

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 602 (Senator Hooper, *et al.*)
Judicial Proceedings

Notaries Public - Qualifications

This bill requires that an individual appointed as a notary public be a U.S. citizen.

Fiscal Summary

State Effect: Minimal general fund revenue decrease.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: An individual appointed as a notary public must be at least 18 years old; be of good moral character and integrity; live or work in the State; if living in the State, be a resident of the Senatorial district from which appointed; and if living outside the State, be a resident of a state that allows Maryland residents working in that state to serve as notaries public in that state.

Background: Virginia requires U.S. citizenship for appointment as a notary public. West Virginia has a reciprocity clause in statute that permits a noncitizen to be appointed a notary public if the noncitizen is a citizen of a country that permits a U.S. citizen to receive an appointment. Pennsylvania and Delaware do not require U.S. citizenship to become a notary public.

A U.S. District Court opinion invalidated a Maryland statute similar to this bill on constitutional grounds. The courts have found that a U.S. citizenship requirement for a notary is a violation of the equal protection clause of the Fourteenth Amendment of the Constitution. In *Taggart v. Mandel*, 391 F. Supp. 733 (Md. 1975) a three-judge panel of the District Court found that a requirement that “applicants for the State constitutional office of notary public be citizens is wholly unrelated to the achievement of any valid State objective, and thus, it is a violation of the equal protection clause of the Fourteenth Amendment...[this Court] is not persuaded that the position of notary public is one where citizenship bears some rational relationship to the special demands of the particular position. Thus, this Court notes that the various functions of a notary public are largely ministerial in nature...”

The U.S. Supreme Court also invalidated a Texas statute similar to this bill, noting that a State law that discriminates on the basis of alienage must satisfy a strict scrutiny test, *i.e.*, the restriction must advance a compelling state interest by the least restrictive means available. The “political function” exception to the strict scrutiny rule applies to law that exclude aliens from positions intimately related to the process of democratic self-government. The court found that the Texas statute did not qualify for the political function exception, and that the statute did not meet the strict scrutiny standard of judicial review. *Bernal v. Fainter*, 467 U.S. 216 (1984).

State Revenues: Notaries public are required to pay a certification fee of \$20 every four years to maintain their standing as a notary public. There are approximately 81,000 active notaries public in Maryland. The number of notaries public who are noncitizens is not tracked and is thus unknown. For illustrative purposes only, if 5% of currently authorized notaries public are not U.S. citizens, general fund revenues would decrease by approximately \$20,000 annually.

Additional Information

Prior Introductions: SB 631 of 2004, an identical bill, received an unfavorable report from the Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Secretary of State, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2005
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Analysis by: Martin L. Levine

Direct Inquiries to:
(410) 946-5510
(301) 970-5510