

LFC Requester:	Christine Boerner
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**AGENCY BILL ANALYSIS
2013 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:

Original Amendment
Correction Substitute

Date Jan. 24, 2013

Bill No: HB 144--305

Sponsor: Rep. Paul C. Bandy

Reviewing Attorney General's Office

Short Issue "REAL ID" Cards

fsdfs Analysis: Sean Cunniff, AAG

Title: _____

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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

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

BILL SUMMARY

Summary Synopsis: HB 144 proposes the creation of state-issued personal identification cards that comply with the requirements of the federal REAL ID Act of 2005 ("REAL ID"). The REAL ID cards would be issued in addition to other state identification cards and driver's licenses. The proposed legislation tracks many (but not all) of the myriad requirements of REAL ID by addressing the physical contents of the license, qualifications for applicants, REAL ID application form, duration of REAL ID cards, etc.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

While the proposed legislation mirrors many of the requirements set forth under REAL ID, it fails to address all issues set forth under 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 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. "Official purposes" are defined under REAL ID to include access to federal buildings and "boarding Federally-regulated commercial aircraft."

Examples of the inconsistencies between the rubric set forth in HB 144 and REAL ID include the following:

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. HB 144 contains no such provision.
2. REAL ID requires that states verify documents submitted by applicants used to establish identity. 6 CFR Part 37.13. HB 144 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 HB 144.
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 HB 144.

While many of these issues can be addressed by the Taxation and Revenue Department through rulemaking, 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 rules.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Although failure to comply with REAL ID will mean that state residents will not be able to utilize state-issued identification cards for federal “official purposes,” the law will not take effect until December 1, 2014. 6 CFR Part 37.5. Until REAL ID takes effect, New Mexicans can continue to use their state-issued identification cards for any federal purpose, including boarding aircraft regulated by the federal government.

However, the December 2014 deadline is not the only date governing state compliance. REAL ID also imposes a schedule by which states must initiate a compliance process with the federal government. 6 CFR Part 37.51. No date is currently in effect for initiating the compliance process, but the U.S. Department of Homeland Security envisions publishing a compliance schedule this fall. See DHS Press Release, “DHS Determines 13 States Meet REAL ID Standards,” Dec. 20, 2012.

AMENDMENTS NEEDED TO IMPROVE THIS BILL