

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 576

(Senator Forehand, *et al.*)

Judicial Proceedings

REAL ID Act of 2005 - Implementation of Regulations or Policies - Expenditure
of Funds

This bill prohibits the Maryland Department of Transportation and the Motor Vehicle Administration from expending any funds, beginning with fiscal 2009, for the implementation of any regulations or policies intended to bring the State into compliance with the federal REAL ID Act of 2005.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: No effect in FY 2009 as funding is not included in the budget; however, an estimated \$60 million in Transportation Trust Fund expenditures would not be incurred between FY 2010 and 2017 if Maryland is prohibited from implementing REAL ID. Corresponding fee increases to raise sufficient revenues would not be implemented. A more accurate final cost estimate is expected to be released by MVA by March 31, 2008.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: On May 11, 2005, President Bush signed into law the REAL ID Act. The Act requires federal agencies to accept only compliant personal identification (ID) cards for official purposes (*e.g.*, boarding aircraft or entering federal

facilities). The legislation contains a number of provisions outlining broad requirements for the composition and issuance of ID cards, as well as the development of information technology systems to enhance document authentication and data verification capabilities. Although it is recognized that compliant states will be required to expend substantial sums of money, the U.S. Congress has explicitly stated that REAL ID is binding only upon the federal government and not the states.

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, The U.S. Department of Homeland Security 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 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 (AAMVA) 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. Finally, 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.

Economic Impact of Implementation

According to the cost estimate released with the final regulations, implementation of the REAL ID Act will cost the states approximately \$4.0 billion, a reduction of 73% from the estimated cost of implementing the proposed regulations. Another \$5.8 billion would be paid by individuals directly and \$171 million would be paid directly by the federal government. The regulations estimate that new customer services would total \$970 million or 24.5% of total state costs, card production would total \$953 million or 24% of total state costs, and information technology systems would total \$1.5 billion or 38.6% of total state costs. According to MVA, the most recent cost estimate for

Maryland, based on the proposed regulations, is between \$60 and \$80 million, or an additional \$15 per license charge over the current cost of a Maryland driver's license.

State Actions

As of January 2008, 12 state legislatures had enacted laws rejecting compliance with REAL ID or urging the U.S. Congress to repeal the Act. An additional 12 states had similar legislation pending. The other 26 states had either defeated such legislative proposals or proceeded to study compliance and implementation of 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 continues to urge 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.

State Fiscal Effect: As of February 2008, the Governor and MDOT have indicated that Maryland plans to comply with REAL ID. Therefore, significant TTF expenditures would not be incurred if Maryland did not implement the Act. Under MVA cost-recovery provisions, MVA would need to recoup the costs of implementing the Act through its miscellaneous fees. Assuming that MVA would have otherwise raised its fees to recover its costs and would no longer do so, TTF revenues would not have to increase.

As noted above, following the release of the proposed regulations, MVA estimated the cost of State implementation of REAL ID at between \$60 and \$80 million. MVA is still reviewing the final regulations and has not yet produced a revised final cost estimate but advises that the former range of cost estimates is still reasonable. Since the final regulations indicate a significant reduction in overall state implementation costs, Legislative Services will proceed with the analysis assuming that the final cost will be approximately \$60 million, the low end of the preliminary cost estimate range.

No information is available regarding the schedule of how or when implementation funds will be expended. Therefore, it is assumed that the \$60 million will be expended at a constant rate over the eight fiscal years before the final compliance deadline, for an annual TTF expenditure of \$7.5 million between fiscal 2010 and 2017. Thus, under the bill, \$7.5 million in annual TTF expenditures would not be incurred.

It should be noted that these estimates reflect potential expenditures and not amounts that have been proposed or appropriated. To date, approximately \$1,609,000 has been expended by MVA for implementation planning. No funds have been appropriated for REAL ID implementation in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Department of Legislative Services

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