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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,
4 and James, by the Department of Children and Family
5 Services; providing an appropriation to compensate
6 them for injuries and damages sustained as a result of
7 negligence by employees of the department or its
8 predecessor agency; providing a limitation on the
9 payment of attorney's fees and lobbying fees;
10 providing legislative intent with respect to
11 ratification of terms of the parties' settlement
12 agreement and waiver of lien interests held by the
13 state; providing an effective date.

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

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

27 WHEREAS, Brian, Matthew, and James officially entered the
28 department's foster care system in January 1995, following a

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29 | departmental investigation indicating that they had been
30 | physically, mentally, and sexually abused and that their
31 | biological parents were mentally ill, had poor prognoses for
32 | improvement, and were abusing alcohol and illegal drugs, and

33 | WHEREAS, from January 1995 to March 1997, the boys lived in
34 | two foster homes that were loving and provided them with
35 | nurturing care, and although both foster parents expressed
36 | interest in adopting the boys, the department did not bring the
37 | foster parents' requests to the attention of the dependency
38 | court, and

39 | WHEREAS, in mid-March of 1997, the department reunified
40 | Brian, Matthew, and James with their biological mother against
41 | the advice and repeated warnings from social workers,
42 | counselors, therapists, and personnel of social service agencies
43 | who recommended against the reunification and advised the
44 | department that the boys' biological mother had married a man
45 | known for alcohol abuse and cocaine addiction, and

46 | WHEREAS, after returning Brian, Matthew, and James to their
47 | biological mother, the department did not provide her with
48 | sufficient support and services despite warnings to the
49 | department by counselors, social service agencies, and
50 | therapists that Brian, Matthew, and James would be at risk of
51 | further harm absent such support and services, and

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

54 | WHEREAS, on August 4, 1997, the parental rights of the
55 | boys' biological mother were permanently terminated, and the
56 | parental rights of the boys' biological father had been

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57 terminated before that date, and

58 WHEREAS, over the next 2 years, the department placed
59 Brian, Matthew, and James in various shelters and foster homes,
60 and on various occasions Brian, Matthew, and James were abused
61 and neglected by their caretakers, which included cruel
62 discipline where they were locked overnight in a backyard
63 chicken coop and underfed, and

64 WHEREAS, one of the boys' foster parents, Hector Rosa, was
65 later convicted of sexual battery on each of the three boys and
66 another foster child and is serving a life sentence in prison,
67 and

68 WHEREAS, while the boys were living in the foster home of
69 Hector Rosa, their therapist repeatedly expressed concern to the
70 department regarding Hector Rosa's treatment of the boys,
71 including a report to the department that while on an outing
72 with the youngest child, he dropped to his knees and
73 hysterically begged not to be returned to the Rosa foster home,
74 but the department did not act on the report, and

75 WHEREAS, in March 1998, the department arranged for the
76 introduction of Brian, Matthew, and James, then aged 6, 5, and
77 3, to Jorge and Debbie Garcia-Bengochea, a couple who had
78 expressed interest in adopting one or, if they were siblings,
79 perhaps two children, but who had specified that they could not
80 adopt children who had significant emotional problems or who
81 were acting out sexually, and

82 WHEREAS, before this introduction, departmental records
83 included medical reports concerning Brian, Matthew, and James
84 which indicated a history of sexual abuse and also reports by

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85 foster parents and day care centers indicating that Brian,
86 Matthew, and James were committing sexual acts on one another
87 and on other children, but the records and the information
88 contained therein were not shared with the Garcia-Bengocheas,
89 and

90 WHEREAS, subsequent to adopting Brian, Matthew, and James,
91 the adoptive parents saw that the boys had severe behavioral
92 problems and were acting out sexually with one another and other
93 children and later came to understand the reasons for these
94 problems, and

95 WHEREAS, the boys soon became aggressive with one another
96 and other children, attacked their adoptive mother, were
97 expelled from school, and had to be separated from other
98 children, and

99 WHEREAS, a departmental memorandum of August 11, 2000,
100 described the Garcia-Bengocheas as "a family in crisis" and
101 admitted, while making various recommendations, that the
102 department had failed to protect the boys by stating that the
103 adoptive parents "are attempting to parent children who were
104 severely damaged while under [the department's] care," and

105 WHEREAS, in January of 2001, the adoptive parents and the
106 three boys traveled to a treatment center in Colorado and, upon
107 arriving there, learned that the department had failed to
108 forward their records, and when the treatment center requested
109 the records from the department, the treatment center was told
110 that the department would send records only if the treatment
111 center promised to conceal the records from, and not disclose
112 the information contained therein to, the adoptive parents, and

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113 WHEREAS, the adoptive parents learned from the staff at the
114 treatment center in Colorado, and subsequently from records
115 produced by the department during the civil litigation, that the
116 department had not disclosed key material records concerning
117 Brian, Matthew, and James and their biological parents during
118 the preadoption period, and

119 WHEREAS, the additional records revealed a history of
120 trauma, abuse, neglect, and resulting behaviors of their
121 adoptive children which had not been previously disclosed to the
122 Garcia-Bengocheas, and if full and complete disclosure of the
123 history had been provided they would not have adopted the boys,
124 and

125 WHEREAS, Brian, Matthew, and James, now 15, 14, and 12
126 years of age, have each been diagnosed as having severe reactive
127 attachment disorder, posttraumatic stress disorder, and
128 oppositional defiant disorder, and

129 WHEREAS, among Brian, Matthew, and James there have been
130 numerous instances of psychiatric hospitalizations, expulsions
131 from school, acts of aggression, sexual acting out on each other
132 and on other children, and running away from home, and

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

135 WHEREAS, Brian, Matthew, and James will need a variety of
136 psychiatric or therapeutic services, and the adoptive parents
137 will also require professional services, and

138 WHEREAS, the adoptive parents have filed a lawsuit against
139 the Department of Children and Family Services seeking
140 compensation for injuries caused by negligence in the care and

141 supervision of Brian, Matthew, and James by departmental
 142 employees and agents and alleging wrongful adoption, based on
 143 negligent misrepresentations and concealment by departmental
 144 employees and agents, and

145 WHEREAS, during the discovery phase of the litigation, even
 146 the department's own retained expert witness, Bruce Perry, M.D.,
 147 admitted under oath during his deposition that the department
 148 was negligent and that he had recommended that the department
 149 settle the case, and

150 WHEREAS, the parties have reached a settlement in the
 151 amount of \$10 million, with other terms of value, and the
 152 plaintiffs have been paid \$500,000, or \$100,000 per claimant,
 153 pursuant to the limits of liability set forth in s. 768.28,
 154 Florida Statutes, leaving a balance of \$9.5 million to be paid
 155 pursuant to this agreed-upon claim bill, NOW, THEREFORE,

156
 157 Be It Enacted by the Legislature of the State of Florida:

158
 159 Section 1. The facts stated in the preamble to this act
 160 are found and declared to be true.

161 Section 2. The sum of \$9.5 million is appropriated from
 162 the General Revenue Fund to the Department of Children and
 163 Family Services for the relief of Jorge and Debbie Garcia-
 164 Bengochea and their adopted sons, Brian, Matthew, and James, for
 165 injuries and damages sustained as a result of negligent acts by
 166 employees and agents of the Department of Children and Family
 167 Services or its predecessor agency, the Department of Health and
 168 Rehabilitative Services.

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169 Section 3. The Chief Financial Officer is directed to draw
170 a warrant in favor of Jorge and Debbie Garcia-Bengochea and the
171 trusts in place for each of the three boys in the sum of \$9.5
172 million upon funds of the Department of Children and Family
173 Services in the State Treasury, and the Chief Financial Officer
174 is directed to pay the same out of such funds in the State
175 Treasury.

176 Section 4. Any amount awarded under this act pursuant to
177 the waiver of sovereign immunity permitted under s. 768.28,
178 Florida Statutes, is intended to provide the sole compensation
179 for all present and future claims arising out of the factual
180 situation described in this act which resulted in injury to
181 Jorge and Debbie Garcia-Bengochea and their adopted sons, Brian,
182 Matthew, and James. The total amount paid for attorney's fees
183 and lobbying fees relating to this claim may not exceed 25
184 percent of the amount awarded under section 2.

185 Section 5. It is the intent of the Legislature that all
186 terms of the parties' settlement agreement are ratified by the
187 passage of this act and all lien interests held by the state
188 resulting from the treatment or care of Jorge and Debbie Garcia-
189 Bengochea and their adopted sons, Brian, Matthew, and James, for
190 the events described in this act are waived as provided for in
191 the parties' settlement agreement.

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