

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1089 Child Support Obligations
SPONSOR(S): Children, Families & Seniors Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:** SB 1532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	18 Y, 0 N, As CS	Rahming	Brazzell
2) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Brascomb	Jones
3) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Lee	Topp
4) Health & Human Services Committee			

SUMMARY ANALYSIS

In Florida, families receive child support services through private attorneys, filing pro se actions, or the Child Support Program administered by the Department of Revenue (DOR). As Florida's Title IV-D agency, DOR is responsible for collecting and enforcing child support. To receive services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.

CS/HB 1089 makes numerous changes to the Child Support Program. The bill:

- Specifies that affidavits of default or a default in payments are not required for Title IV-D cases to have accounts established in the Clerk of Court Child Support Collection System and that Title IV-D payments are processed through the State Disbursement Unit;
- Amends the statements the DOR is required to certify when requesting a consumer report, to conform to the federal Fair Credit Reporting Act;
- Allows notices relating to consumer reports to be made by regular mail instead of by certified or registered mail;
- Prohibits the state from treating incarceration as voluntary unemployment when a support order is established or modified, unless limited exceptions apply;
- Codifies how Social Security dependent benefits affect the amount of child support ordered; the extent to which the parent receives credit for the benefits; and how a parent obtains credit for dependent benefits;
- Updates the process for rendering final orders;
- Authorizes the use of electronic notices of garnishment to consenting financial institutions;
- Revises the data exchange process between the DOR and the Department of Financial Services (DFS) relating to the use of unclaimed property for past due child support;
- Authorizes DOR to use email that is unencrypted to send confidential exempt information with an authorized customer's written consent, with exceptions; and
- Requires an entity to report to the State Directory of New Hires nonemployees who perform services and are paid \$600 or more in a calendar year.

The fiscal impact of the bill is indeterminate, but likely insignificant on state government.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Title IV-D Cases

Title IV-D (IV-D) refers to Title IV, Part D of the Social Security Act, which is the federally funded, state administered child support enforcement program.¹ The IV-D program is administered by the federal Office of Child Support Enforcement (OCSE), within the United States Department of Health and Human Services. The OCSE oversees the national child support program and partners with state and local child support agencies to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households.² The OCSE does not provide services directly to families, but helps state child support agencies develop, manage, and operate their child support programs effectively and according to federal law.³

As Florida's IV-D agency,⁴ the DOR is responsible for collecting and enforcing child support.⁵ The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year.⁶ The Child Support Program works with parents, employers, financial institutions, the Internal Revenue Service, state and local agencies, and courts throughout the state to receive timely child support payments and also works with families and partners to:⁷

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;
- Collect and disburse child support payments; and
- Monitor and enforce child support orders.

Child support services are available even if a parent lives in another state or country. To receive the no-cost services from the Child Support Program, families either complete an application for services or are automatically referred because a parent is receiving cash or food assistance.⁸

The DOR offers child support services in all but two Florida counties, partnering with the State Attorney's Office for services in Miami-Dade County and the Manatee County Clerk of Court for services in Manatee County.

Non-IV-D Cases

A non-IV-D child support case is a case in which a court has determined that income withholding for support is required and neither the employee/obligor nor the custodial party/obligee has applied for, or is receiving, child support services through their state's IV-D agency.

Depository Role in IV-D Cases

¹ 42 U.S.C. ss. 651, et. seq.

² *Id.*

³ U.S. Department of Health & Human Services, Office of Child Support Enforcement (OCSE), An Office of the Administration for Children & Families, *About the Office of Child Support Enforcement*, <https://www.acf.hhs.gov/css/about> (last visited Mar. 20, 2021).

⁴ S. 409.2557(1), F.S.

⁵ See s. 61.13, F.S.

⁶ Florida Department of Revenue (DOR), *Child Support Program: Overview 2019*, https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x_Child_Support_Overview_Presentation_External_2020_FFY_2018-19.pdf (last visited Mar. 20, 2021).

⁷ *Id.* at 7.

⁸ *Id.* at 5.

Current Situation

Once a judge orders child support, the obligor may pay the obligee directly or payments can be made through an Income Withholding Order. If an Income Withholding Order is issued, the payments will be processed at the State Disbursement Unit (SDU) administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligors must make all child support payments in IV-D cases to the SDU.⁹

Any party, or the DOR in a IV–D case, may file an affidavit with the clerk of court depository¹⁰ alleging a default in payment of child support that is payable directly to the obligee and stating that the party wishes to require that child support payments be made through the depository.¹¹

When a private case with a support order payable directly to the parent who is owed support becomes a IV-D case, due to either payment of public assistance or because a parent applies for IV-D services, the clerk’s depository must create payment accounts on the Clerk of Court Child Support Collection System (CLERC System) for payments to be disbursed to the parent owed support and for the payment data to be sent to the DOR.¹²

Effect of Proposed Changes – Depository Role in Title IV-D Cases

The bill:

- Specifies that payments in IV-D cases must be made to the SDU; and
- Requires that, upon notice by the DOR that it is providing IV-D services in a case with an existing support order, the depository establish a case on the CLERC System and set up the appropriate payment accounts so that payments can be disbursed by the SDU, regardless of whether there is a default in payment.

Credit Reporting

Current Situation

As the state’s IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual’s income, establish that individual’s capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, head of the IV-D agency, or its designee, must certify that:¹³

- The consumer report is needed for the purpose of determining an individual’s income and establishing an individual’s capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;
- The individual whose report is sought was provided with at least 15 days’ prior notice by certified or registered mail to the individual’s last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.

Effect of Proposed Changes – Credit Reporting

⁹ Ss. 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 USC 654b(a)(1)(A).

¹⁰ The depository receives, records, reports, disburses, monitors, and otherwise handles alimony and child support payments not otherwise required to be processed by the State Disbursement Unit (SDU). See s. 61.046(4), F.S.

¹¹ S. 61.13(1)(d)3., F.S.

¹² Department of Revenue (DOR), Agency Analysis of 2021 House Bill 1089, p. 2 (Mar. 1, 2021).

¹³ S. 61.1354(3), F.S.

The bill requires consumer reporting agencies to provide requested consumer reports to the DOR, rather than the head of the IV-D agency or its designee. The bill also requires that, when requesting a consumer report, certified statements required to be made under s. 61.1354, F.S., conform to the federal Fair Credit Reporting Act (FRCA)¹⁴ and that DOR, rather than the head of the IV-D agency, or its designee, make the certification.

Although the FCRA was amended in 2015 to remove the requirement to provide notice to individuals, the bill maintains the current notice requirement; however, the bill authorizes such notice to be made by regular mail instead of by certified or registered mail.

Child Support Guidelines; Retroactive Payments

Current Situation

Incarceration

Under current law, Florida courts are permitted to find that conduct leading to incarceration is a voluntary action that justifies imputing income for purposes of ordering child support.¹⁵ Courts are to look at the totality of the circumstances in reaching an equitable and just result.

In *DOR v. Jackson*, 846 So. 2d 486 (Fla. 2003), the Florida Supreme Court found that an incarcerated parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The opinion provides that while the trial court has some discretion, the child's interest in receiving support must generally supersede the obligor parent's substantial change in circumstances resulting from incarceration.

The District Courts of Appeal are split on whether income can be imputed for purposes of entering an *initial* child support order when the respondent is in prison or going to prison.

In *McCall v. Martin*, 34 So. 3d 121 (Fla. 4th DCA 2010), the Fourth District Court of Appeal (DCA) reversed the trial court's order refusing to impute income to the father during his incarceration for committing battery on his wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*, 727 So. 2d 328 (Fla. 4th DCA 1999), which was approved by the Supreme Court in *Jackson*, the Fourth District held that a child's best interest is not served by refusing to set an initial amount of support based on imputed income for a parent about to be imprisoned.

However, in *DOR v. Llamas*, 196 So.3d 1267 (Fla. 1st DCA 2016), the First District Court of Appeal affirmed a final order declining to impose child support obligation upon the father who was going to prison. The First DCA certified conflict with the Fourth DCA's opinion in *McCall*, finding that the administrative law judge reasonably applied the law and did not abuse his discretion in declining to impute income to the father. Subsequently, in *Wilkerson v. Wilkerson*, 220 So. 3d 480 (Fla. 5th DCA 2017), the Fifth DCA aligned itself with *McCall* and certified conflict with *Llamas*, holding that a court does not abuse its discretion in setting an initial child support obligation by imputing income to an incarcerated parent. The court in *Wilkerson* believed that an individual's actions that lead to incarceration are voluntary for purposes of s. 61.30(2)(b), F.S., and that s. 61.30, F.S., was not intended to operate as a shield to avoid having an initial support obligation established while the parent is incarcerated.

In 2016, amendments to 45 C.F.R. § 302.56(c)(3)¹⁶ added a new requirement that state child support guidelines must "...[p]rovide that incarceration may not be treated as voluntary unemployment in establishing and modifying support orders..." The CFR does not provide any exceptions to this requirement.

¹⁴ 15 U.S.C. s. 1681b(a)(4).

¹⁵ S. 31.30(2)(b), F.S.

¹⁶ See 81 FR 93492, Dec. 20, 2016.

By prohibiting states from treating incarceration as voluntary unemployment, the new regulations provide incarcerated individuals the opportunity to have their child support order reviewed and adjusted in accordance with state child support guidelines and their actual income and ability to pay.¹⁷ Florida's child support guidelines do not contain this requirement.

As a condition of the state's IV-D State Plan and continued receipt of federal IV-D matching funds, the state must comply with federal IV-D regulations.¹⁸ The "Federal Compliance Date" for Florida to adopt the federal requirement is on or about June 30, 2023.¹⁹

As of February 2, 2021, the Child Support Program has 641,602 open cases, and in 29,988 of those cases the parent who owes support was incarcerated.²⁰ Of the 29,988 cases with an incarcerated parent who owes support:²¹

- 18,227 have an existing support order; and
- 10,761 have no order for support.
 - 3,383 of these cases need paternity determined before a support order can be established.

In 2020, the Child Support Program received 89 requests for a support order review from parents who owe support and were incarcerated.²² Under current law, the program pends these actions until the parent is released.²³

On September 17, 2020, the federal Office of Child Support Enforcement issued a Notice of Proposed Rulemaking²⁴ to further amend 45 C.F.R. § 302.56(c)(3). The proposed rule maintains the requirement adopted in 2016 that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders, but adds that the state may adopt limited exceptions if incarceration is for (1) intentional nonpayment of child support from a criminal case or civil contempt action and/or (2) for an offense against a child or person who is owed child support.²⁵

Social Security Benefits

When a parent is receiving social security benefits due to the disability or retirement of the child's parent and, as a result, his or her children receive dependent benefits, the total benefits received by or on behalf of that parent are attributed to the disabled or retired parent as income in the child support guideline calculation.²⁶ Dependent benefits are then credited toward the parent's child support obligation and, if dependent benefits are less than support obligation, the parent must pay the difference; but if dependent benefits are more, these pay the support obligation in full, and any excess inures to benefit of child(ren).²⁷ However, such credits may not exceed the established monthly obligation and may not be applied to offset arrearages that accrue before child benefits begin.²⁸ Support order modification is not required to obtain credit.²⁹

¹⁷ See 85 FR 58029, Sep. 17, 2020.

¹⁸ 45 C.F.R. § 302.56(a) and 42 U.S.C. s. 655(a)(1)(A).

¹⁹ DOR, *supra* note 12, at 3.

²⁰ Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: DOR Child Support Concepts Information (Feb. 24, 2021).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Supra* note 17.

²⁵ *Id.*

²⁶ *Williams v. Williams*, 560 So.2d 308 (Fla. 1st DCA 1990); *Wallace v. Dep't. of Revenue*, 774 So.2d 804, 808 (Fla. 2^d DCA 2000); *Sealander v. Sealander*, 789 So.2d 401, 403 (Fla. 4th DCA 2001); *Ford v. Ford* 816 So.2d 1193 (Fla. 4th DCA 2002).

²⁷ *Id.*

²⁸ *Wallace* at 807; *Dep't. of Revenue ex rel. Sprague v. Sprague*, 733 So.2d 585, 587 (Fla. 2^d DCA 1999).

²⁹ *Wallace* at 807.

Courts have the discretion to deviate from the child support guidelines.³⁰

Section 61.30, F.S., does not reflect current case law addressing a parent's entitlement to credit for social security benefits or administrative hearing rights in such cases.

Effect of Proposed Changes – Child Support Guidelines

The bill prohibits treating incarceration as voluntary unemployment when a support order is established or modified, unless incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support, or the court or administrative tribunal deviates from the guideline amount as provided under current law. This change will bring the state guidelines into closer compliance with federal regulations, though state guidelines would include exemptions not authorized in current regulations. Should the proposed rule creating limited exceptions for treating incarceration as voluntary unemployment be finalized, the exception in the bill relating to “willful nonpayment of child support” will be in conflict with the new federal rule, which may necessitate a future amendment.

The bill also amends ss. 61.30(2) and (10), F.S., to be consistent with Florida case law, specifying:

- Social security benefits received by a minor child due to the retirement or disability of the child's parent must be considered part of the parent's gross income for determining child support obligations.
- A parent is entitled to credit for social security benefits paid directly to the child or the child's caregiver when the benefits are paid due to the parent's retirement or disability.
- The parent's share of the monthly support obligation is considered paid in full each month for which such benefits are paid that are equal to or greater than the parent's share of the monthly obligation.
- If the benefits are less than the parent's share of the monthly obligation, the parent must pay the difference to satisfy the monthly obligation, rather than to the child or child's caregiver, allowing the DOR to receive social security benefits payments in cases where the recipient of public assistance assigns their support rights to the state under s. 409.2561, F.S.
- If the benefits are more than the parent's share of the monthly obligation, the excess inures to the benefit of the child and may not be credited to arrears or retroactive support that accrued before the benefits commenced.
- To obtain credit, a parent subject to a court order for child support, or the DOR in a IV-D case, may file a motion with the court or include the request in a petition to modify the support order.
- Alternatively, in a IV-D case, the DOR may apply credit after providing proper notice and an opportunity for a hearing, consistent with ch. 120, F.S., which governs agency adjudications under the Administrative Procedure Act. If credit is determined and applied by the DOR, the DOR must notify the clerk of court and the clerk must update the payment record.

³⁰ S. 61.30(1)(a), F.S. Courts may also order payment of child support in an amount that varies more than five percent from the guideline amount, but only upon a written finding explaining why ordering payment of the guideline amount would be unjust or inappropriate.

Rendering Final Orders

Current Situation

Paternity or Paternity and Child Support Orders

Final orders determining paternity or paternity and child support rendered as authorized by s. 409.256(11), F.S., and administrative support orders rendered as authorized by s. 409.2563(7), F.S., are prepared, reviewed and approved using the Child Support Program's automated system.³¹ Once approved, the orders are electronically signed and automatically mailed to the parties with the original, fully-executed and rendered final orders stored digitally as PDF documents by the automated system.³² Under current law, rendered means that a signed written order is filed with the clerk or any deputy clerk of the DOR and served on the respondent.³³ The date of filing must also be indicated on the face of the order at the time of rendition.³⁴ Final orders issued by the Child Support Program under ss. 409.256 and 409.2563 state that "The Final Order has been rendered on the above date by filing it with the agency clerk of the Florida Department of Revenue and serving it on the respondent."³⁵ As it relates to administrative support orders, s. 409.2563(8), F.S., also requires the DOR to file a certified copy of such orders with the clerk of the circuit court. Currently, DOR's automated system generates final administrative support orders, which are batch e-filed electronically through the Florida Courts E-Filing Portal or automatically sent via U.S. mail to the clerk.³⁶

Effect of Proposed Changes – Rendering Final Orders

CS/HB 1089 amends the definition of "rendered" in ss. 409.256(1)(i) and 409.2563(1)(e), F.S., to reflect that final orders and administrative support orders are system-generated with electronic signatures, rather than filed with the agency clerk or a deputy clerk.

The bill also removes the requirement to file a certified copy of an administrative support order with the clerk of the circuit court, as the orders are filed electronically or automatically sent via U.S. mail to the clerk.

Garnishment/FAST Levy

Current Situation

DOR is authorized to collect unpaid child support obligations by garnishing accounts at banks, credit unions and other financial institutions.³⁷ Upon service of the initial garnishment notice (Notice to Freeze) by registered mail, a person in possession of personal property owned by or owed to a person who owes past due support may not transfer or otherwise dispose of the obligor's property until 60 days after receipt of the notice.³⁸ After the Notice to Freeze is served on the one in possession of the property, the obligor is served with a Notice of Intent to Levy by certified or registered mail and given an opportunity to contest the notice.³⁹ If a timely petition to contest is not filed, or there is a hearing and an order entered that garnishment may proceed, the DOR is authorized to serve a Notice of Levy by registered mail on the one in possession of the property to be levied upon.⁴⁰

The federal OCSE sponsors the Federally Assisted State Transmitted (FAST) Levy program. The FAST Levy program, which is voluntary for both child support and financial institutions, allows child

³¹ DOR, *supra* note 12, at 5.

³² *Id.*

³³ Ss. 409.256(1)(i) and 409.2563(1)(e), F.S.

³⁴ *Id.*

³⁵ DOR, *supra* note 12, at 5.

³⁶ *Id.*

³⁷ S. 409.25656, F.S.

³⁸ S. 409.25656(1), F.S.

³⁹ See ss. 409.25656(7)-(8), F.S.

⁴⁰ S. 409.25656(3), F.S. The Notice of Levy requires a financial institution to transfer the funds in the account to the DOR up to the amount of past due or overdue support. The DOR then disburses the funds to the parent who is owed support.

support agencies to create levy actions for distribution to multiple financial institutions, and allows financial institutions to receive and respond to levy actions from multiple states in a standardized, automated manner.⁴¹ The FAST Levy program also reduces costs, increases efficiency to collect past due child support, and gets support to families faster.⁴² To participate, DOR must provide notice by secure electronic means to the participating financial institutions. However, since the statute requires service of the Notice of Levy by registered mail, DOR and Florida financial institutions are currently unable to participate in the FAST Levy program.

Effect of Proposed Changes – Garnishment/FAST Levy

The bill authorizes the DOR to deliver levy notices electronically to banks, credit unions, and other financial institutions that elect to receive notice in that manner. For financial institutions that elect to participate in the FAST Levy program, the DOR would notify participating financial institutions of pending levy actions by periodically transmitting an electronic data file to the OCSE.⁴³ The financial institution would access the data on the secure website maintained by the federal office and process the data to determine which customer accounts would be levied on and for what amounts.⁴⁴ The financial institution would provide this data to the central site which would generate a response file to the DOR that would be used to automatically update the Child Support Program's automated system.⁴⁵ Financial institutions that do not elect to participate in the program would continue to receive hard copy levy notices from the DOR by registered mail pursuant to current law.

Unclaimed Property

Current Situation

The Department of Financial Services (DFS) regulates the disposition of unclaimed property in Florida.⁴⁶ In addition to money and securities, unclaimed property includes tangible property such as watches, jewelry, coins, currency, stamps, historical items, and other miscellaneous articles from abandoned safe deposit boxes. Until claimed, unclaimed money is deposited into the state school fund, where it is used for public education. Florida's Chief Financial Officer holds unclaimed property claimable accounts valued at \$2 billion, mostly from dormant accounts in financial institutions, insurance and utility companies, securities and trust holdings. There is, however, no statute of limitations, and citizens have the right to claim their property any time at no cost.⁴⁷

As part of an effort to collect and pay past due support, s. 409.25658, F.S., requires DOR and DFS to identify past due obligors' unclaimed property held by the DFS.⁴⁸ The DOR is required to periodically provide the DFS with an electronic file of support obligors who owe past due support.⁴⁹ The DFS is then required to conduct a data match of the file against all apparent owners of unclaimed property under ch. 717, F.S., and provide the resulting match list to the DOR.⁵⁰ Upon receipt of the data match list, the DOR is required to provide the DFS the obligor's last known address and DFS is required to follow the notification procedures under s. 717.118, F.S., ensuring owners of unclaimed property are notified in a cost-effective manner.⁵¹

Prior to paying the approved claim for unclaimed property of an obligor owing past due support, the DFS must notify the DOR that the claim has been approved.⁵² Upon such notice by the DFS to the

⁴¹ Office of Child Support Enforcement: *An Office of the Administration for Children & Families, FAST Levy Overview*, <https://www.acf.hhs.gov/css/training-technical-assistance/fast-levy-overview> (last visited Mar. 20, 2021).

⁴² *Id.*

⁴³ DOR, *supra* note 12, at 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ S. 717.101, F.S.

⁴⁷ Florida Department of Financial Services, *Unclaimed Property*, <https://myfloridacfo.com/division/unclaimedproperty/home> (last visited Mar. 20, 2021).

⁴⁸ S. 409.25658(1), F.S.

⁴⁹ S. 409.25658(2), F.S.

⁵⁰ *Id.*

⁵¹ S. 409.25658(3), F.S.

⁵² S. 409.25658(4), F.S.

DOR, the DOR must immediately send a notice by certified mail to the obligor, with a copy to the DFS, advising the obligor of (1) the DOR’s intent to intercept the approved claim up to the amount of the past due support owed, and (2) informing the obligor of the obligor’s right to request a hearing under chapter 120, F.S.⁵³ The DFS must retain custody of the property until a final order is entered by the DOR and any appeals have been concluded.⁵⁴ If the obligor does not request a hearing, the DOR enters a final order instructing the DFS to transfer the property to the DOR in the amount stated in the final order.⁵⁵

The following chart reflects recent data from the DOR on the number of actions, collections, and final orders related to unclaimed property:⁵⁶

State Fiscal Year	Actions Initiated	Final Orders Entered	Collections Received
2020/21 (YTD)	5,261	4,617	\$721,040
2019/20	6,943	4,904	\$1,165,414
2018/19	6,726	5,285	\$1,021,727
2017/18	8,316	5,035	\$1,388,238

Effect of Proposed Changes – Unclaimed Property

The bill switches the current roles of the DOR and the DFS as they relate to unclaimed property. DFS must periodically provide the DOR with an electronic data file of unclaimed property accounts. The DOR must then use this data to identify support obligors with unclaimed property accounts and send the DFS an electronic data file with the names and other personal identifying information of the support obligors.⁵⁷ The bill adds the DOR as an entity that can submit unclaimed property claims to the DFS, allowing the DOR to continue its interception of the DFS approved claims filed by obligors.

The bill requires the DOR to send a notice of intent to intercept unclaimed property by regular mail, instead of certified mail. If a support obligor does not request a hearing, the DOR notifies the DFS to transfer property to the DOR in the amount of the past due support instead of entering a final order.

Customer Service via E-mail

Current Situation

Under Florida Department of Management Services, Division of State Technology, r. 60GG-2.003(4)(b)1., F.A.C., each state agency is required to “[e]ncrypt confidential and exempt information during transmission, except when the transport medium is owned or managed by the agency and controls are in place to protect the data during transit.” Due to the COVID-19 pandemic, the DOR is operating under a waiver of this rule, providing consumer services by e-mail, phone, fax, online chat, and online self-help.⁵⁸ Since March 2020, e-mails from customers have increased tenfold.⁵⁹ Using encrypted e-mail to respond to customers’ e-mails is cumbersome and disfavored by customers.⁶⁰

Effect of Proposed Changes – Customer Service via E-mail

CS/HB 1089 authorizes DOR to include confidential and exempt information in e-mail communications with a parent, caregiver, or other person who is authorized to receive the information, provided the parent, caregiver, or other person consents, except that social security numbers, federal tax information, driver license numbers and bank account numbers may not be provided in this manner.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Email from Debra Longman, DOR, *supra* note 20.

⁵⁷ This reflects the 2015 Memorandum of Understanding currently in effect between DOR and DFS. See DOR, *supra* note 12, at 7.

⁵⁸ DOR, *supra* note 12, at 7.

⁵⁹ *Id.*

⁶⁰ *Id.*

Compensation Reporting

Current Situation

Under state and federal law, employers are required to report newly hired or rehired employees to the State Directory of New Hires⁶¹ within 20 days of the date of hire.⁶² Employers must report the employee's name, address, social security number, date of birth (if available) date of hire (the date the employee first performs services for pay), employer's name and address, and the employer's federal employer identification number.⁶³ Employers may report new hires online by submitting electronic data files or by fax, phone or by first class mail. Multistate employers may furnish these reports to a single state under certain circumstances.

The Child Support Program adds the new hire data to the State Directory of New Hires database daily and performs automated data matching using the names and social security numbers provided to identify employers of individuals who owe child support.⁶⁴ Within two business days after the information is reported and added to the data base, the Child Support Program must, when appropriate, issue an income deduction notice to the employer.⁶⁵ The information is also made available to other agencies responsible for determining eligibility for various benefit programs under s. 409.2576(9), F.S.

Some individuals rendering services for payment may not be classified as employees but might instead be considered independent contractors. However, income paid to individuals not classified as employees is not reported to the State Directory of New Hires, limiting the ability of the Child Support Program to collect child support by income deduction. Income earned by independent contractors who are paid or will be paid \$600 or more during a calendar year by a service-recipient engaged in a business must be reported to the Internal Revenue Service.⁶⁶ Mandatory reporting of these individuals in the same manner as employees could result in increased child support collections for families. Several states have laws requiring employers to report new-hire information on independent contractors, including California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, Ohio, Texas, Utah, and West Virginia.⁶⁷

Effect of Proposed Changes – Compensation Reporting

The bill adds the definition of “service recipient,” a person engaged in a trade or business for whom a service is performed by an individual in a capacity other than that of an employee. The bill requires a service recipient to report to the State Directory of New Hires any individual, other than an employee, to whom the service recipient pays more than \$600 in a calendar year for services performed by the individual in the course of the service recipient's trade or business.

CS/HB 1089 specifies that, for an individual who is not an employee, the service recipient's report must include the individual's name, address, and social security number, or other identifying number assigned under s. 6109 of the Internal Revenue Code, the date services for payment were first performed by the individual, and the name, address, and employer identification number of the service recipient. The bill provide that service recipients must report these individuals within 20 days after the earlier of either:

- First making payments that require an IRS Form 1099; or
- Entering into a contract providing for such payments.

⁶¹ The State Directory of New Hires is a database maintained by each state containing information regarding newly hired employees for the respective state.

⁶² See s. 409.2576, F.S. and 42 USC § 653a.

⁶³ S. 409.2576(3)(a), F.S. See also, OCSE, New Hire Reporting-Answers to Employer Questions, <https://www.acf.hhs.gov/css/faq/new-hire-reporting-answers-employer-questions> (last visited Mar. 20, 2021).

⁶⁴ DOR, *supra* note 12, at 7.

⁶⁵ S. 409.2576(7), F.S.

⁶⁶ 26 U.S.C. s. 6041A

⁶⁷ DOR, *supra* note 12, at 8.

The bill authorizes multistate service recipients to furnish these reports to a single state, rather than multiple states, in the same manner as multistate employers under current law. The bill also specifies that the information would be provided to the National Directory of New Hires for use by other state child support programs, the same as new hire reports for employees under current law.

The bill provides an effective date of October 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 61.13, F.S., relating to support of children; parenting and time-sharing; powers of court.

Section 2: Amends s. 61.1354, F.S., relating to sharing of information between consumer reporting agencies and the IV–D agency.

Section 3: Amends s. 61.30, F.S., relating to child support guidelines; retroactive child support.

Section 4: Amends s. 409.256, F.S., relating to administrative proceeding to establish paternity or paternity and child support.

Section 5: Amends s. 409.2563, F.S., relating to administrative establishment of child support obligations.

Section 6: Amends s. 409.25656, F.S., relating to garnishment.

Section 7: Amends s. 409.25658, F.S., relating to use of unclaimed property for past due support.

Section 8: Amends s. 409.2567, F.S., relating to services to individuals not otherwise eligible.

Section 9: Amends s. 409.2576, F.S., relating to the State Directory of New Hires.

Section 10: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOR indicated the bill has an operational fiscal impact.⁶⁸ However, any impact is likely insignificant and can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private businesses will need to start reporting independent contractors' information to the State Directory of New Hires and the new reporting requirement may require more resources and additional costs to private businesses.

Incarcerated parents will benefit from not having their incarceration treated as voluntary unemployment, as income will not be imputed to them while they have no ability to pay, reducing the amount in past-due child support they would otherwise owe.

⁶⁸ DOR, *supra* note 12, at 9.
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Financial institutions that participate in the FAST Levy program may experience cost savings with the improved efficiencies associated with participating in the program such as processing levy notices from multiple states in a standardized, automated manner.

D. FISCAL COMMENTS:

The Florida Court Clerks & Comptrollers (FCCC) report the bill would most likely result in minimal impact to the Clerks of Courts' operations and to those of FCCC in its operation and maintenance of the CLERC system.⁶⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rule-making authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2021, the Children, Families & Seniors Subcommittee adopted an amendment to HB 1089 and reported the bill favorably as a committee substitute. The amendment:

- Made a technical correction in the title to include the correct agency name.
- Aligned new provisions on social security benefits to be consistent with current case law, administrative procedures under ch. 120, F.S. (the Administrative Procedure Act), and s. 409.2561, F.S.
- Added the DOR as an entity that can submit unclaimed property claims to the DFS, allowing the DOR to continue its interception of the DFS approved claims filed by obligors.
- Authorized the DOR to use email that is unencrypted to send confidential exempt information with an authorized customer's written consent, with exceptions.
- Authorized multistate service recipients to furnish required reports to a single state, rather than multiple states, in the same manner as multistate employers under current law.

The analysis is drafted to the committee substitute as passed by the Children, Families, & Seniors Subcommittee.

⁶⁹ Florida Court Clerks & Comptrollers, Analysis of 2021 Senate Bill 1532, p. 4 (Mar. 8, 2021).