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BILL



ANALYSIS

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House Bill 4770 (Substitute S-1 as reported)
House Bill 4771 (Substitute S-3 as reported)
Sponsor: Representative Matthew Milosch (H.B. 4770)
Representative Susan Tabor (H.B. 4771)
House Committee: Judiciary
Senate Committee: Families and Human Services

Date Completed: 6-15-04

RATIONALE

Under the Support and Parenting Time Enforcement Act, if a person is ordered to pay child support and fails or refuses to do so, and if an order withholding the person's income is inapplicable or unsuccessful, he or she may be ordered to show cause before a court. If the person fails to appear, the court may issue a bench warrant requiring that he or she be brought before the court without any unnecessary delay. There has been some concern, however, that local law enforcement agencies lack the means to ensure enforcement of bench warrants issued for child support arrearages. It has been suggested that a portion of court fees be used to mitigate this problem.

CONTENT

House Bill 4770 (S-1) would amend the Office of Child Support Act to create the "Child Support Bench Warrant Enforcement Fund"; and require the Office of Child Support (OCS) to contract with law enforcement agencies to use the Fund to enforce bench warrants associated with child support.

House Bill 4771 (S-3) would amend the Revised Judicature Act (RJA) to do the following:

- Revise the court fees assessed in child custody actions, and provide for fees in support and parenting time actions.**
- Allocate \$10 of each fee to the proposed Child Support Bench Warrant Enforcement Fund, and the**

balance to the county treasurer for deposit into the county Friend of the Court (FOC) fund.

- Authorize the circuit court, in a final judgment, to order a party to pay a court fee that was waived or suspended.**
- Require a fee to be waived if the person filing the action were a public officer acting in his or her official capacity.**
- Provide that a motion fee could not be collected for a request for a hearing to contest income withholding.**

House Bill 4770 (S-1) is tie-barred to House Bill 4771. The bills would take effect on October 1, 2004. They are described below in further detail.

House Bill 4770 (S-1)

The bill would create the Child Support Bench Warrant Enforcement Fund in the State Treasury. Money from the Fund could be spent only as provided in the bill. The fees collected under Section 2529(4) of the RJA would have to be deposited in the Fund. (Section 2529(4), under Senate Bill 4771 (S-3), would allocate to the Fund \$10 of the fee collected in a child support, custody, or parenting time action.) The OCS would have to contract with law enforcement agencies to use the Fund to enforce civil warrants related to child support.

The State Treasurer could receive money or other assets from any source for deposit into

the Fund. The Treasurer would have to direct investment of the Fund, and credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would not lapse to the General Fund.

The bill states that money transmitted to the State Treasurer under these provisions could not supplant other money appropriated by the State for OCS functions. The bill also specifies that money used to administer the Fund could not exceed 10% of the annual money deposited into the Fund.

The OCS would have to make an annual report to the standing House and Senate committees that consider child support issues and to the House and Senate Appropriations subcommittees that consider the Family Independence Agency appropriation. The OCS would have to report about the Fund all of the following:

- A listing of contracts entered into, including the amounts and agencies involved.
- The number of bench warrants served by personnel funded by each contract.
- The number of unserved, pending bench warrants as of the start date of the contract for each affected jurisdiction.

House Bill 4771 (S-3)

Section 2529 of the RJA prescribes fees for filing a civil action, a claim of appeal, or a motion, or making a demand for a jury trial, in circuit court. This section also prescribes fees that must be paid before entry of a final judgment in an action for divorce or separate maintenance in which minor children are involved, or in a child custody dispute submitted to the court as an original action. The bill, instead, would require the payment of the fees before entry of a final judgment or order in an action in which the custody, support, or parenting time of minor children was determined or modified.

The current fees are as follows:

- \$30 if the matter was not submitted to domestic relations mediation or investigation by the Friend of the Court.
- \$50 if the matter was submitted to domestic relations mediation.

- \$70 if the FOC Office conducted an investigation and made a recommendation to the court.

The bill would delete these fees, and instead require the following fees:

- In an action in which the custody or parenting time of minor children was determined, \$80.
- In an action in which the support of minor children was determined or modified, \$40. (This fee would not apply when an \$80 fee as described above was paid.) The court could order a party to reimburse to the other party all or a portion of the fee paid by that other party.

At the end of every month, the court clerk would have to submit \$10 of each fee to the State Treasurer for deposit in the proposed Child Support Bench Warrant Enforcement Fund. The balance of the fee would have to be paid to the county treasurer and deposited as provided under Section 2530 of the RJA. (Under Section 2530, the county treasurer must deposit these fees into a Friend of the Court fund, and the county must appropriate the money for FOC functions. In the Third Judicial Circuit, however, the county treasurer must remit the fees to the State, and the Legislature must be appropriate the funds for FOC obligations in that circuit.)

The bill specifies that the balance of an \$80 fee that was paid to the county treasurer would have to be used to fund services that were not Title IV-D services. (In cases in which a family receives assistance from the state, Title IV-D of the Federal Social Security Act requires that the state pay to the Federal government its share of the amount of support collected, and retain or distribute the state's share of the amount of support collected (42 USC 657). Any amount of child support collected by the state on behalf of a child for whom the state is making foster care maintenance payments is to be retained by the state as reimbursement for the payments. To the extent that the amount collected exceeds the foster care maintenance payments, the amount collected must be paid to the public agency responsible for supervising the placement, to serve the child's best interests.)

Section 2529 requires a \$20 fee for filing a motion but specifies that the fee may not be collected for certain motions, including motions to modify or terminate a personal protection order (PPO), to show cause for a violation of a PPO or a foreign protection order, or to enforce a foreign protection order. Under the bill, a motion fee also could not be collected for a request for a hearing to contest income withholding under the Support and Parenting Time Enforcement Act.

The RJA requires the court to waive or suspend all or part of any of the fees prescribed in Section 2529 upon a showing by affidavit of indigency or inability to pay. The bill also would require the court to waive or suspend the fee if the person filing a child support, custody, or parenting time action were a public officer acting in his or her official capacity, if the order were submitted with the initial filing as a consent order, or other good cause were shown. If the fee were waived or suspended and the action were contested, the court could require that one or more of the parties to the case pay the fee.

MCL 400.233 (H.B. 4770)
600.2529 (H.B. 4771)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to Senate Committee testimony, the Law Enforcement Information Network contains more than 80,000 unserved bench warrants for failure to appear for nonpayment under the Support and Parenting Time Enforcement Act. According to a *Lansing State Journal* article (6-8-03), authorities were able to arrest nearly 50% more Ingham County child support offenders in 2003 than in previous years due to the hiring of a special deputy for the FOC, heightened media attention, and an overall increased focus on tracking down "deadbeat" parents. The bills would help local police departments chip away at the backlog by providing them with the resources for more aggressive enforcement activities, such as the practices used in

Ingham County, and also encourage timely payment of child support.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

There are insufficient court data to estimate the amount of additional revenue that would be generated if the circuit court fees were applied to actions in which the support or parenting time of minor children is determined and if the fees in custody actions were changed as shown in the tables above. According to the State Court Administrator's Office (SCAO), based on past history of divorce cases in which the fee is already collected, the fees on those cases alone could generate approximately \$238,000 for the proposed Child Support Bench Warrant Enforcement Fund. It is harder to determine a revenue estimate, however, for fees on additional case types because of a lack of data for the number of overall cases as well as for potential assessment and collection rates. The SCAO believes that this provision of the bill potentially would increase overall revenue nominally and create further revenue for the proposed Fund. Exempting requests for a hearing to contest income withholding from motion fees should have no fiscal impact as it would reflect current practice.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.