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DATE: March 28, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY AND RESOURCES
ANALYSIS**

BILL #: HB 601
RELATING TO: Judgment Liens on Personal Property
SPONSOR(S): Representatives Pickens and Byrd
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT YEAS 7 NAYS 0
 - (2) FISCAL POLICY AND RESOURCES YEAS 13 NAYS 0
 - (3) SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

The process and procedure of recording and enforcing judgment liens were substantially amended in the 2000 Legislative Session by ch. 2000-258, L.O.F. Enactment of the provisions regarding judgment liens in personal property was delayed until October 1, 2001, in order to give affected parties time to adjust to the new procedures and to review the enactment. This bill is a glitch bill addressing errors and oversights in those provisions regarding judgment liens in personal property.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

2000 Legislative Session

The process and procedure of recording and enforcing judgment liens were substantially amended in the 2000 Legislative Session by ch. 2000-258, L.O.F. Enactment of the provisions regarding judgment liens in personal property was delayed until October 1, 2001, in order to give affected parties time to adjust to the new procedures and to review the enactment. This bill is a glitch bill addressing errors and oversights in those provisions regarding judgment liens in personal property.

In General

The procedures for the collection of debt based on a money judgment or court order (e.g., child support) and tax liens and warrants are found in a number of statutory and regulatory enforcement provisions. Debt may be collected directly from the debtor through a writ of execution or replevin proceedings; or indirectly from third parties through use of a writ of garnishment, creditors bill, proceedings supplementary, and bankruptcy.

Judgment Lien

A judgment lien generally refers to a lien against property that is based on an underlying money judgment. A judgment lien on real property is created and perfected upon the recording of a certified copy of a judgment in the official county records (judgments entered by a court other than a Florida court must comply with the Florida Enforcement of Foreign Judgments Act). Section 55.081, F.S., provides that a judgment lien on real property can be effective for up to 20 years from the date the judgment was entered. However, in order to continue to have a valid judgment lien during the 20-year period, the judgment must be periodically re-recorded until the end of the 20-year period. 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. The judgment lien confers on the judgment holder the right to direct the sheriff to levy on property owned by the debtor and found in the county. Upon levy, the sheriff seizes the property, and, if not redeemed by the judgment debtor, the property is sold and the proceeds distributed to the judgment creditor.

Writ of Execution

A writ of execution authorizes the enforcement of a money judgment. The writ must be obtained from the clerk of the court. Only one writ of execution may be issued on a judgment, and thus only property of the judgment debtor in one county of the state is subject to the lien. The judgment creditor has to deliver the writ to the sheriff which creates an inchoate (i.e., unperfected) lien on the

judgment debtor's property. The sheriff records a writ of execution in the sheriff's execution docket. A writ of execution may be withdrawn from a sheriff, and a substitute writ of execution issued for filing in the sheriff's execution docket in a different county. The priority of judgment liens on personal property is determined by when the writ of execution was docketed with the sheriff. The sheriff retains the writ until it is satisfied through a levy or until the underlying judgment expires twenty years later, whichever is later. The writ directs the sheriff to levy all or specific property of the judgment debtor within that respective county and to sell the levied property to satisfy the unpaid balance of the money judgment. See s. 56.031, F.S.

Levy on Property

The levy is the process by which the property is seized for sale to satisfy the writ of execution based on the underlying judgment. All property including lands and tenements, goods and chattels, equities of redemption in real and personal property, and corporate stock, are subject to levy under a writ of execution as are a corporation's money, goods, chattels, lands and tenements. See s. 56.061, F.S., and s. 56.09, F.S. A sheriff may take actual or constructive custody of personal property. The sheriff must take enough property to satisfy the judgment although he or she may accept payment in full on the writ in lieu of making a levy. See, *Rodriguez v. Dicoa Corp.*, 318 So.2d 442 (Fla. 3d DCA 1975).

Notice of Sales of Levied Property

A sale of levied property under a writ of execution must be noticed for four successive weeks by publication in a newspaper of the county in which the sale is to take place. See s. 56.21 F.S. The court may shorten the time of notice if the property is perishable and would not sell for its full value by the scheduled date of sale. Before the first published notice, a copy of the notice must be sent by certified mail to the judgment debtor's attorney of record, or to the judgment debtor at the last known address, even if a default judgment had been entered. If the levy is on real property, notice of the levy and the writ of 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 of real or personal property can be held no sooner than 30 days after the first date of the published notice.

Collection of Money Received from Sale of Levied Property

The money collected from the sale of levied property is distributed first to the judgment creditor in whose favor the writ of execution was issued. See s. 56.27, F.S. The money is either paid to the judgment creditor's attorney of record or paid to the attorney who originally initiated the action or who made the original defense, if there is more than one attorney, unless the file shows a substituted attorney. Any excess money from the sale of property is paid to the defendant/judgment debtor.

Satisfied and Unsatisfied Writs of Execution

Once a writ of execution is satisfied (i.e., money collected upon sale of levied property), the writ is returned to the court. See s. 56.041, F.S. The judgment debtor must be furnished with a satisfaction of judgment. Unsatisfied writs of execution are returned to the court 20 years after the date of the judgment's issuance.

Current Law (before ch. 2000-258, L.O.F.)

Florida is one of 11 states that still follow the lien-on-delivery rule, which 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 relating 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, there may be a time lapse in which a lien could be 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 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.

Tax liens

Generally, when any assessed tax becomes delinquent, the state agency issues a warrant for the full or estimated amount of the tax due, with interest, penalties and cost of collection. See e.g., s. 197.413, F.S. (personal property taxes), s. 199.262, F.S. (intangible property taxes), s. 206.075, F.S. (motor and fuel taxes), and s. 210.14, F.S. (tax on tobacco). The warrant, which directs the sheriff of the state to execute on the warrant, is recorded with the clerk of the circuit in the county where the delinquent taxpayer's property is located. The recording of the warrant converts the warrant into a tax lien upon the delinquent taxpayer's real and personal property in the same manner as a judgment that has been docketed and recorded. The sheriff then executes on the warrant in the same way as on a judgment. Upon payment of the tax lien, the state agency must satisfy the lien of record within 30 days or be compelled to satisfy the lien of record. See s. 199.262, F.S.

Department of State

The Department of State is divided into seven divisions, including the Division of Corporations. See s. 20.10, F.S. The Corporations Trust Fund funds the Division of Corporations, as provided in s. 607.1901, F.S. The funds are required to be used for specified purposes. Pursuant to s. 607.1901(2), F.S., the Legislature must appropriate from the Corporations Trust Fund such amounts as it deems necessary for the operation of the Division of Corporations. There are also other categories of specified transfer amounts required by the Division of Corporations.

Specifically the Division of Corporations is required to transfer from the Corporations Trust Fund to the Cultural Institutions Trust Fund, quarterly proration totaling \$8 million each fiscal year to be used ". . . as provided in s. 265.2861, F.S." Administered by the Department of State, the Cultural Institutions Trust Fund provides funding for statewide arts grants, education and visiting arts programs, local arts agencies, state touring programs and state-owned cultural facilities.

The unencumbered balance in the Corporations Trust Fund at the close of each quarter within the fiscal year may not exceed \$300,000. Any funds in excess of this amount must be transferred unallocated to the General Revenue Fund.

Changes made by Ch. 2000-258, L.O.F.

Chapter 2000-258, L.O.F., amended various provisions relating to debtors and creditors, generally effective October 1, 2001. It established a statutory framework for perfecting and prioritizing claims of judgment liens on personal property by replacing the current system of county-by-county filing of judgment liens on leivable personal property and incorporating liens supporting underlying child support orders and tax liens, with a statewide centralized filing database by October 1, 2003; requires the Department of State to establish and maintain this database; and provides for appropriations from the Corporations Trust Fund. The Act further revised and expanded provisions governing notice, rights, and hearing procedures relating to writs of garnishment. It provides a statutory form and process for filing a Notice of Homestead and for filing a declaratory action within 45 days to determine the validity of a homestead claim on property to be sold or mortgaged or to foreclose on lien against said property. Additionally, the Act revised the re-recording period for a

judgment lien on real property from 7 years to 10 years; and intended to make the same change to the initial filing of a judgment. The bill provides for the transfer of increased trust funds from the Corporations Trust Fund to the Cultural Institutions Trust Fund and the Grants and Donations Trust Fund.

Several issues have arisen regarding ch. 2000-258, L.O.F. This bill addresses some of the errors and oversights that have come to light regarding that act. See "Section-by-Section Analysis" for specific errors and oversights addressed by this bill. There is at least one other bill filed or to be filed this session that address other errors and oversights in ch. 2000-258, L.O.F.

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis".

D. SECTION-BY-SECTION ANALYSIS:

Note: The proposed changes set forth in this bill include changes to ss. 55.201-.209, F.S., which statutes have been enacted, although the effective date of those statutes is October 1, 2001.

Section 1. Amends s. 55.201, F.S., regarding the central database of judgment liens.

Present Situation: Section 55.201, F.S., provides that the Department of State must maintain a database of judgment lien records. Section 55.202(2), F.S., provides that judgment liens are not acquired against property to which an exemption applies, nor to "fixtures, money, negotiable instruments, [or] mortgages."

Effect of Proposed Changes: Amends s. 55.201, F.S., by clarifying that only "certain" personal property may be subject to a judgment lien as filed with the Secretary of State.

Additionally, the term "records" is changed to "files" in this section and throughout the bill to more accurately describe the process with the Secretary of State as filing rather than recording.

Section 2. Amends s. 55.202, F.S., regarding the lien of judgments, orders, and decrees in personal property.

Present Situation: Section 55.202(1), F.S., provides that a judgment lien securing the unpaid amount of any money judgment may be acquired by the holder of a judgment entered by a court of this state; a court of the United States having jurisdiction in this state; a court of the United States or any other state to the extent enforceable under the Florida Enforcement of Foreign Judgments Act, or a foreign state as defined in the Uniform Out-of-Country Foreign Money-Judgment Recognition Act, from the time and to the extent enforceable thereunder. Additional types of judgments, orders, or decrees that may give rise to a judgment lien are also listed.

Effect of Proposed Changes: Amends s. 55.202(1), F.S., to remove the litany of different courts whose final judgment may create a judgment lien, and in place thereof simply provides that any judgment "[e]nforceable under the laws of Florida or of the United States" may create a judgment lien in personal property (provided the judgment holder otherwise complies with the provisions of ss. 55.201-.209, F.S.).

Present Situation: Section 55.202(2), F.S., provides that a judgment lien may be acquired on the judgment debtor's interest in all personal property subject to execution in this state, other than fixtures, money, negotiable instruments, and mortgages.

Section 56.061, F.S., provides that lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, are subject to levy and sale under execution. Section 56.061, F.S., further provides that the interest in personal property in possession of a vendee under a retained title contract or conditional sale contract is subject to levy and sale under execution to satisfy a judgment against the vendee.

Effect of Proposed Changes: Amends s. 55.202(2), F.S., to provide a cross-reference to s. 56.061, F.S., which statute defines what types of property may be subject to a judgment lien. Also, grammar and style changes are made.

Present Situation: Section 55.202(2)(b), F.S., provides that, for any tax lien or assessment granted by law to the state or any of the political subdivisions for any tax enumerated in s. 72.011, a judgment lien may be acquired by recording the lien or warrant with the Department of State. Section 72.011, F.S., provides for jurisdiction of circuit courts in specific tax matters, administrative hearings and appeals, and time for commencing action and parties and deposits in tax matters.

Effect of Proposed Changes: Amends s. 55.202(2)(b), F.S., to provide that the Department of Revenue may file either a judgment lien certificate or a tax warrant. Additionally, this bill deletes the unnecessary cross-reference to s. 72.011, F.S. and specifies that the Department of Revenue must otherwise comply with the filing requirements of ss. 55.201-.209. Conforming changes are made at s. 55.202(5), F.S. Also, grammar and style changes are made.

Present Situation: Section 55.202(2)(c), F.S., provides that a judgment lien is effective as of the date of recording, but no lien attaches to property until the debtor acquires an interest in the property. This paragraph is contrary to s. 55.208, F.S., which provides a phase-out of sheriff's execution dockets and for maintaining priorities previously established by earlier filings (at least as to a specific county). Given the uncertainty of which provision would control, wise judgment holders will likely all attempt to file their judgment lien certificates on or as soon after October 1, 2001 as possible. The resulting "race to the courthouse" has the potential of overwhelming the Secretary of State's Office, for engendering litigation, and possibly creating inequitable results.

Chapter 679, F.S., is the Florida enactment of Article 9 of the Uniform Commercial Code, regarding secured transactions. Chapter 679, F.S., provides for consensual liens against personal property, and for the relative priorities of both consensual liens and judgment liens in personal property. Section 679.301, F.S., provides that "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes a judgment lienholder as provided under ss. 55.202-55.209, F.S., an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

Effect of Proposed Changes: Amends s. 55.202(2)(c), F.S., to provide that the phase-in priority created by s. 55.208, F.S., is controlling over the priority created by the date of filing with the Secretary of State, where and to the extent that s. 55.208, F.S., is applicable. Clarifies that a creditor does not become a lien creditor as to liens under ch. 679, FS., until the debtor acquires an interest in the property. Specifies that priority among competing judgment liens is determined in order of effective date. Also, grammar and style changes are made.

Present Situation: Section 55.202(5), F.S., provides that liens, assessments, or judgments administered by or secured on behalf of any state agency or political subdivision of the state may be filed directly into the central database by such agency or subdivision through electronic or information data exchange programs approved by the Department of State. In practice, the only state agency that would utilize this provision is the Department of Revenue.

Effect of Proposed Changes: Amends s. 55.202(5), F.S., to add tax warrants to the list of types of liens that may be filed electronically. Replaces the reference to any state agency with a reference to only the Department of Revenue.

Section 3. Amends s. 55.203, F.S.; regarding content, filing, and indexing of judgment lien certificates.

Present Situation: In traditional recording of judgment liens with clerks of court (as to real property), and the recording of executions on a sheriff's execution docket (as to personal property, which process is being phased out), the judgment, order, or decree itself is filed and recorded. Once filed, deputy clerks of court, or sheriff's office personnel, respectively, must examine the document and attempt to determine the correct parties to index the document under. There is little uniformity among the documents, and thus the indexing process has the potential for indexing errors. The new processes for filing judgment liens with the Secretary of State requires the holder of a judgment, order, or decree to prepare and file an original judgment lien certificate, a form to be promulgated by the Secretary of State, which will provide a uniform system for entering and indexing judgment liens in personal property.

Section 55.203(1), F.S., provides that the original judgment lien certificate must contain:

- The legal name of each judgment debtor and, if a recorded legal entity, the registered name and document filing number as shown in the records of the Department of State.
- The last known address and social security number, federal identification number, or, in the instance in which the judgment creditor is a state agency or a political subdivision of the state, a taxpayer or other distinct identification number of each judgment debtor, except that in cases of default judgment, the social security number must be included only if known, or federal employer identification number of each judgment debtor.
- The legal name of the judgment creditor and, if a recorded legal entity, the registered name and document filing number as shown in the records of the Department of State, and the name of the judgment creditor's attorney or duly authorized representative, if any.
- The address and social security number or federal employer identification number of 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.
- The signature of the judgment creditor or the judgment creditor's attorney or duly authorized representative.
- With respect to a lien created by a delivery of a writ of execution to a sheriff prior to October 1, 2001, an affidavit by the judgment creditor which attests that the person or entity

possesses any documentary evidence of the date of delivery of the writ, and a statement of that date or a certification by the sheriff of the date.

Effect of Proposed Changes: Amends s. 55.203(1), F.S., to provide that the judgment lien certificate must contain the social security number or federal identification number of the judgment debtor only if the number is shown on the face of the judgment itself.

Present Situation: Section 55.203(5), F.S., provides that the validity of a judgment lien certificate recorded under this section is not defeated by technical or clerical errors made in good faith that are not seriously misleading, nor may any claim of estoppel be based on such errors.

Effect of Proposed Changes: Amends s. 55.203(5), F.S., to provide that technical or clerical errors made by the party filing the judgment lien certificate in good faith and which do not adversely impact any person who reasonably relies thereon will not affect the validity of the judgment lien certificate.

Section 4. Amends s. 55.204, F.S., regarding the duration and continuation of the judgment lien, and destruction of judgment lien records.

Present Situation: Section 55.204(2), F.S., provides that a judgment lien securing the payment of child support or tax obligations owed to the state or its subdivisions lapses twenty years after the date of the original filing of the warrant or other document required to establish the lien. Only one lien recording is allowed. Section 55.204(1), F.S., provides that any other judgment lien lapses five years after the date of recording the judgment lien certificate. Section 55.204(3), F.S., provides that a judgment lien with a five-year duration may be rerecorded one time. The rerecording must be done at any time within the six months prior to the expiration of the lien. The effective date of the rerecorded lien is the date of lapse of the original judgment lien or on the date on which the judgment lien certificate is recorded, whichever is later. The second judgment lien is deemed recorded on its effective date, and is deemed a new judgment lien and thus not a continuation of the original judgment lien. The second judgment lien permanently lapses and becomes invalid 5 years after its effective date, and no additional liens based on the original judgment may be obtained.

Effect of Proposed Changes: Amends s. 55.204(3), F.S., to provide that a five-year judgment lien may be re-filed at any time six months before or six months after lapse of the original judgment lien. The effective date of the re-filed lien is the date of filing of the second judgment lien certificate. Additionally, specifies that the entry of a judgment based on the original judgment does not give rise to new ten-year (5+5) judgment period.

Present Situation: Section 55.204(6), F.S., provides that the Department of State must maintain the record of a filed judgment lien for at least one year beyond when the judgment lien lapses.

Effect of Proposed Changes: Amends s. 55.204(6), F.S., to provide that the Secretary of State must maintain a judgment lien file for a minimum of six years after the judgment lien has been filed or re-filed.

Section 5. Amends s. 55.205, F.S., regarding the effect of a judgment lien.

Present Situation: Section 55.205(1), F.S., provides that a valid judgment lien gives the judgment creditor the right to "take possession of the property subject to levy" through writ of execution, garnishment, or other judicial process. This language may give a judgment creditor the mistaken belief that he or she may, for instance, break into the home of judgment debtor and take any

property found. Under Florida law, the sheriff must levy on (seize) personal property pursuant to enforcement of a judgment lien, and many forms of property are protected from levy by the homestead laws.

Effect of Proposed Changes: Amends s. 55.205(1), F.S., to provide that a valid judgment lien only gives the judgment creditor the right to "proceed against the property of the debtor" through writ of execution, garnishment, or other judicial process.

Present Situation: Section 55.205(2), F.S., provides that a buyer in the ordinary course of business as defined in s. 671.201(9), F.S., takes free of a judgment lien created by ss. 55.201-.209, F.S., even though the buyer knows of existence of the judgment lien. A valid security interest as defined in ch. 679, F.S. in after-acquired property of the judgment debtor, which is perfected prior to the effective date of a judgment lien, takes priority over the judgment lien on the after-acquired property.

Effect of Proposed Changes: Amends s. 55.205(2), F.S., to provide that a valid security interest as defined in ch. 679, F.S., must be perfected before the debtor acquires an interest in the property in order to take priority over the judgment lien on the after-acquired property.

This bill further describes two more situations regarding the effect of a judgment lien and whether that lien remains attached to personal property after that property is sold to a third party. This bill adds subsection (3), which provides that an individual buyer of goods for personal, family, or household use who buys the goods from a seller who held the goods for personal, family, or household use and who pays value without knowledge that the goods are subject to a judgment lien is entitled, to the extent of the value paid, to a lien on the goods superior to the judgment lien. If the buyer has made improvements to the goods, or other reasons justify doing so, a court may adjust the amount secured by the lien as the equities may require. This bill also adds subsection (4), which provides that a buyer of corporate shares takes free of a judgment lien hereunder if the buyer pays value in good faith without knowledge of the judgment lien.

Section 6. Amends s. 55.206, F.S., regarding amendment, termination, release, assignment, continuation, tolling, and correction of a judgment lien record, making grammar and style changes only.

Section 7. Amends s. 55.207, F.S., regarding correction of a judgment lien record, making grammar and style changes only.

Section 8. Amends s. 55.208, F.S., regarding the phase-out of sheriff's execution dockets and the transfer of judgment liens from sheriff's execution dockets to the Secretary of State, making grammar and style changes only.

Section 9. Amends s. 55.209, F.S., regarding fees.

Present Situation: Section 55.209, F.S., provides a fee schedule for filings, certifications, indexing, and copies. No fee is charged for liens, assessments, or judgments filed electronically by a state agency.

Effect of Proposed Changes: Amends s. 55.209(1), F.S., to add that no fee is charged for a tax warrant when filed electronically by the Department of Revenue. Also, an incorrect cross-reference is corrected, and grammar and style changes are made.

Section 10. Amends s. 55.604, F.S., as that section was amended by Section 17 of ch. 2000-258, L.O.F., regarding recognition of foreign judgments.

Present Situation: Sections 55.601-.607, F.S., is the "Uniform Out-of-country Foreign Money-Judgment Recognition Act." Those provisions provide for the recording of, and enforcement of, certain judgments entered by courts not in the United States. Section 55.601(6), F.S., as amended by ch. 200-258, L.O.F., requires that, once an order recognizing a foreign judgment has been entered by a court of this state, the order and a copy of the judgment must be filed with the Department of State and may be recorded in any other county of this state without further notice or proceedings.

Effect of Proposed Changes: Amends s. 55.601(6), F.S., to delete the requirement that the order and a copy of a foreign judgment must be filed with the Department of State. Also, grammar and style changes are made.

Section 11. Amends s. 55.605, F.S., regarding grounds for nonrecognition of an out of country judgment.

Present Situation: Section 55.605(2)(g), F.S., provides that a foreign judgment need not be recognized if the foreign jurisdiction where the judgment was rendered would not give recognition to a similar judgment rendered in Florida. The paragraph further requires the Secretary of State to establish and maintain a list of the foreign jurisdictions to which this paragraph has been found to apply.

Effect of Proposed Changes: Amends s. 55.605(2)(g), F.S., to delete the requirement that Secretary of State establish and maintain a list of the foreign jurisdictions to which the paragraph has been found to apply. This change is made effective upon this bill becoming law.

Section 12. Amends s. 56.21, F.S., as amended by s. 18 of ch. 2000-258, L.O.F., regarding notice of execution sales, making grammar and style changes only.

Section 13. Amends s. 56.27(1), F.S., as amended by s. 19 of ch. 2000-258, L.O.F., regarding the distribution of monies received from a sheriff's levy and sale of personal property.

Present Situation: A judgment creditor may direct the sheriff to seize and sell non-exempt personal property of the judgment creditor. Section 56.27(1), F.S., provides that all money received pursuant to an execution sale is to be paid in the following order: first to the sheriff, for costs of the sale; the levying creditor in the amount of \$500 as liquidated expenses; and then to judgment lienholders in the order of their priority as filed with the Secretary of State. During the phase-out of the sheriff's execution dockets, paying lienholders according to the date of their priority with the Secretary of State could cause a later filed judgment to be paid before one that had earlier been filed on a sheriff's execution docket, but later filed when transferred to the Secretary of State files.

Effect of Proposed Changes: Amends s. 56.27(1), F.S., to replace "judgment lienholder having the earliest recorded judgment lien" with the phrase "holder of the judgment lien with the earliest filed effective date". The concept of "effective date" is created by other sections of this bill to correcting and recognize that a writ of execution currently docketed with a sheriff should be entitled to a higher priority than one later filed with the Secretary of State, as to personal property in the county where the writ of execution was originally filed.

Section 14. Provides an effective date of October 1, 2001 (which does not apply to s. 11 of this bill, which section is effective upon becoming law).

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

When ch. 2000-258, L.O.F., was introduced in last year's session, the following fiscal analysis was provided regarding the transfer of judgment liens to the Florida Secretary of State:

The Department of State estimates the following revenues in future years: \$3.5 million (2001-2002), \$5.2 million (2002-2003), and \$5.7 million (2003-2004).¹

2. Expenditures:

When ch. 2000-258, L.O.F., was introduced in last year's session, the following fiscal analysis was provided regarding the transfer of judgment liens to the Florida Secretary of State:

The bill has an appropriation of \$1,016,969 from the Corporations Trust Fund in fiscal year 2000-2001 to administer this program. Since excess Corporations Trust Fund receipts are transferred to General Revenue during the fiscal year, this appropriation reduces General Revenue by a corresponding amount. In future fiscal years, the bill requires the annual transfer of \$2 million to the Cultural Institutions Trust Fund for use in cultural grant programs and \$1.6 to the Grants and Donations Trust Fund for use in intergovernmental relations programs. Such additional transfers are contingent upon the receipt of corresponding revenues collected under s. 55.209, as created by the act. Even with these transfers and operational expenditures, the Department projects a positive impact on the Corporations Trust Fund, and therefore General Revenue, in future fiscal years.²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to alter the fiscal impacts found in last year's enactment.

¹ House Of Representatives, as Revised By The Committee On Transportation & Economic Development Appropriations Analysis, April 19, 2000, at section III.A.1.

² House Of Representatives, as Revised By The Committee On Transportation & Economic Development Appropriations Analysis, April 19, 2000, at section III.A.2.

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 counties or municipalities have to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The provisions of ch. 2000-258, L.O.F., regarding the duration of a judgment lien in personal property, are carried forward in this bill. Included in those provisions are provisions that cut off judgment lien rights not transferred to the Secretary of State records within the phase-in period, a shortening of the effective life of a judgment lien in personal property from the current twenty years to a maximum of ten years, and modification of the priority of judgment liens (current law provides that first in time is first in right, by these changes a re-recorded lien loses priority after five years).

At first blush, it may appear that these changes in lien rights may be an unconstitutional taking. *City of Sanford v. McClelland*, 163 So. 513, 514-15 (Fla. 1935). However, a judgment lien in the possession of a sheriff is not an actual lien on property until the sheriff actually takes possession of property subject to the judgment. *Love v. Williams*, 4 Fla. 126 (Fla. 1851). The two year phase-in period is more than sufficient for persons currently holding judgments to execute on them.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Section 4.

Section 55.204(2), F.S., provides that certain judgment liens are effective for twenty years from when they are filed the Secretary of State. However, s. 55.081, F.S., provides a statute of limitations on judgment liens, stating that no judgment lien may be a lien upon real or personal property after the expiration of twenty years from entry of the judgment, order or decree. It is unlikely that any judgment creditor will be able to (or would want to try to) prepare and file a judgment lien certificate on the same day that the court enters (signs) the judgment, order, or decree; and thus s. 55.204(2), F.S., will likely have the effect of extending across the board certain judgment liens in personal property beyond the life of the judgment, order, or decree. The conflict between these provisions was not addressed in the enactment last session, and is not addressed by this bill.

Section 55.204(2), F.S., provides that certain judgment liens have a twenty-year life. However, s. 55.204(6), F.S., as amended by this bill, allows the Department of State to destroy the record of a judgment lien after six years. It is unclear why the bill would allow for destruction of the records of a valid judgment fourteen years before its expiration.

Previous Unaddressed Comments.

The following comments were written by the Committee on Judiciary in regards to HB 1725 from the 2000 Legislative Session, which bill contained, among other things, the judgment lien provisions being amended by this bill. The issues raised by these comments were not addressed in last year's enactment, nor are not addressed by this bill:

The bill raises the question about how pro se creditors or debtors, small business owners, or other persons who may not retain counsel may research the status of any liens if those liens are recorded in Tallahassee. While the Department of State does make materials available online, certain interested persons may not have Internet access or otherwise be able to use the world wide web to verify the status of a lien. In the absence of local repositories of lien records, some Floridians may be at a disadvantage in perfecting or determining the status of those liens affected by the bill.

The bill does not require notice to lienholders regarding certification under section 1. Such lienholders will lose their liens and revert to unsecured creditors presumably, if they do not certify their liens with the Department of State. In addition, section 12 of the bill requires certain lienholders to record a certificate with the Department of State. Failure to do so results in abandonment of such lien. There is no provision in the bill for notice of these requirement to lienholders, who may suffer loss of their lien rights without being aware of the effects of such loss.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 27, 2001, the Committee on Judicial Oversight adopted four amendments to this bill:

1. This bill provides that the Florida Secretary of State may destroy a judgment lien record six years after the judgment is filed, even though some judgment liens are effective for twenty years. This amendment removes the proposed change and maintains current language regarding when the Secretary of State may destroy judgment lien files.
2. This amendment clarifies that a judgment lien filing does not extend the effective life of a judgment.
3. This amendment changes two provisions regarding guardianship that were made in ch 2000-258, L.O.F. The first change provided that a debt under a negotiable instrument that will be become due to a defendant is subject to garnishment. By this amendment, a debt under a negotiable instrument that will become due to the defendant in the future is not subject to a current garnishment. The second change provided that all debtors subject to garnishment must be given a form entitled "Notice to Debtor". This amendment provides that the notice requirement is only applicable to natural persons. The third change is applicable to judgment lien certificates, and provides that a judgment lien certificate is not an adverse claim to a financial asset.
4. This amendment is a technical title amendment.

STORAGE NAME: h0601a.fpr.doc

DATE: March 28, 2001

PAGE: 14

The bill was then reported favorably as amended.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT :

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

Kama Monroe

Staff Director:

Greg Turbeville