

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 Children, Families, and Elder Affairs Committee

BILL: SPB 7046

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: Child Support Guidelines

DATE: February 2, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Walsh		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Proposed Committee Bill 7046 outlines the basic principles the court shall adhere to in implementing the child support guidelines schedule, including a description of the income shares model.

The bill amends the provisions for imputing income to a voluntarily unemployed or underemployed parent and provides that the burden of proof is on the party to seeking to impute the income to the other party.

The bill implements the updated schedule of child support obligations and revises the range of incomes on the schedule of obligations. The bill changes the calculation of obligation amounts for incomes that fall below the minimum amount set forth in the child support guidelines schedule and applies the obligor parent's net income to determine if the income falls below the lowest obligation amount in the schedule. The bill provides that subsequent changes to the child support guidelines schedule shall not be applied retroactively to an existing child support order.

The bill eliminates the 25 percent federal income tax credit for childcare expenses. The bill allows 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.

The bill amends the 40 percent parenting threshold, which is considered by the court in deviating from the guidelines. It allows the court to adjust the obligation based on any parenting time spent with the child.

The bill amends the provisions regarding prior and subsequent children and allows the court to consider the existence of subsequent children in any proceeding, not just a proceeding for an upward modification of an existing award.

The bill creates s. 61.29, Florida Statutes, and substantially amends s. 61.30, Florida Statutes.

The bill provides an effective date of January 1, 2011.

II. Present Situation:

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, 1987.¹ 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.² 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.³ The Florida schedule of obligations, based on the income shares model,⁴ 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.⁵ 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.

The most recent review was conducted in 2008 by Florida State University (FSU or the university), under contract with the Legislature.⁶ This review included:

1. 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

¹ Child Support Enforcement Amendments of 1984, 42 U.S.C. §§ 657-662 (1984).

² Family Support Act of 1988, 42 U.S.C. §§ 654, 666-667 (1988).

³ The "guidelines" are the body of laws describing the intent and relating to child support administration. See FLA. STAT. § 61 (2008). The "schedule" is a table of support obligations or payments which should reflect the philosophy set forth in guidelines. See FLA. STAT. § 61.30(6) (2008).

⁴ 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.

⁵ 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 (March 5, 2004).

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, at iv (November 17, 2008).

- data on family income shares allocated to children to the extent such data is publicly available.
2. Update the existing schedule amounts to reflect the effects of inflation and evaluate the methodological validity of this approach.
 3. 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.⁷
 4. 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.
 5. 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.
 6. Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.
 7. Itemize the tax benefits and burdens of child support in regard to the child care tax credit.

Committee staff presented FSU’s recommendations in Interim Project 2010-210, *Review of Child Support Guidelines*, at its January 13, 2010 meeting. Members of the Committee of Children, Families, and Elder Affairs directed staff to prepare a bill to reflect the following recommendations:

Updating Florida’s Child Support Schedule

Federal law requires that each state periodically review and update its child support schedule to reflect the most recently available economic data. Florida’s schedule was last updated in 1993, and the data from which the schedule of child support obligations is derived are from 1972-1973. The update of the Florida schedule proposed adheres closely to the methodology of the current schedule while using data from the 2004-2006 Consumer Expenditure Survey.⁸ Within the proposed schedule, a small range of low-income parents would experience higher support payments. For most parents, the support payments are lower. However, the differences are large only for high-income cases that constitute a small proportion of the total number of child support cases.

*Recommendation 1*⁹: Adopt the updated schedule of child support obligations to replace the 1993 schedule.

Low Income Parents

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

⁷ 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 report, the original terminology will be used, in order to conform with the language in the FSU report.

⁸ McCaleb, *supra* note 6, at 20.

⁹ For convenience, recommendations herein are numbered as presented at the January 13, 2010 committee meeting.

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 following recommendation was made.

Recommendation 3: Use of Combined Income: Apply the self-support reserve and the phase-in to the noncustodial parent's income alone.

The 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 Therefore, the following was recommended:

Recommendation 4: Updating the Schedule of Obligations: Adopt procedures for annual or biannual updating of the schedule of basic child support obligations to reflect changes in the federal single-person poverty guideline.

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.

Recommendation 5: Application of the Self-Support Reserve: Apply 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 percent of the private cases in a sample of Florida child support cases having this level of income

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 6.

¹² *Id.*

¹³ FLA. STAT. § 61.30(2)(b) (2008).

¹⁴ McCaleb, *supra* note 6, 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). FLA. STAT. § 61.046(8) (2008).

despite the fact that only 1 percent of U.S. 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 following was recommended.

Recommendation 6: Imputation of Income: Limit imputation of incomes to those cases where one of the parties does not appear, and no information is available from any other source; and 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 following recommendation was made.

Recommendation 7: Visitation and Shared Parenting: Adopt 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; 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

¹⁶ McCaleb, *supra* note 6, at vi.

¹⁷ *Id.* at 103.

¹⁸ *Id.* at 112.

¹⁹ *Id.* at vi.

percent of the estimated cost of a child. The university found that by only recognizing the childcare credit, the current guidelines treat the tax benefits inconsistently. The following recommendations were made.²⁰

Recommendations 8: Tax Benefits: Reduce or eliminate the 25 percent reduction in the noncustodial parent's share of childcare expenses.

Recommendation 9: Tax Benefits: Include an adjustment to the child support obligation to reflect the tax benefits of children in the child support worksheet.

Pro Se Litigants in Child Support Cases

Courts have recently seen an increase in the number of *pro se* litigants, those representing themselves without the assistance of an attorney, in family law and child support cases.²¹ Recent data from the Florida Office of the State Courts Administrator revealed that in a study based on nine counties in Florida, 15 percent of respondents were represented by an attorney when an answer was filed in a child custody case.²² Many people choose to represent themselves because they lack sufficient income to hire an attorney to represent them.²³ The recent increase in *pro se* litigants can be attributed to a variety of factors, including the current economy and the scarcity of affordable legal services.²⁴ The legal community is becoming aware that the movement towards *pro se* litigation is permanent and that the complications posed by this must be addressed.²⁵

Pro se litigants are frequently intimidated by the judicial process, typically lack legal knowledge and often do not have a clear understanding of what their case involves.²⁶ *Pro se* litigants have limited available and accurate resources and often consult the Florida statutes to assist them in representing themselves in child support proceedings.²⁷ Because of their unfamiliarity with the legal system, *pro se* litigants may make mistakes with expensive and long-lasting consequences.²⁸ As *pro se* litigants are unfamiliar with the proper court procedures, clerks must spend much of their time trying to make sure procedures are correctly followed, which can result

²⁰ *Id.*

²¹ Margery A. Gibbs, *More Americans Serving as Their Own Lawyers*, A.P., Nov. 24, 2008, available at <http://abcnews.go.com/print?id=6323652>.

²² The 2002 assessment captured data from 1,120 cases in 9 counties (Bay, Escambia, Hillsborough, Leon, Manatee, Miami-Dade, Putnam, and Taylor). The respondents were noncustodial parents; however, the Office of the State Courts Administrator did not have any information on representation for those litigants who did not file an answer. E-mail from Brenda Johnson, Director of Community and Intergovernmental Relations, Office of the State Courts Administrator (Sept. 18, 2009, 02:21 EST).

²³ Paula L. Hannaford-Agor, *Helping the Pro se Litigant: A Changing Landscape*, COURT REVIEW, Winter 2003, at 8.

²⁴ *Id.*

²⁵ Some states are beginning to offer self-help websites; desks at court offices that offer standard legal forms; and volunteer lawyers. Gibbs, *supra* note 20. Commentators have suggested moving from a framework of full-service legal representation to new models of access to legal information and legal advice. Hannaford-Agor, *supra* note 22, at 8. In Indiana, the courts produced a video, available at public libraries, law schools, and legal aid organizations, which provides important information about the legal processes and responsibilities that a person takes on when they decide to appear in court without an attorney. *Court Posts Video for People Considering Representing Themselves in Family Law Cases*, Indiana Law Blog (November 25, 2008), http://indianalawblog.com/archives/2008/11/ind_courts_cour_48.html.

²⁶ Hannaford-Agor, *supra* note 22.

²⁷ However, while forms for child support and family law proceedings are available on the court website, *pro se* litigants must likely consult the Florida statutes in order to determine their rights under Florida law.

²⁸ Hannaford-Agor, *supra* note 22.

in a clog in the court system.²⁹ Judges are also frustrated by flooded calendars and by litigants that come to court unprepared.³⁰

As the trend toward increased *pro se* litigation is likely to continue, steps should be taken to minimize the complications that *pro se* litigants will face when representing themselves, thereby increasing judicial efficiency. One step is to amend the child support provisions in chapter 61, F.S., in order to make it more intelligible, or “user-friendly,” for *pro se* litigants, who presumably have a difficult time navigating the complex statutory provisions. It is important that the statute provides concrete guidance to readers. To make the statute more intelligible, the statute should be amended based on: (1) visual guidelines and (2) the type of language used.³¹

To change the visual guidelines, captions or headings keyed to the stage of the proceeding could be used for each section. List formats within the section also make the statute more precise and specific. Another visual guideline would be an index at the beginning of the chapter keyed to the reformatted headings, which would direct individuals to the specific page number and section. Chapter 409, F.S., serves as a good example of how the current chapter 61, F.S., should be restructured to make it more “user-friendly” for *pro se* litigants.

Additionally, the language contained in the statute itself might be amended so that it is more simplistic. The statute and section headings should use as few words as possible and at a level the audience can understand. Adopting new and more simplistic terminology, in the language of the statute and for section headings, will allow users to quickly find the portion of the statute that applies to their particular situation.

Pro se litigants will be more likely to comply with the processes and procedures established by the legislature and courts if they can understand what those procedures are when reading the statute. Adjusting the language and clearly distinguishing chapter headings will make intimidating language more understandable. Being able to navigate the statute will make *pro se* litigants more prepared when they go to court and allow them to know their rights so they can adequately represent themselves. This will likely result in greater judicial efficiency.

Recommendation 10: Pro se Litigants in Child Support Cases: Amend chapter 61, F.S., to be more user-friendly in order to assist the growing number of *pro se* litigants in child support cases.

Subsequent and Prior Children

As the 2004 FSU report addressed, “when a hearing is held to establish a child support award, one or both of the parents already may be subject to child support order for other children. These children are referred to as ‘prior children.’ ‘Existing children’ means the children for whom the current award is being sought. ‘Subsequent’ children means children who are born or adopted after the current order is entered.”³² Though not referenced in the 2008 FSU report, payment

²⁹ Gibbs, *supra* note 20.

³⁰ Richard Zorza, *Trends in Self-Represented Litigation Innovation, A Closer Look At...Special Court and Programs*, National Center for State Courts, at 85, available at <http://www.ncsconline.org/WC/Publications/Trends/2006/ProSeTrends2006.pdf>.

³¹ PETER MEIJES TIERSMA, *LEGAL LANGUAGE*, 224-225 (University of Chicago Press 1999).

³² McCaleb, *supra* note 5.

schedules for individuals with subsequent and prior children have remained an issue not adequately addressed by the statute.³³

Section 61.30, F.S., prohibits the court from considering the existence of subsequent children as the basis for reducing an existing child support award or disregarding the amount provided in the guidelines.³⁴ “The approach adopted by the Florida Legislature is called the ‘first mortgage’ approach, and gives priority to children born first, particularly those covered under preexisting support obligations.”³⁵ Consideration of subsequent children is restricted to situations where the obligor raises the issue “defensively” rather than “offensively.”³⁶ Section 61.30(12)(c), F.S., provides, that support for subsequent children can only be raised as a defense to a request by the custodial parent for an upward modification of an existing order.³⁷ If a parent raises the issue of subsequent children as a defense in a proceeding for upward modification, then the income of the parent’s new spouse must also be considered.³⁸ The support-paying parent cannot seek a downward modification of an existing support obligation for prior children on the grounds that the parent has additional dependents from a subsequent relationship.³⁹

Arguably, this statutory scheme results in unequal treatment of children, as it treats dependent children differently because they are subsequent-children and consequently, it could be challenged on equal protection grounds.⁴⁰ This scheme also discourages the support-paying parent from having additional children when he or she has a court order to pay child support for prior children.⁴¹ On the other hand, “a parent who is responsible for meeting the financial needs of his or her children should not have more children and incur additional financial obligations until the existing obligations to the prior children are...satisfied.”⁴² It was the parent’s decision to have another child and the order for previous children should not be reduced because the prior family has come to depend on it.⁴³

States generally follow three different statutory schemes for subsequent children. As referenced above, Florida law favors prior children and precludes the court from considering subsequent-born children in a proceeding for a downward modification of an existing child support order.⁴⁴ Some states “provide the court with discretion to make an adjustment for subsequent children in those limited circumstances when relief is actually economically justified.”⁴⁵ Thus, in states where the adjustment is discretionary, as opposed to automatic, the court will make

³³ *Id.*

³⁴ Thomas J. Sasser, *et. al.*, *Child Support Myths and Truths: Exploring the Assumptions Underlying Florida’s Statutory Guidelines*, FLA. BAR J., Oct. 1999. “The existence of subsequent children should not as a general rule be considered by the court as a basis for disregarding the amount provided in the guidelines.” FLA. STAT. § 61.30(12)(b) (2008).

³⁵ *Id.*; FLA. STAT. § 61.30(12) (2008); *Green v. Green*, 672 So.2d 49 (Fla. Dist. Ct. App. 1996).

³⁶ Yoonsook Ha, *et.al.*, *Factors Associated with Nonpayment of Child Support*, INSTITUTE FOR RESEARCH ON POVERTY, UNIVERSITY OF WISCONSIN-MADISON, Sept. 2008, pg. 11.

³⁷ *Id.*

³⁸ Sasser, *supra* note 33.

³⁹ Ha, *supra* note 35, at 11; Sasser, *supra* note 33.

⁴⁰ Tonya Brito, *Child Support Guidelines and Complicated Families*, INST. FOR RESEARCH ON POVERTY, UNIVERSITY OF WISCONSIN-MADISON, May 2005; Ha, *supra* note 35, at 13-14.

⁴¹ Brito, *supra* note 39.

⁴² *Id.* at 6.

⁴³ *Id.* at 7.

⁴⁴ Ha, *supra* note 35, at 10.

⁴⁵ States that follow this scheme include Washington and South Dakota. Brito, *supra* note 39, at 11.

individualized determinations on a case-by-case basis whether the existing child support order for prior children will be reduced based on subsequently born children.⁴⁶ Another group of states chooses to treat all children equally and does not draw distinctions between additional dependents based on whether they are prior or subsequent born children.⁴⁷ Effectively, the support order for the prior family is reduced whenever a support-paying parent forms a new family and has additional dependents.⁴⁸

Recommendation 11: Subsequent and Prior Children: Consider amending Florida’s statute on subsequent and prior children to increase the clarity of Florida’s statute.

Schedule of Obligations

Recent statistics show that only half of noncustodial parents pay the full amount of what they owe.⁴⁹ One study found that compared to those who paid child support, those that did not pay were more likely to have unstable employment, low earnings, and to be incarcerated.⁵⁰ A substantial number of similar studies have shown a relationship between the noncustodial parents’ financial capacity and child support payments.⁵¹ “Some studies analyzed the relationship between the burden of a child support order (the owed amount relative to earnings of noncustodial parents) and child support compliance (the amount paid relative to the amount owed) and found that a high burden is associated with a decline in compliance rates.”⁵² Thus, low-income parents are more likely to be noncompliant with child support orders. Additionally, as current federal law provides, “criminal culpability is not obviated by partial payment of support obligations,” the law arguably encourages nonpayment over partial payment of a child support order.⁵³ Furthermore, noncustodial parents in Florida are responsible for any back child support payments that have not been made on time, called arrearages.⁵⁴ Courts may order certain remedies against a noncustodial parent who is in arrears on payments, including: an order for income deduction; suspending or denying a professional license or certificate; and suspending a driver’s license.⁵⁵

Adopting a new schedule with lower payments for low-income noncustodial parents may help the custodial parent, as the latter will be more likely to collect the full order when the payment amount has been reduced and the noncustodial parent’s ability to pay has consequently increased. An important consideration in adopting a new schedule is that the amount ordered by the court to be paid to the custodial parent may decrease, especially with low-income families, possibly making it more difficult for the custodial parent to support the child. However, the amount of child support ordered must somehow reflect the noncustodial parent’s ability to pay.

⁴⁶ *Id.*

⁴⁷ These states include Arizona, Connecticut, the District of Columbia, Indiana, and Oregon. This approach allows noncustodial parents a credit for the support of subsequent children. *Id.* at 10.

⁴⁸ *Id.*

⁴⁹ Ha, *supra* note 35.

⁵⁰ *Id.* at 12.

⁵¹ *Id.* at 2.

⁵² However, one study also found that higher burdens generally do not lead to lower payments. *Id.* at 3 (citing the following studies: Huang, Mincy, and Garfinkel, (2005); and Meyer, Ha, and Hu, (2008)).

⁵³ *Prosecutive Guidelines and Procedures for the Child Support Recovery Act of 1992*, Office of the Attorney General (Feb. 1997), available at <http://www.usdoj.gov/ag/readingroom/childspt2.htm>.

⁵⁴ FLA. STAT. §§ 61.1301 -61.13016 (2008).

⁵⁵ *Id.*

A recent study by the Department of Health and Human Services found that it was almost universally agreed that the highest support order was not necessarily the “best” support order.⁵⁶ Thus, adopting a new schedule might increase noncustodial parents’ compliance, as he or she will be more likely and more able to pay the court-ordered amount, and provide the custodial parent with greater support than he or she was previously receiving under the current schedule.

Recommendation 12: Schedule of Obligations: Adopt one of the schedules in the FSU report which reflects a lower child support payment for low-income noncustodial parents.⁵⁷

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.⁵⁸ 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.⁵⁹

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.⁶⁰ 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.⁶¹ 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.⁶² 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.

⁵⁶ *Setting Appropriate Child Support Orders: Practical Techniques Used in Child Support Agencies and Judicial Systems in 14 States*, National Judicial Child Support Task Force Avoiding Inappropriate Orders Subcommittee, Department of Health and Human Services Administration for Children and Families (Aug. 2007), available at <http://www.acf.hhs.gov/programs/cse/pol/DCL/2009/dcl-09-15a.pdf>.

⁵⁷ Appendix 2.1, *Proposed Support Obligations by Number of Children*, McCaleb, *supra* note 6, at 41.

⁵⁸ *Id.* at iv.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 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.

Recommendation 13: Explanatory Section Preceding Statute: Insert an explanatory section immediately preceding the statute which briefly explains the principles on which the child support statute was based.

III. Effect of Proposed Changes:

Section 1

Proposed Committee Bill 7046 creates s. 61.29, F.S., which explains the income shares model and outlines the basic principles the courts shall adhere to in implementing the child support guidelines schedule, including:

- A parent's first and principal obligation is to support his or her minor child;
- Both parents are mutually responsible for the support of their children;
- Each parent should pay for the support of the children according to his or her ability to pay;
- Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the children's primary residence to improve the lives of the children;
- The guidelines schedule takes into account each parent's actual income and level of responsibility for the children;
- It is presumed that a parent having primary physical responsibility for the children contributes a significant portion of his or her available resources for the support of the children;
- The guidelines schedule calculates child support based upon the parents' combined net income estimated to have been allocated to the child if the parents and children were living in an intact household; and
- The guidelines schedule encourages fair and efficient settlement of conflicts between parents and minimizes the need for litigation.

Section 2

The bill amends s. 61.30, F.S. changing 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, the bill 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. If the information is not available or the unemployed or underemployed parent fails to supply the required financial information in a child support proceeding, then the earnings level imputed by the court shall be based on the median income of year-round full-time workers.⁶³ The source for determining the

⁶³In a proceeding for child support in Florida, parents are required to provide various documents of the court as evidence of the current financial status, including: a sworn financial affidavit, tax returns, W-2 forms, and pay stubs. Florida Courts, *Instruction 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 Feb. 1, 2010).

median income is the United States Bureau of Census, current population reports, or such replacement report as published by the bureau of census.⁶⁴

The bill provides that in order to impute income to a party in a child support proceeding, the court must:

- Conclude that the unemployment or underemployment was voluntary; and
- Determine whether any subsequent underemployment resulted from the spouse's pursuit of his or her own interests or through less than diligent efforts and bona fide efforts to find employment paying income at a level equal to or better than that formerly received.⁶⁵

The bill provides that the burden of proof is on the party seeking to impute income to the other party. This change aligns the statute with case law.⁶⁶

The bill implements the updated schedule of child support obligations. The lower level of the income range and accompanying obligations, from \$650.00 to \$800.00, is removed, and the updated schedule begins at a combined monthly net income of \$850.00. The bill adjusts the child support obligation amounts throughout the schedule. At the high end of the schedule, new obligation amounts are implemented for income levels between \$10,050.00 and \$12,500.00.

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.

- The bill 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 the combined monthly net income of both parents.⁶⁷
- The bill maintains 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 orders should the parent's income increase in the future.
- 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 U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for a single individual living alone.⁶⁸

⁶⁴ The current median income for full-time year round workers in Florida is \$47,778. *U.S. Census Bureau, Median Household Income for States, 2007 and 2008 American Community Surveys*, <http://www.census.gov/prod/2009pubs/acsbr08-2.pdf> (last visited Feb. 1, 2010).

⁶⁵ *Ensley v. Ensley*, 578 So.2d. 497, 499 (Fla. 5th DCA 1991); *Brown v. Cannady-Brown*, 954 So.2d. 1206, 1207 (Fla. 4th DCA 2007).

⁶⁶ *Id.*

⁶⁷ "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. FLA. STAT. § 61.046(13) (2009).

⁶⁸ The 2009 poverty guidelines amount for a single person living alone is \$10,830. U.S. Department of Health & Human Services, *The 2009 HHS Poverty Guidelines*, available at: <http://aspe.hhs.gov/poverty/09poverty.shtml> (last visited Feb. 1, 2010).

The bill also provides that the current poverty guidelines amount shall be used, allowing the court to adjust the poverty guidelines amount in the child support worksheet when the new poverty guidelines amount is released each year.

The bill amends s. 61.30(6), F.S., to conform to the highest income level on the updated schedule of child support obligations, \$12,500.

The bill provides that subsequent changes to the child support guidelines schedule shall not be applied retroactively to an existing child support order.

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 actual children's health and childcare expenses will not be reduced by 25 percent in calculating the total support payment.

The bill amends section 61.20(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.⁶⁹

The bill eliminates the 40 percent threshold (or cliff effect), which is considered by the court in deviating from the guidelines schedule. The bill allows the court to adjust the obligation based on any parenting time spent with the child, and directs the court to calculate the obligation as follows:

1. Calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation;
2. Calculate the percentage of overnight stays the child spends with each parent;
3. Multiply each parent's support obligation as calculated in 1. by the sum of one and the smaller percentage calculated in 2.
4. Multiple each parent's support obligation as calculated in 3. by the percentage of the other parent's overnight stays with the child as calculated in 2.
5. The difference between the amounts calculated in 4. is the monetary transfer between the parents for the care of the child, subject to an adjustment for day care and health care expenses.

The bill further provides that subsequent changes to the child support guidelines schedule shall not be applied retroactively to an existing child support order.

⁶⁹ 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 the expenses be paid 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 Feb. 1, 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*, Jan. 29, 2010, available at: <http://www.irs.gov/individuals/article/0,,id=96406.00.html> (last visited Feb. 1, 2010).

The bill amends s. 61.30, F.S., with regard to prior and subsequent children. It provides that the existence of subsequent children may be considered in any proceeding, not just for a proceeding for an upward modification of an existing award. The court, in adjudicating a case involving a parent with multiple family obligations, shall review all past orders for that parent. If the court has jurisdiction over all matters, it may average the orders or fashion some other equitable resolution to treat all the supported children fairly under the guidelines. If multiple orders have reduced the parent's income to an amount below the self-support reserve, the orders should be adjusted to distribute the parent's available income equitably among all children while taking into consideration the parent's share of the total child support obligation and the parent's self-support reserve. If courts in other states ordered the parent to pay child support for a different family, the Florida court may consider such support for the purpose of maintaining the parent's self-support reserve. This change provides the court with discretion to treat all children equally when ordering a parent to pay child support.

Section 3

The bill provides an effective date of January 1, 2011, in order to provide the court time to prepare forms and schedules consistent with the act.

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:

Under the updated schedule of child support obligations, the obligor parent may be required to pay a lower support payment than he or she would have been charged with under the current schedule. Thus, under the updated schedule, the obligee parent may be entitled to receive less money each month than he or she would under the existing schedule. This may negatively impact the obligee parent by making it harder to raise a child with the support payment provided. However, 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.⁷⁰

C. Government Sector Impact:

Implementation of several provisions of the bill would require the courts to fashion new child support guidelines worksheets. Thus, the courts may incur some expenses related to preparing and implementing new guidelines worksheets, but the impact is not expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁷⁰ See The Florida Senate, Committee on Children, Families, and Elder Affairs, *Review of Child Support Guidelines* (Interim Project Report 2010-210) (October 2009) at 7-8 (citing *Setting Appropriate Child Support Orders: Practical Techniques Used in Child Support Agencies and Judicial Systems in 14 States*, National Judicial Child Support Task Force Avoiding Inappropriate Orders Subcommittee, Department of Health and Human Services Administration for Children and Families (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 lower compliance rates. Florida Department of Revenue, *FFY 2008-2009 Current Support Collections by Monthly Obligation Amount* (Feb., 1, 2010) (on file with the committee).