

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1379 Service of Process

**SPONSOR(S):** Judiciary Committee; Justice Appropriations Subcommittee, Civil Justice Subcommittee; Mayfield

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 3 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	Toms	Jones Darity
3) Judiciary Committee	17 Y, 1 N, As CS	Ward	Havlicak

### SUMMARY ANALYSIS

The duties of a sheriff include service of process and execution of money judgments. Service of process is the means by which official notice of an action is delivered to a defendant or respondent. A "return of service" proving by affidavit that the process was delivered to the proper party is then filed with the court. The bill:

- Provides that a fee of \$40 will be charged by the sheriff for each summons served;
- Provides that the sheriff may rely upon the affidavit provided by the creditor which accompanies the notice of levy;
- Provides immunity to the sheriff for wrongful levy or distribution of the proceeds of sale;
- Requires that the party requesting service of process or the process server file the return of service;
- Provides for changes to service of process on certain businesses; and
- Adds a non-criminal penalty for an employer who fails to provide a designated area for service of process on an employee.

The bill does not appear to have a fiscal impact on the state governments. In cases when the sheriff charges the \$40 fee for each summons served, there could be a positive impact to local governments.

The bill takes effect July 1, 2013.

# 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., provides that service of 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 on 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 the 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 on Employees and Businesses**

Section 48.031, F.S., currently provides that employers "shall permit" service of process on employees in a private area designated by the employer. The bill creates a non-criminal violation punishable by fine of up to \$1,000 for employers who fail to comply with this provision.

Currently, substitute service may only be made on a person in charge of a business when the owner is absent after two or more attempts at service. The bill provides that a sole proprietorship may be served by serving the person after two attempts.

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

<sup>2</sup> *Id.*

<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.

Currently, the person making service of process files a return with the court to show service has been made. The bill adds that the person requesting service may also file the return.

### **Sheriff's Fees for Service**

The bill amends s. 30.231, F.S., which currently provides that if a sheriff is serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill removes this limiting provision, allowing the sheriff to charge \$40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.<sup>9</sup>

### **Sheriff Sales in Execution of Judgments**

Currently, sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.<sup>10</sup> There is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid, although the statute does provide an order in which funds are to be paid. The creditor must supply an affidavit to the sheriff with its request for levy, attesting to certain conditions.

The bill provides that the sheriff may rely upon the affidavit required in the statute, and is not responsible for wrongful distribution of the funds received. When uncertain about the distribution of sale funds, the sheriff may apply for court instructions, after giving notice to all interested parties.

The bill takes effect July 1, 2013.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 30.231, F.S., regarding sheriff's fees for service of summons, subpoenas, etc.

Section 2 amends s. 48.031, F.S., regarding service of process generally.

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

Section 4 amends s. 56.27, F.S., relating to executions; payment of money collected.

Section 5 provides that the bill takes effect July 1, 2013.

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

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

In cases when the sheriff charges the \$40 fee for each summons served, there could be a positive impact to local governments.

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<sup>9</sup> For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the the same person in two capacities. Therefore, that person would be served twice with the complaint.

<sup>10</sup> See s. 30.30, F.S.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Office of State Courts Administrator indicated the "Obstruction of Process Servers" section of this bill would likely not impact judicial workload within the State Courts System.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the word "provided" from s. 48.081, F.S., with the effect that a process server is no longer limited to service at the address provided. The amendment also corrected a scrivener's error and made a conforming title amendment.

On April 4, 2013, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed sections of the bill that adds to the list of warrantless arrests and sections that made changes to the service of process against a limited liability company.

On April 16, 2013, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide:

- An employer who fails to provide for service of process upon an employee is subject to a non-criminal violation punishable by a fine of up to \$1,000;
- After two attempts at service of process upon a sole proprietorship, substitute service may be made upon the apparent person in charge of the business;
- The sheriff may rely upon the affidavit submitted with levy instructions in distributing the proceeds of sale;
- The sheriff conducting the sale is not responsible for wrongful distribution of funds;
- The sheriff is not precluded from seeking court instructions regarding distribution of funds from a court ordered sale, after giving notice to all interested parties.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.