

By Senator Atwater

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1 A bill to be entitled

2 An act relating to the Department of Children and Family
3 Services; providing for the relief of Jorge and Debbie
4 Garcia-Bengochea and their adoptive children Brian,
5 Matthew, and James for injuries and damages sustained as a
6 result of negligence by employees of the department or its
7 predecessor agency; providing an appropriation; providing
8 a limitation on the payment of fees and costs; providing
9 an effective date.

10
11 WHEREAS, when Jorge and Debbie Garcia-Bengochea legally
12 adopted their sons, Brian, Matthew, and James, on July 24, 1998,
13 the boys had previously been under the care and supervision of
14 the Department of Children and Family Services or its predecessor
15 agency, the Department of Health and Rehabilitative Services, and

16 WHEREAS, in November of 1994, when the boys were ages 2
17 years and 9 months, 1 year and 9 months, and a little over 1
18 month, the department, or its predecessor agency, placed them in
19 an emergency shelter due to evidence of physical and sexual
20 neglect and abuse by the boys' biological mother and the father
21 of Matthew and James, and

22 WHEREAS, the boys officially entered the department's foster
23 care system in January of 1995, following a departmental
24 investigation that indicated they had been physically, mentally,
25 and sexually abused and their biological parents were mentally
26 ill, had a poor prognosis for improvement, and were abusing
27 alcohol and illegal drugs, and

28 WHEREAS, in mid-March of 1997, the department placed the
29 boys back with their biological mother after having received

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30 | warnings from some of its social workers and counselors
31 | concerning this placement and notice that the boys' biological
32 | mother had allegedly married a man known for alcohol abuse and
33 | cocaine addition, and

34 | WHEREAS, after returning the boys to their biological
35 | mother, the department did not provide her with sufficient
36 | support and services although counselors and therapists warned
37 | the department that the boys would be at risk of further harm
38 | absent such support and services, and

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

41 | WHEREAS, on August 4, 1997, the parental rights of the boys'
42 | biological mother were permanently terminated, the parental
43 | rights of the boys' biological father having been terminated
44 | before that date, and

45 | WHEREAS, over the next 2 years, the department placed the
46 | boys in various shelters and foster homes and, on various
47 | occasions, the boys were again abused by one or more of their
48 | caretakers, and

49 | WHEREAS, one of the boys' foster parents, Hector Rosa, was
50 | later convicted of sexual battery on each of the three boys and
51 | is serving a life sentence, and

52 | WHEREAS, while the boys were in the care of Hector Rosa,
53 | their therapist repeatedly expressed concern to the department
54 | regarding the placement, and

55 | WHEREAS, in March of 1998, the department arranged for the
56 | introduction of the boys, then aged 6, 5, and 3, to Jorge and
57 | Debbie Garcia-Bengochea, a couple who had expressed interest in
58 | adopting one or, if they were siblings, perhaps two children, and

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59 | specified that they could not adopt a child having significant
60 | emotional problems, and

61 | WHEREAS, before this introduction, departmental records
62 | included medical reports concerning the boys indicating a history
63 | of sexual abuse and also reports by foster parents and day care
64 | centers indicating that the boys were committing sexual acts on
65 | one another and other children, and

66 | WHEREAS, subsequent to adopting the boys, the adoptive
67 | parents saw that the boys had severe behavioral problems and
68 | later came to understand the reasons for these problems, and

69 | WHEREAS, a departmental memorandum of August 11, 2000,
70 | describes the Garcia-Bengocheas as "a family in crisis" and
71 | notes, while making various recommendations, that the adoptive
72 | parents "are attempting to parent children who were severely
73 | damaged while under our care," and

74 | WHEREAS, the adoptive parents learned, in January of 2001,
75 | from staff at a treatment center in Colorado, and subsequently
76 | from records the department produced during civil litigation,
77 | that the department did not disclose material records concerning
78 | the boys and their biological parents during the preadoption
79 | period, and

80 | WHEREAS, the additional records indicate a troubling history
81 | and various troubling behaviors of their adoptive children in far
82 | greater detail than previously disclosed, and

83 | WHEREAS, the boys, now 15, 14, and 12 years of age, have
84 | each been diagnosed as having reactive attachment disorder, post-
85 | traumatic stress disorder, and oppositional defiant disorder, and
86 | there have been numerous instances of psychiatric
87 | hospitalizations, expulsions from school, acts of aggression,

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88 sexual acting out on each other and other children, and running
89 away from home, and

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

92 WHEREAS, the boys will need a variety of psychiatric or
93 therapeutic services and the adoptive parents also will require
94 professional services, and

95 WHEREAS, the adoptive parents have filed a lawsuit against
96 the Department of Children and Family Services seeking
97 compensation for injuries caused by negligence in the care and
98 supervision of the boys by departmental employees and agents and
99 alleging wrongful adoption, based on negligent misrepresentations
100 and concealment by departmental employees and agents, and

101 WHEREAS, the parties have been discussing settlement, and
102 the plaintiffs estimate that the department is liable for
103 economic and noneconomic damages in excess of \$75 million for the
104 three boys and their adoptive parents, NOW, THEREFORE,

105

106 Be It Enacted by the Legislature of the State of Florida:

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

110 Section 2. The sum of \$ million is appropriated from the
111 General Revenue Fund to the Department of Children and Family
112 Services, to be paid for the relief of Jorge and Debbie Garcia-
113 Bengochea and their adopted sons, Brian, Matthew, and James, for
114 injuries sustained as a result of negligent acts by employees and
115 agents of the Department of Children and Family Services or its
116 predecessor agency, the Department of Health and Rehabilitative

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117 Services.

118 Section 3. The Chief Financial Officer is directed to draw
119 a warrant in favor of Jorge and Debbie Garcia-Bengochea in the
120 sum of \$ million upon funds in the State Treasury and pay the
121 same to Jorge and Debbie Garcia-Bengochea out of such funds in
122 the State Treasury.

123 Section 4. This award is intended to provide the sole
124 compensation for all present and future claims arising out of the
125 factual situation described in this act which resulted in injury
126 to the claimants. The total amount paid for attorney's fees,
127 lobbying fees, costs, and other similar expenses relating to this
128 claim may not exceed 25 percent of the amount awarded under this
129 act.

130 Section 5. This act shall take effect upon becoming a law.