

**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 Commerce Committee

BILL: PCS/SB 2330

INTRODUCER: Commerce Committee

SUBJECT: Agency Sunset Review of the Division of Corporations of the Department of State

DATE: March 16, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	<b>Pre-meeting</b>
2.	_____	_____	GO	_____
3.	_____	_____	TA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This PCS proposes to reenact s. 20.10(2)(c), F.S., which would reinstate the Division of Corporations (division) within the Department of State (department) to allow the division to continue to perform its current functions and responsibilities required under law.

In addition, this PCS 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. To fund these transferred responsibilities, the PCS allocates \$1 from the \$4 notary public application surcharge to be deposited in the department's Operating Trust Fund. The department would be required, under the PCS, to inform the EOG of its findings related to any investigation of complaints made against notary publics.

The PCS 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 PCS.

The PCS also:

- Requires a notary applicant to not only include his or her legal name on the notary application, but also the name he or she will use while performing notarial acts.
- Requires a notary applicant to include not only a list of professional licenses and commissions and whether they have been suspended or revoked, but also a list of appointments and the suspension or revocation of any appointment.

- 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.
- Requires the department to annually, and randomly, select 1 percent of notary public applicants to verify each selected applicant's criminal background status to determine if such applicants have misrepresented their criminal background status on their applications.
- Requires the department to submit an annual report to the Governor and Legislature on its findings, pertaining to its review of applicants' criminal backgrounds.
- Requires the department to provide conspicuous notice to applicants on the notary public application of the potential to be selected for a criminal background check and the penalties for misrepresentation if an applicant has misrepresented his or her criminal background status.
- Provides for the fee of an unspecified amount that the Florida Department of Law Enforcement is authorized to charge the department for criminal background checks.
- Provides that a notary public applicant is ineligible to be appointed or commissioned as a notary if he or she has been convicted of a felony or of a misdemeanor for falsifying records.
- Provides that a notary public may be suspended for falsifying records under s. 839.13, F.S., in addition to the other prohibited conduct under current law.
- 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.
- Provides for the repeal, on December 31, 2015, of the provisions requiring the department to verify the criminal background status of applicants and the related report required to be annually submitted to the Governor and Legislature.

The PCS 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 PCS reenacts s. 20.10(2)(c), F.S.

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

## **II. Present Situation:**

### **Sunset Review**

Sections 11.901-11.920, F.S., are known as the Florida Government Accountability Act (act). Under this act, most state agencies are subject to a "sunset" review process, conducted by various committees, in order for the Legislature to determine whether the agency should be retained, modified, or abolished.

Agencies subject to a sunset review under the Florida Government Accountability Act are reviewed by sunset review committees prior to the legislative session in the year the repeal is

scheduled to occur. The Division of Corporations (division) within the Department of State (department) will sunset on June 30, 2010, unless it is reenacted by the Legislature.

The Senate Commerce Committee is the primary sunset review committee for review of the division within the department. After the committee's initial review of the division, it recommended in its Issue Brief 2009-308<sup>1</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>2</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>3</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>4</sup>

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<sup>1</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>2</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>3</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>4</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 provided for public officers under chs. 111 and 112, F.S.

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>5</sup>

Simply stated, a notary public verifies the identities of individuals involved in legal transactions and is the gatekeeper for preventing fraudulent transactions.<sup>6</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>7</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>8</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>9</sup>

<sup>5</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>6</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>7</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>8</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>9</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>10</sup> In FY 2008-09, 246 applicants were not granted a commission by the EOG.<sup>11</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>12</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>13</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>14</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.

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<sup>10</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>11</sup> Information received from the EOG on January 12, 2010, on file with the committee.

<sup>12</sup> Information received from the Division of Corporations on September 11, 2009, on file with the committee.

<sup>13</sup> A person must complete a new application when applying for a new commission, renewal of a commission, or subsequent commission.

<sup>14</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>15</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>16</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>17</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>18</sup> In addition, applicants must pay a \$4 fee, which is appropriated to the EOG to be used to educate and assist notaries.<sup>19</sup>

Civil-law notary applicants, pursuant to 1C-18.001(1)(b)2., F.A.C., must pay a \$50 application processing fee.<sup>20</sup> In addition, applicants may pay up to \$200 to take the civil-law notary examination.<sup>21</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>22</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 maintaining the on-line Notary

<sup>15</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>16</sup> Section 118.10(5)(e), F.S. *See also*, ch. 1C-18.001, F.A.C.

<sup>17</sup> Section 118.10(6), F.S.

<sup>18</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>19</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>20</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>21</sup> *See* ch. 1C-18.001(2)(c), F.A.C.

<sup>22</sup> *See* s. 117.01, F.S.

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>23</sup>

One person is assigned to the notary section of the EOG and is responsible for completing these responsibilities.<sup>24</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>25</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>26</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>27</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>28</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>29</sup>

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

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<sup>23</sup> See [http://www.flgov.com/notary\\_intro](http://www.flgov.com/notary_intro).

<sup>24</sup> Interview with Heather Slager, the EOG’s Notary Education Coordinator, September 8, 2009.

<sup>25</sup> *Id.*

<sup>26</sup> Statistics provided by the notary section of the EOG and by the division, September 2009, on file with the committee.

<sup>27</sup> *Supra* fn. 24.

<sup>28</sup> A list of vendors with approved curricula is available at [http://www.flgov.com/notary\\_education](http://www.flgov.com/notary_education).

<sup>29</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>30</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>31</sup> The division reports that 2 FTEs process applications, while the others answer incoming calls concerning notary public questions.<sup>32</sup>

The division reports that complaints concerning notaries public are referred to the notary section of the EOG.<sup>33</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>34</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>35</sup>

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<sup>30</sup> Information obtained during a tour of the notary section of the Division of Corporations, September 10, 2009.

<sup>31</sup> Department of State’s Agency Programs, Services, and Committees/Councils Review (FY 2008-2009), on file with the committee.

<sup>32</sup> *Supra* fn. 30.

<sup>33</sup> *Id.*

<sup>34</sup> *See* s. 118.10(2), (5)(a)-(g), F.S. *See also*, ch. 1C-18.001, F.A.C.

<sup>35</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>36</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>37</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>38</sup> Notary misconduct is punishable as a felony of the third degree or misdemeanor of the second degree.<sup>39</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>40</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>41</sup>

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<sup>36</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>37</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>38</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>39</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>40</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>41</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.

### III. Effect of Proposed Changes:

**Section 1** reenacts s. 20.10(2)(c), F.S., which would reinstate the Division of Corporations (division) within the Department of State (department) to allow the division 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 facilitate the transfer of these responsibilities, this section of the PCS allocates \$1 from the \$4 notary public application surcharge to be deposited in the department's Operating Trust Fund. The department is to use the \$1 surcharge to receive and process notary applications, educate and assist notaries public, and receive and investigate complaints against notaries public. The other \$3 from the surcharge is to be deposited in the EOG's Grants and Donations Trust Fund. The department would be required to inform the EOG of its findings related to any notary public complaints.

This section of the PCS also requires a notary applicant to not only include his or her legal name on the notary application, but also the name he or she will use while performing notarial acts. Furthermore, a notary applicant must include not only a list of professional licenses and commissions and whether they have been suspended or revoked on the notary application, but also a list of his or her appointments and the suspension or revocation of any appointment.

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.

Subsection (5) requires the department to annually, and randomly, select 1 percent of notary public applicants to verify each selected applicant's criminal background status to determine if such applicants have misrepresented their criminal background status on their applications. If the department finds that an applicant has misrepresented his or her criminal background status, the department must notify the applicant that he or she is ineligible to become a notary.

Subsection (6) requires the department to submit an annual report to the Governor and Legislature by December 1, on its findings, pertaining to its review of applicants' criminal backgrounds. Such findings must include:

- The number of applicants the department initially identifies and finally determines have falsified the required statement as to whether or not the applicant has been convicted of a felony;
- Problems associated with implementation of the requirement for verification of applicants' criminal background status;
- The sufficiency of resources to perform the verification of applicants' criminal background status; and
- Any other information the department deems pertinent to include in the report.

Subsection (7) requires the department to provide conspicuous notice to applicants on the notary public application of the potential to be selected for a criminal background check and provides that misrepresentation of an applicant's criminal background status constitutes a third degree felony.

Subsection (8) provides for a fee of an unspecified amount that the Florida Department of Law Enforcement is authorized to charge the department for criminal background checks.

Subsection (9) provides that a notary public applicant is ineligible to be appointed or commissioned as a notary if he or she has been convicted of any felony or of a misdemeanor for falsifying records under s. 839.13, F.S.

This section of the PCS also provides that, should a notary public falsify records under s. 839.13, F.S., that unlawful act constitutes malfeasance, misfeasance, or neglect of duty for which the Governor may suspend his or her commission.

Subsection (14) requires any entity issuing bonds for notaries public to submit an annual report, by January 1, 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.

Subsection (15) repeals, on December 31, 2015, the provisions requiring the department to verify the criminal background status of applicants and the related report required to be annually submitted to the Governor and Legislature.

This section of the PCS 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. 117.05, F.S., to make stylistic changes and delete an obsolete provision that requires use of rubber stamps after January 1, 1992.

**Section 4** 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 5** amends s. 117.107, F.S., to make stylistic changes.

**Section 6** amends s. 668.50, F.S., to delete the 3-hour notary education requirement, which was transferred to s. 117.01, F.S.

**Section 7** 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 PCS.

**Section 8** provides an effective date of January 1, 2011, except as otherwise specified in the PCS.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**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 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.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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