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MICHIGAN HOUSE OF REPRESENTATIVES

PAUL E. OPSOMMER
STATE REPRESENTATIVE

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Dear NCSL Transportation Committee Colleague:

I hope this letter finds you well. As a fellow member of the NCSL Transportation Committee you are likely aware that DHS has extended the Dec. 31 REAL ID deadline to May 10, 2011. Even though 46 of 56 US licensing jurisdictions are not in interim compliance, it is important to note that many DMVs may still be moving forward with aspects of REAL ID regardless of whether enacting state legislation has been passed.

Since Title II of REAL ID has not been repealed, NCSL will continue to be at the fore of further debate. Having longtime involvement with REAL ID (and the separate but similar Enhanced Driver's License program) I am troubled by several 2009 trends:

- 1) Much of the debate focused on whether REAL ID should be kept or replaced with a new program proposed in the Senate known as PASS ID (SB 1261). In fact, hearings for PASS ID only allowed discussion in these two areas, and did not allow for debate on whether Title II of REAL ID should simply be repealed. REAL ID and PASS ID are more alike than different, and any healthy process should not be artificially limited to such an either/or. NCSL has not passed a resolution endorsing PASS ID over REAL ID, it has only called for it being explored as one option as REAL ID deadlines approach. Previous NCSL resolutions called for REAL ID's repeal irrespective of PASS ID.
- 2) In addition, other options exist beyond PASS ID, which calls for a *non-negotiated* rulemaking process with the states. Alternative House legislation (HR 3471) would call for a stronger *negotiated* rulemaking process. In practice a negotiated rulemaking process may be only slightly more advantageous to the states, but HR 3471 has been largely ignored by DHS and needs to be part of discussions.

- 3) I am also concerned that many members of Congress feel that the REAL ID debate is primarily about who should pay for it. While unfunded mandates are a large problem, and while many in the National Governors Association have characterized their opposition to REAL ID based solely on cost, NCSL has always gone further to address issues dealing with national ID cards, civil liberties, foreign data sharing, and privacy provisions. It is critical for Congress to continue to realize that this debate is about more than DHS grant money.

To that last point, I feel it is important to point out that both REAL ID and PASS ID put DHS or its agents permanently in charge of both initial *and* subsequent rulemaking processes that set our driver's license standards. Unless we are successful in eliminating the power of subsequent rulemaking from REAL ID, PASS ID, or HR 3471, their initial rules will be largely academic as DHS will be able to change them in the future without needing to go back to Congress. This is why I feel claims that REAL ID is not a national ID card are inaccurate. Regardless of what the license is officially called, it will no longer be a state driver's license if a federal department can in perpetuity determine what information must go on the card, what biometrics and machine readable technology must be used, and who the information must be shared with. The fact that license distribution would still be administered by the states would only serve as an example of the federal government successfully outsourcing this task upon us rather than doing it through the passport or social security card system. While the name of a state would still be prominently displayed on the top of the license, this would only be a cosmetic gesture for a national ID card that was being issued in 56 different flavors.

As written, I therefore believe that both REAL ID and PASS ID would constitute a national ID card program unless the process is done via a rulemaking process that is fully negotiated and would require Congressional approval for any changes to the program that would take place after the initial rulemaking process. Such issues as advanced biometrics, the use of RFID, and international data sharing are simply too important to be left in the hands of future unelected or non-governmental agents. If not repealed, any replacement for REAL ID must contain extensive and detailed provisions regarding what DHS can not do in the future or it will simply be a blank bureaucratic check.

I look forward to seeing you at NCSL in 2010 for what should prove to be another busy and important year.

Respectfully in Service,



Paul Opsommer