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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/13

SPONSOR Campos LAST UPDATED _____ HB _____

SHORT TITLE Two-Tiered Driver's License System SB 578

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$205.0		\$205.0	Nonrecurring	TRD-MVD Operating Budget
		\$71.5		\$71.5	Nonrecurring	TRD-ITD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 521 and HB 606

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Homeland Security and Emergency Management (DHSEM)

Attorney General's Office (AGO)

Taxation Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 578 (SB 578) proposes the creation of a two types, or tiers, of driver's licenses: one type of license that can be used for "official federal purposes" and one that cannot. The two types of licenses are to be distinct in appearance. Applications for the federally-compliant license must include the applicant's social security number, or in the case of foreign nationals, the unique identifying number of the applicant's valid visa, passport, or other arrival-departure record. Applications for the non-federally-compliant licenses are to be granted to applicants regardless of immigration status. The bill enumerates a variety of means by which an applicant for the non-federally-compliant license can establish identity, and the applicant must establish presence in New Mexico for thirty days.

Subject to certain exceptions, federally-compliant licenses issued to foreign nationals will expire on the date that the foreign national's period of authorized admission in the United States expires. For the non-federally-compliant licenses, expiration is dependent upon the age of the applicant.

Finally, the legislation clarifies the scope and nature of criminal penalties related to the issuance of driver's licenses and state identification cards. The effective date of the bill is July 1, 2013. The bill contains a severability clause.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) states that the fiscal impact to the MVD for full compliance of SB 578 would include:

- Design and production of the new license - \$200,000
- Training and administrative expenses - \$5,000

Total - \$205,000

Additionally, the TRD indicates that implementation of this bill will have a high impact for its IT Division. Listed below are the affected programs and the estimated times and cost:

- MVD 2.0 - 480 hours
- License Printing Batch Program – 60 hours
- Modify Digital Image Access and Exchange Program – 90 hours
- Implement Systematic Alien Verification Program – 640 hours
- Testing – 160 hours

Total Hours: 1,430 hours @\$50/hour = \$71,500

SIGNIFICANT ISSUES

The Attorney General's Office (AGO) reports that SB 578 appears to be an effort to address the requirements of the federal REAL ID Act of 2005, and identifies the following significant legal issues:

- 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 [federal] 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, although it is scheduled to go into effect on December 1, 2014. 6 CFR Part 37.5(b). 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 SB 578 addressing the issuance of licenses to foreign nationals conform to certain general standards set forth in the REAL ID Act for secure licenses. Like REAL ID, SB 578 imposes the requirement that secure licenses 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, in order for a state to issue licenses that are acceptable for federal purposes, all REAL ID provisions must be satisfied, and SB 578 does not address a number of provisions set forth in the federal law. To be clear, under REAL ID, states must comply with all substantive provisions of the federal law to achieve “full compliance.” 6 CFR Part 37.51. Any identification card issued by a state that falls short of full compliance “is not in compliance with [REAL ID]...and is not acceptable as identification by Federal agencies for official purposes.” 6 CFR Part 37.65.

Additionally, the AGO provides the following examples of the inconsistencies between the rubric set forth in SB 578 and REAL ID:

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. SB 578 contains no such provision.
2. REAL ID requires that states verify documents submitted by applicants used to establish identity. 6 CFR Part 37.13. SB 578 contains no such provisions.
3. REAL ID requires REAL ID cards to include extensive security features. 6 CFR Part 37.15. No mention is made of card security characteristics in SB 578.
4. REAL ID requires states to implement a security plan for state motor vehicle facilities. 6 CFR Part 37.41. No mention is made of such a plan in SB 578.
5. The enumeration of documents in SB 578 that is proposed to establish a person’s identity and lawful status varies from that set forth in REAL ID. See 6 CFR Part 37.11
6. SB 578 does not address the issuance of (non-drivers license) identification cards.

The AGO states that while many of these issues may be within the scope of the TRD’s rulemaking authority, more clarity in the legislation may aid in eliminating doubt with respect to the wishes of the Legislature and provide the agency with clear authority to promulgate appropriate and necessary rules.

Finally, the AGO maintains that REAL ID does authorize states to issue licenses and identification cards that are not compliant with the Act. Thus, as proposed in SB 578, states may have tiers of drivers licenses, based upon whether a given license is in compliance with REAL ID. As this legislation requires, under REAL ID, non-compliant cards must be clearly identified as such and feature a design distinctive from compliant cards.

The Department of Homeland Security and Emergency Management (DHSEM) reports that SB 578 (like SB 521) does not appear to conform to all requirements under the Federal Real ID Act. Section 202(b)(9) of the Act, states are required to include a common machine-readable technology (MRT) with defined minimum data elements for the driver’s licenses and identification cards to be accepted by a Federal agency for official purposes.

The DHSEM looked at several types of technology that could be used, including:

- A 1D bar code, commonly used for tracking inventory, mostly used by supermarket scanners. This does not have the capability to store significant amounts of information.
- A 2D bar code. This is currently used by 45 of 50 States, plus the District of Columbia. It stores a greater amount of information than the 1D bar code, although the “scanning” process is extremely similar to the 1D bar code. This is also the current AAMVA standard.
- An optical stripe. This is currently used on DHS-issued permanent resident cards and border crossing cards, and stores information digitally, much like a compact disc.
- A contact integrated circuit chip. A contact integrated circuit chip (ICC) in a document could be read by inserting the document in a contact ICC reader.
- A contactless integrated circuit chip. A contactless integrated circuit chip in a document could be read by transmitting data via radio frequency to reader

The TRD maintains however, that enactment of SB 578 would result in a New Mexico license that could be used for federal purposes, including boarding a plane or entering a federal facility, if and when the provisions of the REAL ID Act are fully enforced. 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 578 relates to SB 521 and HB 606. The TRD states that this bill conflicts with HB 132, HB 144, HB 161, HB 425, HB 606/SB 521 and SB 95. HB 132 would provide for immediate cessation of driver’s license issuance to any foreign national whose presence in the U.S. is not authorized by the DHSEM. 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. HB 606 and SB 521 would provide a REAL ID driver’s license with no alternative non-federal ID license.

TECHNICAL ISSUES

The AGO suggests defining certain terms employed in the legislation may aid in clarifying legislative intent. The AGO states that examples include terms such as “arrival-departure record,” and “official federal purposes.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will continue to be non-compliant with the Real ID Act. The AGO indicates that if New Mexico does not come into compliance with REAL ID, the state runs the risk that it will be unable to issue its residents identification cards that can be used for federal purposes.