

Among the provisions of SB12/SJCS:

- Defines terms not previously included in the notary acts, including “electronic,” “electronic signature,” and “foreign state,” and updates terms, such as “official stamp,” to reflect new technology;
- Prohibits a notary from signing for a spouse or domestic partner or the notary if the notary or spouse or partner has a beneficial interest;
- Provides detailed conditions for remote notarizations;
- Allows for additional ways a notary may authentic someone’s identity;
- Authorizes notaries to accept a signature from another person under certain conditions when an individual is unable to sign for himself or herself;
- Expands those allowed to perform notarial acts to include judges, lawyers, and court clerks but prohibits judges, lawyers, and court clerks from being notaries;
- Allows for notarial acts by other states, federally recognized Indian tribes, and federal authority under certain conditions;
- Specifies the act applies to all notarial acts in the state and requires SOS to notify out-of-state notaries;
- Requires a notary applicant to pass an exam and post a bond;
- Specifies notification and hearing procedures when the State Ethics Commission plans to refuse to renew, revoke, suspend, or impose conditions on a notary public commission;
- Requires SOS to maintain an electronic database of notaries and notify a notary of the pending expiration of a notary commission;
- Requires those who perform notarial acts who are not attorneys to state they are not an attorney in any advertising;
- Sets fees for notarial services; and
- Allows for the use of the state Inspection of Public Records Act to request certain documents, although it requires the document be named.

The effective date of this bill is January 1, 2022. The provisions of the law would apply to notarial acts performed after the effective date of the bill.

FISCAL IMPLICATIONS

Under SB12/SJCS, the Secretary of State would be responsible for commissioning notaries and maintaining records on applicants and commissioned notaries, while the State Ethics Commission (SEC) would generally be responsible for enforcement. SOS reports it has the resources to meet the bill’s requirements: “This bill would not have staffing implications for the SOS office. The impact to the SOS office would not change and remain status quo.” (See “Administrative Implications.”)

However, SEC reports it would need to hire a lawyer, administrative assistant, and investigator at an annual recurring cost of \$325 thousand and contract with a hearing officer and for other professional services at \$40 thousand a year. SEC projects an initial cost of \$50 thousand for equipment and other upfront expenses.

From SEC:

The committee substitute would task the State Ethics Commission to immediately begin investigating claimed violations and denying, refusing to renew, revoking, suspending, or otherwise imposing conditions on notary public commissions based on findings that the commissioned individual lacks honesty, integrity, competence, or reliability. The State Ethics Commission would be required to investigate the entire gamut of potential violations by commissioned notary publics, including fraudulent conduct, false advertising, failure to maintain residence in the state of New Mexico, and more.

The Regulation and Licensing Department, which currently enforces notary law, indicates its personnel expenses could drop by \$14,850 if its notary law responsibilities are moved to another agency.

SIGNIFICANT ISSUES

Current law places the authority to appoint and revoke notaries with the governor (Section 14-12A-5 and Section 14-12A-28) and since Executive Order 2011-036, New Mexico notary law compliance and enforcement has been the responsibility of the Regulation and Licensing Department.² RLD reports:

Since 2011, the [Notary Compliance and Enforcement Unit of the] Securities Division of RLD has been tasked with conducting investigations, authoring reports and making recommendations regarding notary compliance and enforcement cases. The division received 11 new notary cases in 2020, 15 new cases in 2019 and 16 new cases in 2018. Investigations and analysis can be extensive. The division estimates it averages over 550 hours per year working on these cases.

While SB12/SJCS “indirectly rescinds the executive order,” RLD says it is unclear if the Securities Division would remain responsible for notarial acts committed prior to the effective date of the SB12/SJCS: “Most cases of notary malfeasance arise from facts that occurred multiple years ago. If § 14-12A-1 and Executive Order 2011-036 remained operative law as to acts committed prior to SB12 becoming law, RLD would continue to handle cases that arose during that time-frame.”

RLD also suggests the bill is unclear on the division of duties between SOS and SEC. SB12/SJCS authorizes SEC to “deny” and “refuse to renew” a notary commission but also authorizes SOS to deny and refuse to renew commissions on notice from SEC. “This authority is potentially redundant and conceivably may create ambiguity in the event the two agencies desire inconsistent dispositions.”

While SEC currently has jurisdiction over the civil compliance of public officials, candidates and others subject to the Campaign Reporting Act, government contractors, and lobbyists, the addition of responsibilities for notary compliance might be considered a departure from its expertise and would likely be a substantial increase in its workload. Notably, RLD’s responsibilities include overseeing numerous licensed professions.

New Mexico is among four states currently considering legislation to adopt the revised uniform

² According to a June 2011 article on *Notary Bulletin*, a website of the National Notary Association, the unit was created by executive order with existing resources to investigate fraud with urgency and ensure “proper consequences are administered.” The article says the executive order was prompted by an Attorney General investigation into notary misconduct by a notary who allegedly performed illegal notarizations for a heroin trafficking ring and helped 29 people obtain fraudulent driver’s licenses.

notary law; 12 states have enacted the model statute.

ADMINISTRATIVE IMPLICATIONS

From SOS:

This bill would require that the Secretary of State provide training to potential notaries, provide notice to notaries of expiration, and continue to process notary applications. The SOS will require a dedicated trainer.

The SOS would likely need to create a public facing website to facilitate many of the new requirements under the Act including: approval of communication technology, identity proofing, and audiovisual recording. In addition to, the statutorily required electronic database of notary publics the SOS must maintain pursuant to Section 25. The SOS is also charged with educating out of state notaries on this ACT and our website is the most accessible place to keep this information.

SOS would need to update all notary forms to conform to these new legal requirements.

The SOS would need to create an exam for notary applicants now required in Section 23 of the bill.

ALTERNATIVES

SOS suggests the revisions to laws concerning notarial acts in SB12/SJCS could be adopted and the existing enforcement framework could remain in place.

HG/sb/al