

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/SB 576

INTRODUCER: Judiciary Committee and Senator Leek

SUBJECT: Service of Process

DATE: March 31, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 576 amends state laws governing service of process, which is the procedure by which a party to a lawsuit gives appropriate notice to other parties that the lawsuit has begun.

In 2022, the Legislature enacted a law that substantially revised the state’s service of process statute. Although the 2022 law has since been applied by practitioners and the courts without significant problems, a task force of the Business Law Section of The Florida Bar (the “Task Force”) has identified certain ways that the law can be improved. The Task Force’s proposed improvements are reflected in the bill.

In summary, the bill:

- Allows a process server to serve process on registered agents during additional time periods and locations and on additional individuals.
- Provides how one may serve process on business organizations in receivership.
- Clarifies how to execute substitute service of process on the Secretary of State.
- Clarifies how to execute substitute service of process on nonresidents or on individuals or business entities that are concealing their whereabouts.
- Deems former residents of this state to have appointed the Secretary of State as their agent for purposes of service of process.
- Validates service of process made in conformity with either the 2022 law, or prior law, ensuring the validity of default judgments based on service under either statutory regime.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect upon becoming a law, except as otherwise provided in the bill. The changes to Sections 1, 2, 3, and 4 of the bill are effective October 1, 2025.

## II. Present Situation:

### Service of Process

#### *Generally*

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against him or her.<sup>1</sup> Delivery of that notice is referred to as “service of process.”<sup>2</sup> Adequate service of process is also required to summon a witness for testimony or for production of evidence.<sup>3</sup> Centuries ago, service of process was only trusted to the county sheriff.<sup>4</sup> Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly appraised of a lawsuit or a requirement to produce evidence.<sup>5</sup>

The traditional and best form of service of process on a competent adult is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by youth. Procedures need to be established to determine how to serve process on an entity in a manner likely to have it noticed by management for a timely response. A large body of law has been devoted to the allowable methods for service of process.<sup>6</sup>

The Secretary of State is involved in many aspects of service of process. The Secretary is head of the Department of State,<sup>7</sup> which handles the administrative duties of the Secretary.<sup>8</sup> The Division of Corporations, under the Department of State, accepts business entity registrations and renewals, and maintains a publicly-accessible record of every entity, listing a registered agent and the names of the related top-level individuals of the entity. Every current entity must appoint a registered agent, a person within the state who is authorized by the entity to accept service of

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<sup>1</sup> See, e.g., *Citizens of State v. Florida Public Service Commission*, 146 So. 3d 1143, 1154 (Fla. 2014) (noting that the fundamental requirements of due process are satisfied by reasonable notice and a reasonable opportunity to be heard).

<sup>2</sup> See U.S. District Court, Middle District of Florida, *Service of Process*, <https://www.flmd.uscourts.gov/service-process> (last visited Mar. 27, 2025) (providing that “[s]ervice of process is the procedure used to notify a defendant of the lawsuit”).

<sup>3</sup> Eleventh Judicial Circuit of Florida, *Certified Civil Process Server Program Information Manual*, 1 (Jan. 2017), available at <https://www.jud11.flcourts.org/docs/Process%20Server%20Manual%202017.pdf> [hereinafter “Process Server Manual”].

<sup>4</sup> See Sheriff Roger Scott, *Office of Sheriff, ROOTS: A Historical Perspective of the Office of Sheriff*, National Sheriffs’ Association, <https://www.sheriffs.org/about-nsa/history/roots> (last visited Mar. 27, 2025) (noting, with emphasis added, that “[t]he duties of the sheriff included keeping the peace, collecting taxes, maintaining jails, arresting fugitives, maintaining a list of wanted criminals, and serving orders and writs for the Kings Court”).

<sup>5</sup> Process Server Manual, *supra* note 3, at 7-11 (describing personal service, substituted and constructive service, and extraterritorial service).

<sup>6</sup> See generally ch. 48, F.S. (process and service of process).

<sup>7</sup> Fla. Dep’t of State, *About the Secretary*, <https://dos.fl.gov/about-the-department/about-the-secretary/> (last visited Mar. 27, 2025).

<sup>8</sup> Fla. Dep’t of State, *Office History*, <https://dos.fl.gov/about-the-department/office-history/> (last visited Mar. 27, 2025).

process directed to the entity.<sup>9</sup> In some instances, substituted service of process may be made on the Secretary of State.<sup>10</sup>

### **2022 Legislation**

In 2022, resulting largely from an initiative of the Business Law Section of The Florida Bar,<sup>11</sup> the Legislature enacted ch. 2022-190, Laws of Florida, which amended several laws governing service of process including ch. 48, F.S. (the “2022 Legislation”). A goal of the 2022 legislation was to simplify, clarify, and modernize the manner of service of original process on business entities by eliminating duplicative and sometimes conflicting provisions regarding service of original process in the statutes regulating their formation, governance, and operation.<sup>12</sup>

Since January 2, 2023, the date that the 2022 Legislation became effective, a ch. 48, F.S., task force organized by the Business Law Section (the “Task Force”) has monitored reported judicial decisions addressing or interpreting the 2022 Legislation. The Task Force has also consulted with legal practitioners and the Florida Association of Professional Process Servers, who have had experience in applying the 2022 Legislation’s provisions.<sup>13</sup>

The purpose of the bill is to address certain issues that have arisen in connection with implementing the 2022 Legislation, as described more fully in Section III.

## **III. Effect of Proposed Changes:**

### **Service of Process on Registered Agents and Registered Offices**

Section 48.091, F.S., regulates how partnerships, corporations, and limited liability companies may designate a registered agent and registered agent office for service of process purposes. Among other things, the statute specifies a minimum amount of time (two hours, between 10 a.m. to 12 noon each day except weekends and legal holidays) that designated registered offices must be open to ensure that the registered agent is present and available to accept service.<sup>14</sup>

Following the enactment of the 2022 Legislation, the Florida Association of Professional Process Servers approached the Task Force and requested that the minimum hours be extended to make it easier to serve process on registered agents. The Task Force investigated the issue and concluded

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<sup>9</sup> See generally Fla. Div. of Corps., *Division FAQs*, <https://dos.fl.gov/sunbiz/about-us/faqs/> (last visited Mar. 27, 2025) (explaining how to form corporations and limited liability companies and identify registered agents and the names of top-level individuals of registered entities; maintaining a searchable database with publicly-accessible records of every entity).

<sup>10</sup> See generally ss. 48.161 and 48.181, F.S. (permitting substituted service of process on the Secretary of State under certain conditions).

<sup>11</sup> Business Law Section of The Florida Bar, *Analysis of Proposed “Glitch” Legislation to Amend Statutory Provisions regarding Service of Process in Florida*, 1 (Aug. 2024) (on file with the Senate Committee on Judiciary) [hereinafter referred to as “Analysis”]; see also Giacomo Bossa and James B. Murphy, Jr., *Recent Legislative Changes to Service of Process: A New Ball Game?*, 97 FLA. BAR J. 3, 39 (2023), <https://www.floridabar.org/the-florida-bar-journal/recent-legislative-changes-to-service-of-process-a-new-ball-game/> (providing a more complete summary of the background and scope of the 2022 Legislation).

<sup>12</sup> Analysis, *supra* note 11, at 2.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> Section 48.091(3), F.S.

that requiring designated registered offices to be open an additional two hours would not cause undue hardship for practitioners who often serve as registered agents.<sup>15</sup>

Additionally, the Task Force has expressed concern with a recent court opinion holding that service of process on a registered agent of a limited liability company was not permitted at an address other than at the individual's designated registered office, even though prior law permitted such individuals to be served at his or her principal place of abode.<sup>16</sup> The Task Force's position is that limiting service of process on individual registered agents to the designated registered office is too restrictive and would unduly impede the ability to serve process on business entities. Accordingly, the Task Force believes that a party should be able to serve a registered agent who is an individual in the same manner as one is allowed to serve an individual who is a defendant in the litigation.<sup>17</sup>

Accordingly, **Section 1** of the bill amends s. 48.091, F.S., to:

- Expand by two additional hours (2 p.m. to 4 p.m.) the minimum number of hours that designated registered agent offices must be open.
- Authorize a process server to serve a registered agent who is a natural person in accordance with the general service of process statute.<sup>18</sup>
- Authorize a process server to serve process at a registered office on a registered agent who is a natural person by serving any employee of the agent if the agent is not present.
- Authorize a process server to serve process at a registered office on a registered agent that is not a natural person by serving the entity in accordance with applicable laws governing service of process on such entities or by serving any employee of the registered agent who is present at the designated registered office at the time of service.

### **Service of Process on Entities in Receivership**

Section 48.101, F.S., regulates service of process on dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.

Not addressed in this statute or elsewhere, however, is how one would go about serving a business organization that has not been dissolved but is in receivership.<sup>19</sup> Given the volume of litigation involving business organizations in receivership in recent years, the Task Force concluded that the issue should be addressed.<sup>20</sup>

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<sup>15</sup> Analysis, *supra* note 11, at 9.

<sup>16</sup> *Id.* at 9-10 (citing *Campbell v. ADW Consulting, LLC*, 2024 WL 245802 (M.D. Fla. 2024)).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> Section 48.031, F.S.

<sup>19</sup> A receiver is "a person appointed by the court to take control, custody, or management of property involved in litigation and to preserve the property, and receive rents, issues and profits." Kendall Coffey and David Freedman, *Florida's New Commercial Real Estate Receivership Act: A Roadmap for Judges and Practitioners*, 96 FLA. BAR J. 1, 18 (2022), <https://www.floridabar.org/the-florida-bar-journal/floridas-new-commercial-real-estate-receivership-act-a-roadmap-for-judges-and-practitioners/#u6da1>. "The right to the appointment of a receiver is a long-recognized equitable remedy, tracing its lineage to the English chancery courts, protecting real property and rents and profits arising therefrom." *Id.* A "receivership" means a proceeding in which a receiver is appointed. Section 714.02(15), F.S.

<sup>20</sup> Analysis, *supra* note 11, at 14.

Accordingly, **Section 2** of the bill amends s. 48.101, F.S., to:

- Clarify that it addresses service on *domestic* dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.
- Expand the applicability of the statute to include business organizations in receivership.

The bill also amends the statute to provide that notwithstanding its provisions, and during the pendency of the receivership, a party attempting to serve process on a domestic business entity, business trust, or sole proprietorship in receivership may effectuate service by personal service on the receiver.

### **Method of Substituted Service on Nonresidents**

Section 48.161, F.S., provides the method for substituted service on the Secretary of State with respect to nonresidents in litigation arising from business activities they conducted in the state and persons who conceal themselves to evade service of process.

The 2022 Legislation made several revisions to this statute to clarify its provisions and facilitate its application by practitioners and the courts. However, the Task Force and the Secretary of State have since identified several problems. Many of the summons received by the Secretary of State, particularly through its electronic portal, have incorrectly designated the Secretary of State as the party being served. Additionally, the Secretary of State's office has been inundated with copies of electronic filings of papers in many lawsuits after the substituted service of process has been effectuated, as if the Secretary of State were a party to those proceedings.<sup>21</sup>

In order to resolve these issues, **Section 3** of the bill amends s. 48.161, F.S., to:

- Clarify that the statute applies to substituted service on certain parties in care of the Secretary of State.
- Require that substituted service on parties in care of the Secretary of State be issued in the name of the party to be served, in the care of the Secretary of State.
- Eliminate the requirement that the Secretary of State keep a record of all process served on the Secretary of State.
- Authorize a process server, after exercising due diligence to locate and effectuate personal service, to use the substituted service method provided in statute in connection with any action in which the court has jurisdiction over the individual or business entity, if the individual or a business entity is a nonresident or conceals his, her, or its whereabouts.
- Require affidavits of compliance justifying the use of substituted service to contain sufficient facts showing that:
  - The process server exercised due diligence in attempting to locate and effectuate personal service on the party; and
  - To the extent applicable, the party's nonresidence or concealment, or that the party is a business entity for which substituted service is otherwise authorized by law.
- Revise the point at which substituted service is effectuated under the bill, from the date when service is received by the Department of State under existing law, to the date when the

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<sup>21</sup> *Id.* at 11-12.

affidavit of compliance is filed or when the notice of service requirements has been completed, whichever is later.

- Clarify that the Secretary of State and the Department of State are not parties to the lawsuit by reason of substituted service under the statute and prohibit the service or sending of additional court filings regarding the lawsuit to the Secretary of State or the Department of State.

### **Substituted Service on Nonresidents and Foreign Business Entities Engaging in Business in State or Concealing their Whereabouts**

Section 48.181, F.S., addresses the jurisdictional basis for substituted service on the Secretary of State when nonresidents have engaged in business in this state and are being sued with respect to a transaction or operation connected to such business. The statute also applies to persons concealing their whereabouts to avoid service of process.

According to the Task Force, the 2022 Legislation inadvertently omitted language that clearly brought one particular class of nonresidents – specifically, nonresidents who were formerly residents of the state – within the scope of the statute. The Task Force concluded that there is no reason to treat such nonresidents differently than other types of nonresidents; indeed, nonresidents who have engaged in business in this state in the past should more readily expect to answer a lawsuit in connection with it than nonresidents who have never engaged in business in this state.<sup>22</sup>

**Section 4** amends s. 48.181, F.S., to restore language deleted from it by the 2022 Legislation. The bill provides that any individual who was a resident of this state, and who subsequently became a nonresident, is deemed to have appointed the Secretary of State as his or her agent on whom all process may be serviced in any action or proceeding against him or her. The proceeding must arise out of any transaction or operation connected with, or incidental to, any business or business venture carried out in this state by the individual.

### **Divergent Judicial Interpretations Regarding Applicability of the 2022 Legislation in Existing Cases**

The Task Force is concerned that trial courts may not be consistently applying the 2022 Legislation's amendments. Most courts have applied the amendments to service of process which took place after January 2, 2023 (the effective date of the 2022 legislation). However, some federal courts have held that the amendments do not apply to service of process which took place after January 2, 2023, if the cause or causes of action alleged in the lawsuit accrued prior to January 2, 2023.<sup>23</sup> It is possible that there are state courts that have declined to apply the amendments in the 2022 legislation for the same reason. Judges in both federal and state courts could follow this precedent. Given applicable statutes of limitation, some cases could be filed five years or more after the cause or causes of action accrued, creating uncertainty among practitioners and courts in determining how precisely service of process should be effectuated.<sup>24</sup>

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<sup>22</sup> *Id.* at 13-14.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 6.

To address this situation, the Task Force has developed statutory language creating a ‘safe harbor’ for any service of process made between January 2, 2023, and the effective date of the bill. So long as the service was properly made under *either* the amendments in the 2022 Legislation *or* under the prior law that would have otherwise applied when the cause of action accrued, the service of process will be considered valid.<sup>25</sup>

Accordingly, **Section 5** of the bill provides that:

- Amendments made to ch. 48, F.S., by ch. 2022-190, Laws of Florida, apply to causes of action that accrued on or after January 2, 2023, and to all causes of action that accrued before January 2, 2023, for which service of process was effectuated on or after January 2, 2023.
- Notwithstanding the prior paragraph, any service of process that occurred between January 2, 2023, and October 1, 2025, which has not been invalidated by a court, is valid if such service complied with either ch. 48, F.S., as amended by ch. 2022-190, Laws of Florida, or the laws governing service of process in effect before January 2, 2023, which would have applied in the absence of ch. 2022-190, Laws of Florida.
- Amendments made by the bill apply to all service of process made or effectuated on or after October 1, 2025, regardless of whether the cause of action accrued before, on, or after October 1, 2025.
- The bill does not extend or modify the time for challenging the validity of any service of process and does not revive any ability to challenge the validity of service of process which has been previously waived.

### **Effective Date**

The bill takes effect upon becoming a law, except as otherwise provided in the bill. The changes made in Sections 1, 2, 3, and 4 are effective October 1, 2025.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not 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.

### **B. Public Records/Open Meetings Issues:**

None identified.

### **C. Trust Funds Restrictions:**

None identified.

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<sup>25</sup> *Id.* at 7.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

None identified.

C. Government Sector Impact:

The bill is not expected to affect state and local government revenues and expenditures.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

None identified.

**VIII. Statutes Affected:**

This bill substantially amends the sections 48.091, 48.101, 48.161, and 48.181 of the Florida Statutes:

**IX. 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 12, 2025:**

The committee substitute revises the underlying bill to:

- Reorganize and clarify what facts must be included in an affidavit of compliance to justify substituted service of process under the bill.
- Revise the point at which substituted service is effectuated under the bill, from the date when service is received by the Department of State under existing law, to the date when the affidavit of compliance is filed or when notice of service requirements have been completed, whichever is later.



B. Amendments:

None.

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

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