

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes -- This bill increases the fees charged by a sheriff for service of process.

B. EFFECT OF PROPOSED CHANGES:

Background

Service of process is the formal delivery of a writ, summons, or other legal process or notice. Statutes governing the service of process are strictly construed to insure that a defendant receives notice of an action against them and has the opportunity to protect their rights. There are two types of service of process, enforceable and non-enforceable. Enforceable service involves a court order requiring the sheriff to take action. Non-enforceable service of process is designed to place another party on notice that he or she must take action.

All process must be served by the sheriff of the county where the person to be served is found, except in the case of non-enforceable process¹, which may be served by a special or certified process server.² Florida law establishes three categories of persons by whom process may be served in Florida. These persons include a sheriff, a person appointed by the sheriff in the sheriff's county (known as a special process server) and a certified process server appointed by the chief judge of the circuit court.³ Any person authorized by the rules of procedure may also serve witness subpoenas.⁴

Present Situation

The county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions under a schedule established by statute.⁵ All fees collected under the statutory provisions for sheriffs' fees for service of process are to be paid monthly into the county's fine and forfeiture fund.⁶

A special process server may charge any reasonable fee for services⁷, which can be more or less than the statutorily set fee for sheriffs.

Section 30.231, F.S., provides that the sheriff must charge \$20.00 for service of summons or writs except for executions⁸ and \$20 for each witness to be served. Executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. The sheriff's office must keep files and index these orders. For executions, the sheriff must charge \$20.00 for docketing and indexing each writ of execution, \$20 for advertisement of the sale of property under process, \$20 for each sale under process, and \$20 for each deed, bill of sale, or satisfaction of judgment. This fee was last increased in 1994, and \$20 in 1994 equates to \$27.21 today.⁹

¹ Types of non-enforceable service of process include summons, subpoenas, orders to show cause, injunctions, notices, and writs of garnishment.

² Section 48.021(1), F.S.

³ *Abbate v. Provident Nat. Bank*, 631 So. 2d 312 (Fla. 5th DCA 1994).

⁴ Section 48.021(1), F.S.

⁵ Section 30.231(1), F.S.

⁶ Section 30.231(5), F.S.

⁷ Section 48.021(3), F.S.

⁸ "Executions", in this section, refer to court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. The sheriff's office must keep files and index these orders

⁹ American Institute for Economic Research <www.aier.org>.

When any process for any defendant is returned not executed, or returned improperly executed, the party issuing it is entitled to such additional process against the unserved party as is required to effect service. Section 30.231, F.S., provides that additional fees cannot be charged for these alias writs¹⁰ and pluries¹¹ documents when service was not effected on the original documents in that county by that sheriff. In many cases, it may take more than one attempt to effect service of process. This provision restricts sheriffs from charging additional fees in these situations.

Effect of Bill

This bill amends s. 30.231, F.S., to increase the fees described above from \$20 to \$40.

The bill also removes the provision that additional fees cannot be charged for alias writs or pluries when service was not effected on the original documents in that county by that sheriff. The effect of this provision in the bill is that sheriffs will now be able to charge the party requesting service for each additional document, where the first document was unable to be executed or served on the requisite party.

C. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., to increase the fee that must be charged by sheriffs for service of process and executions from \$20 to \$40, and removes the provision restricting the sheriff from charging additional fees for alias writs or pluries.

Section 2 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill appears to increase the amount of money that is collected by the sheriffs for carrying out their service of process duty thereby increasing county revenues. See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill increases the cost to persons paying a sheriff for service of process from \$20 to \$40.

¹⁰ An alias writ is an additional writ issued after another writ of the same kind in the same case. In other words, it is a writ issued where one of the same kind has already been issued in the same cause, but has lost its force without having been effective.

¹¹ Pluries is a third or subsequent writ issued when the previous writs have been ineffective. It is a writ issued after an alias writ.

D. FISCAL COMMENTS:

Unknown market factors will affect the fiscal impact of this bill. If private process servers increase their fees as a result of this bill, they will see increased revenues, persons requesting service of process will pay increased fees, and the ratio of process served by private process servers and sheriffs will likely remain as it is. If however, private process servers do not match the fee increase, then sheriffs will likely see a decrease in requests for service of process and this will lead to a decrease in revenues.

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.

D. STATEMENT OF THE SPONSOR

This legislation proposes an increase in the fees charged for service of process by the sheriff's department, which will more adequately reflect the cost to perform this function.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A