

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1129 Licensure of Child Care Programs

SPONSOR(S): Health Care Appropriations Subcommittee; Children, Families & Seniors Subcommittee; Cortes

TIED BILLS: **IDEN./SIM. BILLS:** SB 1520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	7 Y, 6 N, As CS	Langston	Brazzell
2) Health Care Appropriations Subcommittee	11 Y, 2 N, As CS	Pridgeon	Pridgeon
3) Health & Human Services Committee	12 Y, 6 N	Langston	Calamas

SUMMARY ANALYSIS

Child care is the care, protection, and supervision of a child, for a period of less than 24-hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care. If a program meets the statutory definition of child care, it must be licensed by DCF or local licensing agencies, unless specifically exempted from regulation by statute.

CS/CS/HB 1129 redefines “child care” and “child care facilities,” and removes the statutory requirement that DCF distinguish between child care programs for school-age children requiring licensure and after-school programs that do not need to be licensed; the bill specifies what constitutes after-school programs that must be licensed as a child care facility. The bill defines an after-school program as child care for school-age children during out-of-school times, including, but not limited to, before school or after school, school breaks, and in service planning days. An after-school program includes, but is not limited to, a program that does not require a parent to be present while the child is at the facility and satisfies three or more of the following elements:

- Provides transportation.
- Provides meals or snacks.
- Provides more than one type of educational, artistic, athletic, or self-directed activity.
- Provides tutoring or homework assistance, or a specific time for children to complete homework.
- Advertises or holds itself out as providing child care or being an after-school program.
- Takes children on field trips.

The bill also provides exemptions from the definition of after-school program, which exempt qualifying programs from licensure. These exemptions mirror those currently in DCF rule; however, they do not include a blanket exemption for a membership organization that is affiliated with a national organization.

It also amends legislative intent related to the licensure of child care facilities to state that membership organizations affiliated with national organizations which provide child care are considered to be child care facilities and, as such, are subject to licensing requirements or minimum standards for child care facilities. The bill provides exceptions from certain physical plant requirements for such membership organizations that are licensed as child care facilities for after-school programs before July 1, 2020.

The bill will have a negative fiscal impact on DCF and an indeterminate, but likely insignificant fiscal impact on local governments. *See Fiscal Analysis & Economic Impact Statement.* The bill provides a nonrecurring appropriation of \$47,040 to implement modifications to DCF’s technology applications to comply with the provisions related to additional licensure requirements.

The bill has an effective date of July 1, 2018.

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

STORAGE NAME: h1129d.HHS

DATE: 2/21/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Care Licensure

Child care is the care, protection, and supervision of a child, for a period of less than 24-hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.¹ If a program meets the statutory definition of child care, it is subject to regulation by DCF or local licensing agencies (LLAs),² unless statute specifically excludes or exempts it from regulation.

While statutes governing child care do not define the term “child,” ch. 402, F.S., specifically envisions regulation of both programs for younger children (those from birth to age five) and for school-aged children, the latter receiving child care before-school, after-school, or during school breaks.

Pursuant to s. 402.301, F.S., the Legislature intends to have statewide minimum standards for the care and protection of children in child care facilities and to enforce and regulate these standards through a program of licensing. Accordingly, under ch. 402, F.S., the Department of Children and Families (DCF) regulates child care facilities, family day care homes, and large family child care homes. DCF is responsible for establishing licensing standards that each licensed child care facility must meet.³ DCF is also responsible for the minimum standards for child care personnel; one of the statutory requirements is that these providers’ personnel shall have good moral character based upon background screening.⁴

Child care facilities are child care centers or child care arrangements that care for more than five children unrelated to the operator and receive a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.⁵ However, the definition of child care facility excludes the following:⁶

- Public schools and nonpublic schools and their integral programs, with certain exceptions;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments,⁷ which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of ch. 435, F.S.

Additionally, child care facilities that are an integral part of churches or parochial schools, meet specified criteria,⁸ and conduct background screening of their personnel are exempt from licensure.⁹

¹ S. 402.302(1), F.S.

² Broward, Hillsborough, Palm Beach, Pinellas and Sarasota counties have decided – either by statute or by the adoption of a local ordinance or resolution – to designate a LLA to regulate child care providers in their areas.

³ S. 402.305(1), F.S.

⁴ S. 402.305(2), F.S.

⁵ S. 402.302(2), F.S.

⁶ Id.

⁷ Transient public lodging establishing are units, groups of units, dwellings, buildings, or groups of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. S. 509.13(4)(a)1., and (11), F.S.

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Child Care for School-Age Children

After-school programs are locally designed school and community solutions that help children learn and grow, keep children safe, and support families to balance work with home.¹⁰ These programs play an important role in keeping children safe and healthy while parents are working or in school.¹¹ After-school programs can have a positive impact on children; these programs can improve a child's academic achievement; improve a child's self-esteem and self-confidence through improved social and personal skills; reduce opportunities for juvenile crime, sexual activity, and other risky behaviors, such as drug and alcohol use; and contribute to healthy lifestyles and increased knowledge about exercise and nutrition.¹²

Regulation of After-School Programs, Generally

Most parents assume that after-school programs are licensed by a state agency to ensure the safety of their children; however, licensing of after-school programs varies considerably by state.¹³ All 50 states require some or all providers of school-age child care programs to be licensed or regulated as child care facilities.¹⁴ Many states address after-school programs separately from traditional birth to age five child care, instead regulating these programs as child care for school-age children.¹⁵

Licensing after-school programs for school-age children provide states with a number of benefits, which include promoting children's health and safety; providing consumers information about a program's licensure status provides additional information for them to make choices; and providing the state with a mechanism to monitor¹⁶ such programs.¹⁷ However, after-school programs present a challenge for designing a regulatory structure due to their variation in goals, structure, location, and hours of operation.¹⁸

⁸ Such facilities must be accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation. They must also meet minimum requirements of the applicable local governing body as to health, sanitation, and safety.

⁹ S. 402.316(1), F.S. If such facilities fail to comply with screening requirements, they will lose their exemptions.

¹⁰ Afterschool Alliance, *What does the research say about afterschool?*, (Nov. 2017), available at, http://afterschoolalliance.org/documents/What_Does_the_Research_Say_About_Afterschool.pdf (last visited January 28, 2018).

¹¹ Oxana Golden and Laura Martinez, *SPOTLIGHT ON LICENSING EXEMPTIONS: A Review of State and Territory Licensing Exemptions Impacting School-Age Child Care*, Afterschool Investments, U.S. Department of Health and Human Services Administration for Children and Families, Child Care Bureau, (Aug. 2011), available at https://qrisguide.acf.hhs.gov/files/SAC_Licensing_Exemptions.pdf (last visited January 28, 2018).

¹² Priscilla M.D. Little, Christopher Wimer, Heather B. Weiss, *After School Programs in the 21st Century: Their Potential and What It Takes to Achieve It*, Harvard Family Research Project, No. 10, (Feb 2008), available at, <https://larrycuban.files.wordpress.com/2016/08/ostissuebrief10-1.pdf> (last visited January 28, 2018).

¹³ *Supra*, note 11 at p. 1.

¹⁴ *Promoting Quality in Afterschool Programs through State Child Care Regulations*, Afterschool Investments, U.S. Department of Health and Human Services, Administration for Children and Families, Child Care Bureau, (June 2006), p. 10, available at, <https://www.researchconnections.org/childcare/resources/11434/pdf> (last visited January 28, 2018).

¹⁵ *Id.* See also, *Promising Practices for Out-of-School Time Licensing and License-Exempt Systems*, National Center on Afterschool and Summer Enrichment, Vol. 1 (Aug. 2017), available at, https://childcareta.acf.hhs.gov/sites/default/files/public/practicebrief1_licensing_aug2017_508c_0.pdf (last visited January 28, 2018), which points out that some states have stand-alone licensing standards for school-age child care programs, while others add language specific to school-age in their early childhood standards.

¹⁶ Program monitoring provides a direct incentive to maintain minimum quality levels over time. Monitoring can also help programs identify areas they may need to improve.

¹⁷ *Supra*, note 14 at p. 8.

¹⁸ *Id.* at p. 10.

Licensure of After-School Programs in Florida

DCF must adopt by rule a definition for child care which distinguishes between child care programs that require child care licensure and after-school programs that do not require licensure.¹⁹ It may also adopt different standards for different age groups, including standards for child care facilities that serve school-age children.²⁰ A definition of a school age child is incorporated by reference in rule as a child that is at least five years of age by September 1st of the beginning of the school year and who attends grades kindergarten or above.²¹ Thus, only certain programs that serve only school-age children must be licensed, using standards developed specifically for the needs of these older children.

The term “after-school program” is not positively defined in Florida statute or DCF rule.²² In an attempt to identify after-school programs exempt from licensure as child care facilities as required by statute, DCF adopted rule 65C-22.008(2), F.A.C., “School-age Child Care,” which lays out the types of after-school programs that may be exempt. DCF has determined that the following programs for school-age children do not need to be licensed as child care facilities, so long as they comply with the minimum background screening requirements in s. 402.305, F.S., and s. 402.3055, F.S.:²³

- **Programs on School Sites:** A program that is located on a public or nonpublic school site is exempt from licensure as a child care program if it:
 - Is operated and staffed directly by that school or through a formal agreement, such as a contract, between the school or school district and a provider which names the school/school district as the responsible party for the operation of the program.²⁴
 - Serves only the school-age children attending the school during the school day.²⁵
 - Follows the standards set forth by the Florida Building Code State Requirements for Public Educational Facilities.
- **Instruction or Tutorial Programs:** A program that has a single instructional or tutorial purpose,²⁶ which is the only service that the program provides, and does not offer any service beyond instructional, tutorial, or academic activity, is exempt from licensure as a child care program if it:
 - Does not cater, serve or prepare meals.²⁷
 - Does not advertise or otherwise represent that it has attributes of child care.
 - Has clearly defined durations for instructional sessions that do not exceed two hours.²⁸
 - Does not contract to deliver a school readiness program pursuant to s. 1002.88, F.S.
- **Open Access Programs:** An open access program is exempt from licensure as a child care program if it:
 - Operates or serves children for less than four hours per day.²⁹

¹⁹ S. 402.305(1)(c), F.S.

²⁰ Id.

²¹ Rule 65C-22.008(4), F.A.C., incorporates the School-Age Child Care Licensing Handbook, March 2017, by reference. See, Department of Children and Families, *School Age Child Care Licensing Handbook*, (Mar. 2017), p. 9, available at, <https://www.flrules.org/gateway/readRefFile.asp?refId=8023&filename=School%20Age%20Handbook.pdf> (last visited January 28, 2018).

²² *Project Esteem of Leon Cnty. vs. Dep't of Children and Families*, Fla. Div. of Admin Hearings, Case No. 15-0777, Recommended Order, p. 11

²³ Rule 65C-22.008(3), F.A.C.

²⁴ A lease for space or user agreement, with or without the endorsement of the program by the school/school district, does not meet the formal agreement requirement.

²⁵ The program may provide services during any out-of-school time, including before school, after school, on teacher planning days, holidays, and intercessions that occur during the school district's academic calendar year.

²⁶ Some examples of these programs include, but are not limited to, tutoring; a computer class; a ballet class; a karate class; baseball instruction or other sport

²⁷ The program may choose to provide drinks and ready-to-eat snacks that are individually pre-packaged and do not require refrigeration.

²⁸ If tutoring is provided in multiple academic areas, the total combined session times cannot exceed three hours per day.

²⁹ The program may provide services during any out-of-school time, including before school, after school, on teacher planning days, holidays, and intercessions that occur during the school district's official academic calendar year.

- Does not advertise or otherwise represent that the program is an afterschool child care program or that the program offers supervision.
- Allows children to enter and leave the program at any time without permission, prior arrangements, or supervision, and the program does not assume responsibility for supervision.
- Does not provide transportation, directly or through a contract or agreement with an outside entity, during the hours of operation for the purposes of field trips; and,
- Does not serve or prepare any meals, except those provided through the USDA Afterschool Meal Program (AMP).³⁰
- Does not contract to deliver a school readiness program pursuant to s. 1002.88, F.S.
- **National Membership Organizations:** Any program providing care for school aged children that is operated by, or in affiliation with a national membership non-profit or not for profit organization that certifies membership organizations, as of February 1, 2017, in at least ten states, that was created for the purpose of providing activities that contribute to the development of good character or good sportsmanship or to the education or cultural development of minors in this state, that charges a membership fee for children and may receive grant funding for services is exempt from licensure as a child care program.
- **Care for Grades 6 and Above:** A program that provides child care exclusively for children in grades six and above is exempt from licensure as a child care program.

If a program described above is designated as a Gold Seal Quality Care³¹ provider, it must be licensed as a child care program.³² Additionally, programs on school sites, open access programs, and national membership organizations that are exempted by rule may elect to be licensed if they meet all applicable licensure standards.³³

Licensure of National Membership Organizations as Child Care Facilities

The intent language in s. 402.301(6), F.S., specifies that a national membership organization that meets certain criteria,³⁴ and *which does not provide child care*, is not considered a child care facility for licensure purposes. The intent language also states that all child care personnel³⁵ in these membership organizations that are exempt from licensure as a child care facility must meet DCF background screening requirements.³⁶ However, while s. 402.301(6), F.S., states legislative intent that a national membership organization that *does not* provide child care, does not have to be licensed as a child care facility, it is silent as to the licensure of such organizations that *do* provide child care.

In 2000, the Florida Office of the Attorney General issued an opinion relating to the issue of child care, child care facilities and licensure for such organizations.³⁷ The opinion addressed whether or not the child care programs operated by the YMCA or other membership organizations were exempt from licensure by DCF as child care facilities, which was raised by the General Counsel of DCF.³⁸ The opinion stated that such programs fall within the definition of a “child care program,” and, as such, are not exempt from licensure by DCF.³⁹ Additionally, the opinion noted that s. 402.302, F.S., provides

³⁰ Programs not participating in the AMP may choose to provide drinks and ready-to-eat snacks that are individually pre-packaged and do not require refrigeration.

³¹ Rule 65C-22.009(2)-(4), F.A.C.

³² Rule 65C-22.008(3), F.A.C.

³³ *Id.*

³⁴ The organization’s primary purpose must be providing activities that contribute to the development of good moral character or good sportsmanship or to the education or cultural development of minors in the state, it may charge only a nominal annual membership fee, it must be not for profit and certified by national associations as being in compliance with the association’s minimum standards and procedures.

³⁵ “Child care personnel” means all owners, operators, employees, and volunteers working in a child care facility. S. 402.302(3), F.S.

³⁶ S. 402.301(6), F.S.

³⁷ Florida Office of the Attorney General. Advisory Legal Opinion, Number AGO 2000-67, (Nov. 17, 2000), *available at* <http://www.myfloridalegal.com/ago.nsf/printview/CDE65A2BC43315E18525699A006A1572> (last visited January 26, 2018).

³⁸ *Id.*

³⁹ *Id.*

specific exemptions from licensure, and that “no other exemptions should be inferred to be intended when the Legislature has specifically provided exemptions from the operation of a statute.”⁴⁰ Section 402.302, F.S., does not specifically exempt such membership organizations from licensure by virtue of their status as membership organizations.

Child Care Facility Requirements

DCF repealed rule 65C-22.002, F.A.C., relating to physical environment for child care on October 25, 2017, and replaced it with the Child Care Facility Handbook (Handbook),⁴¹ incorporated by reference in rule 65C-22.001, F.A.C. Additionally, the School-Age Child Care Licensing Handbook (School-Age Handbook),⁴² which is also incorporated by reference, includes licensure standards for child care facilities that serve exclusively school-age children. These standards include numerous requirements designed to keep children safe, such as:

- Requiring the staff person in charge of the program to be at least 21 years old.
- Training for directors and staff.
- Limits on the number of different after-school sites a director can supervise.
- Ensuring no staff are under the influence of drugs while providing child care.
- Ensuring the safety of outdoor play equipment.
- Ensuring the availability of first aid supplies.
- Requiring van drivers to have valid Florida driver’s licenses.
- Requiring van drivers to keep logs of children to ensure that no child is left in a hot van.
- Prohibiting harsh discipline.
- Requiring that facilities be free of vermin, fire hazards, and any activities that would present risks to children’s health and safety.

Both the Handbook and the School-Age Handbook set out the requirements for the physical environment for all child care facilities.⁴³ For restroom and bath facilities, the Handbook and the School-Age Handbook requires facilities serving one to 15 children to have at least one toilet and one sink.⁴⁴ Facilities must add one additional toilet and sink for every 30 children thereafter.⁴⁵ The Handbook and School-Age Handbook requirements for indoor and outdoor square footage requirements are those required by s. 402.305(6), F.S.:

- A child care facility that had a valid license on October 1, 1992, must have a minimum of 20 square feet of usable indoor floor space for each child and a minimum of 45 square feet of usable outdoor play area for each child.⁴⁶ This standard applies as long as the child care facility remains licensed at the site occupied on October 1, 1992, and is not affected by any change in the ownership of the site.⁴⁷
- A child care facility that did not hold a valid license on October 1, 1992, must have a minimum of 35 square feet of usable floor space for each child and a minimum of 45 square feet of usable outdoor play area for each child.⁴⁸

⁴⁰ Id.

⁴¹ Department of Children and Families, *Child Care Facility Handbook*, (Oct. 2017), available at, <http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Facility%20Handbook.pdf> (last visited January 26, 2018).

⁴² *Supra*, note 21.

⁴³ Id. at pp. 15-31; *supra*, note 41 at pp. 18-37.

⁴⁴ *Supra*, note 21 at p. 20; *supra*, note 41 at p. 25.

⁴⁵ *Supra*, note 21 at pp. 17-19; *supra*, note 41 at p. 25

⁴⁶ S. 402.305(6)(a), F.S. Outdoor play area is calculated at the rate of 45 feet per child in any group using the play area at one time. The facility must provide a minimum play area for one-half of the licensed capacity.

⁴⁷ Id.

⁴⁸ S. 402.305(6)(b), F.S.

The State Uniform Building Code for Public Educational Facilities Construction serves as the minimum standards for physical facilities of a child care program for school-age children which is operated in a public school facility, regardless of who operates of the program.⁴⁹

Effect of Proposed Changes

Child Care Licensure

CS/CS/HB 1129 makes changes to what DCF must license as a child care facility. It revises the definition of child care to include a nominal membership fee as a fee for care. The bill also states that child care may also include, but is not limited to, providing transportation, food services, educational activities, and instructional activities.

Licensure of After-School Programs

The bill defines an “after-school program” as child care for school-age children during out-of-school times, including, but not limited to, before school or after school, school breaks, and in service planning days. A “school-age child,” also defined in the bill, is one who is at least 5 years of age by September 1 of the beginning of the school year, and no older than 12 years of age, who attends grades kindergarten and above. An after-school program includes, but is not limited to, a program that does not require a parent to be present while the child is at the facility and satisfies three or more of the following elements:

- Provides transportation.
- Provides meals or snacks.
- Provides more than one type of educational, artistic, athletic, or self-directed activity.
- Provides tutoring or homework assistance, or a specific time for children to complete homework.
- Advertises or holds itself out as providing child care or being an after-school program.
- Takes children on field trips.

This change makes the process of determining whether a program is an after-school program, and therefore subject to licensure, more uniform. Additionally, providers that do not wish to be licensed may tailor their programs in such a way as avoid being classified as an after-school program by offering fewer than three of the elements listed above.

The bill also provides exemptions from the definition of after-school program. These exemptions mirror those currently in DCF rule; however, they do not include a blanket exemption for a membership organization that is affiliated with a national organization. An after-school program does not include:

- A program on a public or non-public school site that is operated and staffed directly by the school or through a formal agreement⁵⁰ between the school and a provider to serve children who attend that school.
- A program that is solely instructional or tutorial.
- An open-access program.
- A program that does not hold a Gold Seal Quality Care designation under s. 402.281, F.S., that provides child care exclusively for children in grades six through 12.

The bill defines an open-access program as one that allows children to come and go at will. It also places limitations on what services an open access program may provide. An open access program may not:

⁴⁹ S. 402.305(5), F.S. The Legislature intends that if a child care program for school-age children is operated in a public school, the program need not conform to standards for physical facilities other than the standards adopted by the Commissioner of Education.

⁵⁰ A lease for space or user agreement is not considered a formal agreement.

- Serve children for more than four hours per regular school day;
- Advertise or otherwise represent that it provides child care or after-school care, is an after-school program, or offers supervision;
- Provide supervision;
- Provide transportation, directly or indirectly;
- Provide meals or snacks outside of the federal Afterschool Meal Program; or
- Deliver a school readiness program pursuant to s. 1002.88, F.S.

Licensure of Membership Organizations as Child Care Facilities

Current law states the Legislature's intent not to require licensure for membership organizations affiliated with national organizations, which do not provide child care, as child care facilities. The bill specifies that such organizations must, however, be licensed as child care facilities if they provide child care.

The bill creates an exemption from meeting certain facility requirements. A membership organization affiliated with a national organization, which is licensed between July 1, 2018, and June 30, 2020, for an after-school program, is exempt from facility requirements related to square footage for usable indoor floor space, square footage for usable outdoor play area, and restroom and bath facilities. However, if a membership organization remodels its facility or begins using a new facility on or after July 1, 2020, then it must meet the current statutory square footage requirements for usable indoor floor space and usable outdoor play area in statute and any restroom and bath facility requirements specified in rule.

The bill incorporates the aforementioned after-school programs into the existing statutory licensing fee schedule for child care facilities, listed in s. 402.315(3)(a), F.S., and sets the amount at \$75.

Lastly, the bill address the training standards of child care personnel of after-school programs for those associated with a membership organization that is affiliated with a national organization. These personnel may apply up to 30-clock-hour of training approved by the membership organization towards the 40-clock-hour, and such personnel must compete the department's required training on state and local rules and regulations that govern child care and reporting abuse. The department is directed to specify, by rule, the membership organizations to which these training standards apply.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.301, F.S., relating to child care facilities.

Section 2: Amends s. 402.302, F.S., relating to definitions.

Section 3: Amends s. 402.305, F.S., relating to licensing standards.

Section 4: Amends s. 402.315, F.S., relating to funding; license fees.

Section 5: Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Section 6: Amends s. 402.317, F.S., relating to prolonged child care.

Section 7: Amends s. 435.07, F.S., relating to exemptions from disqualification.

Section 8: Amends s. 1002.59, F.S., relating to emergent literacy and performance standards training courses.

Section 9: Amends s. 1002.82, F.S., relating to Office of Early Learning; powers and duties.

Section 10: Amends s. 1002.88, F.S., relating to school readiness program provider standards; eligibility to deliver the school readiness program.

Section 11: Provides an appropriation.

Section 12: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent that the bill requires additional after-school programs be licensed as child care facilities, DCF will collect additional revenue from licensing after-school programs as child care facilities. The impact of such changes is indeterminate, however it is estimated that 160 of the Boys and Girls Clubs and YMCAs may seek licensure. There are currently 241 Boys & Girls Clubs and 35 YMCA's that are not licensed and may seek licensure.⁵¹ However, approximately 116 of those Boys and Girls Clubs and YMCA providers are in counties that already do their own licensure or are school readiness providers meaning they are already inspected by DCF or a county entity. Five counties have elected to regulate licensing of child care facilities and homes through local licensing agencies, as provided in s. 402.306, F.S. Those counties are: Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota. This would potentially reduce the number seeking licensure to 160 facilities.

Assuming all 160 entities seeking licensure paid a \$75 licensure fee (\$100 is the maximum fee), \$12,000 in fee revenue would be generated. If only 80% of the entities sought licensure, fee revenues would be approximately \$9,600.

2. Expenditures:

DCF may incur additional costs to inspect the child care facilities that must be licensed under the bill. The impact of such changes is indeterminate because it is unknown how many child care facilities will be licensed because they meet the definition of an after-school program. In addition, the new requirements may have the potential to allow some currently licensed after-school programs to become exempt from licensure based on the allowed exemption section, but the department has no manner of knowing the number of programs that may become exempt due to the new requirements resulting in those programs no longer paying the licensing fee.⁵²

If all 160 entities sought licensure, using the current DCF standard caseload for child care regulation of one counselor for every 80 programs, two state FTE may be needed to implement this legislation. However, as noted above the new requirements may have the potential to allow some currently licensed after-school programs to become exempt from licensure based on the allowed exemption section. In addition, it is also unknown how many programs may change their model to meet the exemptions envisioned in the bill and therefore not be required to be licensed. The department currently has two vacant FTE within the child care regulation program. The positions have been vacant an average of 304 days as of December 14, 2017⁵³. Based on the unknown number of entities that may seek licensure and the ability the fill vacant FTE to absorb any work load, the department should be able to absorb any additional workload within their existing resources.

The Department would also need to make changes to the systems used by the 62 Department regulated counties as well as updates to each of the individualized sections of the systems used by the five local licensing counties. This would include database and reporting adjustments. The departments estimates 480 hours of programming time at an hourly rate of \$98.00 per hour for a total need of \$47,040.

⁵¹ Department of Children and Families, Agency Analysis of 2018 House Bill 1129 (2/1/2018) (on file with Health Care Appropriations Subcommittee Staff.)

⁵² Id.

⁵³ Florida House of Representatives, Vacancy Report (12/14/17) (on file with Health Care Appropriations Subcommittee Staff.)

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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Five counties have elected to regulate licensing of child care facilities and homes through local licensing agencies, as provided in s. 402.306, F.S. Those counties are: Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota. The potential impact to revenue for these counties is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

After-school programs meeting criteria for licensure will need to pay licensure fees to DCF, as they will be required to obtain licensure as child care facilities. Such fees are capped at \$100 per facility. However, if such programs are not compliant with the requirements for licensure, there may be additional costs to achieve compliance. The impact of such changes is indeterminate as it is unknown how many programs will require licensure that are not currently licensed. The bill aligns with many of DCF's current rule provisions regarding licensure of school-age child care, and thus it may not change the licensure status of many programs.

Membership organizations meeting specific criteria were exempted in rule as of its effective date of March 30, 2017. If such organizations require licensure under the bill's provisions, they may have additional costs to achieve compliance, though they may be able to modify their programs in order to not require licensure if they so desire. The bill also specifically exempts these organizations from having to make changes to their physical facilities if licensed by July 1, 2020. However, those licensed or remodeling or using new facilities on or after July 1, 2020, must meet licensure standards for their physical facilities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Children, Families, and Seniors Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Refining the definition of an “after-school program” to include elements, which if a program provides three or more, will cause a program that does not require a parent to be in attendance while the child is there to meet be licensed.
- Defining what an “open access program” is and what services an open access program may not provide.
- Amending the definition of “child care” to include providing transportation, food services, educational activities, and instructional activities.
- Including that a nominal membership fee is a fee for care.
- Defining a "school-age child" as a child who is at least five years old, but not older than twelve by September 1 of the beginning of the school year and who attends grades kindergarten and above.
- Providing an exception from certain square footage and restroom and bath requirements for membership organizations affiliated with national membership organizations that are licensed as child care facilities for after-school programs before July 1, 2020.

On February 13, 2018, the Health Care Appropriations Subcommittee adopted two amendments that:

- Establish the licensure fee for certain after-school programs as \$75;
- Provide that personnel training for after-school programs operated by a membership organization, which are affiliated with a national organization, may apply a portion of the training provided by the membership organization towards the total statutory requirement of 40-clock-hours;
- Require such personnel to complete department training on state and local rules and regulations pertaining to child care and identifying and reporting child abuse;
- Specify that passage of a competency exam is not required for the approved membership organization training that is applied towards the 40-clock-hours requirement;
- Directs the department to specify, by rule, the membership organizations that qualify under the provisions of the bill and to specify the training criteria; and,
- Provides an appropriation.

The bill was reported favorably as a committee substitute. This analysis is drafted to the bill as reported by the Health Care Appropriations Subcommittee.