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ALLOW NON-RESIDENT NOTARIES PUBLIC

**House Bill 4237 as enrolled
Public Act 60 of 1997
Sponsor: Rep. Mary Schroer**

**House Committee: Regulatory Affairs
Senate Committee: Economic Development,
International Trade and Regulatory
Affairs**

Second Analysis (8-21-97)

THE APPARENT PROBLEM:

Currently, the law requires that notaries public reside in the county for which they are appointed (though, once appointed, a notary public can officially act in other parts of the state so long as he or she keeps her residence in the county for which he or she was appointed). A situation has arisen in which an attorney for a title insurance company in Ann Arbor married and moved to Ohio but continues to work in Ann Arbor. Because his position with the title insurance company requires that he be a notary public, he wishes to keep his appointment as a notary public. However, because of his change in residence, under current law he no longer qualifies for appointment as a notary public. Legislation has been introduced to address this and other issues.

THE CONTENT OF THE BILL:

Currently, Chapter 14 of the Revised Statutes of 1846 ("Of County Officers") allows the secretary of state to appoint one or more notaries public in each county in the state. Applicants for appointment must be 18 years old at the time of application, a citizen of Michigan, and reside in the county for which the appointment is sought. Notaries are appointed for four-year terms, with their term expiring on their birthday four years after appointment.

The bill would amend the law so that people who did not reside in Michigan would be allowed to become notaries public in Michigan. Such individuals would have to demonstrate that their principal place of business was located in the Michigan county in which they requested appointment as a notary and that they were engaged in an activity in which it was likely that they would be required

to perform notarial acts as defined in the 1970 Michigan Uniform Recognition of Acknowledgments Act.

MCL 55.107 and 55.117

BACKGROUND INFORMATION:

House Bill 4237 is nearly identical to legislation introduced in the 1995-96 legislative session (House Bill 5106) that passed the House.

A notary public is a public official who is authorized to administer oaths, witness signatures, and "acknowledge" documents (such as deeds, mortgages, and liens) recorded with county registers of deeds. An "acknowledgment" is the act by which someone goes before a notary public and acknowledges (states) that he or she has signed a document. The notary then signs what officially is called a "Certificate of Acknowledgment," referred to simply as an "acknowledgment." Under the 1970 Michigan Uniform Recognition of Acknowledgments Act (Public Act 57 of 1969, MCL 565.261 to 565.279), an acknowledgment is required before a document can be recorded in a county register of deeds office. In addition to deeds, these documents include mortgages, discharges and assignments of mortgages, construction and tax liens, Uniform Commercial Code finance statements, sheriffs' foreclosures, and notices of lis pendens (notices filed on public records for the purpose of warning all persons that the title to certain property is in litigation and that they are in danger of being bound by an adverse judgment. According to a 1987 survey of 293,000 documents recorded in the Wayne County register of deeds, 90 percent of the acknowledgments were for deeds, mortgages (or mortgage-related documents), and

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liens.

applications) and probably should be changed.

If an individual wants to become a notary public, he or she must submit a written application (on a form distributed by the county clerk) that is indorsed by a member of the legislature or by a circuit or probate judge of the county, district, or circuit where the applicant lives. There is a three dollar application fee.

Within 90 days of receiving notice from the county clerk of his or her appointment, the notary public must take and file an oath and a \$10,000 surety bond with his or her county clerk.

The Department of State reports that currently there are approximately 160,000 active notaries public in Michigan, and that the department appoints between 35,000 and 37,000 notaries each year.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports the bill has no fiscal implications. (5-28-97)

ARGUMENTS:

For:

Under current Michigan law, only Michigan residents can be appointed notaries public in Michigan. The bill would allow a person who lived outside of Michigan to be appointed notary public if his or her principal place of business was in Michigan. In a highly mobile society such as ours, people often do not live in the communities in which they work (and vice versa), and there seems little good reason to restrict a function such as that of notary public to residents, particularly if that function is necessary for someone to perform his or her job properly in Michigan. While the bill would remove the requirement that a notary public be a citizen of Michigan and live in the county for which he or she was appointed notary, the bill would continue to tie the appointment of notaries to specific counties. The National Notary Association reports that out-of-state notary appointments are becoming increasingly common across the nation, especially in large metropolitan areas with workers who commute from neighboring states.

Against:

It could be argued that the law governing notaries needs updating and revising in general. The law, which was amended in 1993 to change the appointment of notaries public from the governor to the secretary of state still retains a reference to whenever "the governor" appoints a notary public. In addition, the three-dollar application fee prescribed in the law also clearly no longer covers the costs of processing applications (reportedly other states charge between \$25 and \$50 for their

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