

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3339-03
Bill No.: SCS for SB 578
Subject: Bonds - Surety; Circuit Clerks; Civil Penalties; County Officials; Crimes and Punishments; Employees-Employers; Judges; Mortgages and Deeds; Notary Public; Property, Real and Personal; Secretary of State
Type: Original
Date: March 3, 2020

Bill Summary: This proposal modifies relating to the certification of documents, including certification by the recorder of deeds and notaries public.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|---|---|---|
| FUND AFFECTED | FY 2021 | FY 2022 | FY 2023 |
| General Revenue | (Less than \$100,000) to (Unknown) | (Less than \$100,000) to (Unknown) | (Less than \$100,000) to (Unknown) |
| Total Estimated Net Effect on General Revenue | (Less than \$100,000) to (Unknown) | (Less than \$100,000) to (Unknown) | (Less than \$100,000) to (Unknown) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|--|-------------------------|-------------------------|-------------------------|
| FUND AFFECTED | FY 2021 | FY 2022 | FY 2023 |
| Other State Funds | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |
| Legal Expense Fund | \$0 | \$0 | \$0 |
| Colleges and Universities | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |
| Total Estimated Net Effect on Other State Funds | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

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

| 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 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |

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 or costs of under \$100,000 to general revenue on this fiscal note.

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 individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by

ASSUMPTION (continued)

the Commissioner of Administration with the approval of the Attorney General.

Oversight notes most LEF costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to Office of Administration - Risk Management (OARM), broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds. Table 1 below shows LEF costs broken down for GR versus Federal Funds/Other Funds.

Table 1: Legal Expense Fund payments from GR and Fed/Other

| | GR | Fed/Other | Total | GR % | Fed/Other % |
|--------------|--------------|------------------|--------------|-------------|--------------------|
| FY 15 | \$9,197,461 | \$661,555 | \$9,859,016 | 93% | 7% |
| FY 16 | \$11,386,339 | \$600,489 | \$11,986,828 | 95% | 5% |
| FY 17 | \$19,983,784 | \$4,217,582 | \$24,201,366 | 83% | 17% |
| FY 18 | \$18,625,000 | \$9,649,513 | \$28,274,513 | 66% | 34% |
| Total | \$59,192,584 | \$15,129,139 | \$74,321,723 | 80% | 20% |

Source: Office of Administration

OARM provided Oversight with claim payment data from FY 2015 to FY 2018. Based on the data provided, Oversight estimated the number of claims and amount paid by claim type shown in table 2 below. Motor vehicle claims accounted for 69% of the total number of claims but only 11% of the value of claims. Claims related to discrimination accounted for 8% of the total number of claims but 25% of the value of claims paid.

ASSUMPTION (continued)

Table 2: Payment data **by type** of claim (FY 15-18)

| Type of Claim | Number of Claims | Cost of Claims |
|---------------------------------|------------------|----------------|
| Discrimination | 67 | \$19.6 million |
| Wrongful Death | 5 | \$11.9 million |
| Motor Vehicle | 583 | \$8.6 million |
| Medical Malpractice | 10 | \$8.3 million |
| STL & KC Police | 5 | \$5.4 million |
| Tort | 10 | \$4.6 million |
| Harassment | 3 | \$4.3 million |
| Personal Injury | 10 | \$3.6 million |
| Class Action Law Suit | 1 | \$2.6 million |
| Dangerous Condition of Property | 96 | \$1.6 million |

Source - OARM: Includes motor vehicle and dangerous condition of property claims.

Oversight notes the cost of any potential liability would be entirely dependent of the number of claims and circumstances of the claims filed; therefore the cost is ultimately unknown.

Oversight does not have any information to the contrary in regards to OA’s assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an “Unknown” cost to the Legal Expense Fund as well as to Colleges and Universities (increased claims).

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 2020, 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.

ASSUMPTION (continued)

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 \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). 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 there is no measurable fiscal impact. The enactment of new crimes creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Officials from the **Department of Transportation** assume the fiscal impact of this bill is not quantifiable, but is likely negative. Chapter 486.805.3 extends liability to MoDOT, as an employer of notaries public, for negligence in the course of employment. The notary bond will likely be unavailable to MoDOT in the distribution of such costs, even in the event that the bond was posted by MoDOT on the notary's behalf. Therefore, the potential risk of litigation against MoDOT is likely to increase.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume the proposal will have no fiscal impact on their organization. In response to similar legislation SB 593, DOC stated this proposal addresses several misdemeanor offenses, which are not generally under the purview of the Department. The proposal also repeals one class E felony offense, in which there were no prison admissions or probation cases opened in FY 2019.

Officials from the **Department of Higher Education and Workforce Development, Department of Health and Senior Services, Department of Labor and Industrial Relations, Department of Public Safety-Veterans Commission, Department of Public Safety-Missouri State Highway Patrol, State Auditor's Office, Office of the Governor, Department of Elementary and Secondary Education, Department of Public Safety-Alcohol and Tobacco Control, Missouri House of Representatives, Office of State Courts Administrator, Department of Public Safety-State Emergency Management Agency, Missouri Tax Commission, Attorney General's Office, Missouri Lottery Commission, Department of Public Safety-Fire Safety, Missouri Consolidated Health Care Plan, Department of Public Safety-Gaming Commission, Missouri Senate, Legislative Research, Missouri Ethics Commission, Missouri Department of Conservation, Missouri State Employees' Retirement System, Department of Mental Health, Department of Revenue, Department of Natural Resources, Department of Economic Development, Department of Social Services, Department of Public Safety-National Guard, Department of Commerce & Insurance, Department of Public Safety-Office of the Director, Office of the State Treasurer, and MoDOT and Patrol Employees Retirement System** 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.

Officials from the **City of Kansas City** assume the proposal will have no fiscal impact on their organization.

In response to a previous version, officials from **Cape Girardeau County** and **Mississippi County Recorder of Deeds** both assumed the proposal will have no fiscal impact on their respective organizations.

ASSUMPTION (continued)

Oversight notes there is a potential of unknown cost to local political subdivisions that employ notaries. Therefore, Oversight will range the fiscal impact to local political subdivisions from \$0 (does not increase litigation to local governments) to an “Unknown”(increased claims).

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, 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 |
|---|--|--|--|
| GENERAL REVENUE | | | |
| <u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (\$486.805) | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |
| <u>Cost</u> - Office of the State Public Defender (\$578.700) | (Less than \$100,000) | (Less than \$100,000) | (Less than \$100,000) |
| <u>Cost</u> - SOS Implementing and maintaining online notarization | <u>\$0</u> | \$0 or (Less than <u>\$100,000</u>) | \$0 or (Less than <u>\$100,000</u>) |
| ESTIMATED NET EFFECT ON GENERAL REVENUE | (Less than \$100,000) to <u>(Unknown)</u> | (Less than \$100,000) to <u>(Unknown)</u> | (Less than \$100,000) to <u>(Unknown)</u> |
| OTHER STATE FUNDS | | | |
| <u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims (\$486.805) | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |
| ESTIMATED NET EFFECT TO OTHER STATE FUNDS | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> |

| <u>FISCAL IMPACT - State Government</u> (continued) | FY 2021 (10 Mo.) | FY 2022 | FY 2023 |
|---|------------------------------------|------------------------------------|------------------------------------|
| FEDERAL FUNDS | | | |
| <u>Cost</u> - Potential increase in claims (\$486.805) | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> |
| ESTIMATED NET EFFECT TO FEDERAL FUNDS | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> |
| LEGAL EXPENSE FUND (0692) | | | |
| <u>Transfer In</u> - from GR, Federal, and Other State Funds potential increase in claims (\$486.805) | \$0 to Unknown | \$0 to Unknown | \$0 to Unknown |
| <u>Transfer Out</u> - payment of discrimination claims | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> |
| ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |
| COLLEGES AND UNIVERSITIES | | | |
| <u>Cost</u> - Colleges and Universities Potential increase in claims (\$486.805) | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> |
| ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> | \$0 to <u>(Unknown)</u> |

| <u>FISCAL IMPACT - Local Government</u> | FY 2021 | FY 2022 | FY 2023 |
|---|--------------------------------|--------------------------------|--------------------------------|
| LOCAL POLITICAL SUBDIVISIONS | | | |
| <u>Cost</u> | \$0 to | \$0 to | \$0 to |
| Potential increase in claims (\$486.805) | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
| ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS | <u>\$0 to (Unknown)</u> | <u>\$0 to (Unknown)</u> | <u>\$0 to (Unknown)</u> |

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This act provides processes for the recorder of deeds to record electronic documents and procedures for remote online notarization.

If a document is required by law to be an original, on paper, or in writing for the purpose of recording, the document may be in electronic form. Furthermore, a requirement of notarization for a document or signature is satisfied if the electronic signature of the authorized person is attached to or logically associated with the document or signature. This act also allows satisfaction of the document requirements if a paper copy of an electronic document bearing an electronic signature along with all other required information is certified by a notary. The form and requirements of such certification are provided for in this act. The notary shall confirm that the electronic document contains an electronic signature that is capable of independent verification, shall personally print or supervise the printing of the document, and shall not make any changes to the document.

A document conveying real property, recorded by a clerk, and not certified by a notary according to the act shall put third persons on notice of the conveyance and is effective as if the document had been certified. The act does not apply to the recording of certain plats, maps, or surveys of real property. For the purposes of proving or acknowledging a written instrument affecting real property by an officer, a person may appear before the officer by physical presence or by means of communication technology, as defined in the act.

Within a year of the enactment of this act, the Secretary of State shall adopt rules regarding the facilitation and standards of remote online notarizations, including credential analysis and identity proofing. In order to perform remote online notarizations, a notary public shall register

FISCAL DESCRIPTION (continued)

with the Secretary and fulfill certain requirements as described within the act. A remote online notary public may perform notarial acts using communication technology for certain remotely located individuals.

The notary shall keep a secure electronic journal containing certain information of each notarial act and shall create an audio and video recording of the performance of the notarial act. Both the journal and recording shall be backed-up, protected from unauthorized use, and maintained for at least ten years after the act. The Secretary of State shall establish standards for the retention of the recording, procedures for preservation of the recording and journal in case the notary's commission or authority is terminated, and standards for third party repositories for the retention of the recording.

A remote online notary public shall not allow another person to use the electronic record, signature, or seal. A remote online notary public shall immediately notify appropriate law enforcement agencies and the Secretary of State of any theft, vandalism, or unauthorized use of his or her electronic record, signature, or seal.

The notary public can only perform remote online notarizations while he or she is physically located within the state. The notary public shall verify the identity of a person creating an electronic signature at the time the signature is taken and shall take reasonable steps to ensure the security of the two-way video and audio communication. The electronic notarial certificate for the remote online notarization shall state that notarization is a remote online notarization. The remote online notary or employer of the notary may charge a fee for notarization as long as that fee is disclosed prior to providing the notarization.

Unless the remote online notary public reregisters within three months following termination, a notary whose registration has terminated is required to destroy those items that enable the electronic affixation of the electronic signature or seal and certify the compliance of such to the Secretary of State.

A notary shall be liable to any person for all damages proximately caused 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.

FISCAL DESCRIPTION (continued)

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 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.

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.

The effective date of this act is July 1, 2021.

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

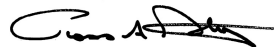
Office of the Secretary of State
Department of Corrections
Office of Administration
Office of the State Public Defender
Joint Committee on Administrative Rules
Office of Prosecution Services
Department of Transportation
Department of Higher Education and Workforce Development
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Public Safety-Veterans Commission
Department of Public Safety-Missouri State Highway Patrol
State Auditor's Office
Office of the Governor
Department of Elementary and Secondary Education
Department of Public Safety-Alcohol and Tobacco Control
Missouri House of Representatives
Office of State Courts Administrator
Department of Public Safety-State Emergency Management Agency
Missouri Tax Commission

SOURCES OF INFORMATION (continued)

Attorney General's Office
Missouri Lottery Commission
Department of Public Safety-Fire Safety
Missouri Consolidated Health Care Plan
Department of Public Safety-Gaming Commission
Missouri Senate
Legislative Research
Missouri Ethics Commission
Missouri Department of Conservation
Missouri State Employees' Retirement System
Department of Mental Health
Department of Revenue
Department of Natural Resources
Department of Economic Development
MoDOT and Patrol Employees Retirement System
Department of Social Services
Department of Public Safety-National Guard
Department of Public Safety-Office of the Director
Department of Commerce & Insurance
Office of the State Treasurer
City of Kansas City



Julie Morff
Director
March 3, 2020



Ross Strope
Assistant Director
March 3, 2020