

The Identity Project

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April 25, 2017

The Honorable Neal Foster, Co-Chair
The Honorable Paul Seaton, Co-Chair
House Finance Committee
Alaska Capitol Building
Juneau, AK 99801

by email: Representative.Neal.Foster@akleg.gov
Representative.Paul.Seaton@akleg.gov
housefinance@akleg.gov

Re: Financial and other implications of the REAL-ID Act

Thank you for this opportunity to provide testimony in response to questions raised by members of the House and Senate Finance Committees about HB74 and SB 34, proposals for Alaska to comply with the Federal REAL-ID Act of 2005.

This testimony is submitted on behalf of the the Identity Project (PapersPlease.org), a nonprofit legal and educational organization which has been active in research and reporting on the implementation of the REAL-ID Act throughout the US.

1. How much will it cost for Alaska to comply with the REAL-ID Act?

Nobody knows how much it will cost for Alaska to comply with the REAL-ID Act, and many of the costs are not included in the Fiscal Notes for HB74 and SB34.

The Alaska Department of Administration and the DMV have testified at earlier hearings that participation by Alaska in the S2S communications system and uploading of information about all Alaska driver's licenses and state ID cards to the SPEXS database are necessary for Alaska to comply with the REAL-ID Act. The SPEXS database was developed to enable states to comply with the data-sharing requirements of the REAL-ID Act. No other system exists or is under development that will enable any state to comply.

But none of the costs of SPEXS participation are included in the Fiscal Notes.

The Department of Administration has testified that the costs of “existing” systems in which Alaska “already” participates, including SPEXS, are “baked in” to other portions of the budget. The Department of Administration and the DMV have not said how much they project those costs to be, or what the basis is for those projections.

Data about Alaskans was uploaded to SPEXS on January 28-29, 2017, in order to be able to comply with the REAL-ID Act (and despite state law forbidding any state spending on implementation of the REAL-ID Act). At that time, SPEXS was still considered a pilot project, with only 14 states and less than 15% of the U.S. population.

SPEXS is approximately ten years behind its original schedule. When the REAL-ID Act was enacted in 2005, SPEXS was expected to be in operation, with all U.S. jurisdictions participating, by 2008. Today, 10 years later, SPEXS is barely out of the “pilot project” phase, and not expected to include all states for at least several more years.

No information about the SPEXS budget, total costs and budget overruns to date during the “pilot project” period, projected future costs, or the basis for those projections has been made public by Alaska, any other state, or AAMVA.

The SPEXS “pilot program” was funded by Federal grants through March 1, 2017. A new governance body for SPEXS was created by AAMVA on March 1, 2017.

Because AAMVA is a private organization not subject to the Freedom Of Information Act or any state public records law, AAMVA is not required to make public, and has not made public, any of the governance documents for SPEXS, any decisions or records of meetings of the new governance body (if there have been any such meetings – a closed meeting of the SPEXS governance body, possibly the first such meeting, is scheduled for this Thursday, April 27, 2017), or any of the fees for SPEXS participants.

Alaska has not yet begun to have to pay its (unknown) share of SPEXS costs. SPEXS fees will be determined by AAMVA, not Alaska. Because withdrawal from SPEXS would automatically and immediately make Alaska “noncompliant” with the REAL-ID Act, Alaska will have no choice but to pay whatever AAMVA demands to remain in SPEXS, if Alaska wants to comply with the REAL-ID Act.

Alaska has only one vote in AAMVA and SPEXS governance. Additional SPEXS costs – and other additional costs to Alaska – could be necessary if other states participating in SPEXS decide to expand SPEXS functions or what data is included in SPEXS records, or if the DHS, in the “discretion” given to it by the REAL-ID Act, decides to require additional data sharing or functionality for the national database as a condition of REAL-ID Act compliance, waivers, or extensions.

AAMVA is a nonprofit organization, but SPEXS has been developed by a for-profit contractor, Clerus Solutions, founded by former AAMVA executives who had been involved in drafting the REAL-ID Act and developing the plans for the SPEXS database.

The sole-source contract between AAMVA and Clerus Solutions for SPEXS development, deployment, and operational support has not been made public.

A commitment by Alaska to comply with the REAL-ID Act is a commitment to unknown and unpredictable future costs of mandatory participation in a system operated by a sole-source for-profit contractor not subject to direct oversight by Alaska, and the functions, cost, and scope of which will be determined by other states and the DHS.

2. Do you or will you need ID to pass through TSA checkpoints at airports?

No. According to DHS and TSA statements in court and findings by Federal courts that have reviewed the secret “Security Directives” issued by the TSA, no current Federal law, regulation or “Security Directive” requires airline passengers to show any ID to pass through TSA checkpoints or board domestic airlines flights within the U.S.

Documents released to us last month by the TSA in response to a request we made four years ago under the Freedom Of Informations Act show that on average, 77,000 people each year — more than 200 a day — pass through TSA checkpoints without showing ID. Ninety-eight percent of the would-be travelers who show up at TSA checkpoints without ID or with “unacceptable” ID are allowed to board their flights, after additional questioning that takes an average of between seven and nine minutes.¹

No bill proposing to impose an ID requirement for domestic air travel has been introduced in the current or any other recent session of Congress.

No official notice of any proposed regulation to impose an ID requirement for domestic air travel has been promulgated by the DHS, TSA, or any other Federal agency.

No court has ever ruled on, much less upheld, any such law or regulation. If such a law, regulation, or “Security Directive” were proposed, it would be highly vulnerable to Constitutional challenge in Federal court – especially by the state of Alaska, in light of the absence of alternatives to air transportation in many parts of Alaska.²

Threats by the DHS, TSA, or state officials about what Congress “will” do to impose new requirements are mere speculation not based on any current or proposed law.

1 “Yes, you can fly without ID”, April 13, 2017,
<<https://papersplease.org/wp/2017/04/13/yes-you-can-fly-without-id/>>

2 See our detailed discussion of this case law in our testimony to the House State Affairs Committee, “Alaska and the right to travel by air” (April 4, 2017), available at <http://www.akleg.gov/basis/get_documents.asp?session=30&docid=15744> or <<https://papersplease.org/wp/wp-content/uploads/2017/03/Alaska-right-to-travel-4APR2017.pdf>>

The DHS can issue speculative press releases or notices that omit mention of the procedures for air travelers who don't have ID. But the DHS does not control Congress.

3. How does a passport card compare with a compliant driver's license or ID?

A passport card is valid for every purpose (except, of course, driving) for which a compliant driver's license or state ID card is valid. A passport card is also valid for land or maritime travel to Canada or Mexico, for which even a compliant state ID is not.

You can travel by road through Canada between Alaska and other states, or get off the ferry in Prince Rupert, with a passport card – but not with a “compliant” state ID.

(Neither a passport card nor any state ID is valid for any international flights.)

People who compare the difficulty, cost, and time currently required to obtain a (noncompliant) Alaska driver's license or state ID card with that of obtaining a passport are comparing apples and oranges. The relevant comparison is between obtaining a compliant driver's license or ID card, if this bill passes, and obtaining a passport card.

A passport card is easier to obtain than a compliant state ID. Any U.S. citizen who has trouble getting a passport card will have more trouble getting compliant state ID.

To apply for a compliant driver's license or state ID, you have to go to a DMV office, in person, with the original copies of **four** documents:

1. Birth or naturalization certificate or other evidence of U.S. citizenship
2. Evidence of your identity (which must be in the form of an ID card or document)
3. Evidence of your residence in Alaska
4. Original Social Security card

To apply for a passport card if you don't already have a passport, you have to go to a designated Post Office, in person, with only **one or two** of these documents:

1. Birth or naturalization certificate or other evidence of U.S. citizenship
2. Evidence of your identity (which can be provided by an identifying witness)

Unlike applying for a compliant state ID, applying for a passport card doesn't require showing a Social Security card. Many people don't have their original Social Security card. Many forms require you to provide your Social Security number, but there is almost no other purpose for which people are required to show their Social Security card. Even the Social Security Administration says that, “you may not need to get a replacement card. Knowing your Social Security number is what is important.”³

3 “Learn what documents you need to get a Social Security Card”,
<<https://www.ssa.gov/ssnumber/ss5doc.htm>>

To get a replacement Social Security Card, you need to either go to a Social Security office in person, or mail in your original documents – including your original or certified birth certificate and your current driver’s license or other ID – and wait up to two weeks for processing, plus another week or so to get your new card back by mail.

Needing to show ID to get a new Social Security card in order to get compliant state ID can be a Catch 22 for people who don’t currently have any ID, such as elderly people or people who don’t drive and whose previous ID has expired.

Typically, the solution for people in this situation who need ID is to get a passport or passport card. A passport card doesn’t require a social security card or any previous ID card, and you can have an identifying witness vouch for your identity for a passport card.

Unlike compliant state ID, a passport card does not require any evidence of your place of residence, which can be difficult for migrants or seasonal workers to obtain.

A passport card sometimes takes longer to obtain than a compliant state ID, but not always, especially if you need to get a birth certificate, then a marriage certificate if you changed your name at marriage, then a replacement Social Security card, and documentary evidence of your residence, before you can apply, and then wait two weeks after that for your compliant state ID to be produced and delivered from Indiana.

We hear regularly from people who have found it difficult or impossible to obtain ID in states that have implemented document requirements and procedures that comply with the REAL-ID Act. Most often, these are people who don’t have their original birth and/or marriage certificate, and have difficulty obtaining a copy of it, especially from a vital records office in another state, unless they already have ID.

The people most adversely affected by REAL-ID Act compliance include the elderly, people who were born at home, people who have moved far from their place of birth, and people who can’t afford to wait months to obtain documents from other states.

Compliance by Alaska with the REAL-ID Act will not help these people. Alaska can best help its residents by challenging any attempt to restrict their rights.

I am available to you or to other members of your Committee and the Legislature to answer any questions you may have about the REAL-ID Act and the right to travel.

Sincerely,

Edward Hasbrouck
Consultant on travel-related civil liberties and human rights issues
The Identity Project (PapersPlease.org)