

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 X **Amendment**
Correction **Substitute**

Date Jan. 24, 2013
Bill No: HB 161--305

Sponsor: Rep. William "Bill" R. Rehm **Reviewing** Attorney General's Office
Short Driver's Licenses for Foreign **Person Writing** Sean Cunniff, AAG
Title: Nationals **Phone:** 827-6469 **Email** scunniff@nmag.gov

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 161 amends several provisions of the Motor Vehicle Code effecting provisions related to driver’s license and state identification cards. With respect to foreign nationals seeking driver’s licenses or identification cards, the legislation proposes requiring applicants to furnish the state with a “unique identifying number” from a passport, visa, arrival-departure record, or other document issued by the federal government. The bill also proposes limiting the duration of licenses or identification cards issued foreign nationals to the authorized period of stay in the United States. In the event the period cannot be ascertained, the bill proposes an expiration date one year from the date the card or license is effective.

The bill also addresses criminal provisions related to the unlawful use of a license, including reclassifying certain conduct from misdemeanor to felony. Similarly, the bill clarifies that criminal sanctions related to fraud in the issuing of licenses and cards apply to both the state and private contractors. In addition, the bill addresses the contents of licenses and identification cards and the applications therefor, specifying the contents for both.

Finally, the bill proposes a new statutory section that requires the state to cancel any driver’s license issued to a person who cannot provide proof of a valid social security number. The bill enumerates certain procedures the state must follow, including providing notice to the person affected and providing a mechanism whereby a person can furnish the state with proof of a valid social security number.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

1. **REAL ID:** The federal REAL ID Act of 2005 (“REAL ID”) has implications for the changes proposed in HB 161. 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 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. 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 HB 161 addressing the issuance of licenses and identification cards to foreign nationals conform to certain general standards set forth in the REAL ID Act for secure licenses. Like REAL ID, HB 161 imposes the requirement that secure licenses and identification cards 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, much of the minutia set forth in HB 161 is at odds with REAL ID’s secure license standards. This includes the enumeration of documents in HB 132 that is proposed to establish a person’s identity and lawful status, see 6 CFR Part 37.11, the physical requirements for the license or identification card, see 6 CFR Parts 37.15, 37.17 & 37.19, etc.

Finally, it should be noted REAL ID authorizes states to issue cards that are not compliant with the Act. Thus, states may have “tiers” of cards, based upon whether a given card is in compliance with REAL ID. Non-compliant cards must be clearly identified as such and feature a design distinctive from compliant cards.

2. **Due Process and the Cancellation Provision:** The provision requiring the cancellation of certain licenses implicates the due process rights of license-holders. While the bill does include certain due process protections for license-holders, there is no opportunity for a person affected by a cancellation to seek a hearing. See Maso v. State Taxation & Rev. Dep’t, 2004-NMSC-28, ¶ 10, 136 N.M. 161, 164 (“Due process requires notice and an opportunity for a hearing before the State can suspend or revoke a person's driver's license.”). However, given the straightforward basis for cancellation in HB 161 (i.e. whether a person has a valid social security number), the protections set forth in the bill may be adequate. See generally Mills v. New Mexico State Bd. of Psychologist Exam'rs, 123 N.M. 421, 426 (N.M. 1997) (“The specific requirements of procedural due process depend on the facts of each case.”).

As our Supreme Court has counseled,

[T]hree factors [are] to be considered in determining what [due process] procedures are required: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Bd. of Educ. v. Harrell, 118 N.M. 470, 478 (N.M. 1994).

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

AMENDMENTS NEEDED TO IMPROVE THIS BILL