

LFC Requester:	Caroline Malone
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 01/18/2016
Original **Amendment** _____ **Bill No:** HB 94
Correction _____ **Substitute** _____

Sponsor: Reps. Garcia Richard and Bandy **Agency Code:** 305
Short **Person Writing** Ari Biernoff
Title: REAL ID Card **Phone:** 505-827-6086 **Email** abiernoff@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
HB 99 (Driver’s License Issuance & Federal REAL ID)
HB 123 (Driver’s Licenses & REAL ID Act Compliance)
HB 144 (Driver’s Licenses & REAL ID Act Compliance)

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

This bill proposes the creation of two separate systems of state identification cards: (1) a “REAL ID card,” i.e. an identification card that is compliant with the federal REAL ID Act of 2005 (“REAL ID Act”), and (2) existing “driver’s licenses and identification cards” which are not REAL ID Act-compliant.

The bill introduces new material and also would amend the Motor Vehicle Code, NMSA 1978, §§ 66-1-4.10, 66-1-4.15, and 66-8-1.1.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

HB 94 appears to be an effort to address the requirements of the federal REAL ID Act. The REAL ID Act establishes mandatory standards governing state issuance of secure driver’s licenses and identification cards.

The Motor Vehicle Code (as amended by HB 94) provides that a “‘license’ ... means any license ... issued or recognized under the laws of New Mexico pertaining to the authorizing of persons to operate motor vehicles.” Section 3(D). HB 94’s new language regarding REAL ID compliance never states that the Real ID cards would “pertain[] to the authorizing of persons to operate motor vehicles” or would be functional equivalents of (non-REAL ID compliant) driver’s licenses for purposes of operating motor vehicles. Similarly, HB 94 defines the REAL ID card only as “an identity document issued to a person who has lawful status,” Section 4(D). Therefore, whether by design or omission, HB 94 does not add language regarding REAL ID cards to the sections of the Motor Vehicle Code that pertain to the requirements for obtaining driver’s licenses, Sections 66-5-1.1 through -51.

Additionally, the changes proposed in HB 94 addressing the issuance of licenses and identification cards to foreign nationals and others conform to some but not all of the standards set forth in the REAL ID Act. Like the REAL ID Act, HB 94 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 HB 94 does not appear to address certain provisions set forth in the federal law. Under REAL ID, states must comply with all substantive provisions of the federal law to achieve "full compliance." 6 CFR Part 37.51. Any card issued by a state for personal identification purposes 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.

Examples of some possible inconsistencies between the requirements set forth in HB 94 and REAL ID include the following:

1. REAL ID generally requires that non-foreign national applicants provide proof of a valid Social Security number. *See* 6 CFR Part 37.11(e). While it is clear in HB 94 that applicants must furnish a Social Security number, it is not apparent that the applicant must provide satisfactory proof thereof.
2. 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. HB 94 does not include such a provision.
3. 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 HB 94.

While some of these issues may be within the scope of the Taxation and Revenue Department'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, it should be noted REAL ID does authorize states to issue licenses and identification cards that are not compliant with REAL ID. Thus, as proposed in HB 94, states may have tiers of identification cards, based upon whether a given identification card 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. HB 94, however, appears to require a person who is entitled to obtain a REAL ID-compliant identification card to also obtain a separate (non-REAL ID-complaint) driver's license if he or she wants to be able to lawfully operate a motor vehicle.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Because HB 94 does not indicate that REAL ID cards will be accepted for driving licensure purposes, the bill could pose an additional administrative burden on the Taxation and Revenue Department (since New Mexico residents might seek *both* a REAL ID-compliant identification card *and* a (non-REAL ID-complaint) driver's license).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

As of the present date, three other House bills address the same subject matter as HB 94: HB 99 (Driver's License Issuance & Federal REAL ID), HB 123 (Driver's Licenses & REAL ID Act

Compliance), and HB 144 (Driver's Licenses & REAL ID Act Compliance).

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

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. See N.M. Const. Art. II, § 18; U.S. Const. amend. XIV; see generally Alexander L. Mounts, Note, A Safer Nation? How Driver's License Restrictions Hurt Immigrants & Noncitizens, Not Terrorists, 37 Ind. L. Rev. 247 (2003). It is well-settled that non-citizens enjoy constitutionally-granted equal protection rights. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). 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. See, e.g., Breen v. Carlsbad Mun. Schools, 2005-NMSC-028, 138 N.M. 331.

The courts are especially skeptical of government actions which withdraw existing rights from such disfavored groups. See Romer v. Evans, 517 U.S. 620 (1996); Perry v. Brown, 671 F.3d 1052, 1079-1080 (9th Cir. 2012). HB 94 would almost certainly have the effect of preventing certain currently licensed foreign national motorists from maintaining driver's licenses, especially those unable to establish two years of presence in the State, or other criteria imposed on such applicants. If the courts of New Mexico or the United States find that legislation affronts basic constitutional protections, it will be invalidated. See, e.g., Griego v. Oliver, 2014-NMSC-003.

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.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Residents of states that 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.

AMENDMENTS