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FISCAL IMPACT REPORT

SPONSOR SHPAC LAST UPDATED 3/17/2023
ORIGINAL DATE 2/21/2023
SHORT TITLE Uniform Law On Notarial Acts BILL NUMBER CS/Senate Bill 246/
SHPACS/aSJC/aHJC
ANALYST Gray

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 82

Relates to Senate Bill 39

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Secretary of State (SOS)

SUMMARY

Synopsis of HJC Amendment to SHPAC Substitute for Senate Bill 246

The House Judiciary Committee amendment to the Senate Health and Public Affairs Committee substitute for Senate Bill 246 makes two substantive changes:

- Eliminating the requirement that a certificate of a notarial act identify the statute authorizing the person to perform the notarial act if that person is authorized to be a notarial officer by a law other than the revised uniform law on notarial acts; and
- Providing that the course required for automatic notarial officers is not to last longer than one and a half hours.

Synopsis of SJC Amendment to SHPAC Substitute for Senate Bill 246

The Senate Judiciary Committee amendment to the Senate Health and Public Affairs Committee substitute for Senate Bill 246 makes a minor clarification, replacing the term notary public with notarial officer.

Synopsis of SHPAC Substitute for Senate Bill 246

The Senate Health and Public Affairs Committee substitute for Senate Bill 246 (SB246) contemplates amendments to the Revised Uniform Law on Notarial Acts (RULNA). According to the Office of the Secretary of State’s website, individuals wishing to become a notary are required to take a course, pass an exam, register their official stamp once commissioned, and maintain a journal of every notarial act they provide. Official stamps are used in the commission of a notary public’s practice and must be registered with the Office of the Secretary of State before the notary performs notarial acts.

SB246 defines “automatic notarial officers” to be any of the following individuals who have registered an official stamp, including:

- Judicial officers;
- County clerks or deputy county clerks while acting within the scope of their duties;
- The secretary of state or full-time staff member of the secretary of state; and,
- Attorneys licensed by the New Mexico bar.

SB246 requires that when a notarial act to be certified is completed by an automatic notarial officer, the certificate shall:

- Identify the judicial district or area served if notarial officer is a judicial officer;
- Identify the state bar number if the notarial officer is an attorney performing notarial acts; and/or,
- Identify the statute authorizing the person to perform the specified notarial act if that act is pursuant to an act other than RULNA.

SB246 provides educational requirements for automatic notarial officers and requires that automatic notarial officers attend a course delivered by the Secretary of State either in person or virtually.

SB246 would allow judicial officers to be commissioned as a notary public outside of their scope of duties as an automatic notarial officer. The bill also amends personal appearance requirements, prohibits acts of discrimination as grounds to refuse to perform notarial acts, and recognizes notarial acts performed by an Indian nation, tribe, or pueblo.

Lastly, SB246 establishes the grounds on which the State Ethics Commission may deny, refuse to renew, revoke, suspend, or condition commission a notarial officer to include violations by the notarial officers of obligations under the RULNA, rules of the SOS, or any federal or state law.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There are no estimated fiscal implications.

SIGNIFICANT ISSUES

While SB246 establishes the grounds on which the state ethics commission may revoke, suspend, or impose a condition on a notarial officer, the bill does not explicitly provide for an opportunity for notice, a hearing, or other common aspects of due process. Analysis from the

NMAG states it may be prudent to consider “whether a notary’s commission could be considered a property right in New Mexico, and if so, what due process would be owed to a notarial officer prior to taking disciplinary action against their commission under both the U.S. and New Mexico constitutions.” The analysis goes on to inquire whether existing statute provides that due process, or if a provision should be added to the RULNA.

SOS notes that the agency is still implementing system changes approved by the Legislature in 2022, and SOS anticipates the need for systemic updates to combine these groups under the same requirements. These changes are anticipated to be reasonable.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 82 requires a sworn oath before a “notary public.” Under SB246, it may be appropriate that the term be revised to “notarial officer” if that term more accurately reflects the legislative intent.

Senate Bill 39 relates to SB246 due to its expansion of those persons granted the authority to solemnize marriages to include notary public or notarial officers.

TECHNICAL ISSUES

Section 14-14A-2 Subsection I (1) refers to the “record” but the definition refers to notarial “acts.” See page 5, lines 11-13.

Section 14-13-3, as amended, may have the unintended consequence of authorizing additional court clerks to administer oaths and affirmations; specifically tribal court clerks and city court clerks. See page 2, lines 6 – 9.

Analysis from SOS recommends that additional amendments to Section 14-14A-26 (4) include recently adopted changes that make the State Ethics Commission responsible for sanctions and that the term "assuring the trustworthiness" is defined for clarity.

BG/rl/ne/rl/mg/rl/ne