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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/1/2016  
**LAST UPDATED** 2/2/2016     **HB** \_\_\_\_\_

**SPONSOR** Ivey-Soto

**SHORT TITLE** Driver's License Issuance & Federal Real ID     **SB** 174

**ANALYST** Malone/Amacher

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$90.0	\$3,144.5*	\$1,522.1*	\$4,756.6	Non-recurring	TRD-MVD Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

\* The TRD cost calculation assumes almost all eligible license or ID holder will seek a new compliant license or ID immediately, rather than waiting for documents to expire, and result in overtime costs of \$2.1 million and no-cost reissuance costs to TRD of \$1.5 million. These costs would likely be lower. See Fiscal Impact.

Conflicts with HB 94, HB 99, HB 123, HB 144, SB 216, SB 231, and SB 256

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of Bill

Senate Bill 174 amends and enacts statutory sections of the Motor Vehicle Code to provide for the issuance of two tiers of driver's licenses and identification cards that meet the requirements of the federal REAL ID Act of 2005, upon proof of lawful status; limiting the validity period of certain driver's licenses and identification cards; providing for the exchange of certain driver's licenses and identification cards; and declaring an emergency.

SB 174 allows an applicant to apply for a driver's license that meets federal requirements or a license not intended to be accepted by federal agencies for official federal purposes. An applicant that does not provide proof of lawful status may only apply for a license not intended

to be accepted by federal agencies for official federal purposes. A foreign national who can prove lawful status and seeks a driver's license may be granted one upon the expiration date of lawful status. If an expiration date cannot be determined, the license is valid for one year. The applicant must provide a social security number or tax identification number, a passport, a valid existing license or identification card or any other document that is approved by the motor vehicle division.

SB 174 prohibits a driver's license, that meets federal requirements, from being renewed by mail or electronic means.

The bill requires that TRD establish and 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. 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.

## **FISCAL IMPLICATIONS**

TRD anticipates that necessary changes related to design and production of new REAL ID compliant credentials as well as training would cost the department \$100 thousand (see administrative implications below).

Due to the emergency clause and requirement that the department establish and issue REAL ID compliant credentials within six months of the effective date of the legislation, TRD anticipates that the costs for overtime to issue an estimated 500 thousand credentials would be \$2.1 million. This estimate assumes that the department would issue all of the new credentials immediately and that significant (85 thousand hours) of overtime would be necessary. However, on HB 99, which has the same effective date, TRD does not make these assumptions. It is unclear why TRD attributes a different fiscal impact to this, but seems unlikely that the department will be required to reissue all current credentials once the state is eligible for an extension and current licenses will be accepted for federal purposes until 2020.

Additionally, with the provision that replaces current licenses at no cost would cost the department an anticipated \$3 per credential, totaling \$1.5 million for the estimated 500 thousand replacement credentials. However, if individuals do not replace credentials before they expire, which many likely will not because if NM receives extension current credentials will be accepted for federal purposes through 2020, the impact to TRD will be much lower as people will pay for their new license if the old one is expired.

Finally, the department calculates the cost for prorated cancellation refunds at \$972.8 thousand and the need for 2 additional FTE at about \$100 thousand. For the same reasons stated above, this may be a lower cost than TRD estimated.

Importantly, for NM to come into compliance with REAL ID requirements, and for current licenses and IDs to continue to be accepted for federal purposes, the state must either qualify for an extension for compliance by demonstrating significant progress or be certified in compliance by the Federal Department of Homeland Security (DHS). If either is accomplished, the timeline for issuing new credentials to New Mexico residents extends to 2018 and 2020, respectively (see

significant issues). By removing the emergency clause and the six month requirement in this bill, and allowing individuals to renew licenses as they expire at their own cost, the expense of becoming REAL ID compliant would be significantly less.

## **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 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.*

The AGO outlines that for a state-issued document to be acceptable for federal purposes, all REAL ID provisions must be satisfied. Even though SB 174, as proposed, may not comply with the REAL ID Act, it is possible that these shortcomings could be remedied by department regulation. REAL ID, 6 C.F.R. Section 37.11(a), mandates that each person applying for a REAL ID compliant ID must be subject to a "mandatory image capture" and that the state must "maintain photographs of individuals even if no card is issued...stored in a format in accordance with REAL ID's source document retention requirements." SB 174 does not require the maintenance of photographs when no card is issued.

According to AGO, SB 174 does not mention the following significant items that are required by the REAL ID Act:

- the implementation of a security plan by the state motor vehicle facilities; and
- applicant signature declaring under penalty of perjury that the information on the application is true and correct.

Furthermore, SB 174 allows the secretary to accept as proof of the applicant's identity a valid New Mexico license or identification card.

The AOC indicates the bill addresses most of the detailed requirements of the federal rule. A list of matters that do not appear in the bill but that are required by the rule includes:

- 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 Administrator's (AAMVA) training, and
- There is no requirement in the bill for background checks of issuing staff.

## **ADMINISTRATIVE IMPLICATIONS**

TRD notes that the requirement that NM begin issuing REAL ID compliant credentials within six months is impossible, would put enormous strain on MVD, and would incur a significant cost to New Mexicans. Furthermore, the agency notes that is unnecessary to petition for an extension with DHS and that the state must be certified in compliance before issuing REAL ID compliant credentials.

TRD anticipates that implementation would take about 14 weeks, not accounting for the amount of time for MophoTrust (the state's license provider) to make appropriate changes.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

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

## **OTHER SUBSTANTIVE ISSUES**

The AGO has indicated on other bills related to the REAL ID Act that because the legislation may result in the enactment of distinctions in legal rights based upon the alienage (or nationality) of the applicant, it potentially runs afoul of state and federal constitutional provisions that demand equal treatment of people by the government. In New Mexico, where the people are afforded heightened constitutional equal protection rights, disparate treatment of a disfavored group potentially gives rise to especially searching scrutiny by the judiciary. AGO has also observed that the courts are especially skeptical of government actions which withdraw existing rights from such disfavored groups. The AGO states that twelve states, the District of Columbia and Puerto Rico give their residents access to driver's licenses without regard to immigration status. Those other state laws may call into question the extent to which there will ultimately be full enforcement of the REAL ID Act.

## **TECHNICAL ISSUES**

TRD notes that the emergency clause is not necessary. If the bill passes and is signed by the governor, NM can get an extension from DHS.

TRD suggests the following changes:

The language on page 6, line 5, should be amended to read: "...a passport from the applicant's country of citizenship or an identification card from any foreign consulate with which the department has established a reliable method of verifying authenticity, or a Matricula Consular card issued by either the consulate of Mexico in Albuquerque, New Mexico, or the consulate

general of Mexico in El Paso, Texas.”

The language on page 9, line 22, through page 10, line 4, and on page 22, lines 5 through 13, should be re-written to clarify that all driver’s licenses and identification cards issued to individuals with temporary lawful status should be marked “LIMITED TERM.”

CEM/jle/jo

Attachment: Driver’s License Issuance & Federal Real ID

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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 American Association of Motor Vehicle Administrators (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](https://www.oig.dhs.gov/assets/Mgmt/OIG_09-36_Mar09.pdf))