

### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 3, 1998

Revised: \_\_\_\_\_

Subject: Legal Process

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Harkins</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

#### I. Summary:

The committee substitute amends provisions governing the service of process, by:

- Allowing substitute service on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at his or her place of business;
- Deleting a cross reference to s. 83.59, F.S., from the provisions regarding service of process in an action for possession of residential premises or nonresidential premises, and thus making s. 48.183, F.S., apply to any action for possession of a residential premises rather than only to possession actions under the Florida Residential Landlord and Tenant Act;
- Directing the chief judge of each circuit to develop application forms for natural persons desiring to have their names added to the list of certified process servers;
- Allowing certified process servers to serve process on a person within that certified processor's circuit when a civil action has been filed against the person to be served in any one of the state's circuit or county courts;
- Allowing an individual who files an action anywhere in the state to choose one or more certified process servers, listed in the circuit where process is to be served, to serve process in that process server's circuit;
- Requiring that the interest payable on a judgment for money damages appear on the face of the order for judicial sale, process, or writ directed to a sheriff;
- Providing that the interest stated on the judgment accrues until the judgment is paid and does not fluctuate, but remains the same until the judgment is paid;
- Providing that a sheriff not be required to docket and index, or collect a process, writ, judgment, or decree if the rate of interest on the judgment is not stated;
- Providing that any surplus from the sale of property sold under execution be paid either to the defendant or to a junior writ if one has been docketed and indexed with the sheriff; and

- Providing that an officer who fails to pay over money which that officer has collected in an execution within 30 days of obtaining the money, or 10 days after the plaintiff has made a written demand to the civil process bureau, is liable for the amount owed and 20 percent of the amount owed.

The committee substitute amends the following sections of the Florida Statutes: 48.031, 48.183, 48.27, 55.03, 56.27, and 56.28.

## II. Present Situation:

### A. Service of Process at Place of Business

Substitute service on a sole proprietor is currently allowed at that sole proprietor's place of business by serving the manager (s. 48.031(2)(b), F.S.). At least one Florida court has interpreted the term "manager" to mean the person in charge of the business when the owner is not there (*Myrick v. Walters*, 666 So. 2d 249 (Fla. 2d Dist. Ct. App. 1996)). However, before substitute service can be obtained, one or more attempts to serve the owner must be made at the place of business (s. 43.031(2)(b), F.S.).

### B. Service of Process in an Action for Possession of Residential & Nonresidential Premises

In an action for possession of residential property under s. 83.59, F.S., or nonresidential property, process may be served by attaching a copy of the service to the premises that is subject to the action (s. 48.183(1), F.S.). The copy must be attached in a conspicuous place. However, prior to obtaining service by this method, one must twice attempt to obtain service upon the tenant in the county, or on anyone 15 years of age or older residing at the tenant's usual place of abode (*id.*).

### C. Certified Process Servers

The chief judge of each judicial circuit may establish a list of individuals designated as certified process servers (s. 48.27(1), F.S.). Additional individuals may be added to the list by the chief judge if they have met the requirements for certification as outlined in s. 48.29, F.S. These individuals are also subject to annual recertification and reappointment by the chief judge (*id.*).

An individual on the list is authorized to serve initial nonenforceable civil process on a person, within the process server's circuit, against whom a civil action has been filed in the circuit court or in a county court of the process server's circuit (s. 48.27(2), F.S.). (See also *Abbate v. Provident Nat. Bank*, 631 So. 2d 312 (Fla. 5th Dist. Ct. App. 1994), interpreting s. 48.27, F.S.). After an action in circuit or county court is filed, the filing party may select one or more certified process servers from the list to serve initial nonenforceable civil process (s. 48.27(2), F.S.).

Under s. 48.27(2), F.S., a certified process server may not serve an individual in his or her circuit if the action was filed in another circuit (*Abbate*, 631 So. 2d at 315, noting that it may be that legislative revision is necessary to the statute if broader authority for certified process servers was

intended by the Legislature). In these instances, only a sheriff, his or her designee, or an elisor, one who has been appointed by a court order, may serve process (*id.* at 313-314).

#### **D. Interest on Judgments**

Currently, interest on judgments is set by the comptroller based on averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the average (s. 55.03(1), F.S.). This new formula was enacted in 1994, with the initial interest rate established under this formula taking effect January 1, 1995. Prior to that time, 12 percent interest was paid on judgments, regardless of market rates. The comptroller must inform the clerk of the court and chief judge for each judicial circuit about the established rate. Private parties can set their own rate of interest by contract or obligation (s. 55.03(1), F.S.).

Under s. 55.03(2), F.S., any process, writ, judgment, or decree directed to a sheriff for execution must bear on its face the rate of interest, which will accrue from the date of judgment until payment.

#### **E. Executions**

If property is sold under execution for more than the execution amount, the surplus money is paid to the defendant (s. 56.27, F.S.).

If an officer collecting money under execution fails to pay within 30 days of receipt or 10 days after a demand by the plaintiff or the plaintiff's attorney of record, the officer is liable to pay the amount held plus 20 percent as damages (s. 56.28, F.S.). Such demands are not required to be in writing.

### **III. Effect of Proposed Changes:**

#### **A. Service of Process at Place of Business**

The committee substitute allows substitute service on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving *the person in charge* of the business at the time of service if two or more attempts to serve the owner have been made at his or her place of business. This revision has the effect of codifying the interpretation given to the term "manager" by the court in the case of *Myrick v. Walters*, 666 So. 2d 249 (Fla. 2d Dist Ct. App. 1996), and of increasing the minimum number of attempts that must be made to serve the owner to two from one.

**B. Service of Process in an Action for Possession of Residential & Nonresidential Premises**

The committee substitute amends s. 48.183(1), F.S., relating to service of process in actions for possession of premises, to delete a cross reference to s. 83.59, F.S. This revision has the effect of allowing service of process by posting and by mail from the clerk of the county court in all actions for recovery of residential and nonresidential rental property. Currently, in order for an action for possession of residential property to be covered by s. 48.183, F.S., the action must be brought under s. 83.59, F.S., which is part of the Florida Residential Landlord and Tenant Act.

**C. Certified Process Servers**

The committee substitute requires the chief judge of each circuit to prescribe appropriate forms for application for inclusion on the list of certified process servers, and provides that a reasonable fee for processing applications must be charged. Upon filing an action in any county or circuit court, the individual filing the action may select one or more certified process servers located in the circuit in which service is to be made.

Additionally, under the committee substitute, a certified process server may serve process on any individual within the circuit where the process server is certified, even if the suit against the individual upon whom service is sought was initiated outside of the process server's circuit. This revision has the effect of clarifying legislative intent on the breath of authority for certified process servers, which a court suggested might be necessary in the case of *Abbate v. Provident Nat. Bank*, 631 So. 2d 312 (Fla. 5th Dist. Ct. App. 1994) (interpreting s. 48.27, F.S., to mean that a certified process server may serve civil process on a person found within the circuit only when the action also has been filed against that person in the *same* circuit).

**D. Interest on Judgments**

An interest rate may be established by contract or by the other method prescribed by s. 55.03, F.S. (i.e., interest on judgments is set by the comptroller based on averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the average). The committee substitute clarifies that, regardless of the method by which the rate is established, the rate remains the same until the judgment is paid, and continues to accrue until that time. In other words, the rate stated in the judgment does not fluctuate regardless of any change in the statutory interest rate, during the period of time after the judgment and before payment.

Under the committee substitute, a sheriff shall not be required to docket and index or collect on any process, writ, judgment, or decree unless the same indicates the rate of interest. If the process, judgment, writ, or decree refers to the statutory rate of interest (as opposed to the contractual rate of interest), the statutory rate of interest shall be deemed to indicate the actual rate of interest.

**E. Executions**

The committee substitute clarifies the responsibilities and potential liabilities regarding the prompt payment to a plaintiff of monies received by an officer. Under the committee substitute, an officer would potentially be liable for the amount owed to the plaintiff plus 20 percent of that amount in the event that the officer failed to pay the plaintiff within 30 days after the officer has received the monies or within 10 days from the date that the plaintiff or the plaintiff's attorney makes a *written* demand delivered to the civil process bureau during regular business hours.

Under the committee substitute, any surplus from the sale of property sold under execution must be paid either to the defendant *or* to a junior writ if one has been docketed and indexed with the sheriff.

The committee substitute provides an effective date of October 1, 1998.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

The committee substitute prescribes that a reasonable fee must be charged for processing an application for inclusion on the list of certified process servers.

**B. Private Sector Impact:**

Process servers will be required to fill out appropriate forms and pay a fee in order to be certified in any particular circuit.

**C. Government Sector Impact:**

Each circuit will now incur the additional costs of providing forms for process servers. However, circuits must collect a reasonable fee for the forms. Potentially, circuits could pass this cost on to the process servers themselves by way of the fee circuits must charge applicants for the appropriate forms.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.