

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 503 Judgments

**SPONSOR(S):** Civil Justice Subcommittee; Renner

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Malcolm	Bond
2) Judiciary Committee	14 Y, 0 N	Malcolm	Havlicak

### SUMMARY ANALYSIS

Proceedings supplementary allow for the discovery of assets that a judgment debtor may have improperly transferred or concealed in an effort to delay or hinder a creditor attempting to satisfy a final judgment. A key part of proceedings supplementary is the ability of a judgment creditor to bring in to the proceeding a non-party who improperly received the property from the judgment debtor.

The bill makes a number of changes to current law governing proceedings supplementary:

- Revises and updates terms and creates a stand-alone “Definitions” section to provide uniform usage of terms.
- Moves the discovery provisions in current law into a single provision and provides that the discovery provisions are in addition to those provided under the rules of civil procedure.
- Provides a procedure for bringing non-parties into proceedings supplementary via service of a Notice to Appear that describes the property at issue, notifies the third-party of the right to a jury trial, and requires the third-party to serve an answer within a time set by the court.
- Provides that Uniform Fraudulent Transaction Act (UFTA) claims raised during proceedings supplementary must be initiated by a supplemental complaint and that such claims are governed by the provisions of the UFTA and the rules of civil procedure.
- Provides that a person who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to court-imposed penalties.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Final Process and Proceedings Supplementary**

Chapter 56, F.S., regulates the final process, referred to as “execution,” to enforce a final judgment of a court. Section 56.29, F.S., titled “Proceedings Supplementary,” was enacted to replace the common law requirement of a creditor’s bill in which a judgment creditor initiates a separate action to enjoin the fraudulent disposition of a judgment debtor’s property.<sup>1</sup> Proceedings supplementary allow for the discovery of assets that may have been improperly transferred, covered up, or concealed by a judgment debtor in an effort to delay or hinder creditors attempting to satisfy a final judgment.<sup>2</sup> A key part of proceedings supplementary is the ability of a judgment creditor to bring a non-party who improperly received the property into the proceeding.

First enacted in 1919, s. 56.29, F.S., has remained substantially unchanged with the exception of a minor change in 2014 that allows separate claims under the Uniform Fraudulent Transfer Act<sup>3</sup> to be filed in proceedings supplementary.<sup>4</sup> According to the Florida Bar, because of its age, s. 56.29, F.S., “contains formulaic provisions and references to archaic rules of civil procedure resulting in a lack of uniformity in the procedural application of the statute”<sup>5</sup> and raises concerns about adequate due process to non-parties brought into the proceeding.<sup>6</sup>

The bill makes the following changes to ch. 56, F.S.:

#### **Terms and Definitions**

A number of terms currently used in ch. 56, F.S., are not used uniformly, are imprecise, and lack conformity with current law and practice.<sup>7</sup> Additionally, ch. 56, F.S., does not currently provide definitions for terms used in the chapter.

The bill revises and updates terms in ch. 56, F.S., and creates s. 56.0101, F.S., a stand-alone “Definitions” section, to provide uniform definitions and usage of terms in ch. 56, F.S. Revisions and definitions made in the bill include the following:

- Where applicable, “defendant” and “defendant in execution” is changed to “judgment debtor,” which is defined as “each person who is liable on a judgment, order, or decree subject to execution under this chapter.”
- “Plaintiff,” “plaintiff in execution,” and “creditor” are changed to “judgment creditor,” which is defined as “the holder of an unsatisfied judgment, order, or decree for the payment of money, including any transferee or any surety having the right to control and collect the judgment.”
- “Corporations” is changed to “corporate judgment debtor,” which means “any judgment debtor other than an individual, an estate, or a trust that is not a business trust.” This definition conforms to corporate law,<sup>8</sup> which encompasses a variety of business entities.
- “Levying creditor” is defined as the “levying judgment creditor.”

---

<sup>1</sup> Benjamin H. Brodsky, *Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, FLORIDA BAR JOURNAL, Dec. 2012, at 28, available at <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Articles/A29338FA50F7A88085257AC2007494DE>.

<sup>2</sup> See *State v. Viney*, 163 So. 57, 60 (Fla. 1935).

<sup>3</sup> ch. 726, F.S.

<sup>4</sup> s. 17, ch. 2014-182, Laws of Fla.

<sup>5</sup> Business Law Section of the Florida Bar, *Analysis of Proposed Amendments to Chapter 56*, 1 (on file with the Civil Justice Subcommittee).

<sup>6</sup> Brodsky, *supra* note 1.

<sup>7</sup> Business Law Section, *supra* note 5, at 1.

<sup>8</sup> chs. 605-621, F.S.

- Where applicable, “defendant” is changed to “claimant,” which is defined as any person other than the judgment debtor who claims any property levied on.”

## **Discovery in Proceedings Supplementary**

Currently, the discovery tools available to a judgment creditor in proceedings supplementary, such as requiring a judgment debtor to be examined before the court, are spread around in s. 56.29, F.S. It is also unclear whether these discovery tools are generally available or whether they may be used prior to initiating proceedings supplementary.<sup>9</sup>

The bill moves the discovery provisions in s. 56.29, F.S., to a newly-created s. 56.30, F.S., to provide clearly identifiable discovery procedures in proceedings supplementary. The provisions in s. 56.30, F.S., are identical to current law with the following additions:

- The discovery provisions in s. 56.30, F.S., are in addition to those provided under the rules of civil procedure.
- A judgment debtor may be required to appear before the court in the county of the judgment debtor’s principal place of business.
- A court’s examination of a judgment debtor may occur before issuance of a Notice to Appear to third-parties.<sup>10</sup>
- A corporate judgment debtor may send a designee with knowledge of the property subject to execution to be examined by the court.

## **Notification and Examination of Third-Parties**

As explained above, proceedings supplementary allow for the discovery of assets that may have been transferred, covered up, or concealed by a judgment debtor in an effort to hinder creditors attempting to satisfy a final judgment. Such attempts at hindering creditors generally involve people and entities that were not parties in the underlying case. However, the process for bringing these third-parties into the proceedings under s. 56.29(2), F.S., is unclear, which has caused confusion and raised due process concerns among practitioners and judges.<sup>11</sup>

The bill amends s. 56.29(2), F.S., to provide a uniform procedure for bringing non-parties into proceedings supplementary. A judgment creditor, in its motion to initiate proceedings supplementary, must describe the property of the judgment debtor that may be applied toward satisfaction of the judgment. After proceedings supplementary have been initiated, a court must issue a notice to appear to third-parties informing them that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the notice to appear makes them parties to the proceedings supplementary. The notice to appear must be served by process server, should describe with reasonable particularity the property at issue, require the third-party to serve an answering affidavit within a time to be fixed by the court (no less than seven business days, unless shortened by the court for cause), and require the third-party to assert any defenses in the answering affidavit. The notice to appear must also inform the third-party that he or she has the right to a trial by jury.

## **Uniform Fraudulent Transfers Act Claims**

Section 56.29(5), F.S., currently allows judgment creditors to file claims under the Uniform Fraudulent Transfers Act<sup>12</sup> (UFTA) in proceedings supplementary. The bill moves this provision from s. 56.29(5), F.S., to newly-created s. 56.29(9), F.S. To highlight that UFTA claims are distinct from proceedings supplementary, the bill provides that UFTA claims must be initiated by a supplemental complaint and served as provided by the rules of civil procedures, and that the UFTA claims are subject to ch. 726, F.S., and the rules of civil procedure. Additionally, the bill requires the clerk of court to provide the parties with a parallel case number that the parties will use for the UFTA action.

---

<sup>9</sup> Business Law Section, *supra* note 5, at 7.

<sup>10</sup> See Notification and Examination of Third-Parties section below.

<sup>11</sup> See Brodsky, *supra* note 1.

<sup>12</sup> ch. 726, F.S.

## **Defenses or Claims Raised Solely for Delay**

Sections 56.16 and 56.18, F.S., currently provide that a person (referred to as a “claimant”), other than the judgment debtor, who claims any property levied on by the judgment creditor, may file an affidavit stating the claim. If the court determines that the claimant’s asserted claim on the property was brought for the purpose of delay, the judgment creditor may be awarded damages up to 20 percent of the value of the property claimed. The bill amends ss. 56.16, 56.18, and 56.29, F.S., to provide that “a person to whom a Notice to Appear has been issued” in proceedings supplementary and who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to the penalties provided in ss. 56.16 and 56.18, F.S.

## **Other Effects of the Bill**

The bill amends s. 56.021, F.S., to provide that an execution may be issued upon an “order,” in addition to a judgment or decree. This is a codification of existing case law<sup>13</sup> and practice.

The bill amends s. 56.29(6), F.S., to provide that the provisions and remedies available in ss. 56.16-56.20, F.S., related to third-party claims and executions against third-parties, apply to orders, judgments, and writs issued pursuant to the proceedings supplementary process.

The bill provides cross-references and makes technical and conforming corrections.

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

Section 1 creates s. 56.0101, F.S., related to definitions.

Section 2 amends s. 56.011, F.S., related to executions and *capias ad satisfaciendum* abolished.

Section 3 amends s. 56.021, F.S., related to executions, issuance and return, alias, etc.

Section 4 amends s. 56.041, F.S., related to executions, collection and return.

Section 5 amends s. 56.071, F.S., related to executions on equities of redemption and discovery of value.

Section 6 amends s. 56.09, F.S., related to executions against corporations; generally.

Section 7 amends s. 56.10, F.S., related to executions against corporations; receivership.

Section 8 amends s. 56.12, F.S., related to executions; levy and forthcoming bond.

Section 9 amends s. 56.15, F.S., related to executions; stay of illegal writs.

Section 10 amends s. 56.16, F.S., related to executions; claims of third parties to property levied on.

Section 11 amends s. 56.18, F.S., related to executions; trial of claims of third persons.

Section 12 amends s. 56.19, F.S., related to judgments upon claims of third persons.

Section 13 amends s. 56.20, F.S., related to executions on judgments against third person claimants.

Section 14 amends s. 56.22, F.S., related to execution sales; time, date, and place of sale.

Section 15 amends s. 56.26, F.S., related to executions; mandamus to force levy and sale.

---

<sup>13</sup> See *Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876).

Section 16 amends s. 56.27, F.S., related to executions; payment of money collected.

Section 17 amends s. 56.28, F.S., related to executions; failure of officer to pay over moneys collected.

Section 18 amends s. 56.29, F.S., related to proceedings supplementary.

Section 19 creates s. 56.30, F.S., related to discovery in proceedings supplementary.

Section 20 provides an effective date of July 1, 2016.

## **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:**

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

### **D. FISCAL COMMENTS:**

The State Courts System commented on the bill, saying:

Language clarifying process and otherwise providing more explicit direction regarding requirements preliminary to proceedings supplementary will likely assist the courts handling these matters and may contribute to a reduction in the related expenditure of judicial time . . . [however, the] fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial time and workload resulting from language clarifying ch. 56, F.S., relating to final process in execution of judgments.<sup>14</sup>

## **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.

---

<sup>14</sup> Office of the State Courts Administrator, 2016 Judicial Impact Statement for HB 503, dated November 25, 2015 (on file with the Civil Justice Subcommittee).

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill may require amendment of Florida Rules of Civil Procedure 1.550 (executions and final process) and 1.560 (discovery in aid of execution).<sup>15</sup> The Supreme Court has sufficient rulemaking authority in current law to make these changes.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 2, 2015, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments make technical corrections and provide cross-references where necessary. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

---

<sup>15</sup> *Id.*