

STORAGE NAME: h0487.sgc.doc
DATE: February 7, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 487
RELATING TO: Attorney's Fees
SPONSOR(S): Representatives Seiler and Gottlieb
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

A court may impose sanctions on parties for filing frivolous claims. A prevailing party may file a motion for attorney's fees in situations where the opposing party takes action designed to unreasonably delay the proceeding or raises claims or defenses that the opposing party knew or should have known were not supported by the facts or would not be supported by application of the law to those facts. In some situations, the opposing attorney may also be sanctioned. A party may seek sanctions against the opposing party or the opposing attorney by filing a motion for sanctions with the court and contemporaneously serving a copy on the opposing party.

HB 487 requires a party that intends to file a motion to seek sanctions to first serve the motion on the opposing party. The opposing party has 21 days to withdraw or correct the claim or defense before the motion for sanctions can be filed with or presented to the court. This bill is similar to a provision currently found in Rule 11 of the Federal Rules of Civil Procedure.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

The bill imposes a new restriction on when certain motions may be filed with the court.

B. PRESENT SITUATION:

Section 57.105, F.S., governs sanctions that can be imposed for raising unsupported claims or defenses in civil actions. Section 57.105(1), F.S., provides that the court may, on its own initiative, or on the motion of a party, award attorney's fees to the prevailing party if the court finds that a claim or defense when initially presented or at any time before trial:

- (1) was not supported by the material facts necessary to establish the claim or defense;
or
- (2) would not be supported by the application of then-existing law to those material facts.

The statute also permits the imposition of sanctions if the court finds that a pleading was filed or other action was taken primarily for the purpose of unreasonable delay. See s. 57.105(3), F.S.

The statute does not permit the imposition of sanctions if the court determines that the claim or defense was initially presented to the court as a good faith argument for a change in law with a reasonable expectation of success. See s. 57.105, F.S.

Motions for sanctions pursuant to the statute must be served on the opposing party or counsel contemporaneously with the filing of the motion with the court. See Fla.R.Civ.P. 1.080.

Rule 11 of the Federal Rules of Civil Procedure governs sanctions for the filing of frivolous pleadings or the raising of frivolous claims or defenses in federal courts. Rule 11(c)(1)(A), Fed.R.Civ.P., requires that a party serve a motion for sanctions on the opposing party at least 21 days prior to filing the motion with the court. If the "challenged paper, claim, defense, contention, allegation, or denial" is withdrawn, the motion for sanctions may not be filed in the court. The rule gives a party an opportunity to withdraw a frivolous or unsupported claim or defense before sanctions are imposed.

The Advisory Committee Notes to the Federal Rules of Civil Procedure explained the purpose of this portion of Rule 11 when the rule was amended in 1993:

These provisions are intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation. Under the former rule, parties were sometimes reluctant to abandon a questionable contention lest that be viewed as evidence of a violation of Rule 11; under the revision, the timely withdrawal of a contention will protect a party against a motion for sanctions.

C. EFFECT OF PROPOSED CHANGES:

This bill requires a party seeking sanctions pursuant to s. 57.105, F.S., to serve the motion on the opposing party at least 21 days prior to filing the motion with the court. If the opposing party withdraws the "challenged paper, claim, defense, contention, allegation, or denial" or makes an appropriate correction within 21 days after service, the motion may not be filed with the court. The bill's language is similar to Rule 11, Fed.R.Civ.P.

This bill will take effect on July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes"

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

In Whitten v. Progressive Casualty Insurance Company, 410 So. 2d 501, 504 (Fla. 1982), the court rejected claims that s. 57.105, F.S., violated separation of powers and held that an award of attorney's fees is a "matter of substantive law properly under the aegis of the Legislature."

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier, Jr.

Staff Director:

Nathan L. Bond

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

L. Michael Billmeier, Jr.

Staff Director:

Don Rubottom