House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

ALLOW NON-RESIDENT NOTARIES PUBLIC

House Bill 5106 as passed by the House
Second Analysis (8-8-96)

Sponsor: Rep. Mary Schroer
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Currently, the law requires that notaries public reside in the county for which they are appointed (though, once appointed, a notary public can officially act in other parts of the state so long as he or she keeps her residence in the county for which he or she was appointed). A situation has arisen in which an attorney for a title insurance company in Ann Arbor married and moved to Ohio but continues to work in Ann Arbor. Because his position with the title insurance company requires that he be a notary public, he wishes to keep his appointment as a notary public. However, because of his change in residence, under current law he no longer qualifies for appointment as a notary public. Legislation has been introduced to address this and other issues.

THE CONTENT OF THE BILL:

Currently, Chapter 14 of the Revised Statutes of 1846 ("Of County Officers") allows the secretary of state to appoint one or more notaries public in each county in the state. Applicants for appointment must be 18 years old at the time of application, a citizen of Michigan, and reside in the county for which the appointment is sought. Notaries are appointed for four-year terms, with their term expiring on their birthday four years after appointment.

The bill would amend the law as follows:

(1) People who did not reside in Michigan would be allowed to become notaries public in Michigan. Such individuals would have to demonstrate that their principal place of business was located in the Michigan county in which they requested appointment as a notary and that they were engaged in an activity in which it was likely that they would be required to perform notarial acts as defined in the 1970 Michigan Uniform Recognition of Acknowledgments Act.

(2) Attorneys could be notaries public as long as they maintained their membership in the Michigan bar (more specifically, the term of office of an attorney licensed by the State Bar of Michigan who applied for appointment as a notary public and who was otherwise in compliance with the law would expire whenever his or her membership in the state bar was suspended, revoked, relinquished, or otherwise terminated).

(3) Michigan state legislators would have the powers of a notary public.

MCL 55.107 and 55.117

BACKGROUND INFORMATION:

A notary public is a public official who is authorized to administer oaths, witness signatures, and "acknowledge" documents (such as deeds, mortgages, and liens) recorded with county registers of deeds. An "acknowledgment" is the act by which someone goes before a notary public and acknowledges (states) that he or she has signed a document. The notary then signs what officially is called a "Certificate of Acknowledgment," referred to simply as an "acknowledgment." Under the 1970 Michigan Uniform Recognition of Acknowledgments Act (Public Act 57 of 1969, MCL 565.261 to 565.279), an acknowledgment is required before a document can be recorded in a county register of deeds office. In addition to deeds, these documents include mortgages, discharges and assignments of mortgages, construction and tax liens, Uniform Commercial Code finance statements, sheriffs' foreclosures, and notices of lis pendens (notices filed on public records for the purpose of warning all persons that the title to certain property is in litigation and that they are in danger of being bound by an adverse judgment. According to a 1987 survey of 293,000 documents recorded in the Wayne County register of deeds, 90 percent of the acknowledgments were for deeds, mortgages (or mortgage-related documents), and liens.

If an individual wants to become a notary public, he or she must submit a written application (on a form

distributed by the county clerk) that is indorsed by a member of the legislature or by a circuit or probate judge of the county, district, or circuit where the applicant lives. There is a three dollar application fee.

Within 90 days of receiving notice from the county clerk of his or her appointment, the notary public must take and file an oath and a $10,000 surety bond with his or her county clerk.

The Department of State reports that currently there are approximately 160,000 active notaries public in Michigan, and that the department appoints between 35,000 and 37,000 notaries each year.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports the bill has no fiscal implications. (8-5-96) According to the Department of State, the bill could minimally increase costs resulting from the need to create new forms. (8-8-96)

ARGUMENTS:

For:

Under current Michigan law, only Michigan residents can be appointed notaries public in Michigan. The bill would allow a person who lived outside of Michigan to be appointed notary public if his or her principal place of business was in Michigan. The bill also would specify that, once appointed, attorneys would keep their commissions as notaries public so long as they remained members of the Michigan state bar. In addition it would provide, as other states have done, that state legislators would automatically be notaries as part of their office.

In a highly mobile society such as ours, people often do not live in the communities in which they work (and vice versa), and there seems little good reason to restrict a function such as that of notary public to residents, particularly if that function is necessary for someone to perform his or her job properly in Michigan. While the bill would remove the requirement that a notary public be a citizen of Michigan and live in the county for which he or she was appointed notary, the bill would continue to tie the appointment of notaries to specific counties. The National Notary Association reports that out-of-state notary appointments are becoming increasingly common across the nation, especially in large metropolitan areas with workers who commute from neighboring states.

The bill also would mirror Ohio law in some respects: In Ohio, notaries public hold their office for five years unless they are attorneys admitted to the practice of law by the Ohio supreme court (or unless their commission is revoked). Attorneys in Ohio hold office as notaries public as long as (1) they reside in Ohio or have their principal place of business or primary practice in Ohio, (2) they are in good standing before the Ohio supreme court, and (3) their commission isn't revoked.

Against:

There appear to be some problems with the bill in its current form. For example, if attorneys are to have appointments that last as long as the attorney is a member of the state bar, how would the Department of State know when an attorney terminated his or her bar membership? Currently, all notaries must reapply for appointment every four years, which at least would allow the possibility for the secretary of state to require proof of bar membership. But if attorneys were required to apply for appointment only once, even this opportunity for checking for bar membership would be absent. There may also be a problem with giving attorneys open-ended terms of appointment because of the law's requirement that notaries file surety bonds with their county clerks. Reportedly, surety bonds have the applicant's appointment and expiration dates on their documentation, but if an attorney-applicant anticipated an open-ended term of appointment, would this affect his or her ability to obtain the required bond? The National Notary Association (in Santa Barbara, California) reports that most of the telephone calls the organization receives concerning problems with notaries are with regard to attorneys who abuse notarial laws (for example, by requiring their staffs to back-date notarized documents or to notarize blank documents). Would these abuses of the power of notary public be exacerbated under the bill? The national association believes that if attorneys are to be given what in effect are life-time appointments as notaries, the attorneys should at least have to be knowledgeable about notarial laws and go through the same application process as non-attorney applicants.

In addition, automatically providing state legislators with notary powers could produce the same problems. Often when notarial powers are granted *ex officio*, the individuals who take the office are unaware of the extent and nature of the powers and this can lead to abuses of those powers.

Finally, it could be argued that the law governing notaries needs updating and revising in general. The law, which was amended in 1993 to change the appointment of notaries public from the governor to the secretary of state still retains a reference to whenever "the governor" appoints a notary public. In addition, the three-dollar application fee prescribed in the law also clearly no longer covers the costs of processing applications (reportedly other states charge between $25

and $50 for their applications) and probably should be changed.

POSITIONS:

The National Notary Association supports the bill's out-of-state provisions, but opposes granting special privileges to attorneys and has concerns about the *ex officio* grant of notarial powers to legislators. (7-30-96)

The Department of State has no position on the bill at present. (8-8-96)

Analyst: S. Ekstrom/W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.