HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 Jurisdiction of the Courts
SPONSOR(S): Bileca
TIED BILLS: None **IDEN./SIM. BILLS:** SB 486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Caridad	Bond
2) Judiciary Committee	18 Y, 0 N	Caridad	Havlicak

SUMMARY ANALYSIS

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment and a state's long-arm statute.

Florida's choice-of-law statute provides that a contract will be enforced by the courts of this state where Florida law has been designated as the governing law in the agreement and the transaction is valued at no less than $250,000. The forum-selection statute grants courts jurisdiction to hear cases relating to any contracts that have been made pursuant to Florida's choice-of-law statute.

The bill revises Florida's long-arm, choice-of-law, and forum-selection statutes, as well as provisions of the Enforcement of Foreign Judgment Act and the International Commercial Arbitration Act to:

- Provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with choice-of-law statute.
- Delete language that prevents the enforcement of a choice-of-law provision in a contract where each party is a nonresident.
- Delete language from the Enforcement of Foreign Judgment Act, regarding the definition of "foreign judgment," to clarify that the statute applies to a court order from a U.S. territory (i.e. Puerto Rico), not merely to a court order from one of the 50 states.
- Correct cross references in the International Commercial Arbitration Act to conform with the UNCITRAL Model Law on Commercial Arbitration.

The bill may have an indeterminate fiscal impact on state courts. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Personal Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment.[1] The test for determining whether a court is able to assert personal jurisdiction over a nonresident is whether the nonresident has "minimum contacts" in the forum so that the commencement of a proceeding against said individual will not "offend traditional notions of fair play and substantial justice."[2] The principal inquiry is whether the nonresident's conduct and connection with the forum state would lead him or her to believe that they could "reasonably anticipate being haled into court."[3]

Florida Long-Arm Statute

The second limitation on a court's ability to assert personal jurisdiction is derived from a state's long-arm statute. Such statutes can be drafted broadly[4] to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow for a court to assume personal jurisdiction in a particular case. Florida's statute falls in the latter category.

In *Venetian Salami Co. v. J.S. Parthenais*, the Florida Supreme Court described the relationship between Florida's long-arm statute and the due process requirements of the Fourteenth Amendment as follows:

> By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned. It has not specifically addressed whether the federal constitutional requirement of minimum contacts has been met. As a practical matter, it could not do so because each case will depend upon the facts.[5]

Therefore, two inquiries must be satisfied in determining a court's ability to assert personal jurisdiction over a nonresident: 1) whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and 2) if so, whether the necessary minimum contacts exist to satisfy due process requirements.[6]

Important Court Rulings

In *Jetbroadband WV, LC v. Mastec North America, Inc.*, the court held that by promulgating ss. 685.101 and 685.102, F.S., the legislature created a separate jurisdictional basis for asserting personal jurisdiction over a nonresident that was outside the ambit of the long-arm statute.[7] In that case, the court declared that the nonresident defendant was subject to the jurisdiction of Florida's courts by virtue

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[1] U.S. Const. amend. XIV, s. 2 ("No state shall . . . deprive any person of life, liberty, or property without due process of law . . .); s*ee International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement,* 326 U.S. 310, 316 (1945).
[2] *International Shoe*, 326 U.S. at 316.
[3] *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474 (1985) (quoting *World-Wide Volkswagen Co. v. Woodson,* 444 U.S. 286, 297 (1980)).
[4] An example of a broad long-arm statute can be found in Cal. Civil Code s. 410.10 (2011), which states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."
[5] *Venetian Salami Co. v. J.S. Parthenais,* 554 So.2d 499, 500 (Fla. 1989).
[6] *Jetbroadband WV, LLC v. Mastec North America, Inc.*, 13 So.3d 159, 161 (Fla. 3rd DCA 2009).
[7] *Id*.

of the forum-selection clause that designated Florida as the appropriate venue to commence an action or proceeding regarding a dispute arising from the parties' agreement.[8]

The court distinguished its ruling from an earlier Florida Supreme Court case, *McRae v. J.D./M.D., Inc.*, that was decided 12 years earlier. There, the court refused to enforce a forum-selection clause and denied jurisdiction on the grounds that there was no jurisdictional basis for doing so under the 1987 version of the long-arm statute.[9] At the time of the decision, Florida's choice-of-law and forum selection statutes had not been enacted.[10] In *Jetbroadband,* the court explained that, due to passage of the choice-of-law and forum selection statutes, Florida courts were now equipped with the jurisdictional authority to hear cases involving forum-selection clauses that designate Florida as the venue of choice for a proceeding.[11]

Florida Choice-of-Law Statute

The choice-of-law statute provides that a court may enforce a contract where Florida law is designated as the governing law in the agreement and the transaction is valued at no less than $250,000.[12] The statute further provides that such contracts will be enforced if: "1) the contract bears a substantial or reasonable relation to Florida, or 2) at least one of the parties is either a resident or citizen of Florida (if a person), or is incorporated or organized under the laws of Florida or maintains a place of business in Florida (if a business)."[13]

As presently drafted, the choice-of-law statute is unclear regarding whether a substantial relationship is required between the agreement, parties, and Florida. For instance, s. 685.101(1), F.S, provides that:

> [A]ny contract, agreement or undertaking . . . may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement or undertaking . . . whether or not [it] bears any relation to this state.

In contrast, s. 685.101(2), F.S, provides that:

> [T]his section does not apply to any contract, agreement, or undertaking regarding any transaction which does not bear a substantial or reasonable relation to the state in which every party is either or a combination of [a nonresident of this state or incorporated or organized under the laws of another state.]

In sum, s. 685.101(1), F.S., appears to require no substantial connection between the subject matter of the agreement and Florida; however, in s. 685.101(2), F.S., the statute explicitly requires a connection between the parties and Florida.

Florida Forum-Selection Statute

The forum-selection statute, s. 685.102, F.S., grants courts jurisdiction to hear cases relating to a contract made pursuant to Florida's choice-of-law statute, or s. 685.101, F.S.

Regarding enforceability, the United States Supreme Court has held that such clauses should be upheld, unless it can be shown that its enforcement would be unreasonable or unjust, or that the clause was invalid as a result of fraud or overreaching.[14] The Court has also held that the minimum contacts

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[8] *Id.* at 162-63.
[9] *McRae v. J.D./M.D., Inc.* 511 So.2d 540, 542 (Fla. 1987).
[10] Sections 685.101 and 685.102, F.S (the statutes were passed in 1989, two years after the court's decision in *McRae*).
[11] *Id.*
[12] *Id.*
[13] *Jetbroadband,* 13 So. 3d at 162 (*quoting* Edward M. Mullins & Douglas J. Giuliano, Contractual Waiver of Personal Jurisdiction Under F.S. § 685.102: The Long-Arm Statute's Little-Known Cousin, 80-May Fla. B.J. 36, 37 (2006)).
[14] *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 15 (1972).

standard is met if a forum-selection clause exists that is "freely negotiated and is not unreasonable and unjust."[15]

Effect of Bill

The bill provides that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with the choice-of-law statute, s. 685.102, F.S.[16] As a result, a court may excercise personal jurisdiction in a case involving nonresidents if they enter into a contract where the parties agree to designate Florida law as governing the contract; thus, contractually agreeing to personal jurisdiction in this state.

The bill amends s. 685.101, F.S., to remove the limiting language requiring "a substantial or reasonable relation to Florida or [that] at least one of the parties be a resident of Florida or incorporated under its laws."[17] As a result, the deletion of the limitation appears to expand the jurisdiction of the courts of this state accordingly.

Other Changes

Florida Enforcement of Foreign Judgments Act

Article IV, clause 1 of the United States Constitution provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. . ."[18] Accordingly, under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., provide that a foreign judgment from a sister jurisdiction may be enforced in Florida upon being recorded in the office of the clerk of the circuit court of any county.[19] Current law limits this to only apply to a judgment or order from "any other state."

The definition does not contain any reference to territories or possessions of the United States entitled to full faith and credit under federal law (i.e. Puerto Rico).[20]

In *Rodriguez v. Nasrallah*,[21] a state court held that "[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister states." As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida.

The bill amends s. 55.502, F.S., to more succinctly define a foreign judgment as any "judgment, decree, or order of a court which is entitled to full faith and credit." By removing from the definition of "foreign judgment" reference to orders from the 50 states, it allows for the judgments, orders, and decrees from U.S. territories, such as Puerto Rico, to be recognized under the statute.

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed statutes relating to international commercial arbitration and, in its place, adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law).

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[15] *Burger King*, 471 U.S. at 473 n. 14.

[16] Several other jurisdictions have similar language in their respective long-arm statutes. MICH. COMP. LAWS s. 600.705 (2011); MONT. CODE ANN. s. 25-20-4(b)(1)(E) (2011); S.D. CODIFIED LAWS s. 15-7-2(5) (2011); TENN CODE ANN. s. 20-2-214 (2011) ("Entering into a contract for services to be rendered or for materials to be furnished in [this state] by such person.").

[17] *Jetbroadband*, 13 So.3d at 162.

[18] U.S. Const. art. IV, cl.1.

[19] Section 55.503, F.S. (2011).

[20] *See* 28 U.S.C. s. 1738 (2006) (". . . The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form . . .").

[21] *See* 659 So.2d 437, 439 (Fla. 1st DCA 1995).

Chapter 684, F.S., in accordance with the UNCITRAL Model Law applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. Currently, two of the statutes contain clerical errors relating to cross-references. The bill amends ss. 684.0019 and 684.0026, F.S., to correct cross-references to conform the Florida International Commercial Arbitration Act to the UNCITRAL Model Law.

B. SECTION DIRECTORY:

Section 1 amends s. 48.193, F.S., relating to the jurisdiction of the courts.

Section 2 amends s. 55.502, F.S., relating to the definition of the term "foreign judgment."

Section 3 amends s. 684.0019, F.S., relating to conditions for granting interim measures.

Section 4 amends s. 684.0026, F.S., relating to recognition and enforcement.

Section 5 amends s. 685.101, F.S., relating to choice-of-law.

Section 6 amends s. 685.102, F.S., relating to jurisdiction.

Section 7 provides that the bill shall take effect on July 1, 2012.

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:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate impact on courts' case load. According to the Office of the State Courts Administrator's 2012 Judicial Impact Statement, the bill may increase the number of contract actions filed in circuit court; however, it is unable to quantify to what extent.[22]

[22] Office of the State Court Administrator, 2012 Judicial Impact Statement for HB 917 (Dec. 30, 2011) (on file with the House Civil Justice Subcommittee).

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:

With respect to choice-of-law conflicts, the United States Supreme Court held that "for a State's substantive law to be selected in a constitutionally permissible manner, the State must have significant contact or a significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair."[23] Accordingly, the removal of the requirement of "significant contacts" or "reasonable relationship" from a state's choice-of-law statute could potentially trigger a due process challenge under the Fourteenth Amendment. However, in *Hague*, there was no contract provision whereby the parties agreed to be governed by a specific state's law. Instead, the question before the Court was which state law applied in the absence of an agreement that designated any state's law as governing. In addition, ss. 685.101 and 685.102, F.S., would continue to preserve existing language that limits the application of the statutes "to the extent permitted under the United States Constitution."[24]

The United States Supreme Court has explained that, in the commercial context, the minimum contacts standard is met if there is a forum-selection clause that it is "freely negotiated and is not unreasonable and unjust."[25]

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

None.

[23] *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981).
[24] Sections 685.101 and 685.102, F.S.
[25] *Burger King*, 471 U.S. at 473, n. 14; *See also, Elandia International, Inc. v. Koy, et al.*, 690 F. Supp. 2d 1317, 1340 (S.D. Fla. 2010).