

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 Committee on Fiscal Policy

BILL: SB 320

INTRODUCER: Senator Gaetz

SUBJECT: Adoption and Foster Care

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Fav/CS
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 320 seeks to increase the number of adoptions of children from foster care. The bill creates a program to award incentive payments to community-based care lead agencies and their subcontractors for achieving specified adoption performance standards. The bill re-creates a program to provide an additional adoption benefit for qualifying employees of state government who adopt a child from the foster care system.

The bill establishes the annual adoption achievement awards. The Governor must select and recognize one or more individuals, families, or entities that have made significant contributions towards efforts to find permanent homes through adoption for children in foster care. The DCF is required to create categories and criteria for the awards and seek nominations of potential recipients in each category.

II. Present Situation:

Financial Incentives to Increase Adoptions of Children from Foster Care

In 1997, Congress enacted the Adoption and Safe Families Act (ASFA) as part of a larger strategy to reduce the number of children in foster care.¹ Adoptions of children from the foster care system have increased over the past decade and a half. Before the ASFA, 25,700 children had been adopted from foster care in 1995 nationwide. Those numbers started to increase,

¹ Pub. L. No. 105-89.

eventually reaching over 50,000 by 2000, and the number of adoptions has exceeded more than 50,000 almost every year since, with a high of more than 57,000 in 2009.²

A major provision of the ASFA related to adoption created an incentive fund under Title IV-E of the Social Security Act to reward states that increased adoptions of children in the foster care system. If states increased the number of children adopted from foster care over a previous year's high mark, they were awarded an incentive of \$4,000 per adoption increase and \$2,000 per special needs adoption increase.³ Funding for the program has been reauthorized about every five years.⁴

In the 2003 and 2008 reauthorizations of the incentive fund, Congress provided an additional incentive to encourage states to increase the adoptions of "older" children. Older children were defined as nine years of age or older. Children most likely to be adopted are under the age of five. Beginning at the age of nine, children tend to be harder to place in adoptive families. In 2008 the incentive was set at \$4,000 per adoption increase, \$4,000 per special needs adoption increase, and \$8,000 per older child adoption increase.⁵ An additional provision of the 2008 reauthorization was the inclusion of an incentive for states that increased their rate of adoptions. This new rate incentive was to assist states that had successfully continued to place children in adoptive families while the actual numbers of adoption went down due to decreased numbers of children in foster care.⁶

The 2014 reauthorization included provisions to incentivize timely adoptions and placements into subsidized guardianships.⁷ The 2014 incentive was set at \$5,000 per adoption increase, \$7,500 per pre-adolescent (children between 9 and 14 years old) adoption increase, and \$10,000 per older child adoption increase.⁸

² U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, *Adoption of Children with Public Child Welfare Agency Involvement By State, FY 2003 through 2013, (July 2014)* available at http://www.acf.hhs.gov/sites/default/files/cb/children_adopted.pdf (last visited Feb. 26, 2015).

³ Pub. L. No. 105-89.

⁴ The Adoption Promotion Act of 2003 (Pub. L. No. 108-145), the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351), and the Preventing Sex Trafficking and Strengthening Families Act in 2014 (Pub. L. No. 113-183).

⁵ *Id.*

⁶ *Id.*

⁷ Library of Congress, Congress.gov, *Public Law (9/24/2014) Summary of H.R. 4980 (113th Congress)*, available at <https://www.congress.gov/bill/113th-congress/house-bill/4980> (last visited Mar. 1, 2015).

⁸ 42 U.S.C. 673b.

Since 2008, Florida has received one of the largest amounts of those incentives, second only to Texas:^{9,10}

	FFY 2008	FFY 2009	FFY 2010	FFY 2011	FFY 2012	FFY 2013
Incentives Earned	\$9.75M	\$6.45M	\$3.84M	\$1.99M	\$3.69M	\$3.49M ¹¹
Foster Child Adoptions	3,870	3,735	3,391	2,945	3,294	3,415

States are required to spend incentive funds to provide for any activity or services, including post-adoption services that may be provided under Part B or E of Title IV of the Social Security Act. Florida has always used 100 percent of this funding to offset the cost of maintenance adoption subsidies (MAS), monthly payments for adoptive parents to support the maintenance of a child.^{12,13}

In Florida, community-based care lead agencies (CBCs) under contract with the Department of Children and Families (DCF) are responsible for providing pre-adoption services, post-adoption services, and MAS for children adopted from the foster care system. While the DCF monitors performance measures and captures certain data related to adoption, the CBCs and their subcontractors do not currently receive state incentive payments for meeting the performance measures in their contracts or other accountability reports.¹⁴

Adoption Benefits for Parents Adopting Children from Foster Care

Current Benefits

Under s. 409.166, F.S., the DCF is authorized to pay a MAS to parents adopting “special needs” children. The term “special needs child” is defined as a child meeting all of the following conditions:

- A child whose permanent custody has been awarded to the DCF or to a licensed child-placing agency;
- A child who has established significant emotional ties with his or her foster parent(s) or is not likely to be adopted because he or she is:
 - Eight years of age or older;
 - Developmentally disabled;

⁹ U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, *Adoption Incentive Earning History by State: FY 1998-2013 (Sept. 2014)*, available at http://www.acf.hhs.gov/sites/default/files/cb/adoption_incentive_history.pdf (last visited Feb. 27, 2015).

¹⁰ Florida has not, however, taken advantage of a provision in the Fostering Connections to Success and Increasing Adoptions Act of 2008 allowing states to extend MAS to the age of 21.

¹¹ Florida has to date only received 57 percent of the 2013 award and will receive the remaining balance when additional funding becomes available. Communication from the Department of Children and Families, Office of Child Welfare (Feb. 1, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹² Florida Department of Children and Families, *Senate Bill 320 Analysis* (Jan. 27, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹³ See s. 409.166(2)(f), F.S.

¹⁴ Florida Department of Children and Families, *Senate Bill 320 Analysis* (Jan. 27, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Physically or emotionally handicapped;
- Of black or racially-mixed parentage; or
- A member of a sibling group of any age, provided two or more members of a sibling group remain together for purposes of adoption; and
- Except when the child is being adopted by the child's foster parents or relative caregivers, a child for whom a reasonable but unsuccessful effort has been made to place the child without providing a maintenance subsidy.

The MAS is \$5,000 annually paid to the adoptive parents on a monthly basis, for the support and maintenance of a child until his or her 18th birthday, or in an amount other than \$5,000 annually as determined by the adoptive parents and the DCF. The agreement between the adoptive parents and the DCF for the MAS must take into consideration the circumstances of the adoptive parents and the needs of the child being adopted. The amount of subsidy may be adjusted based on changes in the needs of the child or circumstances of the adoptive parents; however, in no case may the amount of the monthly payment exceed the foster care maintenance payment that would have been paid during the same period if the child had been in a foster family home.¹⁵

The DCF may also provide adoption assistance to the adoptive parents for assistance initiated after the adoption of the child for medical, surgical, hospital, and related services needed as a result of a physical or mental condition of the child which existed before the adoption and is not covered by Medicaid, Children's Medical Services, or Children's Mental Health Services. Such assistance may be initiated at any time but must terminate on or before the child's 18th birthday.¹⁶

Adoptive parents are also eligible to be reimbursed, retroactive to January 1, 1987, for up to \$1,000 in nonrecurring expenses related to the adoption of a child which were incurred by the adoptive parents. Nonrecurring expenses are one-time expenses, such as attorney's fees, court costs, birth certificate fees, travel expenses, agency fees, and physical examination fees.¹⁷

Children who were adopted from foster care after May 5, 1997, are also exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs at a Florida College System institution or at a state university. The exemption remains valid until the student reaches 28 years of age.¹⁸ In addition, a child who was at least 16 years of age and was adopted from foster care after spending at least six months in licensed care within the 12 months immediately preceding the adoption, is eligible for post-secondary services and support under the Road-to-Independence Program.¹⁹

Additional Benefit for State Employees Adopting Children from Foster Care

In 2000, the Legislature created a program to provide a one-time cash benefit to employees of state government or of a water management district who adopted a child. Qualifying employees

¹⁵ Section 409.166(4), F.S.

¹⁶ *Id.*

¹⁷ Section 409.166(7), F.S.

¹⁸ Section 1009.25(1)(d), F.S.

¹⁹ Section 409.1451, F.S.

adopting a special-needs child, similarly defined under current law s. 409.166, F.S., were eligible to receive a monetary benefit in the amount of \$10,000 per child; qualifying employees adopting a child other than a special-needs child were eligible to receive a monetary benefit in the amount of \$5,000 per child.²⁰ This program allowed for the benefit to be paid for both private and foreign adoptions. The law was amended in 2001 to exclude water management district employees and restrict the program to state employees who adopted a child from the state foster care system.²¹

The program was expanded in 2007 to include water management district employees, county school district employees, community college and university employees, and instructional personnel employed by the Florida School for the Deaf and the Blind. Administration of the program was also transferred from the Department of Management Services to the DCF.²²

Appropriations for the program varied throughout its 10-year history:

Fiscal Year	Appropriation
2000-2001	\$140,000
2001-2002	\$140,000
2002-2003	\$100,000
2003-2004	\$1,200,000
2004-2005	\$1,795,064
2005-2006	\$888,623
2006-2007	\$1,735,957
2007-2008	\$1,835,957
2008-2009	\$1,835,957
2009-2010	\$1,835,957

Before the program was repealed in 2010, the program’s funding was usually not adequate to fund all of the eligible adoptions each year.²³ The bill analysis for CS/HB 803 (2007), that expanded the program to include categories of educational employees and moved the program to the DCF, stated:

- “Significant benefit funding shortfalls have occurred over the past two years. For example, in 2004, although almost \$1.8 million was appropriated, funding proved to be inadequate to fund all 243 eligible applications, and, therefore, only 179 were funded.”
- “In 2005, \$888,000 was appropriated, but only 89 of 167 eligible applications were funded.”

Historically, the majority of children who are adopted from the foster care system have been adopted by either their foster parents or a relative with whom the child has made an emotional bond. For example, in 2013 statewide data show:

- 27 percent were adopted by their foster parents;
- 50 percent were adopted by relatives; and

²⁰ Section 110.152, F.S. (2000). Ch. 2000-241, L.O.F.

²¹ Section 110.52, F.S. (2001). Ch. 2001-256, s. 16, L.O.F.

²² Section 409.1663, F.S. (2007). Ch. 2007-119, L.O.F.

²³ Chapter 2010-158, L.O.F.

- 22 percent were adopted by recruited parents.²⁴

It is unknown how many of those foster parents and relatives who adopted 78 percent of the adopted children in 2013 were state employees and would have been eligible for the incentive payment had the program continued.

Annual Adoption Achievement Awards

While there is currently no statutory requirement for the Governor to present an adoption achievement award, there is typically support for adoption – particularly of children from the foster care system – from the Executive Office of the Governor.

November is National Adoption Month, and throughout the month, the Governor’s Office of Adoption and Child Protection, the DCF, CBCs, and community partners recognize National Adoption Month throughout the state with celebrations, awareness runs, parties, and finalizations, among other activities.²⁵

Governor Rick Scott issued a proclamation announcing November 2014 as Florida Adoption Month and National Adoption Day on Saturday, November 22, 2014. Additionally, First Lady Ann Scott made a video encouraging Floridians to consider adopting a child from foster care. The proclamation and video were posted to the Explore Adoption website throughout November and December.²⁶

On November 12, 2014, the Governor and Cabinet met in Tallahassee, and Florida’s Chief Child Advocate reported on Florida’s recent successes with adoption. Local adoptive parents were also invited to share their adoption story. During the meeting, the Cabinet issued a resolution of congratulations and best wishes to all families celebrating National Adoption Day on November 22, 2014.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 409.1662, F.S., to establish an adoption incentive program to award incentive payments to CBCs and their subcontractors for meeting specific adoption performance standards. The bill also requires the DCF to complete a baseline assessment of CBC performance regarding the adoption of children from foster care. At a minimum, the assessment must identify:

- Number of families attempting to adopt from foster care;
- Number of families who have completed the adoption process;
- Number of children eligible for adoption;
- Number of children whose adoption has been finalized;
- Amount of time eligible children wait to be adopted;

²⁴ Florida Governor’s Office of Adoption and Child Protection 2014 Annual Report, p. 49, *available at* http://www.flgov.com/wp-content/uploads/childadvocacy/OACP_2014_FINAL.pdf (last visited Feb. 26, 2015).

²⁵ Florida Governor’s Office of Adoption and Child Protection 2014 Annual Report, p. 21, *available at* http://www.flgov.com/wp-content/uploads/childadvocacy/OACP_2014_FINAL.pdf (last visited Feb. 26, 2015).

²⁶ Available at www.adoptflorida.org (last visited Feb. 26, 2015).

²⁷ Florida Governor’s Office of Adoption and Child Protection 2014 Annual Report, *available at* http://www.flgov.com/wp-content/uploads/childadvocacy/OACP_2014_FINAL.pdf (last visited Feb. 26, 2015).

- The number of disruptions;
- The number of dissolutions;
- Number of disruptions and dissolutions that could have been prevented by the CBC;
- The time needed to complete each phase of the adoption process;
- Expenditures made toward the recruitment of adoptive families;
- Any initiative to improve adoption performance and streamline the adoption process; and
- Results from any feedback from prospective and adoptive parents.

Once the baseline has been established for the adoption measures, the DCF will establish measurable outcome targets, define the methods for measuring these targets, determine the level of performance required to earn an incentive payment, and the amount of payment that can be earned for each target.²⁸ The DCF is required to update the assessment annually.

Section 2 creates s. 409.1664, F.S., to reestablish an adoption benefit program for state agency employees who adopt children from the foster care system. The benefit program proposed in the bill is the same as the program that was repealed in 2010, providing the same amount of benefit payment for the adoption of a child within the child welfare system (\$5,000), with a higher benefit amount for adoptions of children with special needs as defined in s. 409.166, F.S., (\$10,000). The adoption benefit program is available to both full- and part-time employees of a state agency who are paid from regular salary appropriations. Under the bill, the program – like the former program – does not provide for means testing. The bill provides that the program’s capacity is limited by the amount of funds appropriated.

Section 3 creates s. 409.1666, F.S., to establish the annual adoption achievement awards. The Governor must select and recognize one or more individuals, families, or entities that have made significant contributions towards efforts to find permanent homes through adoption for children in foster care. The DCF is required to create categories and criteria for the awards and seek nominations of potential recipients in each category.

While the bill specifies that the direct support organization established with the Governor’s Office of Adoption and Child Protection may accept donations to be given to award recipients and may also provide other tokens of recognition, currently no direct support organization has been established.²⁹

Section 4 provides an effective date for the bill of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ See Florida Department of Children and Families, *Senate Bill 320 Analysis* (Jan. 27, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁹ Section 39.0011, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides financial incentives to community-based care lead agencies for specified achievement and to state agency employees who adopt children who are in the child welfare system.

C. Government Sector Impact:

Adoption Incentive Program for Community-based Care Lead Agencies and Adoption Benefit Program for Employees of State Agencies

SB 320 does not appropriate funds for the adoption incentive program or the adoption benefit program.

Maintenance Adoption Subsidies

It is unknown whether either or both of the programs created under the bill will result in an increase in adoptions. However, to the extent that additional adoptions occur under the bill, the DCF could experience the need for additional funds for maintenance adoption subsidies. The potential fiscal impact is indeterminate.

Governor's Achievement Award

There is no direct support organization established under s. 39.0011, F.S. It is unclear if one will be established or what entity will assume responsibility to accept donations for awards.

Technology Changes

According to the DCF, the bill will impact the department's SACWIS system, Florida Safe Families Network (FSFN), and the following enhancements will be made: web page and all underlying component changes, business logic and database changes, reporting environment changes, and system documentation changes. The DCF estimates that the technology changes will require 2,411 man hours of effort or \$268,510.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 409.1662, 409.1664, and 409.1666.

IX. Additional Information:

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

See PCS 845714 by Fiscal Policy (Recommended by Appropriations Subcommittee on Health and Human Services) on February 20, 2015.

- B. **Amendments:**

None.