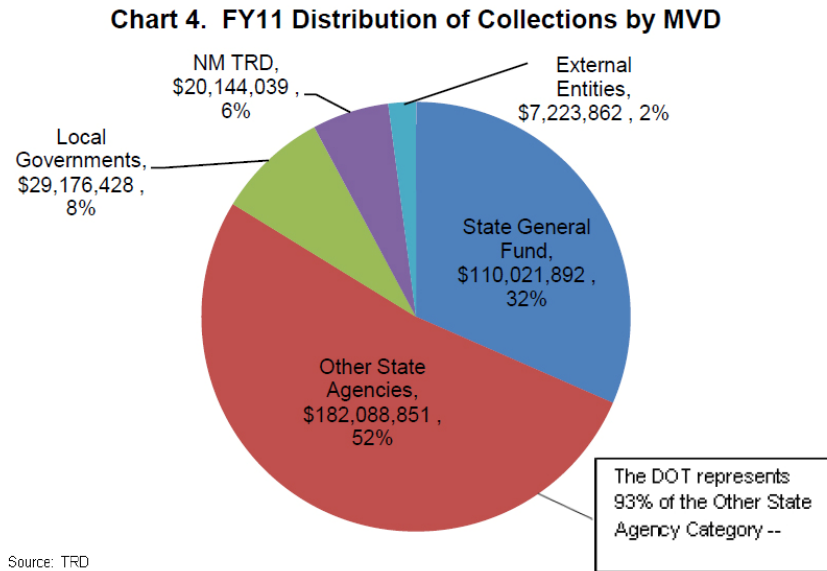
TRD states this bill conflicts with HB 132 and SB 95. This bill and HB 132 both amend Sections 66-5-9 and 66-5-401 thru 409. This bill and SB 95 both amend Section 66-5-403. This bill conflicts with HB 144 by the manner in which it implements compliance with the Real ID Act of 2005. The words “or individual tax identification number” should be deleted on page 19, lines 9-1, 17 and 23-24.

TRD suggests that to avoid the expense of mailing refunds to invalid addresses (estimated to be one-third or more of the addresses on record for foreign national cardholders, page 20 line 12 should be amended to add after “provisional license,” “and upon receipt by the department of the person’s written request for refund.”.

OTHER SUBSTANTIVE ISSUES

TRD states that 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:



Other Issues: TRD states that no funds are appropriated to allow TRD-MVD to reimburse cardholders, as is required by Section 11(F) on page 20 of the bill, whose permits and licenses are canceled. There is no provision for cancellation of current identification cards issued to individuals without SSNs.

Related Bills: 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.

TT/svb