

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 757 Adoption

**SPONSOR(S):** Rich & Others

**TIED BILLS:** IDEN./SIM. BILLS: SB 2046

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	5 Y, 0 N	Preston	Liem
2) Future of Florida's Families		Preston	Liem
3) Judiciary			
4) Human Services Appropriations (Sub)			
5) Appropriations			

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### SUMMARY ANALYSIS

The bill amends §39.812, Florida Statutes, related to postdisposition relief and adoption petitions for dependent children, to provide that when a foster parent or legal custodian of a dependent child who has lived with that foster parent or custodian for at least six months, applies to adopt that child and the application to adopt is not granted by the Department of Children and Family Services, the department may not remove the child from the home without a court order except under certain specified circumstances. The bill also provides an exception to the statutory requirement that a departmental consent be attached to a petition for adoption and amends §63.062, Florida Statutes, to provide for a waiver of departmental consent to an adoption if the court determines such consent is being withheld unreasonably.

The Department of Children and Family Services did not provide an analysis for the bill, however it does not appear to have a fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0757a.fff.doc

**DATE:** March 3, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

A child may be voluntarily placed in foster care by his or her parents or custodians or involuntarily placed when the court has found the child dependent, pursuant to chapter 39, Florida Statutes.<sup>1</sup> Children whose parents have had their parental rights terminated and who are in the custody of the department will continue their placement with the department for the purpose of adoption.<sup>2</sup>

It is the policy of the state and of the department that adoption placements must be made consistent with the best interest of the child. The role of good judgment in assessing the best interest of the child cannot be replaced by rote policy decrees. The exercise of that judgment must be shaped by a number of considerations, including current custodian priority. The current custodian of the child, including foster parents, may wish to adopt, are to be considered as potential adoptive families, and are encouraged to adopt if they are interested. If the foster parent or other custodian applies to adopt the child, the application must be evaluated to determine suitability through an adoptive home study. The home study must assess, among other things, the length of time the child has lived in a stable, satisfactory environment and the depth of the relationship existing between the child and the custodian. It should be recognized that individuals who might not be considered the placement of choice for children not known to them, can be the placement of choice for children with whom they have an existing stable relationship.<sup>3</sup>

Currently, § 39.812, Florida Statutes, provides for the jurisdiction of the court for children whose parent's parental rights have been terminated to continue until the child is adopted. The bill amends §39.812, Florida Statutes, to prohibit the department from removing a foster child who has resided at the foster home for at least 6 months when the foster parent has applied for adoption and the application for adoption has been denied, unless there is a court order for such removal. Exceptions are provided for when the child is believed to be at imminent risk of abuse or neglect, 30 days have expired since the foster parent received written notice of the denial and no formal challenge has been filed, or the foster parent agrees to the child's removal.

Section 63.062, Florida Statutes, related to persons required to consent to adoption currently provides that if parental rights to a child have been terminated, the adoption entity with which the child has been placed for adoption may provide consent to the adoption and that in such cases, no other consent is required. An adoption entity is defined in §63.032, Florida Statutes, as the department, an agency, a

<sup>1</sup> See §§ 409.145(2) and 409.165(3), Florida Statutes and Operating Procedure No. 175-34, Removal and Placement of Children.

<sup>2</sup> See §39.811, Florida Statutes.

<sup>3</sup> See Rule 65C-16.002 and Rule 65C-16.005, Florida Administrative Code.

child-caring agency registered under §409.176, Florida Statutes, an intermediary, or a child-placing agency licensed in another state which is qualified by the department to place children in the State of Florida. The bill appears to only waive the consent of the Department of Children and Family Services and not that of any other "adoption entity".

C. SECTION DIRECTORY:

**Section 1.** Amends §39.812, Florida Statutes, related to postdisposition relief and adoption petitions for dependent children, to provide that when a foster parent or legal custodian of a dependent child who has lived with that foster parent or custodian for at least six months, applies to adopt that child and the application to adopt is not granted by the Department of Children and Family Services, the department may not remove the child from the home without a court order except under certain specified circumstances. The section also provides an exception to the statutory requirement that a departmental consent be attached to a petition for adoption.

**Section 2.** Amends §63.062, Florida Statutes, related to persons required to consent to an adoption, to provide for a waiver of departmental consent to an adoption if the court determines such consent is being withheld unreasonably.

**Section 3.** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services did not provide an analysis for the bill, however it is not anticipated that the bill will have a fiscal impact.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the Department of Children and Family Services did not provide an analysis for this bill, they reportedly have concerns with the bill's provisions. In prior years when similar legislation has been proposed, the department has raised concerns related to the restriction on the department's ability to move a child from a foster home to a prospective adoptive home in those cases in which the current foster parent's application for adoption has been denied. The department asserts that this restriction potentially delays the department's statutory obligation to achieve permanency for the child. Nonetheless, the bill does not permanently restrict the department's ability to move a child, but only until a court order is obtained. At the same time the restriction may serve to minimize the negative effects on children residing in foster homes for 6 months or more, when their foster parents have been denied adoption, by scenarios where there is an unexpected, sudden or unexplained removal from foster parents with whom a child has bonded and there was an expectation of permanency.

Even though the Florida Administrative Code clearly provides that it is the policy of the state and of the department that adoption placements must be made consistent with the best interest of the child and that the role of good judgment in assessing the best interest of the child cannot be replaced by rote policy decrees, anecdotal evidence appears to support the fact that this policy is not always carried out.

Occasionally a child whose parent's parental rights have been terminated and for whom there is a plan for foster parent adoption, has relatives who indicate an interest in adopting after the termination process is completed. A number of factors must be considered in making a decision that represents the best interest of the child in this situation, including attachment. Consideration must be given to:

- The quality and length of the attachment to the foster parent.
- The age of the child at placement and the current age of the child.
- The ease with which the child attached to the current family and any indications of attachment difficulty in the child's history.
- The number of moves the child has experienced as an indicator of the likelihood that the child will form a healthy attachment to the relative.
- The quality of the relationship with the relative; some children will already know and trust the relative seeking to adopt and, if not, the willingness of the relative to participate in pre-placement activities to promote the development of a relationship must be considered.
- The capacity of the relative and the foster parent to meet the child's need for permanence.<sup>4</sup>

It would appear to follow that the same or similar considerations should be applied when moving a child from the home of foster parents whose application to adopt has not been granted.

There have been reports indicating that the issues surrounding the removal of foster children from

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<sup>4</sup> See Rule 65C-16.002 and Rule 65C-16.005, Florida Administrative Code.

the homes of foster parents when their applications for adoption have been denied may be broader than the bill addresses. Concerns have been expressed as to the reasons for denial of some applications for adoptions by the department, lack of provisions of opportunities to remedy issues identified that resulted in denied applications, as well as the need to consider the attachment of the child to the foster parents or prospective adoptive parents when the adoption is being considered or is denied. All of these issues deal with the decision to remove children after long standing relationships have developed which is the focus of the amendment to §39.812, Florida Statutes, provided by this bill.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**