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The Forum for America's Ideas

Donna D. Stone
State Representative
Delaware
President, NCSL

Sharon A. Crouch Steidel
Director, Information Systems
Virginia House of Delegates
Staff Chair, NCSL

William T. Pound
Executive Director

COMMENTS OF

Jeremy D. MEADOWS

Senior Policy Director: Trade & Transportation

State-Federal Relations Division

National Conference of State Legislatures

REGARDING

REAL ID

BEFORE THE

National Association of County Recorders, Election Officials and Clerks (NACRC)

National Association of Counties' (NACo) Legislative Conference

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Washington, D.C.

Denver
7700 East First Place
Denver, Colorado 80230
Phone 303.364.7700 Fax 303.364.7800

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org

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Thank you for the invitation to speak to the National Association of County Recorders, Election Officials and Clerks this morning on the occasion of your 2008 Legislative Conference on the topic of REAL ID. I am Jeremy Meadows and I lobby transportation issues on behalf of the National Conference of State Legislatures (NCSL).

In my comments today, I would like to:

1. give you a brief history of REAL ID,
2. share with you some quick impressions of the final regulations,
3. provide a snapshot of NCSL's work on REAL ID and developments in Congress, and
4. note what actions states took in 2007 and so far in 2008 on REAL ID.

But first I want to assure you that REAL ID is not the only impetus for improving the security and reliability of state-issued identity credentials. States have been moving to improve systems and ID documents since even before September 11th. Indeed, the Department of Homeland Security (DHS) recognizes in the REAL ID final regulations "that many states have made significant progress in improving the integrity of their licenses" (p. 222).

And I look forward to your questions and discussion at the conclusion of my remarks.

A Brief History of REAL ID

When the 9/11 Commission issued its final report, it suggested that:

"Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification document is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists" (p. 390).

Congress acted to realize the Commission's recommendation, and in December 2004, President George W. Bush signed into law the National Intelligence Reform Act of 2004 (P.L. 108-458). The law, among other things, required the U.S. Secretary of Transportation to establish a negotiated rule making process to establish minimum standards for state-issued driver's licenses (DL) and identification cards (ID).



The group assembled to undertake the negotiated rulemaking process – including state officials, privacy advocates, information technology experts, federal transportation and homeland security officials, and others – met once before the process was stopped by REAL ID. REAL ID mandates that states issue state driver's licenses and identification cards pursuant to federal minimum standards; if states do not comply, their IDs will not be accepted for federal purposes, which includes boarding commercial aircraft, entering federal buildings, entering nuclear power plants, or other purposes designated by the Secretary of DHS.

The REAL ID Act of 2005 sailed through Congress and landed on the president's desk, without a hearing in either house, as part of the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005." It was signed into law on May 11, 2005. Nearly three years later and just 120 days before the statutory implementation date of May 11, 2008, DHS issued on January 11, 2008 the final regulations to guide states' implementation of the act.

The Final Regulations

The good news is that the final rules seem to offer much more flexibility for states than was originally proposed in the draft regulations, which were issued on March 1, 2007 and on which comments were accepted through May 8, 2007. Based on this flexibility, DHS has re-estimated the 10-year costs to states at just under \$4 billion, down \$10 billion from the original \$14 billion estimate. In September 2006, NCSL, the National Governors Association (NGA) and the American Association of Motor Vehicle Administrators (AAMVA) estimated the five-year cost of REAL ID to be \$11 billion.

The final rules still require states to ensure that all applicants are legally in the country and to verify applicants' documents using electronic databases (some of which are still under development). States are required to store copies of these documents and to make their department of motor vehicle (DMV) databases available to all other states. States must conduct background checks on certain DMV staff and secure the facilities where licenses are produced and where information and materials are stored.

So then, what flexibility produces a \$10 billion cost savings? The new rules are much less prescriptive, allowing states to develop their own security plans and to self-certify compliance with



most of the requirements. Gone are the rigid prescriptions for the security features of the identification card itself, replaced by several options from which states can choose. And, as states ease into issuing REAL IDs, they will now be able to do so over six years, starting with people born after 1964.

States can request an extension of the May 11, 2008, deadline, which will be valid through December 31, 2009. If a state takes steps toward complying, a second extension can be requested, which will run through May 10, 2011. During these periods, licenses from states with extensions will be accepted by DHS for official federal purposes such as passing through airport security and entering federal buildings and nuclear power plants. States must begin issuing REAL IDs on May 11, 2011, and are expected to have enrolled everyone born after 1964 by 2014, completing the entire enrollment process by December 1, 2017.

The bad news is that privacy issues and costs remain major concerns and money from Washington is barely a trickle. Until the President's latest budget proposal, the administration and DHS had never requested funding for state costs in the president's budgets. DHS has authorized states to use State Homeland Security Grant Program (SHSGP) funds for REAL ID, but this money is largely already spoken for by other state homeland security priorities. Congress has appropriated only \$90 million since FY 2006, leaving states to absorb the difference or pass on the cost to residents. The President's budget proposal for FY2009 zeroes out the grant program for states that Congress created in FY2008, instead makes REAL ID one of the eligible programs for a new \$110 million National Security and Terrorism Prevention Grant program, while at the same time slashing the SHSGP program by 78% (FY2008 appropriations were \$890 million and the President requested \$200 million for FY2009). NCSL's Executive Director, Bill Pound, has said that REAL ID represents "federal standards, and they deserve federal dollars."

Snapshot of NCSL and Congressional Activity

At the Nashville Annual Meeting in 2006, state legislators adopted a policy calling on Congress to "fix and fund" the REAL ID by December 31, 2007 or NCSL would call for the repeal of the act. The "fixes" needed were derived from a September 2006 study conducted by NCSL, NGA, and AAMVA to determine the anticipated cost to states to implement REAL ID and the elements states needed to see in the implementing rules to make REAL ID operable. "Fixes"

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included changed and more lenient timelines, measures that allow states to 'manage the lines' at DMVs, as well as connectivity and verification system issues. That September 2006 report estimated state costs - NCSL's "fund" request - at over \$11 billion for the first five years.

Before the close of the 109th Congress in December 2006, United States Senators Akaka of Hawaii and Sununu of New Hampshire introduced legislation that repealed REAL ID and returned to the negotiated rulemaking process that preceded it. When the 110th Congress dawned in 2007, Senators Akaka and Sununu were joined by Senators Leahy, Baucus, and Tester to reintroduce their 'repeal and replace' legislation. Senator Akaka invited NCSL to testify before his Senate Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia; then NCSL President and Texas State Senator Leticia Van de Putte represented NCSL on the March 2007 panel. Congressman Allen of Maine introduced similar legislation in the U.S. House. Senator Snowe of Maine introduced legislation to delay the implementation of the REAL ID and require the Department of Homeland Security "to take into account the concerns and challenges associated with states' compliance" with the implementation of the Real ID. Some other bills have been introduced suggesting more stringent means for encouraging states to comply with REAL ID. There has also been legislative language that attempted to expand the use of REAL IDs -- some bills have called for states to use REAL IDs for voter registration purposes and one immigration bill funding item linked REAL ID to employment eligibility. Thus far, the only action taken in the 110th Congress has been to provide \$50 million for state REAL ID implementation costs and, in the Court Security Improvement Act (Public Law No. 110-177), to exempt federal judges from REAL ID's address of principle residence requirements in order to provide increased protection.

538 SEC. 508. INCREASED PROTECTION OF FEDERAL JUDGES.

539

540 (a) Minimum Document Requirements.--

541 (1) Minimum requirements.--For purposes of section 202(b)(6) of
542 the REAL ID Act of 2005 (49 U.S.C. 30301 note), a State may, in the
543 case of an individual described in subparagraph (A) or (B) of
544 paragraph (2), include in a driver's license or other
545 identification card issued to that individual by the State, the
546 address specified in that subparagraph in lieu of the individual's
547 address of principle residence.

548 (2) Individuals and information.--The individuals and addresses
549 referred to in paragraph (1) are the following:

550 (A) In the case of a Justice of the United States, the
551 address of the United States Supreme Court.

552 (B) In the case of a judge of a Federal court, the address
553 of the courthouse.

554 (b) Verification of Information.--For purposes of section
555 202(c)(1)(D) of the REAL ID Act of 2005 (49 U.S.C. 30301 note), in the
556 case of an individual described in subparagraph (A) or (B) of
557 subsection (a)(2), a State need only require documentation of the
558 address appearing on the individual's driver's license or other



⁵⁵⁹ identification card issued by that State to the individual.
(excerpted from GalleryWatch.com's text of the bill)

When the long-awaited draft regulations were issued in the spring of 2007, NCSL analyzed the regulations and provided state legislators with short one- to four-page briefs on various aspects of the rules, which were extremely prescriptive and inflexible. NCSL again joined with NGA and AAMVA to submit joint comments before the May 8, 2007 comment deadline. NCSL has been testifying regularly before state legislative Committees and providing briefings on REAL ID.

NCSL's "Fix and Fund" policy was renewed at the 2007 Annual Meeting in Boston with additional language regarding privacy protections and specification that NCSL sought "fixes" at least \$1 billion for state start-up costs by December 31, 2007, at which point NCSL would call for repeal. In October 2007, DHS began to advise stakeholders that the final regulations were imminent and that they had heard the comments of states. In fact, Richard Barth, DHS Assistant Secretary for Policy Development, briefed NCSL's Officers in October, recorded a podcast for the NCSL website in November, and spoke to NCSL's Fall Forum in Phoenix. At the Fall Forum, NCSL's "Fix and Fund" policy was further tweaked so that if the December 31, 2007 deadline was not met, NCSL would call for the repeal of REAL ID and a return to the negotiated rulemaking process.

Now that the final rules have been issued, NCSL is analyzing the rules and disseminating briefs. NCSL is also assessing the "fixes" attained in the final regulations and how to best carry forward NCSL's lobbying policy.

You can access NCSL's policy positions, Senator Van de Putte's testimony, the NCSL-NGA-AAMVA studies and statements, links to the referenced congressional legislation, as well as much more information on REAL ID at www.ncsl.org/realid.

A State Rebellion?

In 2007, 44 states considered approximately 145 bills or resolutions related to REAL ID. Legislation passed in 25. Twenty-one states passed measures that either prohibited state compliance with the act or urged Congress to amend or repeal it. Maine, Montana, New Hampshire, Oklahoma, South Carolina and Washington passed laws that strictly prohibit state agencies from complying. Idaho appropriated \$0 for its implementation in 2008, and legislative chambers in 15 states passed resolutions or memorials that urged Congress to amend or repeal REAL ID, or indicated the state's

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intent to not comply. Georgia lawmakers authorized the governor to delay implementation unless certain conditions are met.

Only Indiana and Nevada expressly decided to bring their states closer to compliance, though the Ohio General Assembly directed the Ohio Department of Public Safety to request an extension for REAL ID compliance and Tennessee appropriated funds for REAL ID implementation.

So far this year, 37 bills have been introduced in 19 states regarding REAL ID. NCSL's database of state REAL ID legislation identifies 11 bills in 5 states as working toward compliance. NCSL shows 13 bills in 10 states as anti-REAL ID and refusing to comply.

DHS has indicated that requesting the first of the two possible deadline extensions does not require states to commit to implementing REAL ID. DHS' webpage, updated as of February 15th, shows 45 of 51 jurisdictions having requested and received these initial extensions; Delaware, Maine, Montana, New Hampshire, and South Carolina have not yet been granted extensions. I understand that New Hampshire has submitted a letter requesting an extension while simultaneously stating that the state will not comply with REAL ID and that Delaware has requested and received an extension. Word from several of these states -- particularly Montana and South Carolina -- is that they will not be reversing their position in opposition to REAL ID, but how states will ultimately react to the final rules and the remaining DHS-estimated price tag of \$4 billion remains to be seen.

In closing, NCSL's next meeting for policy purposes will be our Spring Forum, here in Washington, at the end of April and I don't know yet whether NCSL's policy on REAL ID will change in the wake of the final rules and states' applications for initial extensions. NCSL will continue to monitor state reaction and developments on Capitol Hill or within DHS and to keep our REAL ID web page (www.ncsl.org/realid) updated. Thank you again for the opportunity to speak with you today, and I look forward to your questions.

