

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 59 Service of Process  
**SPONSOR(S):** Civil Justice Subcommittee; Julien  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Billmeier	Bond
2) Judiciary Committee			

### SUMMARY ANALYSIS

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. This bill requires that a process service must be granted unannounced entry to a gated residential community, to a condominium, or to a cooperative, including the common areas and common elements where a defendant resides or is known to be.

This bill allows for service of process on an employee of a corporation's registered agent in situations in which the registered agent is unavailable.

Current law requires a process server to document on the copy served the date and time of service, the process server's identification number, and the process server's initials. This bill requires that a process server place this information on the front page of the copy served.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Service of Process**

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., identifies three classes that may serve process in civil cases. Process may be served by the sheriff in the county where the defendant is located.<sup>1</sup> The sheriff may appoint special process servers who meet specified statutory minimum requirements.<sup>2</sup> The chief judge of the circuit court may establish an approved list of certified process servers.<sup>3</sup> Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.<sup>4</sup> Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.<sup>5</sup>

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper 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>6</sup> Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.<sup>7</sup>

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process. The sheriffs must charge \$40 for docketing and indexing each writ of execution, regardless of the number of persons involved. It is the responsibility of the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.<sup>8</sup>

#### **Service of Process in Gated Residential Communities**

The growth in the number of gated residential communities (communities composed of multifamily residences and single-family residences that have entrances locked or otherwise restrict physical access to their dwellings) have presented a challenge to litigants' efforts to provide service of process to party defendants living in these residences.<sup>9</sup> In *Luckey v. Thompson*, the court noted the difficulty in serving a defendant who "secreted himself from the world and lived in isolation in a high security apartment refusing to answer the telephone or even to open the mail."<sup>10</sup> In *Boatfloat LLC v. Golia*, the

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<sup>1</sup> Section 48.021, F.S.

<sup>2</sup> Section 48.021, F.S.

<sup>3</sup> Section 48.27, F.S.

<sup>4</sup> *Vidal v. SunTrust Bank*, 41 So 3d 401, 402-03 (Fla. 4th DCA 2010).

<sup>5</sup> Section 48.031, F.S.; *Vidal*, 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).

<sup>6</sup> Sections 48.031(1), (3), F.S.

<sup>7</sup> Sections 48.29 and 48.031(5), F.S.

<sup>8</sup> *See s. 30.321*, F.S.

<sup>9</sup> *See Luckey v. Thompson*, 343 So.2d 53 (Fla. 3d DCA 1977); *Boatfloat LLC v. Golia*, 915 So.2d 288 (Fla. 4th DCA 2005).

<sup>10</sup> *Luckey*, 343 So.2d at 54.

court noted the challenge of successfully serving a company's registered agent when the only address is a gated residential community and the company does not have regular business hours open to the public.<sup>11</sup> In *Delancy v. Tobias*, 26 So.3d 77, 80-81 (Fla. 3d DCA 2010), the court allowed substituted service in part because the process server was barred from accessing the defendant due to his gated residence.

## **Condominiums**

Condominiums are regulated under chapter 718, F.S. Condominium property that is not located within the boundaries of individual condominium units and is jointly owned by all condominium unit owners in a condominium is defined as common elements.<sup>12</sup>

## **Service of Process on Corporations**

Section 48.081, F.S., provides for service of process on corporations:

- (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.
- (3)(a) 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 principal place of business or on any employee of the registered agent.

Strict compliance with the statute is required. In *York Communications v. Furst Group*, 724 So.2d 678 (Fla. 4th DCA 1999) and *Top Dollar Pawn Too, Inc. v. King*, 861 So.2d 1264 (Fla. 4th DCA 2003), service was deficient because an employee of a corporate registered agent was served rather than the registered agent.

## **Effect of Proposed Changes:**

This bill requires that a process service must be granted unannounced entry to a gated residential community, to a condominium, or to a cooperative, including the common areas and common elements where a defendant resides or is known to be.

This bill also requires a process server to document the date and time of service and the process server's identification number and initials on the front page of the copy served. It requires the person serving process to list on the return-of-service form all initial pleadings served and requires the form be signed by the process server.

This bill amends s. 48.081, F.S., to provide that an employee of a registered agent may be served during the first attempt at service even if the registered agent is temporarily absent from the office.

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<sup>11</sup> *Boatfloat*, 915 So.2d at 289-90.

<sup>12</sup> Section 718.103(8), F.S.

This bill amends s. 30.231, F.S., to provide that a sheriff may charge \$40 for processing each writ of execution. It allows the party requesting service of process to provide the sheriff with an electronic copy of the process.

The bill provides an effective date of July 1, 2011.

**B. SECTION DIRECTORY:**

Section 1 amends s. 30.231, F.S., related to sheriffs' fees for service of summons, subpoenas, and executions.

Section 2 amends s. 48.031, F.S., related to service of process.

Section 3 amends s. 48.081, F.S., related to service on corporation.

Section 4 amends s. 48.21, F.S., related to return of execution of process.

Section 5 amends s. 48.29, F.S., related to certification of process servers.

Section 6 provides an effective date of July 1, 2011.

**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:

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:

Not applicable. 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:

When changes are made to laws related to condominiums, a similar change is often made to laws relating to cooperatives. This bill does not address cooperatives although cooperatives could be covered pursuant to the provision requiring access to "any secured residential areas."

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

The Civil Justice Subcommittee considered the bill on April 1, 2011, and adopted an amendment. The amendment provided for service of process on an employee of the registered agent in certain situations, allowed for electronic copies of process to be provided to the sheriff and electronic signatures by sheriffs, and made technical changes related to processing writs of execution by the sheriffs. This bill, as amended, was reported favorably as a committee substitute. This analysis reflects the committee substitute.