

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3212-02
Bill No.: HB 1690
Subject: County Officials; Notary Public; Secretary of State
Type: Original
Date: February 25, 2020

Bill Summary: This proposal provides processes for the recorder of deeds to record electronic documents and procedures for remote online notarization.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	\$0	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
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 2021	FY 2022	FY 2023
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.

Oversight notes that in response to similar legislation SB 409 from 2019, SOS stated this proposal will provide them with the ability to offer online notarization if it becomes effective, but does not plan to implement this service at the current time. Oversight assumes if the SOS does decide in the future to offer online notary services there will be an unknown technology costs associated with maintaining a system for electronic documents and online notarization. Therefore, Oversight will reflect a zero to unknown cost to general revenue on this fiscal note.

Officials from the **Office of State Courts Administrator, Office of the State Public Defender, Office of Prosecution Services, Department of Commerce & Insurance, Joint Committee on Administrative Rules, Department of Public Safety-Missouri State Highway Patrol, and Department of Transportation** each assume the proposal will have no fiscal impact on their organization.

Officials from **Cape Girardeau County, Madison County Recorder of Deeds, and Mississippi County Recorder of Deeds** each assume the proposal will have no fiscal impact on their organization.

Oversight notes that the above agencies 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.

ASSUMPTION (continued)

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other county clerks and recorder of deeds were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021	FY 2022	FY 2023
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GENERAL REVENUE

<u>Cost - SOS</u>		\$0 to	\$0 to
Implementing and maintaining online notarization	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2021	FY 2022	FY 2023
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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 bill provides processes for the recorder of deeds to record electronic documents and procedures for remote online notarization.

The bill provides that, if the law requires a document to be the original for the purposes of recording, the document may be an electronic record as long as it satisfies all other recording requirements. This bill requires that an electronic signature of a witness or notary meets the signature requirements for the recording of a document. A document may be a paper copy of an electronic document with an electronic signature that a notary public has certified. The bill provides the requirements for such certification. The notary must personally print or supervise

FISCAL DESCRIPTION (continued)

the printing of the electronic document onto paper. A document conveying real property, recorded by a clerk, and not certified by a notary according to the bill still puts third persons on notice of the conveyance and is still effective. The bill does not apply to the recording of certain plat, map, or survey of real property.

The bill provides that for the purposes of having a written instrument affecting real estate proved or acknowledged by an officer, a person may appear before the officer by means of communication technology. Communication technology is defined as an electronic device or process that allows a notary public located in Missouri to communicate with an individual remotely located by sight and sound.

Within 12 months after the enactment of this bill, the Secretary of State (SOS) shall promulgate rules developing and maintaining standards for remote online notarization. Such rules shall include credential analysis and identity proofing.

In order to perform remote online notarizations, the notary public must register with the SOS and identify the technology that the notary uses. The notary must keep a secure electronic journal of remote online notarial acts and create an audio and video recording of the performance of the notarial act. Both the journal and recording must be backed-up, protected from unauthorized use, and retained for at least 10 years. The SOS must establish standards for the retention of the video and audio recordings, procedures for preservation of the recording and electronic journal in case the notary public's commission or authority to perform notarial acts is terminated, and standards for third party repositories for the retention of the recording.

The notary public can only perform remote online notarizations while he or she is physically located within the state. The notary public must verify the identity of a person creating an electronic signature at the time the signature is taken by using communication technology. The electronic notarial certificate for the remote online notarization must state that the notarization is a remote online notarization. The notary may charge a fee for the remote online notarization if the fee is disclosed prior to the service.

A person who knowingly obtains, conceals, damages, or destroys the certificate, program, or hardware enabling a notary public to affix an official electronic signature or seal shall be guilty of a class D misdemeanor.

The effective date of these provisions is July 1, 2021.

FISCAL DESCRIPTION (continued)


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 State Courts Administrator
Office of the State Public Defender
Office of Prosecution Services
Department of Public Safety-Missouri State Highway Patrol
Department of Commerce & Insurance
Joint Committee on Administrative Rules
Department of Transportation
Cape Girardeau County Recorder of Deeds
Madison County Recorder of Deeds
Mississippi County Recorder of Deeds



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February 25, 2020



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