

STORAGE NAME: h0935.cjcl

DATE: March 15, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 935

RELATING TO: Service of Process

SPONSOR(S): Representative Warner

STATUTE(S) AFFECTED: ss. 48.031, 48.183, 48.27, 55.03, 56.27, 56.28, F.S.

COMPANION BILL(S): SB 914 by Senator Silver (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS YEAS 7 NAYS 0
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I. SUMMARY:

HB 935 would amend five sections of the statutes relating to service of process. It would add some clarifying language and technical modifications to these sections. The bill would also create subsection (3) of s. 55.03, F.S.

HB 935 would embody six changes to current law. First, it would slightly broaden the options for substitute service on sole proprietors. Second, it would delineate the authority of the chief judge of each judicial circuit related to the list of certified process servers. Third, it would allow certified process servers to serve processes originating outside the circuit. Fourth, it would relieve the sheriffs of certain duties connected with processes, writs, judgments, and decrees that do not contain the applicable rate of interest. Fifth, it would allow the government to apply surpluses derived from executions toward satisfying junior writs. Sixth, in some instances, it would require the plaintiff to deliver a written demand for payment, before an officer could be held liable for failing to pay over money derived from an execution.

HB 935 would produce an insignificant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 48.031, F.S., allows process servers to make substitute service on a sole proprietor by serving the manager of the business. This option is only available if one or more attempts have been made to serve the proprietor at the place of business.

Section 48.183, F.S., allows process servers to make substitute service upon a tenant, in an action for possession of residential premises, by attaching a copy of the summons to a conspicuous place on the property. This option becomes available after two attempts have been made to obtain service.

Section 48.27, F.S., authorizes the chief judge of each judicial circuit to maintain a list of certified process servers. It allows the chief judge to reappoint process servers whose names already appear on the list. In addition, the chief judge may add the names of persons who meet statutory requirements. If a process server's name appears on the list, the process server is authorized to serve initial nonenforceable civil process upon persons found within the jurisdiction.

Section 56.27, F.S., requires the government to pay over money derived from an execution to the person in whose favor the execution was rendered. It also requires the government to return any surplus funds to the defendant.

Section 56.28, F.S., states that any officer who fails to pay over money collected from an execution, within 30 days after receipt or within 10 days after demand by the plaintiff, shall be liable for the amount plus 20 percent in damages.

B. EFFECT OF PROPOSED CHANGES:

1. **Would Facilitate Substitute Service on Sole Proprietors** - HB 935 would allow a process server to obtain substitute service upon the "person in charge of the business at the time of service." Currently, only upon the manager of the business can accept processes aimed at the business owner.
2. **Would Delineate the Chief Judge's Authority over Process Server Lists** - HB 935 would allow the chief judge of each judicial circuit to prescribe appropriate forms for persons applying for inclusion on the circuit's list of certified process servers. It would also allow the imposition of a reasonable fee for processing applications.
3. **Would Clarify the Jurisdiction of Process Servers** - HB 935 would allow certified process servers to serve persons, located within the circuit, in connection with any action filed in a county or circuit court within the state. In *Abbate v. Provident National Bank*, 631 So.2d 312 (Fla. 5th DCA 1994), the Fifth District Court of Appeal held that s. 48.27, F.S., restricts process servers, certified in one judicial circuit, from serving processes originating in another. HB 935 directly addresses concerns raised by the court in *Abbate*.
4. **Would Relieve Sheriffs of Certain Duties** - HB 935 would allow sheriffs to refuse to docket and index or collect on processes, writs, judgments, or decrees, unless the rate of interest is present on the face of the document. Currently, sheriffs and clerks

of the court face a considerable administrative burden related to interest rate determinations. According to s. 55.03, F.S., on an annual basis, the comptroller sets interest on judgments. Within certain guidelines established by law, private parties can contract to set their own rates of interest. Although HB 935 would not alter these arrangements, it would require inclusion of the interest rate within the text of the document. If the interest rate is omitted, a party seeking to collect on a judgment would risk inaction on the part of the sheriff. It is not certain whether a reference to the statutory rate of interest, described in s. 55.03, F.S., would be sufficient to require action by the sheriff. Also, in its current form, the bill could operate retroactively to affect some documents drafted before the effective date.

5. **Would Allow the Application of Surpluses to Junior Writs** - HB 935 would change existing law pertaining to the use of surplus funds derived from executions. The government must currently return such funds to the defendant. HB 935 would require the government to devote surplus funds toward resolving any junior writs.
6. **Would Require a Demand in Writing to Expedite Payment** - Currently, officers collecting money under an execution must pay the plaintiff within 30 days after receipt of the funds or within 10 days after a demand for payment. If the officer does not meet these deadlines, s. 56.28, F.S., allows the plaintiff to recover the original amount plus an additional 20 percent in damages. HB 935 would require the plaintiff to make a demand for payment in writing. It would require the plaintiff, or the plaintiff's attorney to deliver the written demand to the civil process bureau during regular business hours. However, even if no written demand is made, it appears that the officer would still become liable to the plaintiff for the full amount plus damages upon the expiration of the 30 day period.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. It gives the chief justice of each circuit the authority to prescribe appropriate application forms.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. HB 935 allows the imposition of a reasonable fee to cover the processing of applications for inclusion on the list of certified process servers.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Process servers would be responsible for paying a processing fee connected with their applications.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

NA.

- (2) service providers?

NA.

- (3) government employees/agencies?

NA.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 48.031, F.S.; permits expanded substitute service upon sole proprietors.

Section 2: Amends s. 48.183, F.S. by striking a cross reference.

Section 3: Amends s. 48.27, F.S.; allows the chief judge of a judicial circuit to prescribe certain application forms; permits the imposition of a fee; authorizes the process server to serve processes originating from outside the circuit.

Section 4: Creates paragraph (3) of s. 55.03, F.S.; relieves sheriffs from docketing and indexing or collecting on processes, writs, judgments, or decrees, if the rate of interest does not appear on the documents.

Section 5: Amends s. 56.27, F.S.; permits surplus money obtained from executions to be applied toward junior writs.

Section 6: Amends s. 56.28, F.S.; requires a demand in writing for expedited recovery of money recovered from executions.

Section 7: Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. The bill would reduce the administrative duties of sheriffs.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

HB 935 would require persons, who seek to have their names placed on a list of certified process servers, to pay a reasonable fee.

2. Direct Private Sector Benefits:

HB 935 would allow service of process in instances where the process originated outside the judicial circuit. It would also facilitate substitute service upon sole proprietors.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, It would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

1. **Key Issues:**

a. **Question Presented** - *Do statutory provisions related to service of process need clarification and, if so, does HB 935 achieve this objective?*

b. **Other Policy Considerations:**

- (1) Should process servers be permitted to serve processes originating outside the judicial circuit?
- (2) Should the bill require a written demand before officers are penalized for failing pay money derived from executions?
- (3) Should execution surpluses go toward resolving junior writs or should such surpluses be returned to the defendant?

STORAGE NAME: h0935.cjcl

DATE: March 15, 1997

PAGE 9

2. **Technical Consideration** - Section 2 of HB 935 currently reads, "Substitute service may be made . . . by serving the person in charge of the business at the time of service manager of the business" This sentence may need rewording.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

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