



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**FINAL  
FISCAL NOTE**

<b>Drafting Number:</b>	LLS 18-0115	<b>Date:</b>	July 31, 2018
<b>Prime Sponsors:</b>	Sen. Gardner Rep. Garnett; Wist	<b>Bill Status:</b>	Postponed Indefinitely
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**Bill Topic:** AUTHORIZE AUDIO-VIDEO COMMUNICATION NOTARIAL ACTS

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill would have allowed notaries public to perform notarial acts remotely using specified systems and processes. It would have increased state revenue and expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2018-19, the bill would have required an appropriation of \$42,895 to the Department of State.

**Fiscal Note Status:** The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1  
State Fiscal Impacts Under SB 18-109**

		FY 2018-19	FY 2019-20
<b>Revenue</b>	Cash Funds	\$49,880	\$20,640
	<b>Total</b>	<b>\$49,880</b>	<b>\$20,640</b>
<b>Expenditures</b>	Cash Funds	\$42,895	\$16,540
	Centrally Appropriated	\$6,077	\$3,974
	<b>Total</b>	<b>\$48,972</b>	<b>\$20,514</b>
	<b>Total FTE</b>	<b>0.5 FTE</b>	<b>0.3 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	General Fund	\$49,880	\$20,640

## **Summary of Legislation**

This bill authorizes notaries public to perform notarial acts remotely using audio-video communications for an electronic record. Notaries public must use a system that is approved by the Secretary of State's office and has the following elements: real-time audio-video communication; authentication procedures, identify verification, and tamper evident; recording; and storage. Audio-video recordings must be retained for at least 10 years. Remote notarizations may not be performed for a record relating to the electoral process, or for a will, codicil, or any other similar document.

The Secretary of State's office may perform rulemaking related to the manner and approval of the remote notarization process. Anyone that sells, offers to sell, or otherwise uses information collected in the course of a remote notarization for an unrelated purpose commits a prohibited act subject to an existing Class 2 misdemeanor.

## **Background**

**Notaries public in Colorado.** A notary public is an individual authorized to officially witness signatures on documents, administer oaths, and certify copies of original documents — essentially serving as an impartial, third-party witness. In Colorado, the Secretary of State's office commissions notaries within its Business and Licensing division. The annual application fee for a notary is \$10, deposited into the Department of State Cash Fund. Under current law, the maximum fee a notary can charge per paper notarization is \$5, and per electronic notarization is \$10. There are approximately 86,000 licensed notaries public in Colorado as of this writing.

## **Comparable Crime**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill prohibits the sale or use of any information collected in the course of performing a remote notarization for any unrelated purpose. Under current law, notary misconduct or impersonation is punishable by a Class 2 misdemeanor. In the past three years, there were three cases filed under the notary misconduct statute, and two convictions under the notary impersonation statute. Because these cases are relatively infrequent, the fiscal note assumes a negligible increase in caseload that will have no tangible impact on the court system.

## **State Revenue**

The bill will increase state revenue from fees to cover program costs to the Department of State Cash Fund, estimated at approximately \$49,880 in FY 2018-19 and approximately \$20,640 in FY 2019-20.

**Fee impact on notaries public.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the Secretary of State's office based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee. The table below identifies the fee impact of this bill.

**Table 2  
 Fee Impact on Notaries Public**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Proposed Increase</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 2018-19	Annual Notary Public Application Fee	\$0.58	86,000	\$49,880
FY 2019-20		\$0.24	86,000	\$20,640

**TABOR Refund**

This bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

**State Expenditures**

Costs will increase for the Secretary of State's office by \$48,972 in FY 2018-19 and by \$20,514 in FY 2019-20 and future years from the Department of State Cash Fund. These costs are shown in Table 3 and discussed further below.

**Table 3  
 Expenditures Under SB 18-109**

	<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Department of State</b>		
Personal Services	\$21,589	\$16,540
Operating and Capital Outlay Costs	\$5,178	-
Computer Programming	\$16,128	-
Centrally Appropriated Costs*	\$6,077	\$3,974
<b>Total Cost</b>	<b>\$48,972</b>	<b>\$20,514</b>
<b>Total FTE</b>	<b>0.5 FTE</b>	<b>0.3 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Secretary of State.** Effective January 2019, the Secretary of State's Business and Licensing division will hire temporary staff in FY 2018-19 only, which will include 0.1 FTE Administrator I to oversee remote notarization vendor approval process, prescribe rules, draft new notarization forms, and update materials and the website, and 0.2 FTE Policy Advisor I to research remote notarization standards. Computer programming is also required in FY 2018-19 to update the online notarization portal, estimated at 144 hours at the rate of \$112 per hour. From FY 2018-19 and ongoing, the office will employ 0.3 FTE of a Complaint Investigator I to process additional complaints under the bill, prorated for the effective date in the first year. This complaint workload assumes a 25 percent increase in notarization complaints, of which there were approximately 85 in 2017, at the rate of 30 hours per complaint.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$6,077 in FY 2018-19 and \$3,974 in FY 2019-20.

**Effective Date**

The bill was postponed indefinitely by the House Appropriations Committee on May 10, 2018.

**State Appropriations**

For FY 2018-19, the bill requires an appropriation of \$42,895 and an allocation of 0.5 FTE from the Department of State Cash Fund to the Secretary of State's office.

**State and Local Government Contacts**

District Attorneys  
Law

Information Technology  
Secretary of State

Judicial