

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0235-02
Bill No.: SB 140
Subject: Notary Public; Secretary of State
Type: Original
Date: February 15, 2019

Bill Summary: This proposal modifies law relating to notaries public.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Legal Expense (0692)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

Officials from the **Office of Administration - General Services** assume section 486.805 appears to create a new cause of action and damages. If a claim were successfully brought against a state agency or a state employee alleging a violation of this legislation, the Legal Expense Fund could be required to pay such claim or claims. However, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the state Legal Expense Fund, Section 105.711, RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified and individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Officials from the **Attorney General's Office** assume the proposal will have no fiscal impact on their organization.

Oversight will reflect the potential liability to the state as described by OA as \$0 (state not liable or no successful suits against the state) to an unknown loss to the State Legal Expense Fund.

ASSUMPTION (continued)

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with any of the proposed new crimes regarding Notaries - all new Misdemeanors. In FY 2019, SPD did not have any cases under RSMo 486. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of Prosecution Services** assume the proposal will have no measurable fiscal impact on their organization.

ASSUMPTION (continued)

Officials from the **Department of Insurance, Financial Institutions and Professional Registration, Department of Public Safety-Missouri State Highway Patrol, Department of Public Safety-Capitol Police, Department of Transportation, Department of Corrections, Missouri Department of Conservation, Office of State Courts Administrator, and Department of Labor and Industrial Relations** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **St. Louis County Board of Elections, Jackson County Election Board, Mississippi County Recorder of Deeds, Buchanan County, City of Springfield, Springfield Police Department, St. Louis County Police Department, Boone County Sheriff's Department, and Jackson County Sheriff's Department** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the St. Louis County Board of Elections, Jackson County Election Board, Mississippi County Recorder of Deeds, Buchanan County, City of Springfield, Springfield Police Department, St. Louis County Police Department, Boone County Sheriff's Department, and Jackson County Sheriff's Department have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, police and sheriff departments were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (6 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - Office of the State Public Defender (\$578,700)</u>	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2020 (6 Mo.)	FY 2021	FY 2022
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LEGAL EXPENSE FUND

<u>Costs</u> - Potential state liability for damages caused by notaries	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
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ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
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<u>FISCAL IMPACT - Local Government</u>	FY 2020 (6 Mo.)	FY 2021	FY 2022
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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act repeals the current law regulating notaries public and replaces it with a new chapter.

A notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization.

A surety for a notary's bond shall be liable to any person for damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in relation to a notarization during the bond term, but this liability shall not exceed the dollar amount of the bond or of any remaining bond funds that have not been disbursed to other claimants.

An employer of a notary shall be liable to any person for all damages proximately caused that person by the notary's negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official

FISCAL DESCRIPTION (continued)

misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer.

A notary shall be guilty of a misdemeanor for knowingly committing any of the following:

- Failing to require the presence of a principal at the time of a notarial act;
- Failing to identify a principal through personal knowledge or satisfactory evidence; or
- Executing a false notarial certificate.

Additionally, a notary who performs any other act prohibited by this act or fails to perform a required act shall be guilty of a misdemeanor, punishable by a fine of no more than \$500 or imprisonment of not more than 6 months, or both.

Any person who is not a notary and who knowingly acts as or otherwise impersonates a notary shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding five hundred dollars or imprisonment for not more than six months, or both.

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary or who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding five hundred dollars.

The provisions of this act become effective January 1, 2020.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State
Office of Administration-General Services
Office of the State Public Defender
Joint Committee on Administrative Rules
Office of Prosecution Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Public Safety-Missouri State Highway Patrol
Department of Public Safety-Capitol Police
Department of Transportation
Department of Corrections
Missouri Department of Conservation
Office of State Courts Administrator
Department of Labor and Industrial Relations
St. Louis Board of Elections
Jackson County Election Board
Mississippi County Recorder of Deeds
Buchanan County
City of Springfield
Springfield Police Department
St. Louis County Police Department
Boone County Sheriff's Department
Jackson County Sheriff's Office



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