

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/ SB 866

INTRODUCER: Judiciary Committee and Senator Bogdanoff

SUBJECT: Judgment Interest

DATE: March 16, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | O'Connor | Maclure | JU | Fav/CS |
| 2. | | | GO | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This 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 450 basis points to the averaged federal discount rate. The bill also provides that the interest rate at the time the judgment is obtained will be adjusted annually until the judgment is paid. Currently, the rate is calculated annually, without quarterly adjustment, and includes an addition of 500 basis points to the averaged federal discount rate. Additionally, under current law, the interest rate established at the time of the judgment remains the same until it is paid, without annual adjustment.

This bill substantially amends sections 55.03 and 717.1341, Florida Statutes.

II. Present Situation:

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.¹ 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.² 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.³ Prejudgment interest is generally only allowed on liquidated damages (those agreed to ahead of time by the parties).⁴ In other cases, the general rule is that interest typically begins to accrue when the judgment is entered.⁵ “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.”⁶

Judgment Interest Rates

Under current Florida law, 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.⁷ A basis point is one one-hundredth of a percentage point, used to express the movement of interest rates or index pricing.⁸ 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.⁹ Florida statute additionally specifies that in all cases where interest accrues without a special contract for the rate, the statutory rate will be applied.¹⁰ Thus, the statutory interest rate applies to both prejudgment and post-judgment interest absent a different rate previously agreed upon by the parties.¹¹ Although the interest rate is adjusted annually, the rate at the time the judgment is obtained remains consistent until the judgment is fully paid.¹² The judgment interest rate for 2011 is 6 percent.¹³

¹ 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)).

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

³ *Id.*

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

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

⁶ *Becker*, 78 F.3d at 516.

⁷ Section 55.03(1), F.S.

⁸ Federal Reserve Bank of New York, *Maiden Lane Glossary*, available at http://www.newyorkfed.org/markets/ml_glossary.html (last visited Mar. 4, 2011).

⁹ Section 55.03(1), F.S.

¹⁰ Section 687.01, F.S.

¹¹ *See Amerace Corp. v. Stallings*, 823 So. 2d 110, 120 (Fla. 2002) (Pariente, J. dissenting).

¹² Section 55.03(3), F.S.

¹³ 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).

III. Effect of Proposed Changes:

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 additional rate adjustments will be calculated on the first day of each calendar quarter. 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 450, 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 also amends s. 55.03(3), F.S., to provide that the interest rate established at the time the judgment is obtained will no longer remain constant until it is paid, but will be adjusted annually. With this change, judgment interest rates will be adjusted to reflect current market conditions throughout the payment period, not just market conditions at the time the judgment was entered. The bill does not specify who will be responsible for accounting for how the annual adjustment in the interest rate affects the total amount due on an unpaid judgment. Further, currently under s. 55.03(2) and (4), F.S., a judgment directed to and docketed by a sheriff shall bear on its face the rate of interest payable on the judgment. At the time the judgment is entered, however, only the initial rate will be known; the adjusted rate for future years in which the judgment may remain unpaid will not be known.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Non-prevailing parties may pay lower interest rates on judgments and will also potentially see rates fluctuate in accordance with market conditions more frequently, including fluctuations throughout the payment period.

C. Government Sector Impact:

The Department of Financial Services (DFS or department) will be required to make arrangements to calculate judgment interest rates more frequently. The department reports that the current annual process requires 15 hours of staff time to prepare and review calculations and to mail notifications. 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 (FLAIR). There will also be some cost associated with additional postage and mailing materials for notices. The department estimates a small fiscal impact associated with making these adjustments.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 14, 2011:

The committee substitute:

- Changes the date that the Chief Financial Officer must set judgment interest rates from “December 1 of each year” to “the first day of the month of each quarter”;
- Changes language specifying that the calculated interest rate will be payable from the beginning of each year and then will be calculated again on three other specified dates to language indicating that the calculated interest rate will be payable for the calendar quarter;
- Deletes the phrase “for the upcoming year”;
- Deletes a provision stating that the established interest rate will take effect at the beginning of each year;
- Increases the number of basis points to be added to the averaged federal rate from 300 under the original bill to 450; and
- Provides that the interest rate established at the time a judgment is obtained will not remain the same until the judgment is paid, but will be adjusted annually.

B. Amendments:

None.

¹⁴ Department of Financial Services, *Senate Bill 866 Fiscal Analysis* (Feb. 23, 2011) (on file with the Senate Committee on Judiciary).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
