A bill to be entitled
An act relating to the Florida Birth-Related Neurological Injury Compensation Association; amending s. 766.303, F.S.; requiring the association to administer the Florida Birth-Related Neurological Injury Compensation Plan in a manner that promotes and protects the interests of children who have birth-related neurological injuries; amending s. 766.315, F.S.; revising the membership of the association board; revising the process for recommending new directors; authorizing the Governor or the Chief Financial Officer to remove a director from office for specified reasons; revising the powers of the directors; providing that meetings of the board of directors are subject to public meetings requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 766.303, Florida Statutes, is amended to read:

766.303 Florida Birth-Related Neurological Injury Compensation Plan; exclusiveness of remedy.—

(1) There is established The Florida Birth-Related Neurological Injury Compensation Plan is established for the purpose of providing compensation, irrespective of fault, for birth-related neurological injury claims. The such plan applies shall apply to births occurring on or after January 1, 1989, and shall be administered by the Florida Birth-Related Neurological
Injury Compensation Association. The association shall
administer the plan in a manner that promotes and protects the
health and best interests of children who have birth-related
neurological injuries.

Section 2. Section 766.315, Florida Statutes, is amended to
read:

766.315 Florida Birth-Related Neurological Injury
Compensation Association; board of directors.—

(1) (a) The Florida Birth-Related Neurological Injury
Compensation Plan shall be governed by a board of seven five
directors which shall be known as the Florida Birth-Related
Neurological Injury Compensation Association. The association is
not a state agency, board, or commission. Notwithstanding the provision of s. 15.03, the association may use the state seal.

(b) The directors shall be appointed for staggered terms of 3 years or until their successors are appointed and have qualified.

(c) The directors shall be appointed by the Chief Financial Officer as follows:

1. One citizen representative who is not affiliated with
   any of the groups identified in subparagraphs 2.-7.

2. One representative of participating physicians.

3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

6. One parent or guardian of a child, living or deceased, who is or was a beneficiary of the plan.
7. One member in good standing of The Florida Bar who is not affiliated with any of the groups identified in subparagraphs 2.-6., and who has experience advocating on behalf of children who have been injured in a health care setting.

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names to be recommended by the Florida Obstetric and Gynecologic Society; the representative of hospitals from a list of at least three names to be recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of American Insurers, and one by the National Association of Independent Insurers; and the representative of physicians other than participating physicians from a list of three names to be recommended by the Florida Medical Association and a list of three names to be recommended by the Florida Osteopathic Medical Association; the parent or guardian of a child from a list of three names to be recommended by the Governor; and the member of The Florida Bar from a list of three names to be recommended by the president of The Florida Bar. In no case shall The Chief Financial Officer be required to make any appointment from among the nominees of such respective associations or persons.

(b) Upon the occurrence of a vacancy, the Chief Financial Officer shall promptly notify the appropriate medical association or person to request recommendations upon the occurrence of any vacancy, and like nominations may be made for the filling of the vacancy.
(b) The Governor or Chief Financial Officer may remove a director from the board for misconduct, malfeasance, misfeasance, or neglect of duty while in office. Any vacancy so created shall be filled as provided in this subsection.

(3) The directors may not transact any business or exercise any power of the plan except upon the affirmative vote of four directors. The directors shall serve without salary, but are entitled to receive reimbursement for actual and necessary expenses incurred in the performance of his or her official duties as directors of the plan in accordance with s. 112.061. The directors shall not be subject to any liability with respect to the administration of the plan.

(4) The board of directors shall have the power to:

(a) Administer the plan.

(b) Administer the funds collected on behalf of the plan.

(c) Administer the payment of claims on behalf of the plan.

(d) Direct the investment and reinvestment of any surplus funds over losses and expenses if, provided that any investment income generated thereby remains credited to the plan.

(e) Reinsure the risks of the plan in whole or in part.

(f) Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

(g) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the plan is created.

(h) Enter into such contracts as are necessary or proper to administer the plan.

(i) Employ or retain such persons as are necessary to
perform the administrative and financial transactions and responsibilities of the plan and to perform other necessary and proper functions not prohibited by law.

(j) Take such legal action as may be necessary to avoid payment of improper claims.

(k) Indemnify any employee, agent, member or alternate member of the board of directors or alternate thereof, or other person acting on behalf of the plan in an official capacity, for expenses, including attorney’s fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any action, suit, or proceeding, including appeals any appeal thereof, arising out of such person’s capacity to act on behalf of the plan if; provided that such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the plan and the health and best interest of the child who has birth-related neurological injuries, and if provided that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was lawful.

(5)(a) Money may be withdrawn on account of the plan only upon a voucher as authorized by the association.

(b) All meetings of the board of directors are subject to s. 286.011, and all books, records, and audits of the plan are open to the public for reasonable inspection to the general public, except that a claim file in the possession of the association or its representative is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement.
of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the association is subject to the authority of the board of directors, which is responsible therefor.

(c) Each person authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any funds shall post a blanket fidelity bond in an amount reasonably sufficient to protect plan assets, as determined by the plan of operation. The cost of such bond must will be paid from the assets of the plan.

(d) Annually, the association shall furnish audited financial reports to a any plan participant upon request, to the Office of Insurance Regulation of the Financial Services Commission, and to the Joint Legislative Auditing Committee. The reports must be prepared in accordance with accepted accounting procedures and must include such information as may be required by the Office of Insurance Regulation or the Joint Legislative Auditing Committee. At any time determined to be necessary, the Office of Insurance Regulation or the Joint Legislative Auditing Committee may conduct an audit of the plan.

(e) Funds held on behalf of the plan are funds of the State of Florida. The association may only invest plan funds only in the investments and securities described in s. 215.47, and shall be subject to the limitations on investments contained in that section. All income derived from such investments must will be credited to the plan. The State Board of Administration may invest and reinvest funds held on behalf of the plan in accordance with the trust agreement approved by the association.
and the State Board of Administration and within the provisions of ss. 215.44-215.53.

Section 3. This act shall take effect July 1, 2013.