

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/CS/SB 694

INTRODUCER: General Government Appropriations Committee, Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Storms

SUBJECT: Child Support

DATE: April 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.	Daniell	Maclure	JU	Fav/CS
3.	Blizzard	DeLoach	GA	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends statutes relating to the Child Support Enforcement Program administered by the Department of Revenue (DOR). Specifically, the bill:

- Provides for the use of the clerk of court's depository in private child support cases.
- Makes support obligation modifications.
- Authorizes the DOR to collect noncovered medical expenses in installments and gives the DOR access to health insurance records received by the Agency for Health Care Administration.
- Authorizes the DOR to claim as program income uncashed checks of less than one dollar.
- Clarifies terms used during the administrative establishment of child support orders.
- Directs the Office of Vital Statistics (OVS) to amend a child's birth certificate based on a marriage license application or a final judgment of dissolution of marriage.
- Makes it discretionary for the DOR to request a federal waiver to provide services without the need of an application.
- Extends the deadline for the DOR to implement electronic filing of documents with the court.

- Clarifies assignment of child support rights to the DOR in temporary cash assistance cases.

The bill has an operational impact to the Department of Revenue of \$99,688 in recurring general revenue and \$193,512 in the Federal Grants Trust Fund.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.30, 382.015, 382.016, 409.2558, 409.256, 409.2563, 409.25635, 409.2564, 409.2567, 409.259, 409.910, 414.095, and 741.101.

This bill reenacts sections 61.14 and 61.30, Florida Statutes.

II. **Present Situation:**¹

The Child Support Enforcement Program is a federally funded program that has been administered by the Department of Revenue 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. The DOR provides services under the federally required program in 65 counties and through contracts in two counties.²

To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program, which must contain the following services:

- Paternity establishment.
- Support order establishment.
- Support order review and modification.
- Location of parents, employers, and assets.
- Payment collection and disbursement.
- Order enforcement.

Paternity establishment uses all administrative and judicial actions to establish paternity. It also uses genetic testing in assisting parents in determining the biological parents. In 2009, 105,379 children were born out of wedlock in Florida. Of that number, 94,775 paternity determinations were made. Currently, 100,568 children in the DOR caseload need their paternity established.

The DOR establishes the initial child support order and modifies existing orders when a family’s circumstances change. During Fiscal Year 2008-2009, the DOR processed \$48 million in child support collections on support orders established in that fiscal year.

Some child support orders are established by the DOR administratively, as provided by s. 409.2563, F.S. In 2009, the DOR established over 12,000 administrative support orders. Prior

¹ The information contained in the Present Situation of this bill analysis is replicated from the professional staff analysis for CS/SB 694 by the Senate Committee on Children, Families, and Elder Affairs (Mar. 9, 2010), *available at* <http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s0694.cf.pdf> (last visited Mar. 21, 2010).

² Miami-Dade County cases are handled by the state attorney’s office, and Manatee County cases are handled by the clerk of court.

to beginning the administrative process, the DOR screens cases for complex circumstances and, if identified, will proceed with those cases judicially.

Pursuant to s. 409.2563(4)-(7), F.S., the DOR issues a proposed order after notice and a requirement for full financial disclosure by the parties. If a request for an administrative hearing in response to the proposed order is not made timely, the DOR renders a final order that incorporates the terms of the proposed order.³

The 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. In 2009, 1.1 million cases were maintained by the DOR. In Fiscal Year 2008-2009, the DOR had a 7.3 percent increase in new service requests and 6.6 percent increase in reopened cases.

Child support orders are enforced by the DOR, as well as the receipt and disbursement of collections. In 2009, over \$1.41 billion was collected and distributed, with 98 percent of collections distributed within 24 hours. Of all parents in the DOR caseload, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, the DOR initiated enforcement actions on 92 percent of the support collections eventually received.

III. Effect of Proposed Changes:

Clerk's Depository in Private Child Support Cases

Section 1 amends s. 61.13(1)(d), F.S., to reinstate the ability of parties in private child support cases to request that the local clerk's depository process their support payments. The Department of Revenue operates the State Disbursement Unit, which is responsible for the collection and disbursement of child support payments. The clerks of all Florida circuit courts operate a depository to "perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit."⁴ In previous years, parties in private child support cases could request the local circuit court's depository to process certain payments through their offices. However, section 1 of ch. 2009-180, L.O.F., enacted in 2009, inadvertently eliminated this ability.

Support Obligation Modifications (Sections 2, 9, 15, and 16)

Section 2 amends s. 61.30(15), F.S., effective July 1, 2010, to give the DOR the option of filing a written declaration, under penalty of perjury, which attests to the income of a parent who receives public assistance when the parent is not cooperative in providing the information. This is intended to expedite establishment of child support orders and allow electronic filing.

³ In contested cases, there is a formal hearing before the Division of Administrative Hearings.

⁴ Section 61.046(4), F.S. The State Disbursement Unit provides "one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order." Section 61.046(20), F.S.

Section 9 amends s. 409.2564(4), F.S., which gave the DOR the authority to reduce the amount of retroactive support an obligor (parent) owed to the state by 25 percent, if the obligor and the DOR agreed on the terms. The intent of this law, enacted in 2006, was to encourage out-of-court settlements and to improve compliance. However, the DOR has been unable to implement this provision due to the complexity of federal distribution rules that determine when arrears are owed to the state.

In addition, this section amends s. 409.2564(11), F.S., relating to modification of a support order, to require that, if the DOR seeks to modify a support order entered by the circuit court, then the DOR must file, along with the petition, a child support guideline worksheet, any financial affidavits received from the parties or completed by the DOR as part of the support order review, and a proposed modified order. The DOR must serve a copy of the petition, proposed order, and other documents to the party who requested the review of a support order by regular mail. The party who did not request the review may be served by registered mail or by personal service. The bill also allows the DOR to seek modification of the support order if it does not provide for payment of noncovered medical expenses or require health insurance and it is accessible and available. In each case, the order may not be modified absent an evidentiary hearing.

Sections 15 and 16 reenact ss. 61.14(1)(c) and 61.30(1)(c), F.S., effective November 1, 2010, to incorporate the amendments made to s. 409.2564, F.S., by the bill. The changes to s. 409.2564, F.S., are also effective November 1, 2010.

Medical Support Improvements (Sections 1, 8, and 12)

Section 1 amends s. 61.13(1)(b), F.S., to remove an erroneous reference to health insurance in the determination of medical support orders. Only noncovered medical expenses are to be considered.

Section 8 amends s. 409.25635(7), F.S., effective October 1, 2010, to authorize the DOR to collect noncovered medical expenses in installments by adding a periodic payment to an income deduction notice issued by the DOR, thereby reducing an administrative burden on the DOR. Noncovered medical expenses mean uninsured medical, dental, or prescription medication expenses that are ordered to be paid on behalf of a child.⁵

Section 12 amends s. 409.910(20), F.S., to give the DOR access to health insurance records received by the Agency for Health Care Administration. These records will assist the DOR in identifying available health insurance of parents and in enforcing support orders containing health insurance coverage for dependents.

Payment Processing

Section 5 amends s. 409.2558(3), F.S., effective July 1, 2010, to allow the DOR to retain uncashed paper checks of less than one dollar that are older than 180 days and balances on closed cases that are less than one dollar. Current law requires the DOR to continue attempts to disburse minimal collections of less than one dollar when a parent does not cash the check. The

⁵ Section 409.25635(1), F.S.

DOR estimates that the cumulative amount that would have been retained from uncashed checks in 2009 was less than \$300.

The bill also establishes additional priorities for applying undistributable collections in the program. The additional priorities will allow the DOR to offset costs incurred from losses resulting from bad checks or overpayments made to either parent. These changes will create additional program income for the DOR and greater efficiency in payment processing.

Administrative Process Improvements (Sections 6 and 7)

Section 6 amends s. 409.256, F.S., relating to administrative proceedings to establish paternity and child support, to replace the term “custodian” with “caregiver.” A “caregiver” is defined as “a person, other than the mother, father, or a putative father, who has physical custody of a child or with whom the child primarily resides.”

Section 7 amends s. 409.2563, F.S., relating to administrative establishment of child support obligations, to replace the term “caretaker relative” with “caregiver.” The definition provided for “caregiver” matches the definition provided in s. 409.256, F.S. This change will give those adults providing care or residence to a child the legal standing to address child support obligations in a court of law or in an administrative proceeding. The DOR is authorized to refer a case to the Division of Administrative Hearings (DOAH) for a formal hearing when an evidentiary hearing is needed to resolve complicated factual issues. In cases where there is conflicting information, such as a complex financial situation or a complicated guidelines-deviation issue, it can be difficult for the DOR to prepare a proposed order. The relatively few such cases⁶ often result in an evidentiary hearing as the process unfolds. Referring such a case to the DOAH earlier in the process, rather than attempting to prepare a proposed order based on incomplete or conflicting information, has the potential to result in more timely support orders and allow the DOR to devote more of its resources to resolving routine matters.

Paternity Establishment via Marriage Applications and Judgments of Dissolution of Marriage (Sections 3, 4, and 14)

Section 3 amends s. 382.015, F.S., to require the Department of Health (DOH) and its Office of Vital Statistics to accept, as a determination of paternity, a certified copy of a final judgment of dissolution of marriage that requires the former husband to pay support for the child. This will require the OVS to amend a child’s birth certificate to include the name of the legal father following a judgment of dissolution of marriage requiring child support payment from the former husband.

Section 4 amends s. 382.016, F.S., to require the OVS to amend a child’s birth certificate to reflect the marital status of the parents upon receipt of a marriage license. According to the DOH, the OVS currently creates a new birth certificate upon a final decree of paternity or acknowledgement of paternity from both parents and amend marital status upon the request of the parents and proof of marriage. The changes made by the bill will require the Office of Vital Statistics to verify with the court if another man is listed as the father and not mentioned in final

⁶ The department estimates that there are fewer than 100 of these types of cases.

decree of dissolution of marriage. Additionally, the bill may require parents' to obtain a legal change of name in order to change the child's surname if not addressed elsewhere in documentation received to file the new birth record. If multiple registrants are named and the birth occurred out-of-state, the bill does not clarify who will notify the other states, such as the Clerk of Court. Out of state marriage records could create problems in litigating the validity of the marriages.⁷

Section 14 amends s. 741.01, F.S., to provide that a marriage application must allow both parties to the marriage to state under oath in writing if they are the parents of a child born in Florida and to identify the children they have in common. The name of any children recorded by both parties must be transmitted to the DOH along with the original marriage license and endorsements. According to the DOH, it does not currently file new birth certificates based on a marriage record. This change may produce additional work for the clerks of court and will require the creation of additional reports to identify children of the marriage.⁸

These changes are intended to assist the DOR in establishing paternity in a timely fashion and maintaining compliance with federal standards for the program, which require paternity to be established for 90 percent of out of wedlock births.⁹

Federal Waiver Request

Section 10 amends s. 409.2567, F.S., to authorize, rather than require, the DOR to request a federal waiver allowing them to provide services to an individual owed child support who has not made an application to the DOR for assistance.

The bill also provides that the DOR may seek a waiver if it would result in an increase of federal funding over the additional costs to the state. This change will allow the DOR to seek the waiver should the federal funding formula change and make the program cost beneficial to the state.

Electronic Filing

Section 11 amends s. 409.259, F.S., to remove the October 1, 2009, deadline to begin electronic filing for pleadings, returns of service, and other papers with the clerks of the circuit courts for child support cases, and requires that it be implemented upon completion of the Child Support Automated Management System (CAMS).

The DOR is currently developing the second phase of CAMS. Due to unexpected implementation issues, the requirement for electronic filing of documents with the court was removed from the DOR's contract with the CAMS vendor. The change to s. 409.259, F.S., will allow the DOR to complete the statewide implementation of CAMS and require the DOR to work with each partner to ensure it can accept electronic documents and filings in Title IV-D cases.

⁷ Florida Dep't of Health, *Bill Analysis, Economic Statement, and Fiscal Note HB 7083* (Mar. 11, 2010) (on file with the Committee on Judiciary) (HB 7083 is the companion bill to SB 694).

⁸ *Id.*

⁹ Conversation with Debbie Thomas, Department of Revenue (Mar. 23, 2010).

Assignment of Rights

Section 13 amends s. 414.095, F.S., to correctly identify the DOR as the agency that obtains the rights of assignment of temporary cash assistance, aligning ch. 414, F.S., with ch. 409, F.S.

Effective Date

Section 17 provides that, except as otherwise specifically provided in the bill, the bill shall take effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Revenue is required to review child support orders in Title IV-D cases at least once every three years when requested, or when support rights are assigned. If the DOR's review of a support order indicates that the order should be modified, the bill requires the DOR to provide service of process to the party requesting review of the order by "registered mail, restricted delivery." The Department of Revenue indicates there will be an operational impact of \$99,688 in recurring general revenue and \$193,512 in the Federal Grants Trust Fund due to the service of process requirement in the bill.

The bill provides for additional ways a person may request a new birth certificate from the Office of Vital Statistics. It is unknown at this time if more people will request new birth certificates, which could result in an additional workload in the Office of Vital Statistics.

VI. Technical Deficiencies:

Under current law, the Department of Revenue is permitted to serve notice of a proceeding for the establishment of administrative support orders by one of the following methods.

- Personal service by an authorized DOR employee.
- Any means authorized for service of process in a civil action.
- Certified mail, restricted delivery, return receipt requested.¹⁰

If the latter method is used, the following restrictions apply:

Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally.¹¹

Lines 1282-1295 of the bill, relating to modification of support orders, require that “A copy of the petition, proposed order, and other documents shall be served by registered mail, restricted delivery on a party who requested review of a support order.” The party who did not request the review may be served in the same manner or by personal service. It appears that the bill does not contemplate service being affected on the party requesting the review by any other method than “registered mail, restricted delivery.”

The Legislature may wish to consider amending the bill to require consistent methods for service of process under all circumstances.

Additionally, according to the Department of Health:

The bill does not amend Section 382.013(2), Florida Statutes, which provides the method by which paternity is established for purposes of a birth record at the time of birth. The failure to amend Section 382.013, Florida Statutes, creates the potential for conflict. For example, Section 382.013(2)(c), Florida Statutes provides, in pertinent part, that “If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution signed by both the mother and the person to be named as the father.” Under the proposed legislation, an unmarried mother could give birth to a child, get married within the 5 day period before the certificate of live birth is filed with the bureau, and purportedly file the marriage record as proof of paternity for the

¹⁰ Section 409.2563(4), F.S.

¹¹ *Id.*

child, which is in conflict with the requirements for establishing paternity listed in Section 382.013(2)(c), Florida Statutes.¹²

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by General Government Appropriations on April 13, 2010:

The committee substitute requires the Department of Revenue to provide service of process to the party requesting review of child support orders by regular mail. Parties who do not request support order review will continue to be served by registered mail or personal service.

CS/CS by Judiciary on March 26, 2010:

The committee substitute changes the effective date of the reenactment of ss. 61.14(1)(c) and 61.30(1)(c), F.S., from becoming a law to November 1, 2010, to coincide with the effective date of the changes made to s. 409.2564, F.S.

CS by Children, Families, and Elder Affairs on March 9, 2010:

The committee substitute amends the manner by which the Department of Revenue may serve notice when seeking to modify a support order, as well as making evidentiary hearings mandatory in those cases. In addition, the bill mandates that the clerks of court, Office of State Courts Administrator, sheriffs, Office of the Attorney General, and the department implement electronic filing in Title IV-D cases.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹² Florida Dep't of Health, *supra* note 8.