

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 935 Child Support Enforcement

**SPONSOR(S):** Civil Justice Subcommittee; Baxley

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Caridad	Bond
2) Health & Human Services Quality Subcommittee	14 Y, 0 N	Mathieson	Calamas
3) Judiciary Committee	14 Y, 0 N	Caridad	Havlicak

### SUMMARY ANALYSIS

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act. To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program, meaning the state's program must provide certain services such as enforcement of child support orders. Statute provides DOR with alternative means of enforcing such orders, including suspension of an obligor's driver license.

The bill:

- Provides that an obligor's license will not be suspended if the obligor pays the delinquency through income deduction;
- Authorizes DOR to send notices to a garnishee by secure e-mail or facsimile upon consent by the garnishee;
- Requires the Chief Financial Officer and DOR to work together to establish an automated method for identifying individuals doing business with the state and owe overdue support so that support payments may be withheld by the state;
- Makes changes related to the use of unclaimed property for payment of past due support; and
- Authorizes DOR to place an administrative lien on certain claims, judgments, and property.

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

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994.<sup>1</sup> A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act.<sup>2</sup> DOR provides services under the federally required program in 65 counties and through contracts in two counties.<sup>3</sup>

DOR is responsible for some case-processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receiving and responding to verbal and written inquiries. To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant,<sup>4</sup> Florida must have a federally compliant child support program.<sup>5</sup> The program must contain the following services:

- Paternity establishment;
- Support order establishment;
- Support order review and modification;
- Location of parents;
- Payment collection and disbursement; and
- Order enforcement.<sup>6</sup>

In Florida, DOR establishes the initial child support order and modifies existing orders when a family's circumstances change.

DOR utilizes various statutory resources in its attempt to collect past due child support. For instance, DOR may suspend the obligor's driver's license. Pursuant to s. 61.13016, F.S., a person (the obligor) who is 15 days delinquent in paying child support may have his or her driver's license suspended after notice and an opportunity for a hearing in circuit court. The obligor may avoid suspension by paying the full amount of the delinquency, entering into a written agreement with DOR to pay the past due amount, or filing a petition in circuit court to contest suspension.<sup>7</sup> Although not provided for in statute, DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension.

If a person has a support obligation subject to enforcement by DOR, the department may inform all persons with credits or personal property (i.e. wages) belonging to the obligor under their control to not transfer any of the credits or personal property up to the amount listed in the notice, without DOR consent.<sup>8</sup>

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<sup>1</sup> Florida Department of Revenue, [http://dor.myflorida.com/dor/childsupport/about\\_us.html](http://dor.myflorida.com/dor/childsupport/about_us.html) (last visited Jan. 27, 2012).

<sup>2</sup> See, 42 U.S.C. ss. 651-669b *et seq.*

<sup>3</sup> Florida Department of Revenue, [http://dor.myflorida.com/dor/childsupport/about\\_us.html](http://dor.myflorida.com/dor/childsupport/about_us.html) (last visited Jan. 27, 2012). Miami-Dade County cases are handled by the state attorney's office, and Manatee County cases are handled by the clerk of court.

<sup>4</sup> TANF is a block grant program to help move recipients into work and turn welfare into a program of temporary assistance. Under the welfare reform legislation of 1996, TANF replaced the old welfare programs known as the Aid to Families with Dependent Children (AFDC) program, the Job Opportunities and Basic Skills Training (JOBS) program, and the Emergency Assistance (EA) program. The law ended Federal entitlement to assistance and instead created TANF as a block grant that provides States, Territories, and Tribes Federal funds each year. These funds cover benefits and services targeted to needy families. U.S. Dep't of Health and Human Servs., [http://www.acf.hhs.gov/opa/fact\\_sheets/tanf\\_factsheet.html](http://www.acf.hhs.gov/opa/fact_sheets/tanf_factsheet.html) (last visited Jan. 27, 2012).

<sup>5</sup> Section 61.1826(1)(d), F.S.

<sup>6</sup> See 42 U.S.C. ss. 654(4), (8), (10), and (29).

<sup>7</sup> Section 61.13016(1)(c), F.S.

<sup>8</sup> Section 409.25656(1), F.S.

Under current law, DOR must provide notice to the Chief Financial Officer (CFO) identifying the obligor and the amount of support outstanding. The CFO must then withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. DOR may then levy upon the withheld payments.<sup>9</sup>

### **Effect of Proposed Changes**

This bill amends Florida law relating to child support enforcement. Specifically, the bill:

- Allows an obligor to pay any delinquency in child support through income deduction so as to avoid suspension of his or her driver's license;
- Provides that if the garnishee provides written consent, DOR may send notices to the garnishee by secure e-mail or facsimile;
- Requires the CFO and DOR to establish an automated method for disclosing to DOR the names of individuals doing business with the state who owe past due support so the state may withhold payments owed to such individuals;<sup>10</sup>

Current law authorizes DOR to intercept unclaimed property for payment of past due support once Department of Financial Services approves a claim. When a claim is approved, DOR notifies the obligor by certified mail of the intent to intercept the claim up to the amount of past-due support owed. The obligor is also notified of his or her right to contest the action at an administrative hearing pursuant to ch. 120, F.S. If there is a hearing and the action is sustained, DOR enters a final order directing DFS to transfer the property to DOR. DOR is required to enter final orders in all cases, even when the action is uncontested.

The bill provides that:

- If a claim for unclaimed property is approved by DFS, DOR shall send a notice by certified mail to the obligor at the address provided by the obligor to DFS, advising the obligor of the department's intent to intercept the approved claim.
- DFS must retain custody of the property until a final order has been entered and any appeals have concluded or, if the intercept is uncontested, until notified by DOR;
- If an obligor does not request a hearing, DOR must notify DFS, electronically or in writing, to transfer the property to DOR;
- Eliminates the requirement for DOR to enter a final order when the obligor does not contest the action.

Under current law, DOR may place an administrative lien on a motor vehicle or vessel that is registered in the name of an obligor who is delinquent in support payments, "if the title to the property is held by a lienholder."<sup>11</sup> The statute does not authorize DOR to place a lien on property owned "free and clear" by the obligor.

The bill authorizes DOR to place an administrative lien for unpaid support on a motor vehicle or vessel, even if owned free and clear by the obligor, and upon a claim, settlement, or judgment that may result in payment to the obligor. The bill further provides that DOR must notify the obligor of the intent to place a lien by regular mail sent to the obligor's address on file with the depository. The notice must state the amount of past due support owed and inform the obligor of the right to contest the lien at an administrative hearing.

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<sup>9</sup> Section 409.25656(10), F.S.

<sup>10</sup> Under current law, DOR provides to the CFO a listing of obligors for whom warrants are outstanding. The CFO then withholds all payments to any obligor doing business with the state and DOR may levy upon the withheld payments. The change made by this bill essentially reverses this method, so that the CFO is disclosing to DOR a file of individuals to whom the state pays money.

<sup>11</sup> Section 409.2575(1), F.S.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 61.13016, F.S., relating to suspension of driver licenses and motor vehicle registrations.
- Section 2:** Amends s. 322.058, F.S., relating to suspension of driving privileges due to support delinquency.
- Section 3:** Amends s. 409.25656, F.S., relating to garnishment.
- Section 4:** Amends s. 409.25658, F.S., relating to uses of unclaimed property for past due support.
- Section 5:** Amends s. 409.2575, F.S., relating to administrative liens.
- Section 6:** Provides for an effective date of 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:

3. According to DOR, its procedures must be modified to implement the changes made by this bill. However, the department expects that any operational impact of the bill will be insignificant.<sup>12</sup>

**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.

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<sup>12</sup> Dep't of Revenue, 2012 Bill Analysis, HB 935, p. 5 (Dec. 16, 2011) (on file with the House Civil Justice Subcommittee).

**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**

On January 25, 2012, the Civil Justice Subcommittee adopted a Proposed Committee Substitute. The CS/HB 935 differs from the bill as filed in that the PCS:

- Removed provisions that would have allowed service of process by regular mail.
- Removed a provision that would have allowed any caregiver of a child to execute an affidavit alleging paternity of a child.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.