

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 567 Judgment Interest

**SPONSOR(S):** Hudson

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Appropriations Subcommittee	13 Y, 0 N	Piscitello	Topp
2) Judiciary Committee			
3) Appropriations Committee			

### SUMMARY ANALYSIS

The bill requires the Chief Financial Officer to adjust the statutory rate of interest payable on judgments or decrees on a quarterly basis by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 300 basis points to the averaged federal discount rate.

Under current law the Chief Financial Officer is required to annually set the rate of interest that is payable on judgments. The rate is calculated by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months and adding 500 basis points to the averaged federal discount rate.

The Department of Financial Services estimates an insignificant fiscal impact to implement the quarterly calculation of the interest payable on judgments or decrees.

The potential revenue loss of interest related to judgments or decrees owed the State of Florida or to a local government based on the reduction in basis points from 500 to 300 is indeterminate.

The bill provides an effective date of July 1, 2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Prejudgment and Post-judgment Interest**

Interest can accrue on both prejudgment and post-judgment awards. Prejudgment interest is awarded for the time between the loss of a vested property right and the time that judgment is entered. The purpose is to compensate the prevailing party for loss of use of his or her money from the date that it is determined he or she is entitled to a sum of money to the time when final judgment is entered.<sup>1</sup> Post-judgment interest, on the other hand, is awarded for the period between the final judgment and the time when the entire sum of the money is collected.<sup>2</sup>

The purpose of post-judgment interest is two-fold: to encourage parties to pay damages quickly and to compensate the prevailing party for the inability to use the awarded money while the appeal is pending, which can take years.<sup>3</sup> Prejudgment interest is generally only allowed on liquidated damages (those agreed to ahead of time by the parties).<sup>4</sup> In other cases, the general rule is that interest typically begins to accrue when the judgment is entered.<sup>5</sup> "Prejudgment and post-judgment interest serve exactly the same purpose, albeit for different time periods: they make the plaintiff whole for having been deprived of the use of the principal loss amount."<sup>6</sup>

#### **Judgment Interest Rates**

Pursuant to s. 55.03, F.S., on December 1 of each year, the Chief Financial Officer is required to set the rate of interest payable on judgments or decrees for the year beginning January 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged federal discount rate.<sup>7</sup> A basis point is one one-hundredth of a percentage point, used to express the movement of interest rates or index pricing.<sup>8</sup> Interest rates are adjusted annually to reflect current market conditions, which vary over time.

The interest rate established in statute does not affect a rate of interest established by written contract or obligation.<sup>9</sup> Section 55.03, F.S. provides that in all cases where interest accrues without a special contract for the rate, the statutory rate will be applied.<sup>10</sup> Thus, the statutory interest rate applies to both prejudgment and post-judgment interest absent a different rate previously agreed upon by the parties. Although the interest rate is adjusted annually, the rate at the time the judgment is obtained remains consistent until it is fully paid.<sup>11</sup>

The judgment interest rate for 2011 is 6 percent.<sup>12</sup> Since 1995, the judgment rate has fluctuated as shown in the chart below:<sup>13</sup>

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<sup>1</sup> Jorge A. Lopez, *Prejudgment and Postjudgment Interest: What's in a Name?*, 76 FLORIDA BAR JOURNAL 20 (Mar. 2002) (citing *Alvarado v. Rice*, 614 So. 2d 498 (Fla. 1993); *Becker Holding Corp. v. Becker*, 78 F.3d 514, 516-17 (11th Cir. 1996); *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985); *Kissimmee Util. Auth. v. Better Plastics, Inc.*, 526 So. 2d. 46 (Fla. 1988)).

<sup>2</sup> Lopez, *supra* note 1 (citing *Becker*, 78 F.3d at 516).

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

<sup>4</sup> Lopez, *supra* note 1 (citing *Hurley v. Slingerland*, 480 So. 2d 104 (Fla. 4th DCA 1985)).

<sup>5</sup> *Haskell v. Forest Land and Timber Co., Inc.*, 426 So. 2d 1251, 1253 (Fla. 1st DCA 1983).

<sup>6</sup> *Becker*, 78 F.3d at 516.

<sup>7</sup> Section 55.03(1), F.S.

<sup>8</sup> Federal Reserve Bank of New York, *Maiden Lane Glossary*, available at [http://www.newyorkfed.org/markets/ml\\_glossary.html](http://www.newyorkfed.org/markets/ml_glossary.html) (last visited Mar. 4, 2011).

<sup>9</sup> Section 55.03(1), F.S.

<sup>10</sup> Section 687.01, F.S.

<sup>11</sup> Section 55.03(3), F.S.

<sup>12</sup> Florida Department of Financial Services, *Statutory Interest Rates Pursuant to Section 55.03, Florida Statutes* (2011), available at <http://www.myfloridacfo.com/aadir/interest.htm> (last visited Mar. 4, 2011).

<sup>13</sup> Between October 1, 1981 and December 31, 1994, the statutory interest rate was 12 percent. See, Ch. 81-113, Laws of Fla. (providing for interest rate of 12 percent); Ch. 94-239 s. 8, Laws of Fla. (requiring calculation of interest rate on annual basis as provided in current law).

### PRIOR YEAR RATES

YEAR	PER ANNUM
2010	6%
2009	8%
2008	11%
2007	11%
2006	9%
2005	7%
2004	7%
2003	6%
2002	9%
2001	11%
2000	10%
1999	10%
1998	10%
1997	10%
1996	10%
1995	8%

The bill provides for quarterly adjustments to the statutory judgment interest rate, as opposed to the annual adjustment currently in place. The bill specifies that the rate adjustments will be calculated on January 1, April 1, July 1, and October 1 of each year. This change will result in interest rates reflecting more current market conditions, as conditions will be evaluated more frequently. Additionally, the bill lowers the number of basis points to be added to the averaged federal discount rate from 500 to 300, which may result in lower percentages. The bill also makes a conforming change to s. 717.1341, F.S., regarding invalid claims, recovery of property, and interest penalties. The section currently refers to annual adjustments to the interest rate.

The bill provides an effective date of July 1, 2011

#### B. SECTION DIRECTORY:

Section 1. Amends s. 55.03, F.S. relating to judgments; rate of interest, generally.

Section 2. Amends s. 717.1341, F.S. relating to invalid claims, recovery of property, interest and penalties.

Section 3. Provides effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The potential revenue loss of interest related to judgments or decrees owed the State of Florida based on the reduction in basis points from 500 to 300 is indeterminate.

2. Expenditures:

The Department of Financial Services (DFS or department) will be required to calculate the interest on judgments and decrees quarterly rather than annually. The department reports that the current annual process requires 15 hours of staff time to prepare and review calculations and to mail notifications to approximately 150 clerks of court and circuit judges. A notice must also be placed in the Florida Administrative Weekly. If calculations are done quarterly, DFS expects staff time to increase to 60 hours per year for calculations and mailings along with an additional 250 hours of staff time to make necessary programming changes to the Florida Accounting Information Resource System (FLAIR). There will also be some cost associated with additional postage and mailing materials for notices. The department estimates an insignificant fiscal impact associated with making the quarterly calculation of interest on judgments and decrees.<sup>14</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The potential revenue loss of interest related to judgments or decrees owed local governments based on the reduction in basis points from 500 to 300 is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lower interest rates may potentially be paid by non-prevailing parties on judgments or decrees based on market conditions impacting interest rate fluctuations.

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 spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>14</sup> Department of Financial Services, House Bill 567 Analysis, February 22, 2011, on file with the Government Operations Appropriations Subcommittee.