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REGARDING

REAL ID

BEFORE THE

Intergovernmental Affairs Committee

Pennsylvania House of Representatives

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Majority Chairman Thomas, Minority Chairman Steil, and honorable members of the Pennsylvania House Committee on Intergovernmental Affairs, thank you for the invitation to speak with you today about the REAL ID. I am Jeremy Meadows and I lobby transportation issues on your behalf in Washington, D.C. for the National Conference of State Legislatures (NCSL).

As you know, NCSL is your association – all fifty state legislatures are members – and we are proud to count all 7,400 elected legislators as well as all the 30,000+ staff who help you with your work as our members. NCSL was created in 1975 with three primary goals:

1. To foster interstate communication among state legislators and staff on issues of common concern;
2. To strengthen the capacity of state legislatures to play their appropriate and laudable constitutional roles; and
3. To lobby on behalf of state legislatures, and states writ large, in Washington, D.C.

For NCSL to lobby an issue, state legislators from three-quarters of the states must agree on a position. You and your elected colleagues determine not just what NCSL's lobbying priorities should be, but what message you want us to deliver to Congress and the federal Administration on your behalf. Since 2006, you have provided NCSL with clear guidance on REAL ID, and even DHS credits your engagement for dramatically altering the REAL ID final regulations.

In my testimony 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 state legislatures took in 2007 on REAL ID.

But make no mistake, REAL ID is not the only driver 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, on January 11, 2008, DHS issued 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 and the American Association of Motor Vehicle Administrators 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 costs remain a major concern and money from Washington is barely a trickle. The administration and the Department of Homeland Security have never requested funding for state costs in the president's budgets. DHS has authorized states to use State Homeland Security Grant Program funds for REAL ID, but this money is largely already spoken for by other 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. NCSL's Executive Director 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, the National Governors Association (NGA), and the American Association of Motor Vehicle Administrators (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" 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. Thus far, the only action taken in the 110th Congress has been to provide \$50 million for state REAL ID implementation costs.

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 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, and spoke to NCSL's Fall Forum in Phoenix. At the Fall Forum in Phoenix, 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 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

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extension for REAL ID compliance and Tennessee appropriated funds for REAL ID implementation.

So far this year, eleven bills have been introduced in eight states regarding REAL ID. Several move states toward compliance while others prohibit compliance, notably Pennsylvania Senate Bill 1220, introduced by Senator Mike Folmer.

DHS has indicated that requesting the first of the two possible deadline extensions does not require states to commit to implementing REAL ID, so many states have requested that first extension. But the states that acted to opt out last year show no signs of reversing their position. How states will react to the final rules and the remaining DHS-estimated price tag of \$4 billion remains to be seen.

In closing, NCSL's policy process will continue to determine NCSL's posture on REAL ID, and I encourage you to be involved in that process so that your and Pennsylvania's interests are factored into the debate. NCSL will continue to monitor state reaction and developments on Capitol Hill or within DHS, and we look forward to remaining a resource to you as you consider Pennsylvania's best course of action. Thank you again for the opportunity to appear before you today, and I look forward to your questions.