

**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 320

INTRODUCER: Senator Gaetz

SUBJECT: Adoption and Foster Care

DATE: February 9, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Favorable</b>
2.	_____	_____	AHS	_____
3.	_____	_____	FP	_____

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**I. Summary:**

SB 320 makes numerous additions to statutes to improve the adoption 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 agencies who adopt a child from the foster care system.

The bill also requires the Governor to select and recognize one or more individuals, families, or entities that have made significant contributions to the adoption of children from foster care each year.

The bill is anticipated to have a fiscal impact on state government.

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.<sup>1</sup> Whether it was the impact of the adoption incentive payments to states, other changes mandated by ASFA, or a combination of multiple factors, 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

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<sup>1</sup> Pub. L. No. 105-89.

number of adoptions has exceeded more than 50,000 almost every year since, with a high of more than 57,000 in 2009.<sup>2</sup>

A major provision of ASFA related to adoption created an incentive fund under Title IV-E of the Social Security Act to reward states if they 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.<sup>3</sup>

The funding for the program has been reauthorized every 5 years.<sup>4</sup> With each reauthorization came changes in the how incentive amounts were determined. The "baseline" or the number of adoptions a state must finalize to receive a share of the funds was reset. This helped states that had missed out the year before because some states now had a decreased number of children in foster care reducing the potential pool of children awaiting adoption. Some of these same states that had missed an incentive in a year were still making progress despite lower numbers because their rates of adoption placements were actually higher.<sup>5</sup>

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 a child nine years of age or older. This is because the 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 now \$8,000 per older child adoption increase.<sup>6</sup>

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.<sup>7</sup> The 2014 reauthorization includes provisions to incentivize timely adoptions and placements into subsidized guardianships.<sup>8</sup>

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<sup>2</sup> 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](http://www.acf.hhs.gov/sites/default/files/cb/children_adopted.pdf). (last visited Jan. 31, 2015).

<sup>3</sup> Pub. Law R. 105-89.

<sup>4</sup> The Adoption Promotion Act of 2003 (Pub. Law R. 108-145), the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. Law 110-351), and the Preventing Sex Trafficking and Strengthening Families Act in 2014 (Pub. Law R. 113-183).

<sup>5</sup> State Policy Advocacy and Reform Center. *The Reauthorization of the Adoption Incentive Fund: Opportunities to Expand Reinvestment of State Funds into Child Welfare Services*, 2013, available at <https://childwelfaresparc.files.wordpress.com/2013/08/the-reauthorization-of-the-adoption-incentive-fund.pdf>. (last visited Jan. 2015).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 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](http://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.<sup>9,10</sup>

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

States are required to spend incentive funding to provide to children of families any activity or service, 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.<sup>12</sup>

In Florida, community-based care (CBC) lead agencies are responsible for providing pre and post-adoption services, and maintenance adoption subsidies for children adopted from the foster care system. While the department 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.<sup>13</sup>

**Adoption Benefits for Parents Adopting Children from Foster Care**

***Current Benefits***

Under s. 409.166, F.S., the Department of Children and Families (DCF or department) is authorized to pay a maintenance adoption subsidy (MAS) to parents adopting “special needs” children. The term “special needs child” means all three of these conditions must be met:

- A child whose permanent custody has been awarded to the department or to a licensed child-placing agency;
- A child who has established significant emotional ties with his or her foster parents 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

<sup>9</sup> 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](http://www.acf.hhs.gov/sites/default/files/cb/children_adopted.pdf). (last visited Jan. 31, 2015).

<sup>10</sup> 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.

<sup>11</sup> 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* (February 1, 2015). (On file with the Senate Committee on Children, Families and Elder Affairs).

<sup>12</sup> *Id.*

<sup>13</sup> 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)

- 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.<sup>14</sup>

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 the 18th birthday of such child or in an amount other than \$5,000 annually as determined by the adoptive parents and the department. The agreement shall 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 upon 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.<sup>15</sup>

The department may also provide adoption assistance to the adoptive parents, for medical 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 shall terminate on or before the child's 18th birthday.<sup>16</sup>

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 have been incurred by 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.<sup>17</sup>

Children who were adopted from the department 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.<sup>18</sup> In addition, a child who was at least 16 years of age and was adopted from foster after spending at least 6 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.<sup>19</sup>

#### ***Additional Benefit for State Employees Adopting Children from Foster Care***

In 2000, the Legislature created a program to provide a cash benefit to any employee of the state 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

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<sup>14</sup> Section 409.166, F.S.

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

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 1009.25, F.S.

<sup>19</sup> Section 409.1451, F.S.

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.<sup>20</sup> This 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.<sup>21</sup>

The benefit 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 from the Department of Management Services (DMS) to the department.<sup>22</sup>

The Legislature funded the program at approximately \$1.8 million each year. This funding was unable to provide an incentive for every state employee who adopted during a budget year. The bill analysis for CS/HB 803 (2007) that expanded the program to include categories of educational employees and moved the program to DCF stated:

- Significant benefit funding shortfalls have occurred 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.
- Total appropriations for the program for years 2000 – 2005 have been \$3,063, 687, however, only 50 percent, or 300 of 602, of the eligible adoptions were funded.

The program was funded for ten years before being repealed in 2010.<sup>23</sup>

### **Annual Adoption Achievement Awards**

While currently there is 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 Governor's Office.

November is National Adoption Month and throughout the month the Governor's Office of Adoption and Child Protection, the department, CBC lead agencies, and community partners recognize National Adoption Month throughout the state with celebrations, awareness runs, parties, finalizations, and more. The Chief Child Advocate attended and participated in several finalization events to show the support of the Governor's Office.<sup>24</sup>

Governor Scott issued a proclamation announcing November 2014 as Florida Adoption Month and National Adoption Day on Saturday, November 22, 2014. Additionally, First Lady Scott

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<sup>20</sup> Section 110.152, F.S. (2000). Chapter 2000-241, Laws of Florida.

<sup>21</sup> Section 110.52, F.S. (2001). Chapter 2001-256, Laws of Florida.

<sup>22</sup> Section 409.1663, F.S. (2007). Chapter 2007-119, Laws of Florida.

<sup>23</sup> Chapter 2010-158, Laws of Florida.

<sup>24</sup> 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](http://www.flgov.com/wp-content/uploads/childadvocacy/OACP_2014_FINAL.pdf). (last visited January 31, 2015).

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.<sup>25</sup>

On November 12, 2014, the Governor's Cabinet met in Tallahassee and Florida's Chief Child Advocate reported on Florida's recent successes in 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.<sup>26</sup>

### 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 sub-contractors, for meeting specific adoption performance standards. The section also requires the department to complete a baseline assessment of CBC lead agency 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 the CBC;
- The time it takes 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 department 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.<sup>27</sup>

**Section 2.** creates s.409.1664, F.S., to reestablish an adoption benefit program for state 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.

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<sup>25</sup> Available at [www.adoptflorida.org](http://www.adoptflorida.org). Last visited January 28, 2015.

<sup>26</sup> 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](http://www.flgov.com/wp-content/uploads/childadvocacy/OACP_2014_FINAL.pdf). Last visited January 31, 2015

<sup>27</sup> Florida Department of Children and Families. Senate Bill 320 Analysis. (January 27, 2015) (on file with the Senate Committee on Children, Families, and Elder Affairs)

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 shows:

- 27% were adopted by their foster parents;
- 50% were adopted by relatives; and
- 22% were adopted by recruited parents.<sup>28</sup>

It is unknown how many of those foster parents and relatives who adopted 78 percent of the children adopted were state employees and would have been eligible for the incentive payment under the provisions of the bill. The proposed benefit program, like the former program, does not provide for means testing. The program would be limited by the amount of the appropriation

**Section 3.** 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 children in care permanent homes through adoption. The department 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.<sup>29</sup>

#### **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.

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

<sup>29</sup> Section 39.001, F.S.

**B. Private Sector Impact:**

SB 320 will provide financial incentives to community based care lead agencies for specified achievement and to state employees who adopt children who are in the child welfare system.

**C. Government Sector Impact:****Incentive Program for CBCs**

The bill does not contain a specific appropriation for this program. Currently the department does not collect data on all of the measures to be included in the baseline assessment and therefore, cannot determine the amount of the incentive payment which may be earned for each target at this time.

While the Florida Safe Families Network (FSFN) has the capability to obtain several of the measures for the baseline assessment, there are some measures that will require enhancements. According to the department, the FSFN work estimate related to these changes is 2,441 hours of effort, or \$268,510. This includes changes necessary to the web pages and all underlying components, including business logic and database changes, changes to the reporting environment to include the information, and modifications to system documentation.

In order for the department to monitor the time it takes to complete each phase of an adoption, a formal definition of the adoption phases would need to be established in rule. Once established, DCF would be able to determine which phases currently are being tracked in FSFN and what additional resources are needed.

**Benefit Program for State Employees**

The bill does not contain a specific appropriation for this program. An additional FTE will be needed by the department to implement this program – Salary, Benefits, Expense and HR Package nonrecurring cost of \$74,644 (recurring cost of \$71,762) The FTE would be used to establish rules, develop operating procedures, and process and approve all incoming applications for the adoption incentive payments and review and approve the applications for the state employee adoption benefit program.<sup>30</sup>

**Governor's Achievement Award**

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

**VI. Technical Deficiencies:**

None.

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<sup>30</sup> *Id.*

**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 Changes:**

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

None.

**B. Amendments:**

None.

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

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