

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/ SB 510

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Child Care Facilities

DATE: January 7, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for SB 510 amends the statutory provisions relative to enforcement of child care regulation to expand and clarify the authority and actions available to ensure compliance. Specifically, the bill provides for the following:

- Requires an applicant for licensure to attest to the accuracy of the information regarding previous violations by signing an affidavit;
- Provides for certain child care facility licensure application and renewal requirements to apply to the licensure of family day care homes and large family child care homes;
- Provides for the application of a provisional license to include registered family day care homes, licensed family day care homes, and licensed large family child care homes;
- Allows for revocation of provisional licenses or registrations;
- Expands the scope of disciplinary actions available to impose a range of disciplinary actions for serious violations, to apply the disciplinary actions to registered family day care homes, and to convert a license or registration to probation status;
- Directs the Department of Children and Families to adopt rules relative to the enforcement provisions stipulated in the bill;
- Removes conflicting administrative fine provisions; and
- Requires a statewide data system for violations and penalties imposed on child care settings.

This bill substantially amends sections 402.3055, 402.308, 402.309, and 402.310 of the Florida Statutes. Section 402.3105, F.S., is created by the bill. Paragraph (b) of subsection (1) of s. 402.313, F.S., and paragraph (a) of subsection (1) of s. 402.3131, F.S. are repealed.

II. Present Situation:

The intent of child care regulation in Florida, as in most states, is to protect the health, safety, and well-being of the children, as well as to promote their emotional and intellectual development and care. The Department of Children and Families is responsible for administering the child care regulations in Florida (ss. 402.301 through 402.319, F.S.), unless a county has chosen to assume this function pursuant to s. 402.306, F.S. Currently, there are seven counties that have chosen to assume the responsibility of regulating child care in their counties. The child care settings identified in statute to which statutory child care regulation applies are as follows:

- Child care 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 (s. 402.302(1), F.S.). These facilities are required to be licensed pursuant to the licensing standards set forth in s. 402.305, F.S., unless certain exemptions are met.
- Family day care homes which are residences where child care is provided for between four and ten children, depending on their ages, from at least two unrelated families for a fee (s. 402.302(7), F.S.). Section 402.313(1), F.S., requires family day care homes to be licensed under the following circumstances:
 - County licensing ordinances require licensure,
 - The home is participating in the subsidized child care program (now the school readiness program), or
 - The Board of County Commissioners passes a resolution requiring licensure (s. 402.313, F.S.).
- Family day care homes not licensed must register annually with the department which requires the provision of certain information and compliance with stipulated provisions such as background screening, training, and maximum number of children in care (ss. 402.302(7), 402.302(13), and 402.313, F.S.).
- Large family child care homes which are residences where child care is provided for up to 12 children for at least two unrelated families for a fee, depending on the ages of the children, (s. 402.302(8), F.S.). These homes are required to be licensed pursuant to s. 402.3131, F.S.

Enforcement is an important component in the child care regulatory process because it ensures that child care settings are complying with the licensing or registration requirements. The enforcement process begins with determining that the child care setting has complied with the licensing standards or registration requirements for the application and issuance of the child care license or registration and continues with sanctions to ensure any non-compliance is resolved. Florida's enforcement process includes the following:

- The licensure process for a child care facility requires an examination of the child care facility, documentation that the licensing standards have been met, and a licensure renewal process that verifies the facility continues to meet the licensing standards. The application for a child care facility license includes 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 have been subject to any disciplinary action (ss. 402.3055 and 402.308, F.S.). Sections 402.3055 and 402.308, F.S., only refer to child care facilities, and similar provisions for the licensure application and renewal process do not exist in other sections of law to guide the process for family day care homes and large family child care homes.
- A provisional license may be issued to applicants for child care licensure or to licensees who are unable to conform with all of the required standards if adequate provisions have been

made for the health and safety of the child (s. 402.309, F.S.). One of the conditions under which a provisional license may be issued is if all the screening materials have been submitted but a response has not yet been received and the staff are in compliance with the screening requirement. It has been reported that the use of the provisional license for existing licensees who are not in full compliance with the standards has not adequately conveyed the severity of the non-compliance. In addition, s. 402.309, F.S., references only child care facilities which has raised some questions as to whether the authority to issue provisional licenses applies to licensed family day care homes and large family child care homes.

- A license must be renewed annually and requires a reexamination of the facility and determination that the minimum standards continue to be met (s. 402.308, F.S.).
- 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 which 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. While there is statutory authority for imposing the administrative fines and specific penalties, the department reports there is insufficient authority for development of rules for both classifying the levels of violations and the determination of sanctions based on the classification of the violation.
 - The sanctions available to the department or local licensing authority for child care licensees are stipulated in ss. 402.309, 402.312, 402.313, and 402.3131, F.S., and provide the following options:
 - The imposition of an administrative fine: Section 402.309, F.S., permits the imposing of a fine of up to \$100 per violation per day and, if the violation causes or could cause death or serious harm, up to \$500 per violation per day. Sections 402.313 and 402.3131, F.S., also provide for imposing administrative fines on family day care homes or large family child care homes not to exceed \$100 for family day care homes and \$1,000 for large family child care homes which conflicts with the fines authorized in s. 402.309, F.S.
 - The denial, suspension, or revocation of a license: Section 402.309, F.S., authorizes the department or local licensing agency to deny, suspend, or revoke a license. This section does not articulate the licenses to which this provision applies and, while it can be construed to include family day care homes and large family child care homes in addition to child care facilities, this authority is not specified. It has also been reported that since the grounds for which a license may be suspended or revoked is not specifically stipulated, these sanctions are not applied as often as considered necessary.
 - An injunction to close a child care setting: Section 402.312, F.S., permits the department or local licensing authority to seek an injunction to close a child care facility, family day care home, or large family child care home for operating without a license or registration, violating the standards which threatens harm to the children,

repeated violations of the standards, or continuing to serve children beyond the established closing date.

The current statutory framework for enforcement of child care regulation does not provide clear direction for imposing the specified disciplinary actions in response to the range of violations that occur. Also, the only sanctions available to registered family day care homes not complying with the registration and other statutory requirements are administrative fines and an injunction to close the home. Lack of clear statutory authority has been reported to result in a lack of uniformity in applying sanctions and in a limited ability to impose the type of sanctions that would generate the compliance, in particular, the more severe penalties. This lack of adequate direction is consistent with the findings of the Office of Program Policy Analysis and Government Accountability (OPPAGA) in its November 2000 *Child Care Program Justification Review* which found that the department's district offices varied in their interpretation of when a violation was to be classified as a Class I, Class II, or Class III. This resulted in enforcement policies for child care licensure that were being applied inconsistently across the state.

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. The Correspondence and Projects Tracking System (CAPTS) had historically maintained 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. However, information on violations and enforcement actions imposed had not been maintained on CAPTS but, instead, had been maintained in each district. As a result, the department does not have the ability to monitor what violations of licensing standards are occurring and what sanctions are being imposed when these problems are detected. This enables the department to determine the enforcement practices used by the districts to ensure that the licensing standards are truly enforced.

OPPAGA recommended that the department develop a statewide licensing data system for the child care program that includes not only basic demographic information about regulated child care providers but also specific information about inspections, complaints, violations, and enforcement actions. The Department of Children and Families reports that its newly implemented Child Care Licensing Information System (CCLS) contains more detailed and accurate information on the programs and services. The department's district licensing staff have been entering information at the time of the inspection on the facility's compliance, non-compliance, corrective action needed, and due date for corrective action. This information is being uploaded into the department's web-site 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. Data on suspensions and revocations is captured and tracked but is not yet available to the public. Currently, the system does not capture specific data on administrative fines.

III. Effect of Proposed Changes:

Committee Substitute for SB 510 amends the statutory provisions relative to enforcement of child care regulation to expand and clarify the authority and actions available to ensure compliance. Specifically, the bill provides for the following:

- Requires an applicant for licensure to attest to the accuracy of the information regarding previous violations by signing an affidavit;
- Provides for certain child care facility licensure application and renewal requirements to apply to the licensure of family day care homes and large family child care homes;
- Provides for the application of a provisional license to include registered family day care homes, licensed family day care homes, and licensed large family child care homes;
- Allows for revocation of provisional licenses or registrations;
- Expands the scope of disciplinary actions available to impose a range of disciplinary actions for serious violations, to apply the disciplinary actions to registered family day care homes, and to convert a license or registration to probation status;
- Directs the Department of Children and Families to adopt rules relative to the enforcement provisions stipulated in the bill;
- Removes conflicting administrative fine provisions; and
- Requires a statewide data system for violations and penalties imposed on child care settings.

The requirements for applicants for child care licensure in s. 402.3055, F.S., are amended to specify that the applicants' attesting to the accuracy of the information provided regarding any previous denial, revocation, or suspension of a license or disciplinary action is by signing an affidavit. Sections 402.3055 and 402.308, F.S., which stipulate the licensure application and renewal process, are amended to apply to family day care homes and large family child care homes.

The issuance of provisional licenses in s. 402.309, F.S., is amended to authorize the department to issue provisional registrations to family day care homes that are unable to conform with statutory requirements. The bill clarifies that provisional licenses can be issued not only to child care facilities but also licensed family day care homes and large family child care homes. The option of issuing a provisional license or registration if the screening material has been timely submitted but has not been processed is specifically limited to child care facilities. Excluded from this option are family day care homes and large family child care homes because of the potential danger to the children since there is often only the one person for whom the screening is being processed who is caring for the children). The department's authority is expanded to allow for revocation of a provisional license. Issuing of a provisional license or registration is limited to the initial license or registration or upon renewal of the license or registration. The department is directed to adopt rules which provide for the conditions and procedures for issuing, as well as suspending or revoking, a provisional license or registration.

The scope of the disciplinary actions available to the department and local licensing agencies pursuant to s. 402.310, F.S., is expanded by the bill. First, the disciplinary actions provided for in this section are applied to registered family day care homes. This provides the department and local licensing agencies with the authority to deny, suspend, or revoke the registration of a family day care home for non-compliance with the statutory requirements. Second, the authority to impose disciplinary actions other than the higher administrative fine if the violation could or does cause death or serious harm is clarified. Third, the department or local licensing agencies are provided with the authority to convert a license or registration to probation status. Licensees and registrants are required to comply with the requirements of the probation. Failure to do so

may result in the license or registration being suspended or revoked. A license or registration may not remain on probation status for a period in excess of 6 months.

The due process requirements set forth for denial, suspension, or revocation of a license or imposition of an administrative fine apply to the new disciplinary actions stipulated in the bill and to family day care home registrants. The department is directed to develop and adopt rules for the proposed scheme of disciplinary sanctions. Specifically, rules are to be developed for the grounds under which a license or registration may be denied, suspended, revoked or placed on probation status. A uniform system of procedures for imposing the disciplinary actions is to be codified in rule. These procedures are to provide for a consistent and progressive application of the disciplinary actions. The department is directed to implement the uniform system of procedures for disciplinary actions by January 1, 2005.

Sections 402.313 and 402.3131, F.S., are amended to repeal the provisions that impose administrative fines on family day care homes and large family child care homes which conflict with the administrative fines permitted by s. 402.310, F.S.

The bill requires that the Department of Children and Families establish and maintain a statewide data system for information relating to violations, citations, and penalties imposed against child care facilities, family day care homes, and large family child care homes. The data system is required to be designed to enable the department to monitor and evaluate the district and local licensing agencies' inspections and enforcement of licensing and registration requirements for child care facilities, family day care homes, and large family child care homes. This database is intended to be a source of information for the department and local licensing agencies to ensure these facilities are complying with the state's regulatory requirements and evaluating facilities for license renewal. Statistical information regarding patterns of violations, classes and types of violations, and sanctions imposed must also be producible with this system. The bill stipulates that the information is to be made available to the public pursuant to the public records provisions of ch. 119, F.S. In maintaining the data base, the department is required to consult and comply with the requirements of the State Technology Office pursuant to ch. 282, F.S. Further, the bill provides that the implementation of the provision is not contingent upon a specific appropriation. These provisions codify the Child Care Licensing Information System already in operation and requires the addition of capturing and tracking citations and penalties.

Committee Substitute for SB 510 sets forth a comprehensive scheme of actions to uniformly and proactively reinforce the full scope of established child care regulations. The actions available to the department and local licensing agencies range from salutary strategies to strong sanctions to protect the safety of the children. The data system proposed should further support this scheme through the tracking and monitoring of local enforcement implementation activities.

This bill takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

Licensed and registered family day care homes may be subject to an increased administrative fine since, in rectifying the inconsistent administrative fine provisions, the \$100 limit established in s. 402.313, F.S., was removed and the fine of up to \$100 per violation per day was retained, thus becoming the basis for determining the fine to be imposed. Similarly, large family child care homes may be subject to different administrative fines because the \$1,000 limit in s. 402.3131, F.S., was removed and the fine of up to \$100 per violation per day was retained.

C. Government Sector Impact:

The Department of Children and Families reports that the enforcement provisions of the bill should pose no fiscal impact. The cost to enhance the Child Care Licensing Information System is estimated to be \$90,000 (for system software reconfiguration and modifications to the central database). However, the department reports that this cost can be accommodated within the existing recurring funds, provided budget reductions do not impact funds available to implement this requirement.

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.
