

**HB**

**439**

**HFIN**

**FILE**

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 439  
 (H) Publish Date: 2/5/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: GOV  
 Title An Act relating to oaths, affirmations RDU \_\_\_\_\_  
 and acknowledgments \_\_\_\_\_ Component Office of the Lt. Governor  
 Sponsor Governor \_\_\_\_\_  
 Requester Rules \_\_\_\_\_ Component No. 1

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 The proposed fee changes for certificates from \$2 to \$5, as set out in Section 5 of the bill, will generate anticipated \$8.7 in additional unrestricted revenues.

Prepared by: Linda J. Perez, Director Phone 465-3876  
 Division: Administrative Services Date/Time 1/29/04 2:40 PM  
 Approved by: Lt. Governor Loren Leman Date 1/29/2004  
 Agency: Office of the Lt. Governor

SECTIONAL ANALYSIS  
CS HB 439 (JUD)

An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed and to notaries public; and providing for an effective date. (H) (S) (A)

Section 1. Adds presiding officers of each house of the Legislature and the Lieutenant Governor to the list of persons permitted to administer oaths. This permission is limited to the administration of the oath of office to new legislators (AS 24.05.160) and to the presiding officers for the same purpose during second and special sessions (AS 24.05.170).

Sections 2 and 3. Conforms sections of Alaska Civil Procedure concerning notarial acts to the updated language in Sec. 44.50.061 (5). These sections apply to court system employees, U.S. Postmasters, U.S. military personnel and municipal clerks.

Sections 4 and 5. Update 09.63 to include reference to limited liability companies, limited partnerships, and limited liability partnerships. (H) (S) (A)

Section 6. Increases fee per notarial certificate from \$2/three folios to \$5/certificate. "Folio" is an outdated term not used in current practice. The increase reflects the State's cost to process the certificates. Deletes territorial language re: accounting for fees. (H) (S) (A)

Section 7. Two categories of notaries:

- a) notary public without limitation
  - terms are for 4 years
  - can charge fees for service
- b) limited governmental notary public (state, municipal and federal employees)
  - conduct only official government business
  - terms are for the length of government employment
  - cannot charge fees for service (new Sec. 44.50.039)

Can have concurrent commissions as a notary public without limitation and as a limited governmental notary public, as long as the activities are separated.

Section 8. Changes Qualifications to be commissioned notary public:

- lowers the age from 19 to 18.
- Must have established Alaska residency. The definition of "residency" is updated to a more widely used and more current definition (AS 01.10.055) than current statute (AS 44.50.020).
- notary public must reside legally in the U.S.
- 10 years between felony conviction/incarceration and ability to apply as notary (H) (S) (A)

Section 9. Sets out the application requirements for notary public commission whether notary public without limitation or limited governmental notary public.

Restates the current \$40 fee per application along with the current requirement that State limited governmental notaries public are exempt from the fee.

Restates current bonding requirement of \$1,000 with term of four years for notaries public without limitation.

Requires Lieutenant Governor to keep the bond for 10 years (was for two years) ~~(H) STA~~

Provides opportunities for Lieutenant Governor to deny applications if:

- a) application is incomplete
- b) applicant has been convicted of and incarcerated for a felony less than 10 years previous to application ~~(H) STA~~
- c) applicant's commission has been revoked

Clarifies current law as to when a new commission begins.

Section 10. Much of AS 44.50.060 is antiquated language. The changes here acknowledge that the duties of a notary public can be encompassed in the broader language of administering oaths and affirmations, taking acknowledgment of or proof of instruments of writing and giving notarial certificates.

Section 11. Defines scope of practice and makes clear that a notary public who is not an attorney may not perform functions that require the practice of law. (H) JUD,  
following sections are renumbered and conforming amendments made to referenced sections throughout the bill.

Also sets out what a notary public cannot do (Sec. 44.50.062), the specifications of the official seal, and its care and keeping, what constitutes a "seal impression", changes in notary status and disciplinary actions. It also specifies at (5) (A) – (C) the elements that must be present for a notary public to notarize a document:

- Person must appear and sign the document before the notary public
- Person must produce identification unless personally known to the notary public
- The notary must sign in his/her own handwriting the name on his/her commission certificate.
- Notary cannot notarize documents which benefit the notary (see Page 12, Lines 19-25) ~~(H) STA~~

This section reorders and clarifies current law defining the notary's seal, and defining the seal impression. The \$5 name change fee is not in addition to the cost of a new certificate under Sec. 44.19.024. ~~(H) STA~~

New sections (Secs. 44.50.068-.069) give the Lieutenant Governor the latitude to suspend or revoke a notary public's commission or to reprimand a notary public for good cause. The Lieutenant Governor may delegate his authority. With regard to a complaint, the Lieutenant Governor may find no merit to the complaint or may elevate the complaint to a formal disciplinary hearing which could end with revocation of the notary public's commission.

New Section 44.50.069 codifies the Lieutenant Governor's move to a web-based notary assistance program as the revised handbook will be provided on the Notary website and provided in print format on request to commissioned notaries without access to the Internet.

Section 12. This section outlines the disciplinary procedure if SB 203 or a similar bill is passed by the Legislature establishing an office of administrative hearings. (H) JUD, following sections renumbered.

Section 13. Adds a Section codifying the lieutenant governor's practice with respect to handbooks. (H) STA Describes the information gathered from notaries public on the application which will be public information.

Section 14. Defines terms used in this Chapter. (H) STA

Section 15. Repealers:

- AS 44.50.030 (Term of office, now covered in new 44.50.010)
- AS 44.50.040 (Fees, now covered in new 44.50.033)
- AS 44.50.070 (Presence and ID, now covered in new 44.50.061)
- AS 44.50.080 (Seal, now covered in new 44.50.063)
- AS 44.50.090 (Protest of bill or note. Notaries don't do this, antiquated language, repealed and not replaced)
- AS 44.50.100 (Return of papers. There are no papers to return. Repealed and not replaced)
- AS 44.50.110 (APA procedure for disciplinary actions, replaced by more comprehensive 44.50.067)
- AS 44.50.120 (Bond requirements, now covered in new 44.50.034)
- AS 44.50.130 (Filing oath and bond, now covered in new 44.50.035)
- AS 44.50.140 (Disposition of bond, now covered in new 44.50.034)
- AS 44.50.170 (State employees as notaries, now covered in 44.50.010, 44.50.131 (c) and 44.50.039)
- AS 44.50.180(c) (Federal law prohibits postmasters from charging fees. Alaska law is inconsistent and this subsection must be repealed) (H) STA
- AS 44.50.190 (Savings clause, a transitional measure from 1961 that is no longer necessary and can be repealed).

## Section 16. Applicability

- Current commissions continue in effect until term of office expires, except if the commissioned is a felon and 10 years have not elapsed since incarceration. ~~CSA~~
- Bonds, seals, liabilities in effect continue through the notary public's term of office.
- All notaries with current commissions or who are commissioned following the effective date of the legislation must follow the notarial procedures encompassed in the legislation.
- When commissions expire, notaries public will apply for new commissions under the new AS 44.50.031 (Section 9).

## Section 17. Transition

Allows the Lieutenant Governor to immediately proceed to adopt regulations with an effective date following the effective date of the legislation.

## Sections 18 & 19. Conditional Effect

Section 12 does not take effect if SB 203 or a similar bill does not pass this Legislature, nor is enacted into law.

## Sections 20 & 21. Effective Date

Effective date is July 1, 2004 to allow time for revision of website, online handbook and forms. Immediate effective date to proceed to adopt regulations.

FRANK H. MURKOWSKI  
GOVERNOR

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February 4, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the authority to take oaths, affirmations, and acknowledgements in the state to notaries public, and to fees for issuing certificates with the seal of the state affixed.

The primary purpose of the bill is to comprehensively update AS 44.50, the chapter that governs notaries public, which includes among its provisions qualifications to become a notary public, duties of notaries public, and liability in the event of misconduct or neglect. AS 44.50 has not been comprehensively revised since it was enacted in 1961. Sections 6-13 of the bill would repeal obsolete provisions, update antiquated language, and add new provisions where needed. Similarly, sections 2-4 of the bill would update statutes in AS 09, the Alaska civil code, relating to notaries' responsibilities when notarizing, verifying, and acknowledging signed instruments.

In addition, section 1 of the bill would conform the oath, affirmation, and acknowledgement statute at AS 09.63.010 to existing law. Section 5 of the bill would update a statute authorizing the Lieutenant Governor to collect fees for the issuance of certificates with the seal of the state affixed, increasing the fee to \$5 per certificate. Section 14 of the bill provides applicability provisions.

A more detailed description of the bill is found in a sectional analysis of the bill available from the office of the Lieutenant Governor.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, reading "Frank H. Murkowski".

Frank H. Murkowski  
Governor

Enclosure

## Notary Statute Comparison -- CS HB 439 (JUD)

	<b>Current</b>	<b>Proposed</b>
<b>Qualifications</b>		
	<p>Applicants must be a resident of the state at least 19 years of age.</p> <p>Resident defined to mean a person who maintains a permanent place of abode in the state, and is in fact living in the state.</p>	<p>Minimum age lowered to 18 years.</p> <p>Residency requirements made consistent with general residency statute AS 01.10.055, rather than separate definition.</p> <p>Applicant must reside legally in the United States.</p> <p>Applicants may not be convicted/incarcerated felons within 10 years of application.</p>
<b>Term</b>	<b>Current</b>	<b>Proposed</b>
	<p>Four years.</p> <p>Automatic revocation of commissions of State employee notaries who terminate employment prior to the commission expiration date.</p>	<p>Notaries Public will continue to serve a term of four years.</p> <p>Limited Governmental Notaries Public commissions will be open-ended with automatic revocation upon termination of government employment.</p>
<b>Fees</b>	<b>Current</b>	<b>Proposed</b>
	<p>\$40 application fee for non-state employee notaries.</p> <p>\$2 per Lieutenant Governor certificate.</p>	<p>\$40 application fee for non-state employee notaries (No change).</p> <p>\$5 per Lieutenant Governor certificate (\$3 increase).</p>
<b>Bond</b>	<b>Current</b>	<b>Proposed</b>
	<p>\$1,000 Notary Bond is required of all applicants.</p>	<p>\$1,000 Notary Bond required of all applicants except Limited Governmental Notaries. Lt. Gov. required to keep for 10 years.</p>

<b>Commission Types</b>	<b>Current</b>	<b>Proposed</b>
	<p>Notaries Public who serve four-year commissions.</p> <p>Limited Governmental Notaries Public commissions available for State employees only.</p>	<p>Notaries Public who serve four-year commissions.</p> <p>Limited Governmental Notaries Public commissions – Expanded to include Municipal and Federal employees in addition to State employees.</p>
<b>Commission Revocation</b>	<b>Current</b>	<b>Proposed</b>
	<p>Via Administrative Procedure Act. Act must be invoked to review all complaints against notaries, no matter how trivial.</p>	<p>By Lieutenant Governor for good cause via a formal disciplinary procedure. Appeals via the Administrative Procedure Act. Through July 1, 2005 when SB 203:Administrative hearing officer legislation takes effect (if passed by Legislature)</p>
<b>Notary Data</b>	<b>Current</b>	<b>Proposed</b>
	<p>Each notary's name, mailing address, surety information and commission dates are available to the public.</p>	<p>The notary information currently available remains unchanged. The notary's name, mailing address, surety information and commission dates continue to be publicly available.</p> <p>To facilitate training and communication the Lieutenant Governor may collect additional information from applicants and notaries that will not be available to the public.</p>
<b>Non-Commissioned Notaries</b>	<b>Current</b>	<b>Proposed</b>
	<p>Justices, Judges, Magistrates, Clerks or Deputy Clerks of Court, United States Postmasters, and Commissioned Military Officers are authorized to take oaths, affirmations or acknowledgments.</p>	<p>No change.</p>

## Frequently Asked Questions – CS HB 439 (JUD)

**Q: Why is this bill necessary?**

A: There has not been a comprehensive update to the notary statutes since 1961.

**Q: What changes are being proposed?**

A: The bill:

- Lowers the minimum age requirement from 19 to 18 years of age.
- Prohibits felons from applying as notaries public until 10 years post incarceration.
- Establishes disciplinary procedures for commission suspensions and revocations.
- Separates publicly available notary information from private notary information.
- Updates and expands the current State Employee notary commission system to include Municipal and Federal government employees.

**Q: I'm a notary now, how does this bill affect me?**

A: This bill will not impact current notaries unless they are felons.

**Q: What is not changing?**

A:

- The notary information that is currently publicly available remains publicly available.
- Notary testing remains voluntary.
- The notary bond amount remains unchanged.
- The application fee remains unchanged.

**Q: What about fees?**

A: The \$40.00 application fee for notary commissions will remain unchanged. The fee for certificates is being raised from \$2.00 to \$5.00.

**Card for Smith, Kevin**

Display Name: Kevin Smith  
[kevins@amljia.org](mailto:kevins@amljia.org)

**Phone**  
Work: 586-3222

**Work**  
AML JIA

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**Card for Barios, April**

Display Name: April Barios

**Phone**  
Work: 800-337-3682

**Work**  
AML  
JIA

**Other**  
Spoke with April on 2-12-04. Confirmed that AML JIA sells bonds for \$50 each. Went over impact figures with her. (AML JIA stands to lose about \$1675.00 per year due to lost bond sales.)

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**Card for Shaub, Thyes**

Display Name: Thyes Shaub  
[thyes@aol.com](mailto:thyes@aol.com)

**Phone**  
Work: 463-5118

**Work**  
Lobbyist  
Alaska  
Bankers  
Association

**Other**  
Contacted by phone 2-17-04. She had participated in the AK Bankers Assoc. meeting with Lisa Corrigan the prior week and had already gone over the bill as part of that meeting. She reiterated that the association supported the bill.

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**Card for Bitney, John**

Display Name: John Bitney  
[bitney@mtaonline.net](mailto:bitney@mtaonline.net)

**Phone**

Work: 745-7560

**Other**

Spoke with John on 2-17-04, emailed him the bill information.

**Work**

Lobbyist  
Alaska Land and Title  
Association

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**Card for Ritchie, Kevin**

Display Name: Kevin Ritchie  
[kevin@akml.org](mailto:kevin@akml.org)

**Phone**

Work: 586-1325

**Other**

Spoke with Kevin on 2-17-04, emailed him bill information.

**Work**

Lobbyist  
Alaska Municipal  
League

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**Card for Miller, Charlie**

Display Name: Charlie Miller  
[cmiller@alaskanational.com](mailto:cmiller@alaskanational.com)

**Phone**

Work: 563-2698

**Other**

Emailed bill information on 2-17-04.

**Work**

Lobbyist  
Alaska National Insurance

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**Card for Reinwand, Jerry**

Display Name: Jerry Reinwand  
[reinwand@ptialaska.net](mailto:reinwand@ptialaska.net)

**Phone**

Work: 586-8966

**Other**

spoke with on 2-18-04, emailed bill info same day.

**Work**

Lobbyist  
Allstate Insurance

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**Card for Hutchinson, Kim**

Display Name: Kim Hutchinson  
[trust@ptialaska.net](mailto:trust@ptialaska.net)

**Phone**

Work: 586-1776

**Work**

Lobbyist  
American Insurance Association

**Other**

Emailed bill info 2-17-04.

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**Card for Winters, Sheldon**

Display Name: Sheldon Winters  
[l-w@qci.net](mailto:l-w@qci.net)

**Phone**

Work: 796-4999

**Work**

Lobbyist  
State Farm Insurance

**Other**

Spoke with Sheldon on 2-17-04, emailed bill info same date.

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**Card for ak-notary**

Display Name: Notary Listserv  
[ak-notary@list.state.ak.us](mailto:ak-notary@list.state.ak.us)

**Other**

Alaska Notary Public listserv. Emailed bill info 2-17-04.

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**Card for Faerber, Chuck**

Display Name: Chuck Faerber  
[cfaerber@nationalnotary.org](mailto:cfaerber@nationalnotary.org)

**Phone**

Work: 800.876.6827

**Work**

Vice President of Notary Affairs  
National Notary Association

**Other**

Emailed bill info 2-18-04

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**Card for Verbocy, Don**

Display Name: Don Verbocy  
[don@notaries.org](mailto:don@notaries.org)

**Other**

Emailed bill information 4-11-04.

**Work**

American Society of Notaries

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**Card for Corrigan, Lisa**

Display Name: Lisa Corrigan

**Phone**

Work: 790-5104

Mobile: 723-8174

**Work**

President  
Alaska Bankers  
Association

**Other**

President of AK Bankers Assoc. Received 2-17-04 letter of support from Lisa/AK Bankers Assoc.

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**Card for Teachworth, Bob**

Display Name: Bob Teachworth  
[bobt1@denalifcu.com](mailto:bobt1@denalifcu.com)

**Phone**

Work: 257-7200 x408

**Work**

Chairman  
Alaska Credit  
Union League

**Other**

Chairman of Board of AK Credit Union Assoc. 800-764-1123 Will distribute bill to member credit unions and solicit comment.

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**Card for Wooliver, Douglas**

Display Name: Douglas Wooliver  
[dwooliver@courts.state.ak.us](mailto:dwooliver@courts.state.ak.us)

**Phone**

Work: 264-8265

**Work**

Administrative  
Attorney  
Alaska Court System

**Other**

Doug reviewed the bill on behalf of the Court system and supports it.

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**Card for Aronson, Marc**

Display Name: Marc Aronson  
[usna@enotary.org](mailto:usna@enotary.org)

**Phone**

Work: 412-281-7871

**Other**

Received 3-5-04 letter of support for legislation from Mr. Aronson.

**Work**

President  
United States Notary  
Association

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