

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government –The bill authorizes DOR to grant a waiver from the requirement to remit child support payments electronically by adopting the same standards that apply to waivers for electronic remittance of tax payments.

Ensure lower taxes – Federal law now requires states to impose a \$25 annual fee for each child support case in which the state has collected at least \$500 during the year and the custodial parent has never received temporary cash assistance (TANF). Current law does not authorize DOR to impose an annual fee. This bill would allow collection of the fee.

Promote personal responsibility – The bill decreases the threshold for an obligor to be subjected to passport sanctions from \$5000 to \$2500.

Empower families – The bill authorizes service of process by publication for legal fathers in paternity cases where an alleged biological father has been identified and DOR is seeking to determine paternity and obtain a support order. This may lead to resolution of additional paternity and support cases.

B. EFFECT OF PROPOSED CHANGES:

Service of Process

Service of process can be carried out in a number of ways. Primarily, service of process occurs through actual delivery of a copy of the process to the witness or defendant, or through substituted service which can occur by delivery to a persons' residence, or through notice by mail or publication as allowed by law. Section 49.011, F.S. permits service of process by publication in specified legal proceedings. Persons who may be served by publication are provided in section 49.021, F.S. Currently, this section does not specifically address service to legal fathers in paternity actions.

In May of 2006, the Supreme Court of Florida held that, “. . . a legal father is an indispensable party in an action to determine paternity and to place support obligations on another man unless it is conclusively established that the legal father's rights to the child have been divested by some earlier judgment.”¹ Prior to this decision, the department served standardized complaints on putative fathers (alleged biological father), and attempted to provide a Notice of Action to the legal father (man who was married to the child's mother at the time the child was conceived or born). According to the court, these attempts to provide service of process failed. The lower court expressed the opinion that the “legal” father is an indispensable party.²The Supreme Court agreed.

Section 409.257, F.S., provides the department's authority for service of process. This provision requires service by the sheriff, or by any means permitted under chapter 48, F.S.

Section 742.09, F.S., prohibits all media and all persons responsible for media publications or broadcasts of any kind from publishing the name of any party to any court proceeding relating to determination of parentage. A violation of this provision constitutes a first-degree misdemeanor.

¹ See Department of Revenue v. Cummings, 930 So.2d 604, 609 (Fla. 2006).

² See . Department of Revenue v. Cummings, 871 So.2d 1055 (Fla. 2d DCA 2004).

Fees

The department is required to deposit Title IV-D program income into the Child Support Enforcement Application and Program Revenue Trust Fund.³

The state plan for child and spousal support must provide services relating to the establishment of paternity or establishment, modification, or enforcement of child support obligations under the plan, and enforce specified support obligations.⁴ The state plan must also provide for collection and disbursement of child support payments.⁵

Federal law requires the department to provide support services to all dependent children and requires the imposition of an application fee for furnishing these services.⁶ In a case in which an individual who has never received assistance under a state program funded in part with federal dollars, and for whom the state has collected at least \$500 of support, the state must charge an annual fee of \$25 for each case in which services are furnished. This fee is required to be retained by the state from the support paid by the individual applying for the services, recovered from the absent parent, or paid by the state out of its own funds. If the fee is paid from state funds, the payment shall not be considered as an administrative cost of the state, and shall be considered income to the program. The state is required to reduce its quarterly claims for federal IV-D matching funds by the amount of program income.⁷

Electronic Remittance of Tax Payments

Employers who are required to remit sales and unemployment tax payments to the department electronically are also required to remit child support payments and associated data electronically when the child support is deducted under an income deduction order or notice.⁸ Current law permits the department to grant a waiver from the requirement to remit tax payments electronically, but does not permit the department to grant a waiver from the requirement to remit child support payments electronically.⁹ Waivers may be granted when extenuating circumstances are present, including, but not limited to: the employer does not have a computer that meets the minimum standards necessary for electronic remittance, additional time is needed for computer programming, the employer does not currently file data electronically with any business or government, electronic filing conflicts with the employer's business procedures, or compliance would cause financial hardship.

Denial, Revocation, or Limitation of United States Passport

State law requires the state to report noncustodial parents who owe more than \$5,000 in support arrearages to the U.S. Department of Health and Human Services. This information is then forwarded to the U.S. Secretary of State who must refuse to issue a passport to the individual, or may revoke, restrict, or limit the individuals previously issued passport. Federal law has lowered the threshold amount for reporting to \$2,500.¹⁰

Interstate Enforcement

Federal and state law require the state to promptly respond to an automated administrative enforcement request from another state to enforce a support order. Previously the state was not authorized to open a child support case on its automated system in order to complete the administrative enforcement under this specific enforcement provision. The Federal Deficit Reduction

³ See s. 61.1814(2), F.S.

⁴ See to 42 U.S.C. s. 654(4)(A).

⁵ See 42 U.S.C. s 654(5).

⁶ See 42 U.S.C. 654(6)(B).

⁷ See 45 C.F.R. s. 304.50,

⁸ See s. 61.1824(6), F.S.

⁹ See s. 213.755(9), F.S.

¹⁰ See 42 U.S.C. 452(k)(1),

Act of 2005 now provides states the option to establish a corresponding case based on another state's request for automated administrative enforcement.

The Bill:

- Amends s. 49.011, F.S., to expand the list of actions or proceedings in which service of process may be made by publication to include proceedings to determine paternity. Service by publication in paternity proceedings is limited to the legal father in a paternity action in which another man is alleged to be the biological father. This change will address the court's opinion in Department of Revenue v. Cummings, 930 So.2d 604 (Fla. 2006), by specifically allowing notice to the legal father by publication. Sections 409.257 and 742.09 F.S., are amended to conform to the changes in s. 49.011, F.S.
- Amends s. 61.1814, F.S., to permit the collection of the annual fee required by federal law for each child support case involving an individual who has never received temporary cash assistance and for whom the state has collected at least \$500 during the year. This change is necessary to as a result of changes to federal law contained in the Federal Deficit Reduction Act of 2005.¹¹ Section 409.2567, F.S., is amended to require that the annual fee under s. 61.1814(2)(f), F.S., be paid by the department.
- Amends s. 1824, F.S., to allow the department to waive the electronic remittance requirement for child support payments, making this consistent with electronic remittance of tax payments and provides cross references in order to ensure the same requirements for electronic remittance of tax payments and child support payments.
- Amends s. 409.2564, F.S., to comply with changes in federal law. Arrearages in an amount exceeding \$2,500 (rather than \$5,000 which is current Florida law) may result in the denial, revocation or limitation of a United States passport.
- Amends s. 409.25641, F.S., to permit the department to implement the changes to federal law and open a case on its automated system for purposes of enforcing an interstate order for support.

C. SECTION DIRECTORY:

Section 1. Amends s. 49.011, Florida Statutes, relating to service of process by publication.

Section 2. Amends s. 61.1814, Florida Statutes, relating to the Child Support Enforcement Application and Program Revenue Trust Fund.

Section 3. Amends s. 61.1824, Florida Statutes, relating to the State Disbursement Unit.

Section 4. Amends s. 409.2564, Florida Statutes, relating to actions for support.

Section 5. Amends s. 409.25641, Florida Statutes, relating to procedures for processing automated administrative enforcement requests.

Section 6. Amends s. 409.2567, Florida Statutes, relating to services to individuals not otherwise eligible.

Section 7. Amends s. 409.257, Florida Statutes, relating to service of process.

Section 8. Amends s. 742.09, Florida Statutes, relating to publishing names and penalties.

¹¹ See 42 U.S.C. s. 654.

Section 9. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

An appropriation of \$1,204,383 in nonrecurring general revenue and \$1,605,846 in recurring general revenue from the General Revenue Fund to the Department of Revenue is required in order to pay the federally mandated annual fee under s. 409.2567, Florida Statutes, as a provision of the bill. The funds are included in the Department of Revenue's budget in the House proposed General Appropriations Act for Fiscal Year 2007-2008 (PCB PBC 07-06).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 27, 2007, the Healthcare Council adopted a technical amendment to the PCB and reported the bill favorable as amended.