

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 523 Notaries Public
SPONSOR(S): Criminal Justice Subcommittee; Kerner
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 526

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Economic Development & Tourism Subcommittee | 12 Y, 0 N | Collins | Duncan |
| 2) Criminal Justice Subcommittee | 13 Y, 0 N, As CS | Keegan | Cunningham |
| 3) Economic Affairs Committee | 14 Y, 0 N | Collins | Creamer |

SUMMARY ANALYSIS

Currently, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers and traffic infraction enforcement officers are authorized to perform the notarial act of administering oaths when performing official duties. Such officers are not currently authorized to verify official documents.

The bill authorizes law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, or traffic infraction enforcement officers to:

- Verify documents pursuant to s. 92.525, F.S., when performing official duties; and
- Administer oaths by reliable electronic means or in the physical presence of the affiant.

The bill defines the term “reliable electronic means” to mean the signing and transmission of a document through means compliant with criminal justice information system security measures.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Notaries Public in Florida

A notary public (notary or notaries) is a public officer appointed and commissioned by the Governor whose function is to administer oaths; to take acknowledgements of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties specified by law.¹

Chapter 117, F.S., provides requirements and guidelines for notaries and authorizes the Governor to appoint as many notaries as necessary. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English.² The application for appointment must include a \$25 fee, a \$10 commission fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.³

Once appointed, a notary serves a four-year term.⁴ During the term of office, a notary must post and maintain a \$7,500 bond payable to any individual harmed as a result of a notary's breach of duty. The bond must be approved and filed with the Department of State (DOS) and executed by a surety company that is authorized to transact business within the state. If a surety company pays an individual harmed by the notary for breach of duty, the company must notify the Governor of the payment and the underlying circumstances.⁵ No person may be automatically reappointed as a notary. The application process must be completed regardless of whether an applicant has previously served as a notary.⁶

A notary is authorized by law to perform six functions:⁷

- Administer oaths or affirmations;⁸
- Take acknowledgements of deeds and other instruments of writing for record;⁹
- Attest to photocopies of certain documents;¹⁰
- Solemnize marriage;¹¹
- Verify vehicle identification numbers;¹² and
- Certify the contents of a safe-deposit box.¹³

Electronic Notarization

Any document requiring notarization may be notarized electronically.¹⁴ In performing a notarial act electronically, a notary public must use an electronic signature that is:¹⁵

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public's sole control; and

¹ *Governor's Reference Manual for Notaries*; State of Florida, November 1, 2001 ed., p. 6, available at http://www.flgov.com/notary_ref_manual/ (last visited March 10, 2015).

² Section 117.01(1), F.S.

³ Section 117.01(2), F.S.

⁴ Section 117.01(1), F.S.

⁵ Section 117.01(8), F.S.

⁶ Section 117.01(6), F.S.

⁷ See *supra* note 1 at 12.

⁸ Section 117.03, F.S.

⁹ Section 117.04, F.S.

¹⁰ Section 117.05(12)(a), F.S.

¹¹ Section 117.045, F.S.

¹² Section 319.23(3)(a)2., F.S.

¹³ Section 655.94(1), F.S.

¹⁴ Section 117.021(1), F.S.

¹⁵ Section 117.021(2)(a)-(d), F.S.

- Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of alteration.

When a signature is required to be accompanied by a notary public seal, the following information must be included in an electronic signature:¹⁶

- The full name of the notary public exactly as provided on the notary public's application for commission;
- The words "Notary Public State of Florida";
- The date of expiration of the commission of the notary public; and
- The notary public's commission number.

Electronic Warrants

In 2013,¹⁷ the Legislature authorized judges to electronically sign a search or arrest warrant upon examination of an application or complaint and proof that it:

- bears the affiant's signature or electronic signature;
- is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and
- if submitted electronically, is submitted by reliable electronic means.

The law also provided that a warrant is deemed issued when it is signed or electronically signed¹⁸ by a judge.

Verification of Documents

Currently, when it is authorized or required by law, by rule, or an administrative agency, or by order of court that a document be verified by a person, the verification may be accomplished:¹⁹

- Under oath or affirmation taken or administered before an officer authorized pursuant to s. 92.50, F.S.,²⁰ to administer oaths; or
- By signing a written declaration.²¹

While notaries are authorized to verify documents, law enforcement officers are not authorized to do so.

Law Enforcement and Correctional Officers

Currently, s. 117.10, F.S., provides that law enforcement officers, correctional officers, and correctional probation officers;²² and traffic accident investigation officers and traffic infraction enforcement officers²³ are authorized to administer oaths when engaged in the performance of official duties. Additionally, the law provides that ss. 117.01, 117.04, 117.045, 117.05, and 117.103, F.S., do not apply to the provisions of s.117.10, F.S., thereby exempting the previously listed officers from a number of the duties and responsibilities of notaries public.

¹⁶ Section 117.021(3)(a)-(d), F.S.

¹⁷ Chapter 2013-247, Laws of Fla.

¹⁸ "Electronically signed" is defined by s. 933.40, F.S., as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

¹⁹ Section 92.525(1), F.S.

²⁰ Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person. Section 92.50(1), F.S.

²¹ "Written declaration" means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. Section 92.525(2), F.S.

²² See s. 943.10 (1)-(3), F.S.

²³ See s. 316.640, F.S.

Effect of Proposed Changes

The bill amends s. 92.525, F.S., to provide that when a document is required to be verified by a person, such verification may be performed under oath or affirmation taken before a law enforcement officer, correctional officer, correctional probation officer, traffic accident investigation officer, or traffic infraction enforcement officer who is engaged in the performance of official duties.

The bill amends s. 117.10, F.S., to authorize a law enforcement officer, correctional officer, correctional probation officer, traffic accident investigation officer, or traffic infraction enforcement officer to administer oaths by reliable electronic means or in the physical presence of the affiant. The bill defines the the term “reliable electronic means” to mean the “signing and transmission of a document through means compliant with criminal justice information system²⁴ security measures.” Such signing and transmission must be made by an affiant under circumstances that indicate that the document was submitted by the affiant.

B. SECTION DIRECTORY:

Section 1: Amends s. 92.525, F.S., authorizing certain officers to verify documents.

Section 2: Amends s. 117.10, F.S., authorizing specified officers to administer oaths by reliable electronic means when engaged in the performance of official duties.

Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁴ The Federal Bureau of Investigation’s Criminal Justice Information Services division was established in 1992 to serve as the focal point and central depository for criminal justice information services in the FBI. Programs under the division’s purview include the National Crime Information Center, Uniform Crime Reporting, and Fingerprint Identification.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill as favorable as a committee substitute. The amendment clarifies language allowing specified officers to verify documents and removes Section 2 of the bill to delete unnecessary language.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.