

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 CS Adoption
SPONSOR(S): Mahon
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	6 Y, 0 N, w/CS	Davis	Collins
2) Civil Justice Committee		Billmeier	Billmeier
3) Health & Families Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1299 substantially amends Chapter 63, F.S., regarding adoption requirements. Some of the major provisions include:

- Changes the definition of “adoption entity.”
- Changes the definition of “primarily lives and works in Florida.”
- Revises duties of adoption entities to prospective adoptive parents.
- Revises conditions under which an adoption entity is the guardian of a minor; and authorizes the court to retain jurisdiction of a minor until the adoption is finalized within or outside of the state.
- Revises provisions relating to notice of petition to terminate parental rights pending adoption, required consent, and change of venue.
- Revises report and preliminary study requirements for placement of a minor by an adoption entity.
- Revises requirements for the affidavit of expenses and receipts; and revises applicability.
- Requires further proceedings if a petition for adoption is dismissed; and revises conditions under which a judgment terminating parental rights is voidable.
- Revises requirements concerning the disclosure of information pertaining to an adoption.
- Authorizes a petition for declaratory statement to be consolidated with a petition for adoption; and permits parents to finalize adoption in their home state.
- Provides an exception to applicability of the Interstate Compact on the Placement of Children; and revises provisions relating to prohibitions with respect to adoptions.

Information was not made available from the Department of Children and Family Services nor the affected entities as to the fiscal impact of the bill.

This bill takes effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: This bill provides that an unmarried biological father may lose parental rights if he does not comply with certain registry requirements.

Provide Limited Government: This bill limits the ability for the court to order investigations in certain adult adoption cases.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The 2003 Florida Adoption Act (ch. 2003-58, L.O.F.) substantially revised the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involved the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaced existing constructive notice provisions as previously applied to fathers who could not be identified or located. The category of "fathers" for whom notice and consent may be required was revised to incorporate and conform to the new definition of "unmarried biological father." Many changes were made, including:

- Deletes the statutory duty of a mother placing a child to identify a potential unmarried biological father.
- Allows for pre-birth execution of an affidavit of nonpaternity.
- Broadens the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expands placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revises venue provisions to include 4 primary venue options and waiver of venue.
- Revises a number of statutory timeframes including reducing the statute of repose period from 2 years to 1 year for any challenge to an adoption or termination of parental rights, reduces in half the time period between the date of personal or constructive service and the date of a final hearing, and extends the time period from 7 to 14 days in which to make adoption disclosures to birth and prospective adoptive parents, extends from 24 hours to 7 days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Families (department), and changes the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement.
- Revises the statutory forms for consent to adoption, for adoption disclosure and for notice of service of process, and eliminates the statutory forms for affidavits of nonpaternity and the waiver of venue to conform to changes in the bill in those areas.
- Revises provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat fee representation and for birth mothers by expanding recovery of pre-birth and post-birth expenses.
- Deletes requirements that all proceedings for adoption be conducted by the same judge that conducted the termination proceedings.
- Allows private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.

Currently, the statutes limit agencies from other states to place children in Florida, to those qualified by the Department of Children and Families [see s. 63.032(3), F.S.]. This restriction is the only legal authority preventing agencies that have lost their Florida license from obtaining a license in another state and continuing to place children here.

Under current law [s. 63.052(1), F.S.], once parental rights have been terminated, a child is permanently committed to an adoption entity by a court order. This means the court must place the child with an adoption entity rather than placement by virtue of consents signed by birth parents designating a placement.

State law [s. 63.082, F.S.] allows a birth parent to execute consent for placement of a minor with an adoption entity or qualified adoptive parents when the child is in the custody of the department. However, the law allows for the court to determine that this transfer is not in the child's best interests.

Current law [s. 63.082, F.S.] provides that the court with jurisdiction over a child pursuant to dependency proceedings continues jurisdiction over the child through adoption.

For children six months or older at the time a consent is executed, the law [s. 63.082(7), F.S.] provides for the revocation of such consent by the birth parent at any time prior to placement of the child. It also establishes time frames by which the adoption entity must return the child to the birth parent when there is a valid revocation of consent.

According to the department, at the present time, all petitions for termination of parental rights must include all information required by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Indian Child Welfare Act (ICWA). The UCCJEA and ICWA are federal requirements that must be complied with whether or not states enact legislation incorporating those acts. The UCCJEA prevents "forum shopping" and petitions before a court that should not have jurisdiction over a child. ICWA acknowledges tribal jurisdiction over Native American children and permits the intervention of a tribe for up to two years in any custody proceeding over a child who is a member or might be a member of that tribe.

Current law [s. 63.092(1), F.S.] requires an adoption entity to file a report to the court on any intended placement of a minor for adoption with any person who is not a relative or stepparent. The report must be filed prior to placement or within 48 hours thereafter.

According to the department, current statutory language [s. 63.097(2)(f)1., F.S.] does not allow birth parents to hire an attorney to represent them in an adoption proceeding, although adoptive parents and adoption entities are permitted to hire attorneys.

State law [s. 63.132(1)(b), F.S.] currently requires affidavits regarding fees in adoption cases to be very specific in order to avoid fraudulent fees.

Pursuant to the Interstate Compact on the Placement of Children (ICPC) [s. 409.401, F.S.], which Florida has ratified, adoption placements must comply with the law of the "receiving state" – the state where the child will be placed. Therefore, orders from other states terminating parental rights or finalizing adoptions under circumstances that are directly in conflict with Florida's statutory provisions preclude placement approval by the Florida ICPC Administrator.

State law [s. 63.212, F.S.] currently prohibits birth parents from placing children directly with prospective adoptive parents to prevent baby selling.

Current statute [s. 63.212(1)(c), F.S.] limits the payment of medical fees for a birth mother to a maximum of six weeks after the birth of the child.

Effect

This bill revises section 63.022, F.S. It revises legislative intent to allow legal custodians to participate in private adoption plans for children. This language would expand the category of people that can participate in adoption plans.

Section 2 of this bill revises a number of definitions in the adoption statute. It redefines “abandoned” to declare a child abandoned when the parent or person having legal custody makes “minimal” provision for the child’s support. “Minimal” is not further defined by the bill. It changes the definition of “adoption entity.” The current statutory definition of “adoption entity” limits agencies from other states to those “qualified by the department to place children in the State of Florida.” There are no other limits on agencies licensed in other states. The language in the bill removes the Department of Children and Families’ (department) authority to regulate agencies licensed by other states. According to the department,¹ this is of particular concern in light of the number of agencies that lose their licenses in Florida, who would simply re-license elsewhere, so that they can continue to place children in Florida under the auspices of an out-of-state license. The bill revises the definition of “legal custody” to give Florida courts more flexibility in dealing with adoptions of children from foreign countries. It provides a definition of a person who “primarily lives and works in Florida.”

Section 3 of the bill makes technical changes to s. 63.039, F.S.

Section 4 of this bill amends s. 63.0423, F.S., to clarify that different procedures to set aside a judgment terminating parental rights applies only when the minor is abandoned.

Section 5 of this bill amends s. 63.052(7), F.S., gives the court jurisdiction over a minor who has been placed for adoption until the adoption is finalized within or outside of this state.

Section 6 clarifies that if an unmarried biological father fails to take action to preserve his parental rights, his parental interests may be lost. Section 7 requires an unmarried biological father to keep his address on file with the registry up-to-date.

Section 8 of this bill amends sections 63.062(2)(d) and 63.062(3)(a), F.S., to state that an unmarried biological father who does not comply with each of the conditions provided in this subsection is deemed to have irrevocably waived and surrendered any rights in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

Section 63.062(3)(b), F.S., is amended to state that if the mother identifies a potential unmarried biological father whose location is unknown, the adoption entity that has been retained to terminate any parental rights that may be asserted by the potential unmarried biological father must therefore make a “good faith” effort to locate him. If the potential unmarried biological father’s location remains unknown and a search of the Florida Putative Father Registry fails to provide an address for him, the adoption entity shall have no further obligation to the potential unmarried biological father. This bill changes the duty of the adoption entity from making a “diligent” search to making a “good faith” effort to locate him.

Section 9 of the bill amends s. 63.064(3), F.S. Current law provides that a court may waive the consent to an adoption if the person whose consent is required has been declared incompetent and whose restoration to competency within a reasonable period of time is medically improbable. This bill requires the court to consider the best interests of the child in making this determination. The Adoption Committee of the Family Law Section of the Florida Bar is concerned that this provision provides too much judicial discretion.²

Section 10 amends s. 63.082(1)(c), F.S., to permit stepparents to witness a consent signed by minor parent. Current law only permits parents or legal guardians to act as witnesses. It also amends s. 63.082(4)(c), F.S., to clarify when the 3-day revocation period for certain adoptions applies.

The bill amends s. 63.082(6)(a), F.S., to state that if a birth parent executes a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents and the minor child is in the custody of the department, but parental rights have not yet been terminated, the adoption consent shall be valid, binding, and enforceable by the court and shall be the basis for a transfer of custody pursuant to the consent. According to the Department of Children and Families, this erodes the department’s ability to ensure safe placements for children in its custody by mandating that consents executed by

¹ The concerns of the Department are contained in a bill analysis provided by the department to the committee staff.

² The Adoption Committee of the Family Law Section of the Florida Bar provided an extensive memorandum discussing the bill.

References to the committees comments on the bill are taken from that memorandum.

birth parents regarding children in foster care shall be the basis for a transfer of custody. Currently, a birth parent can execute consent for placement of a minor with an adoption entity or qualified prospective adoptive parents when the child is in the custody of the department. However, the court may still determine that this transfer is not in the child's best interests. For example, a teenager in department care might not want custody to be transferred to the person to whom consents were signed. Pursuant to Chapter 39, F.S., the preferences of a child over a certain age must be considered in termination of parental rights and manifest best interests of the child. Therefore, a court might find that it was not in the child's manifest best interest to terminate parental rights and/or modify placement to another custodian pursuant to the consent.

The bill amends s. 63.082(6)(c), F.S., to require the adoption entity to provide monthly supervision reports to the court, if required, until finalization of the adoption. Presently, a court with jurisdiction over a child pursuant to dependency proceedings continues jurisdiction over the child through adoption after parental rights are terminated. The benefit of this is that the court is aware of the child's specific needs and issues, including any issues regarding the possibility of an adoptive placement chosen by a parent prior to termination of parental rights failing to protect a child from that parent. According to the Department of Children and Families, the bill divests the dependency court of jurisdiction over children placed with prospective adoptive parents and requires monthly supervision reports to go to the court rather than the department. Therefore, with children who may have continuing issues, the department will not be able to monitor the situation. Further, in light of other provisions in the bill, the department will be unable to protect children or intervene in the event of an adoption that may be set up to continue the relationship of a dangerous parent with a child victim.

The bill amends s. 63.082(7)(a), F.S., changes the provision for returning a child after consent has been properly revoked. For children six months or older at the time a consent is executed, birth parents can revoke consent at any time prior to the placement of the child with prospective adoptive parents. The adoption entity is now required to return the child within three business days of notice of the withdrawal of consent or upon court determination that a withdrawal is valid. The bill removes the provision regarding the procedure for returning a child after consent is properly revoked.

Section 11 amends 63.085, F.S., to make technical changes.

Section 12 amends s. 63.087(1), F.S., to clarify when a court has jurisdiction over a proceeding to terminate parental rights. It provides that a court has jurisdiction when the minor is present in the state and the parent or guardian has been served with notice. Current law does not specify that the minor must be present in the state. The bill amends 63.087(4)(e)2., F.S., to exclude the names and addresses of the adoptive parents in the petition from being included in the adoption petition as provided in s. 63.162, F.S.

Section 15 of this bill amends s. 63.092(1), F.S., to states that the failure to file the report of intended placement within the specified timeframe shall not constitute grounds to deny the petition for termination of parental rights or adoption if the report is subsequently filed and no party is prejudiced by the failure to file the report in a timely manner. Currently, an adoption entity is required to file a report to the court on any intended placement of a minor for adoption with any person who is not a relative or stepparent prior to placement or within 48 hours thereafter.

Section 16 of the bill amends fee provisions for adoption entities and attorneys.

Section 17 of this bill amends s. 63.102, F.S., relating to "short form" adoptions. It permits petitions to filed later than 60 days after parental rights are terminated in cases where the minor child has been placed by the department. It deletes a requirement for prior court approval before fees and costs and permits approval of fees at any time after an agreement is reached.

This bill amends s. 63.122, F.S., to remove the ability of the court to order investigations in cases of adult adoptions to determine whether the adoption is in the best interest of the adult or whether the adoption is in accordance with state law.

This bill amends s. 63.132(1), F.S., relating to fees that can be charged against the adoptive parent. According to the Department of Children and Families, affidavits regarding fees in adoption cases must be very specific in order to avoid fraudulent fees. The bill strikes this language, leaving the door open

to fraudulent fees generally associated with "baby selling." The bill permits attorneys to receive legal fees from birth parents without adequate documentation of the charges, which could result in fraudulent charges being made. The sponsor intends to offer an amendment to remove this provision from the bill.

This bill amends s. 63.135, F.S., to require that an affidavit be filed under the Uniform Child Custody Jurisdictional and Enforcement Act and removes specific statutory requirements.

Section 63.142, F.S., states that if the petition is dismissed, further proceedings, if any, regarding the minor must be brought in a separate custody action under chapter 61, F.S., a dependency action under chapter 39, F.S., or a paternity action under chapter 742, F.S. The effect of this language addresses some of the concerns from the Evan Scott case. Evan Scott is a 3 1/2-year-old boy who was recently sent to live with his biological mother in Illinois after living his entire life with an Atlantic Beach couple who at one time had hoped to adopt him. Some proponents feel that the court system broke down and this change addresses some of those perceived problems.

This bill amends s. 63.152, F.S., to require the clerk of the court to transmit a certified statement of the adoption to the state where adoptee was born within 30 days after the entry of a judgment of adoption.

This bill amends s. 63.192, F.S., to require recognition of foreign judgments terminating parental rights in Florida adoption proceedings.

Section 63.207, F.S., includes language stating, "unless excused by the court for good cause shown," is inconsistent with the Interstate Compact on the Placement of Children Agreement (ICPC) according to the Department of Children and Families. The department states that, ICPC is an agreement between states, federally protected under the contracts clause of the Constitution. It supersedes any conflicting state law. ICPC does not provide any allowance for ICPC to be waived or circumvented by anyone. Judges are specifically listed as a "sending agency" under ICPC, required to abide by the Compact's articles and regulations. The sponsor intends to offer an amendment to remove this provision.

Section 62.212 (1)(b), F.S., removes the prohibition against birth parents placing children directly with prospective adoptive parents. According to the Department of Children and Families, this could open the door for baby selling and makes it impossible to ensure regulation and court oversight of adoptive placements. Section 62.212(1)(c), F.S., according to the Department of Children and Families, deletes the limit of paying medical expenses for the birth mother to a maximum of six weeks after the birth of the child. This could lead to fraud and contribute to baby selling. The sponsor intends to offer an amendment to remove these provisions.

This bill amends s. 63.213, F.S., to prohibit an attorney who represents an intended father from also representing a volunteer mother in the same proceeding.

This bill creates a new section of law which prohibits a person or entity, except a licensed physician, fertility clinic, or attorney from:

- receiving compensation in advising or assisting in donor or gestational carrier arrangements;
- advertising that a donor is sought for or available for matching; or
- charging a fee for making a referral in connection with a donor or carrier agreement.

This bill provides that any petition for termination of parental rights filed before July 1, 2005, shall be governed by the law in effect at the time of filing.

This bill takes effect on July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 63.022, F.S., revising legislative intent.

Section 2. Amends s. 63.032, F.S., revising the definitions.

Section 3. Amends s. 63.039, F.S., revising duties of adoption entities to prospective adoptive parents.

Section 4. Amends s. 63.0423, F.S., providing that a judgment of adoption is voidable under certain circumstances if a court finds that a person whose consent is required gave false information.

Section 5. Amends s. 63.052, F.S., revising conditions under which an adoption entity is the guardian of a minor; and authorizing the court to retain jurisdiction of a minor until the adoption is finalized within or outside of the state.

Section 6. Amends s. 63.053, F.S., providing conditions under which an unmarried biological father shall lose parental rights.

Section 7. Amends s. 63.054, F.S., providing that an adoption entity has no obligation to search for a registrant who has failed to report certain changes in status; providing an exception; revising conditions under which a petitioner for termination of parental rights is required to submit an application for a search of the Florida Putative Father Registry; revising conditions for an unmarried biological father to initiate an action under s. 63.087, F.S.; and requiring compliance by a petitioner for termination of parental rights with search requirements relating to the identity of a man whose consent is required.

Section 8. Amends s. 63.062, F.S., revising provisions relating to notice of petition to terminate parental rights pending adoption, required consent, and change of venue.

Section 9. Amends s. 63.064, F.S., authorizing the court to waive the requirement that consent for adoption be obtained within a certain time period from a parent declared incompetent, under certain circumstances; and requiring the court to consider the best interest of the child in making such determination.

Section 10. Amends s. 63.082, F.S., revising requirements for executing consent for adoption or affidavit of nonpaternity; and revising requirements for withdrawing a consent for adoption.

Section 11. Amends s. 63.085, F.S., revising provision relating to who may sign a valid consent for adoption.

Section 12. Amends s. 63.087, F.S., revising provisions governing the proceedings for terminating parental rights pending adoption; revising the venue requirements for filing a petition to terminate parental rights; revising requirements for a petition to terminate parental rights pending adoption; revising conditions for service of a summons and copy of the petition; requiring an answer to a petition to be timely filed and providing that failure to do so constitutes grounds for termination of parental rights; and requiring appearance at hearing on the petition and providing that failure to do so constitutes grounds for termination of parental rights.

Section 13. Amends s. 63.088, F.S., providing diligent search and court inquiry requirements for identifying and locating a person who is required to consent to an adoption or receive notice of proceedings to terminate parental rights; providing that failure to timely respond or appear constitutes grounds to terminate parental rights pending adoption; revising the inquiries required for diligent search; requiring a person contacted by a petitioner or adoption entity to release certain information; and providing an exception.

Section 14. Amends s. 63.089, F.S., revising hearing requirements for terminating parental rights; revising grounds upon which parental rights may be terminated; revising conditions for making a finding of abandonment; revising dismissal of petition procedures; and revising requirements for issuing and voiding a judgment terminating parental rights.

Section 15. Amends s. 63.092, F.S., revising report and preliminary study requirements for placement of a minor by an adoption entity.

Section 16. Amends s. 63.097, F.S., revising the fees, costs, and expenses that may be assessed by an adoption entity.

Section 17. Amends s. 63.102, F.S., revising requirements for filing a petition for adoption.

Section 18. Amends s. 63.112, F.S., revising requirements for the petition documents for an adoption.

Section 19. Amends s. 63.122, F.S., permitting certain information to be deleted from the notice of hearing to protect privacy rights.

- Section 20.** Amends s. 63.125, F.S., providing for certain licensed professionals to contribute to final home investigation reports.
- Section 21.** Amends s. 63.132, F.S., revising requirements for the affidavit of expenses and receipts; and revising applicability.
- Section 22.** Amends s. 63.135, F.S., revising requirements for information provided to the court for adoption proceedings.
- Section 23.** Amends s. 63.142, F.S., requiring further proceedings if a petition for adoption is dismissed; and revising conditions under which a judgment terminating parental rights is voidable.
- Section 24.** Amends s. 63.152, F.S., requiring the clerk of the court to transmit the statement of adoption to the registrar of vital statistics in the state where the adoptee was born.
- Section 25.** Amends s. 63.162, F.S., revising requirements concerning the disclosure of information pertaining to an adoption.
- Section 26.** Amends s. 63.192, F.S., revising provisions relating to recognition of foreign judgment or decree affecting adoption; and providing conditions for termination of parental rights.
- Section 27.** Amends s. 63.207, F.S., authorizing a petition for declaratory statement to be consolidated with a petition for adoption; permitting parents to finalize adoption in their home state; and providing an exception to applicability of the Interstate Compact on the Placement of Children.
- Section 28.** Amends s. 63.212, F.S., providing an exception to applicability of the Interstate Compact on the Placement of Children; and revising provisions relating to prohibitions with respect to adoptions.
- Section 29.** Amends s. 63.213, F.S., revising provisions relating to legal representation in preplanned adoption agreements; and revising a definition.
- Section 30.** Amends s. 63.236, F.S., providing that any petition for termination of parental rights filed before the effective date of the act is governed by the law in effect at the time the petition was filed.
- Section 31.** Amends s. 409.166, F.S., redefining the term special needs to remove children of racially mixed percentage.
- Section 32.** Amends s. 409.176, F.S., providing that licensing provisions do not apply to certain licensed child placing agencies.
- Section 33.** Amends s. 742.14, F.S., providing that the donor of an embryo relinquishes all parental rights and obligations to the embryo or the resulting children at the time of the donation.
- Section 34.** Amends s. 742.15, F.S., authorizing a physician in a state outside this state to advise a commissioning couple concerning a gestational surrogate.
- Section 35.** Amends s. 742.18, F.S., prohibiting a person or entity, except a licensed physician, fertility clinic, or attorney from doing certain specified acts.
- Section 36.** Reenacts ss. 39.01(49), 984.03(39), and 985.03(40), F.S., relating to the definition of a parent, to incorporate the amendment made to s. 63.062, F.S., in reference thereto.
- Sections 37-38.** Reenact ss. 984.03 and 985.03, F.S., in relation to the changes made in s. 63.062, F.S.
- Section 39.** Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:
See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments section.
2. Expenditures:
See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of Children and Family Services, more money will go to law firms and attorneys.

D. FISCAL COMMENTS:

Information was not made available from the department nor the affected entities as to the fiscal impact of the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill's revision to section 63.162, F.S., arguably creates a public records exemption. Pursuant to art. I, s. 24, exemptions from the requirement that government records be public must be contained in a separate bill. The sponsor intends to offer an amendment to remove this provision.

B. RULE-MAKING AUTHORITY:

This bill does not provide rulemaking authority to the Department of Children and Families; however, s. 63.233, F.S., specifically gives the department authority to adopt rules to "implement the provisions of this chapter."

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments from the staff of the Future of Florida's Families Committee:

The following comments were offered by the Department of Children and Families:

- Currently, the court may waive consent of a parent to an adoption when the parent has been declared incompetent and restoration of competency for that parent is medically improbable. This bill adds language that qualifies the waiver of consent for an incompetent parent when restoration of competency will not be within a reasonable amount of time, and permits the best interests of the child to be considered in making this determination.

- Although this bill promotes the best interest of children in terms of permanency, the term “reasonable” is nebulous enough that the statute will probably be challenged as a violation of a parent’s rights, particularly since there is no language here as to exactly how the parent’s rights are safeguarded (i.e., who makes the determination regarding competency).
- Currently, a parent, legal guardian, or court-appointed guardian ad litem must witness consents or affidavits of non-paternity signed by a minor parent under the age of 14. This bill proposes that stepparents or “designated” guardians be considered legal witnesses for these documents. However, there is no such legal entity as a “designated guardian.” Also, stepparents do not have any type of legal authority over, responsibility for, or fiduciary duty towards stepchildren. Therefore, neither stepparents nor “designated guardians” should be listed by statute as persons designated as legal witnesses to consents or affidavits of non-paternity signed by minors under the age of 14.
- Currently, a (paternal) consent to adopt can be executed only by a biological father or legal father. This bill would permit “any man” to sign a consent to adopt. Just “any man” does not have legal rights as a parent to a child and should not be permitted to consent to adoption without legal rights as a parent.
- Currently, a parent must have personal service regarding a termination of parental rights petition or constructive service through publication. By changing the term “personal service” to “service of process,” the requirements for process on the parent are less stringent.
- Currently, a judgment terminating parental rights and a subsequent adoption are voidable if a court finds that the adoption failed to meet the requirements of Chapter 63. Pursuant to this bill, a court would need to find that the adoption failed to “substantially” meet the requirements of Chapter 63. In other words, adoption entities will be held to a lower standard in determining whether an adoption is voidable for failure to comply with the requirements of Chapter 63.
- The bill broadens the term relative to non-relatives. The new definition of relative broadens the definition of “related by blood” to “related by blood or affinity” which would include similar persons, but not necessarily relatives.

Family Law Section of the Florida Bar:

The Family Law Section of the Florida Bar, specifically the Adoption Committee, has reviewed HB 1299 and has raised the following concerns:

- Section 63.054(13) F.S., is changed to modify the Petitioner’s responsibility to search for all unmarried biological fathers. This change would allow for a diligent search of the paternity registry to act as the only diligent search necessary for an unmarried biological father.
- Sections 63.062(1)(b)2., and 3., F.S., add to the consent requirements. The concern is that such a revision should include a companion form change to advise all men filing paternity actions to immediately file with the Putative Father Registry.
- Section 63.062(3)(b), F.S., adds, “who has been retained to terminate any parental rights which might be asserted by said person.” The committee is opposed to a provision eliminating the diligent search for all men whose consent is not required thus, allowing adoption entities to only rely on the diligent search of the Putative Father Registry. The committee is concerned that the registry has not been widely promoted to justify such a change.
- Section 63.064(3), F.S., the committee has concerns that the standard imposed by the revision “best interest,” provides too much discretion when excusing a legal parent’s rights to consent to the adoption. The committee agreed with the balance of the proposed revision which allowed the court to excuse consent when restoration of the parent’s competency is, “improbable within a reasonable period of time.”
- Section 63.082(7)(d), F.S., is an attempt to allow the court to consider the Privett standard on the DNA issues. A better option may be to modify the provisions to clarify that a DNA order must comply with all the provisions of Florida law.

- Section 63.088(4), F.S., the committee's concerns over this revision regard limiting the diligent search to a search of the Putative Father Registry. A change in the court inquiry is only necessary if the statute no longer requires a diligent search for any man identified by the biological mother as a possible biological father. If the standard is not changed, this inquiry is necessary to allow the court to determine whether all necessary diligent search affidavits were filed in that case.
- Section 63.089(4), F.S., adds language that physical abuse in addition to emotional abuse is grounds to find abandonment. The committee objects to any change in the abandonment standard.
- Section 63.092, F.S., adds the term "prospective adoptive parent." The change is consistent with the statute as it clears up any confusion that the birth parents acknowledgment of receipt of the adoption disclosure is not a part of the adoptive parent's home study. The provision on adult adoptions is an attempt to further prohibit the homosexual adoption. The home study issue allows discretion. The committee objects to this revision.

Other comments:

- Section 63.032(4), F.S. - The term "custody" raises a concern as a person may have legal custody while the birth parents still have rights. This potentially could violate the privacy provisions of the Florida Constitution.
- Sections 63.052(7) and 63.207(1)(b), F.S. - An issue has been raised that, "outside the state clause" potentially has the effect of cutting off Florida's jurisdiction over Florida children because the adoption can be finalized outside of the state instead of only in Florida.
- Section 63.054(13), F.S. - The filing of a claim of paternity with the Florida Putative Father Registry does not excuse or waive the obligation of a petitioner to comply with the requirements for conducting a diligent search and inquiry with respect to the identity of any man whose consent is required pursuant to s. 63.062, F.S. However, s. 63.062, F.S., states that you have to notice only fathers whose consent is required. The question has been raised as to how do you know if consent is required if the person cannot be found? This potentially could be a loophole in the statutes' application.
- Section 63.082(7)(b), F.S. - Gives standards for the court to follow that states, "in the minor's best interest." This potentially could be the wrong standard to use because if a person withdraws consent he is entitled to custody unless it would harm or endanger the child.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Future of Florida's Families Committee adopted a strike everything after the enacting clause amendment to conform the bill to CS/SB 2154. The original house bill was identical to the senate bill with the following exceptions:

- Provides that a judgment of adoption is voidable under certain circumstances if a court finds that a person whose consent is required gave false information.
- Revises requirements concerning the disclosure of information pertaining to an adoption.
- Provides that any petition for termination of parental rights filed before the effective date of the act is governed by the law in effect at the time the petition was filed.
- Redefines the term "special needs" to remove children of racially mixed percentage.
- Provides that licensing provisions do not apply to certain licensed child placing agencies.

- Provides that the donor of an embryo relinquishes all parental rights and obligations to the embryo or the resulting children at the time of the donation.
- Authorizes a physician in a state outside this state to advise a commissioning couple concerning a gestational surrogate.
- Prohibits a person or entity, except a licensed physician, fertility clinic, or attorney from doing certain specified acts.

This analysis is written to reflect the bill as a committee substitute.