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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/12
LAST UPDATED 02/10/12 **HB** _____

SPONSOR Jennings

SHORT TITLE Limit Issuance of Driver's Licenses **SB** 235/aSJC

ANALYST Boerner

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14	FY15	FY16		
None	(\$10.0)	\$4.0	(\$2.0)	(\$5.0)	Recurring	Counties and Municipalities
None	(\$64.0)	\$24.0	(\$16.0)	(\$31.0)	Recurring	TRD-MVD Operating Funds
None	(\$130.0)	\$49.0	(\$33.0)	(\$64.0)	Recurring	State Road Fund
None	(\$44.0)	\$16.0	(\$11.0)	(\$22.0)	Recurring	Local Government Road Funds
None	(\$53.0)	\$20.0	(\$13.0)	(\$26.0)	Recurring	State equalization guarantee distribution (public schools)
None	(\$301.0)	\$113.0	(\$75.0)	(\$148.0)	Recurring	Total

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Estimated Additional Operating Budget Impact*				Recurring or Nonrecurring	Fund(s) or Agency Affected
FY12	FY13	FY14	FY12-14		
\$0.0	\$3,622.0	\$1,934.0	\$5,556.0	Recurring	TRD-MVD Operating Budget
\$28.0	\$0.0	\$0.0	\$28.0	Nonrecurring	TRD-ITD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB171 which requires that, on or after January 15, 2013, a driver's license issued that meets federal requirements for official federal purposes shall contain a unique design that distinguishes federal compliance.

Conflicts with HB103 which requires a social security number from eligible driver's license applicants or the unique identifying number of the foreign national's valid passport, valid visa or other arrival departure record.

Conflicts with HB244 which provides for a guest driver's permit for undocumented persons.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys' (AODA)

Attorney General's Office (AGO)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 235 changes language in the original bill to require that a driver's license (DL) issued to a foreign national applicant without a social security number (SSN) will expire after one year (instead of two years as stated in original bill.)

Additionally, the amendment inserts a new subsection directing the department to identify any person who has been issued a permit or license prior to July 1, 2012, without a SSN and for whom the department has articulable suspicion that the person is no longer a resident of New Mexico, and to cancel the permit or DL without notice for those people whose address cannot be verified. The amendment provides a mechanism whereby a person whose permit or DL has been cancelled may, within 20 days, request the department to rescind the order of cancellation and is given the opportunity to show proof of New Mexico residency.

FISCAL IMPLICATIONS –based on TRD's 02/03/12 response to SB235

The TRD states revenue estimates reflect the reduction in revenue from foreign national driver's license (FNDL) fees resulting from the elimination of 4-year and 8-year licenses (with total license fees of \$18 and \$34 respectively) and issuance instead of 2-year licenses (with total license fees of \$13). The revenue increase in FY14 is the result of the bill's requirement that FNDLs expiring after FY14 be replaced with 2-year licenses before the end of FY14.

It should be noted that base fees for FNDL are reduced pro rata for two-year licenses so FNDL base license fees are the same per year as a standard 4 or 8 year license. Increased fee income for FY14 is assumed the result of other costs above the base rate. Additionally, it appears some costs in the TRD budget impact estimate could be mitigated. For example, it does not seem necessary for all New Mexico field offices to be equipped with fingerprinting hardware and software; this fingerprinting service could be consolidated to a few critical offices. Finally, the JC amendment includes the TRD cost-saving suggestion of adding the provision requiring that a reimbursement (for a cancelled permit/DL) be contingent upon the applicant's submission of a formal claim for refund (see Technical Issues).

Synopsis of Original Bill

The bill amends Section 66-5-9 NMSA 1978 to require the full legal name for all applicants. For foreign national applicants the bill adds a new section requiring additional proof of identification, proof of residency, and a notarized declaration that all documents provided by the foreign national applicant are genuine and accurate. The bill also requires foreign national applicants to be fingerprinted.

The bill amends Section 66-5-21 NMSA 1978 to require that driver's licenses (DL) issued to foreign nationals who do not provide social security numbers (SSN) will be valid for no more than two years.

The bill amends Section 66-8-1.1 to make it a felony for a foreign national applicant to knowingly or willfully provide false or fraudulent documents, to receive an instruction permit or DL and then transfer the permit or DL to another person in exchange for anything of value, or to solicit another person to violate Subsections A or B of this section.

The bill adds a new section to the Motor Vehicle Code providing for the mandatory cancellation of a driver's license issued prior to July 1, 2012, to a person without a social security number within two years if the person fails to provide a SSN or submit a new application pursuant to the new language proposed in Section 66-5-9 NMSA 1978.

Finally, fees for foreign nationals who do not provide a social security number are to be \$5.00 per two-year issuance period, effectively making them comparable with fees for applicants issued driver's licenses for 4 (\$10) or 8 years (\$20).

POLICY ISSUES

The TRD states there are currently 78,847 active New Mexico foreign national drivers' licenses (FNDLs). That number is expected to increase to approximately 83,429 by the July 1, 2012 effective date of this bill. As this bill is understood by TRD-MVD, every one of those license holders will be required to appear at a MVD field office to apply for a new two-year license, with new proof of their identity and New Mexico residency, and a signed and notarized declaration that all documents provided are genuine and accurate.

TECHNICAL ISSUES

The TRD states that it is not clear how the department will reimburse individuals whose licenses are canceled (two years after the effective date of the bill) for failure to provide a SSN or a new application, or how the amount expended could be calculated in advance. It is likely that a high proportion of current foreign national licenses that are cancelled because the cardholder does not appear to apply for a new replacement license within the two-year time period specified will be individuals who have provided a false address or who have failed to notify the department of their change of address. In that case the reimbursement required by the amendment would never reach the individual for whom it is intended. Time and the state's money would be saved by adding a provision requiring that the reimbursement be contingent upon the applicant's submission of a formal claim for refund.

The bill requires that a driver's license shall contain the applicant's "full legal name." The current mainframe system has a limitation regarding name. The full name is made up of the following fields listed below with the maximum number of characters allowed per field:

- Last Name 25
- Middle Initial 1
- First Name 20
- Generation 3

System upgrade is in process to meet Commercial Driver License Inquiry System (CDLIS) requirements that will increase the number of characters allowed per field to the following:

- Last Name 40
- Middle Name 35
- First Name 40
- Generation 5

Any name that would surpass the allowable number of characters will be truncated and marked as truncated per CDLIS 5.2 requirements. We are scheduled to implement the CDLIS 5.2 modifications into production by end of March 2012.

SIGNIFICANT ISSUES

The AGO states that However, New Mexico’s policy of granting drivers’ licenses to undocumented foreign nationals may prevent New Mexico from complying with the REAL ID Act of 2005, 109 P.L. 13. Specifically, states are to require proof of lawful status in the country prior to issuance of a driver’s license. See 49 USC § 30301(c)(2)(B). The federal Department of Homeland Security (“DHS”) recently extended the deadline for states to be in full compliance with the provisions of the REAL ID Act. After this date, driver licenses and identification cards issued by New Mexico may not be accepted as proof of identity for the purposes of travel, to enter a federal building or to access a nuclear facility. Therefore, to comply with federal law, New Mexico may need to grant separate drivers’ licenses to citizens that are distinguishable from the driving privileges provided to foreign nationals who comply with the provisions of this bill.

The bill amends NMSA 1978, Section 66-5-9(B) by specifying that foreign national applicants who do not possess a social security number (“SSN”) may present a variety of documents to apply for a driver’s license. Under the current statute, foreign nationals without a SSN are only required to provide an individual taxpayer identification number provided by the IRS in lieu of an SSN. However, the MVD has promulgated regulations requiring additional documentary proof. See 18.19.5.12 NMAC. This bill attempts to codify many of the additional requirements contained in 18.19.5.12 NMAC. Under this bill, a foreign national applicant without a SSN must present: (1) an ITN or other authorized substitute as determined by TRD; (2) birth certificate with notarized English translation or a passport from the applicant’s country of citizenship (this includes Mexican consular IDs); (3) two forms independent proof which include utility bills, bank statements, mortgage documents, rental agreements, NM school records, or other documents authorized by TRD; (4) signed and notarized declaration by the applicant as to the accuracy of the application; and (5) fingerprinting on two fingerprint cards.

This bill restricts foreign nationals to two-year licenses instead of four and eight. It also imposes additional fees on foreign national applicants. These changes may raise questions about the reasonableness of the disparate treatment of foreign nationals, especially legal immigrants versus U.S. citizens with regard to license duration.

This bill makes it a felony for a foreign national to fraudulently procure a NM license.

Finally, the bill calls for the mandatory cancellation of driver’s licenses issues to persons without a SSN. In New Mexico, a license to operate a motor vehicle is a mere privilege, and not a property right, and is subject to reasonable regulation under the police power in the interest of

public safety and welfare. *Johnson v. Sanchez*, 67 N.M. 41, 351 P.2d 449 (1960). Nevertheless, the cancellation of existing licenses may invite legal challenges as to whether the early termination of such a privilege is a reasonable regulation.

ADMINISTRATIVE AND COMPLIANCE ISSUES

The requirement that all foreign national licensees, who have no SSN, must submit a new application with new proof of identity and New Mexico residency and a signed and notarized declaration by the applicant, will have a significant impact on MVD field office wait times unless substantial additional resources are brought on to handle the additional FNDL activity.

MVD estimates the cost of sending letters to the 63,575 current FNDL holders whose current licenses are scheduled to expire after June 30, 2014, first to warn them of the pending cancellation, then to notify them 30 days prior to the actual cancellation, to be approximately \$250,000 (including staff, postage, printing, paper and envelopes) in FY14. An additional \$100,000 would be required in early FY15 to send notification to those licensees whose licenses have in fact been canceled.

There would be additional costs for fingerprint hardware and software at \$42,500 per office in each of MVD's 71 state and county-municipal field offices, with a total operating budget cost to MVD of \$1,637,500.

An additional 25 field office FTEs would be required in state offices to handle the additional burden of treating all otherwise routine FNDL renewals as first-time foreign national applications, with an annual MVD operating budget cost of \$1,000,000. Even then it is hard to imagine how the field offices could keep up with the extra work involved without a dramatic impact on field office wait times.

In order to relieve some of the added pressure on Albuquerque-area field offices, where the majority of the foreign national activity is transacted, it will be necessary to establish an additional office, centrally located, that will handle FNDLs exclusively. The cost of equipping that office is estimated to be \$300,000 in FY13 for equipment, \$84,000 annually for office lease, and another \$600,000 to staff the new office.

Implementation of this bill will have a moderate impact for IT. Listed are the affected programs and time estimates:

- MVD 2.0 (160 hrs)
- MVD Point of Sale (POS) (60 hrs)
- MVD Mainframe Batch (80hrs)
- Mainframe MVRO (60 hrs)
- Create application to: (80 hrs)
- Identify anyone issued a permit or license without providing a valid social security number
- Create letter, notifying person that their license will be canceled if, within two years, the person doesn't submit a valid social security number or submit a new application
- User Acceptance Testing (120 hrs)
- Total Hours: 560
- 560 hours @ \$50/hour = \$28,000.

ADDITIONAL DETAILED DISCUSSION PROVIDED BY THE TRD:

Estimated Revenue Impact – Detailed Discussion: The number of 4-year drivers’ licenses (DLs) issued to individuals without a SSN (aka foreign national drivers’ licenses or FNDLs) has remained level at approximately 4,000 per year. The number of 8-year DLs issued to individuals with no SSN increased by 20% from calendar year 2008 to 2009 and by 34% from 2009 to 2010, but decreased (returning to the 2008 level) in 2011, presumably as a result of: a) a new policy of requiring appointments scheduled in advance for all first-time foreign national applications; and b) increased scrutiny of all foreign national applications by the departments Tax Fraud Investigations Division (TFID). The numbers below are actual for calendar years 2008-2011 and estimated for FYs 13-16.

As of January 2012 there are 63,575 current FNDLs that are scheduled to expire after June 30, 2014 (the end of FY14, 2 years after the effective date of HB-103S). Those FNDLs will be canceled effective July 1, 2014 if the licensees do not provide SSNs or new applications. The FY14 number below of 2-year issuances assumes that half of those individuals do so apply in FY14. The FY13 numbers assume a constant number of 2-year FNDLs are issued, roughly equal to the 2008 and 2011 total of 4-year and 8-year cards. The FY15 and FY16 numbers assume a doubling in FY15 and a 50% increase in FY16 in the number of 2-year FNDLs issued, reflecting renewals of DLs that would otherwise have been 4-yr and 8-yr issuances.

Foreign National Drivers' Licenses Issued 2008-2011 (calendar year actual) and FY13-15 (fiscal year estimated)											
Calendar year (actual)	2-year licenses issued			4-year licenses issued			8-year licenses issued			total FNDL revenue	annual revenue impact
	number	fee	revenue	number	fee	revenue	number	fee	revenue		
2008				4,069	18	73,242	13,059	34	444,006	517,248	
2009				3,969	18	71,442	15,611	34	530,774	602,216	
2010				3,933	18	70,794	20,894	34	710,396	781,190	
2011				3,886	18	69,948	13,413	34	456,042	525,990	
Fiscal year (estimated)											
FY13	17,300	13	224,900							224,900	(301,090)
FY14	49,088	13	638,138							638,138	112,148
FY15	34,600	13	449,800							449,800	(76,190)
FY16	51,900	13	674,700							674,700	148,710

Technical Issues – Detailed Discussion: The bill fails to address ID cards and what documents a person is required to submit to prove NM residency. Residency documents should be the same for ID cards and licenses. It also fails to address the time period for an ID card issued to certain foreign nationals.

This bill does not result in NM being REAL ID Act compliant because our licenses will still fail to meet federal requirements.

Section 6 amends 66-8-1.1 include providing false or fraudulent documents as a felony. The bill should be amended to include a provision that makes it a felony to provide a legitimate document when the purpose of the document is used to fraudulently obtain a license under 66-5-9. The bill should also provide some sanction allowing MVD to not issue a license to a person if the MVD has reasonable grounds to believe that the person has attempted to fraudulently obtain a license. This would be similar to a Washington state statute that prohibits a person from obtaining a license for one year when a person has attempted to use bad residency documents in the application for a driver's license.

Section 7, page 14 should incorporate language stating that any notices sent to the license holder shall be sent to the address on file with MVD.

The requirement that a foreign national provide proof of six months continuous residency in New Mexico conflicts with an attorney general opinion that a New Mexico resident must obtain a license within thirty days of becoming a resident. The six-month requirement also conflicts with § 66-5-2 which requires New Mexico residents to obtain a New Mexico driver's license.

It is unclear why a foreign national must provide a fingerprint and what then happens to the fingerprint. This requirement is imposed upon anyone who does not have a social security number, regardless of their immigration status and whether or not they are lawfully present in the United States. This problem also occurs in the fee charged for a license issued to a foreign national.

Implementation of the fingerprinting requirement may also be problematic. MVD could provide the required fingerprinting, but currently has fingerprint machines in only a limited number of field offices; and no funding is provided for expanded fingerprinting capacity. And, to the degree that fingerprinting is done in the field offices there will be a significant adverse impact on wait times. If the burden of fingerprinting is placed on to the applicants, as the bill implies, MVD will also have to take into consideration cost, time delays, and fraud avoidance. For example, we require TSA results to come to us in a sealed envelope to avoid tampering.

Administrative & Compliance Impact – Detailed Discussion: The requirement that, for all foreign national licenses with an expiration date on or after July 1, 2014, the licensee must either provide a SSN or submit a new application will result in a substantial increase in the number of FNDL applications in FY14. That increase will have a significant impact on MVD field office wait times unless additional staff are hired to handle the additional FNDL activity.

MVD estimates the cost of sending letters to the 63,575 current FNDL holders whose current licenses are scheduled to expire after June 30, 2014, first to warn them of the pending cancellation, then to notify them 30 days prior to the actual cancellation, to be approximately \$250,000 (including staff, postage, printing, paper and envelopes) in FY14. An additional \$100,000 would be required in early FY15 to send notification to those licensees whose licenses have in fact been canceled.

MVD's state and county-municipal field offices currently process a total of approximately 17,300 new and renewal FNDL applications per year. Most of these FNDL transactions are handled in the 32 state offices. It is estimated that an additional 25 field office FTEs would be required in state offices to handle the additional burden of treating all otherwise routine FNDL renewals as first-time foreign national applications, with new proof of identity and New Mexico

residency and a signed and notarized declaration by the applicant, as required by this bill. At an approximate average cost of \$40,000 per FTE, the additional MVD operating budget cost in FY13 and subsequent years would be \$1,000,000.

Moreover, if half of the 63,575 current FNDL holders whose current licenses are scheduled to expire after June 30, 2014 come to the field offices to apply for the new two-year foreign national license, presumably all in the last half of FY14, it is hard to imagine how the field offices could keep up with the extra work involved without a dramatic temporary (3-6 month) impact on field office wait times or substantial additional resources.

TRD-MVD believes that, in order to relieve some of the added pressure on Albuquerque-area field offices, where the majority of the foreign national activity is transacted, it will be necessary to establish an additional office, centrally located, that will handle FNDLs exclusively. The cost of equipping that office is estimated to be \$300,000 in FY13 for equipment, \$84,000 annually for office lease, and another \$600,000 to staff the new office.

There would be additional costs for fingerprint hardware and software at \$42,500 per office in each of MVD’s 71 state and county-municipal field offices, with a total operating budget cost to MVD of \$1,637,500. If the amendment requires submission of fingerprints to the DPS and FBI for criminal background checks (as would be required for example by HB-244) the additional annual budget impact to TRD-MVD would be \$2,925,790, assuming that DPS continues to charge \$56.75 per person for background checks of in-state criminal records, and the FBI charges \$18 per person for national criminal background checks. (\$74.75 per person times 39,141 applicants= \$2,925,790.)

Detailed breakdown of MVD operating budget impact:

	FY12	FY13	FY14	FY12-14
letters re cancellation of FNDLs	0	0	250	250
additional staff for existing field offices	0	1,000	1,000	2,000
lease of new central FNDL office	0	84	84	168
equipment for new central FNDL office	0	300	0	300
staff for new central FNDL office	0	600	600	1,200
fingerprinting hardware and software	0	1,638	0	1,638
Total	0	3,622	1,934	5,556

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