

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 Appropriations Subcommittee on Health and Human Services

BILL: PCS/SB 320 (845714)

INTRODUCER: Appropriations Subcommittee on Health and Human Services and Senator Gaetz

SUBJECT: Adoption and Foster Care

DATE: February 20, 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>	Recommended: Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/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 prohibits the Department of Children and Families from showing prejudice against a caregiver of a child in foster care who wishes to educate at home any child placed in his or her home through the child welfare system.

The bill requires that, one year after a child's adoption is finalized, the child-placing agency or community-based care agency is required to visit in-person or contact by telephone the child and his or her adoptive family as a post-adoption service. The bill also requires the governor to annually select and recognize one or more individuals, families, or entities that have made significant contributions to the adoption of children from foster care.

The bill appropriates \$10 million of recurring general revenue to fund and administer the programs created under the bill. Additional recurring fiscal impacts for adoption maintenance adoption subsidies are indeterminate at this time.

The bill has an effective date of July 1, 2015.

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 ASFA, 25,700 children had been adopted from foster care in 1995 nationwide. Those numbers started to increase, 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 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 \$2,000 to \$4,000 per child.³ Funding for the program has been reauthorized 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 those 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. 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

¹ Pub. L. No. 105-89.

² U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, 2013. *Adoption of Children with Public Child Welfare Agency Involvement By State, FY 2003 through 2013*, available at http://www.acf.hhs.gov/sites/default/files/cb/children_adopted.pdf. (last visited Jan. 31, 2015).

³ Pub. L. No. 105-89.

⁴ The Adoption Promotion Act of 2003 (PL 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 County Welfare Directors Association of California 2014 *Summary of Public Law 113-183*, available at www.cwda.org/downloads/tools/csec/HR-4980-Summary-and-link-to-law.pdf. (last visited Jan. 31, 2015).

Since 2008, Florida has received one of the largest amounts of those incentives, second only to Texas.^{8,9}

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Incentives Earned	\$9.75M	\$6.45M	\$3.84M	\$1.99M	\$3.69M	\$3.49M ¹⁰
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).¹¹

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 contract or other accountability reports.¹²

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;
 - 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

⁸ U.S. Department of Health and Human Services, Administration on Children, Youth, and Families, 2013. *Adoption of Children with Public Child Welfare Agency Involvement By State, FY 2003 through 2013*, available at http://www.acf.hhs.gov/sites/default/files/cb/children_adopted.pdf. (last visited Jan. 31, 2015).

⁹ 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.

¹⁰ 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).

¹¹ *Id.*

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)

- 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.¹³

The MAS is to be paid to the adoptive parents in the amount of \$5,000 annually, paid 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 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 shall 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.¹⁴

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.¹⁵

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.¹⁶

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.¹⁷ In addition, a child who was at least 16 years of age and was adopted from foster 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.¹⁸

Additional Benefit for State Employees Adopting Children from Foster Care

In 2000, the Legislature created a program to provide a cash benefit to employees of state government or of a water management district who adopted a child. Qualifying employees adopting a child defined as a special-needs child under 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

¹³ Section 409.166, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 1009.25, F.S.

¹⁸ Section 409.1451, F.S.

\$5,000 per child.¹⁹ This program allowed for the benefit to be paid for both private and foreign adoptions. The law was amended in 2001 to restrict the program to state employees who adopted a child from the foster care system.²⁰

The program was expanded in 2007 to include county school district employees, community college and university employees, and instructional personnel employed by the Florida School for the Deaf and the Blind, in the list of employees eligible to receive the benefit. Administration of the program was also transferred in 2007 from the Department of Management Services (DMS) to the DCF.²¹

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

However, the program's funding was usually not adequate to fund all of the eligible adoptions each year before the program was repealed in 2010.²² 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 relative who are individuals and families 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
- 22 percent were adopted by recruited parents.²³

¹⁹ Section 110.152, F.S. (2000). Chapter 2000-241, Laws of Florida.

²⁰ Section 110.52, F.S. (2001). Chapter 2001-256, Laws of Florida.

²¹ Section 409.1663, F.S. (2007). Chapter 2007-119, Laws of Florida.

²² Chapter 2010-158, Laws of Florida.

²³ *Id.*

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.

Homeschooling of Children in Foster Care

A DCF administrative rule²⁴ currently prohibits foster parents from homeschooling children in the foster care system. As a result of the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act²⁵ and the normalcy provisions in Florida law,²⁶ the DCF's administrative rule is in the process of being amended to provide that when a child is placed into foster care, if it is in that child's best interest to remain in his or her school of origin, that should be the educational choice, if possible. If it is not in the child's best interest to remain in his or her school of origin, then other options may be considered, including private school, virtual school, and home schooling.

Intercountry Adoptions

Intercountry adoption of children is governed by both the laws of the country in which the child lives prior to the adoption and the country in which the adoptive parents live.

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) is an international agreement to safeguard intercountry adoptions. Concluded on May 29, 1993 in The Hague, the Netherlands, the Convention establishes international standards of practices for intercountry adoptions. The United States signed the Convention in 1994, and the Convention entered into force for the United States on April 1, 2008.

The Convention applies to all adoptions by U.S. citizens habitually resident in the United States of children habitually resident in any country outside of the United States that is a party to the Convention. The Convention requires that countries who are party to it establish a central authority to be the authoritative source of information and point of contact in that country. The Department of State is the U.S. central authority for the Convention.

The U.S. Department of State requires that licensed child-placing agencies that conduct intercountry adoptions must be designated by the Department of State as an accredited entity for intercountry adoptions.

²⁴ Section 65C-13.029(1)(n)9., F.A.C., which reads: Education. Licensed out-of-home caregivers shall work in partnership with the child's case manager to address the child's educational needs and to allow for the continuation of school attendance. To further promote visibility within the community, children in care may not be home schooled.

²⁵ P.L. 110-351 contains the following: When the initial placement occurs, the agency must take into account the appropriateness of the current school and the proximity of that school to the placement.

²⁶ Section 409.145, F.S.

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 (EOG).

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.²⁷

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.²⁸

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, 2014.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 39.0016(2)(b), F.S., to require that when the DCF enters into statutorily-required agreements with district school boards and other local educational entities regarding education and related services for school-age children known to the DCF and children known to the DCF who are younger than school age but who would otherwise qualify for services from the district school board, such agreements must provide that when a child is placed into foster care, if it is in that child’s best interest to remain in his or her school of origin, that should be the educational choice, if possible. If it is not in the child’s best interest to remain in his or her school of origin, then other options may be considered, including private school, virtual school, and home schooling. The bill also requires that such agreements must prohibit the DCF from showing prejudice against out-of-home caregivers who desire to educate at home any children placed in their home through the child welfare system.

Section 2 creates s. 39.812(6), F.S., to require that, one year after a child’s adoption is finalized, the child-placing agency or community-based care agency is required to visit in-person or contact by telephone the child and his or her adoptive family as a post-adoption service. If the child and family have relocated to another state, the bill requires that the contact be made by telephone.

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 Jan. 31, 2015).

²⁸ Available at www.adoptflorida.org. (last visited Jan. 28, 2015)

²⁹ 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 Jan. 31, 2015)

Section 3 amends s. 409.145(2), F.S., to require that, for the caregiver of a child in foster care, the caregiver's first priority for maintaining educational stability for the child is to allow the child to remain in the school or educational setting he or she attended before entry into out-of-home care, unless it is not in the best interest of the child. If it is not in the best interest of the child, the caregiver must work with the case manager, the guardian ad litem, teachers, guidance counselors, and an educational surrogate if one has been appointed, to determine the best educational setting for the child, which may include a public school that is not the school of origin, a private school, virtual education programs, or education at home. The bill also prohibits the DCF and community-based care lead agencies from showing prejudice against out-of-home caregivers who desire to educate at home any children placed in their home through the child welfare system.

Section 4 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 these measures. 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;
- The number of disruptions;
- The number of dissolutions;
- Number of disruptions and dissolutions that could have been prevented by a CBC;
- The time needed to complete each phase of the adoption process;
- Expenditures made toward the recruitment of adoptive families;
- Any program or performance to improve 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.³⁰

Section 5 creates s.409.1664, F.S., to reestablish an adoption benefit program for state government 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, with a higher benefit amount for adoptions of children with special needs as defined in s. 409.166, F.S. 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.

³⁰ 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)

Section 6 creates s. 409.1666, F.S., to require the governor to select and recognize one or more individuals, families, or entities that have made significant contributions towards efforts to find permanent homes for children in care through adoption. 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.³¹

Section 7 creates s. 409.175(18), F.S., to bring Florida law into compliance with the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. The bill requires that:

- A licensed child-placing agency conducting intercountry adoptions must be designated by the U. S. Department of State as an accrediting entity for intercountry adoption services;
- A licensed child-placing agency providing adoption services for intercountry adoption in Hague Convention countries – both in incoming or outgoing cases – must meet the federal regulations pertaining to intercountry adoptions with convention countries; and
- A Florida adoption agency that provides intercountry adoption services for families residing in Florida must maintain a record that contains, at a minimum, the following:
 - All available family and medical history of the birth family;
 - All legal documents translated into English;
 - All necessary documents obtained by the adoptive parent in order for the child to attain U. S. citizenship, or if applicable, other legal immigration status; and
 - All supervisory reports prepared before an adoption and after the finalization of an adoption.

Section 8 creates an undesignated section of Florida law to provide that, for the 2015-2016 fiscal year, the sum of \$6.5 million in recurring funds from the General Revenue Fund is appropriated to the DCF for the creation of the adoption incentive program. The bill requires the Executive Office of the Governor (EOG) to place these funds in reserve until the DCF submits performance measures, targeted outcomes, and an expenditure plan for approval to the EOG and the chair and vice chair of the Legislative Budget Commission in accordance with s. 216.177, F.S.

Section 9 creates an undesignated section of Florida law to provide that, for the 2015-2016 fiscal year, the sum of \$3,425,356 in recurring funds from the General Revenue Fund is appropriated to the DCF for the creation of the adoption benefits for employees of state agencies, and the sum of \$74,644 in recurring funds from the General Revenue Fund is appropriated to the DCF for one full-time equivalent position to administer the program.

Section 10 provides an effective date for the bill of July 1, 2015.

³¹ Section 39.001, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

PCS/SB 320 provides financial incentives to community-based care lead agencies for specified achievement and to state government employees who adopt children who are in the child welfare system.

C. Government Sector Impact:

Adoption Incentive Program for Community-based Care Lead Agencies

For the 2015-2016 fiscal year, the bill appropriates the sum of \$6.5 million in recurring funds from the General Revenue Fund to the DCF for the creation of the adoption incentive program. The bill requires the Executive Office of the Governor (EOG) to place these funds in reserve until the DCF submits performance measures, targeted outcomes, and an expenditure plan for approval to the EOG and the chair and vice chair of the Legislative Budget Commission in accordance with s. 216.177, F.S.

Benefit Program for State Employees

For the 2015-2016 fiscal year, the bill appropriates the sum of \$3,425,356 in recurring funds from the General Revenue Fund to the DCF for the creation of the adoption benefits for employees of state agencies, and the sum of \$74,644 in recurring funds from the General Revenue Fund is appropriated to the DCF for one full-time equivalent position to administer the program.

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. Such a potential impact is indeterminate.

Governor's Achievement Award

Since there is no direct support organization already established to administer this awards process, it is unclear which entity will assume responsibility for funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.0016, 39.812, 409.145, and 409.175.

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

This bill creates two undesignated sections of Florida law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 18, 2015:

The committee substitute:

- Creates new requirements for the Department of Children and Families (DCF) when the DCF enters into statutorily-required agreements with district school boards and other local educational entities regarding education and related services for certain children known to the DCF. The bill requires that such agreements must prohibit the DCF from showing prejudice against out-of-home caregivers who desire to educate at home any children placed in their home through the child welfare system.
- Requires that, one year after a child's adoption is finalized, the child-placing agency or community-based care agency is required to visit in-person or contact by telephone the child and his or her adoptive family as a post-adoption service.
- Requires that caregivers of a child in foster care must abide by certain priorities for maintaining educational stability for the child, based on the best interests of the child.
- The bill prohibits the DCF and community-based care lead agencies from showing prejudice against out-of-home caregivers who desire to educate at home any children placed in their home through the child welfare system.

- Brings Florida law into compliance with the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.
- Appropriates general revenue to fund the adoption programs created under the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
