



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the types of acts which will subject a person to the jurisdiction of Florida courts, increases the types of contracts which can have choice of law agreements in Florida, and increases the responsibilities and duties of the Secretary of State.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Section 48.193(1), F.S., provides that state courts have personal jurisdiction over any person, whether or not a citizen or resident of the state, who personally or through an agent does any of the following acts:

- Operating, conducting, engaging in, or carrying on a business in this state, or having an office or agency in this state;
- Committing a tort within the state.
- Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
- Contracting to insure any person, property, or risk located within this state at the time of contracting.
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if:
  - The defendant was engaged in solicitation or service activities within this state; or
  - Products, materials, or things processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of commerce, trade, or use.

Sections 685.101 and 685.102, F.S., also pertain to the jurisdiction of Florida courts. Section 685.101, F.S., provides that any party to a contract involving at least \$250,000 can agree that the law of Florida will govern whether or not the contract bears any relation to the state. This provision does not apply to any contract:

- Regarding any transaction that does not bear a substantial or reasonable relation to the state of Florida in which every party is either a resident or citizen of the United States, but not this state, or incorporated or organized under the laws of another state and does not maintain a place of business in Florida.
- For labor or employment.
- Relates to any transaction for personal, family, or household purpose, unless the contract concerns a trust where at least one trustee resides or transacts business as a trustee in this state.

Section 685.102, F.S., provides that any person can file in the state of Florida any action or proceeding against a person or entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract for which a choice of the law of agreement in Florida has been made pursuant to the provisions described above in s. 685.101, F.S.

Section 48.081, F.S., provides the manner in which service of process can be served on a corporation. Service of process is the formal delivery of the first legal notice to a defendant that the defendant is being sued. Since a corporation is not an individual that can be personally served, this section provides the individuals within a corporation that can be served on behalf of the corporation. Process can be served on the president, vice president, cashier, treasurer, secretary, general manager, any director, or business agent residing in Florida. Process may also be served on the person designated by the corporation for receipt of process, known as the "registered agent".

Section 55.502, F.S., provides for the definition of a "foreign judgement" under the "Florida Enforcement of Foreign Judgments Act". The general purpose of the Florida Enforcement of Foreign Judgments Act is to make uniform the law with respect to enforcing foreign judgments among the states enacting it. The Act provides the method by which foreign judgments, entitled to full faith and credit under constitutional standards, may become Florida judgments for enforcement purposes. Subject to the judgment debtor's right to file an action within a specified time challenging the validity of the foreign judgment, the Act permits the enforcement of the foreign judgment without the filing of a separate action. A "foreign judgment" is any judgment, decree, or order of a court of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.

### **Effect of Bill**

This bill amends s. 48.193(1), F.S., to provide that entering into a contract where there is a choice of Florida law agreement, pursuant to s. 685.101, F.S., will subject a person to the jurisdiction of Florida courts, whether or not they are a citizen or resident of Florida.

This bill amends s. 685.101(2), F.S. to expand the types of contracts that can have choice of law agreements. This bill removes the provision that this section does not apply to "any contract regarding any transaction that does not bear a substantial or reasonable relation to the state of Florida in which every party is either a resident or citizen of the United States, but not this state, or incorporated or organized under the laws of another state and does not maintain a place of business in Florida". Therefore, parties that are not citizens or residents of Florida and whose contract is not substantially or reasonably related to Florida would be able to agree that the law of Florida will govern the contract.

This bill also amends s. 685.101(2), F.S., to remove the provision that choice of law agreements pursuant to s. 685.101, F.S., will not apply to contracts relating to any transaction for personal, family, or household purpose, "unless the contract concerns a trust where at least one trustee resides or transacts business as a trustee in this state". Therefore, it appears that a contract or agreement that concerns a trust where at least one trustee resides or transacts business as a trustee in Florida will not be allowed to have a Florida choice of law agreement.

This bill also amends ss. 685.101(4) and 685.102(3) F.S., to provide that this section applies to contracts entered into on or before June 30, 2006. This bill removes language in both sections providing that the two sections apply to "contracts entered into prior to June 27 1989, if an action or proceeding relating to the contract is commenced on or after June 27, 1989".

This bill amends s. 48.081, F.S., to provide that when all other persons that can be served process on behalf of a corporation as provided in current law are unavailable, process can be served on the Secretary of State in the case of a domestic corporation or a registered foreign corporation.

This bill amends s. 55.502, F.S., to revise the definition of a "foreign judgment". This bill provides that a foreign judgment is any judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state. The change in the definition that a foreign judgment consists of an judgment of the United States or "any other court" which is entitled to full faith and credit in this state allows judgments from courts in U.S. territories and other places under U.S. jurisdiction that are not states. Current law provides that a foreign judgment only pertains to courts of "any other state, or of the United States".

C. SECTION DIRECTORY:

Section 1 amends s. 48.081, F.S., to provide that the Secretary of State can be served process on behalf of a domestic corporation or a registered foreign corporation.

Section 2 amends s. 48.193, F.S., to provide that entering into a contract that complies meets certain requirements will subject a person to the jurisdiction of Florida courts.

Section 3 amends s. 55.502, F.S., to revise the definition of "foreign judgment".

Section 4 amends s. 685.101, F.S., to revise the types of contracts where a choice of law agreement in Florida is permitted.

Section 5 amends s. 685.102, F.S., to revise the timeframe that contracts must be entered to apply to the provisions of the section.

Section 6 provides an effective date of June 30, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill allows the Secretary of State to be served on behalf of a domestic corporation or registered foreign corporation. The filing fee for each service of process collected by the department is \$8.75. This would have an indeterminate increase on state government revenues.

2. Expenditures:

This bill, by allowing persons to serve process on the Department of State on behalf of domestic corporations and registered foreign corporations, will cause an indeterminate increase of state government expenditures, related to filing and forwarding service of process papers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A