

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1337 Child Support and Parenting Time Plans

**SPONSOR(S):** Government Operations & Technology Appropriations Subcommittee; Civil Justice & Claims Subcommittee; Diaz, J.

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	11 Y, 3 N, As CS	MacNamara	Bond
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 1 N, As CS	Keith	Topp
3) Judiciary Committee			

### SUMMARY ANALYSIS

Title IV-D of the Social Security Act provides federal grants to states that implement certain laws and procedures regarding child support awards and enforcement. Florida complies with Title IV-D through the child support program administered by the Department of Revenue (department or DOR). The program assists with setting and enforcing child support. The program cannot assist with setting or enforcement of timesharing issues, which must be referred to the judicial system.

The amount of child support that one parent owes to the other is based on a formula. The formula uses the relative incomes of the parties and the timesharing agreement between the parties to arrive at an appropriate child support award.

The bill authorizes the DOR to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The bill requires the department to provide parents with a Title IV-D Parenting Time Plan with a proposed administrative support order. The bill also creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan.

The bill requires that on or before October 1, 2018, the Department of Revenue shall submit an implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill has no fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

Except as otherwise expressly provided in the act, the bill has an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background: Child Support**

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.<sup>1</sup> This obligation arises since each parent has a duty to support<sup>2</sup> his or her minor or legally dependent child.<sup>3</sup> Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.<sup>4</sup>

##### *Establishment of Child Support Obligation*

When parents live apart because they never married or are divorced or separated, the court may order a parent who owes a duty of support to a child to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.<sup>5</sup> Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support according to a formula that is based on a parents' income and the amount of time that the child spends with each parent. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.<sup>6</sup> The judicial officer may also deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.<sup>7</sup> Establishment of a child support award, or enforcement of one, may be through the judicial system or the state child support program.

##### *Department of Revenue Child Support Program*

As required by Title IV-D of the Social Security Act,<sup>8</sup> the federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.<sup>9</sup> Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal

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<sup>1</sup> Black's Law Dictionary 100 (3<sup>rd</sup> pocket ed. 2006).

<sup>2</sup> s. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

<sup>3</sup> s. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.

<sup>4</sup> National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at <http://www.ncsl.org/research/human-services/child-support-homepage.aspx> (last viewed April 4, 2017).

<sup>5</sup> s. 61.13(1)(a), F.S.

<sup>6</sup> s. 61.30(1)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> See 42 U.S.C. ss. 651 et seq.

<sup>9</sup> National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at <http://www.ncsl.org/research/human-services/child-support-administration.aspx> (last viewed April 4, 2017).

government.<sup>10</sup> In Florida, the Department of Revenue (department or DOR) administers the child support program.<sup>11 12</sup>

Current child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.<sup>13</sup>

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.<sup>14</sup> IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- **Public or Current Assistance Cases:** Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to the Child Support Enforcement program within the Department of Revenue in order to attempt to collect child support directly from the noncustodial parent.
- **Non-Public Assistance Cases:** Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- **Foster Care and Adoption Assistance (IV-E Cases):** Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).

Judges issuing an administrative order for child support may include provisions for monetary support, retroactive support, health care, and other elements of support set forth under state law.<sup>15</sup> Procedures set forth by statute include:

- The drafting and service by the DOR of a notice of proceeding to establish an administrative support order;
- The execution and service of financial affidavits by the child's parents;
- The drafting and service of a proposed administrative support order;
- Parental request for a hearing before the Division of Administrative Hearings (DOAH);
- Judicial review of an administrative support order; and
- Enforcement of an administrative support order.<sup>16</sup>

An administrative child support order has the same force and effect as a court order until and unless it is modified by the department, vacated on appeal, or superseded by a subsequent court order.<sup>17</sup> Thus,

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<sup>10</sup> *Id.*

<sup>11</sup> s. 409.2557(1), F.S.

<sup>12</sup> Department of Revenue, *About the Child Support Program*, 2016, available at [http://floridarevenue.com/dor/childsupport/about\\_us.html](http://floridarevenue.com/dor/childsupport/about_us.html) (last viewed April 4, 2017).

<sup>13</sup> See footnote 9.; see also s. 409.2557(2), F.S.

<sup>14</sup> s. 409.2572(3), F.S.

<sup>15</sup> See s. 409.2563(1)(a), F.S.

<sup>16</sup> See s. 409.2563, F.S.

an administrative order may be enforced in the same manner as a court order, except that an administrative order may not be enforced through contempt.<sup>18</sup> Neither the DOR nor the DOAH have jurisdiction to authorize a timesharing schedule. To obtain a determination regarding timesharing, either parent at any time may file a civil action in a circuit having jurisdiction and proper venue for the filing of such an action.<sup>19</sup>

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect unpaid child support.

During the 2015 federal fiscal year, approximately \$32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.<sup>20</sup> Also during that fiscal year, Florida had a total caseload of 650,421 cases and collected approximately \$1.4 billion in child support collections. However, the total amount of arrearages was approximately \$5.7 billion.<sup>21</sup> In fiscal year 2015-2016, the department's IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.<sup>22</sup>

### *Establishing Non-Judicial Timesharing in Other States*

Some states or jurisdictions (Michigan; Texas; Orange County, California; Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents already agree on the division of time.<sup>23</sup> The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.<sup>24</sup> Unlike other states, Texas provides a statutory "standard possession order" that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.<sup>25</sup>

In 1989, the Texas legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.<sup>26</sup> If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.<sup>27</sup>

In the initial creation of the Title IV-D program, Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the

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<sup>17</sup> s. 409.2563(12), F.S.

<sup>18</sup> ss. 409.2563(9)(d), 409.2563(10)(d), F.S.

<sup>19</sup> s. 409.2563(2)(e), F.S.

<sup>20</sup> National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at <http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5> (last viewed April 4, 2017).

<sup>21</sup> *Id.*

<sup>22</sup> Florida Courts, *Uniform Data Reporting, Child Support FY2015-16*, 2017, available at <http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.stml#Support> (last viewed April 4, 2017).

<sup>23</sup> U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13. [https://www.acf.hhs.gov/sites/default/files/programs/css/13\\_child\\_support\\_and\\_parenting\\_time\\_final.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/13_child_support_and_parenting_time_final.pdf) (Last visited April 4, 2017).

<sup>24</sup> Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review. Vol 53 No. 2, April 2015 258-266, on file with the Senate Committee on Children, Families & Elder Affairs.

<sup>25</sup> See Tex. Fam. Code s. 153.252 (West 2013).

<sup>26</sup> Key, *supra* note 4, at 111.

<sup>27</sup> Key, *supra* at 261.

activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.<sup>28</sup>

Texas's program includes parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation, is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has stated that its success is based on:

- the existence in Texas law of the standard possession order;
- simple child support guidelines;
- agency policies and practices with dealing with cases where any dispute regarding parenting time; and
- the agency's successful public educational and outreach activities.<sup>29</sup>

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.<sup>30</sup> However, the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.<sup>31</sup>

### **Effect of the Bill**

In short, the bill authorizes the Department of Revenue (department or DOR) to establish parenting time plans agreed to by both parents in Title IV-D child support actions.

#### *Statement of Public Policy*

The bill amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between a child and each parent. Additionally, there is no presumption for or against the father or mother, or for or against any specific time-sharing schedule when a parenting time plan is created.

#### *Authority to Establish Parenting Plan*

The bill amends s. 409.2557, F.S., to provide the department the authority, in addition to the establishment of paternity or support obligations, to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to by the parents.

#### *Definitions*

The bill amends s. 409.2554, F.S., to provide definitions for "State Case Registry", "State Disbursement Unit" and "Title IV-D Standard Parenting Time Plans" as:

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<sup>28</sup> See 45 C.F.R., Section 304.20(b) (1982).

<sup>29</sup> Key, *supra* at 263.

<sup>30</sup> See Tex. Fam. Code Section 201.007(b)

<sup>31</sup> Key, *supra* at 263.

- “State Case Registry” means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1988. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.
- “State Disbursement Unit” means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.
- “Title IV-D Standard Parenting Time Plans” means a document which may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633, F.S., include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

#### *Notification to the Parties Regarding Standard Plan*

The bill creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of appropriate jurisdiction to establish a parenting time plan. The department must also provide information to the parents on the process to establish such plan.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child’s home state, if one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or where the parent who owes child support is incarcerated.

When the department provides notice of proceeding to establish an administrative support order it shall include a copy of the Title IV-D Standard Parenting Time Plans. Copies of proposed administrative support orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

The bill amends s. 409.2563, F.S., to allow the DOR to establish parenting time plans only if the parents are in agreement. This section also provides that if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan one will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

#### *The Standard Plans*

Section 409.25633, F.S., created by the bill, also creates two different Title IV-D Standard Parenting Time Plans:

Where the parents live within 100 miles of each other and the child is 3 years of age or older, the parent paying child support shall have the following time with the child:

- Every other weekend.—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

- One evening per week.—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;
- Thanksgiving break.—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving, until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;
- Winter break.—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes, or, if both parents agree, upon the child's return to school;
- Spring break.—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and
- Summer break.—Two weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

Where the parents live more than 100 miles from each other and the child is 3 years of age or older, the parties may agree on the schedule above or this recommended plan:

- One weekend per month.—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the parents begin to live more than 100 miles apart; and
- Summer break.—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m. through Sunday at 6 p.m. during any one extended period during the summer.

Where the child is under 3 the parents may agree upon a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or into the appropriate Title IV-D Standard Parenting Time Plan.

The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns. Additionally, if after incorporation of the parenting plan into an administrative support order a parent becomes concerned about the safety of the child, a modification of the parenting plan can be sought through the proper court.

The department is also directed to create and provide a form for a court petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time.

#### *Incorporation Into Administrative Order*

The bill provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order.

Lastly, the bill amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is

appropriate, the department will include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan.

*Department of Revenue Parenting Time Plan Implementation Timeline*

Effective July 1, 2017, the bill requires that the Department of Revenue, on or before October 1, 2018, shall submit a report on the implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Except as otherwise expressly provided in the act, the effective date of the bill is July 1, 2019.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 409.2551, F.S., relating to legislative intent.

Section 2: Amends s. 409.2554, F.S., relating to definitions.

Section 3: Amends s. 409.2557, F.S., relating to the state agency for administering the child support enforcement program.

Section 4: Amends s. 409.2563, F.S., relating to the administrative establishment of child support obligations.

Section 5: Creates s. 409.25633, F.S., relating to a Title IV-D standard parenting time plan.

Section 6: Amends s. 409.2564, F.S., relating to actions for support.

Section 7: Amends s. 409.256, F.S., relating to orders to appear for genetic testing in an administrative proceeding to establish paternity or paternity and child support.

Section 8: Amends s. 409.2572, F.S., relating to cooperation.

Section 9: Requires the Department of Revenue to submit a report that includes a timeline for implementation and administrative costs of the parenting time plans by October 1, 2018 to the Governor and Legislature.

Section 10: Provides that except as otherwise expressly provided in the act, the bill shall take effect July 1, 2019.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**



1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lower costs to parents regarding the setting of a timesharing agreement.

D. FISCAL COMMENTS:

Impacts on the Department of Revenue

It is anticipated that the department will have to modify the Child Support Automated Management (CAMS) System to conform to the new requirements provided in the bill. Additionally, the department will need to develop new forms, procedures, and training. Additional resources will be required to allow time for team members to confer with parents and incorporate agreed upon parenting time plans into support orders. It is also estimated by the department that hearing times may be increased by approximately 15 minutes due to the inclusion of parenting time plans in support orders.

The bill requires that on or before October 1, 2018, the Department of Revenue shall submit an implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

After submission of the implementation timeline and the associated costs of implementation, the department will have the opportunity, through its Fiscal Year 2018-2019 Legislative Budget Request, to request the proper funding and resources necessary to administer the provisions of the act.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added:

- The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns; and
- If after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

On April 17, 2017, the Government Operations and Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes all fiscal impacts from the bill;
- Requires the Department of Revenue to submit an implementation timeline and all identifiable costs of administering the parenting time plans prescribed in the act to the Governor, the President of the Senate, and the Speaker of the House of Representatives; and,
- Provides that except as otherwise expressly provided in the act, the effective date of the bill is July 1, 2019.

This analysis is drafted to the committee substitute as passed by the Government Operations and Technology Appropriations Subcommittee.