

SUBJECT: Allowing peace officers to serve as notaries public

COMMITTEE: Public Safety — favorable, without amendment

VOTE: 7 ayes — Oakley, Bailey, Driver, Edwards, Luna, Madden, McCoulskey
0 nays
2 absent — Allen, Carter

WITNESSES: None

BACKGROUND: Texas Constitution Article 4, sec. 26, requires that the secretary of state appoint a convenient number of notaries public for the state. Chapter 406 of the Government Code governs notaries public and provides that a notary public must execute a bond for \$2,500 as a surety.

DIGEST: HJR 69 proposes a constitutional amendment allowing the Legislature to provide that peace officers could serve as notaries public for matters arising in relation to, and while engaged in, their duties.

HJR 69 would be submitted to voters in the November 7, 1995, election. The ballot proposal would read: "The constitutional amendment to allow peace officers to serve as notaries public."

SUPPORTERS SAY: Police officers spend a lot of unnecessary time coordinating notary services. For instance, a police officer who comes upon a traffic accident can take an affidavit from a witness, but needs to round up a notary to make it official. In the interest of utilizing an officer's time to its maximum potential, the officer should be able to perform these notarial services. Because of the trust the public puts in the individual as an officer of the law, it seems that the public would also trust the officer to administer the ministerial duties of a notary public. Peace officers in Florida are notaries and have performed in that capacity quite well.

Allowing peace officers to serve as notaries public would also save localities money because the police department would not have to provide surety bonds on police officers acting as notaries. In addition, this would

relieve the departments from constant monitoring of their staff in the interest of ensuring the availability of sufficient notaries.

**OPPONENTS
SAY:**

Peace officers many times would not be in a good position to be third party disinterested witnesses of a person's willingness or ability to swear to a statement. Part of a notary public's function is to make sure a person is not coerced into signing a document.

A peace officer might want, for convenience sake, to witness the signature of a person making a confession to a crime, but this would be inappropriate given the officer's interest in arresting and confining the individual. The officer could not witness the signature in a disinterested manner to determine whether the person is of sound mind and is not being coerced. The courts would probably not uphold such a confession.

NOTES:

HB 1209 by West would implement the provisions of HJR 69.