

**TESTIMONY OF DEPUTY SECRETARY KURT MYERS
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
SENATE BILLS 621 AND 623
SENATE COMMUNICATIONS AND TECHNOLOGY COMMITTEE
MAY 13, 2009**

Good morning. My name is Kurt Myers, and I am the Deputy Secretary for PennDOT's Safety Administration. On behalf of Secretary of Transportation Allen Biehler, I appreciate the opportunity to testify today on Senate Bills 621 and 623 relating to the REAL ID Act of 2005 and the use of biometric technology. I am also here to update you on the current status of REAL ID in Pennsylvania.

As background, the REAL ID Act of 2005 is a federal mandate with the intent of enhancing the integrity and security of state-issued driver's licenses and photo identification cards, to aid in fighting terrorism and further mitigating the risk for fraud. The U.S. Department of Homeland Security (U.S. DHS) released the final REAL ID regulations in January 2008. PennDOT performed an in-depth analysis of the regulations to identify and discuss potential options, the costs of those options and the impact to the citizens of the Commonwealth.

Based on our analysis of the REAL ID regulations, at this time we continue to estimate that start-up costs to fully implement REAL ID in Pennsylvania would be between \$120 and \$140 million. Average yearly on-going costs for re-credentialing are estimated between \$40 and \$50 million. Further, we estimate that the cost of a driver's license could increase between \$13 and \$38, in addition to the current \$28 fee, depending on how quickly we decide to recover implementation costs. This assumes there is no federal funding.

Let me assure you that Pennsylvania has not made a final decision regarding REAL ID. Governor Rendell, as well as other states' governors, has made it clear that funding is a major barrier to the future of REAL ID and that the federal government must fully fund REAL ID or their states will not participate.

In regard to funding, currently REAL ID funds are very limited. Pennsylvania applied for the Fiscal Year 2008 REAL ID Demonstration Grant Program funding for state projects that would enhance the security of our products, processes and facilities in order to assist the state in further enhancing driver's license security. The Commonwealth was awarded approximately \$2 million in grant funding by U.S. DHS.

In addition to the 2008 grant, the Commonwealth applied for FY 2009 Driver's License Security Grant Program funding, monies that would also be used to enhance the security of Commonwealth products, processes and facilities in order to assist the state in further enhancing driver's license security. The Commonwealth recently received an allocation announcement of approximately \$1.2 million by U.S. DHS for this grant application.

With the recent change in the administration at the national level, there has been a clear commitment on the part of the new U.S. DHS Secretary, Janet Napolitano, to review the current state of REAL ID at the national level and to look for ways to enhance deployment to address concerns about cost and the privacy of information.

To that end, currently, Pennsylvania, along with other states, is actively participating in the review of potential draft legislation with the National Governor's Association (NGA) and the American Association of Motor Vehicle Administrators (AAMVA) of what's being referred to as the Providing for Additional Security in States' Identification Act. The PASS ID Act is intended to replace the REAL ID Act of 2005. PASS ID would retain the intent to require driver's license/photo ID cards for purposes of boarding commercial aircraft, accessing federal facilities that contain mission functions critical to homeland

security, and accessing nuclear power plants. In addition, it would allow a date-forward compliance schedule that begins one year after issuing final regulations and, in an effort to address concerns related to the privacy of information, the draft language requires the establishment of “appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personal identifiable information...”. Whether it’s REAL ID or PASS ID, our underlying concern remains the issue of cost to implement and maintain.

While this debate has continued, PennDOT has continued its long history of making common sense decisions to improve and enhance the security of products, processes, systems and facilities. PennDOT continues to strengthen the driver’s license/photo ID card issuance process and utilizes technology to reduce the opportunity for license fraud and identity theft. In fact, it is important to note that PennDOT had many of the REAL ID proposed changes in place and operational long before the REAL ID final regulations were issued and were not in response to core provisions of REAL ID.

Fundamental to issuing a driver's license or photo ID card is the establishment of an individual's identity. One recent tool that was implemented by PennDOT is a digital image sharing program with 15 states that are currently participating. With this technology, we are able to access digital images from participating states. This check is another anti-fraud measure to ensure individuals standing in front of us are who they say they are.

In addition, PennDOT's continued commitment to upholding the integrity and enhancing the security of the driver's license/identification card issuance process was demonstrated in 2007, when PennDOT completed an upgrade of its photo technology and equipment at its Photo License Centers across the Commonwealth. With this upgrade, all driver's license products, including photo ID cards, are now outfitted with a new overlay and additional security features. The new overlay and security features help to mitigate the risk for fraud.

PennDOT, also as part of this upgrade, began issuing temporary driver's licenses and photo ID cards to individuals who have never held a Pennsylvania driver's license or photo ID, such as new drivers and new residents. The temporary product is valid for 15 days. During that 15-day period, PennDOT uses state-of-the-art facial recognition technology to validate the applicant does not have more

than one driver's license or photo ID card already issued under a different identity. PennDOT is also using this technology to conduct facial recognition checks of all images we have stored in our database to determine if multiple records exist for one individual. After a comprehensive review has been completed and if it is determined that the individual potentially has more than one record, those driving records are cancelled.

Using these tools to detect license fraud/identity theft is an essential part of the validation process PennDOT uses, especially in light of the growing sophistication of criminals. Nothing could be more basic to this charge than having the ability to compare the photo on one driver's license or photo ID card to the photos on other driver's licenses and photo ID cards. If Senate Bill 621 were enacted PennDOT could no longer utilize facial recognition technology; if Senate Bill 623 is enacted, PennDOT may or may not be able to use facial recognition technology based upon the court's interpretation of a low resolution photographic image of a face. Facial recognition technology has proven to be a valuable anti-fraud tool not only in Pennsylvania, but in other states as well. In fact, 32 states, including Pennsylvania, are currently using facial recognition technology, and two states are considering implementing the technology.

I would also like to take a few minutes to clear up any misunderstandings that may exist regarding facial recognition technology and how it is utilized. Facial recognition technology has been compared to that of DNA testing and fingerprinting, that it can uniquely identify an individual. This is not true. The broad definition of biometrics includes facial recognition; however, facial recognition is a physically non-intrusive technology, and is not like DNA testing and fingerprinting. PennDOT utilizes the technology to compare an image to other images in our database. The technology identifies potential matches. From there, PennDOT staff conducts further analysis to determine if potential fraud has occurred. If it is determined that potential fraud has occurred, then and only then, does PennDOT turn it over to the Pennsylvania State Police for further investigation.

Further, the final REAL ID regulations do not call for the use of facial recognition technology. In fact, PennDOT began using the technology several months prior to the final regulations being issued. The regulations merely establish minimum standards at which a photograph should be captured. PennDOT does not convert images from the original capture file or formatting parameters. Photographic images continue to be captured at the same resolution as they have been since 1994.

While there have been multiple success stories of how facial recognition technology has aided PennDOT, the Pennsylvania State Police and the Attorney General's Office in combating license fraud/identity theft, investigating criminals and helping to deter crime, for the purposes of time, I will speak about two recent cases.

In one case, PennDOT ran an individual's photograph through the facial recognition technology, which identified one other photograph as potential match that was under a different name. After further review, PennDOT turned the case over to the Pennsylvania State Police for further investigation. The PSP investigation revealed that the individual had fraudulently obtained multiple Social Security numbers in multiple names and was collecting benefits the individual was not entitled to. While serving a search warrant of the individual's residence, police found a duffel bag containing AK-47 assault rifles, numerous rounds of ammunition, a ski mask, dark gloves and duct tape. Additionally, police discovered numerous driver's licenses, Social Security cards, birth certificates, marriage licenses, voter registration cards, welfare access cards, Medicare, bank and credit cards as well as other miscellaneous fraudulent documents.

In the second case, PennDOT ran an individual's photograph through facial recognition technology, which identified eight photographs as potential matches that were under different names. Again, after further review, PennDOT turned the case over to PSP for investigation, which revealed that the individual had used fraudulently obtained identifications to purchase multiple firearms over a period of three years.

Regardless of these past successes, the enactment of SB621 or SB623 would take some valuable tools away from PennDOT and law enforcement. In addition to the requirements individuals must meet to obtain a driver's license/photo ID card and the tools utilized to maintain the integrity and enhance the security of the issuance process, PennDOT, per Section 1610 of the Vehicle Code, must comply with the U.S. Patriot Act, which requires individuals applying for hazardous materials endorsement on a commercial driver's license to be fingerprinted as part of FBI background checks. If SB 621 was enacted, PennDOT would no longer be able to license Pennsylvania commercial drivers to transport hazardous materials.

This would have a significant economic impact to many Pennsylvania businesses and citizens as well as potentially reduce federal funding to the Commonwealth.

Further, while it would appear SB623 would allow those applying for the HAZMAT endorsement on a commercial driver's license to be fingerprinted as part of a FBI background check and for law enforcement to use the basic fingerprint to identify criminals, the language is so broad that it could also be interpreted that it would potentially prohibit PennDOT from capturing photos for the driver's license/photo ID card at the resolution we've been capturing photos at since 1994. If so, this would decrease the effectiveness of the facial recognition technology to the point where the photos of numerous innocent individuals would be identified as potential matches, rendering the technology practically useless as an anti-fraud tool.

While written with one intention, if passed, SB 621 and SB 623 may have unintended consequences by being too restrictive. One would prohibit law enforcement from participating in federal programs to identify criminals and the Department from being able to issue commercial driver's licenses with the HAZMAT endorsement. Further, one would and the other potentially would eliminate some of the valuable tools necessary for PennDOT to combat ever more sophisticated criminals who commit license fraud/identity theft.

In conclusion, as the driver's license has evolved into the most recognized form of identity, so too has PennDOT's role in maintaining the integrity and enhancing the security of the driver's license/ID card issuance process. We are far beyond the days of certifying that an individual has the basic knowledge and skills necessary to operate a motor vehicle. Daily, we are charged with the responsibility to ensure individuals standing before us are who they say they are. And, facial recognition technology and digital imaging are two examples of tools we use to do that.

While we acknowledge the concept and principles of the Real ID Act of 2005 and recognize the fundamental importance of establishing the proper identity when issuing a driver's license or photo identification card, we realize there are several issues with REAL ID that need to be addressed, particularly how it will be funded. The Administration continues to study this issue to develop recommendations that balance four critical factors: security of our citizens and our country; privacy of our citizens; convenience to our citizens; and costs to implement and maintain the REAL ID program.

In conclusion, let me again assure you that regardless of whether Pennsylvania implements REAL ID or some future legislation such as PASS ID, PennDOT is

and will remain committed to enhancing the security of our products, processes, systems and facilities and maintaining the privacy of customer data.

At this time, I am available to take any questions you may have. Thank you.