

HJR 125 — Recording of Instruments/County Seat

by Rep. Gay and others (SJR 1610 by Senator Harris)

This bill proposes amending s. 1, Art. VIII, State Constitution, to provide that an instrument is deemed recorded if filed at a branch office designated by the governing body of the county for the recording of instruments.

These provisions must be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1998.

Vote: Senate 39-0; House 111-0

CS/HB 585 — Adoption/Sibling Communications

by Family Law & Children Committee, Rep. Murman and others (SB 264 by Senator Rossin)

This bill amends ss. 39.469 and 63.022, F.S., by adding siblings to the individuals who may have continuing contact pending adoption with a child whose parents' rights have been terminated. Communications as well as contact is provided for in the bill and that communication or contact may include, but is not limited to, visits, letters and cards, or telephone calls.

This bill creates s. 63.0427, F.S., providing statutory authority for continuing communication or contact after an adoption is final. Communication or contact may include, but is not limited to, visits, letters and cards, or telephone calls. Post-adoption contact may occur by court order in adoptions of foster children to allow post-adoption communication or contact among separated siblings who are not included in the adoption, if such communication or contact is found to be in the best interests of the children. This bill also provides criteria to be considered by the court in determining the best interests of the child and for review of the appropriateness of the ongoing communication or contact if necessary. The continuing validity of the adoption is not contingent upon the post-adoption communication or contact, nor shall the ability of the adoptive parents and child to relocate within or outside the State of Florida be impaired by the communications or contact.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 117-0

CS/HB 935 — Legal Process

by Civil Justice & Claims Committee and Rep. Warner (CS/SB 1244 by Judiciary Committee and Senator Burt)

This bill amends provisions governing the service of process, by:

- Allowing substitute service 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 his or her place of business;
- Deleting a cross reference to s. 83.59, F.S., from the provisions regarding service of process in an action for possession of residential premises or nonresidential premises, and thus making s. 48.183, F.S., apply to any action for possession of a residential premises rather than only to possession actions under the Florida Residential Landlord and Tenant Act;
- Directing the chief judge of each circuit to develop application forms for natural persons desiring to have their names added to the list of certified process servers;
- Allowing certified process servers to serve process on a person within that certified processor's circuit when a civil action has been filed against the person to be served in any one of the state's circuit or county courts;
- Allowing an individual who files an action anywhere in the state to choose one or more certified process servers, listed in the circuit where process is to be served, to serve process in that process server's circuit;
- Requiring that the interest payable on a judgment for money damages appear on the face of the order for judicial sale, process, or writ directed to a sheriff;
- Providing that the interest stated on the judgment accrues until the judgment is paid and does not fluctuate, but remains the same until the judgment is paid;
- Providing that a sheriff not be required to docket and index, or collect a process, writ, judgment, or decree if the rate of interest on the judgment is not stated;
- Providing that any surplus from the sale of property sold under execution be paid either to the defendant or to a junior writ if one has been docketed and indexed with the sheriff; and
- Providing that an officer who fails to pay over money which that officer has collected in an execution within 30 days of obtaining the money, or 10 days after the plaintiff has made a

written demand to the civil process bureau, is liable for the amount owed and 20 percent of the amount owed.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 37-1; House 116-0

HB 1019 — Marriage Preparation Act

by Rep. Bloom (CS/CS/SB 1576 by Judiciary Committee, Ways & Means Committee, Senator Rossin and others)

This bill adds a requirement to the high school life management curriculum that “marriage and relationship skill-based education” be added to the course.

The bill provides that couples who complete at least a 4-hour marriage preparation course will receive a \$32.50 reduction in the initial marriage license fee. No marriage license may be issued by a county court judge or a clerk unless a couple attests that they have or have not taken the course. This requirement is intended to assist researchers in gathering statistical information regarding the efficacy of the program. The Florida State University Center for Marriage and Family shall review premarital preparation courses and prepare pilot programs based upon their findings about the efficacy of these programs. The Center is appropriated \$75,000 for FY 1998-99.

Handbooks explaining the rights and responsibilities of the parties to a marriage to each other and to their children will be created by The Florida Bar and reviewed for accuracy by the Family Court Steering Committee of the Supreme Court. The handbooks will be funded by the Family Courts Trust Fund and will receive annual updates.

The marriage preparation course must be conducted by certain licensed professionals, a person approved by a judge, an “official representative of a religious institution with ‘relevant training’,” or any other provider designated by the circuit court, including school counselors who are qualified to teach the courses locally. Topics in the marriage preparation course are to include: conflict management; communication skills; financial responsibilities; and children and parenting responsibilities. Each circuit must compile a registry of course providers and sites for the marriage preparation. Any couple choosing not to take a course must wait three days to obtain their marriage license. This waiting period may be waived by a county judge for good cause.

Upon filing for dissolution of marriage, couples with minor children must complete a 4-hour parenting course. Parties attending a parenting course are not required to take the course together and may be prohibited from doing so. Courts may establish registries for the parenting courses. Both registries must contain at least one course provided in each county which will offer the

course on a sliding fee scale or for free. The fee for filing for dissolution of marriage is increased by \$32.50.

Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when the U.S. Department of Health and Human Services provided funding to the highest court in every state for a comprehensive research project designed to study judicial management of foster care and adoption proceedings involving dependent children. The bill incorporates the recommendations that evolved from this study.

The bill relocates relevant sections of ch. 415, F.S., into ch. 39, F.S., and reorganizes ch. 39, F.S., to reflect an orderly presentation of the dependency process from intake to case outcome. The bill provides attorneys for parents who qualify under indigency standards at shelter hearings, who will continue representation of those parents throughout the duration of the case. The time from the arraignment hearing to the disposition hearing is shortened from 30 to 15 days for those parents who admit or consent to dependency, and the time from the shelter hearing to the arraignment hearing is lengthened from 14 to 28 days to allow for adequate assessment, case planning, and trial preparation.

The bill limits the number of times a case may be reviewed by a citizen review panel and requires concurrent case planning for children and families under the jurisdiction of dependency court. The bill requires law enforcement checks of individuals residing in a home which is being considered for placement of a child and requires home studies of relatives who may become permanent custodians of a child.

The federal Adoption and Safe Families Act of 1997 was signed into law in November 1997, and the bill provides for the requirements of that legislation. The health and safety of children is required to be the paramount concern in decisions made at all stages of dependency proceedings. In addition, all children in foster care are required to have a permanency planning review hearing within 1 year from the date of their removal from home, and additional grounds for expediting termination of parental rights under certain circumstances are provided.

If approved by the Governor, these provisions take effect January 1, 1999.

Vote: Senate 39-0; House 91-21

CS/HB 1381 — Court Cost Collection

by Crime & Punishment Committee, Reps. Heyman, Crist and others (CS/SB 462 by Criminal Justice Committee and Senator Crist)

This bill creates the Comprehensive Court Enforcement Program Act and establishes legislative intent for the act. The enforcement program may be implemented as supplementary proceedings in any judicial circuit at the option of the chief judge. The bill provides that judges, presumably both circuit and county court judges, shall have jurisdiction to carry out the provisions of this act.

The bill provides that any person “ordered to pay any financial obligation in any criminal case” is subject to the newly created section. The bill does not define financial obligation. However, the legislative intent makes clear that the bill is directed at a collection of “court costs, fines, and fees against litigants pursuant to statutory law.”

The bill authorizes a court to require a person ordered to pay an obligation to appear and be examined under oath concerning the person’s financial ability to pay the obligation. An order requiring a person’s appearance at a hearing must be served a reasonable time before the hearing. Any person who fails to attend a hearing may be arrested on warrant or *capias*.

At the hearing, testimony may be taken regarding any subject relevant to the person’s financial interests. Other witnesses may be examined; documents or other exhibits may be produced as evidence.

The court may reduce the obligation based on its determination of the person’s ability to pay. It may order any nonexempt property of the person, “which is in the hands of another” to be applied toward satisfying the obligation. The court may also enter a judgment, if one has not been previously entered, and issue any writ necessary to enforce the judgment as allowed in civil cases. Any judgment issued constitutes a civil lien against the judgment debtor’s presently owned or after-acquired property when recorded pursuant to s. 55.10, F.S.

The county commission may refer past due financial obligations to a collection agent or to a private attorney.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 114-0

HB 1403 — Molders

by Rep. Tobin (CS/SB 114 by Judiciary Committee and Senator Latvala)

This bill creates a process by which a molder can acquire title to an unclaimed mold, that is, a mold which has not been used to make a product for at least 3 years. These provisions repeal on January 1, 2001, and apply only to contracts entered into before January 1, 1999. The bill also creates a lien for unpaid amounts due for manufacturing or fabrication work and for materials used in such work, with the lien to be enforced by public sale of the mold.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 37-0; House 117-0

CS/SB 1466 — Liens

by Judiciary Committee and Senator Dudley

This bill amends s. 255.05, F.S., on public construction, to provide that a contractor may shorten the time period for enforcing a claim against a bond and for extinguishing a claim. The time period would be shortened to 60 days from the date of service of the notice. If an action was not brought in this time, the claim would be extinguished automatically. The bill also allows a contractor to demand that a claimant furnish a statement as to the services or materials to be furnished in the improvement.

The bill amends the definitions in the construction lien law to include provision of solid-waste collection or disposal within the improvements to real property for which a lien may be created.

The bill amends the provisions in s. 713.06, F.S., which provide for the general contractor's affidavit of payment to lienors upon final payment, to provide that the general contractor must state that all lienors who have timely served the notice to owner on both the owner and the contractor have been paid. The bill also provides that if a contractor makes a mistake in the affidavit which does not prejudice the owner, this does not constitute a default that operates to defeat an otherwise valid lien.

The bill amends s. 713.23, F.S., to provide that a contractor may shorten the current 1-year time period for instituting an action against the contractor and the surety based on a claim against a payment bond. The contractor could shorten the time period by serving on the affected lienor a notice of contest of a claim against the payment bond, a form for which is provided. Service would be by the clerk of the court mailing a copy of the notice to the claimant at the address shown on the claimant's notice of nonpayment. The clerk would certify the service on the face of the notice of contest and record the notice. Service would be complete upon mailing.

The time period would be shortened to 60 days from the date of service of the notice. If an action was not brought in this time, the claim would be extinguished automatically.

The bill creates s. 713.235, F.S., to create forms for a waiver of a right to a claim against a payment bond both for a progress payment and a final payment, with related provisions such as are contained in the existing waiver of lien statute, s. 713.20, F.S.

The bill amends s. 713.24, F.S., to provide for attorney's fees in actions to enforce a lien which has been transferred to other security and require a monetary deposit or bond to secure payment of such fees.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 37-0; House 117-0

CS/HB 3035 — Relief/Pitts & Lee

by Civil Justice & Claims Committee, Reps. Meek, Miller and others (CS/SB 68 by Judiciary Committee, Senators Holzendorf, Turner and others)

This bill directs the Division of Administrative Hearings to appoint an administrative law judge to conduct a hearing and determine whether a basis for equitable relief exists for the purpose of compensating claimants Freddie Lee Pitts and Wilbert Lee for any wrongful act or omission of the State of Florida which affected the fundamental fairness of the proceedings that resulted in their convictions. If the administrative law judge determines by a preponderance of the evidence that the State of Florida committed a wrongful act and that a basis for equitable relief exists, the judge is authorized to award Freddie Lee Pitts and Wilbert Lee the amount of \$500,000 each.

This bill provides that if the claimants are prevailing parties, the administrative law judge is authorized to award a reasonable attorney's fee including all costs to the claimants in an amount not to exceed 25 percent of the compensation award.

These provisions became law upon approval by the Governor on May 1, 1998.

Vote: Senate 39-1; House 105-11

CS/HB 3201 — Religious Freedom Restoration Act

by Governmental Operations Committee, Rep. Starks and others (CS/SB 298 by Judiciary Committee and Senators Grant and Bronson)

This bill creates the "Religious Freedom Restoration Act of 1998." It provides that government may not substantially burden a person's exercise of religion, even if the burden results from a rule of facially neutral application. The bill addresses the standard by which the courts may judge an individual's claim alleging governmental interference with the free exercise of religion. Such alleged interference will be judged according to whether the state's action is in furtherance of a

compelling state interest, and, if so, whether that interest is met by the least intrusive means possible.

This bill provides an award of attorney's fees and costs paid by the government to the prevailing plaintiff in any action or proceeding to enforce a provision of this act.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 114-5