

## Department of Planning and Budget 2009 Fiscal Impact Statement

**1. Bill Number:** HB1587

House of Origin    ☐ Introduced       ☐ Substitute       ☐ Engrossed  
Second House       ☒ In Committee    ☒ Substitute       ☐ Enrolled

**2. Patron:**        Marshall, R.G.

**3. Committee:** Transportation

**4. Title:**        **Real ID Act, federal; State will not participate in compliance of any provision.**

**5. Summary:** This bill provides that, with the exception of identification cards issued to employees of the Department of State Police and certain other law enforcement officers, the Commonwealth will not comply with any provision of the federal Real ID Act that would compromise the economic privacy, biometric data, or biometric samples of any resident of the Commonwealth.

**6. Fiscal impact estimates:** Indeterminate. See Item #8.

**7. Budget amendment necessary:** No.

**8. Fiscal implications:** This bill defines certain words and phrases relating to biometric data and economic privacy and would prohibit compliance with any provision of the federal Real ID Act that would compromise the same. As these words and phrases are *specifically* defined in the bill, the current requirements of the Real ID Act would not appear to compromise either.

However, the definitions of both biometric data and economic privacy include the phrase “but not limited to.” Although economic privacy could appear to relate only to an individual’s financial data, as cited in the bill, a tax return would also contain the name, address, and social security number of that individual. This information is required for Real ID. In addition, the Department of Homeland Security (DHS), on its web site’s frequently asked questions on Real ID, has described a photograph as biometric data. A photograph on the license is required for Real ID. Actual implementation of the provisions of the bill would appear to be left to the Department of Motor Vehicles (DMV). If the agency were to utilize DHS’ informal definition of biometric data, it could prohibit Virginia’s compliance with the Real ID Act. In such an event, there may be a fiscal impact on the Commonwealth. Such a fiscal impact cannot be determined at this time.

The lack of specificity in the bill’s prohibitions may also expose the Commonwealth to the risk of litigation by individuals who might challenge DMV’s interpretations of biometric data and economic privacy.

**9. Specific agency or political subdivisions affected:** Department of Motor Vehicles.

**10. Technical amendment necessary:** No.

**11. Other comments:** This bill is identical to SB 1431.

**Date:** 2/23/09/jlv

**Document:** G:\08-10\09 FIS\HB1587S1.Doc Janet Vogelgesang

cc: Secretary of Transportation