

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1532

INTRODUCER: Children, Families, and Elder Affairs and Senator Book

SUBJECT: Child Support

DATE: March 19 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

**I. Summary:**

CS/SB 1532 makes numerous changes to the Child Support Program, which is administered by the Department of Revenue, (DOR) Florida's Title IV-D agency. As the state's Title IV-D agency, the 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.

The changes made by the bill to the Title IV-D program:

- Specify 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;
- Amend the statements the DOR is required to certify when requesting a consumer report, to conform to the federal Fair Credit Reporting Act;
- Allow notices relating to consumer reports to be made by regular mail instead of by certified or registered mail;
- Prohibit the state from treating incarceration as voluntary unemployment when a support order is established or modified, unless limited exceptions apply;
- Codify 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;
- Update the process for rendering final orders;
- Authorize the use of electronic notices of garnishment to consenting financial institutions;
- Revise the data exchange process between the DOR and the Department of Financial Services relating to the use of unclaimed property for past due child support;
- Permit the DOR to transmit confidential and exempt information with limited exception by unencrypted electronic mail to a parent, caregiver, or other person authorized to receive information about DOR services upon his or her consent;

- Require 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 on state and local governments is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2021.

## II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

## III. Effect of Proposed Changes:

### Support of Children (Section 1)

#### *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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

As Florida's IV-D agency,<sup>4</sup> the Department of Revenue (DOR) is responsible for collecting and enforcing child support.<sup>5</sup> The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year.<sup>6</sup> 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:

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;

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<sup>1</sup> 42 U.S.C. § 651, et. seq.

<sup>2</sup> *Id.*

<sup>3</sup> 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*, (February 2, 2021) available at <https://www.acf.hhs.gov/css/about> (last visited Mar. 8, 2021).

<sup>4</sup> Section 409.2557(1), F.S.

<sup>5</sup> See s. 61.13, F.S.

<sup>6</sup> The DOR, *Child Support Program: Overview 2019*, p. 6, 19, available at [https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x\\_Child\\_Support\\_Overview\\_Presentation\\_External\\_2020\\_FFY\\_2018-19.pdf](https://floridarevenue.com/childsupport/Documents/pdf/CS-1003x_Child_Support_Overview_Presentation_External_2020_FFY_2018-19.pdf) (last visited Mar. 8, 2021).

- Collect and disburse child support payments; and
- Monitor and enforce child support orders.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

### *Depository Role in IV-D Cases*

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)<sup>10</sup> administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligor must make all child support payments in IV-D cases to the SDU.<sup>11</sup>

Upon request of the parties, the court may order that child support payments be made through the depository or directly to the obligee if it is in the child's best interest.<sup>12</sup> If such an order is made, any party or the DOR in a IV-D case may file an affidavit with the depository<sup>13</sup> that alleges the obligor has defaulted on his or her child support payment obligations and that requests the payments be made through the depository.<sup>14</sup> The party must submit a copy of the affidavit to the court and to all parties.<sup>15</sup> Fifteen days after receipt of the affidavit, the depository must notify all parties that future payments will be paid through the depository, except income deduction payments must be made through the State Disbursement Unit.<sup>16</sup>

When a private case with a support order payable directly to the parent who is owed support becomes a IV-D case, 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

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> The DOR, *About the Child Support Program*, available at [https://floridarevenue.com/childsupport/about\\_us/Pages/about\\_us.aspx](https://floridarevenue.com/childsupport/about_us/Pages/about_us.aspx) (last visited March 8, 2021).

<sup>10</sup> Section 61.046(20), F.S., provides that the "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the DOR pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the DOR 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.

<sup>11</sup> Sections 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 USC 654b(a)(1)(A).

<sup>12</sup> Section 61.13(1)(d), F.S.

<sup>13</sup> Section 61.046(4), F.S., provides "depository" means the central governmental depository established pursuant to s. 61.181, F.S., created by special act of the Legislature or other entity established before June 1, 1985, 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.

<sup>14</sup> Section 61.13(1)(d)3., F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

owed support and for the payment data to be sent to the DOR.<sup>17</sup> A private case may become a IV-D case due to either payment of public assistance or because a parent applies for IV-D services.<sup>18</sup>

### ***Effect of Bill***

The bill amends s. 61.13, F.S., to:

- Specify that payments in IV-D cases must be made to the SDU; and
- Require 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.

### **Child Support Guidelines; Retroactive Payments (Section 3)**

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:<sup>19</sup>

- 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.

In *DOR v. Jackson*,<sup>20</sup> the Florida Supreme Court held that parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The trial court has some discretion, but 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 not in agreement on whether income can be imputed when determining *an initial* child support order when the parent is in prison or going to prison.

In *McCall v. Martin*,<sup>21</sup> 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

<sup>17</sup> The DOR, *Senate Bill 1532 Agency Analysis*, p. 2, (March 1, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOR Analysis").

<sup>18</sup> *Id.*

<sup>19</sup> Section 61.1354(3), F.S.

<sup>20</sup> 846 So. 2d 486 (Fla. 2003).

<sup>21</sup> 34 So. 3d 121 (Fla. 4th DCA 2010).

wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*,<sup>22</sup> which was approved by the Supreme Court in *Jackson*, the Fourth District held that the father's child support order may not be modified based on his incarceration due to a conviction for attempting to kill the mother to avoid child support.

However, in *DOR v. Llamas*,<sup>23</sup> the First District Court of Appeal affirmed an order declining to impose a 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*,<sup>24</sup> 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, federal law was amended to prohibit state laws from treating incarceration as voluntary unemployment for purposes of establishing or modifying child support orders.<sup>25</sup> On September 17, 2020, the U.S. Office of Child Support Enforcement proposed two optional exceptions to allow incarceration to be treated as voluntary unemployment under child support guidelines, including incarceration which results from:

- Intentional nonpayment of child support resulting from a criminal case or civil contempt action; or
- Any offense of which the individual's dependent child or the child support recipient was the victim.<sup>26</sup>

### ***Effect of Bill***

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 SB 1532 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 s. 61.30(2) and (10), F.S., to be consistent with Florida case law, specifying:

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<sup>22</sup> 727 So. 2d 328 (Fla. 4th DCA 1999).

<sup>23</sup> 196 So.3d 1267 (Fla. 1st DCA 2016).

<sup>24</sup> 220 So. 3d 480 (Fla. 5th DCA 2017).

<sup>25</sup> 45 CFR 302.56(c)(3).

<sup>26</sup> 85 FR 58029 (September 17, 2020).

- Social security benefits received by a minor child due to the retirement or disability of the child's parent are 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. 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, and that, alternatively, in a IV-D case, the DOR may determine and apply credit after notice and opportunity for hearing as provided under chapter 120, F.S. If credit is determined and applied by the DOR, the DOR shall notify the clerk of court and the clerk shall update the payment record.

### **Consumer Reporting Agencies (Section 2)**

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:

- 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.<sup>27</sup>

### ***Effect of Bill***

The bill amends s. 63.1354, F.S., requiring 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

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<sup>27</sup> Section 61.1354(3), F.S.

under s. 61.1354, F.S., to conform to the federal Fair Credit Reporting Act (FRCA)<sup>28</sup> and that the 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.

#### **Rendering Final Orders (Section 4)**

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.<sup>29</sup> Once approved, the rendered final orders are digitally stored as PDF documents after electronic signatures are affixed and copies are automatically mailed to the parties with the by the automated system.<sup>30</sup> 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.<sup>31</sup> The date of filing must also be indicated on the face of the order at the time of rendition.<sup>32</sup> Final orders issued by the Child Support Program under ss. 409.256 and 409.2563, F.S., must 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."<sup>33</sup>

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, the 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 US mail to the clerk.<sup>34</sup>

#### ***Effect of Bill***

The bill amends ss. 409.256(1)(i) and 409.2563(1)(e), F.S., modifying the definition of "rendered" 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 US mail to the clerk.

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<sup>28</sup> 15 U.S.C. § 1681b(a)(4). FRCA protects information held by credit reporting agencies, and places legal obligations on companies who report information to them. The Federal Trade Commission, *Fair Credit Reporting Act*, available at <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited March 8, 2021).

<sup>29</sup> The DOR, *Senate Bill 1532 Analysis*, p. 5.(March 12, 2021)

<sup>30</sup> *Id.*

<sup>31</sup> Sections 409.256(1)(i) and 409.2563(1)(e), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> The DOR, *Senate Bill 1532 Analysis*, p. 5.(March 12, 2021)

<sup>34</sup> *Id.*

### **Garnishment/FAST Levy (Section 6)**

The DOR is authorized to collect unpaid child support obligations by garnishing accounts at banks, credit unions and other financial institutions.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

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 the agency and institutions to communicate more easily in respect of levy actions and in a standardized, automated manner.<sup>39</sup> The FAST Levy program also reduces costs, increases efficiency to collect past due child support, and gets support to families faster.<sup>40</sup> To participate, the 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, the DOR and Florida financial institutions are currently unable to participate in the FAST Levy program.

### ***Effect of Bill***

The bill amends s. 409.25656(4), F.S., authorizing the DOR to deliver levy notices electronically to banks, credit unions, and other financial institutions that provide express consent 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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> 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.

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<sup>35</sup> Section 409.25656, F.S.

<sup>36</sup> Section 409.25656(1), F.S.

<sup>37</sup> See s. 409.25656(7) and (8), F.S.

<sup>38</sup> Section 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.

<sup>39</sup> Office of Child Support Enforcement: *An Office of the Administration for Children & Families, FAST Levy Overview*, available at <https://www.acf.hhs.gov/css/training-technical-assistance/fast-levy-overview> (last visited Mar. 8, 2021).

<sup>40</sup> *Id.*

<sup>41</sup> The DOR, *Senate Bill 1532 Analysis*, p. 6 (March 12, 2021).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*



## Unclaimed Property (Section 7)

Florida's Department of Financial Services (DFS) regulates the disposition of unclaimed property in this state.<sup>44</sup> 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.<sup>45</sup>

As part of an effort to collect and pay past due support, s. 409.25658, F.S., requires the DOR and the DFS to identify past due obligors' unclaimed property held by the DFS.<sup>46</sup> The DOR is required to periodically provide the DFS with an electronic file of support obligors who owe past due support.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> Upon such notice by the DFS to the DOR, the DOR must immediately send a notice by certified mail to the obligor, with a copy to the DFS, advising the obligor of the DOR's intent to intercept the approved claim up to the amount of the past due support owed, and informing the obligor of the obligor's right to request a hearing under ch. 120, F.S.<sup>51</sup> The DFS must retain custody of the property until a final order is entered by the DOR and any appeals have been concluded.<sup>52</sup> 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.<sup>53</sup>

The following chart reflects recent data from the DOR on the number of actions, collections, and final orders related to unclaimed property:<sup>54</sup>

<sup>44</sup> Section 717.101, F.S.

<sup>45</sup> The DFS, *Unclaimed Property*, available at <https://myfloridacfo.com/division/unclaimedproperty/home> (last visited Mar. 8, 2021).

<sup>46</sup> Section 409.25658(1), F.S.

<sup>47</sup> Section 409.25658(2), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> Section 409.25658(3), F.S.

<sup>50</sup> Section 409.25658(4), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Section 409.25658(4), F.S.

<sup>54</sup> E-mail from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: DOR Child Support Concepts Information, March 7, 2021 (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 Bill***

The bill switches the current roles of the DOR and the DFS as they relate to unclaimed property. The 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.<sup>55</sup> The bill authorizes the DOR to submit claims for unclaimed property to the DFS.

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 (Section 8)**

Under the 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.<sup>56</sup> Since March 2020, e-mails from customers have increased tenfold.<sup>57</sup> Using encrypted e-mail to respond to customers’ e-mails is cumbersome and disfavored by customers.<sup>58</sup>

### ***Effect of Bill***

The bill amends s. 409.2567, F.S., authorizing the DOR to include confidential and exempt information in unencrypted 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.

<sup>55</sup> This reflects the 2015 Memorandum of Understanding currently in effect between the DOR and the DFS. See The DOR Analysis at p. 7.

<sup>56</sup> The DOR, *Senate Bill 1532 Analysis*, p. 7 (March 12, 2021).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

### **Compensation Reporting (Section 9)**

Under state and federal law, employers are required to report newly hired or rehired employees to the State Directory of New Hires<sup>59</sup> within 20 days after the date of hire.<sup>60</sup> 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.<sup>61</sup> Employers may report new hires online by submitting electronic data files or by fax, phone or by first class mail.

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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup>

### ***Effect of Bill***

The bill amends s. 409.2576, F.S., adding 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.

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<sup>59</sup> The State Directory of New Hires is a database maintained by each state containing information regarding newly hired employees for the respective state.

<sup>60</sup> See s. 409.2576, F.S. and 42 USC s. 653a.

<sup>61</sup> Section 409.2576(3)(a), F.S. See also, OCSE, New Hire Reporting-Answers to Employer Questions, available at <https://www.acf.hhs.gov/css/faq/new-hire-reporting-answers-employer-questions> (last visited Mar. 8, 2021).

<sup>62</sup> The DOR, *Senate Bill 1532 Analysis*, p. 7. (March 12, 2021).

<sup>63</sup> Section 409.2576(7), F.S.

<sup>64</sup> 26 U.S.C. s. 6041A

<sup>65</sup> The DOR, *Senate Bill 1532 Analysis*, p. 8. (March 12, 2021).

The bill also 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 provides 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.

The bill 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 effective date of the bill is October 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.

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.

**C. Government Sector Impact:**

The Revenue Estimating Conference has not yet determined the fiscal impact of CS/SB 1532.

With respect to a fiscal impact on state government, the DOR reports an operational impact only.<sup>66</sup> The Florida Court Clerks & Comptrollers (FCCC) report the bill would most likely result in minimal impact to the Clerks' operations and to those of FCCC in its operation and maintenance of the CLERC system.<sup>67</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 61.13, 61.1354, 61.30, 409.256, 409.2563, 409.25656, 409.25658, 409.2567, and 409.2576 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Children, Families, and Elder Affairs on March 9, 2021:**

The committee substitute:

- Amends the provision which permits the DOR to deliver notices required under the garnishment section to the obligor by secured electronic means upon express written consent to a person who is in possession of personal property belonging to the obligor;
- Authorizes the DOR to transmit certain confidential and exempt electronic mail regarding support services made on behalf of dependent children in an “unencrypted” format; and

<sup>66</sup> The DOR, *Senate Bill 1532 Analysis*, p. 9 (March 12, 2021)

<sup>67</sup> The FCCC, *Senate Bill 1532 Analysis*, p. 4 (March 12, 2021) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Makes technical changes to the notice that may be given by the DOR to receive depository services even if the obligor is not delinquent in payment of child support.

B. Amendments:

None.

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

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