

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2046  
 SPONSOR: Senator Campbell  
 SUBJECT: Adoption  
 DATE: March 8, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 2046 prohibits the Department of Children and Families from removing a foster child from a foster home or court-ordered custodian whose application to adopt the child has been denied by the department unless the court has ordered the removal, the foster parent or custodian agrees to the removal or does not challenge the removal, or the child is in danger of abuse or neglect. The court is also provided the authority to waive the department’s consent to adopt if it is determined that the consent has been unreasonably withheld.

This bill substantially amends sections 39.812 and 63.062 of the Florida Statutes.

**II. Present Situation:**

A child who has been adjudicated dependent may be placed either in the home of one or both parents, with a relative or another adult approved by the court, or in the custody of the Department of Children and Families which includes a foster home placement [ss. 39.501(2) and 39.521(1)(b), F.S.]. Adjudication of dependency begins the process of working to achieve permanency for the child, sometimes through reunification with the parents and, if this is not possible, through termination of parental rights and either adoption or one of the other permanency options delineated in Part IX of ch. 39, F.S. Children whose parents’ parental rights have been terminated and who are in the custody of the department will continue in the department’s custody for the purpose of adoption [s. 39.811(2), F.S.] with the court retaining jurisdiction until the child is adopted [s. 39.812(4), F.S.].

Foster parents often pursue adoption of the child for whom they have cared. Rule 65C-16.002, F.A.C., provides that the policy of the department in selecting adoptive families is that the adoptive placements must be consistent with the best interest of the child. Considerations

identified in assessing the best interest of the child include the following options for adoptive families: grandparents, other relatives, current custodian, non-custodian with whom the child has a relationship, and family new to the child. In evaluating the potential adoptive families, the department considers such aspects as the child's choice, as well as the adoptive families' previous child rearing experiences, willingness to adopt siblings, commitment to respect and educate the child about his or her heritage, marital status, residence, income, adequate space and living conditions of the home and neighborhood, health, other children in the family, and meeting the background screening requirements [Rule 65C-16.005(3), F.A.C.]. Adoption applicants who are adversely affected by a decision of the department may have the dispute reviewed by the local Adoption Review Committee, with the final decision made by the district administrator or the chief executive director of the community-based care lead provider. Rule 65C-16.008, F.A.C., provides that the adoptive applicant has the option of requesting an administrative hearing pursuant to ch. 120, F.S. However, the rule stipulates that the adoptive applicant does not have the right to appeal the department's decision regarding the selection of the adoptive family for a particular child.<sup>1</sup> The department reports that the adoptive applicant may appeal the department's disqualification of the applicant to become an adoptive parent.

Chapter 63, F.S., sets forth the statutory framework for adoptions. The adoption of children who become available for adoption after parental rights have been terminated pursuant to ch. 39, F.S., is governed by both ch. 63, F.S., and s. 39.812, F.S., with certain exemptions. Section 63.142(4), F.S., provides for judgments of adoptions to be entered upon the court's determination that the adoption is in the best interest of the person being adopted. However, the court's jurisdiction in granting the judgement for adoption for children whose parental rights were terminated pursuant to ch. 39, F.S., is governed by s. 39.812, F.S. Section 39.812(4), F.S., stipulates that the jurisdiction of the court after the department has been given custody of the child for purpose of adoption is to "review the status of the child and the progress being made toward permanent adoption placement" [s. 39.812(4), F.S.]. The sole condition provided for the court's review of the adoption placement is for good cause shown by the guardian ad litem for the child at which time the appropriateness of the adoptive placement may be reviewed. The court has recognized that its continuing jurisdiction provides the authority to not approve an inappropriate selection and has ruled that it does not have the jurisdiction to select different adoptive parents from the department [C.S. and J.S. v. S.H. and K.H., 671 So.2d 260, 1996].

Once the department has been granted custody of the child for the purpose of adoption, it is authorized to become a party to any proceeding for the legal adoption of the child and to consent to the adoption (s. 39.812(1), F.S.). Section 39.812(1), F.S., further provides that the department's consent alone shall be sufficient in all cases. Section 63.062, F.S., stipulates the consents required for an adoption. However, subsection (7) of s. 63.062, F.S., permits the adoption entity with which the minor has been placed to provide the consent to the adoption if parental rights to the minor have previously been terminated. In such instances, other consents are not required. The petition for adoption for children under the jurisdiction of ch. 39, F.S., must be filed in the circuit court which terminated the parental rights and must include a copy of the consent executed by the department. This requirement that the petition for adoption for ch. 39,

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<sup>1</sup> The prohibition to using the ch. 120, F.S., administrative hearing process to appeal the department's decision regarding the selection of an adoptive family is a modification to the rule issued August 2003. It has been reported that this revision is currently being challenged.

F.S., children include the department's consent for the adoption appears to limit the parties that can petition to adopt these children to those families for whom the department has granted the consent to adopt. A recent court case upheld the department's authority to consent to an adoption or to withhold its consent [Department of Children and Family Services v. B.Y., 2003 WL 23095250 (Fla. App. 4 Dist. 2003)].

### **III. Effect of Proposed Changes:**

Senate Bill 2046 prohibits the Department of Children and Families from removing a foster child from a foster home or court-ordered custodian whose application to adopt the child has been denied by the department unless the court has ordered the removal, the foster parent or custodian agrees to the removal or does not challenge the removal, or the child is in danger of abuse or neglect. The court is also provided the authority to waive the department's consent to adopt if it is determined that the consent has been unreasonably withheld.

Specifically, the bill amends s. 39.812, F.S., to prohibit the department from removing a foster child who has resided for at least 6 months with foster parents who are licensed or court-ordered custodians when either the foster parent or custodian has applied for adoption and the application for adoption has been denied, unless such removal is by order of the court. Exceptions are provided for when the child is believed to be at imminent risk of abuse or neglect, 30 days have expired since the foster parent received written notice of the denial and no formal challenge has been filed, or the foster parent agrees to the child's removal.

The bill also amends ss. 39.812(5) and 63.062, F.S., to allow the court to waive the required consent of the department in ch. 39, F.S., adoptions if the court determines that the consent is being unreasonably withheld. This provision appears to authorize the court to select adoptive parents that have not received the department's consent, when such consent is waived by the court under the identified conditions.

The bill takes effect upon becoming law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Children and Families reports that there could be a significant fiscal impact associated with litigation stemming from adoption denials but is not able to quantify this fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Children and Families reports that the prohibition against removing a foster child from a foster parent when the application for adoption has been denied restricts the department's ability to move a child to another prospective adoptive home and, in turn, potentially delays the department's actions for achieving permanency for the child. The department contends that such delays could result in the department's failure to comply with the federal requirements for achieving permanency and, thus, jeopardize federal funding. However, the situations to which this provision applies are primarily those where there are more than one family vying to adopt the child, and the delay is in the determination of which family will be granted the judgement for adoption.

There have also been reports indicating that the issues surrounding the removal of foster children from the homes of foster parents when their applications for adoption have been denied may be broader than the bill addresses. Concerns have been expressed as to the reasons for denial of some applications for adoptions by the department, lack of provisions of opportunities to remedy issues identified that resulted in denied applications, as well as the need to consider the attachment of the child to the foster parents or prospective adoptive parents when the adoption is being considered or is denied. All of these issues deal with the decision to remove children after long standing relationships have developed and with whether there should be some oversight of the department's decisions relative to adoptive families which is the focus of the amendment to s. 39.812, F.S., provided by this bill.

The authority provided to the court by this bill to select adoptive parents in ch. 39, F.S., cases without the consent of the Department of Children and Families when the department's consent is considered unreasonably withheld appears to broaden the jurisdiction of the court. With this bill, the court may have the jurisdiction to not only review the appropriateness of the adoptive

family for whom the department granted consent for the adoption, but also to review the appropriateness and select an adoptive family for whom the department's consent was not granted.

The authority of the court to waive the department's consent to adopt within ch. 63, F.S., was placed in s. 63.062, F.S., which is the section pertaining to the persons required to consent to adoption. Section 63.064, F.S., however, provides for when the consent for adoption may be waived. Since this section is dedicated to waivers of the consent to adoption, there may be merit in either placing the bill's waiver language in s. 63.064, F.S., or adding a reference to the waiver in this section.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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