HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 601 Adoption Proceedings
SPONSOR(S): Roth
TIED BILLS: **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Woodruff	Brazzell
2) Civil Justice & Property Rights Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Adoption is one method of achieving permanency for children who have suffered abuse, abandonment, or neglect and are unable to be reunified with their parents. Chapter 63, F.S., governs adoption proceedings, regardless of whether the child is being adopted from the child welfare system or through private adoption. When a dependent child is available for adoption, DCF receives applications to adopt the child. When two families apply to adopt the same child, DCF routes conflicting applications through the adoption applicant review committee (AARC) for resolution. DCF then reviews the decision of the AARC and issues its consent for adoption to one applicant while communicating its denial to the other applicant through a certified letter. A denied applicant can seek review of DCF's decision through an administrative review hearing process under Ch. 120, F.S. In addition to the administrative review, the denied applicant may also file a petition to adopt the child under Ch. 63, F.S., and argue DCF unreasonably withheld its consent to adopt. Therefore, there can possibly be three legal proceedings simultaneously addressing the adoption of a child.

HB 601 makes changes to current law to reduce the number of simultaneous adoption actions that can be filed by multiple parties to adopt the same child. The bill amends current law to require the dependency court to review DCF's decision to deny an application to adopt and eliminate the ability for a denied applicant to have an administrative review of DCF's decision under Ch. 120, F.S.

The bill has a significant, positive impact on state government, and no fiscal impact on local government.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

<u>Background</u>

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) administers the state's child welfare system and works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children involved in the dependency process.[1] If problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

DCF contracts for case management, out-of-home care, and related services with community-based care lead agencies (CBCs). Using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.[2]

<u>Child Welfare Adoptions</u>

Adoption is one method of achieving permanency for children who have suffered abuse, abandonment, or neglect and are unable to be reunified with their parents. To become a licensed adoptive parent, an individual or couple must complete a licensing study class and complete a home study.[3] Chapter 63, F.S., governs adoption proceedings, regardless of whether the child is being adopted from the child welfare system or through private adoption.

The federal Department of Health and Human Services assesses the performance of a state's child welfare on key measures of safety and permanency. One measure is the percent of children exiting to a permanent home within 12 months of entering care. Currently, 36.97% of children in Florida's child welfare system achieve permanency within 12 months of entering care. This is below the federal target of 40.50%.[4] Out of the children who achieved permanency within 12 months of entering care, 392 (or 7.7%) achieved permanency through adoption.[5]

Between January 1, 2020, and December 31, 2020, 2,759 children (or 53.8% of children legally free for adoption) had been adopted from Florida's child welfare system.[6]

Selection of Adoptive Placement

DCF's ability to place a child in its custody for adoption and the court's review of the placement is controlled by s. 39.812, F.S. DCF may place a child in its custody in a home, and DCF's consent alone is sufficient for the placement. The dependency court retains jurisdiction over any child in DCF's custody until the child is adopted. When DCF has custody of a child for subsequent adoption, the dependency court has jurisdiction to review the status of the child and the progress toward permanent adoptive placement. As part of this continuing jurisdiction, s. 39.811(9), F.S., allows the dependency court to review the appropriateness of the adoptive placement of the child after the child's Guardian ad Litem shows good cause.

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[1] S. 39.001, F.S.

[2] S. 39.001(4), F.S.

[3] Florida Department of Children and Families, *How Do I Become a Foster Parent?*, https:www.myflfamilies.com/service-programs/foster-care/how-do-I.shtml (last visited Feb. 26, 2021).

[4] Florida Department of Children and Families, Florida's Child Welfare Statistics, Children Entering Care Who Achieve Permanency within 12 Months, https://www.myflfamilies.com/programs/childwelfare/dashboard/permanency-within-12.shtml (last visited Feb. 26, 2021).

[5] *Id.*

[6] Florida Department of Children and Families, Florida's Child Welfare Statistics, Adoptions Achieved, https://www.myflfamilies.com/programs/childwelfare/dashboard/adoptions-achieved.shtml (last visited Feb. 26, 2021).

When a dependent child is available for adoption, DCF will receive applications to adopt the child. DCF does not select some applicants because their adoption home studies are denied. When there are two or more families with approved home studies, DCF routes these conflicting applications through the adoption applicant review committee (AARC) for resolution. DCF then reviews the decision of the AARC and issues its consent for adoption to one applicant while communicating its denial to the other applicants through a certified letter. These letters are considered final agency action, which gives an unsuccessful applicant a point of entry to seek review of DCF's decision through an administrative review hearing process under Ch. 120, F.S.

Florida law also permits individuals whom DCF declines consent for adoption of a child to initiate a new Ch. 63, F.S., legal proceeding by filing a petition for adoption. The petitioner must demonstrate DCF unreasonably withheld its consent to adopt a child. Because Ch. 63, F.S., permits anyone who meets statutory requirements to adopt a child, and any petition may argue DCF unreasonably withheld its consent for the adoption, multiple parties may file a Ch.63, F.S., petition to adopt the same child. Therefore, there can possibly be three legal proceedings simultaneously addressing the adoption of a child:
- A Ch. 39, F.S., dependency proceeding.
- A Ch. 63, F.S., adoption proceeding filed by the family who has DCF's consent.
- A Ch. 63, F.S., adoption proceeding filed by an applicant who asserts DCF unreasonably withheld its consent.

In addition to the route offered through Ch. 63, F.S., case law provides an additional option for families denied the ability to adopt through the Ch. 120, F.S., process. Chapter 120, F.S., administrative review hearings are heard by designated hearing officers within DCF. This means that Ch. 120, F.S., hearings may be being held concurrently with Ch. 63, F.S., hearings.

Assignment of adoption disputes to the Ch. 120, F.S., process arose due to the opinion in *Department of Children & Family Services v. I.B. and D.B.*, 891 So.2d 1168 (Fla. 1st DCF 2005). These hearings require agency resources to conduct.

Administrative appeals can delay permanency. From a sample of 25 Ch. 120, F.S., contested adoption matters between 2018 and 2019, the average length of time between the receipt of a hearing request and entry of a final order was 213 days.[7] This does not include any additional delays caused by appeal of the outcome of the administrative review process to the appropriate District Court, which adds, on average, an additional 120 days.

Multiple competing adoption petitions require additional court hearings to resolve the conflict and may lead to a delay of the child's adoption. These court proceedings often occur concurrently with the administrative hearing process, which can lead to disparate results.

Effect of Proposed Changes

HB 601 makes changes to current law to reduce the number of simultaneous adoption actions filed by multiple parties to adopt the same child. The bill also creates timeframes when a denied applicant and the court must review DCF's decision to adopt a specific child.

The bill amends s. 39.811(9), F.S., to require the dependency court to review DCF's decision to deny an application to adopt and eliminate the ability for a denied applicant to have an administrative review of DCF's decision under Ch. 120, F.S.

The bill amends s. 39.812(4), F.S., to allow a denied applicant to file a motion, within 30 days of the issuance of DCF's written notification of denial, for the dependency court to review DCF's decision. The motion to review must allege DCF unreasonably withheld its consent to the adoption and must request that the court allow the denied applicant to file a petition to adopt the child under Ch. 63, F.S., without

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[7] Florida Department of Children and Families, *Agency Analysis of 2021 House Bill 601* (Feb. 22, 2021).

DCF's consent. The bill requires the dependency court to hold a hearing, within 30 days after the filing of the motion to review, to determine whether DCF abused its discretion in denying the application to adopt. The court must enter a written order within 15 days after conclusion of the hearing either denying the motion or finding that DCF unreasonably withheld its consent and authorize the denied applicant to file petition to adopt the child under Ch. 63, F.S., without DCF's consent.

B. SECTION DIRECTORY:

Section 1: Amending s. 39.812, F.S., relating to postdisposition relief; petition for adoption.
Section 2: Amending s. 63.062, F.S., relating to persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DCF estimates a cost avoidance of $1,189,745 if the changes related to the adoption selection process are implemented based on a review of cases from 2019.[8]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Community-based care lead agencies may experience a positive fiscal impact if the changes in the bill speed up permanency for children in their care.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

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[8] *Supra* note 7.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DCF has sufficient rulemaking authority to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES