

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 2246

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, and Children, Families, and Elder Affairs Committee

SUBJECT: Child Support Guidelines

DATE: April 8, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hansson</u>	<u>Walsh</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill amends provisions of law dealing with child support. Specifically, the bill:

- Requires that after October 1, 2010, all child support and income deduction orders must provide for termination of support upon a child’s 18th birthday, unless certain exceptions apply, and for a schedule stating the amount of support that will be owed for the remaining children, if any;
- Outlines the basic principles the court shall adhere to when implementing the child support guidelines schedule;
- Provides that under certain circumstances the court shall impute income equivalent to the median income of year-round full-time workers;
- Creates a rebuttable presumption when imputing income to an unemployed or underemployed parent;
- Places the burden on the party seeking to impute income to present certain evidence;
- Prohibits imputing income for out-of-date records or unprecedented earnings;
- Amends the child support guidelines schedule;

- Changes the calculation obligation amounts for incomes that fall below the minimum amount set forth in the child support guidelines schedule;
- Removes the requirement that certain child care costs are reduced by 25 percent before being added to the basic support obligation;
- Allows the court to consider the impact of the Child & Dependent Care Tax Credit and the Earned Income Tax Credit when adjusting a child support award;
- Changes the overnight time-sharing threshold from 40 percent to 20 percent; and
- Makes technical and conforming changes.

This bill substantially amends sections 61.13 and 61.30, Florida Statutes. This bill creates section 61.29, Florida Statutes.

II. Present Situation:¹

In 1984, Congress recognized the potential value of requiring states to implement guidelines to be used in the determination of the amount of child support obligations. The federal Child Support Enforcement Amendments of 1984 required states to establish non-binding child support guidelines either by law or judicial or administrative action no later than October 1, 1987.² The Family Support Act of 1988 made state child support guidelines presumptive and required states to review their child support guidelines at least once every four years in order to ensure that their application results in child support award amounts that are appropriate. As part of the review process, states must analyze case data related to the application of, and deviations from, the guidelines, and they must also consider economic data related to the cost of raising children.³ With the exception of these two requirements, states have broad discretion and latitude in conducting guideline reviews.

Florida's child support guidelines are enacted in chapter 61, F.S.⁴ The Florida schedule of obligations, based on the income shares model,⁵ was reviewed in 1992 and updated in 1993 to reflect changes in the Consumer Price Index. The guidelines were reviewed again in 1997 and in 2004, both times with recommendations for significant changes in the schedule and the underlying methodology.⁶ Neither set of recommendations was adopted by the Legislature. Although specific provisions of the guidelines have been modified, the schedule that specifies the dollar amount of child support obligation for each income level has remained unchanged since 1993.

¹ The information contained in the Present Situation of this bill analysis is from the Committee on Children, Families, and Elder Affairs, The Florida Senate, *Review of Child Support Guidelines* (Interim Report 2010-210) (Oct. 2009), available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-210cf.pdf (last visited Mar. 31, 2010).

² Child Support Enforcement Amendments of 1984, 42 U.S.C. ss. 657-662 (1984).

³ Family Support Act of 1988, 42 U.S.C. ss. 654, 666-667 (1988).

⁴ See ch. 87-95, s. 3, Laws of Fla. The "guidelines" are the body of laws describing the intent and relating to child support administration. See s. 61.30, F.S. The "schedule" is a table of support obligations or payments which should reflect the philosophy set forth in guidelines. See s. 61.30(6), F.S.

⁵ The premise of the income shares model is that a child should receive the same amount of expenditure as if the family were intact, even if the child is not the product of an intact family. The obligation is determined as a percentage of the combined income of both parents.

⁶ Thomas S. McCaleb, et al., *Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature*, Dep't of Economics, Florida State University (Mar. 5, 2004).

The most recent review was conducted in 2008 by Florida State University (FSU or the university), under contract with the Legislature.⁷ This review included:

- Update Florida’s existing schedule amounts based on the latest available economic data in anticipation of Florida continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such data is publicly available.
- Update the existing schedule amounts to reflect the effects of inflation and evaluate the methodological validity of this approach.
- Within the context of the income shares model, determine how selected other states using the income shares model treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.⁸
- Within the context of the income shares model, evaluate the treatment of low-income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the “self-support reserve” in the income shares model.
- Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experience in other states using the income shares model.
- Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.
- Itemize the tax benefits and burdens of child support in regard to the child care tax credit.⁹

Modifications to Existing Support Orders

Section 61.13, F.S., gives the court authority to order either or both parents who owe a duty of support to a child to pay support to the other parent, or in the case of both parents, to the person with custody in accordance with the child support guidelines schedule. The court that initially enters a child support order requiring one or both parents to make child support payments has continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of support payments. Modification is permitted when it is found necessary by the court in the best interest of the child, when the child reaches majority, when there is a substantial change in the circumstances of the parties, when the child is over 18 years of age but has not yet graduated from high school, or when a child is emancipated, joins the armed services, or dies. The court initially entering a child support order also has continuing jurisdiction to require the obligee parent to report to the court on terms prescribed by the court regarding the disposition of the child support payments.

⁷ Thomas S. McCaleb *et al.*, *Review and Update of Florida’s Child Support Guidelines, Report to the Florida Legislature*, Dep’t of Economics, Florida State University, at iv (Nov. 17, 2008).

⁸ As of 2007, the terminology for many of the dissolution of marriage and child support terms contained in s. 61.046, F.S., was changed. However, for purposes of this analysis, the original terminology will be used, in order to conform with the language in the FSU report.

⁹ Senate professional staff of the Committee on Children, Families, and Elder Affairs presented FSU’s recommendations at its January 13, 2010, meeting. Members of the Committee on Children, Families, and Elder Affairs directed professional staff to prepare SB 7046 to reflect the recommendations. This bill represents the committee’s deliberations on the bill.

Self-Support Reserve

Florida's schedule of child support obligations, like those in other income shares states, includes a "self support reserve"¹⁰ and a range of incomes over which the full child support obligation is phased in. This is to ensure that the payment of a child support obligation does not push a noncustodial parent into poverty. According to the FSU report, these provisions are not effective because they apply to very few parents. To avoid a situation in which income earned by the custodial parent increases the noncustodial parent's child support payment, possibly pushing the noncustodial parent into poverty, the report recommended applying the self-support reserve and the phase-in to the noncustodial parent's income alone.

The FSU report also found that the amount of the self-support reserve has not been indexed to the poverty guideline and is out of date. The university stated that, over time, provisions designed to prevent child support from pushing an individual into poverty may lose their applicability and effectiveness if the schedule is not regularly updated.¹¹ The report recommended adopting procedures for annual or biannual updating of the schedule of basic child support obligations to reflect changes in the federal single-person poverty guidelines.

The current child support provisions are only applied to the basic child support obligations and not to the total obligation including childcare and children's health expenses.¹² The university states that if the objective is to prevent child support from pushing parents into poverty, it is the total support payment that matters and not just the basic obligations. The report recommended applying the self-support reserve to the total child support payment rather than to the basic support obligation only.

Imputation of Income

Most states impute income¹³ when the parent is unemployed or income is unknown. The reasons for imputation are to reduce or eliminate incentives for parents to:¹⁴

- Hide income,
- Seek employment in the underground economy,
- Avoid employment or seek part-time employment instead of full-time employment, and
- Fail to provide relevant information or appear in court.

The university's report states that income is usually imputed as if the parent earned the minimum wage for full-time year-round work. This results in 34 percent of the Title IV-D¹⁵ cases and 5

¹⁰ The inclusion of a self-support reserve ensures that obligors have sufficient income to maintain a minimum standard of living, that is, to avoid being pushed into poverty by payment of child support or, if they are already in poverty, to avoid exacerbation of poverty.

¹¹ McCaleb, *supra* note 7.

¹² *Id.*

¹³ Florida's relevant provision is found in s. 61.30(2)(b), F.S.

¹⁴ McCaleb, *supra* note 7, at 97.

¹⁵ Title IV-D means services provided pursuant to Title IV-D of the Social Security Act, 42 U.S.C. s. 666(a)(19). Section 61.046(8), F.S.

percent of the private cases in a sample of Florida child support cases having this level of income despite the fact that only 1 percent of United States workers earn the minimum wage. The university believes that this appears to indicate an overreliance on the use of minimum wage incomes for imputation of income in Florida. If income is imputed to both parents at this level, then the low-income provisions will not be effective.¹⁶

According to the report, actual income should be used wherever possible. The report recommended limiting imputation of incomes to those cases where one of the parties does not appear, and no information is available from any other source; and to impute more realistic incomes based on the actual earnings of similar individuals.

Visitation and Shared Parenting

The income shares model is based on the premise that child support is intended to ensure that the custodial parent has sufficient resources to provide the child with the same amount of spending as would be available for a child in an otherwise similar intact family.¹⁷

According to the FSU report, Florida's current treatment of visitation and shared parenting suffers from three problems. First, the guidelines discourage noncustodial parents from having substantive contact with their children unless they are able and willing to exercise visitation rights for at least 40 percent of the time or unless the court order deviates from the guideline amount to compensate for the additional costs of visitation. Second, even if a court is willing to deviate, the guidelines provide no guidance to judges, hearing officers, or parents about the appropriate amount of the deviation. Finally, the 40-percent threshold creates a "cliff effect" that encourages disputes and litigation over visitation and shared parenting arrangements.¹⁸ The report recommended adopting a visitation and shared parenting adjustment that applies to all levels of shared parenting but increases with the amount of the noncustodial parent's parenting time.

Tax Benefits in Child Support Guidelines

A noncustodial parent's child support payment equals the parent's prorated share of the basic obligation plus the parent's prorated share of actual children's health and childcare expenses. The amount of the latter payment is reduced by 25 percent, apparently due to the availability to the custodial parent of a federal income tax credit for childcare expenses. However, the 25-percent tax credit is not available to all custodial parents; it applies only over a narrow range of custodial parent incomes; and for most custodial parents in the upper range of incomes, the tax benefit is only about 20 percent.¹⁹

The reduction in the noncustodial parent's share of childcare expenses is the only recognition in the child support guidelines of the tax benefits associated with children. However, other tax benefits exist and can be substantial. In low-income cases, these tax benefits are as high as 72 percent of the estimated cost of a child. The university found that by only recognizing the

¹⁶ McCaleb, *supra* note 7, at vi.

¹⁷ *Id.* at 103.

¹⁸ *Id.* at 112.

¹⁹ *Id.* at vi.

childcare credit, the current guidelines treat the tax benefits inconsistently. The report recommended reducing or eliminating the 25-percent reduction in the noncustodial parent's share of childcare expenses and including an adjustment to the child support obligation to reflect the tax benefits of children in the child support worksheet.²⁰

Explanatory Section Preceding Statute

Child support guidelines rely on the basic premise that both parents have a duty to support their child, whether they live together or not.²¹ To calculate child support payments, Florida adopted the income shares model, which provides the child should receive the same amount of expenditure as if the family were intact. The rationale behind this model is that if the parents lived together, they would pool their income and spend for the benefit of household members, including children. Thus, when the parents no longer live together they should be paying the same proportion as if they did live together.²²

In Florida, only the noncustodial parent is legally obligated to pay a court-ordered amount based on the statutory schedule for support. The custodial parent does not have a legal obligation, but a moral obligation to pay.²³ The rationale is that while living with the child, the custodial parent will spend an equal amount on food, clothes, and basic needs of the child, providing directly to the child.²⁴ This situation has created confusion for some noncustodial parents, who question why the custodial parent is not ordered by the court in a child support proceeding to pay a certain amount of money.²⁵ To help alleviate this confusion, some states have included an explanatory memorandum in their statutes which describes how the payments for child support are assessed and the reason that the noncustodial parent is ordered to pay child support.

A clear statement of legislative intent relating to s. 61.30, F.S., may help citizens by informing them of the purpose of the statutory guidelines and addressing the principles that control the decisions the court makes, thereby increasing the transparency of the judicial process with regard to child support matters. The Senate Committee on Children, Families, and Elder Affairs recommended inserting an explanatory section immediately preceding s. 61.30, F.S., which briefly explains the principles on which the child support statute was based.²⁶

III. Effect of Proposed Changes:

This bill amends provisions of law dealing with child support. Specifically, the bill amends s. 61.13, F.S., to require that all child support and income deduction orders entered on or after October 1, 2010, provide that child support will terminate on the child's 18th birthday, unless

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ The approach adopted in Florida is also known as the cross credit model. Within the child support worksheet or in a separate shared parenting worksheet, a separate support obligation for each parent is computed. Then a credit is provided against each parent's obligation for that share of parenting time and two obligations are offset to determine a net child support payment. For example, instead of charging the noncustodial parent \$500 per month and the custodial parent \$200 per month, based on their relative incomes, the noncustodial parent will just be ordered to pay \$300 per month. *Id.* at 118.

²⁶ Comm. on Children, Families, and Elder Affairs, *supra* note 1.

certain statutory circumstances exist, such as the child is disabled, the child has not graduated from high school, or the parties have otherwise agreed. When a court issues a child support order, the court must provide the amount of the monthly child support obligation for all the minor children at the time of the order and the amount of child support that will be owed for any remaining children after one or more children is no longer entitled to receive child support. The order must also provide the specific date that the reduction or termination of child support will become effective. The bill provides that these changes are to take effect October 1, 2010.

This bill amends s. 61.30, F.S., to change the way income on a monthly basis is imputed to an unemployed or underemployed parent when such employment or underemployment is found to be voluntary on the parent's part. If the court finds voluntary unemployment or underemployment on the part of the parent, current law provides that the employment potential and probable earnings shall be based upon prevailing wage levels in the community, his or her recent work history, and occupational qualifications, if the information is available. However, the bill provides that if information is not available, or a parent fails to participate in a child support proceeding or fails to supply adequate financial information in a child support proceeding,²⁷ income shall be automatically imputed to the parent and there shall be a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of Census.²⁸

According to the Florida Department of Revenue (DOR or department), the standard established in this bill for imputing income conflicts with the standard that applies in proceedings conducted by the department to establish administrative support orders. Specifically:

Under s. 409.2563(5)(a), F.S., when a parent fails to disclose income and no reliable information is available, it is presumed the parent is capable of earning federal minimum wage, which is imputed as income in such cases. Under s. 409.2563(2)(c), F.S., the Department is required to comply with s. 61.30, F.S., when establishing a support obligation.

The same standard for imputing income when a parent fails to disclose income should apply to judicial and administrative proceedings. Having different standards raises questions of fundamental fairness and equal protection laws. An order based on the median wage will be significantly higher than an order based on minimum wage.

. . . .

²⁷ In a proceeding for child support in Florida, parents are required to provide various documents to the court as evidence of the current financial status, including a sworn financial affidavit, tax returns, W-2 forms, and pay stubs. Florida State Courts, *Instructions for Florida Family Law Rules of Procedure Form 12.932, Certificate of Compliance with Mandatory Disclosure*, http://www.flcourts.org/gen_public/family/forms_rules/932.pdf (last visited Mar. 31, 2010).

²⁸ The current median income for year-round full-time workers in Florida is \$47,778. U.S. Census Bureau, *Median Household Income for States: 2007 and 2008 American Community Surveys* (Sept. 2009), available at <http://www.census.gov/prod/2009pubs/acsbr08-2.pdf> (last visited Mar. 31, 2010).

[T]he current [annual] medium income for full-time year-round workers in Florida is \$47,778. In contrast, the annual income for a full-time worker at Federal minimum wage is \$15,288. Using median income as the standard . . . will likely result in imputed income that exceeds actual income in most cases.²⁹

The following illustration shows the difference in monthly order amounts depending on whether income is imputed at the Federal minimum wage or Florida’s medium income:³⁰

	Federal Minimum Wage	Median Income
1 Child	\$244	\$647
2 Children	\$379	\$1,005
3 Children	\$474	\$1,251

The bill provides that in order for the court to impute income at an amount other than the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of Census, the court must make specific findings of fact. The party seeking to impute income has the burden to present competent, substantial evidence³¹ showing:

- That the unemployment or underemployment is voluntary; and
- The amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location, with due consideration being given to the parties’ time-sharing schedule and their historical exercise of that time-sharing provided in the parenting plan or relevant order.

The bill also provides that income may not be imputed based upon:

- Income records that are more than five years old at the time of the hearing or trial at which imputation is sought; or
- Income at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration of the parties’ existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

The bill removes the first three levels of the child support guidelines schedule. Specifically, the combined monthly net income levels and corresponding obligation amounts for \$650, \$700, and \$750 are removed from the schedule. Accordingly, the lowest combined monthly net income included in the schedule is \$800 after the changes made by the bill.

The bill changes the way that child support obligations are calculated for income levels that fall below the minimum amount set forth in the child support guidelines schedule. First, the bill

²⁹ Dep’t of Revenue, *2010 Bill Analysis CS/SB 2246*, 7 (Apr. 2, 2010) (on file with the Senate Committee on Judiciary).

³⁰ *Id.* at 8.

³¹ This is the standard of evidence established in case law. See *Brown v. Cannady-Brown*, 954 So. 2d. 1206, 1207 (Fla. 4th DCA 2007).

applies the obligor parent's net income to the child support guidelines level, to determine if the income falls below the minimum guidelines schedule amount, instead of using the combined monthly net income of both parents.³² Additionally, bill provides that the obligor parent's child support payment shall be the lesser of the obligor parent's actual dollar share of the total minimum child support amount and 90 percent of the difference between the obligor parent's monthly net income and the current poverty guidelines, as measured by the United States Department of Health and Human Services under the authority of 42 U.S.C. s. 9902(2) for a single individual living alone.³³

According to DOR, it appears that subparagraphs 1. and 2. of s. 61.30(6), F.S., as revised by the bill, may be in conflict.³⁴ The bill maintains current law that the parent should be ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased support orders should the parent's income increase. However, the bill adds subparagraph 2., which provides a new formula for a court to use to determine child support. It is unclear how a court will know which provision to use to calculate child support. Additionally, subparagraph 2., provides that the obligor's payment "shall be the lesser of the obligor parent's actual dollar share of the total minimum child support amount, as determined in subparagraph 1." But these provisions of law only apply if the obligor's net income is less than the amount in the guidelines schedule.³⁵ Therefore, if the obligor's income is less than the amount in the guidelines schedule, there is no "total minimum child support amount" because the amount is below where the schedule begins. It is unclear if the intent of the bill is to have "total minimum child support amount" mean the lowest amount on the schedule, or mean the amount determined on a case-by-case basis by the court.

The bill amends s. 61.30(7), F.S., to eliminate the 25-percent federal income tax credit for childcare expenses. Accordingly, the obligor parent's prorated share of childcare expenses will not be reduced by 25 percent in calculating the total support payment.

The bill amends section 61.30(11)(a), F.S., to allow the court, when adjusting the total minimum child support award, to consider the impact of the Child & Dependent Care Tax Credit and the Earned Income Tax Credit, along with the dependency exemption and waiver of that exemption.³⁶

³² "Obligor" means "a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support." Section 61.046(13), F.S.

³³ The 2009 poverty guidelines amount for a single person living alone is \$10,830. U.S. Dep't of Health & Human Servs., *The 2009 HHS Poverty Guidelines*, <http://aspe.hhs.gov/poverty/09poverty.shtml> (last visited Mar. 31, 2010).

³⁴ Dep't of Revenue, *supra* note 29, at 8.

³⁵ See s. 61.30(6), F.S.

³⁶ The Child & Dependent Care Tax Credit is available for a parent who pays someone to care for a dependent child who is under the age of 13 or for a spouse or dependent who is not able to care for him or herself. There are numerous eligibility requirements, including that a parent pay the expenses so that the parent can look for work. Internal Revenue Service, *Child and Dependent Care Expenses* (Dec. 10, 2009), available at <http://www.irs.gov/pub/irs-pdf/p503.pdf> (last visited Mar. 31, 2010). The Earned Income Tax Credit (EITC) is a refundable federal income tax credit for low to moderate income working individuals and families. When the EITC exceeds the amount of taxes owed, it results in a tax refund to those who claim and qualify for the credit. Internal Revenue Service, *EITC Home Page* (Mar. 22, 2010), <http://www.irs.gov/individuals/article/0,,id=96406,00.html> (last visited Mar. 31, 2010).

The bill reduces the time-sharing threshold for purposes of adjusting the total minimum child support award from 40 percent of overnights to 20 percent. The bill also amends the definition of “substantial amount of time” for purposes of adjusting a child support award from 40 percent of the overnights of the year to 20 percent of the overnights of the year.

Finally, the bill creates s. 61.29, F.S., which explains the income shares model and establishes the public policy of Florida in the creation of child support guidelines. Specifically:

- Each parent has a fundamental obligation to support his or his or minor or legally dependent child;
- The guidelines schedule is based on the parent’s combined net income estimated to have been allocated to the child as if the parents and children as if the parents and children were living in an intact household; and
- The guidelines encourage fair and efficient settlement of support issues between parents and minimize the need for litigation.

The bill also makes technical and conforming changes.

The bill provides that except as otherwise expressly provided in bill and except for the effective date section of the bill, which is to take effect October 1, 2010, the bill shall take effect January 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of several provisions of the bill would adjust the order amount some obligor parents would be required to pay. In these situations, the obligee parent may be entitled to receive less money each month than he or she would under the existing statute. This may negatively impact the obligee parent by making it harder to raise a child with

the support payment provided. However, the adjustment in obligations is not expected to be significant and may result in increased compliance. Several studies show that the highest (in dollars) order is not necessarily the best order, and strong evidence exists that if lower support payments are ordered for low-income obligor parents, then compliance rates may subsequently increase.³⁷

C. Government Sector Impact:

Implementation of several provisions of the bill may require the courts to fashion new child support guideline worksheets. The courts may incur some expenses related to preparing and implementing these new worksheets; however, the impact is not expected to be significant.

Also, according to the Florida Department of Revenue:

Systems and forms will have to be reprogrammed to 1) repeal the 25% reduction to child care costs; 2) revise the formula for deviation based on parenting plans; and 3) reflect the new formula for determining obligations for “less than guideline schedule” incomes. Training materials would need to be developed and provided to address imputing income and calculation of support orders for low income obligors.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires all child support and income deduction orders to include a schedule that states the amount of the monthly child support obligation and the amount that will be owed for any remaining children after one or more of the children is no longer entitled to receive child support, based on the existing record at the time of the order. Under current law, a child support obligation does not automatically end, but, rather, the parties must return to court to re-litigate child support based on the current incomes and the number of children requiring support. By creating a schedule in advance that states the amount of child support that will be owed for the remaining children after a child is no longer entitled to receive child support, the bill appears to not take into account a parent’s financial situation at the time the new support obligation takes effect. According to the Florida Department of Revenue (DOR or department), this could create

³⁷ See Comm. on Children, Families, and Elder Affairs, *supra* note 1, at 7-8 (citing Nat’l Judicial Child Support Task Force Avoiding Inappropriate Orders Subcommittee, Admin. for Children and Families, Dep’t of Health and Human Servs., *Setting Appropriate Child Support Orders: Practical Techniques Used in Child Support Agencies and Judicial Systems in 14 States*, (Aug. 2007), available at <http://www.acf.hhs.gov/programs/cse/pol/DCL/2009/dcl-09-15a.pdf>). Additionally, the Florida Department of Revenue reports that lower obligation amounts have higher compliance rates. Dep’t of Revenue, *FFY 2008-2009 Current Support Collections by Monthly Obligation Amount* (Feb. 1, 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

³⁸ Dep’t of Revenue, *supra* note 29, at 8-9.

potential litigation because some courts may craft orders that automatically reduce support based on any number of future contingencies.³⁹

An additional concern with the schedule is that the only guidance the bill provides the court in deriving the schedule is that it be “based on the record existing at the time of the order.” The department stated that since the bill is silent on how to calculate the required schedule, judges could set inconsistent support amounts for children across the state as the older children subject to the order emancipate. This could undercut the intent of s. 61.30, F.S., which is to provide reliable, consistent child support order amounts based upon a given income. The department recommends that stricter guidelines be implemented to avoid inconsistency.⁴⁰

The department also notes that the bill provides that the schedule must be included in all child support orders and *income deduction orders*. The circuit court routinely enters an income deduction order when enforcing unpaid support. However, in a proceeding for enforcement only, including contempt, the court has no jurisdiction to modify the terms of the support order. The department recommends that the requirement to include the schedule be limited to original proceedings and proceedings to modify support.⁴¹

Finally, this bill eliminates the three lowest income levels from the child support guideline chart. This change may create a disincentive effect. Under the bill, a parent with a monthly income of \$750 might have a child support payment of nothing or \$50, determined at the discretion of the court. However, if that parent earned an additional \$50 per month, bringing his or her monthly income to \$800 per month, his or her obligation would increase to \$190 per month for one child. The increase in the child support obligation would be more than the increase in income. This may not only give a parent an incentive to not increase his or her income, but it may also encourage a parent who already makes \$800 per month to reduce his or her income or hide a portion of it in order to lower the monthly child support obligation. This is the disincentive effect that the phase-in range was designed to prevent.⁴²

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 7, 2010:

The committee substitute:

- Reduces the time-sharing threshold for purposes of adjusting the total minimum child support award to 20 percent of overnights, rather than eliminating the threshold completely.

³⁹ *Id.* at 6.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Thomas S. McCaleb, Associate Professor of Economics, Florida State University, *Review and Update of Florida’s Child Support Guidelines* (presentation to the Senate Committee on Children, Families, and Elder Affairs) (Mar. 25, 2009).

- Reinstates the definition of “substantial amount of time” for purposes of adjusting a child support award and lowers the threshold of overnights from 40 percent to 20 percent.
- Reinstates the 1.5 multiplier for calculating an adjustment of a child support award when a parenting plan provides that each child spend a substantial amount of time with each parent.
- Removes the proposed additional way a court could adjust the total minimum child support award.
- Provides that section one of the bill is to take effect October 1, 2010.
- Amends the effective date of the bill to allow for the October 1, 2010, effective date of section one of the bill.

CS by Children, Families, and Elder Affairs on March 18, 2010:

The committee substitute makes changes to the basic principles the court shall adhere to in implementing the child support guidelines schedule.

The committee substitute amends the provisions for imputing income to a voluntarily unemployed or underemployed parent. The bill creates a rebuttable presumption of census level wages if information about the earnings level is not provided. The bill provides that the burden of proof is on the party to seeking to impute the income to the other party. The bill prohibits imputing income for out-of-date records or unprecedented earnings.

The committee substitute removes the first three lines of the child support guidelines schedule, in order to assist low-income families.

B. Amendments:

None.