

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1306

(Delegate Gutierrez, *et al.*)

Judiciary

Vehicle Laws - Federally Compliant Identification Cards - Issuance

This bill requires the Motor Vehicle Administration to issue an identification card that complies with the federal REAL ID Act to any eligible individual who applies for one, regardless of whether he/she already possess a driver's license or State-issued identification card. To be eligible for a federally compliant identification card under the bill, the applicant must be a resident of the State and either a U.S. citizen or lawfully present in the county pursuant to federal law.

Fiscal Summary

State Effect: Transportation Trust Fund expenditures would increase substantially beginning in FY 2009 to accelerate implementation of REAL ID. TTF revenues would increase by an amount necessary to recover the costs of REAL ID card issuance through issuance fees; however, Legislative Services notes that TTF revenues would not increase until card issuance could begin – at a later date.

Local Effect: None.

Small Business Effect: Potential meaningful impact to the extent that MVA contracts with Maryland small businesses to assist in the implementation of REAL ID.

Analysis

Bill Summary: The federally compliant identification card issued under this bill must in all respects comply with the federal REAL ID Act. Thus, MVA may only accept REAL ID compliant proof of age and identity documentation from an identification card

applicant, and the effective term of the card may not exceed the period for which the holder is lawfully present in the United States.

In addition to the existing card design and information standards required for State-issued identification cards, the federally compliant card must also contain a prominent notation on the card that states that it is “federally compliant.”

MVA is required to set a fee for the issuance of a federally compliant identification card at a level that enables it to recover its costs of complying with this bill; no fee revenues may be credited to the Gasoline and Motor Vehicle Revenue Account.

Current Law: An identification card issued by MVA may be used for any purpose as legal identification of the individual for whom it is issued. MVA is required to issue an identification card to any individual who • is a resident of this State; • does not have a driver’s license; • presents a birth certificate or other acceptable proof of age and identity; and • presents a complete application for an identification card on a form provided by MVA. If an identification card holder is issued a Maryland driver’s license, the holder must surrender the identification card at that time.

The identification card must contain the applicant’s • name and address; • birth date; • sex; • description; • color photograph under a procedure approved by MVA; and • signature. MVA is required to make the card tamperproof, to the extent possible, and with the signature and seal of the issuing agent.

An identification card expires after five years for applicants 16 years or older, or after two years for applicants younger than age 16. MVA may cancel an identification card if the holder was never entitled to be issued the card, failed to provide accurate or required information in the application, or obtained the card through a misrepresentation or fraudulent information.

Background: On May 11, 2005, President Bush signed into law the REAL ID Act that requires federal agencies to accept only personal identification cards that meet certain standards. The U.S. Department of Homeland Security issued final regulations in January 2008. Pursuant to these regulations, MVA will need to verify the identity and lawful status of each applicant for a driver’s license or identification card. The Maryland Department of Transportation has announced that Maryland will comply with REAL ID and MVA has been granted a deadline extension until December 31, 2009 for submission of an initial certification package.

Key Features of the REAL ID Act

Major elements of the Act's provisions as amplified by the final regulations are set forth below.

- *Implementation:* The final regulations, issued January 11, 2008, recognize the compliance difficulties that states faced under the initial deadlines in the Act and its proposed regulations. Under the final regulations, DHS requires the initial submission of a state certification package by May 11, 2008, and states would then be allowed to phase in the issuance of compliant ID cards over several years. The final regulations follow a bifurcated approach to this phase-in period depending on the age of the ID card applicant. Individuals younger than 50 on December 1, 2014 must have a REAL ID compliant card if they are to be authorized to use federal facilities. By December 1, 2017, anyone desiring to use federal facilities must have a compliant card. States must file requests for an initial extension no later than March 31, 2008. An additional extension may be granted until May 10, 2011 for states meeting key benchmarks for progress toward compliance as documented on a material compliance checklist and submitted no later than October 11, 2009. Maryland has filed for, and been granted, an initial extension for submission of its certification package until December 31, 2009.
- *Lawful Presence:* As part of the driver's license application process, all applicants would be required to establish their lawful presence in the United States through the production of one of the following identity documents: valid U.S. passport, certified copy of a birth certificate, Consular Report of Birth Abroad issued by the U.S. Department of State, Permanent Resident Card issued by DHS, employment authorization document issued by DHS, foreign passport with valid U.S. visa affixed, Certificate of Naturalization, Certificate of Citizenship issued by DHS, or such other documents as DHS may designate. This mandate would impose a new requirement for applicants of driver's licenses in Maryland and would require a statutory change by the General Assembly.
- *REAL ID Card Standards:* DHS had proposed that each state's ID card consist of a uniform set of nine data elements and security features; however, this uniformity requirement was eliminated in the final regulations.
- *Information Technology Systems Development:* Responding to privacy and security concerns, the final regulations clarified how the REAL ID information technology system would be structured. DHS has initiated a verification systems design project in consultation with the American Association of Motor Vehicle

Administrators and state representatives. The system is envisioned as a hub-based network with the current AAMVAnet system serving as the platform. Maryland and 47 other states currently verify Social Security numbers through AAMVAnet, and the other documents requiring verification under REAL ID could also be added to this system. DHS indicates that it has already begun work on additional security features such as end-to-end encryption and emphasizes that AAMVAnet is a private network with no connectivity to the Internet.

- *Security:* The final regulations clarify that a state-submitted consolidated security plan must address the security of only those facilities that are critical to the issuance, manufacturing, and production of identification. Thus, MVA personnel would be required to undergo background checks of criminal records but would no longer be subject to checks of financial records as formerly proposed. Enabling background checks for MVA personnel would require legislative action to revise current statutory law. In addition, the final regulations removed the independent adversarial security testing requirement for ID cards, but DHS is working to develop standard testing procedures for future voluntary use. DHS maintains that certain features are required for the surface of the card; although in lieu of certain card design standards, it has decided to accept state documentation of its fraud control measures. A barcode will be required, though states will not be required to secure the barcode with encryption technology.

State Actions

According to the National Conference of State Legislatures, five state legislatures have enacted legislation to comply with REAL ID and 22 have enacted laws rejecting compliance with REAL ID or urging the U.S. Congress to repeal the Act. The National Governor's Association, National Conference of State Legislatures, and AAMVA have been collaborating for several years to study the Act's provisions and fiscal impacts and to make recommendations to DHS. Generally, this coalition of state groups has been opposed to the Act, although AAMVA has urged its members to move forward with implementation. NCSL has not yet issued a revision to its official policy in opposition to REAL ID since final regulations were released.

In 2007, two states (Indiana and Nevada) enacted laws to comply with federal REAL ID standards. Three states (Nevada, Tennessee, and Virginia) appropriated money for REAL ID implementation. Some states have considered proposals to develop multi-tiered licensing systems or to subsidize the use of alternative forms of identification, such as the U.S. passport, which will serve the same purpose as a REAL ID. Altogether, legislators in 25 states proposed compliance legislation or alternative REAL ID bills in 2007.

State Expenditures: As noted, the Maryland Department of Transportation has announced that it will comply with the REAL ID Act. Therefore, the following cost estimate reflects an increase in expenditures but not necessarily an increase over expenditures that the State would eventually incur pursuant to its implementation of REAL ID; it is not yet clear when implementation would begin, or what approach MDOT would take. Nevertheless, the bill would accelerate implementation of REAL ID.

Legislative Services emphasizes that the following discussion of REAL ID implementation costs is not comprehensive. The Maryland Department of Transportation is expected to release its official cost estimate based on a complete analysis of the final regulations by March 31. Legislative Services also notes that the following cost estimate is based on a two-tier approach to driver licensing, but that cost estimates would differ if the State implements a one-tier approach in which all driver's licenses issued by the State are REAL ID compliant.

Information Technology

MVA advises that the cost associated with reprogramming its computer systems in preparation for implementing REAL ID would be approximately \$25 million between fiscal 2009 and 2013. This represents approximately 21% of the total cost estimate. The final DHS regulations estimate that data systems and information technology costs will comprise approximately 39% of the total cost to states of REAL ID implementation. Legislative Services advises that the definition of computer reprogramming provided by MVA may not be the same as the definition of data systems and information technology provided by DHS. Another possible explanation for the difference in the DHS and MVA estimates as to the share of information technology costs is that MVA's computer systems may require fewer changes to implement REAL ID than other state departments of motor vehicles.

Central Issuance

Central issuance is considered the most practical manner for reducing over-the-counter transaction times and start-up capital costs associated with the delivery of licenses. MVA advises that it would contract with a private vendor to conduct central issuance delivery of REAL ID compliant cards at a total cost of \$12,787,500 between fiscal 2010 and 2013. This cost represents approximately 11% of total implementation costs. Final DHS regulations indicate that card production and issuance would comprise approximately 24% of total implementation costs. This difference in estimates could be due in part to the inclusion of card production costs in the DHS cost estimate. Legislative Services notes that card production costs have not been separately accounted for in the MVA analysis. However, Maryland driver's licenses already contain many of the features

required by REAL ID; therefore, card production costs could be a relatively small share of total costs.

Personnel

MVA advises that the cost of hiring additional personnel could be \$67,353,465 or approximately 56% of overall costs. This reflects the cost of: • 900 additional contractual customer agents in fiscal 2010 and another 450 in fiscal 2011; • 90 additional supervisory positions in fiscal 2010 through 2013; • salary increases of \$7 million for some existing employees facing additional responsibilities; and • 38 additional permanent customer agents. Legislative Services advises that the cost could be reduced if the 90 additional supervisory personnel are made contractual, rather than permanent; this would be appropriate because after fiscal 2011, the 450 remaining customer agents would not be retained. The final regulations have not included personnel costs in their itemized cost estimate.

Legislative Services advises that personnel costs could be substantially lower if a different assumption is used concerning the issuance period of REAL ID cards. One of the greatest factors in reducing the overall cost estimate between the proposed and final DHS regulations was the introduction of an extended and bifurcated phase-in period for card issuance. In this way, state departments of motor vehicles could maintain existing renewal cycles while administering the issuance of REAL ID compliant cards.

MVA's analysis proceeds under the assumption that 75% of all existing driver's license and identification card holders would be issued REAL ID compliant cards in a two-year period. If the number of card applicants were reduced by 56%, or the approximate number of applicants born before December 1, 1964, and the remaining number of applicants were spread over a five-year period, substantially fewer additional personnel would likely be needed.

Legislative Services also notes that any cost estimate should account for additional specialized personnel capable of handling each of the various requirements of REAL ID and to train the customer agents tasked with administering all newly required tasks under REAL ID.

Equipment and Supplies

MVA advises that the total cost of supplies and equipment could be \$9,828,330 or about 8% of overall costs. This estimate includes the cost of providing office supplies and furniture for the additional personnel. As noted, personnel costs could be much lower than estimated, and therefore the cost of personnel-related supplies and equipment could

also decrease substantially. However, the vast majority of this estimate, approximately \$8 million, reflects the cost of advanced scanning technology needed to process verification transactions. The itemized cost estimate provided in the DHS regulations does not contain a separate entry for scanning technology or for specialized equipment; therefore, there is no relevant figure for comparison to the MVA analysis.

Public Awareness

MVA advises that it could expend \$1.5 million to conduct a public awareness campaign about how REAL ID implementation would affect the driver's license and identification card issuance and renewal process. This is another cost that is not set out specifically in the DHS regulations. However, for comparison purposes, this public awareness campaign is estimated to cost about 10 times that of other public awareness campaigns previously envisioned by MVA in other fiscal analyses, including ones to educate the public about the registration of off-highway recreational vehicles or for the imposition of a lawful presence requirement for driver licensure.

Physical Capital

Legislative Services advises that the cost of building acquisition or modification could require substantial TTF expenditures. MVA estimates that the rental costs necessary to support the additional personnel necessary could be \$3,213,000. As noted above, the number of additional personnel required could be substantially lower than the estimate provided by MVA, in which case, the rental cost would decrease commensurately. Nevertheless, even a relatively small number of additional personnel could require MVA to acquire additional building units or expand its existing facilities at significant cost including for utilities, maintenance, and operating expenses.

Notwithstanding the need for any additional workspace, final DHS regulations require that key MVA facilities be tested for security vulnerabilities and modified accordingly. Although the final regulations reduced the scope of facilities that would be required to undergo security-related modifications, any facility responsible for card production or issuance, or information protection, would be subject to REAL ID security standards. The cost associated with such building modification has not been accounted for in the MVA analysis but would likely be significant.

Verification Transactions

MVA has accounted for several of the component costs associated with REAL ID identity verification requirements in its cost estimate. Notably, it has factored in the additional personnel, supplies, and equipment necessary to conduct the verification

transactions. Additionally, verification-related computer systems and reprogramming costs have also been taken into account. However, the estimate did not discuss the transaction costs to use the federally maintained verification systems.

Although the final REAL ID regulations have been released, DHS has not yet developed a final information technology platform on which data verification will occur. Currently, DHS is working with AAMVA, the U.S. Department of Transportation, and other organizations on a verification systems design project. The platform will be a hub-based network based primarily on the AAMVAnet array of existing data verification systems. For example, AAMVAnet currently supports the Social Security On-Line Verification system, the Electronic Verification of Vital Events system, and the Commercial Drivers License Information System among other databases. These systems, in conjunction with DHS's Systematic Alien Verification for Entitlements system, could support most of the REAL ID objectives. However, access to each of these systems is not free; there are per-transaction fees and maintenance and other charges. While the cost structure associated with access to these systems may change considerably following integration with a final REAL ID verification system, the overall cost to the State could still be significant and should be accounted for.

State Revenues: The bill requires MVA to recover its costs in providing REAL ID compliant cards. In this way, MVA would set the fee for REAL ID card issuance at a level that reflects only the cost of providing REAL ID cards and not any other MVA costs. For *illustrative purposes only*, if MVA anticipated an issuance of 3,875,000 cards over the five-year period between fiscal 2009 and 2013 and anticipated costs of \$121,503,343, the fee charged per card could be set at \$31.36. These figures are based on the estimate provided by MVA. However, as noted above, this estimate does not accurately account for the total cost of REAL ID implementation. In addition, Legislative Services advises that the fee charged under the bill's cost recovery provision could change depending on how costs are characterized by MVA; distinguishing between costs incurred under this bill and costs incurred to produce driver's licenses and nonfederally compliant identification cards would depend on MVA's accounting methods.

Legislative Services advises that TTF would have to cover costs for REAL ID implementation before REAL ID card issuance could begin. Therefore, TTF revenues under the bill would not likely cover expenditures until fiscal 2011 or later. Such TTF revenues would likely be significantly greater than expenditures in fiscal 2012 and 2013.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Office of the Attorney General, National Conference of State Legislatures, Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2008
ncs/ljm

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510