

HB 1079

2008

1                   A bill to be entitled  
2           An act for the relief of Jorge and Debbie Garcia-  
3           Bengochea, and their adoptive children Brian, Matthew, and  
4           James, by the Department of Children and Family Services;  
5           providing an appropriation to compensate them for injuries  
6           and damages sustained as a result of negligence by  
7           employees of the department or its predecessor agency;  
8           providing a limitation on attorney's fees and lobbying  
9           fees; providing legislative intent with respect to  
10          ratification of terms of the parties' settlement agreement  
11          and waiver of lien interests held by the state; providing  
12          an effective date.

13  
14           WHEREAS, when Jorge and Debbie Garcia-Bengochea legally  
15          adopted their sons, Brian, Matthew, and James, on July 24, 1998,  
16          the boys had previously been under the care and supervision of  
17          the Department of Children and Family Services or its  
18          predecessor agency, the Department of Health and Rehabilitative  
19          Services, and

20           WHEREAS, in November 1994, when the boys were ages 2 years  
21          and 9 months, 1 year and 9 months, and approximately 1 month,  
22          the department, or its predecessor agency, placed them in an  
23          emergency shelter because of evidence of physical and sexual  
24          neglect and abuse by the boys' biological mother and the father  
25          of Matthew and James, and

26           WHEREAS, Brian, Matthew, and James officially entered the  
27          department's foster care system in January 1995, following a  
28          departmental investigation indicating that they had been

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29 | physically, mentally, and sexually abused and that their  
30 | biological parents were mentally ill, had a poor prognosis for  
31 | improvement, and were abusing alcohol and illegal drugs, and

32 |       WHEREAS, in mid-March of 1997, the department placed Brian,  
33 | Matthew, and James back with their biological mother after  
34 | having received warnings from some of its social workers and  
35 | counselors concerning the placement and being notified that the  
36 | boys' biological mother had allegedly married a man known for  
37 | alcohol abuse and cocaine addiction, and

38 |       WHEREAS, after returning Brian, Matthew, and James to their  
39 | biological mother, the department did not provide her with  
40 | sufficient support and services despite warnings to the  
41 | department by counselors and therapists that Brian, Matthew, and  
42 | James would be at risk of further harm absent such support and  
43 | services, and

44 |       WHEREAS, on June 3, 1997, the boys' biological mother was  
45 | arrested for child abuse and ordered to undergo treatment, and

46 |       WHEREAS, on August 4, 1997, the parental rights of the  
47 | boys' biological mother were permanently terminated, the  
48 | parental rights of the boys' biological father having been  
49 | terminated prior to that date, and

50 |       WHEREAS, over the next 2 years, the department placed  
51 | Brian, Matthew, and James in various shelters and foster homes  
52 | and, on various occasions, Brian, Matthew, and James were again  
53 | abused by one or more of their caretakers, and

54 |       WHEREAS, one of the boys' foster parents, Hector Rosa, was  
55 | later convicted of sexual battery on each of the three boys and  
56 | is serving a life sentence in prison, and

57 WHEREAS, while the boys were in the care of Hector Rosa,  
58 their therapist repeatedly expressed concern to the department  
59 regarding the placement, and

60 WHEREAS, in March of 1998, the department arranged for the  
61 introduction of Brian, Matthew, and James, then aged 6, 5, and  
62 3, to Jorge and Debbie Garcia-Bengochea, a couple who had  
63 expressed interest in adopting one or, if they were siblings,  
64 perhaps two children, and specified that they could not adopt a  
65 child having significant emotional problems, and

66 WHEREAS, before this introduction, departmental records  
67 included medical reports concerning Brian, Matthew, and James  
68 that indicated a history of sexual abuse and also reports by  
69 foster parents and day care centers indicating that Brian,  
70 Matthew, and James were committing sexual acts on one another  
71 and on other children, and

72 WHEREAS, subsequent to adopting Brian, Matthew, and James,  
73 the adoptive parents saw that Brian, Matthew, and James had  
74 severe behavioral problems and later came to understand the  
75 reasons for these problems, and

76 WHEREAS, a departmental memorandum of August 11, 2000,  
77 describes the Garcia-Bengocheas as "a family in crisis" and  
78 notes, while making various recommendations, that the adoptive  
79 parents "are attempting to parent children who were severely  
80 damaged while under our care," and

81 WHEREAS, the adoptive parents learned, in January 2001,  
82 from staff at a treatment center in Colorado and subsequently  
83 from records the department produced during civil litigation,  
84 that the department did not disclose material records concerning

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85 Brian, Matthew, and James and their biological parents during  
86 the preadoption period, and

87 WHEREAS, the additional records indicate a troubling  
88 history and various troubling behaviors of their adoptive  
89 children in far greater detail than previously disclosed, and

90 WHEREAS, Brian, Matthew, and James, now 15, 14, and 12  
91 years of age, have each been diagnosed as having reactive  
92 attachment disorder, post-traumatic stress disorder, and  
93 oppositional defiant disorder, and

94 WHEREAS, among Brian, Matthew, and James there have been  
95 numerous instances of psychiatric hospitalizations, expulsions  
96 from school, acts of aggression, sexual acting out on each other  
97 and on other children, and running away from home, and

98 WHEREAS, defiant behavior of the two eldest boys has led to  
99 their recent involvement with the juvenile justice system, and

100 WHEREAS, Brian, Matthew, and James will need a variety of  
101 psychiatric or therapeutic services and the adoptive parents  
102 will also require professional services, and

103 WHEREAS, the adoptive parents have filed a lawsuit against  
104 the Department of Children and Family Services seeking  
105 compensation for injuries caused by negligence in the care and  
106 supervision of Brian, Matthew, and James by departmental  
107 employees and agents and alleging wrongful adoption, based on  
108 negligent misrepresentations and concealment by departmental  
109 employees and agents, and

110 WHEREAS, the parties have reached a settlement in the  
111 amount of \$10,000,000, with other terms of value, and the  
112 plaintiffs have been paid \$500,000, or \$100,000 per claimant,

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113 pursuant to the limits of liability set forth in s. 768.28,  
114 Florida Statutes, leaving a balance of \$9,500,000 to be paid  
115 pursuant to this agreed upon claim bill, NOW, THEREFORE,  
116

117 Be It Enacted by the Legislature of the State of Florida:  
118

119 Section 1. The facts stated in the preamble to this act  
120 are found and declared to be true.

121 Section 2. There is appropriated from the General Revenue  
122 Fund to the Department of Children and Family Services the sum  
123 of \$9,500,000 for the relief of Jorge and Debbie Garcia-  
124 Bengochea and their adopted sons, Brian, Matthew, and James, for  
125 injuries and damages sustained as a result of negligent acts by  
126 employees and agents of the Department of Children and Family  
127 Services or its predecessor agency, the Department of Health and  
128 Rehabilitative Services.

129 Section 3. The Chief Financial Officer is directed to draw  
130 a warrant in favor of Jorge and Debbie Garcia-Bengochea in the  
131 sum of \$9,500,000 upon funds of the Department of Children and  
132 Family Services in the State Treasury, and the State Treasurer  
133 is directed to pay the same out of such funds in the State  
134 Treasury.

135 Section 4. Any amount awarded under this act pursuant to  
136 the waiver of sovereign immunity permitted under s. 768.28,  
137 Florida Statutes, and this award is intended to provide the sole  
138 compensation for all present and future claims arising out of  
139 the factual situation described in the preamble to this act  
140 which resulted in the injury to Jorge and Debbie Garcia-

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141 Bengochea and their adopted sons, Brian, Matthew, and James. The  
142 total amount paid for attorney's fees and lobbying fees relating  
143 to this claim may not exceed 25 percent of the amount awarded  
144 under section 2.

145 Section 5. It is the intent of the Legislature that all  
146 terms of the parties' settlement agreement are ratified by the  
147 passage of this act and all lien interests held by the state  
148 resulting from the treatment or care of Jorge Garcia-Bengochea  
149 and Debbie Garcia-Bengochea, and their adoptive children Brian,  
150 Matthew, and James, for the events described in this act are  
151 waived as provided for in the parties' settlement agreement.

152 Section 6. This act shall take effect upon becoming a law.