

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Steinberg Analyst: LuAnna Hass Bill Number: AB 2358

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: July 26, 2004

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Child Support Collections/Transfer From FTB To DCSS

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 21, 2004.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 21, 2004, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would transfer the authority and responsibility for the collection of past due child support from the Franchise Tax Board (FTB) to the Department of Child Support Services (DCSS).

## SUMMARY OF AMENDMENTS

The July 26, 2004, amendments would propose changes to the collection of past due child support as discussed in this analysis. As a result, the Effective/Operative Date, This Bill, Implementation and Policy Considerations, Fiscal Impact, and Economic Impact have been revised to reflect the amendments and are included below. In addition, as a result of the amendments, the Technical Consideration stated in the department's analysis of the bill as June 21, 2004, has been resolved.

The remainder of the department's analysis of the bill (Federal/State Law, Legislative History, and Position) as amended June 21, 2004, still applies.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2005, and states that the transfer of collection authority to DCSS would be operative upon enactment of the Budget Act and staffing authorization from both the Department of Finance (DOF) and the Department of Personnel Administration (DPA).

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA      \_\_\_\_\_ NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA       PENDING

Legislative Director

Date

Brian Putler

8/03/04

## POSITION

Pending.

### Summary of Suggested Amendments

FTB, in consultation with DCSS, is providing the attached amendments, which would resolve most of FTB's concerns that are addressed in this analysis.

## ANALYSIS

### THIS BILL

Federal law requires a Title IV-D agency, which for purposes of California government is DCSS, to implement child support collections according to federal laws. This bill would transfer the authority to collect child support delinquencies from FTB to DCSS. Such a transfer would be in accordance with the intent of federal law.

Specifically, this bill would add Revenue and Taxation Code (R&TC) Section 19270 that would:

- Require DCSS to assume responsibility for the collection of child support delinquencies and the Financial Institution Data Match Program (FIDM) pursuant to a letter of agreement between DCSS and FTB. The agreement would be required to set forth the following:
  - DCSS would assume responsibility for leadership and staff of collection of child support delinquencies and FIDM consistent with the development and implementation of CCSAS and the reorganization of child support functions within DCSS, which would be contingent upon the Budget Act and staffing authorization from DOF and DPA.
  - All FTB employees and personnel who staff or provide support for the child support collections and FIDM would become employees of DCSS at their existing or equivalent classification, salaries, and benefits.
  - Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service. This would include, but not be limited to, agreements for DCSS to continue using FTB automated systems to locate child support obligors and their assets.
- Specify the intent of the legislature to allow DCSS to have the same ability and authority to collect child support delinquencies and operate FIDM as is currently provided to FTB.

In addition, this bill would allow DCSS to administer child support collections and FIDM by adding provisions to the Family Code that are *similar* to the existing provisions in the R&TC. Generally these provisions would remove most references to FTB and child support collections and replace them with references to DCSS. However, the department notes the following differences between existing law regarding the authority both to collect child support delinquencies and to administer FIDM (R&TC Section 19271 and 19271.6), and the laws proposed by this bill (Family Code Sections 17503 and 17503.1):

- Instead of FTB collecting child support delinquencies under Section 19271, DCSS would be allowed to collect any child support delinquency, under new Family Code Section 17503, in any manner authorized under the law for collecting a PIT liability.

- Current law under R&TC Section 19271 allows FTB to collect child support delinquencies using any other laws regarding the collection of PIT delinquencies. Section 17503 of this bill would allow DCSS to apply those same laws to any child support delinquency with the same force and effect and to the full extent as if the language of those laws were incorporated into the Family Code article regarding child support collections.
- Instead of FTB disclosing information for purposes of the California Parent Locator Service (CPLS), this bill would provide that information DCSS receives from any source, such as the local child support agencies, FIDM, FTB, and the Employment Development Department, would be considered information that could be disseminated for purposes of the CPLS.
- Currently, FTB's use of FIDM information for any purpose other than child support collections is a violation of FTB disclosure laws. This bill would provide for the same violation of the disclosure law under the R&TC once DCSS is responsible for FIDM under Family Code Section 17503.1.
- Section 17503 contains language not currently in the R&TC child support provisions. Specifically, this bill states that it is the intent of the Legislature that when CCSAS is fully operational, any statutes that would need modifications due to the status of the system should be revised.
  - During the development and implementation of CCSAS, DCSS may delegate functions and procedures to FTB that would be specified in the Family Code sections added by this bill.
  - FTB would perform the functions and procedures as under current law in the R&TC until the Director of DCSS revokes the delegation by letter to the Executive Officer of FTB.
  - The current R&TC sections regarding child support collections would be effective for these purposes until the revocation of the delegation to FTB.
  - The provisions of R&TC Section 19270, as added by this bill, would also be contained in this section.

Further, this bill would create the following child support delinquency collections provisions in the Family Code:

- §17503.2. DCSS would have the authority to issue OTW's to depository institutions. *This provision is similar to FTB OTW authority under R&TC Sections 18670 and 18670.5.*
- §17503.3. Any employer or person required to withhold and transmit amounts to DCSS for child support collections would comply with the requirement without resorting to legal action. This provision also outlines instances where an employer, person, or depository institution would be liable to the obligor for the amounts withheld, but only if those amounts withheld were returned by DCSS to the employer, person, or depository institution. *This provision is nearly identical to FTB administered provisions under R&TC Section 18674.*
- §17503.4. This section would detail the procedures for depositing and distributing child support collections. Specifically, amounts collected by DCSS would be deposited into a specific fund in the State Treasury and the amounts distributed according to an interagency agreement executed by FTB and DCSS, with concurrence by the Controller. Upon availability of the State Disbursement Unit, any child support delinquency collected would be deposited and disbursed in a manner consistent with federal law. *This provision is nearly identical to R&TC Section 19272.*
- §17503.5. DCSS would have the authority to locate out-of-state obligated parents by using the current procedures and practices available for the collection of taxes from out-of-state taxpayers. DCSS would seek agreements with other states to do so. DCSS would also share with the IRS any tax return information with respect to the location of the obligated parent, and

may pursue agreements with the IRS to improve collections of child support delinquencies from out-of-state obligated parents. CCSAS would interface with the IRS for child support collection purposes to expedite reporting of obligated parent information. DCSS would enter into any interagency agreements necessary to implement child support collections. State departments and boards would be required to cooperate with DCSS, which would reimburse the state departments and boards for their actual and reasonable costs incurred to comply with this section. The reimbursement would come from any money received from the federal government for the purpose of reimbursing the state departments and boards. To the extent the federal government does not provide money for this purpose, and subject to the annual Budget Act, the state shall fund the departments and boards. *This provision is nearly identical to R&TC Section 19273.*

- §17503.6. Local child support agencies would refer a case to DCSS where the social security number (SSN) of the noncustodial parent is unknown. DCSS would search its records for the SSN and furnish the SSN to the local child support agency. DCSS may use any services or information available for tax enforcement purposes or available to local child support agencies or the Title IV-D agency in collecting child support or locating noncustodial parents. *This provision is identical to R&TC Section 19274.*
- §17503.7. Clarity would be provided regarding references to terms within the R&TC administered by FTB for purposes of the management of child support collections by DCSS. *This provision is identical to R&TC Section 19275.*

This bill would amend various Family Code provisions to remove references to FTB. In addition, this bill would amend an existing state law (R&TC Section 19556) to allow a state tax agency or public entity to prosecute disciplinary actions by allowing the careful and sensible disclosure of confidential FTB taxpayer information while satisfying an employee's due process rights. This amendment to current law is necessary to ensure the privacy of taxpayer records by deterring employees from illegally browsing and disclosing confidential FTB taxpayer information. Any state tax agency or public entity granted access to confidential FTB taxpayer information in the future would also be allowed to disclose those records for purposes of disciplinary actions.

#### IMPLEMENTATION AND POLICY CONSIDERATIONS

Once the department and DCSS finalize an agreement regarding the transfer of authority for child support collections and FIDM, as required by this bill, it is anticipated that FTB could implement this bill without issue and this bill would not have a significant impact on the department. The agreement would address personnel staffing issues and the sharing of FTB systems and information. However, the department notes the following considerations and amendments are attached to this analysis that would address most of these concerns.

The attached amendments, combined with the future agreement between FTB and DCSS would resolve the following concerns:

- It appears this bill would allow DCSS to enter into an agreement that would provide DCSS continued use of FTB automated systems once CCSAS is operational. This bill appears to permit DCSS to have unlimited access to FTB automated systems, which maintain confidential taxpayer information. Any sharing of confidential taxpayer information would need to be addressed for purposes of disclosure and to ensure authorized access safeguards. The bill should clarify how FTB would share the data with DCSS and whether FTB would be

responsible for managing the information. It is unclear how FTB would be compensated for its costs associated with use of the information and to manage the information.

- A provision of Section 17503 would provide that information disclosed to DCSS shall be considered information that may be disseminated for purposes of facilitating the California Parent Locator Service (CPLS) under the Family Code. The information could be shared to the extent provided for under child support disclosure laws or any other federal or state law. This is a modification of current law that allows FTB to disclose such information for CPLS purposes, pursuant to FTB disclosure laws. Since DCSS would have access to FTB systems and taxpayer data under this bill and DCSS would have the ability under this provision to disseminate the information, even for the limited use of the CPLS, FTB staff anticipates disclosure issues relating to how much FTB information could be disclosed for CPLS purposes since this bill would remove the reference to the FTB disclosure laws.
- A provision of Section 17503.5 would require DCSS to share tax return information with the IRS and to pursue agreements with the IRS to improve child support collections from out-of-state obligated parents. This provision modifies existing law under Section 19273, which requires FTB to do the above. FTB has the proper information sharing agreements with the IRS to facilitate the sharing of tax return information. It is unclear whether this bill would provide DCSS with access to tax return information or how DCSS would be expected to share it with the IRS. This provision may not be appropriately worded for a non-tax agency to administer.
- A provision of Section 17503.6 would allow DCSS to use any services or information available for tax enforcement purposes to research an obligor's SSN. Similar existing law under Section 19275 allows FTB to research an obligor's SSN using tax information because FTB currently administers child support collections. Again, this bill would transfer responsibility for collecting child support to DCSS, and it appears this provision would allow DCSS access to confidential taxpayer information maintained by FTB.
- This bill would allow DCSS to have access to FTB automated systems that contain confidential taxpayer information. Currently, other state tax agencies have access to FTB's databases via interagency agreements that outline the use of such information. Such an agreement would be needed prior to sharing confidential taxpayer information with DCSS. In addition, this bill should be amended to include a statutory scheme outlining the safeguards DCSS would undertake to protect FTB confidential taxpayer information, including but not limited to, possible criminal and civil sanctions for the unauthorized disclosure of FTB information.

In addition, DCSS is working to draft amendments to resolve the following concerns. Those amendments will be provided by DCSS separately from this analysis.

- Various provisions of this bill would allow DCSS 1) to have the same ability and authority to collect child support delinquencies and operate FIDM as FTB, and 2) to collect child support delinquencies in any manner authorized under law for the collection of delinquent personal income taxes. This would appear to allow DCSS to collect child support delinquencies as if these debts were tax debts, which would allow DCSS to issue earnings withholding orders for taxes (EWOT's), OTW's, and state tax liens. FTB has the ability through various statutes to collect tax and non-tax debts administratively without seeking court intervention for issuing OTW's, EWOT's, and state tax liens. Currently, the local child support agencies (LCSA's) have the administrative authority to issue earnings withholding orders (EWO's) and OTW's. However, it appears that DCSS does not specifically have this authority. Since the LCSA's authority has evolved since 1993 from needing a court order to execute collection actions to today being allowed to collect through administrative action, the authority this bill would give

DCSS should be consistent with existing authorities granted to the LCSA's, instead of using the authority granted to FTB to collect taxes. This would preserve the tax collection statutes and authorities for tax purposes, which are entwined with federal tax collection statutes and authorities.

- Section 17503.3 of this bill would require any employer or person required to withhold and transmit amounts to DCSS for child support collections to comply with the requirement without resorting to legal action. This provision is a modification of current law under Section 18674. However, existing law allows an employer or person to interplead the money if the employer or person is uncertain about the priority of conflicting claims on the money between FTB and the IRS. Without similar language in this proposed provision, it is unclear if DCSS intends for an employer or person to pay DCSS any money regardless of a priority dispute.

### TECHNICAL CONSIDERATIONS

§17503.2. This provision contains an incorrect nomenclature reference. The provision references paragraph (a), but it should instead say subdivision (a). Amendment 5 is provided to correct the reference.

### **FISCAL IMPACT**

Once the department and DCSS finalize an agreement regarding the transfer of authority for child support collections and FIDM, as required by this bill, it is anticipated that this bill would not have an impact on the department's costs. The agreement would address personnel staffing issues and the sharing of FTB systems and information. It is anticipated that budgetary actions would be necessary to effectuate the implementation of this bill for reasons that include the transfer of FTB child support collection staff to DCSS.

### **ECONOMIC IMPACT**

As with any transition of state services between two agencies, the department will do all that is necessary to ensure the transfer of child support collection activities to DCSS is successful and to minimize any adverse economic impact this transfer could have to the state and child support collections.

### **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 2358  
As Amended July 26, 2004

AMENDMENT 1

On page 9, line 14, after "(b)(1)" insert:  
(A)

AMENDMENT 2

On page 9, at the end of line 37, insert:

Subject to the privacy and information security laws of this state, the Franchise Tax Board shall make return information available to the department, upon request, for the purpose of collecting child support delinquencies transferred to the department.

(B) The Franchise Tax Board shall incur no obligation or liability to any person arising from any of the following:

- (i) Furnishing information to the department as required by this section.
- (ii) Failing to disclose to a taxpayer or accountholder that the name, address, social security number, or other taxpayer identification number or other identifying information of that person was included in the data exchange with the department required by this section.
- (iii) Any other action taken in good faith to comply with the requirements of this section.

AMENDMENT 3

On page 12, line 13, strikeout "may" and insert:

may, through appropriate interagency agreement,

AMENDMENT 4

On page 13, at the end of line 12, insert:

It is the further intention of the Legislature that any provision of income tax return information by the Franchise Tax Board to the department pursuant to this article shall be done in accordance with the privacy and confidential information laws of this state and of the United States, and to the satisfaction of the Franchise Tax Board.

AMENDMENT 5

On page 18, line 27, strikeout "paragraph" and insert:  
subdivision

AMENDMENT 6

On page 30, at the end of line 7, insert:

It is the further intention of the Legislature that any provision of income tax return information by the Franchise Tax Board to the Department of Child Support Services pursuant to this Article shall be done in accordance with the privacy and confidential information laws of this state and of the United States, and to the satisfaction of the Franchise Tax Board.