The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL:	SB 1874
INTRODUCER:	Senator Wise
SUBJECT:	Adoption
DATE:	January 30, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill substantially amends the Florida Adoption Act. Specifically, the bill:

- Removes legislative intent that all placements of minors for adoption be reported to the Department of Children and Families (DCF or department);
- Clarifies the duties and obligations of adoption entities prior to and after taking custody of a surrendered newborn;
- Renders a newborn who tests positive for illicit or prescription drugs or alcohol, or is born to a mother who tests positive for the same substances at the time of delivery, properly surrendered for the purposes of Florida's Save Haven law;
- Prohibits DCF from being involved with a properly surrendered newborn who tests positive for illicit or prescription drugs or alcohol, or is born to a mother who tests positive for drugs or alcohol at the time of delivery, except when reasonable efforts to contact an adoption entity to take custody of the child fail;
- Prohibits a court from ordering scientific testing until the court determines that a previously entered judgment terminating parental rights is voidable;
- Requires a child to have lived with a grandparent for six continuous months in order for the grandparent to receive notice of a hearing on the petition to terminate parental rights;
- Allows for judicial enforcement of a contact agreement between the prospective adoptive parents and the adoptive child's birth parent, other relative, or previous foster parent in certain circumstances;
- Prohibits an attorney from removing a child, who was voluntarily surrendered to the attorney, from a prospective adoptive home without a court order unless the child is in danger of imminent harm;

- Revises the obligations and responsibilities of an unmarried biological father seeking to assert his parental rights with regard to his child;
- Outlines the duties of the court when considering a petition for termination of parental rights and, when the petition has been denied, providing for placement of the child;
- Places restrictions on advertisements offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of the advertising restrictions;
- Creates the crime "adoption deception";
- Clarifies the rights and obligations of a volunteer mother involved in a preplanned adoption agreement; and
- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 63.022, 63.032, 63.037, 63.039, 63.042, 63.0423, 63.0425, 63.0427, 63.052, 63.053, 63.054, 63.062, 63.063, 63.082, 63.087, 63.088, 63.089, 63.092, 63.152, 63.162, 63.167, 63.212, 63.213, 63.222, and 63.2325.

II. Present Situation:

Adoption is the "act of creating the legal relationship between parent and child where it did not exist."[1] The Legislature enacted the Florida Adoption Act in 1973[2] to "protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children . . . a permanent family life."[3] The Florida Adoption Act applies to public and private adoptions involving the following entities: Department of Children and Family Services (DCF or department); child-placing agencies licensed by DCF under s. 63.202, F.S.; child-caring agencies registered under s. 409.176, F.S.; an attorney licensed to practice law in Florida; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

In fiscal year 2010-2011, over 3,000 children were adopted in Florida.[4] Over the last five years, nearly 17,000 children have been adopted out of Florida's child welfare system, while setting a record for the number of children adopted in two of the last five years.[5]As a result of the improvement of adoption performance in the state, Florida has collected more than $18 million in federal adoption incentive awards since 2009.[6] Only Texas and Arizona have received more in adoption incentive awards during the same time period.[7] From July 2010 to June 2011, over 51 percent of the children discharged from foster care to a finalized adoption were discharged in less than 24 months from the date of the child's latest removal from the home.[8]

[1] Section 63.032(2), F.S.
[2] Chapter 73-159, s. 2, Laws of Fla. Chapter 63, F.S., the Florida Adoption Act, governs all Florida adoptions.
[3] Section 63.022(3), F.S.
[4] Office of Adoption and Child Protection, Executive Office of the Governor, *Annual Report 2011*, at 59 (Dec. 2011), *available at* http://www.flgov.com/wp-content/uploads/childadvocacy/oacp2011_annual_report.pdf (last visited Jan. 29, 2012).
[5] *Id*. at 6.
[6] *Id*.
[7] *Id*. at 57.
[8] *Id*. at 55. Of those children, the median length of stay in foster care was 20 months. *Id*. at 56.

Termination of Parental Rights

The laws relating to protection of children who are abused, neglected, or abandoned are found primarily in ch. 39, F.S. When a child is adjudicated dependent, DCF must ensure that the child has a plan which will lead to a permanent living arrangement.[9] Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system.[10] A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required.[11] The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the goal is in the best interests of the child.[12] Available permanency goals for children, in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights (TPR) has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; or
- Placement in another planned permanent living arrangement.[13]

If a child in foster care will not be reunited with a parent, the department will initiate a TPR proceeding.[14] In making the determination to terminate a parent's rights, current law prohibits a court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child. If the court determines that it is in the manifest best interests of the child for the parent's rights to be terminated, then the TPR order is entered and the child is placed in the custody of DCF for permanent placement. The Legislature has determined that adoption is the primary permanency option.[15]

A birth parent may decide, as the dependency process unfolds, but prior to final TPR, to work with a private adoption entity[16] to find a permanent home for the child. The Legislature supports cooperation between private adoption entities and DCF to find permanent placement options for children in the care of DCF when the birth parents wish to participate in a private adoption plan with a qualified family.[17] A private adoption entity may intervene in dependency proceedings when it obtains consents to adopt from the parents of the minor child in the custody of DCF prior to the termination of their parental rights.[18] The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents, and the court must then decide whether the prospective adoptive parents are properly qualified to adopt the child and whether the adoption is in the child's best interests.[19]

[9] *See* part VII, ch. 39, F.S.
[10] Section 39.621(1), F.S.
[11] *Id*.
[12] *Id*.
[13] Section 39.621(2), F.S.
[14] *See* part X, ch. 39, F.S.
[15] Section 39.621(6), F.S.
[16] An "adoption entity" is defined as DCF, an agency, a registered child-caring agency, an intermediary (attorney), or a child-placing agency licensed in another state. Section 63.032(3), F.S.
[17] Section 63.022(5), F.S.
[18] Section 63.082(6)(b), F.S.
[19] See s. 63.082(6), F.S.

Preliminary Home Study and Final Home Investigation

A preliminary home study to determine the suitability of the prospective adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.[20] The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s. 61.20(2), F.S.[21] The preliminary home study must include, at a minimum, the following:

- Interview with the prospective adoptive parents;
- Records checks of DCF's central abuse hotline;
- Criminal history check through the Florida Department of Law Enforcement;
- Assessment of the physical environment of the home;
- Determination of the financial security of the prospective adoptive parents;
- Proof of adoptive parent counseling and education;
- Proof that information on adoption and the adoption process has been provided;
- Proof that information on support services available has been provided; and
- Copy of each signed acknowledgment of receipt of adoption entity disclosure forms.[22]

A favorable home study is valid for one year after the date of its completion.[23] Following a favorable preliminary home study, a minor may be placed in the home pending entry of the judgment of adoption by the court. If the home study is unfavorable, placement may not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.[24]

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interests of the child, a final home investigation must be conducted before the adoption is concluded. The investigation is conducted in the same manner as the preliminary home study.[25] Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and provided to the petitioner.[26] The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.[27] The final home investigation must include:

- Information from the preliminary home study;
- Following the minor's placement, two scheduled visits with the minor and the minor's adoptive parent or parents. One visit must be in the home to determine suitability of the placement;

[20] Section 63.092(3), F.S. Unless good cause is shown, a home study is not required for adult adoptions or when the petitioner for adoption is a stepparent or a relative.
[21] *Id*. DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] Section 63.125(1), F.S.
[26] Section 63.125(2), F.S.
[27] Section 63.125(3), F.S.

- Family social and medical history; and
- Other information relevant to suitability of placement information required by rules promulgated by DCF.[28]

Putative Father Registry

In 2003, Florida enacted a Putative Father Registry (registry), joining at least 23 other states with similar legislation.[29] The registry is maintained by the Office of Vital Statistics of the Department of Health (DOH).[30] The DOH is required, within existing resources, to provide and distribute a pamphlet or publication informing the public about the registry.[31]

If a man thinks that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the registry. By filing with the registry, the potential father is claiming paternity for the child and confirms his willingness to support the child.[32] Additionally, he consents to DNA testing and may ultimately be required to pay child support.[33] A claim of paternity may be filed at any time prior to the child's birth, but may not be filed after the date a petition is filed for termination of parental rights.[34] The putative father may change his mind and, prior to the birth of the child, execute a notarized revocation of the claim of paternity.[35] Once that revocation is received, the claim of paternity is deemed null and void. Additionally, if a court determines that a registrant is not the father of a minor, the court will order the man's name be removed from the registry.[36]

The registry was designed to protect the rights of all parties to an adoption proceeding: the rights of the unmarried biological father to notice and an opportunity to be heard, the rights of the birth mother to make an independent decision when the father fails to act, and the rights of the adoptive parent in retaining custody of the child.[37]

Required Consent

Unless excused by the court, proper written consent for adoption is required from:

- The birth mother.
- The birth father if:
  - The minor was conceived or born while the father was married to the birth mother;
  - The minor is his child by adoption;

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[28] Section 63.125(5), F.S.
[29] Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Open Government Sunset Review of Section 63.0541, F.S., Relating to the Florida Putative Father Registry*, 4 (Interim Project Report 2008-206) (Oct. 2007), *available at* www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-206cf.pdf (last visited Jan. 29, 2012).
[30] Section 63.054(1), F.S.
[31] Section 63.054(11), F.S.
[32] Section 63.054(1), F.S.
[33] Section 63.054(2), F.S.
[34] Section 63.054(1), F.S.
[35] Section 63.054(5), F.S.
[36] *Id*.
[37] Amy U. Hickman and Jeanne T. Tate, *Florida's Putative Father Registry: More Work is Needed to Follow the Established National Trends Toward Stable Adoptive Placements*, 82 FLA. B.J. 42, 42-43 (Jan. 2008); *see also* s. 63.022(1), F.S.

  - The minor has been adjudicated by the court to be his child by the date a petition is filed for TPR;
  - He has filed an affidavit of paternity by the date a petition is filed for TPR; or
  - In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the child and filed such acknowledgment with the Office of Vital Statistics. Consent of an unmarried biological father is only necessary if he follows the requirements of ch. 63, F.S.[38]
- The minor, if 12 years of age or older.
- Any person lawfully entitled to custody of the minor.
- The court having jurisdiction to determine custody, if the person having physical custody of the minor cannot consent.[39]

The petitioner in a TPR proceeding must make diligent efforts to notify, and obtain written consent from, all persons required to give consent.[40]

A parent may execute consent to placement with an adoption entity while the child is in the custody of DCF, as long as it is done prior to the parental rights being terminated.[41] Upon execution of the consent of the parent, the adoption entity may intervene in the dependency case as a party in interest and must provide the court a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement.[42] If the court determines that the prospective adoptive parents are properly qualified to adopt the child and that the adoption appears to be in the best interest of the minor child, the court shall immediately order the transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption.[43] A person may withdraw consent for a child older than six months of age who has been placed with prospective adoptive parents within three business days after execution of the consent.[44]

Disclosure to Prospective Adoptive Parents

Adoption entities are required to provide a written disclosure statement to individuals seeking to adopt a child and to individuals seeking to place a child for adoption.[45] The disclosure must notify the individuals of the following:

- Name, address, and telephone number of the adoption entity providing the disclosure;
- The adoption entity does not provide legal representation or advice;
- A child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study;

[38] Section 63.062(2), F.S.
[39] Section 63.062(1), F.S.
[40] Section 63.062(6), F.S.
[41] Section 63.082(6), F.S.
[42] *Id*.
[43] *Id*.
[44] Section 63.082(7), F.S.
[45] Section 63.085, F.S.

- Valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child or after she is discharged from the hospital or birth center;
- Consent for adoption signed before the child attains the age of six months is binding and irrevocable from the moment it is signed. A consent for adoption signed after the child attains the age of six months is valid from the moment it is signed, but may be revoked until the child is placed in an adoptive home, or up to three days after it was signed, whichever period is longer;
- Consent for adoption is not valid if the signature of the person who signed the consent was obtained by fraud or duress;
- An unmarried biological father must act immediately in order to protect his parental rights;
- There are alternatives to adoption, including foster care, relative care, and parenting the child;
- The birth parent has the right to have someone witness the signing of the consent or affidavit of nonpaternity;
- If the birth parent is 14 years of age or younger, he or she must have a parent, legal guardian, or court-appointed guardian ad litem assist and advise the birth parent as to the adoption plan;
- The birth parent has a right to receive supportive counseling; and
- Payment of living or medical expenses by the prospective adoptive parents prior to the birth of the child does not, in any way, obligate the birth parent to sign the consent for adoption.[46]

The adoption entity must also provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity. The information that must be disclosed includes:

- A family social and medical history form;
- The biological mother's medical records documenting her prenatal care and the birth and delivery of the child;
- A complete set of the child's medical records;
- All mental health, psychological, and psychiatric records concerning the child;
- The child's educational records;
- Records documenting all incidents that required DCF to provide services to the child; and
- Written information concerning the availability of adoption subsidies for the child, if applicable.[47]

Some believe that complete disclosure can benefit the child, the adoptive family, and the adoption entity by ensuring the child is placed in an environment that can meet his or her needs – both emotionally and financially. Additionally, it provides the adopted person the opportunity to have full and accurate knowledge of his or her family, medical, and genetic history. Finally, providing such disclosure may help protect agencies and intermediaries from wrongful adoption lawsuits.[48]

[46] *Id*.
[47] *Id*.
[48] Child Welfare Information Gateway, *Providing Background Information to Adoptive Parents* (2003), http://www.childwelfare.gov/pubs/f_backgroundbulletin.cfm (last visited Jan. 30, 2012).

"Safe Haven" law

In 2000, the Florida Legislature passed legislation for the safe abandonment of a newborn.[49] The law provides that a parent may safely abandon an infant who is 7 days old or younger at a fire station, emergency medical services station, or hospital emergency room.[50] The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment. Infants admitted to a hospital under the safe haven law are presumed eligible for Medicaid coverage. The hospital then transfers the infant to a licensed child-placing agency.

The child-placing agency is required to request assistance from law enforcement within 24 hours of receiving the infant to determine whether the child is a missing child.[51] The licensed child-placing agency must seek emergency custody via court order, and may place the infant with court-approved prospective adoptive parents who become the infant's guardians pending termination of parental rights and final adoption.[52] The infant's parent may make a claim of parental rights to the court or to the entity having custody of the infant at any time before the TPR.[53] Parenthood may be determined by scientific testing, if ordered by the court.[54]

Safe haven abandonment under s. 383.50, F.S., does not constitute abuse or neglect, and a child safely abandoned under the statute is not deemed abandoned for purposes of the reporting and investigating requirements of ch. 39, F.S. Similarly, criminal investigation of a safe abandonment under the statute is prohibited, unless there is actual or suspected child abuse or neglect. A parent who abandons a child has the "absolute right to remain anonymous," and the law prohibits pursuit of the parent.[55] In addition, the statute establishes a presumption that the abandoning parent consented to TPR.[56] A parent may rebut the presumption by making a claim for parental rights prior to termination.

III. Effect of Proposed Changes:

This bill substantially amends ch. 63, F.S., the Florida Adoption Act.

Putative Father Registry (sections 3, 10, and 11)

If the parental rights of a child have been terminated by a judgment entered pursuant to ch. 39, F.S.,[57] certain adoption proceedings of ch. 63, F.S., are not required. For example, adoption proceedings initiated under ch. 39, F.S., are exempt from the disclosure requirements for the adoption entity, general provisions and procedures governing termination of parental rights pending adoption, and notice and service provisions governing termination of parental rights pending adoption. This bill adds the requirement for search of the Florida Putative Father

[49] Chapter 2000-188, Laws of Fla.
[50] Section 383.50(1), F.S.
[51] Section 63.0423(3), F.S.
[52] Section 63.0423(2), F.S.
[53] Section 63.0423(6) and (7), F.S.
[54] Section 63.0423(7), F.S.
[55] Section 383.50(5), F.S.
[56] Section 383.50(2), F.S.
[57] Chapter 39, F.S., relates to all proceedings relating to children. Part X of ch. 39, F.S., is the section of law dealing with termination of parental rights in certain circumstances.

Registry to the list of provisions that are not required for adoption proceedings initiated under ch. 39, F.S.

The bill amends s. 63.054, F.S., which relates to actions required by an unmarried biological father. Under current law, an unmarried biological father may not file a claim of paternity with the Florida Putative Father Registry after the date a petition is filed for termination of parental rights (TPR). The bill provides that in a TPR proceeding, the petitioner must submit a copy of the petition for TPR to the Office of Vital Statistics *or* a document executed by the clerk of court showing the style of the case, the names of the persons whose rights are sought to be terminated, and the date and time of the filing of the petition.

Finally, the bill requires that an unmarried biological father "strictly" comply with ch. 63, F.S., and demonstrate a prompt and full commitment to his parental responsibilities or his child may be adopted without his consent.

Adoption Entities and Surrendered Infants (section 4, 6, and 20)

This bill requires that all adoptions of minor children, with the exception of an adoption by a relative or stepparent, require the use of an adoption entity that will assume the responsibilities provided by law.

The bill amends s. 63.0423, F.S., relating to procedures with respect to surrendered infants. The bill replaces the term "licensed child-placing agency" with "adoption entity" throughout the section. The bill requires that upon entry of a final judgment terminating parental rights, an adoption entity must assume responsibility for all costs associated with the emergency services and care of the surrendered infant from the time the adoption entity takes physical custody of the infant. The bill provides that an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, or who is born to a mother who tests positive for such substances at the time of delivery, is to be treated as having been properly surrendered under ss. 383.50[58] and 63.0423, F.S. The bill prohibits the Department of Children and Families (DCF or department) from becoming involved in a situation where an infant is properly surrendered under s. 63.0423, F.S., unless reasonable efforts to contact an adoption entity have not been successful.

The bill also provides that if a court finds that an adoption entity (rather than any person) knowingly gave false information that prevented a parent from timely making known his or her desire to assume parental responsibilities, a judgment terminating parental rights may be voided. A court may not order scientific testing to determine the paternity or maternity of the minor until the court determines that a previously entered judgment terminating the parental rights of a parent is voidable, unless all parties agree that such testing is in the best interests of the child.

Finally, the bill amends s. 63.152, F.S., authorizing an adoption entity (in addition to the clerk of court) to transmit a certified statement of an entry of a judgment of adoption to the state registrar of vital statistics in order to apply for a new birth record.

[58] Section 383.50, F.S., provides for the treatment of a surrendered newborn infant to a hospital, emergency medical services station, or fire station.

Consent and Disclosure (sections 14 and 15)

Current law states that the notice and consent provisions of ch. 63, F.S., as they relate to the father of a child, do not apply in cases where the child is conceived as a result of a violation of a criminal law of Florida, another state, or another country.[59] The bill adds that a criminal conviction is not necessary for a court to find that a child was conceived as a result of a violation of a criminal law.

Following execution of a consent to adoption by the parent, as required by law, the bill requires the court to permit an adoption entity to intervene in a dependency hearing held pursuant to ch. 39, F.S. Current law provides the court discretion on allowing an adoption entity to intervene. Upon intervention, the bill directs the court to promptly hold a hearing to determine if the adoption entity submitted the proper documents to be allowed to intervene and, if so, if a change of placement of the child is appropriate. Among the documents that have to be submitted is a preliminary home study. The bill provides that unless the court is concerned about the completeness of the home study or is concerned about the qualifications of the individual who conducted the home study, another study to be completed by DCF is not necessary.

The bill provides that if the consent of one parent is set aside any other consents executed by the other parent may not be used by the parent whose consent was set aside to terminate or diminish the rights of the other parent whose consent was required for the adoption of the child.

The bill amends s. 63.085, F.S., to specify that a consent to adoption of a child six months of age or older may be revoked up to three *business* days after it was signed. Current law only provides a three day revocation period. The bill appears to be clarifying in nature in order to have s. 63.085(1), F.S., match s. 63.082(7), F.S.

The bill also clarifies in the disclosure required to be given to parents and prospective adoptive parents that if a parent is 14 years of age or younger, a parent, legal guardian, or court-appointed guardian ad litem must not only assist and advise the parent as to the adoption plan, but must also witness consent. Current law already provides that a consent or an affidavit of nonpaternity executed by a minor parent who is 14 years of age or younger must be witnessed by a parent, legal guardian, or court-appointed guardian ad litem.[60]

Finally, the bill amends s. 63.085, F.S., to provide that if the prospective adoptive parents waive receipt of any of the records required to be disclosed to the prospective adoptive parents, a copy of the written notification of the waiver shall be filed with the court.

Termination of Parental Rights Pending Adoption (sections 12, 16, 17, and 18)

Section 63.062, F.S., requires that a petition to terminate parental rights pending adoption may only be granted if notice is served to the father of a minor child if the minor was conceived or born while the father was married to the mother; the minor is his child by adoption; the minor has been adjudicated by the court to be his child before the date the petition is filed; the father

[59] Section 63.082(1)(d), F.S.
[60] Section 63.082(1)(c), F.S.

has filed an affidavit of paternity; or an unmarried biological father has acknowledged in writing that he is the father of the minor. This bill also requires that notice be served to the father if he is listed on the child's birth certificate before the date a petition for termination of parental rights is filed.

The bill requires that the status of the father be determined at the time the petition for termination of parental rights is filed. This status may not be modified with regard to the father's rights or obligations by any acts that occur after the petition has been filed.

Florida case law has permitted the father's status, and thereby his rights and responsibilities, to be reassessed following marriage to the birth mother subsequent to the entry of judgment of termination of parental rights.[61]

The bill clarifies that, in order to demonstrate a full commitment to the responsibilities of parenthood, an unmarried biological father must provide reasonable and regular financial support to the child. However, the bill does not define what "reasonable and regular" means.

Current law requires consent of an unmarried biological father prior to termination of parental rights if the unmarried biological father has complied with certain requirements. If the child being placed with adoptive parents is six months old or younger, the unmarried biological father must have paid a fair and reasonable amount of living and medical expenses incurred in connection with the pregnancy and child's birth if he had knowledge of the pregnancy. The bill amends s. 63.062(2), F.S., to provide that the unmarried biological father retains the responsibility to provide financial assistance to the birth mother during pregnancy and to the child following birth regardless of whether the birth mother and child are receiving financial support from an adoption entity, prospective adoptive parent, or third party. If an unmarried biological father merely expresses a desire to fulfill his responsibilities toward his child, without any acts evidencing this intent, it does not satisfy the requirements of s. 63.062, F.S.

The bill requires an adoption entity to serve notice of an intended adoption plan on any known and locatable unmarried biological father who is identified to the entity by the birth mother at the time she signs consent to adoption, but only if the child is six months old or younger at the time she consents. The bill specifies that service of the notice of intended adoption plan is not required when the child is older than six months of age at the time of the execution of the consent by the mother. Under current law, there is no age limitation for the child in order for an adoption entity to have to serve notice of an intended adoption plan.

Finally, current law provides that a person may execute an affidavit of nonpaternity in lieu of having to give consent and by doing so waives notice to all court proceedings. The bill provides that the affidavit of nonpaternity does not need to deny the existence of a biological relationship, but rather it is sufficient if it contains a specific denial of parental obligations. The affidavit has the effect of indicating that, while the affiant may be the biological father of the child, the affiant has no intention of participating in the parenting of the child and is willfully surrendering his parental rights related to the child.

[61] *See D. and L.P. v. C.L.G. and A.R.L.*, 37 So. 3d 897 (Fla. 1st DCA 2010).

Section 63.087(6), F.S., requires an answer or pleading be filed in response to a petition to terminate parental rights pending adoption. Current law provides that failure to appear at the hearing on the petition is grounds upon which the court may terminate parental rights. The bill specifies that failure to "personally" appear at the hearing constitutes grounds for terminating parental rights.

Current law requires the court to conduct an inquiry of the person who is placing the minor for adoption regarding the identity of:

a) Any man to whom the mother of the minor was married at the time of conception or birth;
b) Any man who has filed an affidavit of paternity;
c) Any man who has adopted the minor;
d) Any man who has been adjudicated as the father of the minor; and
e) Any man whom the mother identified to the adoption entity as a potential biological father.[62]

A person may provide information to the court regarding each inquiry enumerated in s. 63.088(4), F.S., unless the inquiry identifies a father under paragraphs (a), (b), (c), or (d).

Section 63.089(5), F.S., provides that if a court does not find clear and convincing evidence sufficient to enter a judgment terminating parental rights, the court must dismiss the petition and the parent or parents whose rights were sought to be terminated retain all rights in full force and effect. The court must then enter an order based upon written findings providing for the placement of the minor. The bill prohibits the court from making custody decisions between competing eligible parties. Instead, the child must be returned to the parent or guardian who had physical custody of the child at the time of the placement for adoptions unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. However, the court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition.

Current law authorizes the court to order scientific testing to determine the paternity of a minor at any time when the court has jurisdiction over the minor. Under the bill, the court may only order scientific testing if the court determines that the consent of the alleged father would be required, unless all parties agree that testing is in the best interests of the child. However, the court may not order scientific testing to determine paternity if the child has a father as described in s. 63.088(4)(a)-(d), F.S., whose rights have not been terminated.

A parent may file a motion with the court to seek relief from a judgment terminating parental rights. The court must schedule a hearing within 30 days of such motion to determine what contact, if any, should be permitted between the parent and the child pending resolution of the motion. The bill amends subsection (7) of s. 63.089, F.S., to provide that a court may not authorize contact between the child and the parent unless the parent has previously established a bonded relationship with the child and the parent has pled a legitimate legal basis and established a prima facie case for setting aside the judgment terminating parental rights. Finally, the bill

[62] Section 63.088(4), F.S.

provides that if the court grants relief from the judgment terminating parental rights, and no new pleading to terminate parental rights is filed, the child must be returned to the parent or guardian who had physical custody of the child at the time of the placement for adoptions unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. However, the court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition. The bill also prohibits a court from placing a child with a person other than the adoptive parents without first obtaining a favorable home study of that person.

Prohibited Acts (section 23)

The bill amends s. 63.212, F.S., making it unlawful for a person to assist an unlicensed person or entity in publishing or broadcasting an advertisement that a minor is available for adoption or that a minor is sought for adoption. Under the bill, only a Florida licensed attorney or a Florida licensed adoption entity may place a paid advertisement or paid listing of the person's telephone number in a telephone directory that a child is offered or wanted for adoption or that the person is able to place, locate, or receive a child for adoption. This provision will prevent an attorney or adoption entity licensed in another state or country from advertising or broadcasting an offer of a child for adoption or soliciting a child from within the state for adoption.

The bill requires a person who publishes a telephone directory for distribution in Florida to include, in all adoption advertisements, a statement that only licensed Florida attorneys or adoption entities may provide adoption services. The bill requires the telephone directory publisher to include in the advertisement the appropriate Florida Bar number or Florida license number of the attorney or entity placing the advertisement. Any person who knowingly publishes or assists in the publishing of an advertisement in violation of these provisions commits a second degree misdemeanor and is subject to a fine of up to $150 per day for each day the violation continues.

The bill also establishes the elements to the crime of "adoption deception." Specifically, a birth mother, or a woman holding herself out to be a birth mother, who solicits and receives payment of adoption-related expenses in connection with an adoption plan commits adoption deception if:

- She knew or should have known she was not pregnant at the time she sought or accepted funds for adoption-related expenses;
- She accepts living expenses from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses from another prospective parent or adoption entity at the same time in an effort to secure the child for adoption; or
- She makes false representations to induce payment of living expenses and does not intend to offer the child for the adoption.

A person who willfully commits adoption deception commits a misdemeanor of the second degree if the sums received do not exceed $300. If the sums received are more than $300, the person committing adoption deception commits a felony of the third degree. A person who commits adoption deception is also liable for damages as a result of acts or omissions, including

reasonable attorney fees and costs incurred by the adoption entity or the prospective adoptive parent.

Preplanned Adoption (section 24)

This bill amends the definition of "volunteer mother" in the section of law related to preplanned adoption agreements. Specifically, the bill provides that a "volunteer mother" is a female at least 18 years of age who voluntarily agrees, subject to a right of rescission *if it is her biological child*, that if she should become pregnant pursuant to a preplanned adoption arrangement, she will terminate her parental rights and responsibilities to the child in favor of the intended father and intended mother.

The bill amends s. 63.213, F.S., to provide that a volunteer mother may only rescind her consent to relinquish parental rights in a preplanned adoption if the child is genetically related to her.

The bill also revises the definition of "child" to mean a child or children conceived through a fertility technique. Current law refers only to a child or children conceived through an insemination, which does not account for improvements in medical technology that may allow for conception of a child in a manner other than insemination.

Other Provisions (sections 1, 2, 5, 7, 8, 9, 13, 19, 21, 22, 25, 26, and 27)

The legislative intent of ch. 63, F.S., is amended to remove the "safeguard" that all placements of minors for adoption, except relative, adult, and stepparent adoptions, be reported to DCF.

The bill revises the definitions of "abandoned," "parent," "suitability of the intended placement," and "unmarried biological father" in ch. 63, F.S. "Abandoned" is amended to mean a situation in which the parent or person having legal custody of the child, while being able, makes *little or* no provision for the child's support *or* makes little or no effort to communicate with the child, which situation is sufficient to evince an intent to reject parental responsibilities. It is unclear what may be considered "little" for purposes of this definition. The definition of "parent" is changed to clarify that it means a woman who gives birth to a child *and who is not a gestational surrogate*. Finally, the bill provides that a child's biological father who is not married to the child's mother at the time of conception or *on the date of the* birth of the child is an "unmarried biological father."

The bill amends s. 63.0425, F.S., to clarify that if a child has lived with a grandparent for at least six *continuous* months within the 24-month period immediately preceding the filing of a petition for termination of parental rights pending adoption, then the adoption entity must provide notice of the hearing to the grandparent. The bill does not specify what "continuous" means and whether some intermittent breaks during the timeframe would still permit a grandparent to receive notice of the hearing.

Section 63.0427, F.S., is amended to prohibit a court from increasing contact between an adopted child and his or her siblings, birth parents, or other relatives without the consent of the adoptive parent or parents. The court may, however, reduce such contact between the parties without the consent of the adoptive parent or parents.

The bill authorizes prospective adoptive parents to enter into an agreement to allow contact between the child to be adopted and the birth parent, other relative, or previous foster parent. Contact may take the form of visits, telephone calls, written correspondence, exchange of photographs, and other similar kinds of contact. An agreement establishing contact is enforceable by a court only if:

- The agreement is in writing and submitted to the court;
- The adoptive parents have agreed to the terms of the agreement;
- The court determines that contact is in the best interests of the child; and
- The child, if 12 years of age or older, has agreed to the contact agreement.

Any dispute regarding the contact agreement or any breach of the agreement does not affect the validity or finality of the adoption. The adoptive parent may terminate the contact if the adoptive parent reasonably believes that the contact is detrimental to the best interests of the child. To terminate a contact agreement, an adoptive parent must file a notice of intent to terminate the agreement with the court and provide a copy to any party to the agreement and provide the reasons for termination. The bill authorizes the court to order the parties to mediation; however, the bill does not specify how the mediation is to be conducted, who is to serve as the mediator, or who will pay for the mediation.

Under current law, in circumstances where an intermediary (an attorney) has taken custody of a minor who has been voluntarily surrendered through execution of a consent to adoption, the intermediary is responsible for the minor until the court orders approval of placement in a prospective adoptive home. The intermediary retains the right to remove the minor from the prospective adoptive home if the intermediary deems removal to be in the best interests of the child. The bill prohibits the intermediary from removing a child without a court order unless the child is in danger of imminent harm. The bill also clarifies that the intermediary does not become responsible for the child's medical bills that were incurred before taking physical custody of the child after the execution of adoption consents.

The bill requires that prospective adoptive parents receive a completed and approved favorable preliminary home study within one year before placement of a child in the home. The bill requires that, in the case where a suitable prospective adoptive home is not available, the child must be placed in a licensed foster care home, with a home-study approved person or family, or with a relative until a suitable prospective adoptive home becomes available. Current law does not specify that the foster home be licensed and does not provide the option for placement with a person or family that has been home-study-approved.

The bill amends s. 63.092, F.S., to require a *signed* copy of the home study be provided to the intended adoptive parents who were the subject of the home study. The bill does not specify who is supposed to sign the copy of the home study.

Section 63.162, F.S., is amended to allow a birth parent to petition the court to appoint an intermediary or a licensed child-placing agency to contact an adult adoptee who has not registered with the adoption registry and advise him or her of the availability of the intermediary or agency, and that the birth parent or adult adoptee, as applicable, wishes to establish contact.

The bill requires the state adoption information center, established in s. 63.167, F.S., to provide contact information for all adoption entities in a caller's county or, if there are no adoption entities in the caller's area, the contact information for the nearest adoption entity to the caller, when asked for a referral to make an adoption plan. The bill also requires the information center to rotate the order in which names of adoption entities are provided to callers.

The bill amends s. 63.222, F.S., to clarify that any adoption made before July 1, 2012, is valid and any proceedings that are pending as of that date and any subsequent amendments thereto are not affected by the changes made by the bill, unless the amendment is designated a remedial provision.

Finally, the bill makes technical and conforming changes throughout ch. 63, F.S.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Putative Father Registry

The application of the Putative Father Registry implicates the constitutional right of an unmarried biological father to parent his child. This fundamental right requires the strictest scrutiny. This means that the burden is on the state to show why its conduct is justified by providing a compelling state interest and that the conduct is a substantially effective method for achieving that purpose.[63] The state must also show that the intrusion will accomplish the state's goal in the least intrusive way.[64]

The United States Supreme Court has upheld the constitutionality of putative father registries, holding that an unmarried biological father does not have an absolute constitutional right to his biological child and that his rights are protected by the due

[63] Russell W. Galloway, *Basic Substantive Due Process Analysis*, 26 U.S.F. L. REV. 625, 638 (1992).
[64] *Id*.

process clause only if he takes some responsibility for the child.[65] The Florida Supreme Court has recognized this rationale as well.[66]

Termination of Parental Rights

Parents have a fundamental liberty interest in determining the care and upbringing of their children. This interest is protected by both the Florida and federal constitutions.[67] During a termination of parental rights proceeding, notice must be given and consent must be received from certain parties prior to a court entering a judgment to terminate a parent's rights. The bill appears to provide that if an infant tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, or if the infant is born to a mother who tests positive for such substances, the infant shall be treated as having been properly surrendered and DCF may not become involved unless efforts to contact an adoption entity are unsuccessful. It is unclear if in a situation where a mother gives birth to a child at the hospital and either the infant or mother tests positive for drugs or alcohol, whether the mother's parental rights would be automatically presumed to be terminated. If this is the intent of the bill, it may implicate state and federal constitutional provisions relating to the fundamental liberty interest of a parent.

Notice to an Unmarried Biological Father

The process of adoption involves a balancing of the interests of the child, the birth parents, and the adoptive parents. On lines 753-754, the bill appears to provide that an adoption entity is not required to provide notice of an intended adoption plan to an unmarried biological father when the child is older than six months of age at the time of the execution of the consent by the mother. In July 2007, the Florida Supreme Court ruled in favor of providing unmarried biological fathers with actual notice of the Florida Putative Father Registry and the legal obligations they must satisfy if they are to retain parental rights.[68] The Court also determined that unmarried biological fathers are entitled to receive actual notice of the intended adoption plan related to their child.[69] The Court went on to state that while the requirements for terminating the rights of an unmarried biological father where the child is six months old or older were not discussed in the case, "the same ruling as to when service of notice is required would also apply."[70]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[65] See *Lehr v. Robertson*, 463 U.S. 248 (1983).
[66] *Matter of Adoption of Doe*, 543 S. 2d 741, 748-49 (Fla. 1989); *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 966-67 (Fla. 1995).
[67] *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996).
[68] *See Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189 (Fla. 2007).
[69] *Id*. at 200.
[70] *Id*. at n. 6.

B. Private Sector Impact:

This bill authorizes adoption entities to be contacted when a child is abandoned under the safe haven law and the bill directs the court to permit an adoption entity to intervene in a dependency hearing. Under current law, the definition of "adoption entity" includes intermediaries (attorneys). It appears that the bill may have a positive fiscal impact on private adoption entities (or intermediaries) because they may realize an increase in the number of children placed in the private adoption process.

C. Government Sector Impact:

It appears that certain provisions of the bill are designed to move toward the private adoption process in certain cases instead of going through the dependency process. To the extent the bill does this, the resources maintained by the Department of Children and Families (DCF or department) for the purpose of the dependency process may be able to be retained by the department. However, according to DCF, the department is unable to determine if the bill will have any direct fiscal impact on it.[71]

VI. Technical Deficiencies:

The bill revises the definition of "abandoned" to mean a situation where a parent makes *little* or no provision for the child's support *or* makes little or no effort to communicate with the child. It is unclear how a court will determine what "little" support means, which could result in an inconsistent application of the definition.

The bill provides that an infant who tests positive for illegal drugs, alcohol, or other substances is to be treated as having been properly surrendered. In such cases, DCF is not to become involved unless reasonable efforts to contact an adoption entity have not been successful. If an infant is properly abandoned pursuant to s. 383.50, F.S., it is presumed that the parent's rights have been terminated. It appears that the intent of the bill is to alleviate the burden on DCF of investigating and going through the process of terminating parental rights if an infant is abandoned to a hospital, fire station, or emergency services station and the infant has drugs or alcohol in his or her system. However, this intent may be made clearer if s. 383.50, F.S., were amended to include this provision, rather than s. 63.0423, F.S.

On line 352, the bill provides that a judgment terminating parental rights is voidable if the court finds that *an adoption entity* knowingly gave false information that prevented the parent from timely making known his or her desire to assume parental responsibilities. It is unclear how an "entity" can knowingly give false information to a person. Additionally, by changing the term from "person" to "adoption entity" the bill limits who a parent can receive false information from, which may also limit a parent from being able to petition the court to void a judgment terminating parental rights.

[71] Dep't of Children and Families, *Staff Analysis and Economic Impact, SB 1874* (Jan. 12, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

Section 8 of the bill authorizes prospective adoptive parents to enter into an agreement for contact between the child to be adopted and the birth parent, other relative, or previous foster parent of the child. The bill spells out several things that must happen in order for a court to enforce the agreement. However, the sentence structure of the list does not appear to flow and it appears several of the listed items may need to be set out in separate subsections.

On lines 753-754 of the bill, it states that service of the notice of intended adoption is not required when the child is older than six months of age at the time of the execution of the consent by the mother. Strictly construing this provision, it appears that even if an unmarried biological father has done everything to show his commitment to the child, if the child is over six months of age, the adoption entity does not have to serve him notice of the intended adoption plan. It is unclear if this is the intended result.

On lines 1347-1366, the bill adds language regarding the court's order dismissing the petition to terminate parental rights. Throughout the new language in the bill, the term "child" is used; however, in current law the term "minor" is used. Accordingly, there are some inconsistencies with terminology.

VII. Related Issues:

Section 63.082(6), F.S., provides that private adoption entities may intervene in the adoption proceeding of a minor child who is in the custody of the Department of Children and Families (DCF or department) if (a) parental rights have been terminated; (b) the entity produces a favorable preliminary home study of the prospective adoptive parents; and (c) valid consents for placement of the minor with the entity have been obtained. If the court finds the adoption is in the best interest of the child, it shall enter an order immediately transferring custody to the prospective adoptive parents.

This bill amends s. 63.082(6), F.S., making it mandatory that the court permit an adoption entity to intervene in a dependency case if the entity has consent of the parents, a copy of the preliminary home study of the prospective adoptive parents, and any other evidence of the suitability of the placement.

The intervention of private adoption entities into the adoption of certain children in the custody of DCF was an issue researched by the Senate Committee on Children, Families, and Elder Affairs in 2009.[72] According to private adoption practitioners, there are widespread differences in adherence to the statute around the state. In several counties, intervention occurs without issue; in others, DCF and its community-based providers are reported to object to the intervention and slow the private adoption process.[73] According to the Senate interim report, "[r]eports from case law and stakeholder comments seem to

[72] See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Review of Section 63.082(6), F.S., Intervention by Private Adoption Entities in the Adoption of Certain Children in the Custody of the Department of Children and Families* (Interim Report 2010-104) (Oct. 2009), *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-104cf.pdf (last visited Jan. 30, 2012).
[73] *Id*. at 3.

bear this out."[74] Senate professional staff of the Committee on Children, Families, and Elder Affairs provided three recommendations in its report:

- Adopt the ch. 39, F.S., manifest best interest of the child standard;
- Maintain the existing best interest standard and reinstate mandatory intervention; or
- Remove the matter from dependency court jurisdiction.[75]

According to the report, "Senate professional staff recommends that the Legislature consider reinstating mandatory intervention and maintaining the existing best interest standard. That option appears to strike a balance between the constitutional rights of the birth parents and the concerns expressed by dependency practitioners."[76]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[74] *Id*.
[75] *Id*. at 4.
[76] *Id*. at 5.