SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS SB 2012

SPONSOR: Judiciary and Children and Families Committees and Senator Peaden

SUBJECT: Establishment of Child Support

DATE: March 14, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	Matthews	Johnson	JU	Favorable/CS
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

This bill provides for the statewide application and implementation of a program for administrative establishment of child support orders based on the provisions governing the original pilot program and serves as the primary process for a determination of child support in Title IV-D cases. It requires several related reports by the Department of Revenue and the Office of Program Policy Analysis and Government Accountability to be submitted to the Governor, Cabinet, and the Legislature. It directs the Department of Revenue to continue its effort to improve the judicial process for the establishment of child support and to implement, with the assistance of specified stakeholders, the recommendations of a joint study by the Florida Supreme Court and the Department of Revenue.

This bill substantially amends the following sections of the Florida Statutes: 120.80, 409.2557, and 409.2563.

II. Present Situation:

Federal mandates

Federal mandates beginning with the Child Support Enforcement Amendments of 1984, have required each state to use expedited administrative processes and procedures for the establishment and enforcement of child support in return for receipt of federal monies. These mandates have also included specific time frames for establishing paternity and establishing and enforcing support orders. States can meet this requirement for expedited processes in one of three ways:

- States could use administrative processes in which staff of the child support agency have the power to determine and enforce the support duty without judicial involvement.

- States could use quasi-judicial procedures in which a court-appointed master, referee or other court-appointed employee hears and decides child support issues.
- States could retain their judicial procedures in which judges hear and decide cases in the traditional manner if the state could demonstrate it can meet the federal time frames and a waiver is approved by the federal Office of Child Support Enforcement.

(U.S. Commission on Interstate Child Support's Report to Congress, 1993)

Subsequent federal legislation however, has continued to focus on the use of the administrative process for child support enforcement. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) overhauled the state child support enforcement programs in response to the number of children in poverty not receiving child support, the growing child support case loads, and the disparity between what was being collected and what could possibility be collected (*Child Support Enforcement: State Legislation in Response to the 1996 Federal Welfare Reform Act*, NCSL, 1998). The mandates set forth in PRWORA aimed to centralize and streamline child support enforcement operations within the states. States were provided the authority to access certain information, to take more expansive actions concerning child support enforcement previously limited to the judicial system, and to simplify paternity establishment procedures. As the time limits and eligibility restrictions are imposed by the federal welfare reform and the Temporary Assistance for Needy Families (TANF) block grants, there is increased pressure on state child support enforcement agencies to develop child support income streams for low-income families.

Florida

As with other states, there are numerous federal incentives and demands upon Florida to improve the efficiency and effectiveness of the child support program. First, federal child support enforcement laws continue to require states to speed up the process of establishing and enforcing child support and to use statutorily prescribed administrative procedures for child support enforcement that had once been the sole purview of the courts. Since the implementation of a number of administrative enforcement procedures in 1996, Title IV-D collections have increased nationally by 32 percent and by 35 percent in Florida. Second, the federal incentive measures for child support enforcement determine the level of incentive funding received by each state. Florida must compete with other states for this funding who are also examining mechanisms to improve performance on each of the federal measures. The federal performance measures applied to states and Florida's current performance and ranking are as follows:

Federal Performance Measures	Florida's Performance and Ranking for FY 1999-2000	Florida's Performance for FY 2000-2001 (Ranking not yet available)
Percentage of children born out of wedlock with paternity established or acknowledged during the fiscal year.	Performance: 82.9 percent Ranking: 36th	85.5 percent
Percentage of Title IV-D cases with support orders.	Performance: 47.5 percent Ranking: 48th	53.6 percent
Percentage of current support collected.	Performance: 49.9 percent Ranking: 34th	52.1 percent
Percentage of cases paying toward arrears.	(not available)	75 percent
Cost Effectiveness.	Performance: $3.45 Ranking: 41st	$3.60

(Department of Revenue)

Florida's Title IV-D Child Support Enforcement Program, operated by the Department of Revenue, is most reflective of a quasi-judicial process. The primary objective of the program is to obtain financial and medical support for children. Additional services include locating parents, establishing paternity[1]; establishing, modifying and enforcing child support orders, and collecting and disbursing support payments. The program provide services at no cost to families who apply or receive temporary cash assistance, Medicaid, or food stamps or other public assistance. The program also provides service to other non-qualifying families who pay a $25 application fees.

Chapter 61, F.S., guides the process for establishing the child support order. Non-custodial parents for whom paternity has been established can stipulate to their child support obligation as determined by the statutorily prescribed child support guidelines in s. 61.30, F.S. This stipulated agreement will be sent to the court for review, whereupon the court may enter the stipulated agreement as the child support order without a court appearance. Those non-custodial parents who either do not stipulate to the child support obligation or do not respond to the Department of Revenue's notice for a meeting are referred to the legal service provider to begin the judicial process to establish paternity or establish child support. The legal service provider files a petition with the clerk of the court and the service of process is initiated. After the service is successful and either the non-custodial parent responds or defaults, the hearing date is set. If the hearing is to establish paternity, the judge or hearing officer may either order genetic testing or enter a final order of paternity, if the non-custodial father acknowledges paternity. In those cases where genetic testing is ordered, the case is returned for another disposition hearing upon filing of positive results. If the hearing is to establish child support, the judge or hearing officer will determine and establish the child support obligation.

In 2001, the Legislature authorized the establishment of a pilot program for a purely administrative establishment of child support orders in Title IV-D cases where paternity is not at issue. *See* ch. 2001-158, L.O.F. The program has been operational in Volusia County since July 2001 and is primarily modeled after an administrative program in Maine. A six-month report by the Department of Revenue indicates the following results to date:

As of January 14, 2002	**Administrative**		**Judicial**	
	Cases	**Percent**	**Cases**	**Percent**
Assigned to group	262	100	261	100
Notices mailed/judicial referrals	261	100	252	97
Non-custodial parents served notice	178	68	155	59
Non-custodial answers received	47	18	TBD	
Proposed orders sent	141	54		
Informal discussions/pre-trial conferences	6	2	TBD	TBD

[1] Paternity can be legally established for the child of unwed parents without a court proceeding if the father or both natural parents sign and have notarized a paternity affidavit (s. 742.10, F.S.). Absent a voluntary acknowledgement of paternity, the court establishes paternity (s. 742.031, F.S.) and can require a genetic test to show probability of paternity (s. 742.12, F.S.). Genetic tests that provide a statistical probability of paternity that equals or exceeds 95 percent creates a rebuttable presumption that the alleged father is the biological father of the child (s. 742.12, F.S.). For Title IV-D clients, the Department of Revenue is authorized to issue an administrative order to require the putative father to appear for a genetic test if the department has an affidavit from the child's mother stating that the putative father is or may be the parent of the child. Affirmative results on the genetic test are used in the disposition hearing for the establishment of paternity and child support.

Hearings scheduled	7	3	118	45
Hearings held	4	2	62	24
Final orders issued	116	44	52	20
Cases appealed	0	0	0	0
Cases in locate process	20	8	46	18
Cases closed	28	11	24	9

Other states

The use of the administrative process remains at the forefront of states' examination of their child support establishment and enforcement programs. States have implemented the administrative processes to varying degrees, some which also blend the administrative and judicial process. The programs in Maine and South Carolina have been hailed as two of the most successful administrative process systems in place. Maine implemented its system in the mid-1980s. According to the National Conference of State Legislators, Maine establishes more support orders faster. Only 10 percent of non-custodial parents ask for a hearing in Maine and of those who do, 90 percent appear for hearing. Since the number of hearings is small, greater time and attention can be spent resolving the issues which led to the hearing request. Included in Maine's process is an administrative procedure for the establishment of paternity. However, contested cases and default cases (i.e., cases that did not comply with the genetic testing or acknowledge paternity after the positive genetic testing) are transferred to the court. South Carolina sets its orders administratively, but anyone can request a hearing. Dedicated court personnel are available on the same day as the order setting so that people who want a hearing can see someone the same day. An administrative process is also used to establish paternity in most cases, with the judicial process providing for paternity establishment in contested cases and cases where parentage is disputed.

Other states where the Title IV-D agency sets the initial orders and those orders are final unless contested are Alaska, Kentucky, Montana, Missouri, Oklahoma, Utah, and Washington. Colorado has established a front-end administrative scheme which is designed to reduce the number of cases that need to be dealt with by the court system. The Child Support Enforcement Unit issues the notice of financial responsibility to the obligor scheduling a negotiation conference, at which time the support is calculated, a stipulation on the amount of the support to be paid prepared and an administrative order issued which is filed with the court. With parental acknowledgement, the Child Support Unit may issue an administrative order establishing paternity. Texas has established a similar process that identifies appropriate cases for a negotiated conference which are conducted by the Child Support Division. Agreements reached are issued as Child Support Review Process orders. The orders are sent to the court which confirms the order if a hearing is not held. (*Expedited Child Support: An Overview of the Commonwealth Countries' and United States' Procedures for Establishing and Modifying Child Support*, Mary MacDonald, 1997)

Other states such as Illinois, New Mexico, New Jersey, New York, Pennsylvania and California continue to use the judicial process exclusively to address child support issues. A common characteristic among these states is the use of an official in a quasi-judicial capacity who makes the decision on child support issues based on a hearing or review of written materials. California is one of the strongest court-based states in the area of child support. This state has been the focal point of substantial efforts to reform its system due to the heavy emphasis on judicial decision making for all family matters. A 1993 California Child Support Task Force examined the child

support system in California and make recommendations for an effective expedited child support process. Ultimately, the task force rejected the implementation of an administrative process but cited the pros and cons of an administrative process in its report as follows:

- *Pros*: Cheaper and more efficient; greater uniformity among hearing officers belonging to one state agency; process more user-friendly due to informality of the process and relaxed rules of evidence; ability to provide due process safeguards; and ability to divert routine support matters and redirect court resources to other priorities;
- *Cons*: Separate inefficient and confusing forums for child support determinations; potential conflict of interest arising from hearing officers working for the same agency enforcing the support orders; duplicative costs for similar processes performing the same functions; and creation of second-class adjudication system for IV-D cases as distinguished from child support cases determined in private family cases and other IV-D cases."

(*Expedited Child Support: An Overview of the Commonwealth Countries' and United States' Procedures for Establishing and Modifying Child Support*, Mary MacDonald, 1997)

There is no research comparing the effectiveness of quasi-judicial and pure administrative processes.

III. Effect of Proposed Changes:

This bill amends s. 409.2563, F.S., to convert a pilot program for the administrative establishment of child support in Title IV-D cases, into a statewide program. Throughout the process, Title IV-D custodial and non-custodial parents retain the right to use the circuit court for determination of paternity or child support. A parent may at any time file a civil action for a determination of child support, child custody and rights of parental contact.

Under the bill, if a noncustodial parent notices through a written request to the department that the proceeding for child support be processed in circuit court or that he or she intends to raise issues of custody and right to parental contact, the department must terminate the administrative proceeding and file a civil action to determine child support. The noncustodial parent must provide such notice within 20 days of the initial notice from the department regarding the administrative proceeding for child support. The parent must also sign and return the waiver of service form to the department within 10 days of receipt of the department's petition and waiver of service. These provisions must be included in the litany of statements that must already be contained in the department's notice to the custodial and noncustodial parents regarding the initiation of the administrative proceeding to establish child support. Additionally, the notice must include a statement regarding information provided by the Office of State Courts Administrator about self-help programs available for persons who can not afford legal counsel. Any notices or orders issued by the department are required to be written clearly and plainly.

The bill revises the service of notice provisions. Not only must the notice be served by certified mail and return receipt requested but it must also be by restricted delivery. Additionally, service is not complete until the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. However, if a person other than the addressee signs the return receipt, the department must still attempt to reach the addressee by telephone to confirm receipt of the notice. Service is not considered complete if the return receipt is signed by

someone other than the addressee, the addressee does not respond to the notice and the department is unable to confirm that notice has been receipted by the addressee. Thereafter the Department of Revenue must attempt to serve the addressee personally.

The Department of Revenue is given specific authority to adopt rules relating to administrative establishment of child support orders. It is added that neither the department nor the Division of Administrative Hearings has jurisdiction to address matters relating to child custody or the right to parental contact.

A definition for "financial affidavit" is provided which requires the affidavit or written declaration to be executed as provided in s. 92.525(2), F.S. The affidavit must show the individual's income, allowable deductions, net income, and other information needed to calculate the child support pursuant to the guidelines established in s. 61.30. This means the department is no longer required to use the financial affidavit form prescribed by the Florida Family Law Rules of Procedure as used in judicial determinations of child support. That form requires notarization and requests a broader scope of information than may be necessary for the establishment of administrative child support obligations (information pertinent to alimony and equitable distribution of marital property). The definition for " rendered" as pertains to signed written orders is revised to not only mean filed with a department's clerk or deputy clerk but served on the respondent.

The bill eliminates provisions which allowed a designated employee or other department representative who was not an attorney to represent the department at the administrative proceeding as these provisions presented issues of the unlicensed practice of law. The bill also eliminates a provision (that was applicable to the pilot program) requiring the department to consult with the Division of Administrative Hearings and the chief judge of the circuit court in the development of forms for administrative support orders. In addition to other existing requirements, the administrative support order must include a statement that if a payor of unemployment compensation benefits shall withhold and transmit to the department 40 percent of the benefits for payment of support, not to exceed the amount owed.

The bill amends provisions to reflect that either the department or the Division of Administrative Hearings may be entering specified administrative support orders (i.e., an income deduction order as part of the administrative support order).

The bill specifies that an administrative support order will have the same force and effect as a court order. A court order that requires the periodic payments on arrearages arising from a previously entered administrative support order does not constitute a change in the administrative support order and does not act to supersede the administrative order.

The bill also applies "the presumption of ability to pay support" provision of s. 61.14(5)(a), F.S., to administrative support orders. Specifically, the obligor's imputed or actual ability to pay the support would need to be determined in entering the administrative support order. If a contempt hearing is held by the court, the original administrative support order would create a presumption that the person has the ability to pay the support. The obligor would have to show that he or she lacks the ability to pay in order to purge himself or herself from contempt.

The bill revises the requirement that the administrative support order state separately an amount of child support for each child in cases of multiple children. This is a change which the department reports is consistent with the practice used for Title IV-D orders issued by the court.

The provisions governing the "pilot program for the administrative establishment of child support" are converted into provisions governing a "study area" based on the same criteria for the site of pilot program (i.e.,Volusia County). Since the bill provides for the statewide implementation of the administrative process prior to the June 30, 2003, due date of a report whether it is feasible to establish a statewide program, the bill eliminates this requirement. Five reports are required as follows:

1) The department must report by June 30, 2004, to the Governor, Cabinet and Legislature on the implementation and results of the implementation of the administrative process for establishing child support in the study area.
2) The Office of Program Policy Analysis and Government Accountability must report by June 30, 2003, on its evaluation of the administrative process in the study area, to include an evaluation of the measurable outcomes achieved and any recommendations for improving the administrative process for the establishment of child support.
3) The department must report by June 30, 2004, to the Governor , Cabinet and Legislature on the statewide implementation and results of the administrative process for the establishment of child support.
4) The Office of Program Policy Analysis and Government Accountability must report by January 31, 2005, on its evaluation of the statewide implementation of the administrative process for the establishment of child support, to include an evaluation of whether the process allows easy access to the court system for Title IV-D parents.
5) The Department of Revenue must report by December 1, 2002, to the Governor, Cabinet and Legislature (i.e., Senate President, Speaker of the House, Majority and Minority Leader) on a feasibility study for the administrative process for the establishment of paternity in Title IV-D cases, to include consideration of processes in other states and in consultation with affected stakeholders and an evaluation of the measurable outcomes achieved and any recommendations for improving the administrative process for the establishment of child support.

The bill also directs the Department to continue its effort as the state's Title IV-D Child Support Enforcement Program, to identify, implement and support efforts to improve the judicial process as well as to implement the recommendations of the Court Child Support Process Improvement Project Final Report, January 2002, in conjunction with identified stakeholders.

The bill provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

- To the extent this bill may be construed as extending to an executive agency (already responsible for enforcement of specified child support orders) judicial authority and jurisdiction over matters that traditionally fall within the exclusive purview of the judicial branch, this bill may implicate the separation of powers doctrine. *See* s. 3, art. II, *Florida Constitution*. To the extent this bill is construed as circumventing or otherwise interfering with the Supreme Court's constitutional authority to administer the court system and to adopt rules for practice and procedure in all courts, this bill also may implicate constitutional concerns. *See* art. V, s. 2(a), *Fla. Const*. Note that Florida's administrative process as substantively revised by this bill is significantly different than the one struck down in Minnesota.[2]

- Although the bill attempts to replicate due process protections accorded in the judicial process by providing for more explicit notice and service requirements than currently required, and more clarity regarding a person's right to proceed through the judicial process, the bill, as with existing law, may continue to raise due process and equal protection concerns under the Florida Constitution (e.g., the potential conflict in the enforcement agency having responsibility in the establishment of child support, and the creation of a dual system for the authority to establish child support for those persons involved in Title IV-D and non-Title IV D cases).

- In November, 1998, Florida voters adopted a Constitution Revision Commission amendment to article V of the Florida Constitution to shift major costs of Florida's judicial system from the counties to the state. *See* art. V, s. 14, Fla. Const. In 2000, the Legislature established a framework for defining the constitutionally mandated or essential elements of a state courts system, the public defenders' offices, the state attorneys' offices, court-appointed counsel, and those court-related functions that are the responsibility of the counties for funding purposes. *See* ch. 2000-237, L.O.F. The Legislature also provided for a four-year implementation schedule to be completed by July 1, 2004. The Joint Legislative Committee on Article V was appointed to coordinate and oversee this effort. Although this bill does not appropriate any state funds at this time, the statewide implementation of an administrative process for the establishment of child support orders may establish precedence for its funding in the

[2] The authorities granted under the Minnesota administrative programs were a consideration in the Supreme Court's decision and include the following: the administrative law judges could modify child support orders granted by the courts; administrative orders were enforceable by the contempt powers of the court or district courts; the administrative child support process was mandatory for many parties; and child support officers who were nonattorneys were authorized to draft pleadings and appear at hearings representing the public authority without attorney supervision. (State of Minnesota in Supreme Court, C7-97-926, January 28, 1999). According to a Senior Staff Attorney at the Center for Law and Social Policy, the finality and binding effect of administrative orders is consistent with powers states exercise in other areas, such as workers' compensation, unemployment compensation and Medicaid rate setting. In addition, 13 other states issue administrative orders for child support without court approval.

future and may affect funding for the judicial process or staffing if and when a determination is made as to whether it is an essential element of a uniform state courts system. To date, the Joint Legislative Committee on Article V has not met to make such determinations.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is indeterminate to what extent this bill may improve enforcement (i.e., recovery or collection) rates for child support orders by custodial parents and children. For those parents who are less intimidated by an administrative process than a judicial process for the establishment of child support, this bill may encourage greater participation and compliance by parents. The bill places an affirmative responsibility on a person subject to the Department of Revenue's administrative process for child support to notify the department of his or her request to proceed through the judicial process for child support issues or of issues relating to child custody or right to parental contact.

C. Government Sector Impact:

This bill may improve governmental operations and efficiency for the Department of Revenue as the state's child support enforcement agency. Preliminary empirical data from the Volusia County pilot program indicate that an administrative process has the potential to expedite the establishment of child support which in turn may also improve the state's ability to secure federal funding. Nonetheless, it is indeterminate to what extent the bill may increase the Department's establishment and enforcement rate on those child support orders. A new provision requiring a payor of unemployment compensation benefits to withhold and transmit to the department 40 percent of the benefits for payment of support, not to exceed the amount owed, should assist the Department in their recovery and collection. Otherwise, the Department of Revenue reports that this bill will not result in an fiscal impact to the department.

The bill may reduce duplicative efforts and expenditure of resources created by simultaneously-occurring administrative and judicial processes to determine child support as the department is required to terminate proceedings under specified circumstances.

The Office of State Courts Administrator reports that since the Department of Revenue currently does not pay filing fees for court actions it initiates, any decline in the number of such cases would not affect revenues. Custodial or non-custodial parents who desire a judicial determination of child support, who appeal an administrative order to the judicial review level or who require a separate court action in circuit court for resolution of custody and visitation would be required to pay a filing fee in some cases. The Office of State Courts Administrator also reports that while an unknown number of cases currently handled judicially will now be handled administratively, some portion of these cases will

still be entering the judicial process but in a different manner, i.e., with more support orders there may be potentially more contempt activities by the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- The bill provides that an administrative support order must require that 40% of the unemployment compensation benefits received by a noncustodial parent be withheld and transmitted by the payor to the department. *See* s. 409.2563(7)(e), F.S., as amended in section (3) of the bill. This provision appears to conflict with the current provisions of s. 443.051(3), F.S., which allow for the intercept of such benefits for payment of a child support obligation but only as follows:

  1. The amount specified by the individual to the division to be deducted and withheld under this section;
  2. The amount determined pursuant to an agreement submitted to the division under s. 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency; or
  3. Any amount otherwise required to be deducted and withheld from such unemployment compensation through legal process as defined in s. 459 of the Social Security Act.

- The bill converts provisions relating to the establishment and evaluation of the pilot program into an evaluation of a study area. Presuming Volusia County, which qualified for the pilot program, continues to qualify as the study area, it is presumed that the evaluation and reporting requirements for the study area will simply build on the original requirement for the evaluation and report on the pilot program.

- The bill states that the presumption of ability to pay and purge contempt established in s. 61.14(5)(a), F.S., apply to administrative support orders that include a finding of present ability to pay. Although s. 61.14(5)(a), F.S., is clear that only a court may hold a contempt hearing and enter a contempt order, the provision created in s. 409.2536(10)(b), F.S., it could be clarified that this is not intended to imbue the department with authority to issue contempt orders and that this provision only means that the presumption of ability to pay which underlies a judicial support order will also underlie an administrative support order.

VIII. Amendments:

None.