HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1231 Service of Process
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Bond	Bond

SUMMARY ANALYSIS

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Substitute service of process (process on an alternative person) is allowed in certain circumstances.

This bill provides that if the only address for a person to be served is a virtual office or an executive or mini office suite, substitute service may be made by leaving a copy of the process with the person in charge of the virtual office or executive or mini office suite, provided the process server determines that the person to be served maintains a virtual office or an executive or mini office suite at that location.

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

The effective date of this bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of original process and of many witness subpoenas is made by delivering a copy of the process or subpoena to the person to be served with a copy of the complaint, petition, or other initial pleading or paper.[1] The process server must document the service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[2] The person serving the process or subpoena is obligated to file a return of service form with the court to show that service was made.[3]

While direct service upon the person to be served is preferred, it is not always practicable. Some people are busy, and some hide. Accordingly, the law allows for substituted service in certain circumstances, such as:

- Service at the person's residence if delivered to another person residing in the home who is at least 15 years of age;[4]
- Service upon the spouse of the person to be served, which can be served anywhere in the county with the consent of the spouse;[5]
- Service upon a sole proprietor can be made upon the person in charge of the business during business hours, provided there have been 2 prior attempts;[6]

Another circumstance in which substitute service is provided for is found in s. 48.031(6), F.S., which provides:

> (6) If the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location.

Laws on service of process are strictly construed against the party attempting to prove proper service of process.[7] As to this particular statute, the courts have ruled that it may not be used unless the private mailbox is the only address that can be discovered.[8]

Effect of the Bill

The bill amends s. 48.031(6), F.S., to provide that if the only address discoverable for a person to be served is a virtual office, substitute service may be made by leaving a copy of the process with the person in charge of the virtual office, provided that the process server determines that the person to be served maintains a virtual office at that location. The bill defines a virtual office as an office that provides communication and address services without providing any dedicated office space and in which all communication is routed through a common receptionist.

The bill also amends s. 48.031(6), F.S., to provide that if the only address discoverable for a person to be served is an executive or mini office suite, substitute service may be made by leaving a copy of the

[1] s. 48.031, F.S.
[2] ss. 48.29(6) and 48.031(5), F.S.
[3] s. 48.031(5), F.S.
[4] s. 48.031(1), F.S.
[5] s. 48.031(2)(a), F.S.
[6] s. 48.031(2)(b), F.S.
[7] *Carlini v. State Dept. of Legal Affairs*, 521 So.2d 254 (Fla. 4th DCA 1988)("Statutes dealing with service of process are to be strictly construed. . . . The burden of proof to sustain the validity of service of process is upon the person who seeks to invoke the jurisdiction of the court, and to achieve proper service of process, there must be a strict compliance with the applicable statute." [internal citations omitted]).
[8] *Beckley v. Best Restorations, Inc.*, 13 So.3d 125 (Fla. 4th DCA 2009).

process with the person in charge of the an executive or mini office suite, provided that the process server determines that the person to be served maintains an executive or mini office suite at that location. The bill defines an executive or mini office suite as an office that provides communication, dedicated office space, and other support services in which all communication is routed through a common receptionist.

B. SECTION DIRECTORY:

Section 1 amends s. 48.031, F.S., regarding service of process.

Section 2 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:

None.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a