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FISCAL IMPACT REPORT

SPONSOR McSorley DATE TYPED 2/22/05 HB _____

SHORT TITLE Uniform Interstate Family support Act SB 838

ANALYST Weber

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Administrative Office of the Courts (AOC)

Attorney General (AG)

SUMMARY

Synopsis of Bill

Senate Bill 838 amends the existing New Mexico Uniform Interstate Family Support Act found in 40-6A-101 through 103 NMSA 1978 to include model provisions of the federal Uniform Interstate Family Support Act adopted in 2001.

Significant Issues

Human Services contributes the following.

When a custodial parent (CP) or non-custodial parent (NCP) with a child support case moves out of or into New Mexico, this case becomes an “Interstate case.” Interstate cases are some of the most difficult cases to administer because of the differences in state laws and the ability to coordinate through multiple legal jurisdictions. NCPs in the 1970s used moving from state to state to evade the system. Therefore, the federal government has had to step in and mediate between states and get control of runaway NCPs. The first

such attempt out of the various Social Security Acts, was the Uniform Reciprocal Enforcement of Support Act or URESA.

NCPs, however, continued to shop around to either pay less child support or avoid paying child support at all. Although the Full Faith and Credit Clause of the United States Constitution, 28 U.S.C. 1738, was in place, it did not automatically ensure that one state's support judgment was enforceable in another state. Thus, many problems arose regarding the enforcement and modification of child support orders. To stop the state-to-state jumping, the United States Congress enacted the Full Faith and Credit for Child Support Orders Act (FFCCSOA) in 1994. This law is located at 28 U.S.C. 1738B. The FFCCSOA required all courts in the United States and its territories to accord full faith and credit to child support orders issued by a sister state as long as the sister state had properly exercised jurisdiction over the parties and the subject matter. The federal Office of Child Support Enforcement (OCSE) required states to adopt the Uniform Interstate Family Support Act, or UIFSA, by 1994. UIFSA 2001 is not federally mandated for states to adopt.

The Child Support Enforcement Division (CSED) in the New Mexico Human Services Department worked with the New Mexico State Legislature to adopt the UIFSA, in 1994, as a replacement to both URESA, and the subsequent "Revised Uniform Reciprocal Enforcement of Support Act."

UIFSA works in conjunction with FFCCSOA and it begins at S.C. Code Ann. Section 20-7-960 (Supp. 1996) and ends at Section 20-7-1170. The types of proceedings governed by UIFSA are as follows:

- Establishment of an order for spousal support or child support;
- Enforcement of a support order and income-withholding order of another state without registration;
- Registration of an order for spousal support or child support of another state for enforcement;
- Modification of an order for child support or spousal support issued by a "tribunal" (or District Court as in New Mexico's case) of any state;
- Registration of an order for child support of another state for modification; and
- Determination of parentage (S.C. Code Section 20-7-1025(B)(Supp. 1996)).

The goal of UIFSA is to create one "controlling order" regarding a support issue (both alimony and child support)---- one order, one time, in one place. To accomplish this goal, UIFSA sets forth the rules to determine which state or rather tribunal has the continuing exclusive jurisdiction (CEJ) over a support order. If there are multiple orders, UIFSA sets forth the rules to determine the controlling order. Sometimes when there is more than one order, it is possible that more than one state has continuing exclusive jurisdiction. In that case, UIFSA gives priority to the order issued from the child's home state ("Home" state is defined as the state where the child has lived for the prior consecutive six-month period.). If there is more than one state with continuing, exclusive jurisdiction (CEJ) but none of the states is the home state of the child, the state with the most recent order controls future enforcement. On the other hand, if there are two or more orders but no state or tribunal has continuing exclusive jurisdiction, then the state with jurisdiction over the non-requesting party must establish a new order, and the new order becomes the controlling order.

Thus, the only state that may modify an order is the state with continuing exclusive jurisdiction. Enforcement, however, is available in every state where the obligor is subject to personal jurisdiction, earns income or owns property.

SB 838 would amend the existing Uniform Interstate Family Support Act to include some of the UIFSA 2001 model provisions developed by the National Conference of Commissioners on Uniform State Laws. Approximately 35 other states have done so (2003 OCSE Survey).

The proposed amendments in SB838 closely track the 2001 UIFSA revisions, with some minor differences as in the Section 102-Definitions regarding Indian tribes, and in Section 308-regarding Duty of Attorney General. Proposed changes remove the antiquated language "Uniform Reciprocal Enforcement of Support Act" in the existing law.

Both the AOC and Attorney General make similar comments regarding the origin of the information in the bill.

PERFORMANCE IMPLICATIONS

There could be some effect on Child Support Enforcement measures regarding amount of support collected

TECHNICAL ISSUES

HSD notes.

The proposed amendment closely tracks the 2001 UIFSA revisions, but does not do so entirely. It is recommended that the 2001 UIFSA revisions be adopted in their entirety. Pending additional legal analysis, it is unclear if adopting only a portion of the model provisions and the model provisions that have been rewritten by SB838 may lead to a conflict in laws in New Mexico statutes. Additionally, there may be a small difference in laws between the SB838 version of UIFSA 2001 and the one adopted by the other states that might lead to minor legal technicalities.

MW/lg