

SUBJECT: Application and renewal procedure for notaries public

COMMITTEE: Licensing and Administrative Procedures - favorable without amendment

VOTE: 7 ayes — Wilson, Kubiak, Brimer, Dear, D. Jones, Pickett, Torres

0 nays

2 absent — Goolsby, Yarbrough

WITNESSES: No public hearing

BACKGROUND: Texas has 314,339 notaries public, who are commissioned by the state to perform various services related to documents and to charge fees set by law.

An applicant to become a notary must be at least 18 years of age and a resident of Texas. Applicants are required to submit an application to the secretary of state. After pre-screening by the secretary of state, applicants are notified about their appointments. An applicant appointed to serve as a notary public has 30 days from the date of notice to qualify by, among other things, obtaining a bond in the amount of \$2,500 and paying a fee of \$21 for a four-year notary term. In order to carry the bond, an appointee is required to pay \$50.

Some private companies buy from the secretary of state's office the names of persons appointed as notaries who are awaiting qualification. These companies provide notary appointees with information, supplies and bonding information to assist them in qualifying.

The Texas Department of Insurance regulates the rates surety companies can charge for bonds.

DIGEST: SB 1391 would eliminate the two-step procedure for qualifying as a notary public. Instead, applicants would be required to submit a fully completed application to satisfy the secretary of state that the applicant is qualified. An individual would qualify as a notary by:

- properly completing the application form;
- executing the statement for officers as required by the Constitution;
- providing a bond in the amount of \$10,000 (which could be filed electronically if an agreement to buy the required bond had been made with a surety company);
- paying the required filing fee of \$21, and
- meeting the eligibility requirements of age, residence and criminal history background, including not having been convicted of a felony or crime involving moral turpitude.

The applicant's application would have to include the applicant's date of birth and driver's license number or the number of other official state-issued identification.

The bill would delete provisions relating to the second step of the process, including an applicant's responsibilities to secure a bond and take an oath during the 30-day qualifying period. Instead, immediately after the notary was approved, the secretary of state would be required to send notice of the appointment along with a commission to the person, and to provide the oath of office form along with educational materials.

SB 1391 would require the applicant to take the official oath of office after approval. It could be signed and sworn or affirmed by the notary public in the presence of another notary public or other person authorized to administer oaths in this state. Notaries would not be able to execute their own oath of office.

SB 1391 would add that a commission could be removed if a good-cause showing was made that the notary performed a notarization when the person for whom the notarization was performed did not personally appear before the notary at the time the notarization was executed.

SB 1391 would add that the dismissal and discharge of proceedings under either the misdemeanor adult probation and supervision law or the adult

probation, parole, and mandatory supervision law would not be considered a conviction for the purposes of determining removal of a notary for good cause.

SB 1391 would delete provisions requiring that the secretary of state send notaries an application for reappointment not later than the 90th day before the date on which the notary's term expires. Instead, the bill would require that a notary public get the application and reapply for reappointment on submission of a new application to the secretary of state. A notary public who was not reappointed on or before the expiration date of the term the notary public was currently serving would be appointed for a new term expiring four years from the date of the new qualification.

If a governor or secretary of state ceased to hold office, existing supplies of commissions bearing the officeholder's name, signature or facsimile signature could still be used until they ran out, and the person succeeding to the office would have to have the commissions issued with the former officeholder's printed name and signature or facsimile signature struck through with the successor's printed name in its place replacing the old office holder's name. The inscription, "printed name authorized by law" would be required to be placed near the successor's printed name.

The bill would take effect January 1, 1996.

**SUPPORTERS
SAY:**

SB 1391 would streamline the notary application process by consolidating the current two-step process for qualification into one step. Potential applicants would only have to fill out one complete application to be considered for appointment as a notary public. Once approved, the notary would only have to be sworn in. This would reduce paperwork, printing staff time and postage. It would not, however, cut back on the screening that occurs when considering candidates for appointment as notaries public. In addition, the same application could be used for applications and reapplications. The Department of Transportation has had great success in reducing from two steps to one step its required procedure for used car dealers.

Eliminating the requirement for the secretary of state to mail applications for reappointment to notaries whose commissions expire would be cost-

effective for the state. Notaries, just like car owners who have to remember to get their cars annually inspected, would have to take responsibility to renew their notary commissions when they expire. Every notary seal should have a notary expiration date affixed to it, making each seal a handy reminder that notaries must remember to renew their commission.

OPPONENTS
SAY:

SB 1391 would save a mere \$48,624 in fiscal 1996 and about the same in each of the next four years, while creating numerous procedural problems and undermining the dignity of the notary office. The current application, qualification and renewal notification system has proven to be an effective and workable system, also generating revenue for the state.

Failing to notify notaries about reappointment applications could have a devastating effect on the legality of a host of notarized documents. It is very likely that notaries, without some reminder, would unintentionally would let their commissions expire and continue to notarize documents that could be held invalid. In addition, employers could be potentially liable for having their employees illegally notarize when their commissions have expired.

The one-step approach suggested by this bill would require individuals to pay approximately \$71 for bonds and fees before they have even been approved for appointment as notaries. This would make little sense if the applicant's appointment was ultimately not approved by the secretary of state.

The public would lose the benefits of having seven to 10 companies provide applicants with information about application and commission procedures. Each service company distributes applications, appointment information, booklets and provides toll-free phone assistance. Thousands of inquires are handled by these companies each year, and save the state thousands of dollars in printing, mail, phone, staffing and processing costs. These offices could lose 25 private sector jobs while at the same time, the state might have to increase staffing to meet the new demands from persons interested in becoming notaries.

The provision allowing the continued use of outdated stocks of notary commissions by simply striking out the names of former governors and secretaries of state would appear "cheap and cheesy" and would undermine the dignity of the office.