

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader - Revised

House Bill 939 (Delegate Platt, *et al.*)  
 Health and Government Operations

State Government - Acknowledgments, Oaths, and Affirmations - Recordations  
 and Notarizations

This bill authorizes a notary to perform electronic notarization and remote notarization. A notary must register the capability to perform notarizing electronically with the Secretary of State (SOS) prior to performing electronic notarizations. The bill establishes provisions relating to registering, documenting, processing, authenticating, and confirming identity in electronic notary transactions. The bill also makes conforming changes to existing law. SOS must adopt regulations to implement and enforce the bill, as specified.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$60,400 in FY 2018 for SOS to hire one full-time investigator to enforce electronic notary requirements. Future year expenditures reflect annualization. General fund revenues increase due to fees from additional registrations; any such increase cannot be reliably estimated at this time but is expected to be minimal.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	\$60,400	\$75,800	\$79,300	\$82,900	\$86,800
Net Effect	(\$60,400)	(\$75,800)	(\$79,300)	(\$82,900)	(\$86,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** None.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** “Electronic notarization” means a notarial act by an electronic notary that involves an electronic record. “Electronic notary” means a notary public who has been registered by SOS as having the capability of performing electronic notarizations. “Electronic notary seal” means information within a notarized electronic document that generally corresponds to information contained in standard notarial seals used on paper documents, including the notary’s name, county, and commission expiration date. “Electronic signature” is an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document. “Register of electronic notarizations” is a device for creating and preserving a chronological record of electronic notarizations performed by an electronic notary that includes specified information. “Remote notarization” means an electronic notarization by an electronic notary in which the signer of the electronic document is not in the physical presence of the electronic notary at the time of the notarization.

*Registration and Renewal:* SOS must develop a registration form for electronic notaries, which must include a description of the technology the registrant will use to create an electronic signature and electronic notary seal, including the name of the technology provider. An electronic notary must reregister with SOS within 90 days whenever the technology used is updated and after renewing a notary public commission.

*Electronic Notarization Security Precautions:* An electronic notary must attach to or logically associate with the electronic record the official electronic signature of the notary and the electronic notary’s electronic notary seal. The electronic signature and seal must be used in combination with technology that (1) includes a unique identifier; (2) renders the time and date of the electronic notarization capable of independent verification; and (3) is attached to or logically associated with the electronic record in a manner that renders the record tamper-evident.

*Electronic Notarization Procedure:* Except in the case of remote notarization, an electronic notary must refuse to perform an electronic notarization if the signer (1) does not appear before the notary at the time of the electronic notarization; (2) is not personally known to the electronic notary or identified to the notary’s satisfaction; (3) shows a demeanor that causes the notary to have a compelling doubt about whether the signer knows the purpose of the electronic notarization; or (4) is not, in the notary’s judgment, acting willingly.

*Electronic Notarizations Performed Remotely:* An electronic notary may perform a remote notarization if the notary obtains satisfactory proof of the identity of the signer of the electronic record. “Satisfactory proof” means proof of the identity of the signer of the electronic document that is established using real-time, two-way audio-video

communication that enables the electronic notary to interact with and identify the signer of the electronic record and is confirmed by (1) the electronic notary's personal knowledge of the signer; (2) a valid public key certificate that complies with any regulation adopted under the bill's provisions; or (3) the signer's successful completion of an identity assessment that is based on a set of questions formulated from public or private data sources for which the signer has not provided a prior answer, combined with:

- the use of software that relies on high-resolution imaging and document classification to perform a forensic analysis on an unexpired, government-issued photo identification that has been provided by the signer; or
- the electronic notary's visual inspection of a high-resolution image of a valid government-issued photo identification provided by the signer containing information consistent with other information provided to the electronic notary.

An electronic notary may also use any other method of confirming the identity of the signer of the electronic record that is authorized by a regulation.

*Fees:* An electronic notary may charge a fee that exceeds the prescribed fees for standard notarizations if it reasonably accounts for the costs of the technology used in electronic notarizations and if it has been conspicuously disclosed to the signer in advance of being charged. An electronic notary may also charge a reasonable fee to recover the cost of preparing records and duplicates for inspection. Fees collected for notarial services may be shared with a private entity that provides software or other services used by the electronic notary in performing duties.

*Reasonable Care and Recordkeeping Requirements:* Electronic notaries must exercise reasonable care in performing electronic notarizations and a high degree of care in obtaining the satisfactory proof of identity of the signer of an electronic record. Electronic notaries must take reasonable steps to ensure the integrity, security, and authenticity of electronic notarizations, among other things.

Records of electronic notarizations must be protected and maintained for inspection. The register of electronic notarizations must be backed-up and maintained for at least five years from the date of notarization. The register of electronic notarizations, electronic signature, and electronic notary seal must be kept secure under the notary's exclusive control and for the notary's exclusive use. An electronic signature may only be used for the purpose of performing electronic notarizations. An electronic notary must inform the appropriate law enforcement agency in the case of theft or vandalism and must notify SOS in writing if the register of electronic notarizations, electronic signature, or electronic notary seal has been lost, stolen, or used by an individual other than the electronic notary.

*Applicability:* Electronic notaries are subject to the rules set forth in State law for standard notaries and may perform electronic notarizations in any other county or state with the same power and effect as if the notarization was performed in the county for which the notary was appointed. All electronic notarizations performed by an electronic notary, regardless of the jurisdiction in which the signer of the record is physically located, are deemed to have been performed in the State and governed by State law.

*Commercial Transactions:* The bill's provisions do not affect the validity or effect of an electronic notarization performed in accordance with the Maryland Uniform Electronic Transactions Act (MUETA) before the bill's effective date. Electronically notarized real property records may be recorded by the circuit court provided they were created and retained in accordance with MUETA or the laws of another State.

*Other Jurisdictions:* The bill applies existing law regarding the recognition of official acknowledgements made by an official outside of the State or outside of the United States to electronic notifications, provided they meet the same authentication requirements. Any instrument acknowledged by a clerk or deputy clerk of a federal court or any court of record in any other State or jurisdiction, or a notary public that appears on its face to be properly acknowledged, is presumed to be so under the laws of the other State. Also, any instrument that has been acknowledged before the same individuals and is recorded as specified is valid on the date of recording despite any technical defect in the acknowledgment, unless the acknowledgment was made fraudulently or under duress. This last provision applies retroactively to any instrument that has been acknowledged and recorded on or before the bill's effective date.

**Current Law:** A notary public must (1) be at least age 18; (2) be of good moral character and integrity; (3) live or work in Maryland; and (4) be a resident of the senatorial district in which he or she is appointed or, if living outside the state, be a resident of a state that allows Maryland residents working in that state to serve as notaries. The term of a notary is four years.

A notary public must provide a public notarial seal or stamp with which the notary will authenticate the notary's acts, instruments, and attestations. The seal or stamp must include the name, surname, and office of the notary and the notary's place of residence, which must be designated by the county of the notary's residence or, if the notary is a resident of Baltimore City, Baltimore City.

If a document presented for notarization does not contain a notarial certificate reflecting the taking of an oath or acknowledgment, a notary may nevertheless witness the signing of the document in the notary's official capacity by (1) obtaining satisfactory proof of the identity of the person signing the document; (2) observing the signing of the document;

(3) dating, signing, and sealing or stamping the document; and (4) recording the act in the notary's fair register.

*Federal Law:* In June 2000, the U.S. Congress passed the federal Electronic Signatures in Global and National Commerce Act, which states that if a statute, regulation, or other rule of law requires a signature or record relating to a transaction to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

*Commercial Transactions:* MUETA gives legal effect to an electronic record or signature provided the procedures in the Act are adhered to. Under MUETA, a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, and if a law requires a record to be in writing, an electronic record satisfies the law. Similarly, if a law requires a signature, an electronic signature satisfies the law.

**Background:** Several states have laws authorizing notarizations of electronic documents using an electronic notary seal; however, the signer is still required to appear in person for a notary to notarize a document. On July 1, 2012, Virginia became the first state in the country to authorize remote online notarization, which allows an electronic notary to perform a notarization without being in the physical presence of the signer. Unlike the bill, the Virginia electronic notary act does not require the Secretary of the Commonwealth to enforce or monitor electronic notaries for compliance with the law.

The Secretary of the Commonwealth of Virginia did not respond to requests for information regarding their experience with electronic notaries. However, SOS advises that Virginia does not systematically track the number of notaries in the Commonwealth, so a reliable estimate of the number of electronic notaries may not be available. Anecdotal evidence suggests that the number of electronic notaries in Virginia is minimal compared to the total number of notaries.

**State Expenditures:** The bill requires SOS to adopt regulations to implement and enforce the bill. SOS advises that there is currently no procedure for developing criteria for identifying or certifying electronic notarization software vendors or technology, and it anticipates that additional staff are needed to handle additional complaints and investigations involving electronic and remote notary transactions. Specifically, SOS advises that it requires five additional staff as a result of the bill (two supervisor positions for enforcement and three administrative support staff for processing electronic notary registrations, responding to email and telephone inquiries, and supporting the investigative staff). The Department of Legislative Services disagrees and believes that SOS can implement the bill with fewer than five new positions. According to SOS, during

fiscal 2016, more than 20,000 notaries registered or renewed registration; these registrations are handled by two full-time administrative staff. Although the number of additional registrations that SOS needs to process under the bill is unknown, it is assumed to be relatively small based on the experience of other states. Accordingly, SOS can process additional electronic notary registrations with existing resources, assuming that the number of new registrations is not significantly larger than anticipated. If the number of electronic notary applications exceeds expectations, SOS may require additional administrative staff to process them. Given the bill's requirement that SOS enforce the bill's provisions, and that SOS does not have any investigative staff, SOS does require one investigator to confirm that electronic notaries comply with the bill's extensive requirements.

Therefore, general fund expenditures for SOS increase by \$60,378 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring one full-time investigator for enforcement. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. SOS also requires a registration and tracking system for electronic notaries. SOS recently automated the registration for regular notaries, and the Department of Information Technology advises that its current vendor provides these services through a master contract, with the cost offset by a user convenience fee charged by the vendor through the system. Assuming that the vendor can accommodate the registration of electronic notaries in addition to regular notaries, no additional expenditures for registration and tracking are anticipated.

Positions	1
Salary and Fringe Benefits	\$55,269
Operating Expenses	<u>5,109</u>
<b>Total FY 2018 State Expenditures</b>	<b>\$60,378</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

**State Revenues:** SOS advises that the current application fee for a notary registration is \$9, which is paid to the general fund. There is no way to reliably estimate the number of additional notary registration applications submitted to SOS under the bill, but it is expected to be minimal. Accordingly, general fund revenues increase minimally in any fiscal year to the extent additional electronic notary registration applications are submitted.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 747 (Senator Zirkin, *et al.*) - Judicial Proceedings.

**Information Source(s):** Secretary of State; Judiciary (Administrative Office of the Courts); Department of Information Technology; Virginia Secretary of the Commonwealth; Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2017  
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Analysis by: Michelle Davis

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