

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.)

BILL: CS/CS/SB 294

SPONSOR: Committee on Fiscal Policy, Judiciary Committee

SUBJECT: Debtors and Creditors

DATE: April 12, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Mannelli/Hayes</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides for the following:

- Allows electronic filing of judgments and other related documents under chapter 55, F.S.
- Provides expressly that seizure of property by the sheriff be actual or alternatively, constructive seizure
- Provides the sheriffs with the option to periodically update the list of process servers
- 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; specifically, this part:
 - ▶ 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;
 - ▶ permits a judgment creditor to amend judgment lien records to reflect the termination, continuation, tolling, partial release, assignment or correction of a judgment lien;
 - ▶ requires, upon written demand, a judgment creditor to confirm satisfaction or partial release of an obligation underlying a judgment lien;
 - ▶ 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;
 - ▶ phases-out the sheriff's execution docket as required under chapter 30, F.S.,
 - ▶ establishes the responsibilities of the Department to collect processing fees and to ensure public access to the judgment lien database; and
 - ▶ 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.
- ▶ redefines “lien creditor” to include a judgment lienholder for personal property as established under the new provisions.
- 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 unsatisfied lien, then the plaintiff may file an affidavit to institute proceedings supplementary
- Expressly provides for the respondent’s liability for certain costs, fees, and expenses associated with the service of a writ of bodily attachment in connection with a child-support obligation
- Revises certain garnishment provisions, specifically:
 - ▶ gives an entity a right of garnishment to include any debt under a negotiable instrument
 - ▶ provides comprehensive provisions relating to notice to defendant for a claim of exemption from garnishment and procedure for obtaining a hearing
 - ▶ clarifies provisions relating to service of garnishee’s answer and notice of right to dissolve writ
 - ▶ clarifies that service of the writ of garnishment creates a lien on the debt or property at the time of service
 - ▶ adds that a person may also take an oath before a notary public for purposes of establishing exemption of wages from writ of garnishment
- Provides that certain provisions relating to the statutory framework for judgment liens on personal property will take effect October 1, 2001, whereas all other provisions will take effect October 1, 1999.
- Removes the requirement to re-record a judgment every 7 years by extending the effective period of a judgment lien on real property from 7 years to 14 years.

This bill substantially amends the following sections of the Florida Statutes: 15.16, 30.17, 30.231, 48.021, 55.604, 55.10,56.09, 56.21, 56.27, 56.29, 61.11, 77.01, 77.041, 77.055, 77.06, 222.12, 607.1901, and 679.301. The bill also creates the following sections of the Florida Statutes: 55.201, 55.202, 55.203, 55.204, 55.205, 55.206, 55.207, 55.208, and 55.209.

II. 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 exemption (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 (chapter 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.

A judgment lien on real property is acquired upon the recording a certified copy of a judgment with official records of the county where the property is located. This judgment lien only confers the right to levy. A person can only take title to the property upon following certain steps through execution and sale of the real property.

Under current law, a judgment lien can be effective for up to 20 years from the date the judgment was entered because a judgment can only be valid for 20 years. However, during that period, in order to continue to have an effective judgment lien, a person must re-record the judgment every 7 years until the 20-year period as measured from the date of the judgment is entered.

- *Issuance 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* § 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* §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* §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* §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.¹ 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* §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 short 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 had 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. *Id.* 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* § 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, then 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 sale), it is returned to the court. *See* §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 acknowledge 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

¹The case law regarding constructive custody, however, is not very specific to how a sheriff would do that. *See Ex parte Fuller*, 128 So. 483 (1930).

to execution by filing an affidavit stating that the unsatisfied execution is valid and outstanding. See §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 §56.29, F.S. Upon motion by a judgment creditor, a court may require a defendant debtor to appear before the court or a master² appointed by the court. 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 subject to 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

²The 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.

any leivable 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. Section 77.0305, F.S., provides for a writ of garnishment on salaries and wages. A number of exemptions from garnishment exist under chapters 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. §§ 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 notice to all interested parties and to the defendant. *See* § 77.055, F.S. The notice must include 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* § 77.07, F.S.

III. 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 leivable 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.

Section-by-section analysis

Section 1 amends s. 15.16, F.S., relating to electronic filing of records with the Department of State, to allow the electronic filing of records filed under chapter 55, Florida Statutes, relating to judgments. It also requires the department to determine the appropriate format, manner of execution, method of electronic transmission, and fee for recordation of documents electronically filed. It also authorizes the department to contract for such services.

Section 2 amends s. 30.17, F.S., relating to maintenance of an execution docket. It provides 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. 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. The sheriffs duties under this section will cease on October 1, 2003.

Section 3 amends s. 30.231, F.S., relating to sheriffs' fees for service of summons, subpoenas and executions. It clarifies 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. It provides the sheriff with the option to periodically add names to the list of process servers. This change harmonizes with the option currently given to judges to appoint process servers.

Section 5 amends s. 55.10, F.S., to remove the requirement to re-record a judgment every 7 years by extending the effective period of a judgment lien on real property from 7 years to 14 years. Thereafter, re-recording is only necessary to continue the judgment lien for another 6 years or for whatever period of time remains within the 20-year period as measured from the date the judgment was entered, whichever occurs first.

Section 6 provides that the changes in the effective lien provisions as related to s. 55.10, F.S., will apply to judgments recorded prior to the effective date of the act and all judgments recorded after the effective date of the act.

Section 7 creates s. 55.201, F.S., to require the Department to maintain a centralized electronic database of judgment liens on personal property. It also provides legislative intent that this database be accessible to the public.

Section 8 creates s. 55.202, F.S., to provide for the creation of judgment liens on personal property based on the filing of a judgment lien certificate with the Department. The judgment lien is acquired on a judgment debtor's interest in all personal property other than fixtures, money, and negotiable instruments. The effective date of the judgment lien is the date of the filing of the judgment lien certificate. It provides 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, i.e., date of filing. However, no judgment lien can attach to the property until the debtor acquires an interest in the personal property.

Section 9 creates s. 55.203, F.S., to provide for the content, filing and indexing of judgment lien certificates. Subsection (1) requires 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 court in which, the record number, and the date of filing the judgment, the amount due on the judgment and applicable interest rate, and the signature of the judgment creditor or the judgment creditor's attorney or representative. In cases of default judgment, the social security number need only be provided if known.

Subsection (2) requires the filing of a second judgment lien certificate (which establishes a new judgment lien on the underlying judgment of the original judgment lien) to comply with the provisions of subsection (1) and to state the file number of the original judgment lien certificate, the money amount remaining unpaid, and the interest accrued thereon.

Subsection (3) requires 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 which was assigned to the judgment lien

certificate which the amendment or correction relates and the basis for the amendment or correction.

Subsection (4) requires the Department to examine each document submitted for filing for compliance with the newly created sections 55.201-55.209. It also specifies that the Department is to assign unique numbers to each newly created record of the judgment lien (including the date of filing), to maintain electronic public access to the record, to index judgment lien certificates by the name of the judgment debtor, and to index all subsequently filed documents to relate back to the relevant original judgment lien certificates.

Subsection (5) states that technical or clerical errors may in good faith which are not seriously misleading may not defeat the validity of a judgment lien certificate filed with the department. In addition, no claim of estoppel may be based on these errors.

Subsection (6) requires the Department to prescribe the necessary forms for all such instruments.

Section 10 creates s. 55.204, Florida Statutes, to provide for the duration and continuation of judgment liens and the destruction of such records. Subsection (1) provides that a judgment acquired under this bill lapses and becomes invalid 5 years after the date of filing. However, under subsection (2) 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. Presumably for preserving priority lienholder status, a second judgment lien is considered a new lien and not a continuation of the original judgment lien. 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. The second judgment lien permanently lapses and becomes invalid 5 years after its effective date.

Subsection (3) provides 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 the lapse. The property also has to be located in the county in which the sheriff has jurisdiction. Subsequent removal of the property does not defeat the lien. The court may order a longer extension upon a showing that extraordinary circumstances prevented the levy.

Subsection (4) provides 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.

Subsection (5) requires the Department to maintain records for a minimum of one year after the judgment lien lapses.

Section 11 creates s. 55.205, Florida Statutes, relating to the effect of judgment liens. Subsection (1) states that a judgment lien acquired under this bill gives the judgment creditor the right to take possession of property subject to levy. This section allows a judgment creditor, nonetheless, 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. This section includes a statement 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.

Subsection (2) provides that a buyer in the ordinary course of business takes free of a judgment lien only under this section even if the buyer knew of its existence. 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 12 creates section 55.206, Florida Statutes, to allow the filing of an amendment to a recorded judgment lien. Subsection (1) states that an amendment providing 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.

Subsections (2) and (3) provide 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. Within 30 days of that demand, a judgment creditor must send a statement confirming the judgment debtor's statement. In the case of a partial release, the statement must also include the value of the judgment lien remaining unpaid to date. 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. 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's fees, resulting therefrom. The judgment debtor, the judgment creditor or the assignee may file the statement with the Department.

Section 13 creates s. 55.207, Florida Statutes, to allow the filing of a correction statement relating to a recorded judgment lien. 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. A correction statement must: a) include the judgment debtor named and the assigned file number to the judgment lien record, b) identify the statement as a correction statement, and c) provide the basis for the correction statement. The effectiveness of the original judgment lien or other filed record is not affected by the filing of a correction statement.

Section 14 creates s. 55.208, Florida Statutes, to provide a phase-out period for judgment liens created through writs of execution prior to a date certain. Subsection (1) provides 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. It is effective as to any property of the judgment debtor located in that county on October 1, 2001, and not removed thereafter. 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.

Subsection (2) provides 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. 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. The duration of all judgment liens is otherwise, as provided in sections 55.204 and 55.205(3), regardless of the date on which a lien is recorded.

Subsection (3) provides that if a judgment creditor as set forth in subsection (2) 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 15 creates s. 55.209, Florida Statutes, to set forth the processing fees to be assessed by the department and other departmental responsibilities. Subsection (1) enumerates the non-refundable processing fees. Subsection (2) prohibits the department from conducting searches of any record database for the existence of a judgment lien. The department can not make any certification or determination regarding the validity of any recorded claim of a judgment lien. Subsection (3) requires the department to ensure public electronic access to the database via the Internet. It is also prohibited from selling any information regarding the database in any form.

Section 16 amends s. 55.604, Florida Statutes, relating to the recognition and enforcement of foreign judgments. This section adds to the list of requirements to be satisfied for giving effect to a foreign judgment on personal property. It requires that a judgment lien certificate must be filed in accordance with the provisions of this bill.

Section 17 amends s. 56.09, F.S., relating to executions against corporations, to expand to executions against persons under certain circumstances. It permits a writ of execution to be levied on a person's money in excess of \$1,000. The term "money" is defined to be cash, checks, money orders, and the like. This section does not authorize a physical search. Therefore, the sheriff can only request that the person hand over the money.

Section 18 amends s. 56.21, F.S., relating to execution sales and notice. It provides a procedure for notice when levying upon personal property. It requires levying creditor to give notice of levy and execution sale, and a copy of an affidavit to the attorney of record of the judgment creditor or to 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. 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 19 amends s. 56.27, F.S., to revise slightly the distribution of money collected under executions. Specifically, subsection (1) provides 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 judgement 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.

Subsection (2) revises provisions regarding surplus distribution to all lienholders with judgment or execution liens and the remainder to the defendant. Subsection (3) states 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.

Subsection (4) sets forth 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. The affidavit must be filed on or before the date of the first publication or posting. The affidavit must contain all the information contained in the judgment lien certificate. Subsection (5) provides 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 20 amends s. 56.29, F.S., relating to proceedings supplementary. It clarifies 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 21 amends s. 61.11, F.S., relating to writ of bodily attachment in connection with court-ordered child support. Although the authority to assess certain costs already exists, this section expressly holds 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 22 amends s. 77.01, F.S., relating to right to garnishment, to expand to entity's the right afforded persons, to sue to recover a debt against a person or entity. The right of garnishment extends to any debt under a negotiable instrument that will become due.

Section 23 creates s. 77.041, F.S., relating to notice to defendant for claim of exemption from garnishment and procedure for hearing. Specifically, subsection (1) expands substantially on the Notice to Defendant requirements. It provides a comprehensive form entitled "Notice to Defendant" which details a defendant's rights and responsibilities, and explains a defendant's initial recourse.

Subsection (2) requires 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.

Subsection (3) requires 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. If the plaintiff fails to respond with an objection within 2 business days, or alternatively 7 days if the Claim of Exemption was mailed, the writ of garnishment will be dissolved and property released. No hearing is then required.

Section 24 amends s. 77.055, F.S., relating to service of garnishee's answer and notice of right to dissolve writ. It requires the plaintiff serve only the garnishee's answer and a notice of right to dissolve writ to the recipient. 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.

Section 25 amends s. 77.06, F.S., relating to the effect of writ of garnishment. It provides 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 when they come into the garnishee's possession or control.

Section 26 amends s. 222.12, F.S., relating to exemption from writ of garnishment. It allows a person to also take an oath of exemption before a notary public.

Section 27 amends s. 679.301, F.S., relating priority interests and right of lien creditor. It clarifies that it is the secured party who takes priority over the rights of transferee or a lien creditor. Additionally, "lien creditor" is redefined to include a judgment lienholder as now provided under ss. 55.202-55.209.

Section 28 authorizes the Department of State to allocate \$917,611 from the Corporations Trust Fund for FY 1999-00 and \$245,490 effective January 1, 2001 for administering the central data base.

Section 29 increases the annual transfer from \$8 million to \$10 million from the Corporations Trust Fund to the Cultural Institutions Trust Fund for the purpose of funding cultural programs as provided in s.265.2861. It also authorizes the Department to transfer \$1.6 million each fiscal year from the Corporations Trust Fund to the Grants and Donations Trust Fund in the Office of the Secretary for the purpose of funding intergovernmental relations programs as provided in s.288.816.

Section 30 provides the bill's effective date of October 1, 1999, with the exception of certain sections. Sections 7 through 16 and sections 18 through 20 are to take effect October 1, 2001.

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:

None.

B. Private Sector Impact:

The bill's centralized system of filing judgment liens on personal property may facilitate the determination of existing judgment liens before commercial and private transactions occur between persons and businesses. The bill may encourage judgment creditors to be more diligent about perfecting and executing on a judgment lien on personal property. It may also prompt judgment debtors to satisfy liens or otherwise file for bankruptcy.

C. Government Sector Impact:

The Department of State estimates that approximately \$4.7 million in revenues annually will be deposited in the Corporations Trust Fund as a result of the processing fees provided in the bill.

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

The fiscal impact on the Department of State who will be responsible for establishing the centralized database, effective October 1, 2001, is estimated as follows:

Department of State	FY 1999-00	FY 2000-01	FY 2001-02
Staff (4 FTE) DP	\$274,858	\$274,858	\$274,858
Staffing (9 FTE) Filing	-0-	\$213,243	\$213,243
OCO - DP Staff	\$442,753	-0-	-0-
OCO - Filing Staff	-0-	\$32,247	-0-
Expense	\$200,000	\$200,000	\$200,000
Total	\$917,611	\$720,348	\$688,101

The CS/CS/SB 294 authorizes the Department of State to allocate \$917,611 from the Corporations Trust Fund for FY 1999-00 and \$245,490 effective January 1, 2001 for administering the central data base.

The CS/CS/SB 294 increases the annual transfer from \$8 million to \$10 million from the Corporations Trust Fund to the Cultural Institutions Trust Fund for the purpose of funding cultural programs as provided in s.265.2861.

The CS/CS/SB 294 authorizes the Department to transfer \$1.6 million each fiscal year from the Corporations Trust Fund to the Grants and Donations Trust Fund in the Office of the Secretary for the purpose of funding intergovernmental relations programs as provided in s.288.816.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
