

# 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: August 17, 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 amended July 26, 2004.

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 July 26, 2004.

FURTHER AMENDMENTS NECESSARY.

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

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 26, 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 August 17, 2004, amendments would resolve most, but not all, of the implementation and technical considerations included in the department's analysis of the bill, as amended July 26, 2004. Specifically, with respect to FTB, the amendments would:

- Remove various references that would have allowed DCSS to 1) have the same ability and authority to collect child support delinquencies and operate the Financial Institution Data Match (FIDM) program as FTB, and 2) collect child support delinquencies in any manner authorized under law for the collection of delinquent personal income taxes.
- Add language to the Family Code and the Revenue and Taxation Code (R&TC) regarding the collection of child support delinquencies and disclosure of tax information.
  - FTB would make tax return information available to DCSS, upon request, subject to federal and state privacy and information security laws.
  - FTB would incur no obligation or liability to any person arising from:
    - Furnishing information to DCSS as required by this provision.
    - Failing to disclose to a taxpayer or accountholder that his or her information was included in a data exchange with DCSS.
    - Any other action taken in good faith to comply with these provisions.

Board Position:

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

Legislative Director

Date

Brian Putler

8/20/04

- Legislative intent that any income tax return information provided to DCSS by FTB would be done according to state and federal privacy and confidentiality laws, and to the satisfaction of FTB.
- Clarify that DCSS may delegate to FTB the functions or procedures to administer child support collections through an appropriate interagency agreement.
- Remove a reference that would have stated that FIDM information used for anything other than child support is a violation of disclosure laws under R&TC Section 19542, which makes it a misdemeanor for inappropriate use or disclosure of confidential taxpayer information. Instead, this reference is replaced with a reference to disclosure laws and a misdemeanor provision under the child support provisions within the Family Code.
- Remove a provision that would have allowed DCSS to pursue out-of-state obligors using the same mechanisms as FTB uses to pursue out-of-state taxpayers.
- Remove language that would have required DCSS to share tax return information with the Internal Revenue Service (IRS).
- Remove a provision that would have allowed DCSS to use any services or information available for tax enforcement purposes to research an obligor's social security number (SSN).

In addition, these amendments would remove a provision of the bill that would have amended existing state law to allow a state tax agency or public entity to disclose confidential taxpayer information to prosecute personnel disciplinary actions.

As a result of the amendment to remove the provision regarding disclosures for personnel actions, the Implementation Considerations have been revised to include a concern regarding the need for this provision to be included in the bill. The remainder of the department's analysis of the bill as amended July 26, 2004, still applies.

## **ANALYSIS**

### **IMPLEMENTATION 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.

- 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.
- FTB may disclose confidential taxpayer information to an employee or former employee of FTB, a representative of an employee or former employee, an administrative law judge, SPB members, and Superior Court judges for purposes of disciplinary actions. However, other state tax agencies and public entities that receive confidential FTB taxpayer information through information sharing agreements are currently unable to disclose those records when necessary to prosecute disciplinary actions involving inappropriate browsing or disclosure.

If FTB is required to share confidential taxpayer information with a non-tax agency such as DCSS, this bill should be amended to authorize other state tax agencies and public entities to disclose confidential FTB confidential taxpayer information in disciplinary actions. Language to amend the bill is attached to this analysis.

The amendment would 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.

### **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 2358  
As Amended August 17, 2004

AMENDMENT 1

On page 32, after line 36, insert the following:

SEC. 12. Section 19556 of the Revenue and Taxation Code is amended as follows:

19556. (a) A state agency or a local public entity (~~The Franchise Tax Board~~) may disclose to persons described in paragraphs (1) to (4), inclusive, of subdivision (b) tax return and return information solely for use in an action or proceeding affecting the personnel rights of an employee or former employee of the state agency or local public entity, or in preparation of the action or proceeding, but only to the extent the state agency or local public entity ~~Franchise Tax Board~~ determines that the tax return or return information is, or may be, relevant and material to the action or proceeding.

(b) Tax return and return information may be disclosed pursuant to this section to any of the following persons:

(1) An employee or former employee of the state agency or local public entity ~~the Franchise Tax Board~~ who is, or may be, a party to an administrative action or proceeding affecting the personnel rights of that employee or former employee.

(2) Upon written request by the employee or former employee of the state agency or local public entity, to the employee's or former employee's duly authorized legal representative.

(3) Officers and employees of the state agency or local public entity ~~the Franchise Tax Board~~ for use in any action or proceeding affecting the rights of an employee or former employee of the state agency or local public entity, to the extent necessary to advance or protect the interests of the State of California.

(4) An administrative law judge, administrative board member, judge, or justice, or authorized officer or employee thereof, in connection with an administrative hearing, adjudication, or appeal thereof, related to an action or proceeding affecting the personnel rights of an employee or former employee of the state agency or local public entity.

(c) The disclosure by a state agency or local public entity, as authorized by this section, is limited to those state agencies and local public entities where officers, employees, agents, deputies, clerks, or other persons of the agency or entity have access to tax return or return information pursuant to some other provision of law. For purposes of this section an action or proceeding affecting the personnel right of an employee or former employee of the Franchise Tax Board means an action proceeding arising under either of the following:

~~(1) The State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of the Government Code).~~

~~(2) The Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).~~

(d) Any unauthorized disclosure by a person described in paragraphs (1) to (4), inclusive, of subdivision (b) of any tax return or return information disclosed to that person pursuant to this section shall be subject to criminal penalty and civil liability under this part for that unauthorized disclosure.

(e)(1) For purposes of this section, "state agency" has the same meaning as under Government Code section 11000, et. seq.

(2) For purposes of this section, "local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision of the State.