

**STORAGE NAME:** h2041s1.go

**DATE:** April 8, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
ANALYSIS**

**BILL #:** CS/HB 2041

**RELATING TO:** Liens

**SPONSOR(S):** Committee on Governmental Operations and Representative Sublette

**COMPANION BILL(S):** HB 1075 (compare), CS/SB 294 (compare), SB 1830 (compare)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (2) JUDICIARY
  - (3) REAL PROPERTY & PROBATE
  - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (5)
- 

**I. SUMMARY:**

This bill allows electronic filing of judgments and other related documents under chapter 55, F.S.; phases-out the sheriff's execution docket as required under chapter 30, F.S.; provides expressly that seizure of property by the sheriff be actual or, alternatively, constructive seizure; and provides the sheriffs with the option to periodically update the list of process servers.

This bill establishes a statutory framework for perfecting and establishing priority claims of judgment liens on personal property through the maintenance of a central database by the Department of State(department) as follows: creates a central database of judgment liens on personal property; provides for the acquisition of a judgment lien on personal property based on the filing of a judgment lien certificate with the department; provides for the 5-year duration, lapse and record maintenance of original and second judgment liens; sets forth the effect of judgment liens; allows a person to file a correction statement regarding the inaccuracy of a judgment lien record or a wrongfully filed judgment lien; phases-out over 2 years, existing judgment liens established through writs of execution previously delivered to sheriffs; establishes the responsibilities of the department to collect processing fees and to ensure public access to the judgment lien database; requires liens on foreign judgments to be established through judgment lien certificates; requires a notice of levy, execution, and affidavit of levying creditor to be provided to certain judgment creditors and secured creditors; provides for the order of distribution of money collected under execution; requires an affidavit of levying creditor regarding review of judgment lien database; and redefines "lien creditor" to include a judgment lienholder for personal property as established under the new provisions.

This bill allows a writ of execution to be made on a person's money in excess of \$1,000; clarifies when a person rather than a sheriff holds an unsatisfied lien, then the plaintiff may file an affidavit to institute supplementary proceedings; expressly provides for the respondent's liability for certain costs, fees, and expenses associated with the service of writ of bodily attachment in connection with a child-support obligation; and specifically revises certain garnishment provisions by: giving an entity a right of garnishment to include any debt under a negotiable instrument; providing comprehensive provisions relating to notice to the defendant for a claim of exemption from garnishment and procedure for obtaining a hearing; clarifying that service of the writ of garnishment creates a lien on the debt or property at the time of service; and adding that a person may also take an oath before a notary public for purposes of establishing exemption of wages from writ of garnishment.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

There is a broad scheme set in statute and rules governing the collection of a debt whether through a money judgment or court order (e.g., child support). There are two general classes of persons from whom to collect: the debtor through execution, replevin and bankruptcy, and third parties through garnishment, creditor's bills, proceedings supplementary, and bankruptcy. The state and federal laws, however, recognize a number of exemptions. Those include homestead exemptions (s. 222.01, F.S., and s. 4, art. X, Fla. Const.), personal property up to \$1,000 (s. 222.06, F.S., and s. 4, art. X, Fla. Const.), household wages (s.222.11, F.S., and 15 U.S.C. 1673(a), and other exemptions (ch. 222, F.S.).

#### **Execution**

A judgment lien on personal property is created upon the delivery of a writ of execution to the sheriff in the county where the personal property is located but the lien is not perfected until the property is actually levied. A judgment lien generally refers to a lien based on the entry of a money judgment, including costs and interests. A judgment lien on real property is created and perfected upon the recording of a certified judgment in the official county records (with the exception of foreign judgments which must be recorded according to the Florida Enforcement of Foreign Judgments Act. Generally, a judgment lien acts as a lien, unless otherwise specified, on any or all of the judgment debtor's real or personal property. The judgment lien confers the right to levy (i.e., seize) on such property and sell it for satisfaction of the judgment debt.

#### **Issue of Writ of Execution**

The writ of execution is the process by which a money judgment is enforced. The writ of execution directs any sheriff of the state to levy the property within his or her respective county and to sell it to satisfy the unpaid balance of the money judgment. See s. 56.031, F.S. Under current law, a person or entity; with a money judgment (judgment creditor) against a person or an entity (judgment debtor) may obtain a writ of execution from the clerk of the court. Only one writ is issued on a judgment and must be dated on the day it was issued. Once the writ is issued by the clerk of the court, the judgment creditor delivers the writ to the sheriff. A sheriff can only act on the writ within the county in which the property is located. The statute does not expressly provide for multiple writs of execution to be docketed in different counties.

#### **Delivery and Docketing of Writ of Execution**

As to personal property of the judgment debtor, the delivery of the writ creates an inchoate (i.e., unperfected) lien until levied. The sheriff of each county is required to keep an execution docket, which must contain a list of all executions, orders and decrees directed to the sheriff. The docket must also include the collection of moneys, and a statement of all moneys credited on such executions, orders, and decrees, and when, and to whom, and by whom, they are paid. See s. 30.17, F.S. The priority of judgment liens on personal property is determined by writs of execution docketed with the sheriff. The sheriff retains the writ until it is satisfied through levy or until the underlying judgment expires twenty years later, whichever is later.

#### **Levy on Property**

A levy works in conjunction with an execution. All property subject to execution includes lands and tenements, goods and chattels, equities of redemption in real and personal property, and corporate stock. See s. 56.061, F.S. A writ of execution may be levied against the money, goods, chattels, lands, and tenements of a corporation but not of an individual. See s. 56.09, F.S. A writ of execution may already contain instructions to levy generally on all or specific property of a judgment debtor. A sheriff has a duty to levy upon the property specifically described in the writ of execution and failure to do so, may result in the issuance of a writ of mandamus compelling the sheriff to levy on the property. The sheriff must take enough property to satisfy the judgment and may also accept payment in full on the writ in lieu of making a levy. See *Rodriguez v. Dicoa Corporation*, 318 So.2d 442 (Fla. 3d DCA 1975). A sheriff may take actual or constructive custody of personal property. The case law regarding constructive custody, however, is not very specific as to how a sheriff would do that. See

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Ex parte Fuller, 128 So. 483 (1930). The sheriff retains possession of all of the judgment debtor's seized personal property until it is sold. The sheriff is also liable for its loss or destruction unless the judgment creditor designates a third party in which case liability shifts to that third party.

### **Notice of Sales of Levied Property**

Notice of all sales under execution must be made by weekly publication for 4 successive weeks in a newspaper of the county in which the sale is to take place. See s. 56.21, F.S. If the property to be sold is perishable and would not sell for its full value by the scheduled date of sale, the court may shorten the time of notice. Before the first published notice, a copy of the notice must be furnished by certified mail to the attorney of record of the judgment debtor, or to the judgment debtor at the judgment debtor's last known address, even if a default judgment has been entered. If the levy is on real property, notice of the levy and the execution sale must be made to the property owner of record in the same manner as notice is made to any judgment debtor. The sale date must not be any earlier than 30 days after the first date of the published notice, regardless of whether the sale is for real or personal property.

### **Collection of Money Received from Sale of Levied Property**

All money received under executions is paid to the judgment creditor (or his or her attorney) in whose favor the execution was issued. See s. 56.27, F.S. The sheriff is released from further responsibility upon receipt of the money. The money is paid to the attorney of record for the judgment creditor, or if there is more than one attorney, to the attorney who originally initiated the action or who made the original defense unless the file shows a substituted attorney. The defendant/judgment debtor is entitled to receive any excess surplus from the property sale.

### **Satisfied and Unsatisfied Execution of Writ**

Once a writ of execution is satisfied (i.e., money collected upon execution of sale), it is returned to the court. See s. 56.041, F.S. The judgment debtor must be furnished with a satisfaction of judgment. The sheriff may return unsatisfied writs of execution to the court 20 years after the date of the judgment's issuance. Upon return, the clerk of the court must provide a receipt to the sheriff acknowledging receipt of the returned unsatisfied execution. Under current law, the unsatisfied executions are not returned to the judgment creditor. Alternatively, if the 20 years have not yet expired, a holder of an execution may prepare to initiate proceedings supplementary to execution by filing an affidavit stating that the unsatisfied execution is valid and outstanding. See s. 56.29, F.S.

### **Proceedings Supplementary**

Proceedings supplementary allow a judgment creditor to use all discovery tools available in the Rules of Civil Procedure in order to collect a judgment. See s. 56.29, F.S. Upon motion by a judgment creditor, a court may require a defendant debtor to appear before the court or a master appointed by the court. The court may refer the proceeding to a master at any time who is directed to report findings of law and/or fact. The master has the power to issue subpoenas, and is to be paid fees provided by law. The order must be served a reasonable time before the date of examination on the defendant debtor or his or her attorney as provided for service of papers. Examination is taken under oath as if at trial and is comprehensive, covering all matters and things pertaining to the business and financial interests of the defendant debtor in order to determine the existence and location of any property the defendant debtor may have. Any testimony aiding in satisfying the execution is admissible. A corporation must attend and answer by an officer, who can be specified in the order. Any party may call witnesses.

The judge may order any property of the judgment debtor, not exempt from execution, in the hands of any person or due to the judgment debtor to be applied toward the satisfaction of the judgment debt. When, within 1 year before the service of process on the defendant, the defendant has had title to, or paid the purchase price of, any personal property to which the defendant's spouse, any relative, or any person on confidential terms with defendant claims title and right of possession at the time of examination, the defendant has the burden of proof to establish that such transfer or gift from him or her was not made to delay, hinder, or defraud creditors. When any gift, transfer, assignment, or other conveyance of personal property has been made or contrived by defendant to delay, hinder, or

defraud creditors, the court must order such transaction to be void and direct the sheriff to take the property to satisfy the execution.

### **Conclusion**

Florida is one of 11 states that still follows the lien-on-delivery rule which as stated earlier, means that a true lien is not actually created on personal property until the property is levied and sold by the sheriff. Once the property is levied, the effective date of the lien, for purposes of establishing priority lienholder status, dates back to the date of the writ's delivery to the sheriff. Therefore all claims (whether arising from lenders who have taken a security interest or mortgage in the property, subsequent purchasers, beneficiaries, decedents, and transferees, or other creditors) that come after that date take claim subject to the claim of the first judgment creditor.

Determining the existence of liens under Florida's existing system has proven problematic. For example, because of the decentralized system, an interested person such as a lender would have to inspect the docket of each county to determine the existence of any liens as relates to a particular person. Moreover, since a writ of execution is not necessarily docketed on the same day as it is delivered to the sheriff, a period of lapse may occur in which the lien is overlooked by a subsequent lienholder. The system has also been criticized for encouraging the accumulation of passive writ holders who for whatever reason have been unsuccessful or have given up in finding any leviable property belonging to the debtor. Consequently, the writ and inchoate lien could remain on a sheriff's docket for the life of the judgment (i.e., 20 years).

### **Garnishment**

Chapter 77, F.S., governs writs of garnishment. S. 77.0305, F.S., provides for a writ of garnishment on salaries and wages. A number of exemptions from garnishment exist under chapter 222, F.S. There is also a federal restriction on wage garnishment which limits recovery to 25% of a person's net wages and prohibits the discharge of an employee due to the service of a writ of garnishment. See 5 U.S.C.A., ss. 1671-1677. A plaintiff commences a garnishment action by filing a motion for writ pursuant to s. 77.01, F.S. The issued writ is served on the garnishee, advises the garnishee to respond within 20 days and to disclose amounts owed to defendant. The garnishee is then liable for all amounts due and owing to defendant during the attached time period. The answer must include the names and addresses of other persons having an ownership interest in the garnished property. If the garnishee fails to respond, a default garnishment judgment is entered. Within 5 days after the garnishee's answer, the plaintiff is required to give the right to respond, to move to dissolve the writ and to declare any exemptions within twenty days or else be subject to default. Writs of garnishment may be dissolved at any time by the court by motion of any party. See s. 77.07., F.S.

#### **B. EFFECT OF PROPOSED CHANGES:**

This bill amends a number of provisions relating to debtors and collectors. It primarily replaces the current county-by-county filing of inchoate liens with a statewide centralized filing database of judgment liens on leviable personal property for purposes of establishing priority lienholder status and revises related provisions; expands upon certain notice and rights provisions regarding writ of garnishment; and clarifies a number of other provisions relating to debt collection.

#### **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?

No.

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

The Department of State would have responsibility for establishing a statewide centralized filing database of judgment liens on leviable personal property for purposes of establishing priority lienholder status.

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

No.

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

This bill does not eliminate or reduce an agency or program.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

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

This bill establishes processing fees the Department of State may charge.

- 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. individuals using the services of the Department of State would pay the established processing fees.

4. Individual Freedom:

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

Yes. A centralized filing database of judgment liens on leviable personal property would be available to individuals needing these services.

- 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:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

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(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Amends ss. 15.16, 30.17, 30.231, 48.021, 55.604, 56.09, 56.21, 56.27, 56.29, 61.11, 77.01, 77.041, 77.055, 77.06, 222.12, and 679.301, F.S. Creates ss. 55.201, 55.202, 55.203, 55.204, 55.205, 55.206, 55.207, 55.208, and 55.209, F.S.

**E. SECTION-BY-SECTION ANALYSIS:**

- Section 1. Amends s. 15.16, F.S., relating to electronic filing of records with the Department of State; allowing the electronic filing of records filed under ch. 55, F.S., relating to judgments; requiring the department to determine the appropriate format, manner of execution, method of electronic transmission, and fee for recordation of documents electronically filed; and authorizing the department to contract for such services.
- Section 2. Amends s. 30.17, F.S., relating to maintenance of an execution docket; providing that, on or after October 1, 2001, sheriffs will no longer need to docket newly delivered writs of execution although the docket must be maintained until October 1, 2003; providing that those persons who delivered a writ of execution before October 1, 2001, may request a written certification from the sheriff as to the date of delivery; and ceasing the sheriffs duties, under this section, on October 1, 2003.
- Section 3. Amends s. 30.231, F.S., relating to sheriffs' fees for service of summons, subpoenas, and executions; and clarifying that listed or unlisted property in the instructions for levy may be seized through actual possession or constructive seizure by order of the court.
- Section 4. Amends s. 48.021, F.S., relating to designation and reappointment of process servers by the sheriff; and providing the sheriff with the option to periodically add names to the list of process servers which harmonizes with the option currently given to judges to appoint process servers.
- Section 5. Amends s. 55.10, F.S., relating to judgments, orders, and decrees; simplifying the procedures for recording judgments in the public records; and providing that judgments remain enforceable for a maximum period of 20 years, but would be recorded for an initial 14 year period with one 6 year renewal option.
- Section 6. Creates s. 55.201, F.S., requiring the Department of State to maintain a centralized electronic database of judgment liens on personal property; providing legislative intent that this database be accessible to the public; and prohibiting the bulk sale or distribution of such database information in any form.
- Section 7. Creates s. 55.202, F.S., providing for the creation of judgment liens on personal property based on the filing of a judgment lien certificate with the department; providing that the judgment lien is acquired on a judgment debtor's interest in all personal property other than fixtures, money, and negotiable instruments; providing that the effective date of the judgment lien is the date of the filing of the judgment lien certificate; providing that the priority of judgment liens acquired in accordance with provisions of this bill is established at the time the judgment lien is recorded, which is at the time of its effective date, the date of filing; and providing that no judgment lien can attach to the property until the debtor acquires an interest in the personal property.
- Section 8. Creates s. 55.203, F.S., providing for the content, filing, and indexing of judgment lien certificates; requiring the judgment lien certificate to include: the legal name or the registered name (if a legal entity) of the judgment debtor, of the judgment creditor, and of the judgment creditor's attorney or representative; the last known address and social security number, or alternatively, federal employer identification number of the judgment debtor and the judgment creditor; the identity of the court which entered the judgment and the case number and the date the written judgment was entered; the amount due

on the money judgment and the applicable interest rate; and the signature of the judgment creditor or the judgment creditor's attorney or representative.

Requiring the filing of a second judgment lien certificate (establishing a new judgment lien on the underlying judgment of the original judgment lien) to comply; and stating the file number of the original judgment lien certificate, the money amount remaining unpaid, and the interest accrued thereon.

Requiring in the case of an amendment to the judgment lien certificate, in accordance with s. 55.204(2), F.S., or a correction to the judgment lien certificate, in accordance with s. 55.207, F.S., the filing must contain the file number assigned to the judgment lien certificate to which the amendment or correction relates and the basis for the amendment or correction.

Requiring the department to examine each document submitted for filing for compliance with the newly created ss. 55.201 - 55.209, F.S.; specifying that the department assign unique numbers to each newly created record of the judgment lien, including the date of filing; providing for maintaining electronic public access to the record; providing for indexing judgment lien certificates by the name of the judgment debtor; and providing for indexing of all subsequently filed documents to relate back to the relevant original judgment lien certificates.

Providing that technical errors made in good faith, which are not seriously misleading, may not defeat the validity of a judgment lien certificate filed with the department; providing that no claim of estoppel may be based on these errors; and requiring the department to prescribe the necessary forms for all such instruments.

- Section 9. Creates s. 55.204, F.S., providing for the duration and continuation of judgment liens and the destruction of such records; providing that a judgment acquired under this bill lapses and becomes invalid 5 years after the date of filing; providing that a judgment creditor can acquire a second judgment lien on the same judgment at any time within 6 months of the date of the scheduled lapse of an original judgment lien; providing that a second judgment lien is considered a new lien and not a continuation of the original judgment lien; providing that the effective date of the second judgment lien is the date the second judgment lien certificate is recorded or the date of the lapse of the original judgment lien; providing that the second judgment lien permanently lapses and becomes invalid 5 years after its effective date; providing for a 90-day extension beyond the date of lapse of a judgment lien, but only as to any property particularly itemized in instructions for levy delivered to a sheriff prior to the date of lapse; providing that the property must be located in the county in which the sheriff has jurisdiction; providing that subsequent removal of the property does not defeat the lien; providing that the court may order a longer extension upon a showing that extraordinary circumstances prevented the levy; providing that the time for lapse of a judgment lien may be tolled 30 days after a stay or an injunction against the enforceability of a judgment lien is terminated; and requiring the department to maintain records for a minimum of one year after the judgment lien lapses.
- Section 10. Creates s. 55.205, F.S., relating to the effect of judgment liens; stating that a judgment lien acquired under this bill gives the judgment creditor the right to take possession of property subject to levy; allowing a judgment creditor to take possession of a judgment debtor's property through writs or other judicial process even if the judgment creditor has not filed a judgment lien certificate or the judgment lien has lapsed; providing that a judgment creditor proceeding by writ of execution acquires a judgment lien at the time of levy and only on the property levied upon; providing that a buyer, in the ordinary course of business, takes free of a judgment lien even if the buyer knows of its existence; and providing that a valid security interest in after-acquired property of the judgment debtor, perfected prior to the effective date of a judgment lien, takes priority over a judgment lien on the after-acquired property.
- Section 11. Creates s. 55.206, F.S., allowing the filing of an amendment to a recorded judgment lien; providing that an amendment for either the termination, continuation, partial release, assignment, tolling, or correction of a recorded judgment lien or any part



thereof may be filed by a judgment creditor; providing an opportunity for a judgment debtor to make a written demand of any judgment creditor regarding the termination or the partial release of any obligation underlying a judgment lien; providing that within 30 days of that written demand, a judgment creditor must send a statement confirming the judgment debtor's statement; providing that in the case of partial release, the statement must also include the value of the judgment lien remaining unpaid to date; providing that if the statement is signed by an assignee, the statement must be accompanied by the assignment or a separate written statement of assignment signed by the judgment creditor; providing that if the judgment creditor fails to send the statement within 30 days after proper written demand, the judgment creditor is liable for \$100 and any additional loss incurred by the judgment debtor, including attorney fees resulting therefrom; and providing the judgment debtor, the judgment creditor, or the assignee may file the statement with the department.

- Section 12. Creates s. 55.207, F.S., allowing the filing of a correction statement relating to a recorded judgment lien; providing that any person who believes that a judgment lien record with the department is inaccurate or that a judgment lien certificate was wrongfully filed as to that person, may file a correction statement; providing that a correction statement must include: the judgment debtor named and the assigned file number to the judgment lien record; identification of the statement as a correction statement; and the basis for the correction statement; and providing that the effectiveness of the original judgment lien or other filed record is not affected by the filing of a correction statement.
- Section 13. Creates s. 55.208, F.S., providing a phase-out period for judgment liens created through writs of execution prior to a date certain; providing that a judgment lien acquired through a writ of execution delivered to a sheriff prior to October 1, 2001, remains in effect until October 1, 2003; providing that it is effective as to any property of the judgment debtor located in that county on October 1, 2001, and not removed thereafter; providing that no judgment lien will be created through writs of execution on any property of the judgment debtor brought into the county after October 1, 2001; providing that a judgment creditor who has delivered a writ of execution to a sheriff prior to October 1, 2001, may record a judgment lien certificate with the department by October 1, 2003, to be accompanied by a sheriff's certification as to the date of the writ's delivery; providing that such judgment lien is considered recorded on the date the writ was delivered to the sheriff as to all leviable property located in that county on October 1, 2001, and not removed thereafter; providing that the duration of all judgment liens is otherwise, as provided in ss. 55.204 and 55.205(3), F.S., regardless of the date on which a lien is recorded; and providing that if a judgment creditor fails to record a judgment lien certificate by October 1, 2003, the writ of execution is abandoned and of no effect after October 1, 2003.
- Section 14. Creates s. 55.209, F.S., setting forth the processing fees to be assessed by the department and other departmental responsibilities; enumerating the non-refundable processing fees; prohibiting the department from conducting searches of any record database for the existence of a judgment lien; prohibiting the department from making any certification or determination regarding the validity of any recorded claim of a judgment lien; requiring the department to ensure public electronic access to the database via the Internet; and prohibiting the department from selling any information regarding the database in any form.
- Section 15. Amends s. 55.604, F.S., relating to the recognition and enforcement of foreign judgments; adding to the list of requirements to be satisfied for giving effect to a foreign judgment on personal property; and requiring that a judgment lien certificate must be filed in accordance with the provisions of this bill.
- Section 16. Amends s. 56.09, F.S., relating to executions against corporations; expanding executions against persons under certain circumstances; permitting a writ of execution to be levied on a person's money in excess of \$1,000; defining the term "money" to include cash, checks, money orders and the like; providing that this section does not authorize a physical search; and providing, therefore, that the sheriff can only request that a person hand over money.

Section 17. Amends s. 56.21, F.S., relating to execution sales and notice; providing a procedure for notice when levying upon personal property; requiring a levying creditor to give notice of levy and execution of sale, and a copy of an affidavit to the attorney of record of the judgment creditor with a lien under s. 55.202, F.S., and to the secured creditors who have filed financing statements as provided in s. 679.401, F.S.; and providing that notice is to be provided in the same manner as notice is made to a judgment debtor under this section (i.e., by weekly publication for 4 weeks and by certified mail).

Section 18. Amends s. 56.27, F.S., revising slightly the distribution of money collected under executions; providing that the following persons shall be paid from money collected, in the order prescribed: sheriff for costs; levying creditor in the amount of \$500 for liquidated expenses; and the priority judgment lienholder as established under s. 55.202, F.S., and as set forth in the levying creditor's affidavit. The payment of \$500 to a levying creditor is a new feature to the existing distribution scheme.

Revising provisions regarding surplus distribution to include all lienholders with judgment or execution liens and the remainder to the defendant; providing that the value of the property levied is not to be considered excessive unless the value unreasonably exceeds the total debt reflected in all unsatisfied judgment liens or other liens of the judgment creditor; providing a requirement for the levying creditor to execute and file an affidavit attesting to the review of the judgment lien database at the Department of State; providing the affidavit must be filed on or before the date of the first publication or posting; providing the affidavit must include all the information contained in the judgment lien certificate; and providing sheriffs with immunity from civil liability for damages arising from a wrongful levy providing the sheriff acted in accordance with the information contained in the affidavit.

Section 19. Amends s. 56.29, F.S., relating to proceeding supplementary; and clarifying that when a person, in lieu of a sheriff, holds an unsatisfied execution and a writ has been delivered to the sheriff, the plaintiff may file an affidavit to initiate proceedings supplementary.

Section 20. Amends s. 61.11, F.S., relating to writ of bodily attachment in connection with court-ordered child support; and expressly holding the respondent liable for the purge payment, all court costs, sheriff fees, actual costs of detention or imprisonment, and other related expenses associated with the service of the writ and transportation of the respondent.

Section 21. Amends s. 77.01, F.S., relating to the right to garnishment; expanding to entities the right afforded persons to sue to recover a debt against a person or entity; and extending the right of garnishment to any debt under a negotiable instrument that will become due.

Section 22. Creates s. 77.041, F.S., relating to notice to defendant for claim of exemption from garnishment and procedure for hearing; expanding substantially on "Notice to Defendant" requirements; providing a comprehensive form entitled "Notice to Defendant" which details a defendant's rights and responsibilities, and explains a defendant's initial recourse; requiring the plaintiff to mail, by first class, a copy of the writ of garnishment, the motion for writ of garnishment, and the Notice to Defendant to the defendant's last known address within 5 business days after the writ is issued, or 3 business days after the writ is served on the person; requiring the defendant to respond within 20 days, to request a hearing if he or she wants one, and to file a form for claim of exemption, if applicable; providing if the plaintiff fails to respond with an objection within 2 business days, or 7 days if the claim of exemption was mailed, the writ of garnishment will be dissolved and property released; and providing that no hearing is then required.

Section 23. Amends s. 77.055, F.S., relating to service of garnishee's answer and notice of right to dissolve writ; requiring the plaintiff to serve only the garnishee's answer and a notice of the right to dissolve the writ to the recipient; and providing the notice must advise the recipient that a motion is needed to dissolve the writ of garnishment within 20 days after the date on the certificate of service if the recipient alleges that the writ of garnishment is untrue.

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- Section 24. Amends s. 77.06, F.S., relating to the effect of writ of garnishment; and providing that a writ of garnishment automatically creates a lien in or upon debts or property at the time of service of the writ of garnishment or at such time as they come into the garnishee's possession or control.
- Section 25. Amends s. 222.12, F.S., relating to exemption from writ of garnishment; and allowing a person to also take an oath of exemption before a notary public.
- Section 26. Amends s. 679.301, F.S., relating to priority interests and rights of lien creditor; clarifying that it is the secured party who takes priority over the rights of a transferee or a lien creditor; and redefining "lien creditor" to include a judgment lienholder as now provided under ss. 55.202 - 55.209, F.S., created in this bill.
- Section 27. Providing an effective date of October 1, 1999, except ss. 5 through 14, and ss.16 through 18, are to take effect October 1, 2001.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

**AGENCY REQUIREMENTS TO ADMINISTER THE PROVISIONS OF THE BILL:**

	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
4 FTE DP Staff	\$274,858	\$274,858	\$274,858
9 FTE Filing Staff		213,243	213,243
<b><u>OCO</u></b>			
DP Staff	442,753	-0-	-0-
Filing Staff	-0-	32,247	-0-
<b><u>EXPENSE</u></b>	200,000	200,000	200,000
	<hr/>	<hr/>	<hr/>
<b>TOTAL</b>	<b>\$917,611</b>	<b>\$720,348</b>	<b>\$688,101</b>

Based on the amended version of the bill which increased the variety of documents that may be recorded, filing activity with the Department of State will significantly increase over earlier estimates. This activity is reflected in this narrative.

Based on a survey of fifteen sheriff's departments, by the Department of State, approximately 145,000 judgment executions were indexed in 1998 and approximately 15,000 executed judgments levied on in 1998. Both are expected to increase by approximately 10% annually. Additionally, given the new viability of this database, it is anticipated that increased filing and inquiry activity will occur which will result in an estimated one time increase of 25% in filing volume. Based on these reports, it is estimated that for FY 2000 there will be approximately 185,000 judgments to be recorded, 40,000 amending documents, and approximately 20,000 certifications to be issued statewide. This proposed recording activity will require the development and maintenance of a separate and distinct new database. It is estimated that the development process will take approximately eighteen months, hence, staffing for FY 1999-2000 will require two Project Administrators, one Telecommunications Specialist III, and one Systems Programmer II. The recording process can begin six months after system development and will require one Section Administrator, two Supervisors and six Document Specialists. **Revenue is expected to total approximately \$4.7 million annually, based on processing fees found in the bill.**

**AMOUNT OF DISPOSITION OF ANY ANTICIPATED REVENUE COLLECTIONS EACH OF NEXT THREE YEARS:**

Approximately \$4.7 million per year to the Corporations Trust Fund.

**EFFECTS OF BILL ON LOCAL GOVERNMENT UNITS OF THE STATE:**

The loss of the docketing fee will result in an approximate \$1.56 million revenue reduction to sheriff departments.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The loss of the docketing fee will result in an approximate \$1.56 million revenue reduction to sheriff departments.

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

This bill does not reduce the percentage of a tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its April 8, 1999, committee meeting, the Committee on Governmental Operations adopted an amendment to amendment 1 and then adopted amendment 1, as amended. The amendments did the following:

Amendment 1, is a remove everything amendment that conforms HB 2041 to CS/SB 294. This remove everything amendment is the proposed legislation that has been analyzed in this analysis.

Amendment to Amendment 1, simplifies the procedures for recording judgments in the public records; and provides that judgments remain enforceable for a maximum period of 20 years, but would be recorded for an initial 14 year period with one 6 year renewal option.

The bill, as amended, was reported favorably as a committee substitute, and the committee substitute changes have been reflected in the body of the analysis.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:  
Prepared by:

Staff Director:

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Jimmy O. Helms

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Jimmy O. Helms