

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 149 Social Security Benefits

SPONSOR(S): Gottlieb

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services	6 Y, 0 N	Preston	Liem
2) Future of Florida's Families			
3) Judiciary			
4)			
5)			

SUMMARY ANALYSIS

House Memorial 149 requests that the United States Congress revise the Social Security Act to authorize the interception of "funds payable under the Social Security Act" to social security recipients who owe past-due child support. The intercepted funds would be used to pay past-due child support and for reimbursement of attorney's fees incurred in collecting past-due child support.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0149a.fff.doc

DATE: April 2, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Title IV-D of the Social Security Act provides for a partnership between the federal and state governments to provide Child Support Enforcement services to individuals who meet specified eligibility requirements.¹ These services include the collection of child support payments from noncustodial parents, or obligors, and the distribution and disbursement of such collections typically to the custodial parent, or obligee.

The Social Security Act also gives consent, on behalf of the United States, to the garnishment or withholding under court order of monies payable based on remuneration for employment to any individual, when the garnishment is to enforce the legally established obligation of the individual to provide child support or alimony. There is no distinction made between current support obligations and retroactive or past-due support obligations. A state Title IV-D agency or an individual may use the procedure.²

Wages payable to individuals are subject to the withholding, as are social security benefits based on contributions derived from employment, social security retirement, and disability benefits. Other periodic federal payments under pension and retirement systems, worker’s compensation, and death benefits are also covered. Not included in the definition are disability payments under the Social Security Act based on the person’s lack of income and assets (SSI), as opposed to previous contributions made from wages and employers. Support collections by a Title IV-D agency through income withholding take priority over almost any other legal obligation. “Support” is defined as amounts payable under a court or administrative order for the support and maintenance of a child and can include costs, interest, penalties and attorney’s fees.

Florida law provides for garnishment or income withholding for both child support payments and alimony:

So much as the court orders of the money or other things due to any person or public officer, state or county, whether the head of a family residing in this state or not, when the money or other thing is due for the personal labor or service of the person or otherwise, is subject to attachment or garnishment to enforce and satisfy the orders and judgments of the court of this state for alimony, suit money, or child support, or other orders in proceedings for dissolution, alimony, or child support; when the money or other thing sought to be attached or garnished is the salary of a public officer, state or county, the writ of attachment or

¹ 42 USC 651-669b

² 42 USC 459

garnishment shall be served on the public officer whose duty it is to pay the salary, who shall obey the writ as provided by law in other cases. It is the duty of the officer to notify the public officer whose duty it is to audit or issue a warrant for the salary sought to be attached immediately upon service of the writ. A warrant for as much of the salary as is ordered held under the writ shall not issue except pursuant to court order unless the writ is dissolved. No more of the salary shall be retained by virtue of the writ than is provided for in the order.³

Florida law also provides for income deduction orders:

(1) ISSUANCE IN CONJUNCTION WITH AN ORDER ESTABLISHING, ENFORCING, OR MODIFYING AN OBLIGATION FOR ALIMONY OR CHILD SUPPORT.--

(b) The income deduction order shall:

1. Direct a payor to deduct from all income due and payable to an obligor the amount required by the court to meet the obligor's support obligation including any attorney's fees or costs owed and forward the deducted amount pursuant to the order.

2. State the amount of arrearage owed, if any, and direct a payor to withhold an additional 20 percent or more of the periodic amount specified in the order establishing, enforcing, or modifying the obligation, until full payment is made of any arrearage, attorney's fees and costs owed, provided no deduction shall be applied to attorney's fees and costs until the full amount of any arrearage is paid;⁴

The memorial provides for the Florida Legislature to request that the United States Congress revise the Social Security Act to authorize the interception of "funds payable under the Social Security Act" to social security recipients who owe past-due child support. The intercepted funds would be used to pay past-due child support and for reimbursement of attorney's fees incurred in collecting past-due child support.

C. SECTION DIRECTORY:

Not Applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³ See §61.12(1), Florida Statutes

⁴ See §61.1301(1)(b), Florida Statutes

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear what is meant by the term "funds payable under the Social Security Act". If the term is referring to typical social security retirement benefits, federal law and Florida law already provide for the interception of such benefits for payment of both current and past-due court ordered child support as well as attorney's fees.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On **April 1, 2003** the **Subcommittee on Children's Services** adopted a strike everything amendment that clarified the intent of the memorial. The memorial now requests that Congress determine the feasibility of accessing pension plans and retirement funds, both public and private, for the purpose of collecting child support obligations, to include all fees and costs associated with such collections, from monies that would ordinarily be payable only upon retirement.