

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The Department of Children and Family Services will be granted specific rulemaking authority relating to safety standards in licensed family day care homes. The bill strengthens the enforcement authority of the licensing agencies over child care providers by authorizing the issuance of provisional licenses to large family child care homes and family day care homes required to be licensed.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The Department of Children and Family Services is responsible for administering child care regulations in Florida, unless a county has chosen to assume this function pursuant to section 402.306, Florida Statutes. The child care settings to which statutory child care regulation applies are as follows:

- Child care facilities provide child care to more than five children who are unrelated to the operator and for whom a payment is received for the care.
- Family day care homes are residences where child care is provided for a fee for up to ten children, depending on their ages, from at least two unrelated families.
- Large family child care homes are residences where child care is provided for a fee for up to 12 children from at least two unrelated families, depending on the ages of the children.

Licensing Requirements

Child care facilities are required to be licensed unless exempted. Pursuant to section 402.313, Florida Statutes, family day care homes are required to be licensed only under the following circumstances:

- County licensing ordinances require licensure.
- The home is participating in the subsidized child care program.
- The Board of County Commissioners has passed a resolution requiring licensure.

Family day care homes not licensed must register annually with the department, providing certain information and complying with statutory requirements such as background screening, training, and maximum number of children in care. Large family child care homes are required to be licensed.

According to the department, current law contains the following conflicting language relating to the background screening of volunteers in a child care setting:

- Pursuant to section 402.302(3), Florida Statutes, volunteers who work more than 40 hours per month are considered “child care personnel” for purposes of background screening. Pursuant to section 402.305(2), Florida Statutes, “child care personnel” are subject to a Level 2 background screening.
- However, section 402.302(13), Florida Statutes, states that screening for volunteers that meet the definition of child care personnel only includes a local criminal records check and a statewide criminal records correspondence check (not an employment history check and federal criminal records check).

Although the law provides a series of enforcement options for non-compliance with uniform child care standards in licensed child care facilities, licensed family day care homes and large family child care homes, the department has limited enforcement authority with regard to registered family day care

homes. Enforcement authority in registered family day care homes is currently limited to either a \$100 fine or injunctive action, without the additional series of escalating enforcement actions available regarding other types of providers (for example, suspension or revocation of a registration).

The department or local licensing agency is authorized to seek an injunction in the circuit court where the facility is located to enjoin continued operation of such facility if it is being operated without a license or registration (s. 402.312, F. S.). Other grounds for seeking an injunction to close a child care facility, family day care home or a large family child care home are the following:

- There is any violation of the standards applied under sections 402.301-402.319, Florida Statutes, which threatens harm to any child in a child care facility, family day care home or a large family child care home.
- A registrant has repeatedly violated the standards provided for under sections 402.301-402.319, Florida Statutes.
- A child care facility, family day care home or a large family child care home continues to have children in attendance after the closing date established by the department or the local licensing agency.

The pursuit of an injunction to close is quite often deemed cost prohibitive by district legal staff. Section 402.310, Florida Statutes, relating to escalating administrative actions (fines, suspension and revocation) applies specifically to licensed child care providers. As a result, the department's ability to timely and consistently assure the safety of children in registered family day care homes is more limited than in other child care settings. This has been a long-standing problem identified by district legal offices, the department's general counsel, the child care program office, and child care field staff.

Enforcement

The Department of Children and Family Services has issued administrative guidelines classifying violations into three categories. Decisions about the application of sanctions are governed by these guidelines:

- 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, or 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.
- 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.

According to the department, 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. 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. The 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, with 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 Class I, Class II, or Class III. This disparity across districts resulted in enforcement policies for child care licensure that were being applied inconsistently across the state.

Administrative Fines

The law includes the following provisions relating to fines for non-compliance with child care standards. For licensed facilities and licensed family day care homes: denial, suspension or revocation of a license or imposition of an administrative fine not to exceed \$100 per violation, per day, for the violation of any provision of sections 402.301–402.319, Florida Statutes, or rules adopted thereunder (s. 402.310(1)(a), F. S.). In addition, “where the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day.” (s. 402.310(1)(a), F. S.). Licensed or registered family day care homes according to section 402.313(1)(b), Florida Statutes, authorizes the department or local licensing agency to “impose an administrative fine, not to exceed \$100, for failure to comply with licensure or registration requirements.” According to the department, this conflicts with section 402.310(1)(a), Florida Statutes, relating to licensed child care providers. Large family child care homes according to section 402.313(1)(a), Florida Statutes, authorizes the department or local licensing agency to “impose an administrative fine, not to exceed \$1,000, for failure to comply with licensure requirements.”

Safety Standards in Licensed Family Day Care Homes

The department currently has the authority to adopt rules relating to minimum safety standards for licensed child care facilities, but not licensed family day care homes. The department’s rulemaking authority relating to family day care homes is limited to “minimum health standards” rather than “health and safety standards.” According to the department, this inconsistency leaves children in family day care homes more vulnerable to the risk (or the potential risk) of harm than children being cared for in other licensed child care settings.

Background Screening of Volunteers

Current law contains the following conflicting language relating to the background screening of volunteers in a child care setting:

- Pursuant to section 402.302(3), Florida Statutes, volunteers who work more than 40 hours per month are considered “child care personnel” for purposes of background screening. Pursuant to section 402.305(2), Florida Statutes, “child care personnel” are subject to a Level 2 background screening.
- However, section 402.302(13), Florida Statutes, states that screening for volunteers that meet the definition of child care personnel only includes a local criminal records check and a statewide criminal records correspondence check (not an employment history check and federal criminal records check).

Teacher Education and Compensation Helps (TEACH) Program

The national TEACH program was established in 1989 to address the relationship between low compensation and low rates of retaining child care workers. Under the program, teachers are compensated for receiving additional training and education. Currently, 21 states, including Florida, have established the program. Since 2002, the TEACH program in Florida has been administered by the Agency for Workforce Innovation (AWI), pursuant to the General Appropriations Act implementing bills.

Subsidized Child Care Program

Current law requires that family day care homes participating in the subsidized child care program must be licensed. However, federal regulations adopted in 1998 relating to the subsidized child care program require that parents have an array of choices for this service, including licensed, registered, and informal care arrangements. Because this federal regulation makes unavailable any federal Child Care and Development funds for states that do not allow this choice, the provision requiring licensing of these homes has not been used since 1998.

Effect of Proposed Changes:

The bill recognizes the current situation in which AWI, rather than the department, administers the TEACH program. The bill amends the statutory provisions affecting enforcement of child care regulation to expand and specify the authority and actions available to ensure compliance.

The requirements for applicants for child care facility licensure are amended to include that the applicants attest to the accuracy of the information provided regarding any previous denial, revocation, or suspension of a license or disciplinary action by signing an affidavit. Those sections of law that describe the licensure application and renewal processes are broadened to apply to family day care homes and large family child care homes.

The licensing agency is authorized to issue provisional registrations to family day care homes that are unable to conform to statutory requirements, as well as provisional licenses to child care facilities, family day care homes required to be licensed, and large family child care homes. The option of issuing a provisional license if the screening material has been timely submitted but has not been processed is specifically limited to child care facilities. The licensing agency is explicitly authorized to revoke provisional licenses and registrations. The issuance 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 that 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 licensing authorities is expanded by the bill in three ways:

1. The disciplinary actions are applied to registered family day care homes.
2. 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.
3. The option of converting a license or registration to probationary status is described. Failure to comply with the terms of the probation may result in the license or registration being suspended or revoked. A license or registration may not remain on probationary status for a period in excess of six 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 set out in the committee substitute and to family day care home registrants. The department is directed to develop and adopt rules outlining the grounds under which a license or registration may be denied, suspended, revoked or placed on probationary status. The rules are also to establish a uniform system of procedures for imposing the disciplinary actions, providing 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, 2006.

The bill creates section 402.3105, requiring the department to 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 must provide the following:

- 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.
- Be a source of information for the licensing agencies to ensure these facilities are complying with the state's regulatory requirements and evaluating facilities for license renewal.
- Produce statistical information regarding patterns of violations, classes and types of violations, and sanctions imposed.
- Make the information available to the public pursuant to the public records provisions of chapter 119, Florida Statutes.

In maintaining the database, the department is required to consult and comply with the requirements of the State Technology Office pursuant to chapter 282, Florida Statutes. The bill provides that the implementation of the data system is not contingent upon a specific appropriation. These provisions codify the Child Care Licensing Information System already in operation with the addition of capturing and tracking citations and penalties.

The bill revises section 402.302(13), Florida Statutes, relating to the background screening of volunteers. The bill provides for volunteers who meet the definition of "child care personnel" to be subject to the same level of screening as other child care personnel. According to the department, the purpose of this change is to remove conflicting language in the statute in order to clarify its application.

The bill revises section 402.310, Florida Statutes, relating to disciplinary actions; hearings upon denial, suspension, or revocation of a license; and administrative fines to include registered family day care homes. This revision provides the department the authority necessary to enforce (through consistent fines and the ability to revoke or suspend registration) the minimal standards for registered family day care homes and ensure greater protection for children in care.

The bill revises sections 402.313 and 402.3131, Florida Statutes, relating to the maximum amount of administrative fines to be imposed on child care centers. The purpose of this change is to provide consistent fines for all provider types. The proposed revision will provide for the imposition of a maximum of \$100 per violation, per day, regardless of the type of child care setting. This is consistent with the guidelines in place for fines currently imposed upon licensed child care centers.

The bill revises section 402.313(13), Florida Statutes, regarding licensed family day care homes. This change provides rulemaking authority regarding minimum safety standards. Current law limits the department's authority to "minimum health standards." This change includes health and safety standards that will allow the department to correct the inconsistency in the law that allows children in family day care homes to be at risk, "to more potential risk," than children in licensed child care settings.

According to the department, these proposed changes are consistent with department and program goals, and are important for the continued protection of children in child care. The proposed changes will provide consistent enforcement measures and safety standards for all child care arrangements to protect the health and safety of all children in care, regardless of the type of setting.

C. SECTION DIRECTORY:

Section 1. Renumbers and amends s. 402.3017, F. S., revising requirements for the Teacher Education and Compensation Helps scholarship program.

Section 2. Amends s. 402.302, F. S., authorizing the background screening of child care volunteers.

Section 3. Amends s. 402.3055, F. S., requiring an applicant, owner, or operator of a child care facility to sign an affidavit attesting to the accuracy of certain information.

Section 4. Amends s. 402.308, F. S., requiring family day care homes that are required to be licensed and large family child care homes to have a license that is renewed annually.

Section 5. Amends s. 402.309, F. S., authorizing the local licensing agency or the Department of Children and Family Services to issue a provisional license or registration to a child care facility or a large family day care home.

Section 6. Amends s. 402.310, F. S., providing for the registration of a family day care home to be suspended or revoked; and providing that a consistent administrative fine may be imposed for all provider types.

Section 7. Creates s. 402.3105, F. S., requiring the department to establish a database of information concerning violations, citations, and penalties imposed against child care facilities, family day care homes, and large family day care homes licensed by or registered with the department and local licensing agencies.

Section 8. Amends s. 402.313, F. S., removing conflicting language relating to an administrative fine.

Section 9. Repeals s. 402.3131 (1), F. S., removing conflicting language relating to an administrative fine.

Section 10. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill revises the fee/fine structure relating to non-compliance with child care standards. As a result, licensed and registered family day care homes would be potentially subject to an increased administrative fine (\$100 per violation, per day—consistent with guidelines for fines imposed upon licensed facilities and family day care homes—rather than the \$100 limit established by current statute). Large family child care homes would be potentially subject to either a reduced or increased administrative fine, depending on the length of the violation (\$100 per violation, per day—consistent with guidelines for fines imposed upon licensed family day care homes—rather than the \$1,000 limit established by current statute).

Volunteers will bear the cost of the background screening.

D. FISCAL COMMENTS:

The Department of Children and Family Services predicts no fiscal impact from the enforcement provisions of House Bill 1199 CS. The cost to enhance the Child Care Licensing Information System is estimated to be \$18,500 (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. Consistent enforcement actions are potentially a cost-saving measure, preventing costly injunctive relief actions, which are the only current remedies for removing the registration of a family day care home.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

A. RULE-MAKING AUTHORITY:

The bill directs the department to adopt a rule establishing minimum standards for family day care homes, with standards for both health and safety.

The department is directed to adopt rules specifying the conditions and procedures under which a provisional license or registration may be issued, suspended, or revoked. Also, the department is to adopt rules to establish grounds by which the department may deny, suspend or revoke a license or registration, or place a license or registrant on probation; and, establish a uniform system of procedures to impose disciplinary sanctions for violations of sections 402.301 through 402.319, Florida Statutes.

B. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Future of Florida's Families Committee adopted a strike everything after the enacting clause amendment to conform the bill to CS/SB 1600. The original house bill did not include the following provisions:

- Revising requirements for the Teacher Education and Compensation Helps scholarship program.
- Requiring an applicant, owner, or operator of a child care facility to sign an affidavit attesting to the accuracy of certain information.
- Requiring family day care homes that are required to be licensed and large family child care homes to have a license that are renewed annually.
- Authorizing the local licensing agency or the Department of Children and Family Services to issue a provisional license or registration to a child care facility, or a large family day care home.
- Requiring the department to establish a database of information concerning violations, citations, and penalties imposed against child care facilities, family day care homes, and large family day care homes licensed by or registered with the department and local licensing agencies.

This analysis is written to reflect the bill as a committee substitute.