

HB

3

<TARGET><BILL>HB 3</BILL><SUBJECT>HB
3</SUBJECT><COMM>HF IN27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version CSHB 3(STA)
(H) Publish Date 2/2/11

Identifier (file name) HB003-STA-DOA-DMV-1-24-11 Dept. Affected Administration
Title "An Act relating to issuance of driver's licenses." Appropriation Motor Vehicles
Allocation _____
Sponsor REP(s) Lynn, Hawker, Chenault, Johnson, Gatto
Requester (H)STA OMB Component Number 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version

Not applicable; initial version

Prepared by Whitney Brewster
Division Motor Vehicles
Approved by John Cramer, Deputy Commissioner

Phone 907-269-5574
Date/Time 1/24/11 10:30 AM
Date _____

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 3(STA)

Analysis

This bill has no fiscal impact on the Division of Motor Vehicles (DMV).



January 27, 2011

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STUDENT ADVISOR

The Honorable Bob Lynn, Chair
The Honorable Wes Keller, Vice-Chair
House State Affairs Committee
Alaska State House of Representatives
State Capitol, Room 106
Juneau, AK 99801

via email: [Representative Bob Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us);
[Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)

Re: House Bill 3 - Relating to Issuance of Driver's Licenses
Constitutional Issues

Chair Lynn, Vice-Chair Keller:

Thank you for the opportunity to submit written testimony regarding House Bill 3, Relating to Issuance of Driver's Licenses.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. From that perspective, as we testified at the hearing this morning, we have several concerns with the proposed legislation, outlined in greater detail below.

Purpose of Driver's License: Federal Pre-Emption Issues

A driver's license' "primary purpose is to allow its bearer lawfully to drive a car." *U.S. v. Campos-Serrano*, 404 U.S. 293, 299 (1971). It is not intended as a document to relate to one's immigration status.

HB 3 would require the State of Alaska both to determine *whether* someone is legally present in the country and to speculate on *how long* that individual may stay. This determination implicates the Supremacy Clause of the United States Constitution, which guarantees that federal law will supersede state law in the areas of immigration. “The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. *State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid.*” *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (citations omitted) (emphasis added).

The once-a-year requirement to renew a driver’s license for those present for an indefinite period of time bears a striking similarity to the annual registration requirement for legal immigrants overturned in *Hines v. Davidowitz*, 312 U.S. 52, 59-60 (1941). In *Hines*, legal aliens were required to obtain a Pennsylvania identification card, renewed every year, which had to be shown, among other purposes, “as a condition precedent to registering a motor vehicle in his name or obtaining a license to operate one.” *Id.* at 59. *The Pennsylvania identification requirement was invalidated, as Congress had reserved entirely to itself, or “occupied the field” of, the management of aliens within the borders of the United States.* *Id.*, (emphasis added).

The United States Supreme Court has even held that some state laws relating exclusively to *undocumented immigrants* may violate the Supremacy Clause, where the regulation does not clearly serve legitimate state interests. *Plyler v. Doe*, 457 U.S. 202, 226-30 (1982) (overturning a Texas policy of not reimbursing public school districts for the costs associated with teaching undocumented students). Further, various federal statutes manifest an intent to prohibit discrimination against people on the basis of immigration status. *See, e.g.*, 8 U.S.C.A. § 1324b.

These cases and statutes indicate that, if enacted, HB 3 would likely be found to violate the Supremacy Clause.

Legislation Directed at Immigrants: Suspect Classification

Generally, regulations explicitly directed at legal immigrants are considered suspect classifications, like distinctions based on race and nationality. *Graham v. Richardson*, 403 U.S. 365, 372 (1971). The State of Alaska may not impose a special condition of driver’s license renewal on legal immigrants, for similar reasons as it could not impose such conditions on drivers of a certain race, sex, or religion.

HB 3, if enacted as drafted, would regulate the issuance of essential identification to legal immigrants, in a manner discriminatory towards those legal immigrants and potentially quite burdensome. Some immigrants may have short-term visas which are periodically renewed. The State of Alaska would impose unreasonable burdens on those immigrants by mandating that they also renew their driver's licenses each time they obtain a new visa, *for reasons having nothing to do with the fitness of the individual to drive a car*. See *Lozano v. City of Hazleton*, 620 F.3d 170, 220 (3d Cir. 2010) (distinguishing between the city's authority to regulate the housing market for health and safety purposes, and the city's use of its regulatory powers to "regulate residence based solely on immigration status").

Equal Protection / Due Process Issues

HB 3 additionally raises issues regarding violation of both federal and Alaska standards for equal protection. See, e.g., *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 78 (Alaska 2001) (noting that both sides conceded, and the court held, that an earlier regulation barring *all* legal aliens from obtaining money from the permanent fund violated equal protection). That driving may be considered a privilege and not a right is immaterial; the denial to non-citizens of certain state benefits, including financial assistance for education and certain welfare benefits, has been ruled unconstitutional. *Richardson*, 403 U.S. at 375-76; *Nyquist v. Mauclet*, 432 U.S. 1, 11-12 (1973).

Assuming that the statute's intended meaning is that some categories of non-citizens should be forced to renew their licenses more frequently than citizens, the use of immigration status, or alienage, as a classification violates equal protection.

Moreover, the Alaska Supreme Court has emphasized the status of driver's licenses as "an important property interest." *Champion v. Department of Public Safety*, 721 P.2d 131, 133 (Alaska 1986). A driver must receive meaningful due process before a "driver's license[] may be revoked or suspended." *Javed v. Department of Public Safety*, 921 P.2d 620, 622 (Alaska 1996) (citations omitted). While most due process cases relate to revocation or suspension of a driver's license, rather than issuance, given the technical legal nature of the terms by which the license is revoked, a court might look at this rule as requiring a substantial and meaningful hearing, including a court hearing, to determine the immigration status of the individual. Designating a license for early and automatic expiration is not functionally different from suspending or revoking the license.

Thus, allowing employees of the Division of Motor Vehicles to assess someone's immigration status would likely not comport with due process. Moreover, the implications of a due process challenge on this issue would merely heighten the pre-emption argument that the bill as a whole is invalid, as the statute would likely require state officials to assess independently a licensee's federal immigration status. That function is neither one that state officials are well-equipped to do, nor one that Congress has delegated to them.

Given the lack of expertise of state officials in the federal immigration arena, the “risk of error” in assessing whether someone is a legal immigrant and how long they may legally stay in the United States would seem to be high. Such “risk of error” would invalidate an automatic scheme of license revocation. *City of Redmond v. Moore*, 91 P.3d 875, 881 (Wash. 2004).

Additionally, the Committee may wish to consider the potential language proficiency issues of some legal immigrants and their lack of familiarity with the legal system. An immigrant who innocently misses a re-registration deadline, and is then found guilty of driving on an expired license, could have that conviction hamper their continued efforts to remain in the country or to become a citizen or permanent resident.

Procedural Issues: Departmental Regulations, Scope of “Indefinite”

A further problem with HB 3 is that it dictates an outcome, without explaining a method. The bill leaves up to regulation by the department *how* the duration of the individual’s stay is determined. However, Alaska state administrative agencies have no identified expertise in determining immigration status, and the courts have noted the inability of the states to do so, as “the structure of the immigration statutes makes it impossible for the State to determine which aliens are entitled to residence, and which eventually will be deported.” *Plyler*, 457 U.S. at 236 (Blackmun J., concurring); *id.* at 226; *Lozano*, 620 F.3d 170, 197 (3d Cir. 2010).

Without a fixed system for determining the immigration status of driver’s license applicants, the uncertainty of the administrative determination could impose unreasonable suspicion on those who “look” or speak “differently.” “Guesswork unavoidably yields discrimination.” *Lozano*, 620 F.3d at 217. A better course, is for the state to leave determination of immigration status to the unified federal system, rather than enacting legislation and eventual regulations that put admittedly legal immigrants under a pall of suspicion.

Conclusion

We hope that the State Affairs Committee will note the multiple constitutional infirmities with the proposed language in HB 3.

While, as testified, the ACLU of Alaska does not contest the State’s ability and duty to regulate the safety of our roads, as drafted, HB 3 goes far outside this permissible sphere. The issues raised above present substantial Constitutional problems and would entangle the state in lengthy, costly, and needless litigation, should HB 3 pass as currently written.

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House State Affairs Committee
Constitutional Analysis of H.B. 3
January 27, 2011
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Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Mittman", with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Paul Seaton; [Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)
Representative Peggy Wilson; [Representative Peggy Wilson@legis.state.ak.us](mailto:Representative_Peggy_Wilson@legis.state.ak.us)
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Alaska State Legislature



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A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Sponsor Statement **HB 3**

"An Act relating to issuance of driver's licenses."

Under current statute, Alaska driver's licenses are issued for a period of five years. The Department of Administration-Division of Motor Vehicles is afforded discretion to extend the expiration date for certain licenses beyond five years, but is not currently empowered to issue a license for *less* than five years. HB 3 would authorize DMV to issue driver's licenses that expire in less than five years for persons who are legally permitted to stay in the United States indefinitely or for less than five years. If a person is authorized to stay in the United States indefinitely, the DMV would issue a license that must be renewed annually. If a person is authorized to stay in the United States for a definite length of time that is less than five years, the DMV would issue a license that is only valid for the period of authorized stay.

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A Communication From
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District 31 Anchorage

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Feb. 2, 2011

To: Representative Bill Stoltze, Co-Chairman
Representative Bill Thomas, Co-Chairman
House Finance Committee

Fr: Representative Bob Lynn

Re: Explanation of Changes between HB 3 [Version 27-LS0010\E] and CS HB 3(STA)
[Version 27-LS0010\X]

Both for legal and compassionate reasons, the House State Affairs Committee wanted to be certain that HB 3 does not impose an undue burden on legal aliens whose current immigration status is provisional and as such subject to change. Accordingly, Version 27-LS0010\X allows the DMV to establish procedures for mail-in renewal and waiver of renewal fees (up to five years) for persons required to renew their licenses annually under HB 3. Also, 27-LS0010\X uses slightly more concrete language to make clear that persons whose legal presence is provisional or indefinite should only be expected to renew their licenses annually, as opposed to every 30 or 90 days as their immigration status changes.

Contact: Thomas Reiker

thomas_reiker@legis.state.ak.us

465-4965

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL
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FAX: (907) 258-4978

January 28, 2011

Representative Bob Lynn
State Capitol Room 108
Juneau, Alaska 99801

Re: HB-3

Dear Representative Lynn:

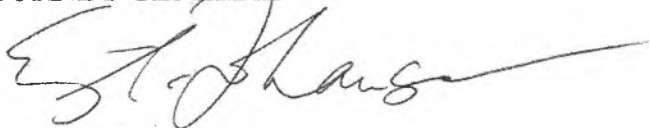
Mr. Reiker of your office contacted me following the House State Affairs committee hearing this week concerning the above referenced bill.

Consistent with Department of Law practice, I had reviewed this bill prior to the committee hearing. In my review I saw no basis for constitutional challenge of it. Having revisited the bill following Mr. Reiker's contact that remains my position.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:


Erling T. Johansen
Assistant Attorney General

ETJ/ljt

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Feb. 2, 2011

To: Representative Bill Stoltze, Co-Chairman
Representative Bill Thomas, Co-Chairman
House Finance Committee

Fr: Representative Bob Lynn

Re: States (including the District of Columbia) That Tie Expiration of Driver's Licenses to Length of Authorized Stay in the United States

The following states have already codified the provisions of HB 3 into law:

Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming

In all, *thirty* states and the District of Columbia issue driver's licenses that are valid for no longer than the period of time that the driver is legally permitted to reside in the United States. It is important to note that under the provisions of HB 3, the DMV would only consider authorized length of stay for drivers who use an immigration document as their proof of identification when applying for their driver's license.

For more information on the relevant statutes in these other states, please contact Thomas Reiker at 465-4965 or thomas_reiker@legis.state.ak.us.

Helen Phillips

From: Thomas Reiker
Sent: Wednesday, February 02, 2011 1:35 PM
To: House Finance Legislation
Subject: Hearing Request for HB 3
Attachments: HB 3.pdf; HB 3 Fiscal Note.pdf; HB 3 Hearing Request.doc; HB 3 Sponsor Statement.doc; HB 3 Explanation of Changes.doc; HB 3 Legal Opinion dated 012811.pdf; HB 3 State by State Analysis.doc

I am writing to request a hearing for HB 3. Any questions or concerns regarding this bill can be directed to Thomas Reiker at 465-4965 or thomas_reiker@legis.state.ak.us. Whitney Brewster, Director of the Alaska Division of Motor Vehicles, will be online in the hearing to answer questions, as will Assistant Attorney General Erling Johansen. In addition to a copy of the bill and its accompanying zero fiscal note, I am attaching all other documentation you have requested. Please find included the formal hearing request, a sponsor statement, an explanation of changes between versions E and X, a legal opinion offered by the Department of Law, and an analysis of other states with similar provisions in statute. If you require additional information, please just let me know.

Thank you so much for your time and consideration,

Thomas Reiker

Staff

State Rep. Bob Lynn

District 31

465-4965

thomas_reiker@legis.state.ak.us