HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 627 Service of Process
SPONSOR(S): Pilon and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 620

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N	Ward	Bond
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	16 Y, 0 N	Ward	Havlicak

SUMMARY ANALYSIS

The duties of a sheriff include service of process and execution of money judgments. Service of process is the means by which official notice of an action is delivered to a defendant or respondent. Service of process may also be made by authorized individuals. A "return of service" proving by affidavit that the process was delivered to the proper party is then filed with the court. The bill:

- Provides that a fee of $40 will be charged by the sheriff for each summons served;
- Provides immunity to a sheriff for wrongful levy or distribution of the proceeds of sale;
- Requires that the party requesting service of process or the process server file the return of service; and
- Adds a noncriminal penalty of up to $1,000 for an employer who refuses to accommodate service of process on an employee.

The bill appears to have an unknown minimal positive fiscal impact on state and local government revenues. The bill may increase revenues of private process servers, and may increase costs to users of the court system.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the party to be served is located.[1] The sheriff may appoint special process servers who meet specified statutory minimum requirements.[2] The chief judge of the circuit court may establish an approved list of certified process servers.[3]

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.[4] Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.[5]

Service of original process and most witness subpoenas is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of the contents.[6] Each process server must document the service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[7] The person serving process is obligated to file the return of service form with the court to show that service was made.[8]

The sheriffs of all counties of the state must charge fixed, nonrefundable fees for docketing and service of process.[9] The sheriffs must charge $40 for docketing and serving each summons or writ of execution, except if duplicate process is to be served in the same action on the same person.[10] This may occur, for example, when a defendant is sued both individually and in some representative capacity in the same action. In that event, two summons' are issued and served. Current law precludes the sheriff from charging for service of each in such an event, when both are served at the same time.[11]

Currently, sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.[12] There is a requirement that the judgment creditor provide an affidavit assuring the sheriff of clear title in the debtor

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[1] Section 48.021(1), F.S.
[2] Section 48.021(2), F.S.
[3] Section 48.27, F.S.
[4] *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).
[5] *See* s. 48.031, F.S.; *Vidal,* 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).
[6] Sections 48.031(1) and 48.031(3), F.S.
[7] Sections 48.29(6) and 48.031(5), F.S.
[8] Section 48.031(5), F.S.
[9] Section 30.231(1), F.S.
[10] Section 30.231(1)(a), F.S.
[11] Section 30.231(1)(a), F.S.
[12] *See* s. 30.30, F.S.

to the asset,[13] but there is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid.

Effect of Proposed Changes

Service on an Employee of a Business

Section 48.031, F.S., provides that an employer "shall permit" service of process on an employee in a private area designated by the employer. The bill creates a noncriminal[14] penalty of up to $1,000[15] for an employer or an agent who fails to comply with this provision.

Sheriff's Fees for Service

The bill amends s. 30.231, F.S., which currently provides that when serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill removes this limiting provision, allowing the sheriff to charge $40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.[16]

Filing of the Return of Service

The bill adds that either the person requesting service or the person authorized to serve process may file the return of service with the court.

Sheriff Sales in Execution of Judgments

The bill provides that the sheriff may rely upon the affidavit of clear title provided by the judgment creditor, and that the sheriff is not liable for wrongful distribution of funds which are proceeds of the sale.

The bill adds that a sheriff may apply to the court for instructions for distribution of sale proceeds. Instructions may be requested of the court that entered the judgment or the court in the jurisdiction where the levied property lies. The bill provides that service of the application for instructions and notice of hearing must be given by the sheriff to the parties. Service related to this hearing may be made by certified mail.

The bill takes effect July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., regarding sheriff's fees for service of summons, subpoenas, etc.

Section 2 amends s. 48.031, F.S., regarding service of process generally.

Section 3 amends s. 48.081, F.S., regarding service on corporation.

Section 4 amends 56.27, F.S., regarding executions and payment of money collected.

Section 5 provides that the bill takes effect July 1, 2014.

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[13] *See* s. 56.27(4), F.S.

[14] A noncriminal violation is any offense punishable by nothing more than a fine, forfeiture, or other civil penalty, and does not constitute a crime. *State v. Knowles*, 625 So.2d 88 (Fla. 5th DCA 1993).

[15] Noncriminal fines are deposited by the clerk of the court in the "fine and forfeiture fund established pursuant to s. 142.01." *See* s. 775.083(1)(g), F.S.

[16] For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may then be brought against the same person in two capacities. Therefore, one person would be served twice with the same complaint - once individually, and once as an officer of the corporation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The portion of the bill creating a civil penalty may have a minimal positive impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The portion of the bill providing that the sheriff may charge a fee for each process served rather than each address served may have an unknown positive fiscal impact on revenues received by sheriffs. See Fiscal Comments.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively affect revenues of private process servers and appears to increase costs to users of the civil court system. See Fiscal Comments.

D. FISCAL COMMENTS:

The fiscal impact of the portion of the bill providing that the sheriff may charge a fee for each process served rather than each address served may have unknown fiscal impacts on governments and the private sector.

While fees charged by the sheriff are fixed in statute, private process servers are free to charge any fee that the competitive market will bear. Some process servers match the sheriff's fees, some advertise lower fees to attract business, and others charge more and compete on service rather than price. In general, however, economic theory suggests that an increase in the statutory price for service of process generally leads to an increase in the private cost of such service. Should this occur, revenues to sheriffs and to private process servers will increase as a result of this bill, and the cost to the private sector litigants for prosecuting civil lawsuits will correspondingly increase.

There is no statistical reporting of how often sheriffs and private process servers currently serve a single individual in multiple capacities, and thus no means to accurately estimate the fiscal impact of the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.