

S.B. NO. 1023

JAN 24 2013

A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 456-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§456-3 Seal.** Every notary public shall constantly keep
4 an engraved seal of office or a rubber stamp facsimile seal
5 which shall clearly show, when embossed, stamped, or impressed
6 upon a document, only the notary's name, the notary's commission
7 number, and the words, "notary public" and "State of Hawaii".

8 The notary public shall authenticate all the notary's official
9 acts, attestations, certificates, and instruments therewith, and
10 shall always add to an official signature the typed or printed
11 name of the notary and a statement showing the date that the
12 notary's commission expires. Upon resignation, death,
13 expiration of term of office without reappointment, or removal
14 from or abandonment of office, the notary shall immediately
15 deliver the notary's seal to the attorney general who shall
16 deface or destroy the same. If any notary fails to comply with
17 this section within ninety days of the date of the notary's

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1 resignation, expiration of term of office without reappointment,
2 or removal from or abandonment of office or if the notary's
3 personal representative fails to comply with this section within
4 ninety days of the notary's death, then the notary public or the
5 notary's personal representative shall forfeit to the State not
6 more than \$200, in the discretion of the court, to be recovered
7 in an action brought by the attorney general on behalf of the
8 State."

9 SECTION 2. Section 456-9, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§456-9 Fees and administrative fines.** (a) The attorney
12 general shall charge and collect the following fees for:

13 (1) Issuing the original commission, \$40; and

14 (2) Renewing the commission, \$40.

15 ~~[Notwithstanding the foregoing, the attorney general may~~
16 ~~establish and adjust fees]~~ These fees may be adjusted, and any
17 other fees may be established and adjusted, by adopting rules
18 pursuant to chapter 91.

19 (b) The court fees for filing a copy of a commission and
20 for each certificate of authentication shall be specified by the
21 supreme court.

22 (c) The attorney general may impose and collect the
23 following administrative fines for a notary public's failure to:

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- 1 (1) Maintain an official seal of one type, either a single
2 engraved seal or a single rubber stamp facsimile seal,
3 on which shall be inscribed the name of the notary
4 public, the commission number of the notary public,
5 and the words "notary public" and "State of Hawaii"
6 only, \$20;
- 7 (2) Surrender the notary public's seal and certificate to
8 the attorney general within ninety days of
9 resignation, removal from office, or the expiration of
10 a term without renewal, \$200;
- 11 (3) Authenticate every acknowledgment or jurat with a
12 certificate that shall be signed and dated by the
13 notary, include the printed name and official stamp or
14 seal of the notary, identify the jurisdiction in which
15 the notarial act is performed, describe in close
16 proximity to the acknowledgment or jurat the document
17 being notarized, and state the number of pages and
18 date of the document, \$500;
- 19 (4) Record all of the notary public's transactions as
20 prescribed by section 456-15 and applicable rules,
21 \$200;
- 22 (5) Surrender the notary public's record books to the
23 attorney general within ninety days of the end of the

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1 commission, resignation, or removal from office, \$500;

2 and

3 (6) Notify the attorney general within ten days after
4 loss, misplacement, or theft of the notary public's
5 seal, stamp, or any record book, inform the
6 appropriate law enforcement agency in the case of
7 theft, and deliver a copy of the law enforcement
8 agency's report of the theft to the attorney general,
9 \$20.


10 (d) The foregoing moneys collected by the attorney general
11 pursuant to this section shall be deposited into the notaries
12 public revolving fund established by section 456-9.5, except
13 that if that fund is terminated, the foregoing moneys shall
14 thereafter be deposited with the director of finance to the
15 credit of the general fund."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

19

20

INTRODUCED BY: 

21

BY REQUEST

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Report Title:

Notaries Public

Description:

Clarifies the information required to be on notary seals, authorizes the Attorney General to adjust the fees to become a notary and to renew a notary commission by rules adopted pursuant to chapter 91, Hawaii Revised Statutes, and authorizes other fees related to the regulation of notaries public to be established and adjusted by rules adopted pursuant to chapter 91, Hawaii Revised Statutes.

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JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO NOTARIES PUBLIC.

PURPOSE: To authorize the Attorney General to adjust the fee to become a notary public and to renew a notary commission, and to establish and adjust other fees related to the regulation of notaries public, by the adoption of administrative rules pursuant to chapter 91, Hawaii Revised Statutes, and to clarify the information required to be on notary seals.

MEANS: Amend sections 456-3 and 456-9, Hawaii Revised Statutes.

JUSTIFICATION: Created in 1998, the Notary Public Revolving Fund ("Fund") uses the fees it collects from applicants who wish to become notaries and notaries renewing their commissions to pay for the salaries and fringe benefits of two office assistants, travel to neighbor islands to administer exams, phone service, postage, and office supplies. Generally, the Fund has been self-sufficient and its balance was as high as \$252,000 at the beginning of fiscal year 2009-2010.

Since that time, however, budget constraints required portions of salaries for three legal clerks (\$26,000) and one deputy attorney general (\$15,000) to be annually paid for by the Fund. The partial support of these salaries accurately reflects the work time devoted by personnel to the Notary Public Program. However, the Fund now has a balance of less than \$80,000 and can no longer support the additional salary costs.

A budget request to remove the costs of the three legal clerks from the Fund is pending review for submission to the Legislature. Even with this \$26,000 deduction, however, the Fund still cannot cover its costs to administer the Notary Public Program without an increase in fees.

Fees for notaries were last increased fourteen years ago in 1998, when they increased from \$35 to \$40. Over the years, the number of notaries has tremendously increased, largely due to the rising number of notaries employed with real estate companies, mortgage companies, title companies, financial institutions, and law firms. With this ever-growing number of notaries comes a likewise rising number of inquiries from employers, applicants, notaries themselves, and affected consumers. Similarly, with the economic downturn, we received an increase in the number of complaints against notaries and requests for copies of entries in notary record books related to disputed or litigated transactions.

In addition, the adoption of administrative rules regarding the Notary Public Program resulted in an increase in the number of inquiries about the rules. We undertook an active role in bettering the public's understanding of the rules and the appropriate role and responsibilities of notaries by conducting educational seminars; improving our website to allow email inquiries; actively investigating, prosecuting, and resolving complaints; and starting to develop an online program to encourage applicants to apply for a notary commission online and current notaries to renew online.

These efforts required the assistance of the three legal clerks and one deputy attorney general whose portions of salaries were paid for by the Fund.

This bill will allow fees related to the regulation of notaries public to be established and adjusted upon the adoption of administrative rules pursuant to chapter 91. Such flexibility will enable the Notary Public Program to continue its efforts to improve the processing of applications and renewals, research and timely respond to inquiries, requests, and complaints, and generally regulate notary practice and conduct. As current problems or issues in notary practice and conduct arise, the Notary Public Program may establish and adjust fees accordingly. Similarly, as the development of its online program progresses, the need for staffing assistance may lessen and the program's revenues may be more in line with its costs.

Regarding the inclusion of the notary's commission number on the notary's seal or stamp, section 5-11-5(a), Hawaii Administrative Rules, requires every notary public to "obtain and keep an official seal of one type, either an engraved seal or a rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, the commission number of the notary public, and the words 'notary public' and the 'State of Hawaii.'"

The new requirement of the commission number of the notary on the notary's seal or stamp was added to help deter fraudulent use of notary seals or stamps in that the commission number could be used to quickly ascertain whether the notary was properly commissioned in this State. Several other states such as California, Oregon, and New York similarly require the commission number on the notary's stamp or seal.

Currently, sections 456-3 and 456-9, Hawaii Revised Statutes, require notaries to have an engraved seal or rubber stamp seal with the notary's name, "and the words, 'notary

public' and 'State of Hawaii.'" The amendment of sections 456-3 and 456-9, Hawaii Revised Statutes, will clarify that the commission number of the notary public is required on the notary public's stamp or seal.

Impact on the public:

The authorization to establish and adjust fees by adopting administrative rules pursuant to chapter 91 enables the Department of the Attorney General to continue its efforts to efficiently process notary applications and renewals, timely respond to inquiries, requests, and complaints, and improve its regulation of notary practice and conduct. The bill also allows the Notary Public Program to be more flexible and responsive to current issues and problems as they arise in the notary practice, as well as to develop cost-saving measures, adjusting fees as needed.

Regarding the notary commission number on a notary's stamp or seal, because notaries already obtain new stamps or seals in compliance with section 5-11-5(a), Hawaii Administrative Rules, two of the amendments will have no negative impact on the public. In fact, the amendments will help reduce confusion and assist notaries in clarifying exactly what information is required on notary stamps or seals.

Impact on the department and other agencies:

The authorization to establish and adjust fees will enable the department to respond more timely to inquiries, complaints, and record book searches, as well as process applications and renewals. The amendments concerning the notary's commission number will help reduce the amount of time spent by the department's staff in responding to questions about notary's stamps and seals.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.