

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 536

INTRODUCER: Senator Smith

SUBJECT: After-school Child Care Programs

DATE: November 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 536 requires the Department of Children and Families (DCF or department) to develop a tiered licensure program for after-school child care programs. The bill requires the tiered licensure program to apply licensure criteria based on the risk levels of activities offered and the populations of children served by after-school child care programs.

The bill requires the department to promulgate rules to implement the tiered licensure program by a date certain and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include a description of the tiered licensing program and implementation activities, public comment received regarding the development of the program and recommendations for statutory change.

The bill is anticipated to have a fiscal impact on state government.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Legislative Intent Related to Child Care and Child Care Facilities

Florida law provides that it is the intent of the Legislature to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care.¹ To further that intent, laws were enacted to:

- Establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to provide for enforcement to regulate conditions in such facilities through a program of licensing;² and

¹ Section 402.301, F.S.

² Sections 402.301 - 402.319, F.S.

- Require that all owners, operators, and child care personnel shall be of good moral character.³

Child Care

Child care is defined as 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.⁴

While legislative intent related to child care finds that many parents with children under age 6 are employed outside the home⁵ and child care is typically thought of as care and supervision for children under school age, the definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- The term indoor recreational facility means an indoor commercial facility which is established for the primary purpose of entertaining children in a planned fitness environment through equipment, games, and activities in conjunction with food service and which provides child care for a particular child no more than 4 hours on any one day. An indoor recreational facility must be licensed as a child care facility.⁶
- A school-age child care program is defined as any licensed child care facility serving school-aged children⁷ or any before and after school programs that are licensed as a child care facility and serve only school-aged children.⁸
- Any of the after school programs accepting children under the age of the school-age child must be licensed.⁹
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.¹⁰

Child Care Facilities

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives 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.¹¹ The definition excludes the following:

³ Good moral character is based upon screening that shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. See s. 402.305, F.S.

⁴ Section 402.302, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least 5 years of age by September 1, of the beginning of the school year and who attends kindergarten through grade five.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 402.302, F.S.

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509,¹² 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 chapter 435.¹³

Every child care facility in the state is required to have a license that is renewed annually. The department or the local licensing agencies¹⁴ approved by the department are the entities responsible for the licensure of such child care facilities.¹⁵

Facilities Serving School-Age Children

The department established minimum standards for child care facilities serving school-age children including criteria for specific afterschool activities or programs that would not require licensure to operate.¹⁶ School-age programs not required to be licensed include:

- Programs operated and staffed directly by a public or nonpublic school, serving only children who attend the public/nonpublic school during the school day.
- Programs that provide strictly instructional and tutorial/academic services (e.g., karate, ballet or tutoring-only services) where no other activities occur beyond skill instruction.
- Programs that meet all of the following criteria:¹⁷
 - Operate for a period not to exceed 4 hours in any one day.
 - Allow children to enter and leave the program at any time without adult supervision.
 - Do not provide transportation (directly or indirectly) for field trips.
 - Do not serve or prepare any meals, except those administered through the USDA Afterschool Meal Program (AMP). Those programs not participating in the AMP may provide drinks, snacks or vending machine items that do not require refrigeration.
 - Provides afterschool care exclusively for children in grades six and above.

III. Effect of Proposed Changes:

Section 1 amends s. 402.305, F.S., relating to licensing standards for child care facilities, to require the department to develop a tiered licensure program for after-school child care programs. The tiered licensure program must apply licensure criteria based on the risk levels of activities offered and the populations of children served by after-school child care programs.

¹² “Transient public lodging establishing” means any unit, group of units, dwelling, building, or group 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 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

¹³ Section 402.302, F.S.

¹⁴ Currently, there are five counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota. Department of Children and Families, House Bill 11 Analysis (Dec. 8, 2014).

¹⁵ Section 402.308, F.S.

¹⁶ Chapter 65C-22.008(2)(c), F.A.C.

¹⁷ *Id.*

Section 2 requires the department to promulgate rules to implement the tiered licensure program by a date certain and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include a description of the tiered licensing program and implementation activities, public comment received regarding the development of the program and recommendations for statutory change.

Section 3 reenacts s. 1002.88, F.S., relating to school readiness program provider standards, to incorporate the amendment to s. 402.305, F.S.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local Government

The department regulates child care programs in 62 of 67 counties in Florida. Child care programs are regulated by the county in Broward, Hillsborough, Palm Beach, Pinellas and Sarasota counties. The cost associated with licensing in these counties is an expense paid by the county's local government. It is unclear what fiscal impact, if any, the bill will have on these 5 counties.¹⁸

¹⁸ Department of Children and Families. 2016 Agency Legislative Bill Analysis. SB 536, October 26, 2015. (On file with the Committee on Children, Families and Elder Affairs).

State Government

The department reports that the minimal costs associated with rule development will be absorbed by the department. If the intent of the bill is for the department to create and develop rule for a statewide tiered licensure system that expands beyond the 62 counties currently overseen by the department, there may be additional costs when including the local licensing counties.¹⁹

Costs associated with technology development following the implementation of tiered licensure will be unknown until the rule is finalized and the tiered system structure is in place. Up to three developers would be assigned to create this portion of the system. The hourly rate for each developer would be \$85 per hour. The estimated length of time required to execute the inspection and database construction would range from 4-14 months; which equates to a total estimated cost range from \$380,800-\$462,400 for project completion.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The state will be required to monitor programs receiving School Readiness funding based on federal requirements for the Child Care and Development Block Grant. The tiered system would have to align with and be recognized by the federal government to ensure it meets the requirements for participation in the Child Care and Development Block Grant Reauthorization.²¹

The term “after school” does not fully capture the range of care that is provided, given that care for school-age children can be provided before or after school, and during school intercessions. Additionally, the current rule regarding this age group is referenced in Chapter. 65C-22.008, F.A.C, and titled “School Age Child Care”.

Licensure requirements for child care facilities are typically related to health and safety standards. Requiring the proposed tiered licensure structure to apply licensure criteria based on the risk levels of activities offered and the populations of children served by after-school child care programs may expose after-school programs to unintended liability.

VIII. Statutes Affected:

This bill substantially amends section 402.305 of the Florida Statutes.
This bill reenacts section 1002.88 of the Florida Statutes.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
