

By the Policy and Steering Committee on Ways and Means; and  
Senator Pruitt

576-06122-09

200958c1

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  
29 departmental investigation indicating that they had been

576-06122-09

200958c1

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  
57 terminated before that date, and

58       WHEREAS, over the next 2 years, the department placed

576-06122-09

200958c1

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  
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

576-06122-09

200958c1

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

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

576-06122-09

200958c1

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 17, 16, and 14  
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

576-06122-09

200958c1

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 are  
160 found and declared to be true.

161 Section 2. There is appropriated from the Federal Grants  
162 Trust Fund within the Department of Children and Family Services  
163 the sum of \$950,000 each year for fiscal years 2009-2010 through  
164 2018-2019, inclusive, to the department for the relief of Jorge  
165 and Debbie Garcia-Bengochea and their adopted sons, Brian,  
166 Matthew, and James Garcia-Bengochea, for injuries and damages  
167 sustained as a result of negligent acts by employees and agents  
168 of the Department of Children and Family Services or its  
169 predecessor agency, the Department of Health and Rehabilitative  
170 Services.

171 Section 3. For fiscal years 2009-2010 through 2018-2019,  
172 inclusive, the Chief Financial Officer is directed to draw  
173 annually a warrant in favor of Jorge and Debbie Garcia-Bengochea  
174 and of the trusts in place for Brian, Matthew, and James in the

576-06122-09

200958c1

175 sum of \$950,000 upon funds of the Department of Children and  
176 Family Services in the State Treasury. The Chief Financial  
177 Officer is directed to pay the same out of such funds in the  
178 State Treasury. These funds shall be distributed annually as  
179 follows:

180 (1) The sum of \$256,666.66 to the special needs trust for  
181 Brian Garcia-Bengochea;

182 (2) The sum of \$256,666.66 to the special needs trust for  
183 Matthew Garcia-Bengochea;

184 (3) The sum of \$256,666.66 to the special needs trust for  
185 James Garcia-Bengochea;

186 (4) The sum of \$90,000 to Debbie Garcia-Bengochea; and

187 (5) The sum of \$90,000 to Jorge Garcia-Bengochea.

188 Section 4. (1) This award, appropriated up to a grand total  
189 of \$9.5 million, is intended to provide the sole compensation  
190 for all present and future claims arising out of the factual  
191 situation described in this act which resulted in the injury to  
192 Jorge and Debbie Garcia-Bengochea and their adopted sons, Brian,  
193 Matthew, and James Garcia-Bengochea.

194 (2) The total amount paid for attorney's fees and lobbying  
195 fees are to be paid to the attorneys and lobbyists currently  
196 retained by the claimants. The total amount paid for attorney's  
197 fees, lobbying fees, costs, and other similar expenses relating  
198 to this claim may not exceed 25 percent of each annual payment  
199 awarded pursuant to this act. Further, no more than 25 percent  
200 of each annual payment may be used to pay attorney's fees,  
201 lobbying fees, costs, and other similar expenses relating to  
202 this claim.

203 Section 5. (1) It is the intent of the Legislature that the

576-06122-09

200958c1

204 department's recognition of its negligence as the cause of the  
205 injuries suffered by the minor children, as provided by the  
206 parties' settlement agreement, is ratified by this act and all  
207 lien interests held by the state resulting from the treatment  
208 and care of Jorge and Debbie Garcia-Bengochea and their adopted  
209 sons, Brian, Matthew and James Garcia-Bengochea, for the  
210 occurrences described in this act are waived.

211 (2) Brian, Matthew, and James Garcia-Bengochea shall be  
212 eligible for services from the Department of Children and Family  
213 Services as though each child is eligible for foster care-  
214 related services.

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