

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 337                      Notaries Public  
**SPONSOR(S):** Simmons and Sansom  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** SB 432

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	_____	<u>Billmeier</u>	<u>Billmeier</u>
2) <u>Veterans &amp; Military Affairs (Sub.)</u>	_____	_____	_____
3) <u>Local Government &amp; Veterans' Affairs</u>	_____	_____	_____
4) <u>Finance &amp; Tax</u>	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 337 provides that a notary public cannot charge a fee for any notarial act performed for a United States military veteran, or a firefighter, police officer, or sheriff's deputy applying for a pension, allotment, allowance, compensation, insurance policy, or other benefit resulting from public service.

This bill requires that a notary public keep a journal of notarial acts. This journal must be kept for at least five years after the date of the last entry. For each notarial act, the bill requires the notary to record in the journal at the time of notarization:

- the date, time, and type of notarial act;
- the date, type, title, or description of the document or proceeding;
- the signature and thumbprint of the signer or principal;
- the name and address of the signer or principal;
- a description of the evidence of identity of the signer; and
- the fee charged, if any.

This bill permits any person lawfully entitled to the information recorded in the journal to submit to the notary a signed, written request stating the month, year, and type of document or proceeding and the name of the signer or principal for a notarial act. The requester shall be permitted to examine the corresponding entry in the notary's journal.

This bill does not appear to have a fiscal impact on state and local governments.

This bill takes effect on January 1, 2005.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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**DATE:** March 23, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill requires a notary public to keep a journal of notarial acts. There is no such requirement under current law.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Chapter 117, F.S., is the statute regulating notaries public in Florida. Notaries public are authorized to administer oaths or affirmations, take acknowledgments, attest to photocopies of documents, solemnize marriages, verify vehicle identification numbers, and certify the contents of safe-deposit boxes.<sup>1</sup>

Notaries public are appointed by the Governor and each appointment lasts four years.<sup>2</sup> A person may be reappointed as a notary public but reappointment is not automatic.<sup>3</sup> The Governor may suspend a notary public for numerous reasons including malfeasance, misfeasance, neglect of duty, charging fees in excess of fees authorized by statute, or failure to maintain the bond required by statute.<sup>4</sup>

A notary public can charge a fee of not more than \$10 for each notarial act except for solemnizing marriages or witnessing an absentee ballot.<sup>5</sup> The notary public cannot charge a fee in excess of the fees provided by law to the clerks of the court for solemnizing marriages.<sup>6</sup>

Florida does not require notaries public to keep a journal of notarial acts performed or make such a journal available for inspection.

##### HB 337

Section 1 of this bill provides that a notary public cannot charge a fee for any notarial act performed for a United States military veteran, or a firefighter, police officer, or sheriff's deputy applying for a pension, allotment, allowance, compensation, insurance policy, or other benefit resulting from public service.

Section 2 of this bill requires that a notary public keep a journal of notarial acts. This journal must be kept for at least five years after the date of the last entry. For each notarial act, the bill requires the notary to record in the journal at the time of notarization:

<sup>1</sup> See ss. 117.03, 117.04, 117.045, 117.05(12), 319.23(3)(a)2., and 655.94(1), F.S.

<sup>2</sup> See s. 117.01, F.S.

<sup>3</sup> See s. 117.01(6), F.S.

<sup>4</sup> See s. 117.01(4), F.S.

<sup>5</sup> See s. 117.05(2)(a) – (b), F.S.

<sup>6</sup> See s. 117.045, F.S.

- the date, time, and type of notarial act;
- the date, type, title, or description of the document or proceeding;
- the signature and thumbprint of the signer or principal;
- the name and address of the signer or principal;
- a description of the evidence of identity of the signer; and
- the fee charged, if any.

This bill permits any person lawfully entitled<sup>7</sup> to the information recorded in the journal to submit to the notary a signed, written request stating the month, year, and type of document or proceeding and the name of the signer or principal for a notarial act. The requester shall be permitted to examine the corresponding entry in the notary's journal.

This bill provides that the failure of a notary public to comply with the bill's requirements may result in sanctions against the notary public but will not invalidate the notarial act.

Section 3 of this bill provides that the bill takes effect on January 1, 2005.

**C. SECTION DIRECTORY:**

Section 1. Amends s. 117.05, F.S., to provide that a notary public cannot charge a fee for any notarial act performed for a United States military veteran, or a firefighter, police officer, or sheriff's deputy applying for a pension, allotment, allowance, compensation, insurance policy, or other benefit resulting from public service.

Section 2. Creates s. 117.055, F.S., to require that a notary public keep a journal of notarial acts and specifies requirements for information to be kept in the journal.

Section 3 of this bill provides that the bill takes effect on January 1, 2005.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

This bill does not appear to impact state government revenues.

2. Expenditures:

This bill does not appear to impact state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

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<sup>7</sup> This bill does not define who is "lawfully entitled" to the information recorded in the journal. Arguably, any person could be lawfully entitled to examine the journal. See "Constitutional Issues" section of this analysis.

This bill does not appear to impact local government revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will prohibit notaries public from charging fees for certain notarial acts. It is not known how many notaries public charge such fees or how revenues from such fees would be affected.

The costs that would be incurred by notaries public in keeping a journal are not known.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Every person has the constitutional right to access public records and meetings in connection with official business of any public body, officer, or employee of the state, or persons acting on their behalf.<sup>8</sup> The term “public records” has been defined by the Legislature in s. 119.011(1), F.S., to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.<sup>9</sup> Unless these public records are exempted by the Legislature, they are open for public inspection, regardless of their final form.<sup>10</sup> The State Constitution permits exemptions to open government requirements and states that these exemptions can be established by general law, provided the law creating the exemption states with specificity the public necessity justifying the exemption and the exemption is no broader than necessary to accomplish the stated purpose of the law.

This bill arguably implicates the public records law. The notary public is commissioned by the Governor and is a public official.<sup>11</sup> As a public official, any work or materials generated in the course of his or her official business is a public record. Therefore, a notary public’s notarial journal is arguably a public record. Construing the phrase “any person lawfully entitled to the journal information” as including all persons who have a constitutional and statutory right to access a public record, this provision would not violate the constitutional right of access to a public record. However, this bill further proscribes that the request to the information must be preceded by a signed, written request and that the request must specify the entry to be seen to which inspection is limited. These limitations may impliedly create a public records exemption because they prohibit access by persons

<sup>8</sup> See Art. I, s. 24, Fla. Const.

<sup>9</sup> Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc., 379 So. 2d 633, 640 (Fla. 1980).

<sup>10</sup> Wait v. Florida Power & Light Co., 372 So. 2d 420 (Fla. 1979).

<sup>11</sup> See s. 113.01, F.S. (providing that a notary public is commissioned by the Governor); s. 112.061(2)(c), F.S. (providing that a person who is commissioned is a public officer).

who do not submit signed, written requests and because they require a member of the public to request access to specific entries in the journal.

If the notarial journal is construed as a public record, then the exemption impliedly created by this bill would need to be the subject of a separate bill stating the public necessity for the exemption.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

N/A