

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 407 Notaries Public

SPONSOR(S): Business & Professional Regulation Subcommittee; Economic Development & Tourism Subcommittee; Peters

TIED BILLS: **IDEN./SIM. BILLS:** SB 172

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|-------------|--|
| 1) Economic Development & Tourism Subcommittee | 12 Y, 0 N, As CS | Collins | West |
| 2) Business & Professional Regulation Subcommittee | 12 Y, 1 N, As CS | Brown-Blake | Luczynski |
| 3) Economic Affairs Committee | | | |

SUMMARY ANALYSIS

The bill creates s. 117.055, F.S., which requires state-commissioned notaries public to maintain a notarial journal to record specific information at the time of a notarial act. The notarial journal must be kept for at least 5 years, and notaries public must notify the Department of State (DOS) immediately should the journal be lost, stolen, misplaced, destroyed, or rendered unusable during this time. Failure to do so constitutes grounds for suspension or nonrenewal of the notary public's commission and grounds for the denial of a subsequent commission by the Governor.

The bill amends s. 117.10, F.S., to include s. 117.055, F.S., in the list of notaries public provisions that do not apply to the provisions of s. 117.10, F.S., and therefore does not apply to law enforcement, correctional officers, correctional probation officers, as defined in s. 943.10, traffic accident investigation officers, and traffic infraction enforcement officers, as described in s. 316.640, F.S.

The fiscal impact of this bill is insignificant on state funds. The bill has no impact on local government revenues or expenditures.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Notaries Public in Florida

A notary public (notary or notaries) is a public officer appointed and commissioned by the Governor whose function is to administer oaths; to take acknowledgements of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties specified by law.¹

Chapter 117, F.S., provides requirements and guidelines for notaries and authorizes the Governor to appoint as many notaries as necessary. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English.² The application for appointment must include a \$25 fee, a \$10 commission fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.³

Once appointed, a notary serves a four-year term. During the term of office, a notary must post and maintain a \$7,500 bond payable to any individual harmed as a result of a notary's breach of duty. The bond must be approved and filed with DOS and executed by a surety company that is authorized to transact business within the state. If a surety company pays an individual harmed by the notary for breach of duty, the company must notify the Governor of the payment and the underlying circumstances.⁴ No person may be automatically reappointed as a notary. The application process must be completed regardless of whether an applicant has previously served as a notary.⁵

A notary is authorized by law to perform six functions:⁶

- administer oaths or affirmations;⁷
- take acknowledgements of deeds and other instruments of writing for record;⁸
- attest to photocopies of certain documents;⁹
- solemnize marriage;¹⁰
- verify vehicle identification numbers;¹¹ and
- certify the contents of a safe-deposit box.¹²

With the exception of solemnizing a marriage, a notary cannot charge more than \$10 for each notarial act.¹³ Any person who impersonates a notary,¹⁴ acts as a notary after their commission has expired,¹⁵

¹ *Governor's Reference Manual for Notaries*; State of Florida, November 1, 2001 ed., p. 6, available at http://www.flgov.com/notary_ref_manual/ (last viewed February 25, 2014).

² Section 117.01(1), F.S.

³ Section 117.01(2), F.S.

⁴ Section 117.01(7), F.S.

⁵ Section 117.01(6), F.S.

⁶ *Ibid.* 1, p. 12.

⁷ Section 117.03, F.S.

⁸ Section 117.04, F.S.

⁹ Section 117.05(12)(a), F.S.

¹⁰ Section 117.045, F.S.

¹¹ Section 319.23(3)(a)2., F.S.

¹² Section 655.94(1), F.S.

¹³ Section 117.05(2)(a), F.S.

¹⁴ Section 117.05(7), F.S.

¹⁵ Section 117.05(8), F.S.

or unlawfully possesses a notary public official seal or any papers or copies relating to notarial acts is guilty of a misdemeanor of the second degree.¹⁶ A notary must make reasonable accommodations to provide notarial services to persons with disabilities including signing documents for them under certain circumstances.¹⁷

The Governor may suspend a notary for any of the grounds provided in Article IV, section 7 of the Florida Constitution.¹⁸ Acts of malfeasance, misfeasance, or neglect of duty that may result in suspension under these grounds include, but are not limited to:¹⁹

- A material false statement on the application.
- A complaint found to have merit by the Governor.
- Failure to cooperate or respond to an investigation by the Governor's office or DOS regarding a complaint.
- Official misconduct as defined in s. 838.022, F.S.
- False or misleading advertising related to notary services.
- Unauthorized practice of law.
- Failure to report a change in business address, home address, telephone number, or failure to submit documentation to request an amended commission after a lawful name change, within the specified period of time.
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.
- Charging fees in excess of fees authorized by state law.
- Failure to maintain the surety bond required by state law.

According to DOS staff, there were 400,432 notaries registered in the state as of January 31, 2014.²⁰ In 2013 the Governor removed 12 notaries from office and suspended 48 others.²¹ As of February 25, 2014, 19 notaries had been suspended, two publicly censured, and none removed from office during the 2014 calendar year.²²

Notarial Journals

In 1998, the Governor's Task Force on Notaries Public recommended the mandatory use of notarial journals. The use of notarial journals remains strictly voluntary in the State of Florida. Fourteen states and the District of Columbia currently require notarial journals to be kept, with 26 others, including Florida, recommending that state-appointed notaries keep such a journal voluntarily.²³

Law Enforcement and Correctional Officers

Currently, s. 117.10, F.S., provides that law enforcement officers, correctional officers, and correctional probation officers, as defined in s. 943.10, F.S., and traffic accident investigation officers and traffic

¹⁶ Section 117.05(3)(e), F.S.

¹⁷ Section 117.05(14), F.S.

¹⁸ The grounds for suspension by the Governor found in s. 7, Art. IV of the State Constitution are, "malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony...."

¹⁹ Section 117.01(4), F.S.

²⁰ Florida Department of State, Division of Corporations, *Yearly Statistics, Total Active Registrations & Notaries*, available at http://sunbiz.org/corp_stat.html (last viewed February 25, 2014).

²¹ Executive Orders issued by Governor Rick Scott, *Executive orders issued in 2013*, available at <http://www.flgov.com/all-executive-orders/> (last viewed February 25, 2014) .

²² Executive Orders issued by Governor Rick Scott, *Executive orders issued in 2014*, available at <http://www.flgov.com/all-executive-orders/> (last viewed February 25, 2014) .

²³ *Notary Recordbook Requirements*; American Society of Notaries (can be found at: <http://www.notaries.org/notaryrecordbookrequirements.html>) last accessed on February 6, 2014.

infraction enforcement officers, as described in s. 316.640, F.S., are authorized to administer oaths when engaged in the performance of official duties. Additionally, s. 117.10, F.S., provides that ss. 117.01, 117.04, 117.045, 117.05, and 117.103, F.S., does not apply to the provisions of s.117.10, F.S., exempting the previously listed officers from a number of the duties and responsibilities of notaries public.

Effect of Proposed Changes

Notarial Journals

The bill requires notaries to maintain a notarial journal of bound sequential paper or an electronic journal which must be used to record the following information at the time of a notarial act that requires notarizing a signature:

- Date and time of the notarial act.
- Type of notarial act.
- Type, title, name, or description of the document, proceeding, or transaction requiring the notarial act.
- The signer's printed name and signature, or in the case of an electronic journal, the signer's name and electronic signature pursuant to s. 668.50(2)(h), F.S.
- The signer's complete residence address.
- Whether the signer is personally known to the notary public or presented satisfactory evidence pursuant to s. 117.05(5)(b), F.S., the type, last four digits of the unique identification number, and expiration date of the identification presented.
- Names of witnesses to the notarial act, if applicable.

A notary is required to keep a notarial journal for at least five years after the date of the last recorded notarial act in the journal. If the journal is lost, stolen, misplaced, destroyed, or rendered unusable during the retention period, the notary must immediately notify DOS in writing of the circumstances of the incident.

The notarial journal is the exclusive property of the notary and shall be kept in a locked and secure area, under the direct and exclusive control of the notary. Failure of the notary to comply with this section of state law constitutes grounds for suspension or nonrenewal of the notary's commission and grounds for the denial of a subsequent commission by the Governor.

Law Enforcement and Correctional Officers

The bill adds s. 117.055, F.S., to the list of sections that law enforcement officers, correctional officers, and correctional probation officers, as defined in s. 943.10, F.S., and traffic accident investigation officers and traffic infraction enforcement officers, as described in s. 316.640, F.S., are exempt from. Therefore the aforementioned officers are not required to maintain a notarial journal related to the oaths they administer while engaged in the performance of official duties.

B. SECTION DIRECTORY:

Section 1: Creates s. 117.055, F.S., to direct notaries on the keeping of notarial journals.

Section 2: Provides that s. 117.055, F.S., does not apply to the provisions of s. 117.10, F.S.

Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Notaries will be required to maintain records regarding their notary duties. This would be an increase in record keeping and require minimal costs related to the maintenance of the records.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the notary to document the names of witnesses in a notarial journal. However, not all notarial acts that require notarizing a signature require a witness. The bill should be amended to clarify the journal requirements related to witnesses.

The bill requires the journal to be kept in a locked and secure area, but is not clear how the notary would implement the locked and secured area for an electronic journal. Additionally, the bill requires the journals be maintained for at least five years. In the cases of electronic journals, the notary is able to maintain the journals for much longer periods of time. The language of the bill does not address the length of time an electronic journal will be maintained.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the House Economic Development & Tourism Subcommittee adopted two amendments.

- Amendment 1 was adopted to remove Section One of the bill (lines 22-72) which required a Department of Law Enforcement criminal history records check for notary public applicants. The section also allowed the Department of Law Enforcement to charge a \$15 fee for each criminal history records check, payable from the existing notary public application fee.

- Amendment 2 was adopted to clarify that the requirements associated with the keeping of a notarial journal would only apply to notarial acts involving a signature.

On March 4, 2014, the Business & Professional Regulation Subcommittee adopted an amendment providing that s. 117.055, F.S., does not apply to the provisions of s. 117.10, F.S., thus exempting law enforcement officers, correctional officers, and correctional probation officers, as defined in s. 943.10, F.S., traffic accident investigation officers, and traffic infraction enforcement officers, as described in s. 316.640, F.S., from being required to maintain a notarial journal as required in s. 117.055, F.S.

The analysis has been updated to reflect the amendments.