

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 521                      Relating to child care facilities  
**SPONSOR(S):** Detert  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 194

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Children's Services (Sub)</u>	<u>4 Y, 2 N</u>	<u>Walsh</u>	<u>Liem</u>
2) <u>Future of Florida's Families</u>	<u>6 Y, 7 N</u>	<u>Walsh</u>	<u>Liem</u>
3) <u>Human Services Appropriations (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill amends the child care licensing and enforcement statutes to:

- clarify that validation that an applicant for licensure has not had a license previously denied, revoked or suspended, or been the subject of disciplinary action, must be by affidavit, and require that the licensing agency complete a statewide review of child care licensing records to validate the information;
- specify when programs of certain not-for-profit organizations are not considered child care for the purpose of licensure;
- authorize the Department of Children and Families to establish uniform penalties for violations of the licensing requirements;
- require a statewide data system for violations and penalties imposed on child care facilities; and
- eliminate the exemption from licensure for religious-based child care facilities.

According to the Department of Children and Families, implementation of these provisions will cost approximately \$406,000 for the first year and approximately \$360,000 annually thereafter.

The bill provides that the act will take effect July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0521a.fff.doc  
**DATE:** April 15, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

1. Approximately 450 child care facilities historically exempt from licensure will be subjected to the state’s licensing requirements and related processes.

#### B. EFFECT OF PROPOSED CHANGES:

##### Applicant Information

The current statute requires that applicants for child care licensure attest under penalty of perjury to the correctness of the information provided to the department. “Written attestation under penalty of perjury” normally takes the form of an affidavit. While HB 521 clarifies that the information provided must include an affidavit, the department application form contains the following statement to effectuate the existing language: “Under penalty of perjury, I swear and affirm that all the information given within this application is complete and accurate.”<sup>1</sup> The statement must be sworn to before a notary.

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 five children who are unrelated to the operator and for whom a payment is received for the care,<sup>2</sup> unless the facility is exempt from licensure or not considered child care for the purposes of licensure pursuant to Florida Statutes. 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.].

<sup>1</sup>Application for a License to Operate a Child Care Facility, CF-FSP 5017, Apr 97.

<sup>2</sup>Section 402.302, Florida Statutes.

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, of the 1,417 child care facilities in Florida eligible for licensure exemption according to s. 402.316, F.S., 986 have chosen to be licensed.

Nationally, 39 states regulate religious based child care centers.<sup>3</sup> 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.

#### Licensing Standards: Violations and Penalties

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. 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, many of which are 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, 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.

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<sup>3</sup>2002 *Child Care Licensing Study*, The Children's Foundation.

- 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.

DCF is responsible for issuing licenses to child care facilities and enforcement of licensing standards. 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<sup>1</sup> 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 [ §§ 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 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 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,<sup>4</sup> which has not provided the necessary authority for rule development. This bill requires DCF to establish and impose uniform penalties for certain violations, which is a grant of rulemaking authority.

In the November 2000 *Child Care Program Justification Review* and in its *Progress Report No. 02-61, Child Care Program Implements Recommendations to Improve Licensing and Enforcement Activities*, OPPAGA identified the lack of adequate statewide information on licensing and enforcement actions as another weakness in the department's enforcement activities. 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, in its *Child Care Program Annual Report Fiscal Year 2001-02*, that an enhanced statewide licensing data system has been deployed which allows public internet access to provider demographics and licensing inspections reports that include compliance

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<sup>4</sup>Section 402.3115, F.S.

information. The department also reports that they are already upgrading the system and adding local government licensing agencies to the system.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 402.3055, F.S., to require that the applicant sign an affidavit attesting to the accuracy of the information he or she provides, and the department or local licensing agency review statewide child care licensing records to determine if a child care license applicant has been the subject of a disciplinary action when the applicant denies that any such disciplinary action has occurred.

**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, and specifies that care for children under age 4 is child care subject to ss. 402-301-402.319.

**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 that the department 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. 409.146, 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.

**Section 11.** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF reports that the estimated first year fiscal impact of this bill is approximately \$406,000. The recurring cost for year 2 is approximately \$360,000. See "Fiscal Comments" below.

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:

Approximately 450 child care facilities historically exempt from licensure will be subjected to the state's licensing requirements and related processes.

D. FISCAL COMMENTS:

DCF reports as follows:

Based on the approximately 450 religiously exempt facilities, nine staff would be required to perform the licensing function. Of the nine, two would be necessary for local licensing and seven for the department. A minimum of seven additional staff will be required to perform licensing inspections for the department for those facilities that are currently identified as religious exempt. Annual minimum salary  $\$37,860 \times 7 + \$265,020$ , plus first-year expenses  $\$15,918 \times 7 = \$111,426$ .

Hardware and software for the seven additional staff will be required:  $7 \times \$4,248 = \$29,736$ .

System software reconfiguration and modifications to the central database will be approximately \$290,000. This could be handled within current recurring resources, however funding will be necessary if additional budget reductions occur.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department is required to establish and impose uniform penalties for certain violations, which is a grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 14, 2003, the Subcommittee on Children's Services adopted a strike-all amendment to the bill. The strike all amendment had the following effect:

- Retains the current statutory exemption to licensure for religious based child care programs and establishes specific requirements for attaining a religious exemption for such programs.

Child care programs or weekday preschool programs qualify for an exemption if the program is an integral part of an established church, temple, or parochial school conducting regularly-scheduled classes and is a member of or accredited by a state, regional or national accrediting agency for religious exemption which is recognized by DCF.

The program may choose to be licensed or may choose to be exempt from licensure. If the program chooses to be exempt, it must display its certificate of compliance from the recognized accrediting agency.

- Directs DCF to establish in rule a definition of child care that distinguishes between child care programs requiring licensure and after school programs not requiring licensure.
- Transfers the Child Care Program from the DCF to the Department of Health on October 1, 2003; clarifies that DCF's rules implementing the Child Care Program are included within the transfer; and specifies the provisions of law relating to the Child Care Program, to which the transfer applies.
- Retains the current statutory requirement that the annual DCF report on the client management information system be submitted to the Joint Information Technology Resources Committee.
- Deletes the requirement for validation that an applicant for licensure has not had a previously denied, revoked, or suspended license or been subjected to disciplinary action.
- Revises the role of the State Technology Office and DCF as it pertains to the central data base.
- Stipulates that information made available to the public from the central data base must be based on the public records provisions of Chapter 119, F.S.
- Clarifies that DCF's role as it relates to the accrediting agency for religious exemption is not that of oversight.
- Deletes the provisions that specify when programs of certain non-for-profit organizations are not considered child care for the purpose of licensure.
- Directs DCF to establish in rule a definition of child care that distinguishes between child care programs requiring licensure and after school programs not requiring licensure.

On April 14, 2003, the Committee on the Future of Florida's Families adopted one amendment to the strike all amendment. That amendment deleted Section 6 of the strike all, which had required that the child care program be transferred from DCF to the Department of Health.