

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 Children, Families, and Elder Affairs Committee

BILL: SPB 7034

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: Dependency Proceedings

DATE: February 2, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Proposed Senate Bill 7034 amends s. 63.082(6)(b), F.S., to provide for mandatory intervention by adoption entities in dependency proceedings when the birth parents have executed a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents, the minor is in the custody of the Department of Children and Families (DCF), and the parents' rights have not been terminated.

This bill substantially amends Section 63.082, Florida Statutes.

II. Present Situation:¹

Adoption is the "act of creating the legal relationship between parent and child where it did not exist."² The Florida Adoption Act was enacted in 1973,³ to "protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children ... a permanent family life."⁴

¹ During the 2009 interim period, staff of the Committee on Children, Families, and Elder Affairs conducted research on the issues surrounding implementation of s. 63.082(6)(b), F. S. This Bill Analysis draws from Interim Project 2010-104, *Review of Section 63.082(6), F.S., Intervention by Private Adoption Entities in the Adoption of Certain Children in the Custody of the Department of Children and Family Services*, September 2009.

² Section 63.032(2), F.S.

³ Chapter 73-159, s. 2, Laws of Fla. Chapter 63, F.S., the Florida Adoption Act, governs all Florida adoptions.

⁴ Section 63.022(3), F.S.

A major rewrite of the Florida Adoption Act occurred in 2001⁵ to address proceedings for termination of parental rights (TPR) and finalization proceedings in adoptions, and again in 2003.⁶ Most recently, in 2008 the Legislature addressed issues relating to adoption, TPR, and the rights and responsibilities of unmarried biological fathers.⁷ It also amended s. 63.082(6)(b), F.S., to make permissive intervention by adoption entities in dependency proceedings.⁸

Adoption via Dependency — Post-TPR

The laws relating to protection of children who are abused, abandoned, or neglected are found primarily in Chapter 39, F.S, the dependency statutes. When a child is adjudicated dependent, DCF must ensure that the child has a plan which will lead to a permanent living arrangement.⁹ If a child in foster care will not be reunited with a parent, the department will initiate a proceeding to terminate parental rights (TPR).

Section 39.810, F.S., requires that the court must consider the “manifest best interests of the child” when determining whether to terminate a parent’s right to their child, which includes an evaluation, among other factors, of:

- suitable permanent relative custody arrangements;
- the ability of the birth parent(s) to provide for the material needs of the child;
- the ability of the birth parent(s) to care for the child’s health, safety, and well-being upon the child’s return home;
- the present and future needs of the child; and
- the love, affection and emotional ties between the child and his or her parent(s), siblings, or other relatives.

In making this determination, the statute prohibits the court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child.

If the court determines that it is in the manifest best interests of the child for their parent’s rights to be terminated, then the TPR order is entered and the child is placed in the custody of the department for permanent placement. The Legislature has determined that “adoption, under chapter 63, is the primary permanency option.”¹⁰

During Fiscal Year 2008-2009, the Office of State Courts Administrator reported that 2,170 juvenile dependency adoption petitions were filed statewide;¹¹ these petitions are filed pursuant to ss. 39.812(5) and 39.813, F.S., for the adoption of a child in foster care after these parents’ rights have been terminated.

⁵ See ch. 2001-3, Laws of Fla.

⁶ See ch. 2003-56 and ch. 2003-58, Laws of Fla.

⁷ See ch. 2008-151, Laws of Fla.

⁸ *Id.* at s. 10. Compare s.63.082(6)(b), F.S. (2008) (“Upon execution of the consent of the parent, the adoption entity **may intervene** in the dependency case...”) with s. 63.082(6)(b), F. S. (2007) (“Upon execution of the consent of the parent, the adoption entity **shall be permitted to intervene** in the dependency case...”).

⁹ See generally Part IX, Chapter 39, F.S., permanency.

¹⁰ Section 39.621(6), F.S.

¹¹ E-mail to the committee from Brenda Johnson, Office of State Courts Administrator, 10/1/09 at 11:29 a.m.

Adoption via Dependency — Pre-TPR

Some birth parents decide, as the dependency process unfolds but prior to the termination of their parental rights, to work with a private adoption entity¹² to find a permanent home for their child. The Legislature has encouraged their constitutional right¹³ to do so:

It is the intent of the Legislature to provide for cooperation between private adoption entities and the Department of Children and Family Services in matters relating to permanent placement options for children in the care of the department whose birth parents wish to participate in a private adoption plan with a qualified family.¹⁴

In order to assert this right on behalf of the birth parents, private adoption entities may be able to intervene in dependency proceedings pursuant to s. 63.082(6), F.S. The law provides:

- The adoption entity may intervene in the dependency case as a party when it
 - obtains consents to adopt from the parents of a minor child in the custody of the department,
 - prior to the termination of their parental rights.
- The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents with whom the child will be placed.
- The court must determine
 - whether the prospective adoptive parents are properly qualified to adopt the child, and
 - whether the adoption is in the child's best interest.

The statute requires that the dependency court, in determining the best interest of the child prior to TPR, consider

- the birth parents' rights to determine an appropriate placement for their child,
- the permanency offered,
- the child's bonding with any potential adoptive home in which the child has been residing, and
- the importance of maintaining sibling relationships.¹⁵

If the court decides that it is in the child's best interest, the dependency court will order the transfer of custody of the minor child to the prospective adoptive parent under the supervision of the adoption entity, who shall provide monthly reports to the department until the adoption is finalized.¹⁶

¹²“Adoption entities” are DCF; a licensed child-placing (adoption) agency; a registered or approved child-caring agency; or a Florida attorney who intends to place a child for adoption. *See* ss. 63.023(3), (6), (9), (11), F.S.

¹³ Parents have a fundamental liberty interest in determining the care and upbringing of their children. The interest is protected by both the Florida and United States Constitutions. *See Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996); FLA. CONST. art. I, s. 23. *See also* discussion in *Adoption Miracles*, *infra*.

¹⁴ Section 63.032(5), F.S.

¹⁵ Section 63.082(6)(d), F.S.

¹⁶ Section 63.082(6)(c), F.S.

Florida's 20 circuit courts were surveyed to determine how often private adoption entities intervene in dependency cases; 14 responded.¹⁷ It must be noted that no circuit tracks this specific activity. Each response was compiled by querying judges, lawyers, guardians, or court personnel who may have had knowledge of these proceedings. Thus qualified, in Fiscal Year 2008-2009, between 19 and 24 cases¹⁸ were filed across the responding circuits.

In *Adoption Miracles*,¹⁹ a 2005 decision arising from a case in Hillsborough County, the court explained the standard it must apply when an adoption entity intervenes in a dependency case:

We note that the “best interest” determination to be made [pursuant to s. 63.082(6)(c), F.S.] under these circumstances is somewhat unique [as compared to the “manifest best interests” standard in s. 39.810, F.S.]. If the birth parent has executed a valid and binding consent to an adoption, the court is not making a comparative assessment of the birth parents versus the prospective adoptive parents. Further, section 63.082(6)(d) specifically provides that the court “shall give consideration to the rights of the birth parent to determine an appropriate placement for the child” --- an explicit recognition of the parents’ constitutional right to the care, custody, and control of their children. Thus, the court is also prevented from comparing the birth parents’ choice of prospective adoptive parents with other potential placements that the court or the Department might choose for the child. Viewed in this light, **the “best interest” analysis requires a determination that the birth parent’s choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives.** (Emphasis supplied; interior citations omitted.)²⁰

Of the 19 to 24 intervention cases reported, an objection was raised in seven. It appears that the basis for more than half the objections was application of the Chapter 39 manifest best interest of the child standard in the Chapter 63 intervention. Despite the objections and the fact that the statutory standard for intervention is permissive, the courts denied the petitions for intervention in only one of the 19 to 24 cases reported.²¹

¹⁷ Survey responses on file with the committee.

¹⁸ One circuit responded “no more than 5” in response to the question, “In how many cases did an adoption entity petition the court to intervene in a dependency case pursuant to s. 63.082(6), F.S.?” For the purposes of the questions, “adoption entity” does not include the Department of Children and Families.

¹⁹ *In the Interest of S.N.W., a child. Adoption Miracles, LLC v. S.C.W. and Department of Children and Family Services*, 912 So.2d 368 (2d DCA 2005)

²⁰ *Id.* at 373FN 4.

²¹ The intervention was reportedly denied on the basis that the proposed intervenor was not an adoption entity. See Survey Responses (on file with the committee).

III. Effect of Proposed Changes:

Proposed Senate Bill 7034 amends s. 63.082(6)(b), F.S., to provide for mandatory intervention by adoption entities in dependency proceedings when the birth parents have executed a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents, the minor is in the custody of the Department of Children and Families (DCF), and the parents' rights have not been terminated.

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:

None.

C. Government Sector Impact:

To the extent that the process associated with intervention by an adoption entity is unnecessarily prolonged, children may remain in foster care for a greater period of time at the state's expense. Timely transfer to the supervision of the adoption entity may have a small positive fiscal impact on the department.

DCF reports that any additional legal workload that may result from the proposed bill can be absorbed within existing resources.²²

VI. Technical Deficiencies:

None.

²² E-mail from Jane McElroy, DCF, February 1, 2010, 4:51 PM (on file with the Committee).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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