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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 957

RELATING TO: Economic Commerce

SPONSOR(S): Representatives Culp, Trovillion, and Effman

STATUTE(S) AFFECTED: amends sections 117.05, 215.322, 282.20, 471.025, 471.033, 472.025, 240.289, 402.18, repeals sections 118.01-118.04, F.S., creates sections 117.20 and 282.745, F.S.

COMPANION BILL(S): SB 998

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill contains specific statutory changes aimed at promoting the development of electronic commerce in Florida. Electronic commerce is a broad concept that can be defined as the use of computers and telecommunications to conduct business transactions. These transactions include the placing and tracking of orders, the delivery of products and services, the exchange of funds, and the documentation of such events. In addition, electronic commerce may involve electronic submission of various types of documents to government entities such as regulatory agencies and courts.

The bill would authorize the Secretary of State to commission notaries to perform electronic notarizations which could add trust, reliability, and authenticity to electronic transactions. The bill allows agencies to accept debit cards as a form of payment for goods and services, and introduces the concept of a "convenience fee" which would be paid to agencies for the convenience of using credit cards and debit cards.

The bill would also authorize the Secretary of State to promulgate and implement rules for the voluntary licensure of private certification authorities which would issue digital certificates to be used with digital signatures to authenticate electronic commerce transactions.

The bill would allow the use of electronic seals, based on digital signature technology, to be affixed to official engineering, land surveying, and mapping documents which are distributed in an electronic format.

The bill would authorize the Secretary of State to develop criteria for persons to be qualified as "international attorney-notaries" who would work with international attorney notaries in other countries to authenticate and execute international transactions.

The Department of State would incur non-recurring costs of \$40,000 to \$60,000 to implement the requirements of this bill, and recurring costs associated with implementing this bill. The bill authorizes the levy of a \$25 fee to fund recurring administrative costs.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Electronic Signatures

During the 1995 interim, the Joint Legislative Information Technology Resource Committee conducted a study on electronic signatures and electronic commerce. A digital signature, a highly secure form of an electronic signature, provides an electronic method for authenticating the origins of documents sent from remote locations and the ability to verify that the documents were not altered after being sent.

The Joint Committee found that the use of electronic commerce can result in increased efficiencies over traditional paper-based methods of conducting business transactions and that digital signatures, using public key cryptography, can add authenticity, security, and reliability to such transactions. (Public key cryptography is a security tool that involves the ciphering and deciphering of messages. Using a "private key," known only to the sender, transactions, messages, or signatures are processed using a mathematical algorithm that reduces the message to a code. This code is then sent to the recipient, who possesses the "public key" that "unlocks" or decodes the message. The public key and the private key are together known as a "key pair." The private key can be used only to encode the message and the public key is correspondingly the only way to decode the message. The development of public key cryptography has formed the basis for use of digital signatures.)

Additionally, the use of a certification process for digital signatures further adds to the reliability of such signatures by providing a trusted third party who can vouch for the authenticity of the digital signature. (A certification authority is a trusted third party that issues a "public key certificate" that associates a particular person with a key pair. This certificate is published along with that person's "public key" in an on-line repository, where the recipient of any message can verify the identity of the sender.)

The Joint Committee also found that at least one other state, Utah, has authorized a state agency to act as a certification authority for digital signatures in their state.

As a result, during the last legislative session, the Joint Committee on Information Technology Resources proposed legislation that resulted in passage of the Electronic Signature Act of 1996. This Act gave the Secretary of State authority to act as a certification authority for both public and private entities and to promulgate any necessary rules associated with being a certification authority. The Act also required the Secretary of State to study the issues surrounding the use of electronic commerce and digital signatures and report back to the Joint Committee by December 1, 1996.

The Secretary of State conducted a study which resulted in the formation of the Digital Signature Advisory Committee and the November 30, 1996, report titled, "Electronic Commerce in Florida: Report to the Joint Legislative Committee on Information Technology Resources." That report contains proposed legislation relating to electronic commerce and digital signatures.

As of this date, the Secretary of State has not issued any certificates for the use of digital signatures. Certain private sector companies are now offering their services as certification authorities by issuing certificates for the use of digital signatures.

Currently, notaries public in Florida are appointed by the Governor and applications for notary commissions are handled by the Secretary of State. The law requires that a notary seal be affixed to all notarized documents and that the seal be of the rubber stamp type. Therefore, under current law, notaries public have little or no role in electronic commerce.

Debit Cards

The present situation with regard to payment systems allows a state agency or the judicial branch may accept credit cards for payment of goods and services with the prior approval of the Treasurer. The Treasurer is charged with adopting rules governing the establishment and acceptance of credit cards. The state agency or judicial branch may add a surcharge in an amount sufficient to pay the service fee charges by the financial institution, vending service company, or credit card company. In other words, the agency or court can recover the costs it incurs, but no more.

Debit cards are used in electronic payment systems. Unlike a credit card, however, the transaction is completed only if there are available funds in the account.

This bill amends s. 215.322, F.S., pertaining to the acceptance of credit cards, to add debit cards as an acceptable form of payment to governmental entities. The bill would require the approval of the Florida Fiscal Accounting Management Information System Coordinating Council for state agencies to use credit cards or debit cards. The current law requires that the use of credit cards, but not debit cards, be approved by the Treasurer. The bill also requires the Council to adopt rules for the establishment and acceptance credit cards and debit cards. The bill replaces the word "requirements" with the word "guidelines" wherever possible in s. 215.322, F.S.

The bill removes language which addresses surcharges by a financial institution, vending service company, or a credit card company, and replaces it with language that would allow a state agency or the judicial branch to charge a "convenience fee." Language which limits the service fee or surcharge to taxes, license fees, tuition, and other statutorily prescribed revenues is also deleted by the proposed bill. In addition, the bill limits the proposed convenience fees to an amount which shall not exceed the reasonable additional cost of providing remote electronic access to goods and services, less the actual savings to be achieved.

Electronic Surveying and Mapping

The Technology Resource Center of the Department of Management Services is created in s. 282.20, F.S., as an information-system utility. It currently serves only state agencies, primarily those without data centers of their own, on a fee-for-services basis. The TRC is governed by a policy board of its users which, among other duties, is responsible for accepting new users and approving information technology resource acquisitions.

Currently, the practice of engineering is regulated under ch. 471, F.S., and the practice of land surveying and mapping is regulated under ch. 472, F.S. The regulatory scheme for the two groups is similar. Both professions are regulated by statutorily created boards, and individuals must meet licensure requirements in order to legally practice their profession. For both professions, the statutes state that the boards shall prescribe, by rule, a form of seal to be used by all registrants holding valid certificates of registration. The statutory

requirement to use physical seals is a significant barrier to transmitting documents electronically.

International Attorney-Notaries

Currently, transactions between the United States and other countries are hampered, closed, and made more expensive by the lack of a domestic equivalent to the international notary to execute and authenticate transactions between people in the U.S. and civil law countries. The Secretary of State's report to the Joint Legislative Information Technology Resource Committee notes that "Fundamental differences between countries in the procedural and content requirements for many types of international transactions, from powers of attorney to transfers of corporate shares, have long resulted in numerous U.S.-executed documents being rejected by legal and recording authorities overseas."

The report further notes, "Heretofore this problem has been dealt with inadequately by U.S. lawyers who specialize in international transactional law, through a lengthy and cumbersome process in which the lawyer undertakes a review of the particulars of the transaction and pertinent foreign legal formalities, and writes an opinion letter affirming that the transaction complies with both U.S. and foreign law. This process not only costs the client a great deal of money, but it also exposes the lawyer to potential liability for which he may not be adequately insured."

Commissioner of Deeds

Additionally, the Executive Office of the Governor brought to the attention of the Secretary of State's workgroup the existence of "Commissioners of Deeds," authorized under ch. 118, F.S. The Secretary of State's report notes that "the existence of this Chapter has been used to facilitate fraudulent acts on some occasions and the Governor's office prefers that this Chapter be repealed. To the extent that Commissioners of Deeds served valuable purposes their role is subsumed within the new concept of International Attorney-Notaries."

B. EFFECT OF PROPOSED CHANGES:

Electronic Signatures

This bill amends s. 117.05, F.S., which pertains to the use of seals by notaries public. The changes clarify that the notary seal section applies only to paper documents, and not to electronic notarizations.

The bill creates a new s. 117.20, F.S., which provides for electronic notarizations. The bill specifies the requirements for electronic notarizations, one of which is that the notary's digital signature be included. The bill states that neither a rubber stamp seal nor an impression type seal is required for an electronic notarization.

The bill allows for a notary to obtain an amended notary commission from the Secretary of State which would allow the notary to perform electronic notarizations. A notary seeking an amended commission would send the Secretary of State a fee of \$25, his/her current commission, and a notice of change form which would include the name of the certification authority from which the notary obtained a certificate. After requesting the amended commission, the notary could continue to perform traditional notarial acts but would be

required to wait until the amended commission is received from the Secretary of State before using a digital signature in the performance of notarial acts.

The bill specifies that a notary shall immediately notify the Secretary of State if their private key corresponding to their public key is compromised, and shall also request that the issuing certification authority suspend or revoke the certificate. The bill also states that failure to comply with s. 117.20, F.S., electronic notarization, constitutes grounds for suspension by the Governor.

The bill also amends s. 282.20, F.S., pertaining to the Technology Resource Center (TRC) of the Department of Management Services, to define the term "customer" as a state agency or other entity which is authorized to utilize the SUNCOM Network pursuant to this chapter. This definition would include local governments and certain nonprofit corporations as eligible to receive services from the TRC.

The bill amends the TRC data processing policy board's voting rules to exclude ex officio members from voting, and also to provide a method for weighted voting based on the revenue paid by the member's entity in the prior year. The bill also raises the threshold for purchases which the policy board must approve from \$2,500, to the amount provided in s. 287.017, F.S., for CATEGORY TWO purchases (currently set at \$15,000).

This bill amends the Electronic Signature Act of 1996 (SB 942, Chapter Law 96-224, codified at ss. 282.70 - 282.75, F.S.) to define the future role of the Secretary of State with regard to digital signatures and certificates used to verify digital signatures. The bill authorizes the Secretary of State to promulgate and implement rules for the voluntary licensure of private certification authorities.

The bill states that no private certification authority shall be required to obtain a license from the Secretary of State. Under present law and also with the proposed amendments, any party involved in electronic commerce is free to use any type of digital signature and any certification authority they choose.

The bill lists certain things that shall be included in future rules of the Secretary of State. These minimum requirements address such issues as licensing fees, standards and requirements, audit procedures, insurances reserve or bonding requirements, and procedures for license revocation and suspension of licenses. The bill also authorizes the Secretary of State to enter into reciprocity agreements with other jurisdictions to allow full recognition of certificate authorities.

Electronic Surveying and Mapping

This bill amends s. 471.025, F.S., pertaining to seals which are affixed to official engineering documents, to allow for the use of electronic seals in addition to the traditional physical seals on paper. This section is also amended to make it clear that after an engineer's certificate of registration has expired, the engineer cannot legally use electronic seals. Once an engineer's seal has expired or been revoked or suspended, the engineer must surrender his/her seal to the secretary of the board and confirm to the secretary the cancellation of his/her digital signature.

This bill also amends s. 472.025, F.S., pertaining to seals which are affixed to official land surveying and mapping documents, to allow for the use of electronic seals. The

amendments to s. 472.025, F.S., are substantially similar to the amendments to s. 471.025, F.S., pertaining to engineering documents.

This bill also makes conforming changes to s. 471.033(1)(j), F.S., relating to disciplinary proceedings.

International Attorney-Notaries

The proposed bill would facilitate the use of electronic commerce processes for the engineering, land surveying and mapping industries, and allow the concomitant benefits of such processes over paper-based processes to be realized.

This proposed bill enacts law relating to international legal transactions. The bill defines the term, "authentic act," "international attorney-notary," and "protocol." An "international attorney-notary" would be a lawyer licensed under the laws of Florida who has practiced law and been a member of the Florida Bar for at least five years, holds a commission as an international attorney-notary issued by the Secretary of State, and has a specialized knowledge of the drafting, authentication, and public recording formalities of non-United States jurisdictions, and has passed an examination prescribed by the Secretary of State.

This proposed bill would facilitate the development of a class of Florida attorneys, specialized in international law, who would be authorized by the Secretary of State to authenticate and execute international transactions using their digital signatures.

The Secretary of State would be authorized to establish criteria for the qualifications of international attorney-notaries, the form and content of signatures and seals for authentic acts, procedures for archiving such acts, and the charging of reasonable fees associated with implementing the act.

Commissioner of Deeds

The Bill repeals the provisions of law authorizing the creation of a "Commissioner of Deeds".

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?

No.

(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?

N/A

(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?

A fee of \$25 would be charged by the Secretary of State to process requests for amended commissions to allow the use of electronic notarizations.

The concept of a "convenience fee" is introduced by this bill. The amount of the fee may not exceed the reasonable additional cost of providing remote electronic access to goods and services, less the actual savings to be achieved.

The Secretary of State could charge fees for licensing certification authorities in an amount sufficient to support the licensing program. The amount of such fees has not yet been determined.

The Secretary of State would be authorized to establish, by rule, reasonable fees to implement the purposes of this act, such as prescribing an examination or examinations to qualify an individual as an international attorney-notary.

- 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?

A fee of \$25 would be charged by the Secretary of State to process requests for amended commissions to allow the use of electronic notarizations.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(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?

N/A

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:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 117.05, F.S., pertaining to the use of seals by notaries public, to clarify that the section pertains to notarization of paper documents.

Section 2: Creates s. 117.20, F.S., to allow the Secretary of State to commission notaries to perform electronic notarizations.

Section 3: Amends s. 215.322, F.S., pertaining to the acceptance of credit cards, to add debit cards as an acceptable form of payment to governmental entities. Requires the Florida Fiscal Accounting Management Information System Coordinating Council to approve

the use of credit and debit cards by state agencies, rather than the Treasurer. Removes language which addresses surcharges by a financial institution, vending service company, or a credit card company, and replaces it with language that would allow a state agency or the judicial branch to charge a "convenience fee." Specifies that the amount of the convenience fees shall not exceed the reasonable additional cost of providing remote electronic access to goods and services, less the actual savings to be achieved.

Section 4: Amends s. 282.20, F.S., pertaining to the Technology Resource Center (TRC) of the Department of Management Services, defining its customers and amending provisions relating to its policy board.

Section 5: Amends the Electronic Signature Act of 1996 (codified at ss. 282.70 - 282.75, F.S.) by creating section 282.745, F.S., which authorizes the Secretary of State to promulgate and implement rules for the voluntary licensure of private certification authorities. The proposed bill would also authorize the Secretary of State to collect licensing fees in an amount sufficient to support the licensing program. Additionally, the Secretary of State would be authorized to enter into reciprocity agreements for the recognition of digital signatures with other jurisdictions on behalf of the State of Florida.

Sections 6: Amends s. 471.025, F.S., which pertains to seals which are affixed to official engineering documents. The bill authorizes the use of electronic seals in addition to the traditional physical seals on paper for these types of activities and provides for disciplinary action for the illegal use of electronic seals.

Section 7: Amends s. 471.033, F.S., which pertains to disciplinary action for engineers.

Section 8: Amends s. 472.025, F.S., which pertains to seals which are fixed to official land surveying and mapping documents. The bill authorizes the use of electronic seals in addition to the traditional physical seals on paper for these types of activities and provides for disciplinary action for the illegal use of electronic seals.

Section 9: Creates new law relating to international legal transactions. The bill would facilitate the development of a class of Florida attorneys, specialized in international law, who would be authorized by the Secretary of State to authenticate and execute international transactions using their digital signatures. This section would define the terms "authentic act," "international attorney-notary," and "protocol." The Secretary of State would be authorized to establish criteria for the qualifications of international attorney-notaries, the form and content of signatures and seals for authentic acts, procedures for archiving such acts, and the charging of reasonable fees associated with implementing the act.

Section 10: Amends s. 240.289, F.S., to conform the section to the proposed amendments in section 3 of the bill pertaining to debit cards.

Section 11: Amends s. 402.18, F.S., to conform the section to the proposed amendments in section 3 of the bill pertaining to debit cards.

Section 12: Repeals ss. 118.01, 118.02, 118.03, and 118.04, F.S. which pertain to the commissioner of deeds. The duties formerly attributed to the commissioner of deeds would be carried out by the international attorney-notaries as defined in section 9 of the proposed bill.

Section 13: Provides that this bill shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

E. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

In order to support this type of transaction, the Office of the Secretary of State has stated that it will be required to update it's on line facilities and security. Hardware and software upgrades to meet these estimated requirements are anticipated to be \$40,000 - \$60,000 in Operating Capital.

2. Recurring Effects:

The Department of State will incur costs associated with commissioning electronic notaries. The bill authorizes a \$25 fee to fund these costs.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A1 and A2 above.

F. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

G. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

A fee of \$25 would be charged by the Secretary of State to process requests for amended commissions to allow the use of electronic notarizations.

2. Direct Private Sector Benefits:

Many important documents used in the private sector are currently reduced to paper and notarized with a rubber stamp seal. This bill could result in increased efficiency and reduced cost of these paper-based processes, through the use of electronic notarization.

Notaries public would assume the costs associated with obtaining a certificate for the use of their digital signature.

The proposed changes may make it more convenient for the private sector to purchase goods and services from the government through the use of credit and debit cards.

Increased trust and reliability, and therefore increased use, of electronic commerce could result if this bill is passed. The efficiencies gained as a result of electronic commerce could be significant. A voluntary licensing scheme by the Secretary of State could add credibility and therefore increased value to digital certificates issued by private certification authorities. This addresses a primary area of concern about the role the state should play with regard to digital signatures. At this early stage in the development of digital signatures and a public key infrastructure to support reliable electronic commerce, there appears little or no reason to require licenses for certification authorities. A license by the Florida Secretary of State may, however, add trust and therefore value to the certificates issued by a licensed certification authority as opposed to an unlicensed certification authority. At least one other state, Utah, has passed legislation authorizing voluntary (optional) licensure of private certification authorities. Therefore, this bill could facilitate the growth of electronic commerce by adding trust to electronic commerce transactions.

The engineering, land surveying and mapping industries could save costs currently associated with the signing and sealing of thousands of paper-based documents each year. The costs associated with obtaining a certificate for the use of a digital signature would be borne by the engineers and land surveyors and mappers electing to use a digital seal, or their firms.

This bill could improve international transactions between private parties, making them more efficient and effective.

3. Effects on Competition, Private Enterprise and Employment Markets:

This bill will have a positive impact upon the efficiency of conducting trade and international commerce. This bill replaces many traditional paper-based methods of conducting business with electronic technology which can add authenticity, security and reliability to such transactions.

H. FISCAL COMMENTS:

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VI. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

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