

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1673                      Service of Process  
**SPONSOR(S):** Simmons  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	17 Y, 0 N	Jaroslav	Havlicak
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

Current law provides for service of process generally to be by hand delivery to the person or by leaving a copy with a person over 15 years of age at the residence of the person to be served. This bill provides that, when the only address available from public records for a person or business to be served is a private mailbox, substitute service of process may be made by leaving a copy of the process with the person apparently in charge of that mailbox.

In addition to the means specified above, current law provides that witness subpoenas in non-capital, non-first-degree-felony criminal cases may also be served by certified mail. This bill allows witness subpoenas by mail in such cases to be sent by regular mail. This bill also provides that a witness subpoena in a criminal case may be posted after three service attempts at different times of day or night have been made at the witness's residence, as long as this is done at least five days prior to the witness's required appearance.

Current law provides a number of means for effecting service of process on a corporation, including by service on the corporation's registered agent. This bill provides that, in cases where the registered-agent statute is not complied with, service of process will be effective on any employee at the corporation's principal place of business or on any employee of the registered agent. This bill further provides that, if the address provided for a director, officer or registered agent is a residence or private mailbox, service on the corporation may be made by serving that person just as if serving them personally.

Current law requires the sheriff in a county where a distress writ against rent or advances was issued against a non-residential tenant to deliver that writ to the sheriff of the appropriate county if the underlying personal property is no longer in the county. This bill transfers this responsibility from the sheriff of the county where the writ was issued to the party who sought the writ.

This bill appears to have an uncertain positive fiscal impact on state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Section 1, Relating to Service of Process Generally and Witness Subpoenas: Present Situation

Current law provides that service of process is generally made by "delivering a copy ... to the person to be served ... 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 their contents."<sup>1</sup> Witness subpoenas may be served in the same manner.<sup>2</sup> However, a witness subpoena in non-capital, non-first-degree-felony criminal cases may also be served by certified mail to the witness at his or her last known address, if the subpoena is mailed at least seven days before the witness's appearance is required.<sup>3</sup>

##### Proposed Changes

Section 1 of this bill amends s. 48.031(2), F.S., to provide that, when the only address available from public records for a person or business to be served is a private mailbox, substitute service of process may be made by leaving a copy of the process with the person apparently in charge of that mailbox. This may only be done after determining that the person or business to be served does, in fact, maintain a mailbox at that location.

This section also amends s. 48.031(3), F.S., to allow witness subpoenas by mail, in the cases where they are already allowed, to be sent by regular mail, not only by certified mail. This section further provides that a witness subpoena in a criminal case may be posted after three service attempts at different times of day or night have been made at the witness's residence, as long as this is done at least five days prior to the witness's required appearance.

##### Section 2, Relating to Service on Corporations: Present Situation

Section 48.081, F.S., provides, in pertinent part:

- (1) Process against any private corporation, domestic or foreign, may be served:

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<sup>1</sup> Section 48.031(1)(a), F.S. Substitute service may be made on the spouse of the person to be served, if the proceeding is not an adversarial one between the spouse and the person to be served. See s. 48.031(2)(a), F.S. Substitute service may also be made "on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business." Section 48.031(2)(b), F.S.

<sup>2</sup> See s. 48.031(3), F.S.

<sup>3</sup> See *id.*

- (a) On the president or vice president, or other head of the corporation;
  - (b) In the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager;
  - (c) In the absence of any person described in paragraph (a) or paragraph (b), on any director; or
  - (d) In the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state.
- (2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state.
- (3) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's place of business.

Section 48.091, F.S., further provides that every Florida corporation, and every foreign corporation authorized to do business in Florida, must designate a registered agent and a registered office, and must keep that office open and staffed by a registered agent at least between 10 AM and 12 noon each day except weekends and legal holidays.

#### Proposed Changes

Section 2 of this bill amends s. 48.081(3), F.S., to provide that, in cases where s. 48.091, F.S., is not complied with, service of process will be effective on any employee at the corporation's principal place of business or on any employee of the registered agent. This section further provides that if addresses provided for a director, officer or registered agent is a residence or private mailbox, service on the corporation may be made by serving that person just as if serving them personally under s. 48.031, F.S.

#### Section 3, Relating to Levies on Distress Writs: Present Situation

Part I of ch. 83, F.S., governs nonresidential tenancies. Section 83.10, F.S., provides landlords with liens on crops grown on rented land for advances "for the sustenance or well-being of the tenant or the tenant's family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market." Enforcement of this lien is by means of a distress writ issued by the court in the county where the land is and having jurisdiction over the amount in controversy.<sup>4</sup> If the distress writ is issued, the sheriff of that county executes it by service on the defendant and by levy on the property underlying the writ's issuance (e.g., crops or equipment).<sup>5</sup> If that property is outside the county, the sheriff must deliver it to the sheriff of the proper county to execute there.<sup>6</sup>

#### Proposed Changes

This bill amends s. 83.13, F.S., to provide that, if the property underlying issuance of a distress writ is in another county, the responsibility for delivering the writ to that county's sheriff is on the party who sought the writ, not on the sheriff of the county where it was issued.

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<sup>4</sup> See ss. 83.11 and 83.12, F.S.

<sup>5</sup> See s. 83.13, F.S.

<sup>6</sup> See *id.*

C. SECTION DIRECTORY:

Section 1. Amending s. 48.031, F.S., relating to service of process in general and to service of witness subpoenas by mail.

Section 2. Amending s. 48.081(3), F.S., relating to service of process on corporations.

Section 3. Amending s. 83.13, F.S., relating to levies on writs for distress of rent or advances.

Section 4. Providing an effective date of upon becoming law.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Because this bill eliminates the need for certified mail in certain criminal cases, this bill may reduce the state's postal expenses. The current United States Postal Service rate for certified mail is \$2.30, while the first-class letter rate is \$0.37.<sup>7</sup> The amount of reduction is uncertain.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By placing the responsibility for delivering distress writs to sheriffs in other counties on plaintiffs rather the sheriffs in the counties where they are issued, this bill may reduce the amount of time that the sheriffs spend on doing this. Any resulting savings appears negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

<sup>7</sup> For United States Postal Service rates, see their website at <http://www.usps.com/ratecase/special.htm>.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

The phrase "apparently in charge" in Section 1 of this bill may present confusion or evidentiary problems by requiring proof that a sheriff or process-server believed the person on whom process was served to be in charge of the private mailbox.

The phrase "available from public records" in Section 1 of this bill may be unnecessarily narrow. The address of the person or business to be served might be available elsewhere.

It is unclear what is meant in Section 1 of this bill by "posting" a witness subpoena, as well as by "attempts" to serve a witness at his or her residence; one ambiguity appears to reinforce the other. Posting could mean by mail or by physically posting the subpoena; attempts could mean attempts to serve the witness personally or by mail.

The phrase "having had the writ issued" in Section 3 of this bill may also be unclear.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2003, the House Committee on Judiciary reported this bill favorably.