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/SB 1060

SPONSOR: Children and Families Committee and Senator Campbell

SUBJECT: Child Support Guidelines

DATE: February 18, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.			JU	
3.			FT	
4.			AP	
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I. Summary:

The committee substitute for Senate Bill 1060 modifies the methodology for calculating child care expenses in determining the child support award. Specifically, the bill provides for the full child care cost to be considered in determining the child support obligation, in lieu of 75 percent of the cost. The federal child care tax credit is added as a basis for the court to adjust the child support award. The bill also authorizes the modifying, vacating, or setting aside of a temporary support order and stipulates the options for retroactive application of the change made to the temporary support order.

This bill substantially amends section 61.14, 61.30, and 742.031 of the Florida Statutes.

II. Present Situation:

Florida's child support guidelines were established in 1987 (ch. 87-95, L.O.F.) and include a support schedule that considers both the custodial and noncustodial parents' net income to determine the basic support obligation. The proportion of the basic support obligation which the noncustodial parent must pay is based on the noncustodial parent's percentage of the combined net income. Any child care costs, health insurance costs, and noncovered medical, dental, and prescription medication expenses are added to the basic support obligation using the same percentage that the noncustodial parent's income represents of the total combined income. In 1993, the calculation for considering child care costs was modified to provide that only 75 percent of the child care costs be added to the basic support obligation (ch. 93-208, L.O.F.). The bill analysis for that legislation reported that the 25 percent reduction in the amount allowed for child care expense was incorporated to make allowances for the tax credit (presumably the U.S. income tax dependent care tax credit) received by the custodial parent (House of Representatives Committee on Judiciary, Final Bill Analysis and Economic Impact Statement, April 16, 1993).

The federal dependent care tax credit is available as an employment related expense up to $3,000 for one child and $6,000 for 2 or more children (26 U.S.C. Sec. 21). An article on states' application of the child support guidelines noted that most states calculate the cost of child care by subtracting the dependent care tax credit from the child care expense before adding it to the child support obligation as a mechanism to prevent the custodial parent from obtaining a "windfall" from the tax credit (Morgan, Laura, *Child Support Guidelines: Interpretation and Application,* Aspen Law and Business, New York, 1999). However, an informal survey of how states address child care conducted in 2003 by the state of Connecticut revealed diverse approaches for calculating child care costs, including a number of states that reported consideration of the federal dependent care tax credit in the calculation of the child care expense, as well as states that did not identify how or whether the dependent care tax credit was considered.

Section 61.30, F.S., sets forth Florida's guidelines for determining the child support award. Current law allows for child care costs to be considered if necessary for employment, job search, or education that will result in employment or enhanced earnings from the current employment (s. 61.30(7), F.S.). Payments made by the noncustodial parent for the child care costs are deducted from the noncustodial parent's child support obligation. Section 61.30(11)(a), F.S., allows the court to adjust the child support award based on a number of considerations, such as extraordinary medical expenses, other child support obligations, independent income of the child, special needs of the child, the age of the child, available assets, seasonal variations in income or expenses, or the impact of the Internal Revenue Service dependency exemption.

Problems have been identified regarding Florida's methodology for considering child care costs. First, it has been reported that not every custodial parent is eligible to actually earn the tax credit; however, 25 percent of the child care expense is always excluded from consideration. Second, the current guidelines provide for the deduction of federal income taxes, "adjusted for actual filing status and allowable dependents and income tax liabilities" from gross income (s. 61.30(3)(a), F.S.), which would account for adjusting the gross income for receipt of the dependent care tax credit. As a result, the income of the dependent care tax credit can be considered once in the income calculation and again in the consideration of the 25 percent reduction of the child care cost. Third, it has been reported that there is confusion in the calculation formula when the noncustodial parent pays for the child care costs. The statute provides for consideration as a child care expense only 75 percent of the actual costs but allows for consideration of *any* payment made by the noncustodial parent (which could exceed the amount considered as the expense). As a result, sometimes 100 percent of the *payment* is considered and other times only 75 percent is considered.

For shared parental arrangements where each parent is spending a substantial amount of time with the child, s. 61.30(11)(b), F.S., provides an alternative method of calculating the child support award. With this alternative method, the full child care cost is considered in determining the child support award with language that specifically provides direction that the 25 percent reduction required for parents without substantial shared parenting time is *not* to be applied.

Temporary support orders may be issued upon the initial filing of petitions for dissolution of marriage, support, or determining paternity to provide the necessary child support until a final

judgment is granted. Recent court cases have issued differing rulings relative to whether temporary orders are considered final for the lifespan of the order. The finality applied to the order appears to dictate the authority of the court to change, modify, or set aside an order until entry of the final decree, including the retroactive periods to which increases and decreases in orders are applied. Case law that provides that courts retain authority over interlocutory orders[1] and, therefore, have the authority to change, modify, or set aside such orders until the entry of the final decrees includes court rulings that were issued as early as 1953 [Young v. Young, 65 So.2d 28 (Fla. 1953)] and as recently as 2000 [Wayno v. Wayno, 756 So.2d 1025 (Fla. 5th DCA 2000)]. However, court cases such as Kraus v. Kraus, 749 So.2d 513 (Fla. 2d DCA 1999) found that an order of temporary alimony is final during its lifespan and that the increased temporary alimony award should not be retroactive to the date before the motion for increased temporary alimony was filed. Dent v. Dent, 851 So.2d 819 (Fla. 2nd DCA 2003) presented the practical policy concerns relative to temporary support orders.

> "A temporary support order is often required at the beginning of the dissolution action, before the parties have had an opportunity to complete discovery. Given the urgency of some of these matters, the order is often entered based on an abbreviated hearing and limited evidence…. As the case progresses, the developing evidence or changes in the parties' financial circumstances may reveal inequities or errors in the prior support awards that require adjustment in the final analysis. Recently however, cases have suggested that temporary orders should enjoy a higher degree of "finality" than has been previously afforded to them."

Current law stipulates the retroactive date to which a support order or modification may apply under different circumstances. Specifically, s. 61.30(17), F.S., provides the court with the discretion to award child support retroactively to the date the parents no longer reside together, up to 24 months, in an initial determination of child support. For noncustodial parents whose support orders were adjusted due to shared parental arrangements and the visitation was not regularly exercised, s. 62.30(11)(c), F.S., permits the modification of the support order to be retroactive to the date the noncustodial parent first failed to regularly exercise the ordered visitation. Section 61.14, F.S., permits the court to increase or decrease the support retroactively to the date of filing of the court action or supplemental action for modification, except as provided in s. 61.30(11)(c), F.S.

III. Effect of Proposed Changes:

The committee substitute for SB 1060 modifies the methodology for calculating child care expenses in determining the child support award. Specifically, the bill provides for the full child care cost to be considered in determining the child support obligation, in lieu of 75 percent of the cost. The federal child care tax credit is added as a basis for the court to adjust the child support award.

Section 61.30(7), F.S., is amended to eliminate the required 25 percent reduction of the child care cost considered in determining the child support award. Subsection (11) of s. 61.30, F.S.,

[1] "Interlocutory orders" is defined as an order that relates to some intermediate matter in the case or any order other than a final order (*Black's Law Dictionary*, Seventh Edition)

that provides for the considerations the courts may use to adjust the child support award is amended to add the impact of any federal child care tax credit. Since the 25 percent reduction is being eliminated, reference to not considering the 25 percent in the calculations for substantial parenting time arrangements currently contained in s. 61.30(11)(b), F.S., is deleted by this bill. With this bill, the consideration of the dependent care tax credit for the purposes of determining the child support award is shifted from an adjustment to the child care expense to an adjustment that may be made by the court based on the actual receipt of the tax credit.

Section 61.14, F.S., which provides for the modification of support and alimony orders and s. 742.031, F.S., which provides for the determination of paternity by the court and the subsequent ordering of support, are amended to authorize the court to modify, vacate, or set aside a temporary support order either before or at the time a final order is entered in a proceeding. Such modification, vacating, or setting aside of the temporary support order may be executed with the showing of good cause and without the need to show a substantial change in circumstances. The bill specifically provides for the possible retroactive timeframes to which the modification, vacating, or set aside of the temporary support order may apply: the date of the filing of the initial petition of dissolution of marriage, the initial petition of support, the initial petition determining paternity, or the supplemental petition for modification; or the date prescribed in ss. 61.14(1)(a), 61.30(11)(c), or 61.30(17), F.S.

The bill provides for an effective date of July 1, 2004.

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:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of this shift in the method the dependent care tax credit is considered will likely result in an increase in the child support award received by the custodial parent, particularly if the child care payment has been actually paid by the custodial parent. However, in the instances where the noncustodial parent has been making the child care payment, the child support award could increase further or decrease depending on how the noncustodial parent's payment of the child care expenses was considered. Specifically, if the support was calculated exactly as articulated in statute, the child support award required of the noncustodial parent who is paying the full child care expense would likely increase further. If the support was calculated only crediting the noncustodial parent with the 75 percent of the payment that was considered for the expense, the child support award would decrease.

C. Government Sector Impact:

The Department of Revenue did not report a fiscal impact for the original bill SB 1060.

The Office of State Courts Administrator reports that the elimination of the 25 percent reduction in the child care expense considered will likely increase the child support obligation but that it is unknown whether increasing the amount of the child support obligations will increase litigation of this issue. It is, therefore, not possible to estimate the impact on judicial workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Amendments:

None.