

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

**BILL:** CS/CS SB 2330

**INTRODUCER:** Governmental Oversight and Accountability Committee, Commerce Committee, and Commerce Committee

**SUBJECT:** Agency Sunset Review of the Department of State

**DATE:** April 7, 2010                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	Naf	Wilson	GO	Fav/CS
3.			TA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill is the result of an agency sunset review of the Department of State conducted by the Senate Committees on Commerce, Ethics and Elections, and Governmental Oversight and Accountability.

This bill reenacts s. 20.10(2), F.S., which reinstates the Department of State (department), to allow the department to continue to perform its current functions and responsibilities required under law.

In addition, this bill transfers the current notary administration responsibilities of the Executive Office of the Governor (EOG) that relate to the education and investigation of notaries public to the department under a type two transfer, as defined in s. 20.06(2), F.S. To fund these transferred responsibilities, the bill allocates \$1.20 from the \$4 notary public application surcharge to be deposited in the department's Operating Trust Fund. The department would be required to inform the EOG of its findings related to any investigation of complaints made against notary publics.

The bill also provides that, for FY 2010-11, one full-time-equivalent position, with the associated salary of \$38,652, is authorized and the sum of \$120,000 in recurring funds from the Operating Trust Fund is appropriated to the department for the purpose of carrying out the provisions of the bill.

The bill also:

- Transfers the 3-hour notary education requirement from s. 668.50, F.S., to s. 117.01, F.S., and amends the education requirement to require all notary applicants to provide proof of attendance of the education course, instead of only first-time applicants.
- Revises notary application requirements.
- Reiterates current law under s. 817.155, F.S., by providing that an applicant who submits an application that he or she knows to contain any false, fictitious, or fraudulent statement commits a felony of the third degree.
- Requires the department to provide conspicuous notice to applicants on the notary public application form that, if an applicant misrepresents information on the application, he or she commits a felony of the third degree pursuant to s. 817.155, F.S.
- Requires any entity issuing bonds for notaries public to submit an annual report to the department as to whether any claims were paid and the circumstances under which those claims were paid.

The bill also makes stylistic changes and deletes two obsolete provisions concerning an increase in the required bond amount on January 1, 1999, and the required use of rubber stamps after January 1, 1992.

This bill reenacts s. 20.10, F.S.

This bill also substantially amends the following sections of the Florida Statutes: 117.01, 117.021, 117.05, 117.103, 117.107, and 668.50.

## **II. Present Situation:**

### **Agency Sunset Review of the Department of State Overview**

Sections 11.901-.920, F.S., are known as the Florida Government Accountability Act (act). Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;

- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- The process by which an agency actively measures quality and efficiency of services it provides to the public;
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislature.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submissions, the OPPAGA studies and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees must:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.<sup>1</sup>

The review process for the Department of State began in July of 2008, when the department submitted its statutorily mandated agency report.

The review of the Department of State was conducted by three primary Senate committees:

- The Commerce Committee reviewed the Division of Corporations;
- The Ethics and Elections Committee reviewed the Division of Elections; and

---

<sup>1</sup> §§ 11.901-11.920, F.S.

- The Governmental Oversight and Accountability Committee reviewed the Divisions of Historical Resources, Library and Information Services, Cultural Affairs, and Administrative Services.

### **Division of Corporations Sunset Review**

The Senate Commerce Committee is the primary sunset review committee for review of the Division of Corporations within the department. After the committee's initial review of the division, it recommended in its Issue Brief 2009-308<sup>2</sup> that the committee conduct further research to:

- Evaluate the efficacy of transferring some or all of the responsibilities of the division to the Department of Revenue;
- Re-evaluate the feasibility, value, and associated costs of implementing a Master Business Index; and
- Evaluate consolidating the responsibilities related to administration of the notary public commissioning process either within the division or within the Executive Office of the Governor (EOG).

The Office of Program Policy Analysis and Government Accountability (OPPAGA) researched the first two aforementioned recommendations and provided its findings and recommendations in a report.<sup>3</sup> OPPAGA primarily found:

- There is no compelling advantage to transferring the division to the Department of Revenue; and
- A better alternative to implementation of the Master Business Index is implementation of an online one-stop portal for businesses.

Committee staff researched the third recommendation, concerning the consolidation of administration of the notary public commissioning process, and provided findings and options in Interim Report 2010-212.<sup>4</sup> Committee staff's key findings were:

- Consolidation of administration of the notary public commissioning process would provide for marginal gains in efficiencies; and
- No entity is statutorily required to verify any information on a notary public's application.

### Notary Public Administration

#### *Background*

Notaries public are referenced in the State Constitution as public officers, which are to be commissioned by the Governor.<sup>5</sup>

---

<sup>2</sup> Issue Brief 2009-308 is available at

[http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim\\_reports/pdf/2009-308cm.pdf](http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-308cm.pdf).

<sup>3</sup> OPPAGA Report No. 10-22, *Florida Has Made Limited Progress to Streamline Business Processes; Other States Have Realized Benefits from One-Stop Portals*, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1022rpt.pdf>.

<sup>4</sup> Interim Report 2010-212 is available at

[http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-212cm.pdf](http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-212cm.pdf).

<sup>5</sup> See Fla. Const. art. II, s. 5, and art. IV, s. 1. Note: Notaries public differ from other types of public officers (e.g. legislators, law enforcement, clerks of court). For example, notaries are not eligible for the same types of benefits and protections

A notary public has been defined as a

public officer whose function it is to attest and certify, by his or her hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgements of and certify deeds and other conveyances, and to perform certain official acts, chiefly in commercial matters.<sup>6</sup>

Simply stated, a notary public verifies the identities of individuals involved in legal transactions and is the gatekeeper for preventing fraudulent transactions.<sup>7</sup> In Florida, there are two types of notaries: notaries public and civil-law notaries. Chapter 117, F.S., provides for the appointment and commissioning of notaries public and ch. 118, F.S., provides for the appointment of civil-law notaries.<sup>8</sup> The main distinctions between notaries public and civil-law notaries are that civil-law notaries must be attorneys and may issue “authentic acts,” which are more likely to be legally recognized by a foreign country than notarizations by notaries public.

The Division of Elections within the DOS has historically administered the notary section. Administration of the notary section was transferred to the Office of International Affairs, within the DOS, in 1999 or 2000.<sup>9</sup> In 2002, administration of the notary section was transferred to the Office of Tourism, Trade, and Economic Development (OTTED), within the Executive Office of the Governor (EOG). In 2003, administration of the notary section was transferred to the Division of Corporations (division), within the DOS, while the EOG retained certain responsibilities.

Today, the EOG’s notary section is responsible for appointing, investigating, and educating notary public applicants. The EOG also has the discretion to suspend notary public commissions. The division is responsible for processing notary public applications, approving and recording a required \$7,500 bond, issuing notary public commissions and certificates of notarial authority, and recording the results of actions taken by the EOG against a notary public. The division notes that “[c]oordination between the Division and the Governor’s Office is essential in carrying out the duties and responsibilities of the notary public program.”<sup>10</sup>

---

provided for public officers under chs. 111 and 112, F.S.

<sup>6</sup> 66 C.J.S. *Notaries* s. 1 (2009); see also *Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a “person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments.” BLACK’S LAW DICTIONARY (8th ed. 2004).

<sup>7</sup> For a current example of this gatekeeper role, see: Industry News, *Mortgage Fraud: Notaries on Front Lines of Defense*, June 6, 2005, available at

<http://www.valuationreview.com/ME2/Audiences/dirmod.asp?sid=63BC7A7A20BC48EEBDBC08290841922B&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=EB053935DAFF4A1999982B1489DD342A&tier=4&id=ABAA9AC8E84A4DB49D7B2964FF6166FC&AudID=The%20Legal%20Description>.

<sup>8</sup> Section 118.10(3), F.S., authorizes a civil-law notary to “authenticate or certify any document, transaction, event, condition, or occurrence” and s. 118.10(7), F.S., specifies that civil-law notaries have “all the power of a notary public under any law of this state.”

<sup>9</sup> Historical information provided via telephone interview with Jennifer Kennedy, Deputy Secretary for Corporations and Elections, October 1, 2009. Exact dates could not be provided as most transfers have been made by a memorandum of understanding or have not been recorded.

<sup>10</sup> Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-68.

The division reported that in FY 2008-09, there were 101,848 notary public commissions (including renewals) and 95 civil-law notary renewals.<sup>11</sup> In FY 2008-09, 246 applicants were not granted a commission by the EOG.<sup>12</sup> The division has also reported that as of September 2009, there are 440,503 notary public commissions and 95 civil-law notary appointments active in Florida.<sup>13</sup>

### *Legal Qualifications for Florida Notaries Public*

Section 117.01, F.S., requires notary public applicants to meet certain legal qualifications prior to being commissioned by the Governor. These legal qualifications require an applicant to:

- Be at least 18 years of age;
- Be a legal resident of the state and maintain such residency throughout his or her 4-year term of appointment;
- Be able to read, write, and understand the English language;
- Complete an application form prescribed by the DOS;<sup>14</sup>
- Submit to the division an affidavit of good character from someone unrelated to the applicant and who has known the applicant for 1 year or more;
- Submit to the division 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 any such license or commission revoked or suspended;
- Submit to the division a statement as to whether or not the applicant has been convicted of a felony, and if so, the nature of the felony and whether or not the applicant's civil rights have been restored;
- Take an oath that the application for a commission is true and correct, that he or she has read ch. 117, F.S., that he or she knows the duties, responsibilities, limitations, and powers of a notary public, and that he or she will honestly, diligently, and faithfully discharge the duties of the notary public;<sup>15</sup>
- Obtain a bond for \$7,500, payable to any individual harmed as a result of a breach of duty by the notary public acting in his or her official capacity; and
- Provide any other information the Governor deems necessary for determining whether the applicant is eligible to be commissioned.

In addition, s. 668.50(11)(b), F.S., requires first-time notary public applicants to submit proof that the applicant has, within 1 year prior to the application, completed at least 3 hours of interactive or classroom instruction, which covers electronic notarization and the duties of the notary public.

---

<sup>11</sup> Information received from the Division of Corporations on November 9, 2009, on file with the committee. Note: A civil-law notary's appointment is continued as long as an annual report is filed with the division each year. *See* 1C-18.001(4)(c), F.A.C.

<sup>12</sup> Information received from the EOG on January 12, 2010, on file with the committee.

<sup>13</sup> Information received from the Division of Corporations on September 11, 2009, on file with the committee.

<sup>14</sup> A person must complete a new application when applying for a new commission, renewal of a commission, or subsequent commission.

<sup>15</sup> A person taking the oath is subject to the penalty of perjury under s. 837.012, F.S., which is a misdemeanor of the 1<sup>st</sup> degree.

Civil-law notaries are appointed by the Secretary of State. Pursuant to s. 118.10(1)(b), F.S., applicants must be a Florida Bar member in good standing who has practiced law for at least 5 years.<sup>16</sup> Additionally, under the DOS' administrative rule, 1C-18.001, F.A.C., civil-law notary applicants must complete an application form as prescribed by the DOS and must successfully complete a civil-law notary examination with a score of 70 percent or higher on the exam. The Secretary of State may adopt rules prescribing procedures for the disciplining of civil-law notaries, including the suspension and revocation of appointments.<sup>17</sup> However, the Secretary of State is prohibited from regulating and disciplining "any civil-law notary for, or with regard to, any action or conduct that would constitute the practice of law in this state, except by agreement with The Florida Bar."<sup>18</sup>

### Application Fees

Section 117.01(2), F.S., requires notary public applicants, including renewals, to pay a \$25 application fee and a \$10 commission fee.<sup>19</sup> In addition, applicants must pay a \$4 fee, which is appropriated to the EOG to be used to educate and assist notaries.<sup>20</sup>

Civil-law notary applicants, pursuant to 1C-18.001(1)(b)2., F.A.C., must pay a \$50 application processing fee.<sup>21</sup> In addition, applicants may pay up to \$200 to take the civil-law notary examination.<sup>22</sup>

### Notary Section of the Executive Office of the Governor

Section 117.01, F.S., vests the Governor with the authority to appoint and commission as many notaries public as he deems necessary. The Governor is also responsible for disciplining and providing educational assistance to notaries public.<sup>23</sup>

The notary section of the Executive Office of the Governor (EOG) states that it carries out its function by:

publishing and distributing educational materials, particularly the notary laws and the Governor's Reference Manual for Notaries; by answering telephone inquiries from Notaries; by conducting notary seminars; and

<sup>16</sup> Chapter 1C-18.001(1)(b)1., F.A.C., requires civil-law notary applicants to submit a certificate of good standing from the Supreme Court of Florida to the division within 90 days of the date of application.

<sup>17</sup> Section 118.10(5)(e), F.S. *See also*, ch. 1C-18.001, F.A.C.

<sup>18</sup> Section 118.10(6), F.S.

<sup>19</sup> Because there are approximately 100,000 applications a year, the division collects an estimated \$3.5 million annually, which is deposited into General Revenue. Statistics provided by the Division of Corporations, September 2009, on file with the committee.

<sup>20</sup> Because there are approximately 100,000 applications a year, the EOG collects an estimated \$400,000 annually, which is deposited in the Grants & Donations Trust Fund. Statistics provided by the notary section of the EOG and by the Division of Corporations, September 2009, on file with the committee.

<sup>21</sup> Civil-law notaries also pay \$50 a year when submitting annual reports. Because the current 95 civil-law notaries retain their appointment as long as they file an annual report, the division collects approximately \$4,750 annually, which is deposited into General Revenue. Statistics provided by the Division of Corporations, November 2009, on file with the committee.

<sup>22</sup> *See* ch. 1C-18.001(2)(c), F.A.C.

<sup>23</sup> *See* s. 117.01, F.S.

maintaining the on-line Notary Education Course....The Notary Section also assists the Governor by reviewing “special review” applications related to the applicants’ eligibility for appointment and by reviewing complaints against Notaries and recommending disciplinary action when appropriate.<sup>24</sup>

One person is assigned to the notary section of the EOG and is responsible for completing these responsibilities.<sup>25</sup> According to the notary section of the EOG, complaints and the section’s workload have increased during the past 2 years, especially because of the increase in mortgage or real estate fraud.<sup>26</sup> The notary section of the EOG reports that it receives approximately 25-40 complaints a month and the division reports that, on average, 27 notary commissions are suspended each year.<sup>27</sup> The notary section was previously staffed with a total of 4 people, including 1 education coordinator, 2 complaints investigators, and 1 other personal services (OPS) person.<sup>28</sup>

The notary section, by and large, fulfills its educational assistance requirement by approving notary education curricula for certain vendors. Applicants can only take the required 3-hour class from a notary education vendor that has a core curriculum approved by the EOG. In Florida there are 16 vendors that provide notary public applicants with the required 3-hour notary public education course.<sup>29</sup> Many of these vendors also offer “one-stop” type services for notary applicants by providing them with the surety bond (directly or in coordination with an underwriter), educational course, application forms, and notary equipment required by statute.

Another important function of the notary section is the investigation of notaries or notary public applicants. Investigations are conducted on applicants under “special review,” when their applications have been flagged by a vendor or the division. Under s. 117.01(2), F.S., an applicant is required to self-disclose if he or she has ever been convicted of a felony, which may trigger an investigation. In addition, the notary section may receive complaints by phone or mail, which may lead to the investigation of a commissioned notary public or an applicant. Section 117.01(8), F.S., requires a surety company to notify the Governor when a claim for a bond has been paid and the circumstances under which the bond was paid, which could lead to an investigation of a commissioned notary.

Usually during an investigation a criminal background check is performed, which is not statutorily required for notary public applicants under ch. 117, F.S. The notary section reports that it coordinates investigations with law enforcement and the Florida Bar if the notary is also an attorney.<sup>30</sup>

The notary section of the EOG has no role in the administration, investigation, or appointment of civil-law notaries.

---

<sup>24</sup> See [http://www.flgov.com/notary\\_intro](http://www.flgov.com/notary_intro).

<sup>25</sup> Interview with Heather Slager, the EOG’s Notary Education Coordinator, September 8, 2009.

<sup>26</sup> *Id.*

<sup>27</sup> Statistics provided by the notary section of the EOG and by the division, September 2009, on file with the committee.

<sup>28</sup> *Supra* fn. 24.

<sup>29</sup> A list of vendors with approved curricula is available at [http://www.flgov.com/notary\\_education](http://www.flgov.com/notary_education).

<sup>30</sup> *Supra* fn. 24.

Notary Section of the Division of Corporations

The division serves solely in a ministerial capacity when processing notary public applications, issuing certificates of notarial authority, and recording bonds. The division does not verify application information or investigate notary public applicants or commissioned notaries. If a concern with the application is identified during processing, it is referred to the EOG for review and investigation.

The division reports that it receives all of its notary public applications from vendors that provide a “one-stop” type service for those seeking to become a notary public. These companies provide surety services (directly or through its affiliates) to meet the \$7,500 statutory bond requirement for notaries public, ensure that the educational courses satisfy the 3-hour notary public educational course required by statute, ensure that the application forms meet with the DOS’ approval, and may provide notary equipment, such as stamps and embossers, to notaries once they have been commissioned. These companies submit their customers’ applications, along with proof of attendance of the educational course and the required bond, to the DOS. The DOS receives the applications and reviews them for completeness to ensure they meet the statutory requirements under ch. 117, F.S., before processing the application and printing a commissioning certificate.<sup>31</sup>

Six employees (FTEs) are funded in the division to process notary public applications and record the required bonds and certificates of authority for notaries public.<sup>32</sup> The division reports that 2 FTEs process applications, while the others answer incoming calls concerning notary public questions.<sup>33</sup>

The division reports that complaints concerning notaries public are referred to the notary section of the EOG.<sup>34</sup>

Although the division reports that it operates solely in a ministerial capacity when processing notary public applications, it has a different role with civil-law notaries. Statutorily, the Secretary of State has the authority to develop application processes, prescribe educational requirements, investigate applications, appoint civil-law notaries, and suspend or revoke the appointments of civil-law notaries under ch. 118, F.S.<sup>35</sup> These functions are carried out by the division. However, to date, the division has not deemed it necessary to investigate civil-law notaries or suspend or revoke a civil-law notary’s appointment.<sup>36</sup>

---

<sup>31</sup> Information obtained during a tour of the notary section of the Division of Corporations, September 10, 2009.

<sup>32</sup> Department of State’s Agency Programs, Services, and Committees/Councils Review (FY 2008-2009), on file with the committee.

<sup>33</sup> *Supra* fn. 30.

<sup>34</sup> *Id.*

<sup>35</sup> *See* s. 118.10(2), (5)(a)-(g), F.S. *See also*, ch. 1C-18.001, F.A.C.

<sup>36</sup> *Supra* fn. 30.

### Notary Misconduct

It is reported that notary public misconduct has been a problem in the United States ever since the first notary public was appointed in the American colonies in 1639.<sup>37</sup> Examples of notary public misconduct include the forgery of signatures, the notarization of signatures of persons not present before the notary, and the notarization of blank documents that are later drafted with fraudulent terms.<sup>38</sup> The National Notary Association (NNA) reports that, in Florida, notary public misconduct is especially prevalent in fraudulent real estate transactions where the elderly and those who speak English poorly are targeted.<sup>39</sup> Notary misconduct is punishable as a felony of the third degree or misdemeanor of the second degree.<sup>40</sup>

### Notaries as Gatekeepers

The NNA reports that:

[n]otarization is an effective weapon against mortgage fraud because it verifies identity, proves willingness and awareness on the part of the signer, authenticates signatures, and creates an auditable evidence trail for prosecution. In addition, the notarial seal is an authenticating tool that is used by law enforcement in detecting cases of document tampering.<sup>41</sup>

This kind of gatekeeping against mortgage fraud is especially important in Florida. The Mortgage Asset Research Institute (MARI) reported in March 2009, that Florida had the second largest number of mortgage frauds in the country in 2008 and had the most instances of mortgage fraud in 2006 and 2007.<sup>42</sup>

---

<sup>37</sup> Anderson, John C., and Closten, Michael L; *A Proposed Code of Ethics for Employers and Customers of Notaries: A Companion to the Notary Public Code of Professional Responsibility*; 32 J. Marshall L. Rev. 887 (Summer 1999).

<sup>38</sup> See Lilly, Joanna, *The Unlawful Notary*, which gives an account of various cases of notary fraud, available at <http://www.lastwordedits.com/unlawfulnotary.pdf>. Note: This is not an exhaustive list of the types of notary misconduct.

<sup>39</sup> National Notary Association, *The Growing Real Estate Problem in Florida: How Requiring a Thumbprint in a Notary Recordbook Can Significantly Diminish Real Property Scams in the State*, March 2003, pg. 4, available at <http://www.nationalnotary.org/userimages/reFraudfla.pdf>. See also, White, Gary, *The Ledger, Real Estate Fraud Growing in Polk and Across Florida*, February 28, 2009, available at <http://www.theledger.com/article/20090227/NEWS/902280283?Title=Real-Estate-Fraud-Growing-in-Polk-and-Across-Florida>.

<sup>40</sup>Section 117.105, F.S., provides that “a notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree.” Pursuant to s. 117.05(1), F.S., a notary public is guilty of a felony of the third degree if the notary uses a commission in other than the notary’s real name and if the notary notarizes his or her own signature. In addition, it is unlawful to possess a notary public official seal or any papers or copies relating to notarial acts, impersonate a notary public, or to knowingly act as a notary public after a commission has expired; all are a misdemeanor of the second degree. See s. 117.05, F.S.

<sup>41</sup> National Notary Association, *National Notary Association Issues Consumer Tips to Protect Against Mortgage Fraud: FBI and NNA collaborate on the heels of FBI warning that mortgage fraud has become “epidemic,”* available at <http://www.nationalnotary.org/about/index.cfm?Text=aboutPR&newsID=402>.

<sup>42</sup> James, Denise; Butts, Jennifer; and Donahue, Michelle; Lexis Nexis, MARI, *Eleventh Periodic Mortgage Fraud Case Report to: Mortgage Bankers Association*, March 2009, available at <http://www.marisolutions.com/pdfs/mba/mortgage-fraud-report-11th.pdf>.

However, the effectiveness of notaries as gatekeepers to prevent fraud may be limited under circumstances where a signer is committing identity theft, but has seemingly valid proof of identification.

### **Division of Elections Sunset Review**

The Senate Ethics and Elections Committee is the primary sunset review committee for review of the Division of Elections within the Department of State.

As part of the Sunset Review, the committee held a meeting on March 18, 2009, and heard extensive testimony regarding the duties and responsibilities of the Division of Elections. In 2008, the Senate Ethics and Elections Committee recommended in its Issue Brief, 2009-318, that the committee conduct further research to determine:

- The efficacy of using HAVA monies to fund the operational functions of the Bureau of Voter Registration Services; and
- Division compliance with the findings of the 2008 Auditor General follow-up to the 2006 Auditor General Operational Audit.

The committee reviewed and considered Interim Mandatory Review 2010-214. On January 13, 2010, the committee made the following recommendations:

- The Legislature should retain the Division of Elections of the Department of State since programs and functions of the division are not currently duplicated by any other agency of Florida government.
- The Legislature should recognize and address the Department of State's anticipated future use of HAVA monies to ameliorate the funding needs of the Division of Elections, especially in light of anticipated HAVA funds depletion during fiscal year 2017 2018.
- The Legislature should continue to follow up with the department regarding its implementation of its response to the Auditor General's 2008 follow up to its 2006 audit by:
  - Confirming when a solution is found to provide detailed traffic auditing and reporting given that the department's Network Access Control Solution did perform up to standards.
  - Confirming when a disaster recovery plan is created that includes FVRS.
  - Continued monitoring of the department's systematic felon matching program.

After review and consideration of the Interim Mandatory Review 2010-214 on January 13, 2010, the Senate Ethics and Elections Committee authorized the committee professional staff to prepare a bill. The Senate Ethics and Elections Committee at its February 17, 2010, meeting reviewed the bill and directed that a proposed committee bill be introduced.

### **Divisions of Historical Resources, Library and Information Services, Cultural Affairs, and Administrative Services Sunset Review**

The Senate Governmental Oversight and Accountability Committee is the primary sunset review committee for the Divisions of Historical Resources, Library and Information Services, Cultural Affairs, and Administrative Services within the Department of State.

In 2008, the Senate Governmental Oversight and Accountability Committee recommended in its Issue Brief, 2009-322, that the committee conduct further research to determine:

- Whether merger of the Department of State and the Department of Community Affairs would improve the efficiency and effectiveness of the programs assigned to these departments, and whether such a merger would reduce costs. Further, whether there are programs in other departments, such as the Department of Environmental Protection, that could be transferred to the merged department that could improve program efficiency and effectiveness and also reduce costs.
- Whether the electronic grant information and application processes at the Department of State could be expanded to provide a single state site for grant information for all state agencies and whether such a program would reduce state program costs and increase efficiency.
- Whether admission fees and the production and sale of promotional items should be authorized to help to support state museums and other cultural or historical attractions and what changes to the Florida Statutes would be necessary to permit these practices.
- How timeframes for the completion of the development plan for the Mission San Luis could be reduced without negatively impacting archaeological research at the site and how funding levels could be increased. This review should contain information regarding how similar archaeological sites in other states (such as Jamestown Settlement in Virginia and The Alamo in Texas) are owned and operated.
- Whether the electronic system for accessing Florida Administrative Code rules provided by the department provides the most efficient and effective means for providing such electronic access.
- Whether the availability of on-line research capabilities by Legislators and staff have resulted in diminished use of the legislative library, whether user rates at the legislative library are sufficient to continue the operation of the library, and whether the use of extended or special hours at the State Library during certain times of the year (such as during legislative sessions) would be more efficient and effective.
- Whether the number of advisory entities at the Department of State, including the costs for operating these entities, could be reduced by merger of some of the entities assigned within each division.
- Whether the current or proposed measures and standards are the appropriate performance indicators for assessing program results.

The committee reviewed and considered Interim Mandatory Review 2010-218. On February 2, 2010, the committee made the following recommendations:

- The Legislature should retain the Divisions of Historical Resources, Library and Information Services, Cultural Affairs, and Administrative Services of the Department of State because programs and functions of the divisions are not currently duplicated by any other agency of Florida government.

### **III. Effect of Proposed Changes:**

**Section 1** reenacts s. 20.10, F.S., which would reinstate the Department of State (department) to allow the department to continue to perform its current functions and responsibilities required under law.

**Section 2** amends s. 117.01, F.S., to transfer the current notary administration responsibilities of the Executive Office of the Governor (EOG) that relate to the education and investigation of notaries public to the department. To enable the department to carry out these responsibilities, this section of the CS allocates \$1.20 from the \$4 notary public application surcharge to be deposited in the department's Operating Trust Fund. The department is to use the \$1.20 surcharge to receive and process notary applications, educate and assist notaries public, and receive and investigate complaints against notaries public. The other \$2.80 from the surcharge is to be deposited into the EOG's Grants and Donations Trust Fund.

The 3-hour notary education requirement is transferred from s. 668.50, F.S., to s. 117.01(4), F.S., and amends the education requirement to require all notary applicants to provide proof of attendance of the education course, instead of only first-time applicants.

This section of the bill also revises the notary application requirements to:

- Require an applicant to provide his or her "legal" name.
- Require the applicant to provide his or her gender, instead of "sex."
- Delete the requirement for applicants to provide an affidavit of good character from an unrelated person who has known the applicant for 1 year or more.
- Require the applicant to state whether he or she has previously been commissioned as a notary public in Florida.
- Require the applicant to state whether he or she has been convicted "or found guilty" of a felony.
- Delete the provision permitting applicants to use a nickname on an application.

Paragraph (4)(e) reiterates current law under s. 817.155, F.S., by providing that an applicant who submits an application that he or she knows to contain any false, fictitious, or fraudulent statement commits a felony of the third degree.

Paragraph (4)(f) requires the department to provide conspicuous notice to applicants on the notary public application form that, if an applicant misrepresents information on the application, he or she commits a felony of the third degree pursuant to s. 817.155, F.S.

Subsection (6) requires the department to inform the EOG of its findings related to any complaints made against notaries public.

Subsection (11) requires any entity issuing bonds for notaries public to submit an annual report to the department to report whether any claims were paid and the circumstances under which those claims were paid. To ensure compliance with this provision, the department may not accept bonding certificates from an entity that has failed to submit the required report until the required report is submitted.

This section of the bill also makes stylistic changes and deletes an outdated provision concerning an increase, on January 1, 1999, of the required bond amount for notaries public.

**Section 3** amends s. 117.021, F.S., to correctly identify the Governor, instead of the Executive Office of the Governor, as having the authority to suspend notaries public.

**Section 4** amends s. 117.05, F.S., to make stylistic changes, delete an obsolete provision that requires use of rubber stamps after January 1, 1992, and correct certain references to the “Secretary of State” to refer to the department instead.

**Section 5** amends s. 117.103, F.S., to change “Secretary of State” to “Department of State,” to clarify that the department is responsible for certain notary administration functions.

**Section 6** amends s. 117.107, F.S., to delete the use of “facsimile” signature stamps, which permits electronic signature stamps, and to make stylistic changes.

**Section 7** is an undesignated section of Florida law that transfers the current notary administration responsibilities of the Executive Office of the Governor (EOG) that relate to the education and investigation of notaries public to the department under a type two transfer, as defined in s. 20.06(2), F.S.<sup>43</sup> The EOG would retain its commissioning and disciplining responsibilities.

**Section 8** amends s. 668.50, F.S., to delete the 3-hour notary education requirement, which was transferred to s. 117.01, F.S.

**Section 9** provides that, for FY 2010-11, one full-time-equivalent position, with the associated salary of \$38,652, is authorized and the sum of \$120,000 in recurring funds from the Operating Trust Fund is appropriated to the department for the purpose of carrying out the provisions of the CS.

**Section 10** provides an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

---

<sup>43</sup> See s. 20.06(2), F.S. In a type two transfer, the agency or unit of government transferred has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of segregated funds must be made in a manner that the relation between program and revenue source as provided by law is retained.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

If a notary public chooses to use a vendor to take a notary education course prior to the renewal of his or her application for a commission, the notary may incur costs associated with taking the course. However, the department will offer the required course online for free and therefore, it is not necessary that a notary public incur any cost associated with the education course.

**C. Government Sector Impact:**

To the extent law enforcement enforces the criminal penalties provided for in the bill, the state may incur costs associated with arresting, prosecuting, and jailing offenders.

The department will incur costs associated with assuming the investigatory and education responsibilities from the EOG. However, these costs will be offset by the \$1.20 per notary application surcharge allocated to the department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Governmental Oversight and Accountability on April 6, 2010:**

The CS/CS differs from the CS in that it:

- Reenacts the entire Department of State.
- Removes the prior addition of “ethnicity” from the notary affidavit form.
- Conforms all provisions of the bill to an effective date of July 1, 2010.
- Specifies that an entity issuing bonds for a notary public must submit an annual report to the Department of State regarding payment of bonds by January 1 of each year.
- Deletes “oaths of affidavit” from the documents that may be submitted by surety companies for hire to the Department of State to conform with the term’s deletion in the rest of the bill.

**CS by Commerce on March 24, 2010:**

The CS differs from the bill in that it:

- Reenacts the Division of Corporations.
- Transfers the education and investigatory responsibilities from the Executive Office of the Governor to the department.
- Allocates \$2.80, in lieu of \$4 under current law, to the Executive Office of the Governor to fund its commissioning and disciplinary responsibilities. The remaining notary application surcharge (\$1.20) is allocated to the department to fund its investigatory and education responsibilities.
- Revises application requirements.
- Reiterates current law under s. 817.155, F.S., by providing that an applicant who submits an application that he or she knows to contain any false, fictitious, or fraudulent statement commits a felony of the third degree.
- Permits the public to file complaints against notaries and requires the department to investigate such complaints.
- Deletes obsolete provisions.
- Requires each bonding entity to submit an annual report to the department of bonds paid and the circumstances under which they were paid.
- Requires notary education for all notaries applying for a commission, not only first-time notary applicants.
- Requires the department to provide notice on notary application forms that applicants who misrepresent information on the application commit a felony of the third degree.
- Provides for the appropriation of funds for the department's new responsibilities and authorization for staff personnel.

**B. Amendments:**

None.