



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 263 of the 132nd G.A.

**Status:** As Reported by House Government Accountability and Oversight

**Sponsor:** Sens. Huffman and Wilson

**Local Impact Statement Procedure Required:** No

**Subject:** Establishes online notaries public and revises the application process for all notaries

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### State Fiscal Highlights

- The bill consolidates the procedure for commissioning notaries under the Secretary of State. It also establishes a process for authorizing notary services online. As a result, the Secretary of State will incur new costs for regulating notaries. Those costs will be offset by the revised application and renewal fee structure authorized under the bill.
- The bill increases initial application and renewal fees for notary commissions from \$15 for each under current law to up to \$150 for applications and up to \$60 for renewals. The fee to serve as an online notary is to be determined by rule. A portion of these fees are collected by the entity responsible for providing the education requirements under the bill.
- Notary commission fees currently and under the bill are deposited into the Notary Commission Fund (Fund 4120), which is used to pay the operating costs of the Notary Public Office under the Secretary of State.
- The bill requires applicants for a notary commission to undergo a background check through the Bureau of Criminal Identification and Investigation (BCII). The fee for such checks is \$22, and is deposited into the Attorney General's General Reimbursement Fund (Fund 1060).
- The Notary Public Office contains six full-time employees and typically processes 10,700 new notary commissions, 21,800 renewal commissions, and 1,000 new attorney notaries each fiscal year.
- The bill exempts oil and gas professionals from the Real Estate Broker Licensing Law, but does require these individuals to register with the Superintendent of Real Estate. These individuals are required to submit an annual fee established by the Superintendent, in an amount not to exceed \$100. These fees would be deposited into the Division of Real Estate Operating Fund (Fund 5490).

- The bill creates the National Motor Vehicle Title Information System Utilization Study Committee. The members of the committee are not to be compensated or reimbursed for expenses.

## **Local Fiscal Highlights**

- The bill shifts recordation of notary commissions from the clerk of a court of common pleas to the Secretary of State. Clerks charge a fee (typically \$5) to offset these costs. Therefore, the revenue losses associated with this provision would be offset through cost reductions.
- The bill transfers the responsibility of notary public discipline from courts of common pleas to the Secretary of State. This would reduce costs to these courts.

## **Detailed Fiscal Analysis**

### **Overview**

The bill gives the Secretary of State exclusive statewide responsibility for overseeing notaries public. It also allows a notary public to apply to the Secretary of State for authorization to perform notarizations online using live video links, electronic signatures, and electronic notary seals. Along with these changes, the bill increases the notary commission fees paid to the Secretary of State from \$15 for applications and renewals currently, to up to \$150 for applications and \$60 for renewals, and an additional \$25 to provide services as an online notary. Nonattorney notary commissions are valid for five years, while those held by attorneys are valid as long as that person practices law. The bill also establishes related education and application requirements for nonattorneys and for new attorneys after the bill's effective date, rule-making requirements for the Secretary of State, technology and security requirements for online notaries public, and procedural requirements for online notarial acts. Although the Secretary of State will incur new costs for regulating notaries, presumably those costs would be offset through the revised fee structure authorized under the bill.

### **Notary commission fees**

The bill revises the fee structure for applications of notary public commissions. Under current law, there is a \$15 flat fee for both initial applications and renewals of a notary commission. Under the bill, the fee structure is revised in the following manner. First, the Secretary of State may charge initial application fees for a notary commission an amount determined by rule that may not exceed \$150. The individual receiving the notary commission is required to remit this fee to the entity that administered the required educational program, with a portion of that fee, not exceeding \$15, to be remitted to the Secretary of State. The bill also increases the renewal application fee to an amount of up to \$60. For permission to serve as an online notary, the bill provides for an application fee of an amount determined by rule. All of these are deposited into the Notary Commission Fund (Fund 4120) used to pay the operating costs of the Notary Public Office.

The Notary Public Office contains six full-time employees and typically processes 10,700 new notary commissions, 21,800 renewal commissions, and 1,000 new attorney notaries each fiscal year. Fund 4120 typically receives approximately \$480,000 in licensing revenue in each fiscal year. Appropriations from the fund, through appropriation item 050609, Notary Commission, are \$475,000 in both FY 2018 and FY 2019.

### **Notary public applications**

While there would presumably be an increase in fee revenue under the bill, there are several provisions of the bill that will result in a cost increase for the Secretary of State. The bill allows a notary public who has been duly appointed and commissioned under the Notary Law to apply to the Secretary of State for authorization to act as an online notary public during the commission's term. The bill further revises the requirements and procedures for initial application for a notary public commission. These changes would increase costs to the Secretary of State's Notary Public Office. First, the Office would experience new costs for processing the applications for electronic notary commissions. The total number of such new applications is unclear. As noted above, the Office typically processes about 33,500 applications for new commissions or renewals annually. Some number of these applicants or renewals would also apply to serve as an online notary.

There will also be some additional costs for developing the educational course and the test which individuals applying to serve as online notaries must take. There will also be some ongoing recordkeeping costs related to the oversight of online notaries. The bill specifies that online notaries must retain electronic records of notarizations in an electronic journal for five years. At the end of that five-year period, these electronic journals must be transmitted to the Secretary of State, or to a repository approved by the Secretary of State, where they must be maintained for ten years. The extent of the new costs the Secretary of State would incur for undertaking these responsibilities is unclear, but they would be paid from the proceeds of the licensing revenue deposited into Fund 4120.

### **Criminal record requirements**

The bill requires nonattorney applicants for notary public commissions to submit a criminal records check from the Bureau of Criminal Identification and Investigation (BCII), completed no more than six months before application. The applicant for a commission is required to pay the costs of a criminal records check under the bill. The fee charged by BCII depends on the type of background check requested. Under the bill, the applicant would request a state-only background check, which carries a base fee of \$22. These fees are deposited into the Attorney General's General Reimbursement Fund (Fund 1060).

## **County courts of common pleas**

The bill removes the recordkeeping requirements currently imposed on county courts of common pleas court clerks with regard to notary public commissions. Typically, individuals must register their commission with the applicable clerk of courts, who then charges a fee, typically \$5, to record the commission. The bill shifts this recording responsibility to the Secretary of State. While county courts would experience some cost reductions for no longer recording these commissions, these cost reductions would also be in conjunction with revenue losses from recordation fees. The bill also transfers responsibility for notary public discipline from courts of common pleas to the Secretary of State. The costs of discipline would therefore be borne by the Secretary of State, while courts of common pleas would see a corresponding reduction in costs.

## **Database of notary commissions**

Finally, the bill requires the Secretary of State, as part of the recordkeeping process, to maintain an online database of commissioned notaries public. As a practical matter, the Secretary of State currently maintains an Ohio Notaries Public Search webpage that allows individuals to search for notaries by name, county, and zip code. Consequently, the database of notaries required under the bill could be maintained at little or no additional cost to the Secretary of State.

## **Other provisions**

### **Salvage motor vehicles**

The bill contains provisions that deal with titles for salvage vehicles as they pertain to the Certificate of Motor Vehicle Title Law. In general, these provisions do not appear to have any direct fiscal impact. Specific information about these changes can be found in the LSC Bill Analysis.

The bill contains a provision that specifies that the Department of Public Safety (DPS) instead of the Registrar of Motor Vehicles is responsible for (1) the collection and maintenance of records submitted by salvage motor vehicle auctions and salvage motor vehicle pools and overseeing the statewide database of those records, (2) adoption of rules, and (3) law enforcement related to these matters. Since the requirement to collect these records and maintain this database already exists, this change has no fiscal effect. The bill also eliminates the requirement that all expenses for the database be paid for from the Public Safety – Highway Purposes Fund (Fund 5TM0). By eliminating the requirement to pay for these expenses through Fund 5TM0, DPS has more flexibility in how these expenses are paid.

The bill also establishes the National Motor Vehicle Title Information System Utilization Study Committee. The committee consists of the Director of Public Safety, or the Director's designee, and 11 members appointed by the Director. The members of the committee are not compensated and do not receive reimbursement for expenses.

### **Oil and gas professionals**

The bill exempts oil and gas professionals from the Real Estate Broker Licensing Law, but does require these individuals to register with the Superintendent of Real Estate and submit an annual fee established by the Superintendent, in an amount not to exceed \$100. These fees would be deposited into the Divisions of Real Estate Operating Fund (Fund 5490).