

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 493 w/CS Delivery of Writs, Notice, and Service of Process  
**SPONSOR(S):** Rep. Simmons  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 222

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N w/CS	Thomas	Havlicak
2) Judicial Appropriations Subcommittee	7 Y, 0 N	Davis	DeBeaugrine
3) Appropriations	35 Y, 0 N w/CS	Davis	Baker
4)			
5)			

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### SUMMARY ANALYSIS

The bill amends provisions relating to the delivery of writs, notice, and service of process. The bill allows witness subpoenas in criminal traffic cases, misdemeanor cases, and second or third degree felony cases to be served by any form of United States mail, rather than by certified mail only. The bill permits the posting of any criminal witness subpoena after three unsuccessful attempts to serve the subpoena at the residence of the witness on different dates and at different times of day. The bill requires the person serving process to annotate certain information on the document after service. In cases in which the only address for the person to be served is a private mailbox, the bill allows service on the person in charge of the private mailbox if it is verified that the person to be served maintains a private mailbox at that location. The bill provides for notice by regular U.S. mail, that is not certified, that is sent by the holder to the maker or drawer of a check, draft, or order, payment of which is refused because of lack of funds or credit.

The bill may allow for cost savings by state and local governments. The impact, however, is indeterminate because of a lack of data on how frequently these entities will take advantage of the reduced requirements.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0493e.ap.doc  
**DATE:** March 22, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

The bill amends provisions relating to the delivery of writs, notice, and service of process. The bill allows witness subpoenas in criminal traffic cases, misdemeanor cases, and second or third degree felony cases to be served by any form of United States mail, rather than by certified mail only. The bill permits the posting of any criminal witness subpoena after three unsuccessful attempts to serve the subpoena at the residence of the witness on different dates and at different times of day. The bill requires the person serving process to annotate certain information on the document after service. In cases in which the only address for the person to be served is a private mailbox, the bill allows service on the person in charge of the private mailbox if it is verified that the person to be served maintains a private mailbox at that location. The bill provides for notice by regular U.S. mail, that is not certified, that is sent by the holder to the maker or drawer of a check, draft, or order, payment of which is refused because of lack of funds or credit.

#### **Section 1: Relating to Service of Process Generally and Witness Subpoenas**

Current law provides that service of process is generally made by “delivering a copy ... to the person to be served ... or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.”<sup>1</sup> Witness subpoenas may be served in the same manner.<sup>2</sup> A witness subpoena in non-capital, non-first-degree-felony criminal cases may also be served by certified mail to the witness at his or her last known address provided it is mailed at least seven days before the witness’s appearance is required.<sup>3</sup>

Substitute service may be made on the spouse of the person to be served, if the proceeding is not an adversarial one between the spouse and the person to be served.<sup>4</sup> Substitute service may also be made “on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business.”<sup>5</sup>

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<sup>1</sup> Section 48.031(1)(a), F.S.

<sup>2</sup> Section 48.031(3), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 48.031(2)(a), F.S.

<sup>5</sup> Section 48.031(2)(b), F.S.

## Proposed Changes

### Section 1 of the bill:

- amends s. 48.031(3), F.S., to allow service of witness subpoenas by any form of United States mail, rather than requiring mail service only by certified mail; provides that failure of a witness to appear in response to a subpoena served by U.S. Mail that is not certified may not be grounds for finding the witness in contempt of court;
- creates s. 48.031(3)(b), F.S., to provide that a criminal witness subpoena may be posted by a person authorized to serve process at the witness's residence after three service attempts have been made at the witness's residence at different times of the day or night on different dates, provided it is posted at least five days prior to the witness's required appearance;
- creates a new subsection (5) of s. 48.031, F.S., to require the person serving process to put the date and time served and his or her initials and identification number on the copy of the process that is served;
- creates a new subsection (6) of s. 48.031, F.S., to provide that, when the only address available from public records for a person or business to be served is a private mailbox, substitute service of process may be made by leaving a copy of the process with the person in charge of that mailbox. This may only be done after the person serving process has made a reasonable investigation as to the location of the person to be served and only after determining that the person or business to be served does, in fact, maintain a mailbox at that location.

## **Section 2: Relating to Service on Corporations**

Section 48.081, F.S., provides, in pertinent part:

- (1) Process against any private corporation, domestic or foreign, may be served:
  - (a) On the president or vice president, or other head of the corporation;
  - (b) In the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager;
  - (c) In the absence of any person described in paragraph (a) or paragraph (b), on any director; or
  - (d) In the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state.
- (2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state.
- (3) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's place of business.

Section 48.091(1), F.S., provides that every Florida corporation and every foreign corporation authorized to do business in Florida must designate a registered agent and a registered office in accordance with ch. 607, F.S. The corporation must keep the registered office open and staffed by a registered agent at least between 10:00 AM and 12:00 noon each day except weekends and legal holidays and must keep a sign in the office designating the name of the corporation and the name of the registered agent on whom process may be served.<sup>6</sup>

#### Proposed Changes

Section 2 of the bill amends s. 48.081(3), F.S., to provide that, in cases where a corporation has not complied with the provisions of s. 48.091, F.S., in addition to service on any employee at the corporation's principal place of business, service of process is permitted on any employee of the registered agent. This section further provides that if the address provided for a director, officer or registered agent is a residence or private mailbox, service on the corporation may be made as provided in the new provisions of s. 48.031(6), F.S., as discussed above.

#### **Section 3: Relating to Return of Execution of Process**

Section 48.21, F.S., requires an officer to whom process is directed to make certain notations on the process or on a return-of-service form attached to the process. The information required to be notated is "the time when it comes to hand, the time when it is executed, the manner of execution, the name of the person on whom it was executed and if such person is served in a representative capacity, the position occupied by the person. A failure to state the foregoing facts invalidates the service," but it may be amended to correct the omission.<sup>7</sup> The court is given discretion to impose a fine of no more than \$10 if the required notations are not made.<sup>8</sup>

#### Proposed Changes

Section 3 of the bill amends s. 48.21, F.S., to broaden the application of this section to include "the person who effects service of process" rather than only "officers to whom process is directed." The changes refer to "service" rather than "execution" of process, and requires the use of a return-of-service form and notation of both date and time of receipt and service. These changes will make the information included in a return-of-service uniform regardless of whether the process is served by a sheriff's deputy, a certified process server, or another person appointed by the court.

#### **Section 4: Relating to Certification of Process Servers**

Section 48.29, F.S., provides the chief judge of each judicial circuit with authority to establish a list of certified process servers who may serve initial, non-enforceable civil process. A certified process server must be at least 18 years of age, have no mental or legal disability, be a permanent resident of the state, submit to a background investigation, provide a certificate of good conduct, submit to any required examination, execute a bond of \$5,000, and take an oath of office.<sup>9</sup> The section also requires certified process servers to make certain notations on the face of any process that is served.

#### Proposed Changes

Section 4 of the bill amends s. 48.29(6)(a), F.S., to revise the requirement for certified process servers to annotate certain information on the face of the original and any served copies of the process and requires instead that the server annotate information on the face of the documents as provided in s. 48.031(5), F.S.

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<sup>6</sup> Section 48.091(2), F.S.

<sup>7</sup> Section 48.21, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 48.29(3), F.S.

## **Section 5: Relating to Levies on Distress Writs**

Part I of ch. 83, F.S., governs nonresidential tenancies. Section 83.12, F.S., provides for issuance of a distress writ in non-residential tenancy cases by the court having jurisdiction over the amount in controversy in the county where the land is located. A distress writ prohibits removal of certain property from real property that is subject to distress for rent or advances and provides for levy on the property.<sup>10</sup> Section 83.13, F.S., provides that the county sheriff is responsible for service of distress writs. If the property subject to the writ is in another county, the sheriff is required to deliver the writ to the other county's sheriff. Section 83.10, F.S., provides landlords with liens on crops grown on rented land for advances "for the sustenance or well-being of the tenant or the tenant's family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market." Enforcement of this lien is by means of a distress writ.<sup>11</sup>

### **Proposed Changes**

The bill amends s. 83.13, F.S., to provide that the party who sought a distress writ is responsible for delivering it to the sheriff of the appropriate county if the property that is subject to levy is found in another county. This relieves the sheriff of the county where the writ was issued from responsibility for transmitting the writ.

## **Section 6: Relating to Intent to Defraud**

Chapter 832, F.S., provides for violations relating to checks and drafts. Section 832.07, F.S., provides for a means of establishing prima facie evidence of intent to defraud or knowledge of insufficient funds when a check, draft, or order is refused due to lack of funds or credit. Under the statute, once a check, draft, or order is refused, the maker or drawer of the check, draft, or order must pay the money owed, plus service fees, to the holder within seven days of receipt of notice from the holder that the check, draft, or order was refused. Failure to pay within the seven days of receipt of the notice constitutes prima facie evidence<sup>12</sup> that the maker or drawer of the check, draft, or money order had intent to defraud or had knowledge that there were insufficient funds to pay the check, draft, or order. The statute further provides that notice mailed by certified or registered mail, evidenced by return receipt, to the address printed on the check or given at the time of issuance, is equivalent to notice having been received by the maker or drawer, whether or not such notice is returned undelivered.

### **Proposed Changes**

The bill amends s. 832.07(1), F.S., to provide that notice sent by the holder to the maker or drawer by first class-mail, evidenced by an affidavit of service of mail, to the address printed on the check or given at the time of issuance, is equivalent to notice having been received by the maker or drawer, whether or not such notice is returned undelivered. The bill also provides that the notice may be sent to the maker's or drawer's last known address if that address is based on more accurate information.

## **Section 7: Relating to Service of Process by the Department of Revenue**

Section 7 of the bill makes a conforming change correcting a cross-reference found in s. 409.257, F.S. This statute relates to service of process by the Department of Revenue in furtherance of its obligations to enforce child support orders under ch. 409, F.S. Section 409.257, F.S., provides that the

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<sup>10</sup> Section 83.12, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> "Prima Facie Evidence" is defined as "Evidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient." Black's Law Dictionary, revised 4<sup>th</sup> Edition, (West Publishing Co.).

Department may serve witness subpoenas by certified mail pursuant to s. 48.031(3), F.S. The bill amends s. 48.031(3) to allow service of witness subpoenas by regular mail, as well as by certified mail. Section 7 of the bill amends s. 409.257, F.S., to conform.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 48.031, F.S., relating to service of process in general and to service of witness subpoenas by mail.

**Section 2:** Amends s. 48.081(3), F.S., relating to service of process on corporations.

**Section 3:** Amends s. 48.21, F.S., relating to the return of execution of process.

**Section 4:** Amends s. 48.29, F.S., relating to the certification of process servers.

**Section 5:** Amends s. 83.13, F.S., relating to distress writs for rent or advances.

**Section 6:** Amends s. 832.07(1), F.S., relating to prima facie evidence of intent regarding checks and drafts.

**Section 7:** Amends s. 409.257, F.S., correcting a statutory cross-reference relating to service of witness subpoenas by the Department of Revenue.

**Section 8:** Provides that the bill takes effect on July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Because this bill eliminates the need for certified mail in certain criminal cases, this bill may reduce the state's postal expenses. The current United States Postal Service rate for certified mail is \$2.30, while the first-class letter rate is \$0.37.<sup>13</sup> The amount of reduction is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By placing the responsibility for delivering distress writs to sheriffs in other counties on plaintiffs rather the sheriffs in the counties where they are issued, this bill may reduce the amount of time spent by sheriffs on this process. Any resulting savings appear negligible.

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<sup>13</sup> For United States Postal Service rates, see their website at <http://www.usps.com/ratecase/special.htm>.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mailing a certified letter currently costs \$1.93 more than sending a letter by regular mail. The impact of permitting service by regular mail appears to be insignificant for individual litigants, but there may be beneficial savings for commercial litigants who process a significant volume of routine cases. Similarly, the change in the responsibility for delivery of distress writs will probably not result in significant financial impact to individual litigants.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill was amended in the House Committee on Judiciary on March 3, 2004. The differences between the bill as filed and the bill as amended are:

- Provides that the failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court;
- Removes a provision from the bill which grants access for process servers to gated communities; and
- Adds a section to the bill providing for notice by regular U.S. mail, that is not certified, that is sent by the holder to the maker or drawer of a check, draft, or order, payment of which is refused because of lack of funds or credit.

On March 19, 2004, the House Committee on Appropriations adopted the following two amendments to CS/HB 493, then reported the bill favorably.

- Allowing the Department of Financial Services to send certain service of process in limited situations, through any verifiable means, e.g. facsimile in lieu of registered or certified mail.
- Allows an individual fifteen days, rather than the current seven, to make payment on the amount drawn on a bad check.