

LFC Requester:	Caroline Malone
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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{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. 14, 2015
Bill No: HB 32

Sponsor: Rep. Paul Pacheco
Short Title: Two-Tiered Driver's Licenses

Agency Code: Attorney General's Office
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

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.

BILL SUMMARY

HB 32 proposes the creation of two types, or “tiers,” of driver’s licenses and state-issued personal identification cards (“ID cards”): one type of licenses/ID cards that can be used for “official federal purposes” and one that cannot.

Certain different standards are proposed for applicants seeking driver’s licenses versus ID cards. Applications for the federally-compliant driver’s license (first tier) 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. A similar requirement is imposed on foreign nationals seeking the first tier identification card, but no social security number is required for other applicants seeking a first tier ID card.

Expiration standards proposed for first tier (federally-compliant) driver’s licenses and ID cards issued to foreign nationals are the same. Subject to certain exceptions, federally-compliant first tier licenses and identification cards issued to foreign nationals will expire on the date that the foreign national’s period of authorized admission in the United States expires. Renewals of such licenses/ID cards require the foreign national applicant to substantiate continued “lawful status” in the United States.

Eligibility for the “second” tier of licenses (not for federal purposes) is the same for both driver’s licenses and ID cards. Such licenses/ID cards may only be issued to applicants who have been granted “deferred action for childhood arrivals,” have resided in New Mexico for six months, have completed a driver’s education course, and who can provide proof of identity. Expiration for such second tier licenses/ID cards is the earlier of one year from the date the license is effective or the date of the applicant’s termination of deferred action for childhood arrivals.

Finally, the legislation clarifies the scope and nature of criminal penalties related to the issuance of driver’s licenses and state identification cards.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

HB 32 appears to be an effort (at least in part) to address the requirements of the federal REAL ID Act of 2005 (“REAL ID”), which is in the process of being implemented by the United States

Department of Homeland Security (“DHS”).

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. However, DHS has granted New Mexico an extension to achieve full compliance with REAL ID, thereby allowing federal agencies to continue accepting New Mexico-issued licenses and ID cards for the time being.

DHS has repeatedly delayed implementation of REAL ID, but issued guidance in late 2013 setting forth a new timeline for implementation. In that directive, DHS established a “phased enforcement plan” for the legislation. See Real ID Enforcement in Brief, United States Dept. of Homeland Security, Dec. 20, 2013. For certain limited “federal facilities,” initial enforcement is slated to begin on April 21, 2014, and scheduled to be fully implemented for all federal facilities by January 19, 2015. The universe of these federal facilities subject to the January 2015 deadline apparently includes federal buildings, other federally-owned properties, and nuclear power plants. A second round of enforcement, which is slated to begin “no sooner than 2016,” governs the use of identification cards to board aircraft regulated by the federal government.

The changes proposed in HB 32 addressing the issuance of licenses and identification cards to foreign nationals and others conform to certain standards set forth in the REAL ID Act for secure licenses. Like REAL ID, HB 32 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 32 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 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.

One noteworthy apparent conflict between the proposed legislation and REAL ID is the omission in the legislation of certain requirements for ID cards. For instance, unlike the requirements for driver’s licenses in HB 32, the legislation does not appear to require that social security cards be required for non-foreign nationals seeking “first tier” identification cards. REAL ID generally requires evidence of a social security number from such applicants. See 6 CFR Part 37.11(e).

Examples of other inconsistencies between the requirements set forth in HB 32 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 32 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 32 contains no such provisions.
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 32.

While many 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 32, 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.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

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 32 would almost certainly have the effect of preventing certain currently licensed foreign national motorists from maintaining driver's licenses, especially those lacking a designation of "deferred action for childhood arrivals." 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.

ALTERNATIVES

NA.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

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.

AMENDMENTS

Defining certain terms employed in the legislation may aid in clarifying legislative intent. Examples include terms such as “arrival-departure record,” “deferred action for childhood arrivals,” and “official federal purposes.”