

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 641

Service of Process

SPONSOR(S): Snyder

TIED BILLS: None

IDEN./SIM. BILLS: SB 1712; SB 1932

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>3 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Blalock</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Service of Process must be carried out by the county sheriff except that non-enforceable civil process can be served by a special process server. The county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions under a fee schedule established by statute. The current fee schedule for service of process for most writs and summons is \$20, and no additional fee can be charged for serving the same kind of writ again where original service was ineffective or unable to be served (called "alias writs" and "pluries"). County sheriffs also have a duty to serve injunctions for protection from domestic or sexual violence received from the clerk of court.

Executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. The local sheriff will effect an execution by serving a writ of execution on the person against whom a judgment is rendered.

This bill adds criminal witness subpoenas and criminal summons to the types of process that can be served by a special process server.

This bill increases the fee that sheriffs must charge for service of process from \$20 to \$40, and deletes the provision that additional fees cannot be charged by the sheriff for alias writs and pluries.

This bill also revises the process for carrying out executions by amending:

- The order by which money received under executions are to be paid;
- How the priority of liens will be determined; and
- The information that must be included in the affidavit required in connection with a personal property levy and a real property levy.

This bill allows the clerk of court to send the county sheriff a certified facsimile copy of an injunction for protection against domestic or sexual violence, and this facsimile copy can be served by the sheriff in the same manner as a certified copy.

This bill has a recurring fiscal impact on state government expenditures. This bill appears to have a positive fiscal impact on local governments, and a negative fiscal impact on the private sector for those requesting service of process by increasing the fees charged by the sheriff for serving process. See Fiscal Comments section for a further discussion of other potential fiscal impacts on the private sector and local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes -- This bill increases the fees charged by a sheriff for service of process.

B. EFFECT OF PROPOSED CHANGES:

Background

Service of process is the formal delivery of a writ, summons, or other legal process or notice. Statutes governing the service of process are strictly construed to insure that defendants receive notice of an action against them and have the opportunity to protect their rights. There are two types of service of process, enforceable and non-enforceable. Enforceable service involves a court order requiring the sheriff to take action. Non-enforceable service of process is designed to place another party on notice that he or she must take action.

"Executions" as provided for in this bill, generally refers to court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. County sheriff offices are required to keep files and index these orders. Writs of execution are issued to a sheriff or officer of the court that directs and authorizes the sheriff or officer to carry into effect the judgment of the court.¹ The issuance of a writ of execution is typically performed by the clerk of court. The person in whose favor a judgment is rendered is the person entitled to the issuance of a writ of execution, and the person against whom a judgment is rendered is subject to the issuance of a writ of execution. Sheriffs must execute all writs directed to them for execution in their counties, and the sheriff may perform this duty in person or by deputy.² The delivery of a writ of execution to the sheriff or appropriate officer perfects a lien on personal property.³ Thus, a writ of execution issued on a judgment operates as a lien on the judgment debtor's personal property from the time the writ is delivered to the sheriff of the county in which the debtor's property is located. A sale under a writ of execution is a sale of property by a sheriff or sheriff's deputy, by virtue of the sheriff's authority as an officer holding process. It differs from a judicial sale in that, in an execution sale, the sheriff has authority by virtue of the execution and is guided in the sale by statute rather than the court.

Effect of Bill

Sheriffs' Fees for Service of Summons, Subpoenas, and Executions

Current Law

The county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions under a schedule established by statute.⁴ All fees collected under the statutory provisions for sheriffs' fees for service of process are to be paid monthly into the county's fine and forfeiture fund.⁵ A special process server may charge any reasonable fee for services⁶, which can be more or less than the statutorily set fee for sheriffs.

¹ *Raulerson v. Peeples*, 81 Fla. 206, 87 So. 629 (1921).

² Section 30.15(1)(b), F.S.

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⁴ Section 30.231(1), F.S.

⁵ Section 30.231(5), F.S.

⁶ Section 48.021(3), F.S.

Section 30.231, F.S., provides that the sheriff must charge \$20 for service of summons or writs except for executions⁷ and \$20 for each witness to be served. For executions, the sheriff must charge \$20 for docketing and indexing each writ of execution, \$20 for advertisement of the sale of property under process, \$20 for each sale under process, and \$20 for each deed, bill of sale, or satisfaction of judgment. This fee was last increased in 1994, and \$20 in 1994 equates to \$27.21 today.⁸

When any process for any defendant is returned not executed, or returned improperly executed, the party issuing it is entitled to such additional process against the unserved party as is required to effect service. Section 30.231, F.S., provides that additional fees cannot be charged for these alias writs⁹ and pluries¹⁰ documents when service was not effected on the original documents in that county by that sheriff. In many cases, it may take more than one attempt to effect service of process. This provision restricts sheriffs from charging additional fees in these situations.

Proposed Changes

This bill amends s. 30.231, F.S., to increase sheriff's fees from \$20 to \$40 for service of the following:

- Summons or writs except executions; and
- Witness subpoenas.

In addition, the bill increases the fees from \$20 to \$40 for:

- Docketing and indexing each writ of execution;
- Advertisement of sales under process;
- Conducting each sale under process; and
- Preparing each deed, bill of sale, or satisfaction of judgment.

The bill also removes the provision that additional fees cannot be charged for alias writs or pluries when service was not effected on the original documents in that county by that sheriff. The effect of this provision in the bill is that sheriffs will now be able to charge the party requesting service for each additional document, where the first document was unable to be executed or served on the requisite party.

Persons Authorized to Serve Process

Current law

Section 48.021(1), F.S., provides that all process must be served by the sheriff of the county where the person to be served is found, except in the case of non-enforceable process,¹¹ which may be served by a special or certified process server. Florida law establishes three categories of persons by whom process may be served in Florida. These persons include a sheriff, a person appointed by the sheriff in the sheriff's county (known as a special process server) and a certified process server appointed by the

⁷ "Executions" are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. The sheriff's office must keep files and index these orders.

⁸ American Institute for Economic Research <www.aier.org>.

⁹ An alias writ is an additional writ issued after another writ of the same kind in the same case. In other words, it is a writ issued where one of the same kind has already been issued in the same cause, but has lost its force without having been effective.

¹⁰ Pluries is a third or subsequent writ issued when the previous writs have been ineffective. It is a writ issued after an alias writ.

¹¹ Types of non-enforceable service of process include summons, subpoenas, orders to show cause, injunctions, notices, and writs of garnishment.

chief judge of the circuit court.¹² Any person authorized by the rules of procedure may also serve witness subpoenas.¹³

Proposed Changes

The bill amends s. 48.021(1), F.S., to provide that criminal witness subpoenas and criminal summonses can be served by special process servers and certified process servers in addition to a sheriff. Currently, there is no a statute or rule that allows anyone, other than a sheriff or deputy, to serve criminal witness subpoenas and criminal summonses.

This bill also amends s. 48.021(1), F.S., to specify that any person authorized by the civil rules of procedure may also serve civil witness subpoenas. This change conforms to the above changes made in this bill to s. 48.021(1), F.S., relating to service of criminal witness subpoenas and summons.

Unsatisfied Executions

Current Law

Section 56.041(2), F.S., provides that all unsatisfied executions in the hands of the sheriff may be returned to the court issuing the execution 20 years after the date of issuance of final judgment upon which the execution was issued. Upon such return, the clerk of the court of issuance shall provide a receipt to the sheriff submitting the return, acknowledging the return of the unsatisfied execution. Sections 55.201 to 55.209, F.S., effective October 1, 2001, provided a system of obtaining a judgment lien on personal property by filing a Judgment lien certificate with the Department of State. Filing the judgment lien certificate gives priority to the lien, which attaches upon filing the certificate, in the order the certificates are filed. On October 1, 2001, sheriffs mostly ceased docketing newly delivered writs of executions.

Proposed Changes

This bill amends s. 56.041(2), F.S., to provide that sheriffs can return all unsatisfied executions docketed before October 1, 2001, or 20 years after the date of issuance of final judgment upon which the execution was issued.

Execution Sales

Current Law

Section 56.21, F.S., provides that notice of all sales under execution must be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place.” When personal property is levied upon, a notice of such levy and execution sale and a copy of an affidavit required by statute, must be sent by the sheriff to all judgment creditors. When real property is levied upon, notice of such levy and execution sale must also be made to the property owner of record in the same manner as notice is made to any judgment debtor.

Proposed Changes

The bill revises s. 56.21, F.S., to require creditors attempting to levy on real property to supply an affidavit to the sheriff similar to the affidavit required for levying on personal property, and requiring notice of such affidavit to be made to the property owner.

¹² *Abbate v. Provident Nat. Bank*, 631 So. 2d 312 (Fla. 5th DCA 1994).

¹³ Section 48.021(1), F.S.

Payment of Money Received Under Executions

Current Law

Section 56.27(1), F.S., provides that all money received under executions must be paid, in the order prescribed, to the following:

1. The sheriff, for costs;
2. The levying creditor in the amount of \$500 as liquidated expenses; and
3. The judgment lienholder having the earliest recorded judgment lien acquired under s. 55.202 and s. 55.204(3), F.S., or his or her attorney, in satisfaction of the judgment lien, provided that the judgment lien has not lapsed at the time of the levy.

Section 56.27(2), F.S., provides that when property sold under execution brings more than the amount needed to make the necessary payments, the surplus is paid in the order of priority to any judgment lien holders whose judgment liens have not lapsed. Priority is based on the effective date of the judgment lien. If there is a surplus after all valid judgment liens and execution liens have been satisfied, the surplus must be paid to the debtor.

Section 56.27(4), F.S., provides that the levying creditor must deliver to the sheriff an affidavit prior to the first publication or posting of the notice of sale. Section 56.27(4), F.S., also requires the affidavit contain the following information about the judgment debtor:

- An attestation that the levying creditor has reviewed the database or judgment lien records and that the information in the affidavit based on that information is true and correct.
- The information required by statute¹⁴ for each judgment lien certificate, the file number assigned to the judgment lien, and the date of filing for each judgment lien certificate; and
- A statement that the levying creditor either does not have any other levy in process or, if another levy is in process, that the levy creditor believes in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

Proposed Changes

The bill amends s. 56.27(2), F.S., to provide that the priority of judgment liens on real property is based on the date that the judgment lien was acquired.

This bill amends s. 56.27(4), F.S., to create specific information that must be provided in an affidavit, used in connection with the levy on real property.¹⁵ This bill also specifies that the requirements for an affidavit, already provided in current law, are to be used in connection with a levy on personal property.

Service of Process for an Injunction for Protection Against Domestic Violence and Sexual Violence

Current Law

Section 741.30, F.S., provides for a statutory cause of action for an injunction for protection against domestic violence, which is initiated by a petition by the victim or by family or household members. The petitioner need not be a spouse, and need not be represented by an attorney. Court filing fees may be waived, no bond is required, and the clerk of the court is required to assist petitioners in seeking both

¹⁴ Section 55.203, F.S., provides what information must be in a judgment lien certificate.

¹⁵ Under this bill, an affidavit used in connection with a levy on real property must state that the levying creditor has reviewed the records of the clerk of court of the county where the property is situated, or has performed a title search, and that the information contained in the affidavit based on this review or title search is true and correct. The affidavit for a levy on real property must also include the information contained in the certified copy of recordation of lien for each lien recorded on real property.

injunctions and enforcement for violation thereof.¹⁶ The sworn petition must be in substantially the form set forth in the statute.¹⁷ Upon the filing of the petition, the court is required to set a hearing and the respondent must be personally served with a copy of the petition and other specified documents.¹⁸

Section 741.30(8), F.S., provides that in domestic violence case where a protective injunction is being sought, a county clerk is required to furnish:

"a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night."

Further, the clerk of the court is responsible for furnishing the sheriff with information on the respondent's physical description and location.

Section 784.046, F.S., provides for a cause of action for an injunction for protection against sexual violence similar to that provided in s. 741.30, F.S. for protection against domestic violence. Section 784.046(8), F.S., also includes the same requirements of the clerk of court found in s. 741.30(8), F.S., discussed above.

Proposed Changes

This bill amends ss. 741.30(8) and 784.046(8), F.S., to provide that the clerk of court, when requested by the sheriff, may transmit a facsimile copy of an injunction that has been certified by the clerk of court, and this facsimile copy may be served in the same manner as a certified copy. This bill also provides that upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of court, the sheriff may transmit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

Appropriation

Current Law

When a non-custodial parent is delinquent in the payment of child-support, the custodial parent, or the Department of Revenue on behalf of the custodial parent, can petition the court to enforce the child support order. The judge typically will issue a writ of bodily attachment to be served on the non-custodial parent who is delinquent in their child support payments. The writ of bodily attachment is served by the county sheriff, and the sheriff charges a statutorily set fee of \$70 for each writ of bodily attachment that he or she is required to serve. Currently, the federal government through Title IV-D funds reimburses the Department of Revenue for the costs incurred in enforcing these child support cases, including the \$20 fee charged by the sheriff for serving process. This bill by raising the fee from \$20 to \$40 will increase the money needed by the Department of Revenue to continue enforcing child support orders.

Proposed Changes

This bill provides that there be appropriated \$2,285,925 in recurring funds from the Grants and Donations Trust Fund of the Department of Revenue to implement the increased costs for service of process in Title IV-D child support cases. This appropriation will allow the Department of Revenue to

¹⁶ Section 741.30(2), F.S.

¹⁷ Section 741.30(3), F.S.

¹⁸ Section 741.30(4), F.S.

pay for the increased costs by the sheriff for serving writs of bodily attachment in child support enforcement cases. However, this increased expenditure will continue to be reimbursed to the state by the federal Title IV-D funds. Without this appropriation, the state would not continue to receive these Title IV-D funds.

C. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., relating to sheriff's fees for service of summons, subpoenas, and executions.

Section 2 amends s. 48.021, F.S., relating to the types of process required to be served by the sheriff.

Section 3 amends s. 56.041, F.S., relating to civil execution orders.

Section 4 amends s. 56.21, F.S., relating to notice of execution sales.

Section 5 amends s. 56.27, F.S., relating to the payment of money collected under an execution sale.

Section 6 amends s. 741.30, F.S., relating to injunctions for protection from domestic violence.

Section 7 amends s. 784.046, F.S., relating to injunctions for protection from repeat, sexual, or dating violence.

Section 8 provides for an appropriation.

Section 9 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill appropriates \$2,285,925 in recurring funds from the Grants and Donations Trust Fund of the Department of Revenue. However, the federal government reimburses the Department of Revenue for this expenditure through Title IV-D funds.

This bill will also increase costs to all other state agencies that pay the fee charged by the sheriff to serve process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill appears to increase the amount of money that is collected by the sheriffs for carrying out their service of process duty thereby increasing county revenues. On March 24, 2007 the Revenue Estimating Conference concluded that this bill would result in a recurring local government revenue increase of approximately \$25.2 million for fiscal year 2007-08.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill increases the cost to persons paying a sheriff for service of process from \$20 to \$40.

D. FISCAL COMMENTS:

Unknown market factors will affect the fiscal impact of this bill. If private process servers increase their fees as a result of this bill, they will see increased revenues, persons requesting service of process will pay increased fees, and the ratio of process served by private process servers and sheriffs will likely remain as it is. If however, private process servers do not match the fee increase, then sheriffs will likely see a decrease in requests for service of process and this will lead to a decrease in revenues.

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, 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This legislation proposes an increase in the fees charged for service of process by the sheriff's department, which will more adequately reflect the cost to perform this function.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 11, 2007 the Safety & Security Council adopted two amendments to this bill. The amendments made the following revisions:

- Added criminal witness subpoenas and criminal summons to the types of process that can be served by a special process server;
- Revised the process for carrying out executions by amending the order by which money received under executions are to be paid, how the priority of liens are to be determined, and the information that must be included in the affidavit required in connection with a personal property levy and a real property levy; and
- Provided that the clerk of court, at the request of the sheriff, can send a certified facsimile copy of an injunction for protection against domestic or sexual violence to the sheriff, and this facsimile copy can be served by the sheriff in the same manner as a certified copy;
- Appropriated \$2,285,925 in recurring funds from the Grants and Donations Trust Fund.

This bill was then reported favorably with a council substitute. This analysis is drafted to the council substitute.