

# National Council of State Legislatures Spring Forum 2007

## “Implementing REAL ID” Briefing by Assistant Secretary Richard Barth

Hyatt Regency on Capitol Hill – Ticonderoga Room  
April 21<sup>st</sup> at 10:30 a.m.

There were approximately 200 people present in the briefing room, most of which were state legislators. An introduction was made by Senator Leticia Van de Putte from Texas. She is the President of the NCSL, and recently testified before the Senate Homeland Security Committee on REAL ID. Senator Van de Putte stated the NCSL’s opposition to REAL ID adding the organization advocates a “Fix-It and Fund-It” approach.

Assistant Secretary Barth starting off by thanking the attendees for the state-federal partnership necessary to implement REAL ID. He cited the valuable dialogue leading up to the proposed rule for REAL ID. A/S Barth also pointed to interactive sessions (webcasts) the Department has been encouraging comments through and soliciting input; including an April 12<sup>th</sup> webcast with state officials, upcoming broadcasts May 1<sup>st</sup> with the general public and May 4<sup>th</sup> with the NCSL’s members. A/S Barth noted Policy has not refused any opportunities to discuss the proposed rule; imploring all attendees to comment by the May 8<sup>th</sup> deadline.

A discussion of the proposed rule began with audience participants after A/S Barth’s opening remarks.

Senator Bruce Starr from Oregon, Chairman of the NCSL Transportation Committee, made a few observations:

- 1) The proposed re-enrollment period should be adjusted. For example, Oregon re-issues licenses every eight years.
- 2) Certain classes of identification should be sufficient for use. For example, military identification cards should be exempted.
- 3) Funding needs to be addressed. The extra cost to Oregon residents seeking DLs is \$31.

4) The database infrastructure does not currently exist.

A/S Barth thanked Mr. Starr for his comments and recommended he submit said comments for the record. A/S Barth also said the cost structure may be positively impacted through cutting costs for re-enrollment.

Representative Larry Lucas from South Dakota asked if cards from Native American tribes were acceptable? Before replying, A/S Barth cited a great partnership with South Dakota and thanked the Representative. He went on to say a variety of documents were already usable. The TSA also has flexibility concerning secondary evaluations.

Representative Sherman Packard from New Hampshire asked if Homeland Security Grant Program funds may be used? A/S Barth replied Secretary Chertoff's March 1<sup>st</sup> press conference included the announcement that 20% of HSGP funds may be used by states; roughly \$100 million.

Mr. Packard followed up by asking if DHS can guarantee there will not be a national database. A/S Barth affirmed the current Administration will not do that.

Senator Mee Moua from Minnesota entered three comments:

- 1) VISA problem needs fixing
- 2) Databases are not in place, so how can we say the databases will be secure?
- 3) Fund-it or Repeal it!

A/S Barth stated there will be security of data networks. States will submit comprehensive security plans, for one. He also pointed to the Commercial Driver's License Information Program (CDLIS) as a model. Since the program's inception by the Department of Transportation, there have not been any security violations reported.

Representative Floyd Esquibel from Wyoming asked, since the proposed rule includes an "opt out", how viable it would be for states to opt out? A/S Barth said it was a matter of states' rights and therefore included. However, at a date in the future the TSA would not accept driver's licenses that were not REAL ID compliant. Persons could still use passports, military IDs and a number of other proofs to board aircraft.

Senator Leticia Van de Putte from Texas commented that states not issuing DLs over-the-counter should be viewed differently than states practicing over-the-counter issuance. She then asked if states would be required to comply with any databases not set up by the time the REAL ID deadline takes effect? A/S Barth delivered the statistics regarding current state connectivity to the databases – 48 of 50 states online with SSOLV; 20 of 50 with SAVE and all remaining states have MOUs with the Department to get online; 7 of 50 with EVVE and all others

could be wired for approximately another \$4 million; and 0 of 50 with Passports. He added that DHS will not require states to do anything that is technically infeasible.

There was a second round of discussion with Senator Van de Putte. She asked if a "Plan B" existed for states which either cannot or will not comply? Can a citizen go to DHS for ID? A/S Barth said discussion of the issue is ongoing.

Legislative staff from Tennessee, James White, said the states will not be in session when the final regulation is announced. Then he asked, how will states be able to comply? A/S Barth once again re-iterated the importance of the comment period. He asked for comments with 'specific alternatives' to address various scenarios in the proposed rule.

Legislative staff from Rhode Island, Kevin Madigan, said there were unintended consequences of REAL ID. For instance, ferry boats are "federal purpose" but clearly gets compliance outside the purpose of boarding aircraft. Additionally he followed-on the preceding commenter's line that uncertainty of the final rule leaves states with a narrow window to act.

Delegate Ana Sol Gutierrez with Maryland thanked A/S Barth for getting input from state legislatures. She warned against speaking with DMVs because they will support any new technology. Ms. Gutierrez said to keep speaking with state legislators. She then entered into a series of comments: current deadline is not representative of state legislatures' timelines; verification requirement poses a huge burden on states; and cited database problems. A/S Barth invited the help of states in implementing the Act. He asked for states to identify someone to work with the REAL ID Office, echoing his call last fall before the NCSL, NGA and AAMVA for help. Only New York has taken up DHS on the offer through sending John Hilliard, a great source of institutional knowledge. A/S Barth said a partnership will help make the rule workable in ensuring persons entering planes are who they say they are.