

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- This bill creates additional rulemaking power for the Secretary of State.

B. EFFECT OF PROPOSED CHANGES:

Background

A notary public is a state-appointed official who administers oaths and serves as an impartial witness when important documents are signed. A notary identifies each signer, and makes sure the signer has entered into the agreement knowingly and willingly. To confirm that a document and its signature are authentic, the notary affixes his or her signature and official seal to it.¹

Notaries public are governed by Chapter 117, F.S. Provisions concerning appointment of notaries public, application, fees, administration of oaths, seal and permitted duties are outlined in this chapter.

A person wishing to become a notary public may obtain an application and information from a bonding company approved to submit applications electronically to the Department of State, Notary Commissions and Certifications Section. The application fee is \$39, \$4 of which is appropriated to the Executive Office of the Governor to be used to educate and assist notaries public, the rest is directed to General Revenue. The application that is sent to the Department of State must contain: the full name, residence address and telephone number, business address and telephone number, date of birth, race, sex, social security number, citizenship status, driver's license number or the number of other official state-issued identification, affidavit of good character from someone unrelated to the applicant who has known the applicant for 1 year or more, a list of all professional licenses and commissions issued by the state during the previous 10 years and a statement as to whether or not the applicant has had such license or commission revoked or suspended, and a statement as to whether or not the applicant has been convicted of a felony, and, if there has been a conviction, a statement of the nature of the felony and restoration of civil rights. If a name change is required during a notary's commission a completed name change is required by DOS and a \$25 fee is assessed.

The Department of State (DOS) serves as the custodian of records for notary public applications, and maintains the record for the full term of a notary commission. Currently there are over 750,000 active notaries in the state, and DOS receives approximately 65,000 new applicants annually.

Proposed Changes

HB 1305 creates s. 117.021, F.S, to allow for electronic notarization of documents. The bill requires that provisions (including appointment process, administration of oaths, acknowledgments of deeds, seals, and prohibited acts) found in Chapter 117, F.S., that apply to traditional notarization, apply to electronic notarization of documents as well. The bill omits the provision found in s. 117.05 (12), F.S., requiring a notary public to supervise the making of a photocopy of an original document.

The bill provides the specifications of the electronic signature of a notary public and requires that it be:

- Unique to the notary public
- Capable of independent verification
- Retained under the notary public's sole control
- Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration

¹ <http://www.nationalnotary.org/userimages/WhatNotary.pdf>

The bill also provides that when a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains all of the following seal information:

- The full name of the notary public
- The words "Notary Public State of Florida"
- The commission date of expiration
- The commission number

The bill provides the Department of State with the authority to adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized.

The bill provides an effective date of January 1, 2008.

C. SECTION DIRECTORY:

Section 1: Creates s. 117.021, F.S., allows for the electronic notarization of documents and gives DOS rule making authority.

Section 2: Provides an effective date of January 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS: The removal of the requirement that notaries register with the Department of State appears to remove the bulk of the fiscal impact on the Department that was previously expressed. Minimal costs will be associated with the rule making process, should this be deemed necessary.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY: This bill creates additional rulemaking authority for the Secretary of State. It is anticipated that the Division of Corporations would be assigned the responsibility for the rulemaking, should the department determine its necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 29, 2007, the Economic Expansion and Infrastructure Council adopted a "strike-all" amendment by Representative Cretul that does the following:

- Removes the requirement that notaries register with the Department of State.
- Provides an effective date of January 1, 2008.

The removal of the requirement that notaries register with the Department of State appears to remove the bulk of the fiscal impact on the Department that was previously expressed. Minimal costs will be associated with the rule making process, should this be deemed necessary.

The bill was reported favorably as a council substitute.