

**STORAGE NAME:** h0175.br.doc  
**DATE:** January 14, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION  
ANALYSIS**

**BILL #:** HB 175  
**RELATING TO:** Child Care Facilities  
**SPONSOR(S):** Representative(s) Lynn  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS REGULATION
  - (2) INFORMATION TECHNOLOGY
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUE.

This bill amends the child care licensing and enforcement statutory provisions to specify when programs of certain not-for-profit organizations are not considered child care for the purpose of licensure; to eliminate the exemption from licensure for religious-based child care facilities; to require validation that an applicant for licensure has not had a previously denied, revoked or suspended license or been subject to disciplinary action; to authorize the Department of Children and Families to establish uniform penalties for violations of the licensing requirements; to require a statewide data system for violations and penalties imposed on child care facilities; and to eliminate the requirement that the department's annual report on the client and management information system be submitted to the Joint Information Technology Resources Committee.

According to the Department of Children and Families implementation of these provisions will cost approximately \$850,000 for the first year and approximately \$360,000 annually thereafter.

The bill provides that the act will take effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The intent of child care regulation in Florida, as in most states, is to protect the health, safety and well being of the children, as well as to promote their emotional and intellectual development and care. Those child care centers required to meet Florida licensing standards are the facilities which provide child care to more than 5 children who are unrelated to the operator and for whom a payment is received for the care (s. 402.302, F.S.), unless the facility is exempt from licensure or not considered child care for the purposes of licensure pursuant to Florida Statute. Separate requirements for registration or licensure of family child care homes and large family child care homes are provided in ss. 402.313 and 402.3131, F.S.

Programs not considered child care for the purposes of child care licensure include the following:

- Programs for children under the age of five operated and staffed by public schools [s. 402.3025(1), F.S.];
- Programs for children ages 3 to 5 years when provided in non-public schools where the majority of the children enrolled are 5 years of age or older [s. 402.3025(2), F.S.];
- Summer camps [s. 402.302(2), F.S.];
- Vacation Bible schools [s. 402.302(2), F.S.];
- Child care services operated in transient establishments [s. 402.302(2), F.S.]; and
- Not-for-profit organizations affiliated with and certified by national organizations whose primary purpose is providing activities that contribute to the development of good character or cultural development of minors [s. 402.301(6), F.S.].

Programs considered child care that are exempted from licensure are those that are an integral part of churches or parochial schools conducting some form of classes or education program [s. 402.316, F.S.]. Accreditation or membership in an organization which publishes and requires compliance with its health, safety and sanitation requirements is required, as is compliance with local governing body health, sanitation and safety ordinances and the background screening applied to all child care caregivers. While some form of health, safety and sanitation requirement is to be imposed by the accrediting organization, there are no minimum standards for these requirements, nor are there any mechanisms for ensuring that the accrediting organization's requirements are met. Child care facilities exempted from licensure pursuant to s. 402.316, F.S., are not precluded from being licensed by the state.

Currently, 948 child care facilities in Florida eligible for licensure exemption according to s. 402.316, F.S., have chosen to be licensed and 467 child care facilities have chosen license exemption. Nationally, 39 states regulate religious based child care centers [The Children's Foundation, 2001 *Child Care Licensing Study*]. Of the states that exclude religious based child care facilities from their licensing requirements, some limit the programs eligible for exemption or impose more stringent requirements on the religious affiliated child care centers than Florida. For example, Virginia requires that religious exempt child care centers meet identified staff-to-child ratios, that a person trained and certified in first aid be present, and that parents be notified that the center is exempt from licensure and be provided specific information regarding the qualifications of the staff, the physical facilities, enrollment capacity, the food service offered and the health requirements for staff. Utah exempts parochial educational institutions only if the state agency is satisfied that the care is educational rather than primarily care in lieu of that provided by a parent and three of the four following requirements are met: all children are over the age of 3 years, there is a written curriculum for part of the children's course of study, a majority of the time is devoted to studying the curriculum, and there is a governing board that directs and supervises the curriculum. Georgia issues a "commission" to religious based child care centers in lieu of a license; however, the requirements to obtain a commission are identical to those for obtaining a license.

Basic health and safety considerations of children in child care facilities have historically focused on such aspects as protecting children from hazards, potential injuries, and serious infectious diseases. These considerations have formed the core of child care regulation and are applied as minimum standards for child care facilities. Examples of such health and safety minimum standards are those contained in the National Health and Safety Performance Standards developed by the American Public Health Association and American Academy of Pediatrics which recommend requiring that staff are certified in first aid, including rescue breathing and first aid for choking and explains that this is to ensure that someone is available to respond to common life-threatening emergencies. Requiring that cleaning materials, detergents, pesticides and other toxic materials be labeled and stored in locations inaccessible to the children is recommended to prevent injury and poisoning. Many communicable diseases can be prevented through appropriate hygiene, sanitation and methods of disinfection. Certain gastrointestinal diseases are spread from infected persons through fecal contamination of objects in the environment and the hands of caregivers and children. Therefore, diaper requirements which include a diaper changing area that is cleaned with a sanitized solution after each use, limiting accessibility to the soiled diapers by the children, and requiring thorough hand washing after each diapering is recommended to reduce this contamination and control the spread of these diseases. Each of the recommended standards above is included in Florida's licensing standards for child care.

Section 402.305, F.S., provides the framework for Florida's licensing standards for child care facilities. The purpose of these licensing standards, as specifically articulated in this section, is to address the health, nutrition, sanitation, safety, adequate physical surroundings, and child development needs for all children in child care. The areas for which minimum standards are to be adopted in rule are explicitly set forth in s. 402.305, F.S., and are as follows:

- Child care personnel, including background screening, age requirement, training and staff credentialing.
- Staff-to-children ratio based on the age of the children.
- Physical facility, including requirements for building conditions, play space, bathroom facilities, and equipment.
- Square footage per child for indoor and outdoor space.
- Sanitation and safety, including first aid treatment, emergency procedures, sanitary and safety conditions, and pediatric cardiopulmonary resuscitation.

- Transportation safety, including requirements for child restraints, annual inspections of vehicles, limitations on the number of children in vehicles, and accountability for children being transported.
- Access to the child care facility by the parent while the child is in care.
- Child discipline practices that are age-appropriate and constructive.
- Plan of varied activities, including active and quiet play opportunities.
- Urban child care facilities that allow such centers to substitute indoor play space for outdoor play space.
- Evening and weekend child care.
- Specialized child care for the care of mildly ill children.
- Parental notification of transfer of ownership of the child care facility.

Enforcement is an important component in the child care regulatory process because it ensures that the child care facilities are complying with the licensing standards. The enforcement process begins with determining that the child care facility has complied with the licensing standards for the application and issuance of the child care license and continues with corrective action or sanctions to ensure any non-compliance is resolved. The Department of Children and Families is responsible for licensing and enforcement of child care facilities. However, counties may choose to become a local licensing agency if the local standards meet or exceed the state minimum standards. Currently, there are nine counties that have chosen to assume the responsibility of licensing their child care facilities. Florida's enforcement process includes basically the following:

- A child care facility's application for a license requires an examination of the child care facility and documentation that the licensing standards have been met, including the owner or operators' attesting to the accuracy of the information and that they have never had a license denied, revoked or suspended or been subject to any disciplinary action [ss. 402.3055 and 402.308, F.S.].
- A license must be renewed annually and requires a reexamination of the facility and determination that the minimum standards continue to be met. Generally, three inspections are conducted per year, some of which may be abbreviated.
- A continuum of enforcement actions is used when violations to the licensing standards are identified. Sanctions are imposed using a progressive enforcement process that begins with a corrective action plan and ends with revocation of the provider's license. The department classifies violations into three categories that guides the sanctions applied. A Class I violation is considered a violation that is serious in nature and could or does result in death and serious harm to the health, safety and well being of a child. A Class II violation is a serious violation that does not pose an immediate threat to the safety or health of the children in care, but could reasonably be expected to cause harm within 90 days. Finally, a Class III violation is the least serious violation type and is generally related to the maintenance and operation of the child care facility. The authority for the administrative fines and specific penalties is set forth in ss. 402.3055, 402.309, 402.310, 402.312, and 402.319, F.S. However, the only statutory reference to classification of violations speaks to eliminating duplicative and unnecessary inspections, and developing a plan for abbreviated inspections for facilities without Class I or II violations [s. 402.3115, F.S.] which has not provided the necessary authority for rule development.

In the November 2000 *Child Care Program Justification Review*, OPPAGA reported that the department's enforcement policies for child care licensure were being applied inconsistently across the state. Specifically, the department's district offices varied in their interpretation of when a violation was to be classified as a Class I, Class II or Class III resulting in inequitable treatment of facility operators who commit similar violations, as well as failure to take appropriate actions to ensure that the violations are corrected.

The OPPAGA report also identified the lack of adequate statewide information on licensing and enforcement actions as another weakness in the department's enforcement activities. Currently, the Correspondence and Projects Tracking System [CAPTS] maintains basic demographic and statistical data on child care facilities, family child care homes and large family child care homes, such as type of program, capacity, services, hours of operation and license status. From this information the department can produce such reports as the number of licensed facilities, those that have subsidized slots, capacity of the facilities, and lists of facilities. CAPTS also provides a method of alerting the counselor 90 days prior to the facilities license renewal deadline and when relicensing was overdue. However, information on violations and enforcement actions has not been maintained on CAPTS but, instead, is maintained in each district. As a result, the department does not have the ability to monitor what violations of licensing standards are occurring and what sanctions are being imposed when these problems are detected, from which to determine the enforcement practices used by the districts and to ensure that the licensing standards are truly enforced.

OPPAGA recommended that the department develop a statewide licensing data system for the child care program that included not only basic demographic information about regulated child care providers but also specific information about inspections, complaints, violations and enforcement actions. The Department of Children and Families reports that an enhanced statewide licensing data system is currently being developed and implemented which will contain more detailed and accurate information on the programs and services. The department's district licensing staff have begun entering information at the time of the inspection on the facility's compliance with the licensing standards as determined by the inspection and identifying the classification of the violations, i.e., Class I, Class II, or Class III.

**C. EFFECT OF PROPOSED CHANGES:**

This bill addresses establishing a system that requires validation of certain information provided by an applicant for a child care facility license and specifies membership organizations that are not considered child care facilities. The bill requires the Department of Children and Family Services to establish and impose uniform penalties for violation of provisions regulating child care facilities and requires the department to establish and maintain a database to monitor violations, citations, and penalties imposed against such facilities. The bill repeals exemption from state regulation for child care facilities operated by a church or parochial school.

[Please see VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES]

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1. Amends s. 402.3055, F.S., to require the department or local licensing agency review statewide child care licensing records to determine if a child care license applicant has been the subject to a disciplinary action.

Section 2. Amends s. 402.301, F.S., to exempt some non-profit member organizations whose primary purpose is the development of good character or good sportsmanship and who provide child care for school-age children for not more than four hours per day.

Section 3. Amends s. 402.310, F.S., to require the department establish and impose uniform penalties for violations and provides that the implementation of this requirement is not contingent upon additional funding.

Section 4. Creates s. 402.3105, F.S., to require the department to establish and maintain a central database to compile and record all district information relating to violations, citations, and penalties imposed against child care facilities regulated by the department.

Section 5. Amends s. 402.146, F.S., to delete a reference to the Joint Information Technology Resources Committee that is no longer in existence.

Section 6. Amends s. 402.26, F.S., to remove reference to an exemption in s. 402.316.

Section 7. Amends s. 402.281, F.S., to remove a reference to an exemption in s. 402.316.

Section 8. Amends s. 402.302, F.S., to remove a reference to an exemption in s. 402.316.

Section 9. Amends s. 402.3051, F.S., to remove a reference to exemptions.

Section 10. Repeals s. 402.316, F.S., which contains an exemption from state regulation for child care facilities operated by church or parochial schools.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Children and Families reports that the cost for implementing the statewide child care data system will include \$290,000 for system software configuration and modifications to the central database, and \$351,865 to add the local licensing agencies to the data system. The department reports that the \$290,000 for the central database is currently available within the department's existing budget. The costs associated with adding the local licensing agencies to the system include equipment and software, modification of the database to accommodate the differences in the counties' standards, training and additional Internet server support.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A minimal impact is expected for local licensing agencies since some of these agencies are already licensing religious affiliated child care centers.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A total of 467 child care facilities historically exempt from licensure will be subjected to the state's licensing requirements and related processes.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The department is granted rule-making authority to implement the provisions of this legislation.

C. OTHER COMMENTS:

The bill requires that the statewide child care data system be designed by the State Technology Office [STO], in conjunction with the department pursuant to ch. 282, F.S., with the department implementing, operating and maintaining the system. Phase I of the statewide data system has already been implemented; therefore much of the design has already been completed by the department in consultation with the STO. Chapter 2001-261, LOF, provided for memorandums of agreement between each state agency and the STO regarding consolidation of information technology resources and staff, but those agreements have not yet been fully implemented. It appears that this provision of the bill anticipated the full implementation of the responsibilities of the STO provided for in ss. 282.005 and 282.102, F.S., which have not yet occurred and may pose conflicting directions regarding the current operation of information technology activities.

In nine counties in the state the licensing function is performed by local licensing agencies and not by the department. It is not clear whether the requirements for recording information relative to violations, citations and penalties imposed against child care facilities for the statewide child care data system applies to the local licensing agencies. Without this information from the local licensing agencies, only partial statewide information will be available.

The requirement that information in the statewide child care data system be made available to the public upon request may conflict with other statutory exemptions in chapter 119. For example, s. 119.07(3)(i), F.S., provides for the confidentiality of home addresses and telephone numbers of law

enforcement officers, fire fighters and judges and their spouses and it is conceivable that some of these individuals could also be owners of child care facilities.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

Representative Lynn has prepared a strike-everything amendment to the bill that significantly amends the bill as originally introduced and which addresses a number of the areas of controversy. As amended:

The department is authorized to establish by rule uniform penalties for violations of the child care regulations in Florida Statutes and to impose such penalties. This will allow the department to develop and enforce rules regarding Class I, Class II and Class III violations. Implementation is not to be contingent upon a specific appropriation.

The amendment requires that the Department of Children and Families establish and maintain a statewide data system for information relating to violations, citations, and penalties imposed against child care facilities. The data system is required to be designed to enable the department to monitor and evaluate the district inspections and enforcement of state child care licensing requirements, for the purpose of ensuring child care facilities are complying with the state's regulatory requirements and evaluating facilities for license renewal. Statistical information regarding patterns of violations, classes and types of violations and sanctions imposed must also be producible with this system. The amendment stipulates that the information is to be made available to the public upon request subject to restrictions imposed by chapter 119. Further, the amendment provides that the implementation of the provision is not contingent upon a specific appropriation.

The amendment sets forth specific requirements that organizations accrediting religious exempt child care programs are to impose on their member child care and weekday preschool programs. The current requirement that the accrediting organizations require compliance with their standards for health, safety and sanitation is enhanced to require that the accrediting agencies' minimum standards *meet or exceed* state licensing standards as delineated in ss. 402.305(1)-(11), (13), (15) and (16), F.S. The Department of Children and Families is required to review and "recognize" that each accrediting agency's standards meet the state's minimum standards. The accrediting agencies and the religious exempt child care programs are specifically exempt from meeting standards pertaining to child discipline, urban child care facilities, specialized child care for mildly ill children and transfer of ownership as provided in ss. 402.503(12), (14), (17) and (18), F.S., respectively; as well as from any state oversight of governance, religious instruction, curriculum, discipline, or hiring practices.

As is the case under current law, religious exempt child care programs may choose to become licensed child care programs. If a child care program chooses religious exemption, the amendment requires that their Certificate of Compliance issued by the accrediting agency be posted in a conspicuous location in the child care facility. The accrediting agencies must include in their standards a requirement that religious exempt child care programs inform parents that their facility is exempt from state licensure and meets the standards of their accrediting agency, which minimum standards meets or exceeds state standards. The accrediting agencies are required to conduct an initial onsite review of each facility or program. Each subsequent year the child care facility is required to submit a notarized statement to the accrediting agency verifying continued compliance.

Child care personnel in religious exempt child care programs are required to begin the department's 40-clock-hour course in child care within 90 days after the effective date of this act or within 90 days after employment and are allowed one year to complete the training. Religious exempt facilities and programs must meet the staff credentialing requirements by July 1, 2007. There is no requirement for director credentialing. Equivalency programs developed by the accrediting agencies can be used in lieu of the staff child development associate credential. The amendment directs the department to expedite approval of such equivalency programs.

The Department of Children and Families is required to notify the accrediting agencies within 30 days of any revisions made to the state minimum standards. The accrediting agencies must, within 30 days of receiving the revised standards, submit a written statement to the department documenting that the accrediting agency has notified each religious-exempt facility or program of the revised minimum



standards. The accrediting agency must incorporate the revised state standards into their standards during the accrediting agency's next revision.

The accrediting agencies are required to submit annual reports to the department updating their lists of accredited child care programs. Each accrediting agency is required to notify the department in writing within 30 days after a child care facility or program affiliates with the accrediting agency or terminates their affiliation. Facilities and programs that transfer their affiliation from one agency to another must notify the accrediting agency from which it is transferring at least 30 days in advance of the transfer.

Accrediting agencies are prohibited from owning, operating or administering a child care program under their certificate of compliance.

The bill provides that the child care programs are solely responsible for their day-to-day operations and compliance with applicable Florida Statutes and the minimum standards of their accrediting agency.

Finally, the department is required to meet annually with the accrediting agencies and other interested child advocates to exchange ideas for ensuring the health and safety of children in child care facilities and programs.

The amendment provides an effective date of July 1, 2002.

#### Technical Comments

The bill's definition of the child care and preschool programs which are considered religious exempt child care programs includes the provision that they are to be accredited by a "recognized" Accrediting Agency for Religious Exemption and sets forth requirements for the accrediting agencies in their role of accrediting these child care programs. However, the bill does not identify how or who recognizes the accrediting agency. The wording seems to imply that the state is regulating the accrediting agency, when some of these agencies may actually be outside the State of Florida and not within this state's jurisdiction to regulate.

#### VII. SIGNATURES:

##### COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

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Janet Clark Morris

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M. Paul Liepshutz