



- Counties with child support collection programs and systems in operation as of April 1, 1997, that are comparable to FTB's child support collection program and system and may be exempt from referring its delinquencies to FTB for collection.
- The funding for FTB's child support collection program would be partially shifted beginning January 1, 1998. With the shift in funding, 34% of FTB's existing program costs and any increases attributable to this bill, which under current law would be funded through reimbursements from the county incentive payments, would be funded from the General Fund.
- The registry for independent contractors could be released to FTB for tax enforcement purposes.

#### SPECIFIC FINDINGS

**Under current tax law**, FTB's child support collection activities must not interfere with FTB's responsibility to administer the PITL. A collection priority is established under tax law whereby if more than one debt is being collected by FTB, FTB is required to apply amounts "being collected" first against personal income taxes and the balance, if any, to child support obligations.

**Under this bill**, as amended, if a person owes both a child support delinquency and a personal income tax delinquency, FTB would be required to give involuntary actions to collect personal income tax delinquencies priority over child support delinquencies.

**Currently**, counties with technology similar or identical to that used by FTB in its automated child support collection program do not participate in FTB's collection program.

**Under this bill**, as amended, counties with such technology in operation as of April 1, 1997, may apply to DSS for an exemption from the requirement to refer all delinquencies to FTB.

**Currently**, FTB's child support collection program is funded through two components: federal reimbursements and county incentive payments. Federal guidelines allow states to recover 66% of their administrative costs through reimbursement. The county incentive payments, which are made up of state and federal funds, are determined by a three-part structure, which includes compliance and performance standards and a base rate of 6% of any support collections distributed, including FTB's collections. To compensate FTB for its child support collection program, counties participating in the program share up to 50% of their base rate incentive for the amounts FTB collects, but never to exceed FTB's actual departmental costs. With the two funding components, FTB's child support collection program receives 66% of its costs through federal reimbursement and the remaining 34% from county base incentives. The base incentive structure, from which FTB is partially funded, sunsets June 30, 1998. Under the federal Welfare Reform Act, FTB will continue to be funded through the federal reimbursement program for 66% of its program costs.

**Under this bill**, the counties would continue to receive credit for FTB's collections but, as the bill is amended, would no longer share their incentive payments with FTB. The FTB's departmental costs that are not reimbursed through federal funds would be paid expressly from the General Fund. Under this bill, as amended, the General Fund, beginning on January 1, 1998, would be responsible for

payment of 34% of the department's current child support collection program costs, plus 34% of the costs attributable to this bill, which is further discussed under Fiscal Impact.

**Under current law**, EDD administers a new employee registry that can be used for child support or personal income tax enforcement purposes. This bill as amended March 10, 1997, would have restricted the use of the independent contractors registry to child support enforcement purposes only.

**Under this bill**, as amended, the independent contractor registry could be used for either child support or personal income tax enforcement purposes.

#### Policy Considerations

- Under current law, in general, up to 50% of earnings may be garnished under an earnings withholding order for child support and up to 25% of earnings may be garnished for tax delinquencies. By collecting tax delinquencies before child support, the obligor is able to escape collection on the additional 25% of earnings, which would otherwise be subject to collection for child support. Perhaps the FTB should collect child support and tax delinquencies simultaneously and divide the 50% of garnished earnings as follows:  $\frac{1}{2}$  for child support and  $\frac{1}{2}$  for tax delinquencies.
- As a General Fund expenditure, the administration of the FTB child support program would be directly subject to approval by the Department of Finance and the Legislature through FTB's budgetary process. Any reduction in the FTB child support program's budget could result in reductions in child support collections.

#### Implementation Considerations

- The implementation consideration identified in the previous analysis relating to the length of time that the independent contractor information should be retained by EDD still applies. The attached Amendment 9 extends the retention period to the November 1 that follows the due date for filing the 1099MISC, as previously suggested.
- In the event a person owes both delinquent personal income taxes and child support, it is the author's intent for FTB to generally pursue tax collection before child support. However, if the tax delinquency is being paid through an installment payment agreement and collection of the child support delinquency would not cause the taxpayer to default on that agreement, it would be reasonable for FTB to pursue collection of the child support delinquency. To allow for this situation, staff suggests the attached Amendments 1 and 2.

#### Technical Considerations

- To provide that taxes enforceable by FTB would be collected before FTB would take involuntary collection actions on other debts owed by the same person, the collection hierarchy that gives preference to taxes, which is amended by this bill, should include nonadmitted insurance taxes, which FTB is responsible for enforcing. (Amendment 3)
- The technical considerations identified in the previous analysis still apply, as follows, and the suggested amendments are attached:

- ◇ Service-recipients filing 1099s though not required to do so should be required to file with the registry, unless the individual is reported as an employee for California purposes. (Amendments 4 and 5)
- ◇ Service-providers, which can include personal service corporations, should be limited, for child support collection purposes, to individuals. (Amendments 4 and 9)

Additionally, other recently identified amendments relating to the reporting of independent contractors are as follows:

- ◇ The payment threshold for reporting to the registry, which is payments "in excess of \$600," should be consistent with the threshold for filing the federal 1099MISC, which is "\$600 or more." (Amendments 8 and 9)
- ◇ In allowing the registry to be used for tax enforcement purposes, a comma was omitted in separating the phrases. (Amendment 10)

#### FISCAL IMPACT

##### Departmental Costs

This amendment would not change the departmental costs reflected in the previous analysis, which is as follows:

Departmental Costs Impact SB 247		
Fiscal Year		
(In Millions)		
1997-98	1998-99	1999-00
\$1.3	\$3.9	\$3.6

However, this amendment impacts the funding for FTB's child support collection program creating the need for the following:

##### Appropriation

Because 34% of the costs of the child support collection program would be funded from General Fund instead of the county incentive payments, staff requests that this bill contain an appropriation of \$1,324,000 to implement this bill in 1997/98; \$874,000 (66%) would be paid through federal reimbursement and \$450,000 (34%) would be paid from the General Fund (attached Amendment 11). For subsequent years, the program's expenditures would be appropriated through the usual budget act.

##### 1997/98 Budget Impact

Because this bill would shift to the General Fund 34% of the cost of FTB's existing child support collection program, for the period of January 1, 1998 to June 30, 1998, a budget adjustment is needed to increase the General Fund appropriation by \$972,000 and reduce the reimbursements for fiscal year 1997/98 by the same amount. To accomplish this adjustment, staff requests an amendment to the budget bills as reflected in Attachment 2.

##### Collection Estimate

##### Mandatory Referral Provision

These amendments impact the FTB's collection estimates as follows:

- FTB's child support collection estimate presumes sufficient funding to pay for 34% of the FTB's departmental costs, which under this amendment would be shifted from the county incentive payments to the General Fund.
- The amendment that could exempt certain counties from the mandatory referral requirement could reduce FTB's child support collection estimate. However, staff is uncertain which counties would apply for the exemption, if any, and whether DSS would grant any exemptions. Therefore, the collections previously estimated with respect to this provision still apply, as follows:

Estimated Collections Impact AB 247 Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
\$15	\$60	\$60

Independent Contractor Registry Provision

The estimated increase in delinquent child support collections due to the use of the independent contractor registry, as reflected in the previous analysis, still applies. Additionally, however, because of the amendment that allows the registry of independent contractors to be used for tax collection purposes, collections of personal income tax are expected to increase. Both estimates are as follows:

Child Support Delinquency Estimated Collections Independent Contractor Registry Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
\$1	\$5	\$8

Personal Income Tax Estimated Collections Independent Contractor Registry Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
\$4	\$11	\$18

POSITION

Support. The FTB voted on April 14, 1997, to support this bill.

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FRANCHISE TAX BOARD'S PROPOSED  
AMENDMENTS TO SB 247  
As Amended May 1, 1997

AMENDMENT 1

On page 4, strike out lines 5 to 7, inclusive, and insert:

delinquent personal income tax liability is paid in full. However, the Franchise Tax Board may engage in involuntary collection action to collect a delinquency referred under subdivision (a) under the following circumstances:

- (i) the delinquent personal income tax liability is discharged from accountability pursuant to Section 13940 of the Government Code.
  - (ii) the obligor has entered into an installment payment agreement for the delinquent personal income tax liability and is in compliance with that agreement and the Franchise Tax Board determines that the initiation of involuntary collection action to collect the delinquency referred under subdivision (a) would not jeopardize the payments under the terms of the agreement.
- (C) In the event the

AMENDMENT 2

On page 4, strike out line 15 and insert:

(D) For purposes of subparagraph (B) of paragraph (1) of subdivision (b), the following

AMENDMENT 3

On page 9, line 13, after "under" insert:

Part 7.5 (commencing with Section 13201),

AMENDMENT 4

On page 16, line 27, after "who" insert:  
makes or

AMENDMENT 5

On page 17, line 7, strike out "a person" and insert:  
an individual who is not an employee of the service-recipient for California purposes and

AMENDMENT 6

On page 17, line 9, after "performed" insert:

for that service-recipient

AMENDMENT 7

On page 17, lines 13 and 16, strike out "in excess of six hundred dollars (\$600)" and insert:

of six hundred dollars (\$600) or more

AMENDMENT 8

On page 17, line 26, strike out "exceed" and insert:

total

AMENDMENT 9

On page 17, strike out lines 32 and 33, and insert:

(c) until November 1 following the tax year in which the contract is executed, or if no contract, November 1 following the tax year in which the payments first total six

AMENDMENT 10

On page 17, line 39, after "11475.1" insert:

AMENDMENT 11

On page 18, line 5, after "6." insert:

The sum of one million three hundred twenty four thousand dollars (\$1,324,000) is hereby appropriated to the Franchise Tax Board in augmentation of its fiscal year 1997/98 support budget Item 1730-001-0001 Schedule (d) 40-Child Support Collections of the Budget Act, of which eight hundred seventy four thousand dollars (\$874,000) will be paid through federal reimbursement received from the Department of Social Services and four hundred fifty thousand (\$450,000) will be paid from the General Fund.

SEC. 7.

FTB Proposed Amendment to AB 107 and SB 130  
As Introduced January 9, 1997

AMENDMENT 1

On pages 57, lines 6, strike out "328,996,000" and insert:

329,968,000

AMENDMENT 2

On pages 57, lines 19, strike out "-13,362,000" and insert:

-12,390,000