

STORAGE NAME: h1077a.brc

DATE: March 29, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
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 YEAS 9 NAYS 0
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

The Committee on Judiciary adopted a strike-all amendment that is traveling with the bill. The amendment clarifies the Department of State's (department) responsibility to issue a certified copy of a notary's original certificate of commission. It provides for certain activities and functions of a civil-law notary and bestows a presumption of correctness upon documents. The department's rulemaking authority is expanded. Among other things, the department would be able to specify by rule bonding and insurance requirements for civil-law notaries. The amendment limits testing of civil-law notaries and implements a provision seeking to increase the volume of international transactions in Florida.

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 bill has no estimated fiscal impact on state or local governments. Civil-law notaries would incur the expense of meeting the bond requirement.

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." See 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." See 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. See 1C-18.001, F.A.C.

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. See s. 117.01(7)(a), F.S. (Supp. 1998). Examples of 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 maintain it 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. The bond must be 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:

This section need be completed only in the discretion of the Committee.

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.

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:

The Department of State supports the bill on grounds that it will increase the number of international business transactions undertaken in Florida, and will open the market for these transactions for Florida lawyers to the civil law countries of Latin America and Europe.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted a strike-all amendment that is traveling with the bill. The amendment provides for the request by a person of a certified copy of a notary public's original certificate of commission, which shall be deemed legally sufficient to establish the notary's authority to provide notarial services, and may also be used in support of domestic transactions. The amendment also contains a technical amendment adding the singular term "party" to s. 118.10(1)(a), F.S. The amendment provides that a civil-law notary may authenticate or certify any document, transaction, event, condition, or occurrence, and that the contents of an authentic act and matters incorporated therein shall be presumed correct. The amendment grants to the Department of State authority to promulgate rules prescribing the form and content of authentic acts, oaths, acknowledgments, and solemnizations, the procedures for taking solemnizations, educational requirements for civil-law notaries, including legal and ethical responsibilities, disciplinary procedures for civil-law notaries, and bonding and errors and omissions insurance requirements. The amendment provides that the Department of State may not require any test for civil-law notaries unless the test is offered in connection with a bar education program. The amendment prescribes the procedures for requesting and obtaining a certificate of a civil-law notary's authority and an Apostille (a standard authentication certificate) as called for under the Hague Convention.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson

Staff Director:

Don Rubottom

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Eric Lloyd

Staff Director:

Rebecca R. Everhart