

**SB**

**302**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 10, 2004

FURTHER REFERRALS:

Date of Committee Action: 5/11/04

The FINANCE Committee considered:

CSSB 302(FIN)

CS FOR SENATE BILL NO. 302(FIN)

OATHS; NOTARIES PUBLIC; STATE SEAL

"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."

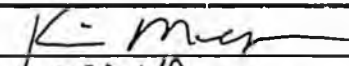
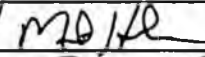

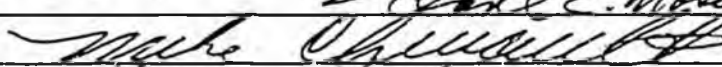
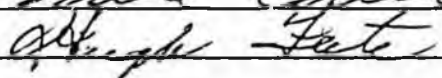
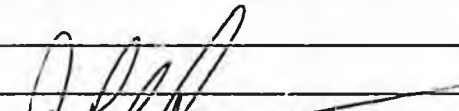

Recommends it be replaced with  HCS or  CS for CS SB 302 (STA)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LA GOV	#1	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer	X			
	Howkr			X	
	MOSES	✓			
	Chennault	✓			
	Fater	✓			
Chair: 	Williams			✓	
Chair: 	Willow	X			

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 302  
(S) Publish Date: 2/6/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title An Act relating to oaths, affirmations RDU \_\_\_\_\_  
and acknowledgments \_\_\_\_\_ Component Office of the Lt. Governor  
Sponsor Governor \_\_\_\_\_  
Requester Rules \_\_\_\_\_ Component No. 11

**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

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Prepared by: Linda J. Perez, Director  
Division: Administrative Services  
Approved by: Lt. Governor Loren Leman  
Agency: Office of the Lt. Governor

Phone 465-3876  
Date/Time 1/29/04 2:40 PM  
Date 1/29/2004

## Frequently Asked Questions – CS SB 302 (FIN)

**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 Lieutenant Governor Certificates is being raised from \$2.00 to \$5.00.

## CHANGES TO SB 302: OATHS; NOTARIES PUBLIC; STATE SEAL

Sponsor: Rules by request of Governor

Introduced 2/6/04 and referred to:

STA, JUD, FIN

**PURPOSE OF THE BILL:** Notary statutes have not been updated since 1961. Lieutenant Governor intends to move to a web-based education and service system for the 12,000 notaries in the State. The changes in the notary bill were vetted to notaries and those who employ notaries prior to introduction. Notaries in rural areas without access to the Internet will continue to be served as they have been, without change.

### **HIGHLIGHTS:**

- Notary certificate fee increases from \$2 to \$5
- Minimum age lowered to 18 years (only Nebraska now above 18)
- Felons must wait 10 years post-incarceration to apply. (based on Dept. of Corrections recommendation)

### **SENATE STATE AFFAIRS COMMITTEE CHANGES:**

- Clarified that the \$5 name change fee is the same as the fee for a new certificate, not an additional fee. Each certificate regardless of the reason for the generation, requires the \$5 fee.
- Repealed AS 44.50.180(c) because it was inconsistent with federal law which prohibits postmasters from charging fees for notarial services.

### **SENATE JUDICIARY COMMITTEE CHANGES:**

- Allows felon to apply to be a notary 10 years after incarceration.
- Notary cannot notarize documents benefiting the notary.

### **SENATE FINANCE COMMITTEE CHANGES:**

- Technical amendment to Sections 4 and 5 dealing with suggested forms for acknowledgments for limited liability companies. Amendment added limited liability partnerships.
- If SB 302 or a similar Administrative Hearing Officer bill passes the Legislature and becomes law, the hearings under Section 12 would be conducted by an Administrative Hearing Officer. However, from July 1, 2004, until that bill becomes law, the Lieutenant Governor would appoint an independent hearing officer to consider formal disciplinary action against a notary.

HOUSE STATE AFFAIRS COMMITTEE CHANGES:

- Committee Chairman gave direction to Legal Services to put this in the “Legislature’s format” which resulted in many minor stylistic changes
- Page 9, Line 29 requires Lt. Governor to keep bonds for 10 years rather than the current two (Gruenberg)
- Page 11, Lines 24-31 and Page 12, Lines 1-2: Adds section saying that notaries public may not practice law. (Gruenberg)
- Page 18, Lines 8-13: Codifies current practice and future plans to use web site more for education, yet provide handbooks when requested by notaries.

SECTIONAL ANALYSIS  
HCS SB 302 (STA)

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.

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. (S) FIN

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.

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 (S) JUD

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 ~~(S) JUD~~
- 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) STA,~~  
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) ~~(S) JUD~~

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. ~~(S) 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. (S) FIN, 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.

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) (S) 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. ~~(S) JUD~~
- 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. ~~(S) FIN~~

## 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. ~~(S) FIN~~

## Notary Statute Comparison – HCS SB 302 (STA)

	Current	Proposed
<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>

