

**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.)

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

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BILL: SB 1322

INTRODUCER: Senator Grall

SUBJECT: Adoption of Children in Dependency Court

DATE: March 17, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tuszynski</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1322 amends s. 63.082(6), F.S., to change the conditions for when and how a child-welfare involved parent may execute a consent for adoption of his or her child with an adoption entity when that child is under the supervision of the Department of Children and Families (DCF), or otherwise subject to the jurisdiction of the dependency court pursuant to ch. 39, F.S.

Specifically, the bill:

- Limits when a consent for adoption of a child with an adoption entity is valid, binding, and enforceable by the court under s. 63.082(6), F.S.
- Requires the court to promptly grant an evidentiary hearing on a motion to intervene to determine whether:
  - The adoption entity has filed the required documents to be allowed to intervene;
  - The fee and compensation structure of the adoption entity creates any undue financial incentives;
  - The preliminary home study is adequate and provides the information required to make a best interest determination; and
  - The change of placement of the child to the prospective adoptive family is in the best interests of the child.
- Details legislative findings and intent language to reduce the disruption of stable and bonded long-term placements that have been identified as prospective adoptive placements.
- Creates a rebuttable presumption that it is in a child’s best interest to remain in his or her current placement if it is a prospective adoptive placement and the child has been in that placement for a certain amount of time.
- Clarifies the list of factors a court must consider and weigh to determine whether it is in the best interest of a child to change his or her placement to the prospective adoptive parent selected by the parent or adoption entity.

- Requires the DCF to develop a transition plan to minimize the trauma of removal of the child if the court grants the motion to intervene and orders a change of placement.
- Makes technical and conforming changes throughout.

The bill also creates an unnumbered section of law requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a national comparative analysis of state processes that allow private adoption entities to intervene or participate in dependency cases and requires the DCF and licensed child-caring and child-placing agencies to provide OPPAGA with certain data by dates certain. The analysis and report is due to the President of the Senate and Speaker of the House of Representatives by January 1, 2024.

The bill does not appear to have a fiscal impact on the government or private sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Florida's Child Welfare System

Chapter 39, F.S., creates the state's dependency system that is charged with protecting the welfare of children in Florida; this system is often referred to as the "child welfare system." The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.<sup>1</sup> The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by DCF-contracted community-based care lead agencies (CBC).<sup>2</sup>

### *Community-based Care*

The DCF, through the CBCs, administers a system of care<sup>3</sup> for children that is required to focus on:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and

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<sup>1</sup> Section 39.001(8), F.S.

<sup>2</sup> Section 409.986(1), F.S.; *See generally* The Department of Children and Families (The DCF), *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last viewed March 15, 2023).

<sup>3</sup> *Id.*

- Transition to independence and self-sufficiency.<sup>4</sup>

The CBCs must give priority to services that are evidence-based and trauma informed.<sup>5</sup> The CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.<sup>6</sup> The CBCs employ case managers that serve as the primary link between the child welfare system and families under the DCF's supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.<sup>7</sup>

### ***Out-of-home Placement***

When a child protective investigator determines that in-home services are not enough to ensure safety in a child's home, the investigator removes and places the child with a safe and appropriate temporary placement.<sup>8</sup> These temporary placements, referred to as out-of-home care or foster care, provide housing and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.<sup>9</sup>

The CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.<sup>10</sup> Legislative intent is to place a child in the least restrictive, most family-like environment in close proximity to parents when removed from his or her home.<sup>11</sup>

### ***Case planning***

The DCF must develop and draft a case plan for each child receiving services within the dependency system.<sup>12</sup> The purpose of a case plan is to develop a document that details the identified concerns and barriers within the family unit, the permanency goal or goals, and the services designed to ameliorate those concerns and barriers and achieve the permanency goal.<sup>13</sup>

The services detailed in a case plan must be designed in collaboration with the parent and stakeholders to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement.<sup>14</sup> The services offered must be the least intrusive possible into the

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<sup>4</sup> *Id.*; Also see generally s. 409.988, F.S.

<sup>5</sup> Section 409.988(3), F.S.

<sup>6</sup> The DCF, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited March 15, 2023).

<sup>7</sup> Section 409.988(1), F.S.

<sup>8</sup> Sections 39.401 through 39.4022, F.S.

<sup>9</sup> The Office of Program Policy and Government Accountability, *Program Summary*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053> (last visited March 15, 2023).

<sup>10</sup> Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.

<sup>11</sup> Sections 39.001(1) and 39.4021(1), F.S.

<sup>12</sup> See Part VII of ch. 39, F.S.

<sup>13</sup> Section 39.6012(1), F.S.

<sup>14</sup> *Id.*

life of the parent and child and must provide the most efficient path to quick reunification or other permanent placement.<sup>15</sup>

### **The Florida Adoption Act**

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:

- The Department of Children and Families (DCF) under ch. 39, F.S.;
- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is licensed by the DCF to place children in Florida.<sup>16</sup>

### ***Chapter 39 Adoptions***

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her, the child welfare system may seek a permanent home for that child through the adoption process.<sup>17</sup> Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be legally the child of the adoptive parents and entitled to all rights and privileges and subject to all obligations of a child born to the adoptive parents.<sup>18</sup> Adoption is one of the legally recognized child-welfare permanency goals that may be ordered by a court for a child within the child welfare system.<sup>19</sup>

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her current parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.<sup>20</sup> The DCF may place the child with a licensed child-placing agency, a registered child-caring agency, or a family home for prospective adoption if given custody of a child that has been made available for a subsequent adoption under ch. 39, F.S.<sup>21</sup>

### ***Intervention by an Adoption Entity into a Dependency Proceeding***

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,<sup>22</sup> and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to participate in a private adoption plan.<sup>23</sup> In 2003, the Legislature created s. 63.082(6), F.S., which is a path to allow a

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<sup>15</sup> *Id.*

<sup>16</sup> Section 63.032(3), F.S.

<sup>17</sup> Section 39.811(2), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.

<sup>18</sup> Section 39.01(5), F.S.

<sup>19</sup> Section 39.01(59), F.S., defines "permanency goal" to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time as another permanency goal is pursued. *See also* Section 39.621(3), F.S.

<sup>20</sup> Section 39.811(9)

<sup>21</sup> Section 39.812(1), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.

<sup>22</sup> Section 63.022, F.S.

<sup>23</sup> Section 63.022(5), F.S.

child-welfare involved parent to place their child for adoption with a private adoption agency, while the child is under the jurisdiction of the dependency court and receiving services from the DCF and CBCs, as long as parental rights have not been terminated.<sup>24</sup>

Upon execution of a consent for adoption by a child-welfare involved parent with an adoption entity, the court is required to accept that consent as valid, binding, and enforceable and requires the court to allow that adoption entity to intervene in the dependency case.<sup>25</sup> The intervention process allows a child welfare-involved parent to potentially have his or her dependent child removed from the child's current judicially approved placement and subsequently placed with and adopted by a person chosen by the child-welfare involved parent or adoption entity. Current law requires courts to notify child welfare-involved parents about the option of consent and adoption through a private adoption entity at certain points in the dependency case, including when it has been determined that reunification is not a viable permanency option and a case plan goal of adoption has been added.<sup>26</sup>

After a child-welfare involved parent executes the valid and binding consent, the process is as follows:

- The court must permit the adoption entity to intervene in the dependency case.<sup>27</sup>
- The adoption entity provides the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.<sup>28</sup> The home study must be deemed sufficient and no additional home study needs to be performed by the DCF unless the court has concerns about the qualifications of the home study provider or adequacy of the home study.<sup>29</sup>
- The dependency court must hold a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is in the best interests of the child.<sup>30</sup>
- After consideration of all relevant factors, if the court determines that the prospective adoptive parent is properly qualified and the adoption is in the best interest of the minor child, the court must promptly order transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.<sup>31</sup> The court may establish reasonable requirements for the transfer of custody, including time for a reasonable transition from the child's current placement to the new prospective adoptive placement.<sup>32</sup>
- The adoption entity must keep the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.<sup>33</sup>

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<sup>24</sup> Chapter 2003-58, L.O.F., codified as s. 63.082(6), F.S.

<sup>25</sup> Section 63.082(6)(a), F.S.; *See also* Rule 65C-16.019, F.A.C.

<sup>26</sup> Section 63.082(6)(g), F.S.

<sup>27</sup> Section 63.082(6)(b), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 63.082(6)(c), F.S.

<sup>31</sup> Section 63.082(6)(d), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 63.082(6)(f), F.S.

The court has always been required to consider certain factors to determine the best interest of the child. Prior to 2016, the court was required to only consider the following factors:

- Rights of the parent to determine an appropriate placement for the child;
- Permanency offered;
- Child's bonding with any potential adoptive home that the child has been residing in; and
- Importance of maintaining sibling relationships, if possible.<sup>34</sup>

In 2016, the Legislature broadened these best interest factors to give more deference to the court to make a best interest determination and better align the best interest factors in ch. 63, F.S., with those already in ch. 39, F.S.<sup>35</sup> To determine whether the transfer of custody and subsequent adoption is in the best interest of the child, the court is required to consider and weigh all relevant factors, including, but not limited to:

- The permanency offered;
- The established bonded relationship between the child and his or her current potential adoptive caregiver with whom the child is residing;
- The stability of the potential adoptive home in which the child currently resides and the desirability of maintaining continuity of placement;
- The importance of maintaining sibling relationships, if possible;
- The reasonable preferences and wishes of the child, if the child is of sufficient maturity, understanding, and experience to express a preference;
- Whether a petition for termination of parental rights has been filed pursuant to certain statutes;
- What is best for the child; and
- The right of a parent to determine an appropriate placement for the child.<sup>36</sup>

Florida courts have interpreted these 2016 changes differently.

### **Judicial Treatment of Adoption Intervention into Dependency Cases**

The Florida Supreme Court has held that while a parent has a fundamental right to raise his or her child, that right is not absolute and is “subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail.”<sup>37</sup>

#### ***Circuit Split***

In *W.K. v. Department of Children and Families*,<sup>38</sup> Florida’s Fourth District Court of Appeal found that “it is not the court's role to determine which placement would be better for the child” and that “the ‘best interest’ analysis [in s. 63.082(6)] requires a determination that the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives.”

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<sup>34</sup> Chapter 2003-58 s. 15, L.O.F.

<sup>35</sup> Chapter 2016-71 s. 2, L.O.F.

<sup>36</sup> Section 63.082(6)(e), F.S.

<sup>37</sup> *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So. 2d 565, 570 (Fla. 1991) (citing *In re Camm*, 294 So. 2d 318, 320 (Fla. 1974))

<sup>38</sup> 230 So.3d 905, 908 (Fla. 4<sup>th</sup> DCA 2017)

However, in a more recent case, *Guardian ad Litem v. Campbell*,<sup>39</sup> Florida’s Fifth District Court of Appeal found that a trial court’s order applying the standard set in W.K. (4<sup>th</sup> DCA), inappropriately elevated one statutory factor, the right of the parent to determine an appropriate placement for the child, over the other seven statutory factors in its best interest determination.<sup>40</sup> The 5<sup>th</sup> DCA concluded, in full:

“The current version of section 63.082(6) is clear that when considering a motion to transfer custody of a dependent child who is under the supervision of the Department, the trial court must consider the wishes of the natural parent or parents, if their parental rights have not been terminated, and weigh those wishes with the other seven factors articulated in section 63.082(6)(e), along with “all relevant factors.” *see also* E.Q., 208 So. 3d at 1261 (“It is therefore clear that when considering a motion by a parent to transfer a dependent child, who has been placed with the department or a legal custodian, to a relative, the trial court must consider the wishes of the parent or parents, if their parental rights have not been terminated, and weigh those wishes with the other ... factors articulated in section 63.082(6), which relate to the best interests of the child.”) The trial court correctly followed this statutory directive and entered an order with factual findings under section 63.082(6)(e). However, based on its interpretation of W.K.’s statement about the court’s role in determining a custody transfer to prospective adoptive parents, the trial court reluctantly ordered custody transferred to the Grandparents, even though it had concluded that this transfer was not in the Child’s best interests. Its ultimate conclusion inappropriately elevated one factor over the others and constituted a departure from the essential requirements of the law causing irreparable harm.”

### III. Effect of Proposed Changes:

#### Chapter 39, F.S., Intervention Adoptions

The bill amends s. 63.082(6), F.S., to change the conditions for when and how a child-welfare involved parent may execute a consent for adoption of his or her child with an adoption entity when that child is under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court pursuant to ch. 39, F.S.

#### *Legislative Findings and Intent*

The bill details findings and intent of the Legislature that:

- There is a compelling state interest to ensure that a child involved in chapter 39 proceedings is served in a way that minimizes his or her trauma, provides safe placement, maintains continuity of bonded placements, and achieves permanency as soon as possible.

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<sup>39</sup> 348 So.3d 1177 (Fla. 5<sup>th</sup> DCA 2022).

<sup>40</sup> *Id.* at 1181 – 1183

- The use of intervention into dependency cases for the purpose of adoption has the potential to be traumatic for a child and that the disruption of a stable and bonded long-term placement and the change of placement to a person or family to whom the child has no bond or connection may create additional trauma.
- The right of a parent to determine an appropriate placement for a child who has been found dependent is not absolute and must be weighed against other factors that take the child's safety and well-being into account.
- Disruptions of stable and bonded long-term placements that have been identified as potential adoptive placements should be reduced.

### ***Judicial Process***

The bill limits when a consent for adoption of a child with an adoption entity is valid, binding, and enforceable by the court under s. 63.082(6), F.S., by making any consent for adoption of a child with an adoption entity not valid if executed after the filing of a petition for the termination of parental rights by the DCF under s. 39.802, F.S. This change reduces the opportunity for a parent to disrupt a bonded and stable placement late in the pendency of a case, when the DCF has decided that it is in the child's best interest to terminate the legal relationship between the child and his or her parents.

The bill allows, rather than requires, an adoption entity to petition for intervention upon the execution of a valid consent. The bill requires the court to promptly grant an evidentiary hearing if a motion to intervene is filed to determine whether the:

- Adoption entity has filed the required documents to be allowed to intervene;
- Fee and compensation structure of the adoption entity creates any undue financial incentive for the parent to consent or for the adoption entity to intervene;
- Preliminary home study is adequate and provides the information required to make a best interest determination; and
- Change of placement of the child to the prospective adoptive family is in the best interests of the child.

The bill strikes language that requires a court to consider a home study sufficient unless the court has concerns as to the qualifications of the home study provider or the adequacy of the home study in general and that no additional home study needs to be performed by the DCF. The bill instead makes the adequacy of the home study a determination made by the court during the evidentiary hearing and is silent as to whether the court may order another home study.

The bill requires the court, when making the determination of whether to change the placement to the prospective adoptive parents selected by the parent or adoption entity, to consider and weigh all relevant factors, including but not limited to the:

- Permanency offered by each placement;
- Established bond between the child and the current caregiver with whom the child is residing if that placement is a potential adoptive home;
- Stability of the current placement if that placement is a potential adoptive home, as well as the desirability of maintaining continuity of that placement;
- Importance of maintaining sibling relationships, if possible;



- Reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference; and
- Right of the parent to determine an appropriate placement for the child.

These changes clarify the current factors in statute, removes a factor related to certain grounds for termination of parental rights to be considered (an impossibility under the new language) and removes a recursive factor, “what is best for the child,” as the overarching purpose of the factors is to determine what is in the child’s best interests.

### ***Rebuttable Presumption***

The bill creates a rebuttable presumption that it is in the child’s best interest to remain in his or her current placement if that placement is a prospective adoptive placement and the child has been in that placement for at least 9 continuous months or 15 of the last 24 months preceding the filing of the motion to intervene. The court must grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence for the intervention. The limited party status expires upon the issuance of a final order on the motion to intervene and for the change of placement of the child. To rebut the presumption, the intervening party must prove by competent and substantial evidence that it is in the best interests of the child to disrupt the current stable prospective adoptive placement using the above-described best interest factors, and any other factors the court deems relevant. These changes further highlight the legislative intent to reduce the disruption of stable and bonded long-term placements by increasing the burden of proof on an intervenor in cases in which a child is in a stable and bonded long-term placement that is a prospective adoptive placement.

### ***Transition Plan***

The bill requires the DCF to develop a transition plan to minimize the trauma of removal of the child from his or her current placement if the court grants the motion to intervene and orders a change of placement to the prospective adoptive placement identified by the parent or adoption entity.

The bill changes “minor child” to “child” and makes other conforming changes throughout.

### **Office of Program Policy Analysis and Government Accountability (OPPAGA) Study**

The bill also creates an unnumbered section of law requiring the OPPAGA to conduct a comparative analysis nationally of state processes that allow private adoption entities to intervene or participate in dependency cases. The analysis should look at processes, statutory fee limits, and any regulations on marketing and client recruitment. The bill requires the DCF to provide OPPAGA a list of all licensed adoption entities by July 15, 2023, and for all licensed child-caring and child-placing agencies to provide OPPAGA with any data requested related to contact information for any intermediary adoption entities the agency contracts with, fees and compensation for any portion of intervention adoptions, and related costs. The analysis and report is due to the President of the Senate and Speaker of the House of Representatives by January 1, 2024.

The bill takes effect July 1, 2023.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.<sup>41</sup> Other due process rights include notice and appointment of counsel for indigent parents.<sup>42</sup>

The Florida Supreme court has held in *Padgett v. Dep’t of Health & Rehab. Servs.*, 577 So. 2d 565, 570 (Fla. 1991), that while a parent has a fundamental right to raise his or her child, that right is not absolute and is subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail.<sup>43</sup>

Florida’s 3<sup>rd</sup> DCA stated it succinctly as “the wishes of the parents are a factor, but those wishes must be considered with the other [seven] factors, which relate to a determination of what is in the best interest of the child.”<sup>44</sup>

<sup>41</sup> *Santosky v. Kramer*, 455 U.S. 745, 756, 769 (1982).

<sup>42</sup> *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).

<sup>43</sup> Citing *In re Camm*, 294 So. 2d 318, 320 (Fla. 1974).

<sup>44</sup> *E.Q. v. Dep’t of Child. & Fams.*, 208 So. 3d 1258, 1260 (Fla. 3d DCA 2017).

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 63.082 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.