HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1111 Uniform Interstate Family Support Act
SPONSOR(S): Civil Justice Subcommittee; Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Woodburn	Bond
2) Health & Human Services Access Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law currently has uniform standards for interstate enforcement of support orders, but not international enforcement.

This bill may have a conditional fiscal impact on state government. See fiscal comments. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hague Convention[1]

With the rise of globalization, many families form and extend across national boundaries. In the United States, family law has traditionally been a subject of local or state concern, generating significant conflict of laws problems between states. Global movement further complicates the regulation of family relationships. The United States has a large and mobile population, with an estimated 6.6 million private citizens living abroad, and many of these Americans will face challenging international family law problems. National and local laws are inadequate to manage transnational family issues, especially in cases of international adoption or parental abduction but also in ordinary custody, child support or child protection matters. As the scale and frequency of global movement has increased, family and children's issues have also taken on a new relevance in foreign relations. The Hague Conference on Private International Law (the Conference) has responded to the new realities of globalized families with a series of treaties that foster international cooperation in cases involving children. The Conference is an intergovernmental organization, funded and governed by its members.[2] Its traditional purpose has been to work for the progressive unification of the rules of private international law, including family and children's law. The United States signed the 2007 Hague Convention on the International Recovery of Child Support and Other Family Maintenance (Hague Convention), and implementing legislation is proceeding toward adoption.[3]

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) was originally enacted in 1996 (and amended subsequently) to address complications in enforcing child support orders across state lines.[4] In response to a congressional mandate,[5] all states enacted the original 1996 version of UIFSA. After the United States signed the Hague Convention in 2007, establishing numerous provisions of uniform procedure for the processing international child support cases, the National Conference of Commissioners on Uniform State Laws (NCCUSL) amended the 2001 version of UIFSA, which serves as the implementing language for the Hague Convention throughout the states.[6] The UIFSA provides universal and uniform rules for the enforcement of family support orders by:

- Setting jurisdictional standards for state courts;
- Determining the basis for a state to exercise continuing exclusive jurisdiction over child support proceedings;
- Establishing rules to determine which state will issue the controlling order if there are proceedings in multiple jurisdictions; and
- Providing rules to modify or refuse to modify another state's child support order.[7]

The 2008 UIFSA amendments were made to fully incorporate the provisions of the Hague Convention that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention.[8]

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[1] Background on the Hague Convention was taken from the article by Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47 (2010).

[2] The Conference was founded as a permanent organization in 1955. Statute of the Hague Conference on Private International Law, July 15, 1955, T.I.A.S. No. 5710, 2997 U.N.T.S. 123.

[3] *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, reprinted in 47 I.L.M. (2008).

[4] National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 2 (2008).

[5] 42 U.S.C. s. 666.

[6] National Conference of Commissioners of Uniform State Laws, *Interstate Family Support Act Amendments (2008) Summary*, *available at* http://www.nccusl.org/ActSummary.aspx?title=Interstate Family Support Act Amendments (2008) (last visited Mar. 16, 2011).

[7] *Id*.

State Adoption of Amended UIFSA

Federal implementing legislation pending approval by Congress will require that the 2008 amended version of UIFSA be enacted in every jurisdiction as a condition for federal funds for state child support programs.[9] To date, Maine, Tennessee, Wisconsin, North Dakota and Nevada are the only states that have enacted the current version of UIFSA.[10] In addition to Florida, several states have introduced UIFSA enacting legislation this year. Those states are: Hawaii, Missouri, New Mexico, Utah, and Washington.[11]

Florida's UIFSA Statute

Along with the rest of the states, Florida enacted the original 1996 version of the UIFSA, which was codified in ch. 88, F.S., and remains current law. Its provisions provide the infrastructure to enforce child support laws uniformly among states to prevent parents from crossing state lines to avoid their support obligations. Some of the main concepts of UIFSA, as codified under Florida law, are outlined below.

Jurisdiction

Personal jurisdiction is the power of a court over the person of a defendant in contrast to the jurisdiction of a court over a person's property or property interest.[12] Under UIFSA, when a Florida tribunal is exercising personal jurisdiction over a nonresident, that tribunal may apply special rules of evidence to receive evidence from another state and assistance with discovery to obtain discovery through a tribunal of another state.[13] There are also provisions for Florida courts to exercise jurisdiction to issue a support order during simultaneous proceedings in another state.[14] If support orders are issued by more than one state, there is a process to determine which one controls.[15]

General Application

Initiating tribunals have the duty to forward copies of the petition to establish a support order and its accompanying documents to the responding tribunal.[16] When acting as a responding tribunal, courts are directed to apply the procedural and substantive law generally applicable to similar proceedings originating in that state[17] and determine the duty of support and the amount payable in accordance with the law and support guidelines of that state.[18]

Establishment of Support Order

If a support order entitled to recognition under UIFSA has not been issued, a responding tribunal may issue a support order under certain conditions.[19]

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[8] *Id.*
[9] *Id; see also* Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).
[10] Uniform Law Commission, *Interstate Family Support Act Amendments (2008): Enactment Status Map, available at* http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008) (last visited Mar. 16, 2011).
[11] *Id.*
[12] BLACK'S LAW DICTIONARY 1144 (7th ed. 1990).
[13] Sections 88.2011, 88.2021, 88.3161, and 88.3181, F.S.
[14] Section 88.2041, F.S.
[15] Section 88.2071, F.S.
[16] Section 88.3041, F.S.
[17] Section 88.3031(1), F.S.
[18] Section 88.3031(2), F.S.
[19] Section 88.4011, F.S.

Direct Enforcement of Income Withholding

An obligor is an individual who owes a duty of support and is liable under a support order.[20] An obligor may have his or her income withheld in order to make up for unpaid support. Employers are required to treat income-withholding orders from another state as it if had been issued by the state where he or she lives.[21]

Modification

After a child support order has been issued in one state, another state has the ability to modify the order if certain conditions are met.[22]

Determination of Parentage

A state court may serve as an initiating or responding tribunal in a proceeding to determine whether a petitioner or a respondent is the parent of a particular child.[23]

Grounds for Rendition

The Governor has the ability to demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to pay child support.[24]

Effect of this Bill

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and is pending ratification in Congress to be adopted by each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law accounts for interstate enforcement of support orders, but not international enforcement. Following is a section-by-section analysis of the bill.

General Provisions

Section 1 amends s. 88.1011, F.S., containing definitions, to redefine or delete a number of existing terms to conform to the most current version of UIFSA and to include foreign countries in addition to states and also define the following new terms: "Convention"; "Foreign country"; "Foreign support order"; "Foreign tribunal"; "Issuing foreign country"; "Person"; "Record"; and "United States Central Authority."

Section 2 amends s. 88.1021, F.S., to designate the Department of Revenue as the support enforcement agency of the state.

Section 3 amends s. 88.1031, F.S., to specify that the act does not provide the exclusive method of establishing or enforcing a support order or grant authority to render judgment relating to child custody.

Section 4 creates s. 88.1041, F.S., to apply the act to foreign proceedings.

[20] Section 88.1011(13)(a)-(c), F.S.
[21] Section 88.50211, F.S.
[22] Section 88.6111, F.S.
[23] Section 88.7011, F.S.
[24] Section 88.8011, F.S.

Jurisdiction

Section 5 amends s. 88.2011, F.S., relating to bases for jurisdiction over a nonresident, to provide that personal jurisdiction under the section does not extend to the modification of child support orders unless specified conditions are met. Sections 5 and 6 both assert what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. To sustain a support order, the tribunal must be able to assert personal jurisdiction over the parties.[25]

Section 6 amends s. 88.2021, F.S., relating to jurisdiction over a nonresident, to specify that personal jurisdiction under the act continues as long as a tribunal has continuing jurisdiction to enforce its order.

Section 7 amends s. 88.2031, F.S., relating to forwarding proceedings between initiating and responding tribunals, to also refer to proceedings initiated in foreign countries.

Section 8 amends s. 88.2041, F.S., relating to simultaneous proceedings in another state, to include foreign countries.

Section 9 amends s. 88.2051, F.S., relating to continuing exclusive jurisdiction, to specify that except in very narrowly defined circumstances, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order.[26]

Section 10 amends s. 88.2061, F.S., relating to continuing jurisdiction, to make adjustments that are the correlative of the continuing, exclusive jurisdiction described in the previous section. It makes the distinction between the jurisdiction "to modify a support order" established in the previous section and the "continuing jurisdiction to enforce" established in this section.[27]

Section 11 amends s. 88.2071, F.S., relating to controlling child support orders, to provide a procedure to identify one order that will be enforced in every state. It declares that if only one child support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continues to reside in the issuing state. It also establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child.[28]

Section 12 amends s. 88.2081, F.S., relating to child support orders for two or more obligees, to specify that it also applies to foreign countries.

Section 13 amends s. 88.2091, F.S., relating to credit for payments, to specify that the issuing tribunal is responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources.[29]

Section 14 creates s. 88.2101, F.S., relating to the application to a nonresident subject to personal jurisdiction, to specify that upon obtaining personal jurisdiction the tribunal may receive evidence from outside the state, communicate with a tribunal outside the state, and obtain discovery outside the state. In other respects, the tribunal will apply the law of the forum.

Section 15 creates s. 88.2111, F.S., relating to jurisdiction to modify spousal orders, to specify that the restriction on modification of an out-of-state spousal support order extends to foreign countries. It also

[25] National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 20 (2008).
[26] *Id.* at 27.
[27] *Id.* at 29.
[28] *Id.* at 32.
[29] *Id.* at 35.

provides that the question of continuing, exclusive jurisdiction is to be resolved under the law of the issuing tribunal.[30]

Civil Provisions of General Application

Section 16 amends s. 88.3011, F.S., relating to proceedings under this act, to specify that all proceedings under this act also apply to foreign support orders.

Sections 17 and 18 amend ss. 88.3021 and 88.3031, F.S., to make technical changes.

Section 19 amends s. 88.3041, F.S., relating to the duties of the initiating tribunal, to facilitate enforcement even with states that have not implemented the updated version of UIFSA and with foreign countries.[31]

Section 20 amends s. 88.3051, F.S., relating to the duties and powers of the responding tribunal, to establish updated duties relating to responding tribunals.

Section 21 amends s. 88.3061, F.S., relating to inappropriate tribunals, to make a technical change.

Section 22 amends s. 88.3071, F.S., relating to the duties of the support enforcement agency, to specify that the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child support order, enforcement or review and adjustment of an existing child support order, or a modification of that order. It also directs the Department of Revenue, as the support enforcement agency, to make reasonable efforts to ensure that the order to be registered is the controlling one.[32]

Section 23 amends s. 88.3081, F.S., relating to the duty of the Governor and Cabinet, to allow the Governor and Cabinet to make reciprocal child support determinations regarding foreign countries.

Section 24 amends s. 88.3101, F.S., relating to the duties of the state information agency, to make technical changes and add a reference to foreign countries.

Section 25 amends s. 88.3111, F.S., to establish the requirements for drafting and filing interstate pleadings.[33]

Section 26 amends s. 88.3121, F.S., relating to pleadings and accompanying documents, to create an exception for providing certain information in the pleadings if its disclosure is likely to harm a party or child.

Sections 27 and 28 amend ss. 88.3131 and 88.3141, F.S., to make technical changes.

Section 29 amends s. 88.3161, F.S., relating to special rules of evidence, to make technical changes and specify that a voluntary acknowledgment of paternity is admissible to establish parentage.

Sections 30 and 31 amend ss. 88.3171 and 88.3181, F.S., to make technical changes.

Section 32 amends s. 88.3191, F.S., relating to receipt and disbursement of payments, to require that when all parties reside in this state, the Department of Revenue or a tribunal must direct support payments in another state if necessary and send an income-withholding order to the obligor's employer.

[30] *Id.* at 37.
[31] *Id.* at 41.
[32] *Id.* at 47.
[33] *Id.* at 51.

Establishment of Support Order

Section 33 amends s. 88.4011, F.S., relating to support order establishment, to authorize a responding tribunal of this state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction when the person or entity requesting the order is "outside this state" (i.e., anywhere else in the world). It also specifies circumstances relating to parentage that make a support order appropriate.[34]

Section 34 directs the Division of Statutory Revision to redesignate part V of chapter 88 as "Enforcement of Support Order of Another State without Registration."

Section 36 amends s. 88.50211, F.S., relating to the designation of payment of funds as directed by the withholding order.

Direct Enforcement

Sections 35 and 37 amend ss. 88.5011 and 88.5031, F.S., to add more specific language to provisions regarding income-withholding orders.

Sections 38 and 39 amend ss. 88.5041, and 88.5051 F.S., to make technical changes to apply the sections to foreign countries.

Section 40 amends s. 88.5061, F.S., relating to a contest by the obligor, to provide more specific instructions for a contest by the obligor.

Section 42 directs the Division of Statutory Revision to redesignate part VI of chapter 88, as "Registration, Enforcement, and Modification of Support Order."

Sections 41 and 43 amend ss. 88.5071 and 88.6011, F.S., to make technical changes to apply the sections to foreign countries.

Enforcement and Modification

Section 44 amends s. 88.6021, F.S., relating to procedure to register an order for enforcement, to provide cross references and specify a process to be followed by a person requesting registration when two or more orders are in effect.

Section 45 amends s. 88.6031, F.S., relating to effect of registration for enforcement, to apply the section to foreign countries.

Section 46 amends s. 88.6041, F.S., relating to choice of law, to modify the conditions under which the law of the issuing state governs.

Section 47 amends s. 88.6051, F.S., relating to notice of registration of an order, to make technical changes applying the section to foreign countries and specify notice requirements when two or more orders are in effect.

Section 48 amends s. 88.6061, F.S., relating to the procedure to contest validity or enforcement of a registered order, to provide cross references and make technical changes.

Sections 49 and 50 amend ss. 88.6071 and 88.6081 F.S., to make technical changes.

Section 51 amends s. 88.6091, F.S., to provide a technical change for a statutory cross-reference.

[34] *Id.* at 61.

Section 52 amends s. 88.6111, F.S., relating to modification of a child support order of another state, to provide cross references and create an exception relating to jurisdiction to modify an order when the parties and the child no longer reside in the issuing state and one party resides outside the United States.

Section 53 amends s. 88.6121, F.S., relating to recognition of an order modified in another state, to make technical changes.

Section 54 creates s. 88.6151, F.S., to provide standards of jurisdiction to modify a child support order of a foreign country.

Section 55 creates s. 88.6161, F.S., to specify a procedure to register a child support order of a foreign country for modification.

Section 56 directs the Division of Statutory Revision to redesignate part VII of chapter 88 as "Support Proceeding under Convention."

Section 57 repeals s. 88.7011, F.S., relating to a proceeding to determine parentage.

Section 58 creates s. 88.70111, F.S., providing definitions for; "Application;" "Central authority;" "Convention support order;" "Direct request;" Foreign central authority;" Foreign support agreement;" and "United States central authority."

Provisions Specific to Foreign Countries

Section 59 creates s. 88.7021, F.S., providing that the section applies only to a support proceeding involving a foreign country in which the Hague Convention is in force with respect to the United States.

Section 60 creates s. 88.7031, F.S., to define the relationship between the Department of Revenue (department) and the United States Central Authority. It recognizes the department as the agency designated by the United States Central Authority to perform specific functions under the Hague Convention.

Section 61 creates s. 88.7041, F.S., relating to the initiation by a governmental entity of support proceedings subject to the Hague Convention, to provide a list of requirements in such proceedings, and to list which support proceedings are available to an obligor under the Hague Convention. It also lists which support proceedings are available to an obligor against whom there is an existing support order.

Section 62 creates s. 88.7051, F.S., to specify provisions for a petitioner to file a direct request in a tribunal in this state seeking the establishment or modification of a support order or determination of parentage. The law of the state will apply in these proceedings. In direct request for enforcement of foreign support orders, an obligee or obligor who has benefitted from free legal assistance is also entitled to any free legal assistance provided under state law.

Section 63 creates s. 88.7061, F.S., relating to the registration of a foreign support order subject to the Hague Convention. It specifies that a party who is seeking recognition of a foreign support order is required to register the order with the state. The request for registration is required to be accompanied by an enumerated list of other documents.

Section 64 creates s. 88.7071, F.S., relating to a contest of the validity of a foreign support order subject to the Hague Convention. It provides that a contest to the recognition of a foreign support order must be filed within 30 days after the notice of the registration. If the contesting party lives outside the United States, he or she will have 60 days after the notice. It also lists possible bases for a contest, such as lack of basis for enforcement, questionable authenticity, etc.

Section 65 creates s. 88.7081, F.S., relating to the recognition and enforcement of a foreign support order subject to the Hague Convention. It provides that this state is required to recognize a foreign support order if the issuing tribunal had personal jurisdiction and the order is enforceable in the issuing country. This section also provides a process for when a tribunal of this state does not recognize a foreign support order. If the order is not recognized as a whole, any severable portions are to be recognized.

Section 66 creates s. 88.7091, F.S., relating to refusal of recognition and enforcement of a foreign support order subject to the Hague Convention. Grounds for refusal of a foreign support order include a determination that the order is incompatible with public policy, was obtained by fraud, etc.

Section 67 creates s. 88.7101, F.S., relating to foreign support orders subject to the Hague Convention. This section states that a direct request for recognition and enforcement of a foreign support order must be accompanied by the complete text of the foreign order and a record stating that the order is an enforceable decision in the issuing country. Grounds for refusal to recognize foreign orders are also listed.

Section 68 creates s. 88.7111, F.S., relating to modification of a foreign child support order subject to the Hague Convention. It provides that a tribunal in this state may not modify a foreign support order if the obligee remains a resident of the issuing country, except under specified circumstances.

Section 69 creates s. 88.7112, F.S., relating to jurisdiction to modify a spousal support order of a foreign country. This section provides that a tribunal of this state having personal jurisdiction over the parties may modify a spousal support order of a foreign tribunal under specified circumstances.

Section 70 amends s. 88.8091, F.S., relating to a technical change.

Section 71 amends s. 88.9011, F.S., to specify that in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law among enacting states.

Section 72 amends s. 88.9031, F.S., relating to severability.

Sections 73 and 74 amend ss. 61.13 and 827.06, F.S., relating to support of children, parenting and time-sharing, and nonsupport of dependents to provide cross references.

Section 75 provides that upon passage of this bill, the Department of Revenue is directed to apply for a waiver from the Federal Office of Child Support Enforcement pursuant to the state plan requirement under Title IV-D of the Social Security Act.

Section 76 provides that this act shall take effect upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act.

B. SECTION DIRECTORY:

See above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Revenue (DOR or department), the bill will create an operational workload because DOR will have to prepare and submit a formal request for an exemption from Federal Title IV-D requirements to the Federal Office of Child Support Enforcement. The department will also have to revise its procedures for interstate case processing and retrain staff. The bill may also affect DOR's IV-D automated system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a positive fiscal impact on Florida residents who are owed child support from foreign obligors who currently face great difficulties in collecting.

D. FISCAL COMMENTS:

The Department of Revenue reports that amendments to UIFSA can result in the state being out of compliance with federal law and losing federal funding. However, it is anticipated that, as some point in the near future, federal law will require passage of this act and at that point the failure to pass this law would result in a loss of federal funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Pursuant to federal law, Florida adopted the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to continue to receive federal funding for state child support programs.[35] There is currently similar legislation pending in Congress to require adoption of the 2008 UIFSA revision represented in the bill.[36] Congress has the authority to act only pursuant to express or implied legislative authority in the Constitution.[37] Under the Tenth Amendment, all other powers are reserved to the states and the people. The authority to make laws relating to family issues is not delegated in the Constitution and is thus something that has traditionally been left to the discretion of the states. However, the Supreme Court has held that under its broad taxing and spending powers, "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory administrative objectives.'"[38] Therefore, it seems permissible for

[35] 42 U.S.C. s. 666.
[36] Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).
[37] U.S. CONST. art. 1, s. 1. states that "All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives."
[38] *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (holding that Congress had the authority to mandate a national minimum drinking age conditioned on federal funding).

Congress to require the states to adopt this uniform act in the furtherance of the policy objective of international child support enforcement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments from the Florida Department of Revenue

Federal law requires that states adopt the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to receive federal funding. After the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention), UIFSA was amended in 2008 to incorporate the treaty created at Hague Convention. Currently, the U.S. Senate has ratified the treaty, but it is not in effect in the United States because full effect requires state law amendments.

This bill makes many changes to ch. 88, F.S., which is the section of law relating to UIFSA. According to the Department of Revenue (DOR or department), if this bill passes, Florida will not be in compliance with federal law.[39] If Florida is not in compliance with federal law, its Title IV-D plan may be disapproved, which will mean Florida will not receive federal IV-D matching funds or incentive payments. Additionally, a federal financial penalty may be imposed on the state's Title IV-A TANF block grant.[40]

The Federal Office of Child Support Enforcement (OCSE or office) has stated that if a state adopts UIFSA, as amended in 2008, "verbatim" and with a provision that the effective date is delayed until the Hague Convention is ratified, then OCSE will approve the state's IV-D state plan.[41]

A state may formally request an exemption or waiver from the OCSE justifying why the state's Title IV-D plan should be approved, but the OCSE may not grant the request.

According to DOR, there are currently only four states that have adopted UIFSA, as amended in 2008, and the law in each of those states incorporated a delayed effective date pending approval of the Hague Convention.[42]

Telephonic Testimony

The bill amends s. 88.3161(6), F.S., to require a tribunal to permit a party or witness outside this state to be deposed or to testify by telephone, audiovisual means, or other electronic means. Currently, UIFSA allows, but does not require, a tribunal to permit telephonic testimony. Allowing a party to provide telephonic testimony requires the consent of all parties involved in the proceeding.[43] To the extent that this bill requires a tribunal to permit such testimony over the objection of a party, it will conflict with the Florida rules of judicial administration, as well as Florida case law.

Determination of Paternity

According to DOR, the state is required by federal law to determine paternity in interstate initiating and responding cases.[44] Under current law, s. 88.7011, F.S., provides that a tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought to determine parentage. This bill repeals

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[39] *Id*.
[40] *Id*.
[41] Office of Child Support Enforcement, Administration for Children and Families, U.S. Dep't of Health and Human Servs., *Dear Colleague Letter DCL-08-41, Subject: Uniform Interstate Family Support Act 2008, available at* http://www.acf.hhs.gov/programs/cse/pol/DCL/2008/dcl-08-41.htm (last visited Mar. 24, 2011).
[42] *Id*.
[43] Fla. R. Jud. Admin. 2.530(d)(1); *M.S. v. Dep't of Children and Families*, 6 So. 3d 109 (Fla. 4th DCA 2009); *S.A. v. Dep't of Children and Families*, 961 So. 2d 1066 (Fla. 3d DCA 2007).
[44] Florida Department of Revenue, *supra* note 39; *see also* 45 C.F.R. s. 303.7.

that section of law. The determination of parentage is still provided for under s. 88.3051, F.S., in the bill; however, this section of law only relates to the duties and powers of a responding tribunal. There is no corresponding provision in s. 88.3041, F.S., which relates to the duties of the initiating tribunal. Accordingly, it appears that if this bill becomes law, a tribunal of this state may only act as a responding tribunal in determination of parentage proceedings.

Legal Assistance

The bill creates s. 88.7051, F.S., which provides, in part, that in a direct request for recognition and enforcement of a foreign support order or agreement the obligee or obligor is entitled to benefit from free legal assistance provided for by the law of this state if the person was receiving free legal assistance in the issuing country. According to DOR, "the impact of this requirement, legally and fiscally, is unknown."[45]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Civil Justice Subcommittee adopted four amendments. The amendments:

- Make several technical changes relating to omitted words;
- Direct the Department of Revenue to apply for a waiver from the Federal Office of Child Support Enforcement pursuant to the state plan requirement under Title IV-D of the Social Security Act; and
- Provide a effective of the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act

The bill was then reported favorably. This analysis is drafted to the committee substitute.

[45] Florida Department of Revenue, *supra* note 39.