

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4029 Nonresident Plaintiffs in Civil Actions

SPONSOR(S): Sprowls

TIED BILLS: None **IDEN./SIM. BILLS:** SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Malcolm	Bond
2) Justice Appropriations Subcommittee	8 Y, 1 N	Smith	Lloyd
3) Judiciary Committee	16 Y, 0 N	Malcolm	Havlicak

SUMMARY ANALYSIS

Current law requires a nonresident plaintiff, or a plaintiff who leaves the state after filing a lawsuit, to file a surety bond of \$100 conditioned to pay all costs for which the plaintiff may be liable. The bill repeals this requirement.

This bill is expected to have an insignificant fiscal impact to the State.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Security by Nonresident Plaintiffs

Enacted in 1828 and 1829 by the Legislative Council of the Territory of Florida,¹ s. 57.011, F.S., requires a nonresident plaintiff, or a plaintiff who leaves the state after beginning an action, to file a surety bond of \$100 within 30 days after the commencement of the action or leaving the state. The bond must be conditioned to pay all costs for which the plaintiff may be liable in the action. A defendant may, after providing 20 days' notice to the plaintiff, move to dismiss the action or hold the plaintiff's attorney liable for any costs for which the plaintiff may be liable in the action up to the amount of the bond.

Costs for which a plaintiff may be liable in a lawsuit (which a cost bond in 57.011, F.S. would at least partially pay) may include court reporting costs, costs related to depositions, costs related to witnesses and testifying expert witnesses, electronic discovery expenses, and mediation fees and expenses.² Generally, these costs are only taxed against a plaintiff when the defendant prevails in the action unless a contract or statute provides otherwise.

More than 40 states have statutes similar to s. 57.011, F.S.³

Effect of Proposed Changes

The bill repeals the nonresident plaintiffs' bond requirement in s. 57.011, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 57.011, F.S., related to costs and security by nonresidents.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Association of Court Clerks and Comptrollers indicates that they expect an insignificant fiscal impact from this bill.⁴

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹ s. 8, Nov. 23, 1828; s. 4 Nov. 21, 1829.

² See ss. 57.041, 57.071; Fla. R. Civ. P. Taxation of Costs (2013).

³ See *Gerace v. Bentley*, 62 V.I. 254 (V.I. Super. 2015)(analyzing nonresident cost bond statutes in all federal jurisdictions and states). Section 57.011, F.S., has one notable distinction from similar statutes in other states: "in the event the plaintiff fails to post the statutory cost bond, plaintiffs [sic] counsel must stand in the absent surety's shoes-so that plaintiff's counsel is personally liable for the costs adjudged in the cause against the plaintiff . . ." *Id.*

⁴ Email from Fred Baggett, General Counsel of the Florida Association of Court Clerks & Comptrollers (Nov. 19, 2015) (on file with the House Justice Appropriations Subcommittee).

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The minimum premium charged by a leading surety for a cost bond like the one required in s. 57.011, F.S., is \$100.⁵

D. FISCAL COMMENTS:

None.

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

None.

⁵ Jurisco, Inc., *Cost Bond*, <http://jurisco.com/bonds/plaintiffs-bonds/cost-bond/> (last visited Nov.12, 2015).