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Chris Winters Testimony for House Government Operations on H.206, An Act relating to the Regulation of Notaries Public

2/23/16

Agreed:

- Vermont's outdated notary laws need to be updated
- Ours are some of the oldest and most sparse notary laws in the nation
- As the first line of prevention for fraudulent documents, we need some assurance that:
 - notaries are qualified
 - notaries have clear standards to follow
 - notaries understand the importance of the acts they perform
- We need to protect the integrity of the notarial process
- We need to allow our notarized documents to be transferable in interstate commerce

At the very least we need to think about updating for:

- Initial requirements for commissioning
- Minimal continuing education
- Verifying identity
- Requiring personal appearance
- Recordkeeping - stamp and journal
- Electronic notarization
- Enforcement for failure to follow standards

Also agreed on the systematic issues:

We must modernize and streamline the process to ensure a smooth-flowing application and renewal process for the modern era, with online services.

On the Secretary of State's (SoS) role:

As the state agency responsible for Apostilles, including collecting copies of the notary applications, signatures and creating a database of notaries and signatures (all with no part of the notary application fee or any dedicated staff), we at the Secretary of State's Office (SoS) have a vested interest in the process and want to improve upon it. We have the infrastructure in place to create a more efficient and accurate centralized commissioning process.

This is why we had originally proposed locating the entire process within the SoS Office of professional Regulation (OPR) and running the program solely on the fees collected.

Funding issues:

We acknowledge the financial implications tied to the notary fees. For every \$30 application, \$15 goes to the County and \$15 goes to the State's General Fund, to be used to support the Judiciary budget. This amounts to a very rough estimate of \$400K every four years, with \$200K split among the 14 counties per capita by notary, and the other \$200K going to the GF. While this translates to a relatively small amount of money per year per (\$50K across 14 counties) the Counties and State are understandably reluctant to give that up and make up the difference through increases in property taxes.

The SoS is exploring how to keep the Assistant Judges involved in commissioning, using our existing technology, and splitting the fee to maintain current funding sources. For our office to achieve this, we will need additional revenue to pay for staff and technology. Accordingly, we would seek some portion of the fees. This would require an increase in the fee to pay for the existing and increased SoS role while maintaining the funding status quo for the others involved. Here are two possibilities:

Scenario 1: We raise the fee from \$30 to \$50 (every four years) with the \$20 increase going to the SoS, generating approximately \$270K every four years for SoS (\$67,500 annually) in addition to the \$200K (\$50K annually) received by the Counties and the GF. This would help pay for part of an SoS staff person and the infrastructure necessary to support the program.

Scenario 2: We keep the fee at \$30 but change renewal to every two years, generating an additional \$400K every four years, with 30% to the county \$60K annually, 30% to the GF \$60K annually, and 40% to SoS at \$80K annually, providing a slight increase to each fund than in the first scenario.

If we can figure out the money and positions, here are the other issues to be resolved, as I see them:

- **Law enforcement**

Stamping and journaling requirements would be a burden. Other states have adopted the Uniform unsworn Declarations Act (UUDA), determining that a statement signed under the pains and penalties of perjury satisfied the needs of criminal court and some civil court proceedings. The UUDA and an explanation can be found here:

http://www.uniformlaws.org/shared/docs/unsworn%20domestic%20declarations/2015apr_UDDA_Unif.%20Unsworn%20Declar.%20Act_Mtg%20Draft_Clean.pdf

Under UUDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. UUDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary. Enactment of UUDA harmonizes state and federal treatment of unsworn declarations. The act alleviates affiants' burden in providing important information for state proceedings. This would also require combing through the statutes to update the perjury provisions and determining other statutes affected.

- **Court staff**

Journal / recordkeeping may also be a burden here for high volume court documents. The courts have indicated a desire to examine when a notarial act is really necessary. Potential burden alleviated through UUDA. Potential exemption for mass court transactions?

- **Exam and education requirements**

Need to clarify that this is a minimal exam requirement designed to prove knowledge of the notary laws, purpose and obligations of a notary public. The exam should be a minimum standard to achieve commissioning, would be online and open book, and a small step forward from the lack of requirements we have now. There are many resources already available from other states. We would also require minimal continuing education at every renewal and would provide trainings and materials online to make this easily accessible to those wanting to be notaries. Again, there are many resource online already built and ready to use. The bill currently requires up to four hours every two years, though we could certainly spread that over a four year term if that changes.

- **Attorneys exempt from education**

It seems that an attorney by his or her training should not have to pass an exam or do the continuing education. Attorneys are also subject to their own licensing and discipline process.

- **Term and Regulating entity**

The current bill is for a two year term of commissioning but we could keep it at the existing four year. See the revenue discussion above. The bill currently lists the office of professional regulation, but could more generically refer to the SoS and the Assistant Judges as the regulatory entity.

- **Ex officio notaries**

Who is in and who is out? Is the current law on this acceptable? Do we expand to other court staff?

- **Enforcement**

The new law must have some enforcement mechanism to have meaning. Again, this is why we had originally proposed it go to the Office of Professional Regulation. I do not foresee many complaints about notaries or enforcement cases, but they will happen and we must have some mechanism for removing or restricting a notary commission. If the Assistant Judges are to remain as the commissioning authority, I would propose they conduct an administrative proceeding under the APA for any alleged violation of the notary statutes. The OPR Administrative Rules of Conduct provide an example for the Assistant Judges to follow in determining whether to discipline a notary on those rare occasions when it might be necessary.

- **Effective date**

We have until February 2019 until these expire again and could plan for the transition to occur then, giving us plenty of time to ramp up systems, materials and support. There was some discussion of making certain parts (standards) effective now, certain parts (commissioning at

SoS, exam, education) effective later. Consider whether a staggered approach may cause confusion.

- **Electronic notarizations**

Covered by the bill, electronic notarizations are increasingly popular in other states. Needs further explanation with the committee and stakeholders. See this for a simple explanation: <https://en.wikipedia.org/wiki/ENotary> Note that this is different from “remote notarization” which does not require personal appearance. SoS does not support remote notarization.

All of these issues require feedback from stakeholders.

SoS current recommendations on redrafting the bill:

- Put the notary commissioning role in the SoS without specifying which part (removing references to OPR), and in joint consultation with the Assistant Judges, thereby preserving the current fees for the County and the State.
- Determine the appropriate fee increase to cover SoS costs and new system
- Determine the term of the commissioning (pending fee discussion)
- Determine appropriate exam and education levels and provide more specificity in the bill
- Exempt attorneys from the exam and education requirements
- Expand ex officios to include all court staff
- Include UUDA language and amend the perjury statutes
- Leave enforcement with the Assistant Judges
- Effective date of 2019