

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 194

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Children and Families Committee, and Senator Lynn

SUBJECT: Child Care Facilities

DATE: April 10, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	Gillespie	Maclure	CM	Favorable/CS
3.	Wilson	Wilson	GO	Favorable
4.			AHS	
5.			AP	
6.				

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 194 transfers the Child Care Program, which provides for licensure of child care facilities and enforcement of licensing standards, from the Department of Children and Family Services to the Department of Health. The committee substitute revises requirements for religious-exempt child care programs to quality for exemption from licensure by the Department of Children and Family Services. The committee substitute also:

- Requires an applicant for licensure to attest to the accuracy of the information regarding previous violations by signing an affidavit;
- Directs the Department of Children and Family Services to establish uniform penalties for violations of the licensing requirements;
- Requires the department to establish a central statewide database system to record violations and penalties imposed on child care facilities; and
- Requires the department to establish a definition for child care which distinguishes between programs requiring licensure and after-school programs that do not require licensure.

This committee substitute substantially amends the following sections of the Florida Statutes: 402.3055, 402.310, and 402.316. The committee substitute also creates s. 402.3105, F.S., and creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Child Care Program

The purpose of the Florida's Child Care Program, which provides for the licensure of child care facilities and the enforcement of licensing standards, as with most states, is to "protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care" (s. 402.301, F.S.). The child care facilities required to meet Florida licensing standards are those facilities that 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 to be "child care" for the purposes of licensure under current law. Separate requirements for registration or licensure of family day care homes and large family child care homes are provided in ss. 402.313 and 402.3131, F.S.

The following programs are not considered to be "child care" for the purposes of child care licensure:

- Programs for children between 3 and 5 years of age operated and staffed by public schools (s. 402.3025(1), F.S.);
- Programs for children ages 3 to 5 years when provided in nonpublic schools in which the majority of children enrolled are 5 years of age or older (s. 402.3025(2) F.S.);
- Summer camps (s. 402.302(2)(b) and (c), F.S.);
- Vacation bible schools (s. 402.302(2)(d), F.S.); and
- Child care services operated in transient establishments (s. 402.302(2)(e), F.S.).

Not-for-profit membership 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 are also not considered child care for the purposes of child care licensure (s. 402.301(6), F.S.). According to the Department of Children and Family Services, this exemption applies to organizations, such as Boys and Girls Clubs and YMCAs, which, when this exemption became a law, offered programs for children which were not child-care related. However, over the years, many of these programs have evolved into offering daily child care-like functions with few legal distinctions of the point at which a program becomes child care and, therefore, is subject to licensure. This distinction between child care programs and non-child care programs is less clear with after-school programs.

Religious-Exempt Child Care

In addition, child care programs that are an integral part of churches or parochial schools conducting some form of classes or educational program are also exempt from licensure (s. 402.316, F.S.). Under current law, accreditation or membership in an organization that publishes and requires compliance with its health, safety, and sanitation requirements is required, as is compliance with the health, sanitation, and safety ordinances of the local governing body and the background screening applied to all child care facility personnel. Although some form of health, safety, and sanitation requirement must 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 under s. 402.316, F.S., may choose to be licensed by the state. Of the 1,450 religious-exempt child care facilities in the state, 1,009 have chosen to be licensed, and the remaining 441 child care facilities have chosen license exemption. Nationally, 39 states regulate religious-based child care centers.¹ Of the states that exclude religious-based child care facilities from their licensing requirements, several limit the programs eligible for exemption or impose more stringent requirements on the religious-affiliated child care centers than those provided in 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 provided is educational rather than custodial care provided in lieu of that provided by a parent and three of the four following requirements are met: all children are older than 3 years of age, 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.

Health and Safety Standards

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 these health and safety minimum standards are those contained in the National Health and Safety Performance Standards developed by the American Public Health Association and the American Academy of Pediatrics, which recommend that states require staff to be certified in first aid, including rescue breathing and first aid for choking, and explain that the recommendation is intended 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 children is recommended to prevent injury and poisoning. Many communicable diseases can be prevented through appropriate hygiene, sanitation, and disinfection methods. 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, are recommended to reduce this

¹ Children's Foundation, *2001 Child Care Center Licensing Study* (2001). The 2003 study is available from the Children's Foundation (*see* <http://www.childrensfoundation.net/research.htm> (last visited Apr. 3, 2003)).

contamination and control the spread of these diseases. Each of these recommended standards is included in Florida's licensing standards for child care (*see* s. 402.305, F.S.).

Licensing Standards

Section 402.305, F.S., provides the framework for Florida's licensing standards for child care facilities. The purpose of the licensing standards, as specifically articulated in that 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 by rule are explicitly set forth in s. 402.305, F.S., and are summarized 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

Enforcement is an important component in the child care regulatory process to ensure that child care facilities comply with 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 that any noncompliance is resolved. The Department of Children and Family Services, through its Child Care Program, 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 eight counties that have assumed the responsibility of licensing their child care facilities. Florida's enforcement process generally includes 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

operator's 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 guide the sanctions applied. A "Class I" violation is considered a violation that is serious in nature and could or does result in death or 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 type of violation and is generally related to the maintenance and operation of the child care facility. The authority for the administrative fines and specific penalties are set forth in ss. 402.3055, 402.309, 402.310, 402.312, and 402.319, F.S. However, the only statutory reference to the classification of violations refers to the elimination of duplicative and unnecessary inspections, and the development of a plan for abbreviated inspections for facilities without Class I or II violations (s. 402.3115, F.S.), which does provide the necessary authority for rule development.

Justification Review of the Child Care Program

In November 2000, the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) conducted a justification review of the Child Care Program administered by the Department of Children and Family Services.² The report found that the department's enforcement policies for child care licensure were being applied inconsistently across the state.³ Specifically, the department's district offices varied in their interpretation of when a violation should be classified as Class I, Class II, or Class III. The practical effect of these identified discrepancies was 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 day 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 the facilities. The CAPTS system also provides a method of alerting a counselor 90 days before the facilities' license renewal

² OPPAGA, *Justification Review, Child Care Program, Florida Department of Children and Families*, Report No. 00-16 (Nov. 2000), available at <http://www.oppaga.state.fl.us/reports/pdf/0016rpt.pdf> (last visited Apr. 3, 2003).

³ *Id.* at 21.

deadline and when relicensure is overdue. However, information about violations and enforcement actions imposed is not maintained on CAPTS system, but instead is maintained in each district. Consequently, the department does not have the ability to monitor the violations of licensing standards that occur or the sanctions that are imposed when problems are detected, from which to determine the enforcement practices used by the districts and to ensure that the licensing standards are effectively enforced.

In its report, OPPAGA recommended the department develop a statewide licensing data system for the child care program which 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 Family Services reports that an enhanced statewide licensing data system is currently being developed and implemented, which is planned to contain more detailed and accurate information on the programs and services. The department's district licensing staff enters information at the time of the inspection on the facility's compliance, noncompliance, corrective action needed, and due date for corrective action. This information is uploaded into the department's website for child care programs where parents can identify not only licensed facilities in their community, but the facilities' compliance with the licensing standards as determined by the inspection. District staff began identifying the classifications of violations (i.e., Class I, Class II, or Class III) in September 2002 and continue to work toward establishing the system for monitoring penalties and compliance.

III. Effect of Proposed Changes:

Transfer of the Child Care Program

The committee substitute transfers the Child Care Program, which provides for the licensure of child care facilities and the enforcement of licensing standards, from the Department of Children and Family Services to the Department of Health, effective October 1, 2003. The committee substitute specifies that the transfer is performed by a type-two transfer and transfers to the Department of Health all powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds which relate to the Child Care Program administered under ss. 402.301-402.319, F.S.⁴

Religious Exemption

The committee substitute amends s. 402.316, F.S., to establish requirements that an organization must meet in order to be recognized as an accrediting agency for the purpose of offering membership or accreditation that exempts religious child care programs from the state's child

⁴ Section 20.06(2), F.S., defines a type-two transfer as the:

merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

care licensing standards. State, regional, or national accrediting agencies for religious exemptions may qualify child care programs as religious exempt if the agencies are recognized by the Department of Children and Family Services. The committee substitute establishes criteria that the department must verify for an accrediting agency to be recognized as an accrediting agency for religious exemptions. These criteria require that accrediting agencies:

- Adopt minimum standards for child care programs and weekday preschool programs that meet the state's minimum child care licensing standards as delineated in s. 402.305, F.S., with the exception of the standards pertaining to child discipline, urban child care facilities, specialized child care for mildly ill children, and transfer of ownership;
- Publish the adopted standards and require that the child care programs they accredit or offer membership or participation to meet these standards;
- Require that these child care programs meet the local government minimum requirements for health, sanitation, and safety;
- Require these child care programs to inform parents of the programs' exemption from state licensing standards but that the programs meet the accrediting agencies' standards that meet or exceed the state's standards;
- Conduct an initial on-site review of these child care programs and subsequently require that a notarized statement be submitted annually to the accrediting agency verifying compliance with the standards and applicable Florida Statutes; and
- Require that personnel at the child care programs meet the state's minimum training and staff credentialing requirements. Staff must be required to begin training by October 1, 2003, or within 90 days after employment and complete the training within 1 year. Credentialing must be completed by July 1, 2007. Equivalency programs developed by the accrediting agency may be used in lieu of the staff child development associate credential. The committee substitute directs the department to expedite approval of these equivalency programs.

The committee substitute requires an accrediting agency to submit its published standards to the department as part of the recognition process. The department is required to review the standards within 30 days and maintain a list of all recognized accrediting agencies for religious exemption. The department is prohibited from regulating or controlling either the accrediting agency for religious exemptions or the governance, religious curriculum, discipline, or hiring practices of religious-exempt child care programs. Within 30 days after any revisions, the department is required to notify the accrediting agencies, and the accrediting agencies are allowed 30 days to inform the department that the child care programs were notified of the revised standards, which are subsequently incorporated into the next revision of the agency's standards.

The accrediting agency must submit an annual report to the department, as well as notice of the new memberships and terminations within 30 days after the accrediting agency's action. Accrediting agencies are prohibited from owning, operating, or administering a child care program under its accreditation. The committee substitute provides that the child care programs are solely responsible for compliance with the standards. The department is required to meet annually with the accrediting agencies and other interested child advocates.

Licensure Affidavit

The committee substitute revises the application requirements for child care licensure in s. 402.3055, F.S., to specify that applicants must attest to the accuracy of the information they provide regarding any previous denial, revocation, or suspension of a license or disciplinary action by signing an affidavit.

Uniform Penalties

The committee substitute requires the Department of Children and Family Services to establish by rule uniform penalties for violations of the child care regulations in the Florida Statute and to impose these penalties. This provision allows the department to develop and enforce rules regarding Class I, Class II, and Class III violations. Implementation is not contingent on a specific appropriation.

Central Statewide Database

The committee substitute requires that the Department of Children and Family Services 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. The system must also be able to produce statistical information regarding patterns of violations, classes, and types of violations and sanctions imposed. The committee substitute specifies that the information is to be made available to the public upon request based on the public records provisions of ch. 119, F.S. In maintaining the database, the department is required to consult and comply with the requirements of the State Technology Office under ch. 282, F.S. Further, the committee substitute provides that the implementation of these provisions is not contingent upon a specific appropriation.

Definition of Child Care

The committee substitute directs the Department of Children and Family Services to adopt by rule a definition of child care that distinguishes between child care programs that require licensure and after-school programs that do not require licensure. This rule would presumably clarify for both the department and national organizations, such as YMCAs and the Boys and Girls Clubs, which programs are required and not required to be licensed child care facilities.

Effective Date

The committee substitute provides an effective date of July 1, 2003, except for the transfer of the Child Care Program to the Department of Health, for which the committee substitute provides an effective date of October 1, 2003.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Some portion of the 451 child care facilities historically exempt from licensure would be subject to more stringent standards. It is anticipated that costs would be incurred by the facilities in meeting these standards. However, parents of children in the child care facilities would have assurances that certain minimum health and safety standards are being met. Some of these historically religious-exempt programs may not be considered child care pursuant to the non-public school exclusion, and, therefore, not subject to licensure and, potentially, the more stringent standards proposed.

C. Government Sector Impact:

The Department of Children and Family Services estimates the department would need approximately \$290,000 to implement the statewide child care data system, as described in the committee substitute, for system software configuration and modifications to the central database. The department anticipates it would absorb these costs within existing resources unless additional budget reductions occur.

Additional costs associated with the transfer of the Child Care Program from the Department of Children and Family Services to the Department of Health may also exist, but the amount of these costs is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
