

SUMMARY ANALYSIS OF AMENDED BILL

Author: Lockyer Analyst: Gloria McConnell Bill Number: SB 247

Related Bills: AB 573, AB 1395, Telephone: 845-4336 Amended Date: 07/31/97

AB 702 (97)

Attorney: Geoff Way

Sponsor:

SUBJECT: Referral of Delinquent Child Support to FTB/General Fund
Expenditure/Independent Contractor Registry/Joined to AB 1395 & AB 573

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended May 1, 1997.
- AMENDMENTS IMPACT COLLECTION ESTIMATE. A new estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 1, 1997, STILL APPLIES.
- OTHER - See comments below.

SUMMARY OF BILL

This bill would:

1. require district attorneys (DAs) to refer all child support obligations that they are responsible for enforcing that are 91 days delinquent to Franchise Tax Board (FTB) for collection as though they are delinquent personal income taxes;
2. allow DAs to voluntarily refer those obligations that are more than 30 but less than 91 days delinquent to FTB for collection as though they are delinquent taxes;
3. generally give the collection of delinquent taxes priority over delinquent child support, in the event an individual owes both delinquent taxes and delinquent child support referred to FTB for collection;
4. would shift FTB's program funding from the county's incentive payments to the General Fund; and
5. require certain persons currently required under federal law to file an information return reporting non-employee personal services (independent contractor) for which \$600 or more was paid to accelerate the reporting of those services and payments to Employment Development Department (EDD). The reporting would be the earlier of 30 days of entering into the personal service contract or first paying \$600. ~~The independent contractor registry (ICR)~~

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Department Director Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> _____ PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> _____ DEFER TO _____	GOVERNOR'S OFFICE USE Position Approved _____ Position Disapproved _____ Position Noted _____
Department/Legislative Director Date	Agency Secretary Date	By: Date:

information would be available to FTB for child support or tax enforcement purposes.

The enactment of this bill is contingent upon the enactment of the following two bills --

AB 1395, as amended July 22, 1997, contains the same provisions as above, plus it would:

- allow counties with child support collection programs and systems in operation as of April 1, 1997, which are comparable to FTB's child support collection program and system, to be exempt from referring their delinquencies to FTB for collection;
- require real estate brokers reporting new salespersons to Department of Real Estate (DRE) to include their federal employer identification number (FEIN) and exempt them from the ICR reporting requirement;
- require Department of Real Estate (DRE) to release to FTB the new salespersons information to FTB no less than every 30 days; and
- allow DAs to refer any child support case to FTB to search for the social security numbers (SSN) of noncustodial parents and use tax enforcement information.

AB 573, as amended July 23, 1997, contains the same provision as above item 5, plus it would:

- allow DAs to voluntarily refer child support obligations to FTB for collection of current child support payments through wage assignment orders. If the obligor also owes delinquent personal income taxes, FTB's collection of delinquent taxes generally would have priority over FTB's collection of current child support;
- require real estate brokers reporting new salespersons to Department of Real Estate (DRE) to include their FEIN and exempt them from the ICR reporting requirement;
- create a Child Support Collection and Enforcement Advisory Committee, which would include a representative of the FTB; and
- make changes to various child support enforcement provisions (which should not directly impact FTB's program), as requested by the Department of Social Services to clean up earlier enacted legislation or conform to the federal Welfare Reform Act.

All three bills (this bill, AB 573 and AB 1395) are joined with contingent enactment language. Each bill will be effective and operative only if all three bills are enacted on or before January 1, 1998.

SUMMARY OF AMENDMENT

The July 11, 1997, amendments:

- added the above item 2 to the bill; and
- as discussed in FTB's analysis of the bill as amended May 1, 1997, clarified the priority provisions (above item 3) and made various technical changes to the collection hierarchy and ICR provisions.

The July 31, 1997, amendments make various technical corrections and add the contingent enactment language, which joins this bill to AB 573 and AB 1395.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 1998.

SPECIFIC FINDINGS

Under current law, DAs may voluntarily refer accounts 30 days or more delinquent to FTB for collection.

Under this bill, the voluntary referral of cases could continue except when the child support payment becomes 91 days delinquent, at which time referral of the delinquency to FTB would be required.

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 first to apply amounts "being collected" against personal income taxes and the balance, if any, to child support obligations.

Under this bill, if a person owes both a child support delinquency and a personal income tax delinquency, FTB, except under specified limited circumstances, would be required to give involuntary actions to collect personal income tax delinquencies priority over child support delinquencies. Limited exception are provided.

Policy Considerations

Collection Priority

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: half for child support and half for tax delinquencies.

Funding Shift

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

Because the identification number of the service recipients is critical to the maintenance and effective use of the ICR, staff suggests that reference to the entities' identification numbers (page 17, lines 36 through 40, and page 18, lines 1 through 9) include a caveat that EDD could specify which identification number would be provided. Staff understands EDD will be providing the necessary amendments.

Technical Considerations

Lines 6-8 and 14-16 of page 18, set forth ICR reporting requirements on independent contractors who are not specifically under contract, the key here is the date payments first total \$600; therefore, the phrase "or more" should be deleted to avoid confusion. Please see attached amendment 1._

In addition, section 19532, which is renumbered and amended in this bill (and AB 1395), is also renumbered and amended with respect to FTB's court-ordered-debt (COD) collection program in SB 1106, as amended July 11, 1997, and AB 1040, as amended June 30, 1997. Double-joining language may be necessary.

FISCAL IMPACT

Departmental Costs

Mandatory and Voluntary Referral¹

It is estimated that this bill would increase the departmental costs as follows:

Departmental Costs Impact SB 247/AB 1395 Fiscal Year (In Millions)		
1997-98	1998-99	1999-00
\$1.3	\$3.9	\$3.6

Because of the funding shift, the bill also creates the need for the following:

- For 1997/98, a budget augmentation for \$1,324,000 to implement the mandatory and voluntary referral of cases; \$874,000 (66%) would be paid through federal reimbursement and \$450,000 (34%) would be paid from the General Fund (attached Amendment 2, Attachment 1). For subsequent years, the program's expenditures would be appropriated through the usual budget act.
- 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.

Independent Contractor Registry²

Currently, EDD charges FTB for its use of the new employee registry (NER) for child support purposes. Assuming the costs for the ICR were approximately the same, the costs per fiscal year could be in the \$10,000 range and would be included in the child support collection

¹Because AB 1395 contains the same provisions providing for mandatory and voluntary referral as this bill, this same cost analysis is reflected in the summary analysis of AB 1395, as amended July 22, 1997.

²Because AB 1395 would create the same workload increase and generally would create the same ICR as this bill, this same costs analysis is provided in the summary analysis of AB 1395, as amended July 22, 1997.

program's annual budget. The costs for FTB to implement an ICR match for tax enforcement purposes is unknown.

Additional Comments

By not requiring counties to share their incentive payments with FTB for its collections, this bill could affect the departmental costs associated with AB 573. Counties referring current support obligations to FTB under AB 573 would be credited with FTB's collections, which could be a significant dollar amount, yet under the funding shift would not have to pay for any of the associated costs. Therefore, counties could see significant fiscal benefit if they were to shift the workload for current support orders to FTB.

Collection Estimate

Mandatory Referral³

The collections previously estimated with respect to this provision still apply as follows. Staff continues:

- to presume that FTB would be sufficiently funded to pay for 34% of its departmental costs, which under this bill would be shifted from the county incentive payments to the General Fund, and
- to be uncertain as to which counties, if any, would apply for the exemption from the program and whether DSS would grant any exemptions.

Estimated Collections Impact SB 247/AB 1395 Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
\$15	\$60	\$60

Voluntary Referral⁴

Based on the results of FTB's existing child support collection program, it is estimated that every 30,000 cases referred to FTB, collections would be as follows:

Estimated Collections Impact For Every 30,000 Cases Referred Less Than 90 Days Delinquent SB 247/AB 1395 Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
minor	\$10	\$10

Independent Contractor Registry⁵

³Because AB 1395 contains the same mandatory referral provisions as this bill, this same collection estimate is provided in the summary analysis of AB 1395, as amended July 22, 1997.

⁴Because AB 1395 contains the same voluntary referral provisions as this bill, this same collection estimate is provided in the summary analysis of AB 1395, as amended July 22, 1997.

The estimated increase in delinquent child support and personal income tax collections due to the use of the ICR, is as follows:

Child Support Delinquencies		
Estimated Collections Independent Contractor Registry SB 247/AB 573/AB 1395 Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
\$1	\$5	\$8

Personal Income Tax Delinquencies		
Estimated Collections Independent Contractor Registry SB 247/AB 573/AB 1395 Fiscal Year (In Millions)		
1997-8	1998-9	1999-0
\$4	\$11	\$18

⁵Because AB 573 and AB 1395 also create an ICR and the bills are joined, this same collection estimate for the ICR provision is provided in the summary analyses of all three bills as last amended.

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FTB Proposed Amendment to SB 247
As Amended July 31, 1997

AMENDMENT 1

On page 18, lines 8 and 16, strike out "or more"

AMENDMENT 2

On page 19, line 1, after "SEC. 7." 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. 8.

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