

STORAGE NAME: h1077.jud

DATE: March 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1077

RELATING TO: Civil-Law Notaries

SPONSOR(S): Representative Kosmas

COMPANION BILL(S): SB 2242(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill requires a civil-law notary to secure a surety bond in the amount of \$15,000 before undertaking any duties as a civil-law notary. The bond must be approved by and filed with the Department of State and must be executed by a surety company authorized to transact business in Florida.

The bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 118 provides for the appointment and regulation of "civil-law notaries" in Florida. A "civil-law notary" is defined as "a person who is a member in good standing of the Florida Bar, who has practiced law for at least 5 years, and who is appointed by the Secretary of State as a civil-law notary." s. 118.10(1)(b), F.S. A civil-law notary is authorized to "issue authentic acts and may administer an oath and make a certificate thereof when it is necessary for execution of any writing or document to be attested, protested, or published under the seal of a notary public." s. 118.10(3), F.S. The civil-law notary may also take acknowledgments of deeds and other instruments of writing and solemnize the rites of matrimony. See s. 118.10(3), F.S.

The Department of State is authorized to regulate civil-law notaries and to adopt rules relating to the administration of Chapter 118.

Presently, Chapter 118 does not contain any surety requirements for civil-law notaries. However, Chapter 117, F.S., requires a notary public to secure a \$7,500 surety bond. s. 117.01(7)(a), F.S. (Supp. 1998). Representative approximate premiums for 4 year bonds are \$150 for a \$15,000 bond and \$100 for a \$7,500 bond at current competitive rates.

B. EFFECT OF PROPOSED CHANGES:

The bill will add a requirement to Chapter 118, F.S., that a civil-law notary have a \$15,000 surety bond in place before the notary undertakes any activities as a civil-law notary and during the course of that person's term of office. The bill will also require the bond to be approved by and filed with the Department of State and written by a surety company authorized to transact insurance business in Florida.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill will require the Department of State to approve and file surety bonds for civil-law notaries.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not eliminate or reduce any agency or program.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

To the extent that the Department of State requires a filing fee for the surety bond, the beneficiaries of the bill will pay a portion of the costs of the bill's implementation.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

By requiring a surety on the obligations of a civil-law notary, the bill may foster increased use of such notaries in the private sector.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill requires a civil-law notary to secure a surety bond. This is not presently required by law, and may limit some attorneys from acting as civil-law notaries.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

The bill does not increase or change a program providing services to families or children.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

S. 118.10, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 requires a civil-law notary to secure a surety bond in the amount of \$15,000 before undertaking any duties as a civil-law notary. The bond must be approved by and filed with the Department of State and must be executed by a surety company authorized to transact business in Florida.

Section 2 provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None estimated.

2. Recurring Effects:

None estimated.

3. Long Run Effects Other Than Normal Growth:

None estimated.

4. Total Revenues and Expenditures:

None estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None estimated.

2. Recurring Effects:

None estimated.

3. Long Run Effects Other Than Normal Growth:

None estimated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Civil-law notaries will bear the premium costs associated with the surety bonds, and may also be required to pay filing fees to the Department of State. Such costs have not been estimated.

2. Direct Private Sector Benefits:

The bill will ensure that clients of civil-law notaries will be compensated in cases where the civil-law notary fails to perform.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill should foster increased use of civil-law notaries in the private sector.

D. FISCAL COMMENTS:

None.

STORAGE NAME: h1077.jud

DATE: March 15, 1999

PAGE 6

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds, therefore it is not violative of the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the revenue raising authority of a city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill will not reduce the amount of state tax shared with a city or county.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson

Don Rubottom