

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 CS Child Care
SPONSOR(S): Ausley
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 270 and SB 1510

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|----------------|---------|----------------|
| 1) Future of Florida's Families Committee | 7 Y, 0 N, w/CS | Davis | Collins |
| 2) Health Care Appropriations Committee | | | |
| 3) Health & Families Council | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

HB 1231 amends existing statutory provisions relating to chapter 402, F.S., pertaining to the Teacher Education and Compensation Helps scholarship program, the Gold Seal Quality Care designation, revising the definition of the term "screening", expanding the Department of Children and Families (DCF's) licensing authority, revising disciplinary actions and fines, and requiring minimum safety standards for family day care homes.

Specifically, this bill:

- Transfers authority for the administration of the Teacher Education and Compensation Helps (T.E.A.C.H.) scholarship program from the Department of Children and Families to the Agency for Workforce Innovation.
- Revises provisions relating to the background screening of volunteers in child care settings regulated by the Department of Children and Families to remove conflicting language.
- Revises provisions relating to the department's enforcement authority in registered family day care homes to provide the same escalating enforcement options available in other child care settings.
- Provides the department with specific rulemaking authority relating to safety standards in licensed family day care homes.
- Revises the Gold Seal Quality Care program to require a child care provider to maintain a certain compliance history in order to maintain their Gold Seal status.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 402.3017, 402.281, 402.302, 402.309, 402.310, 402.313, 402.3131.

According to the Department and Children and Families, this bill has a potential fiscal impact. SEE FISCAL COMMENTS section of bill for a detailed analysis.

This bill shall take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill increases the responsibility and the authority of the Department of Children and Families in the licensure and registration of certain child care facilities.

Safeguard Individual Liberty: This bill decreases an individual's or private organization's options regarding the conduct of their own affairs because licensed family day care homes potentially could face larger administrative fines.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Health and Safety: According to DCF, the provisions of this bill are intended to better ensure the safety of children in child care through the establishment of consistent safety standards and enforcement measures and were developed with the input of the following organizations:

Florida Family Child Care Homes Association
Florida Association of Child Care Management
National Association of Child Development Education
Florida Children's Forum
Florida Partnership for School Readiness
Early Childhood Association of Florida

T.E.A.C.H. Program: The Teacher Education and Compensation Helps (T.E.A.C.H.) program addresses the issues of poor education, low compensation, and high turnover in the child care sector by providing early childhood professional development opportunities for teachers, directors, and family child care providers. The T.E.A.C.H. program provides scholarships for child care personnel to pursue a Child Development Associate (CDA) credential or equivalency, an A.S. degree in Child Development and Education, or a Director's Credential. The Florida Children's Forum is the authorized agent for the T.E.A.C.H. Early Childhood Scholarship Program in Florida. Although s. 402.3017, F.S., directs/authorizes the Department of Children and Families to administer the program, the Agency for Workforce Innovation (AWI) has actually been responsible for administering the program since 2002, pursuant to the implementing bill of each year's General Appropriations Act.

In 2000, the Legislature authorized the Department of Children and Family Services (DCF) to contract for the administration of the Teacher Education and Compensation Helps (T.E.A.C.H.) scholarship program, which provides educational scholarships to caregivers and administrators of early childhood programs, family day care homes, and large family child care homes (s.15, ch. 2000-253, L.O.F.; s. 402.3017(2), F.S.).

Beginning in fiscal year 2002-2003 and subsequent years thereafter, each year's appropriations implementing act has authorized the AWI to contract for administration of the T.E.A.C.H. program (s. 55, ch. 2002-402, L.O.F.; s. 15, ch. 2000-253; ss. 55, 79, ch. 2002-402; s. 73, ch. 2003-399; s. 55, ch. 2004-269; and s. 40, ch. 2005-71).

Gold Seal Quality Care Program: In 1996, the Florida Legislature established the Gold Seal Quality Care program to recognize those child care facilities and homes that are accredited by nationally recognized associations whose standards reflect a level of quality of child care that exceeds minimum licensing standards. A private pre-kindergarten provider must be Gold Seal or otherwise accredited in

order to participate in the Voluntary Universal Pre-kindergarten program in s. 1002.55(3), F.S. This has resulted in heightened awareness of Gold Seal and its correlation to quality child care.

According to DCF, a disconnect currently exists between the level of quality implied by Gold Seal Quality Care status and the licensure compliance history of a child care program. Gold Seal status is conferred at the request of the provider upon becoming accredited by an accrediting agency that has been recognized by the Department of Children and Families as having accreditation standards that substantially meet or exceed the National Association for the Education of Young Children (NAEYC), the National Association of Family Child Care, or the National Early Childhood Program Accreditation Commission. The accrediting standards of an approved accrediting agency may or may not address a provider's regulatory compliance history. Current law, s. 402.281, F.S., does not provide the Department of Children and Families with the authority to "revoke" a provider's Gold Seal status based on non-compliance with state child care standards, nor does it provide the department with the authority to require the accrediting agency to revoke the provider's accreditation for the same.

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 s. 402.302(3), F.S., volunteers who work more than 40 hours per month are considered "child care personnel" for purposes of background screening. Pursuant to s. 402.305(2), F.S., "child care personnel" are subject to a Level 2 background screening. However, s. 402.302(13), F.S., 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).

Enforcement Authority in Registered Family Day Care Homes: Although statute 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 currently has very limited enforcement authority with regard to *registered* family day care homes. Section 402.310, F.S., relating to escalating administrative actions, fines, suspension, and revocation applies specifically to *licensed* child care providers.

According to DCF, the lack of enforcement authority relating to registered family day care homes limits the ability of child care licensing staff to timely assure the safety of children in registered care and leaves the department with little recourse in the event of non-compliance by a registered provider. As a result, the department's ability to timely and consistently assure the safety of children in care 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 General Counsel of the department, the child care program office, and child care field staff.

Pursuant to s. 402.309(1), F.S., a local licensing agency or the department may issue a provisional license to applicants for a license or to licensees who are unable to conform to child care standards, provided adequate provisions have been made for the health and safety of children in care. Provisional licenses are typically issued when background screening or fire inspection backlogs prevent the timely receipt of required documentation, provided the background screening or fire inspection requests were timely submitted. Because the term "child care facility" is used, these provisions apply only to licensed centers, not licensed family day care homes. Current statute does not provide for provisional registration of family day care homes.

Administrative Fines: Statute currently includes the following provisions relating to fines for non-compliance with child care standards:

- **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 ss. 402.301-402.319 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:** Section 402.313(1)(b), F.S., 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.”
- **Large family child care homes:** Paragraph 402.3131(1)(a), F.S., 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: DCF 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 rule authority relating to family day care homes is currently limited to “minimum health standards” rather than “health *and* safety standards.” 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.

Effect of Proposed Changes

T.E.A.C.H. Program: The bill amends s. 402.3017, F.S., relating to the Teacher Education and Compensation Helps (T.E.A.C.H.) scholarship program to transfer authority for administration of the program from the Department of Children and Families (DCF) to the Agency for Workforce Innovation. This makes the substantive statute consistent with directives included in the implementing bill since 2002.

House Bill 1231 (section 1) permanently transfers the T.E.A.C.H. scholarship program from DCF to AWI, thereby eliminating the need for the appropriations implementing act to annually reflect the transfer for the fiscal year.

Although current law authorizes, but does not require DCF to contract for the T.E.A.C.H. scholarship program, the bill would require AWI to contract for the program and adopt rules to administer the program.

Gold Seal Quality Care Program: This bill revises s. 402.281, F.S., relating to the Gold Seal Quality Care Program to require a child care provider to maintain the following compliance history in order to achieve and maintain Gold Seal status:

- The child care provider must not have had any Class I deficiencies (as defined by rule) within the two years preceding application for Gold Seal Quality Care status. Commission of a Class 1 violation shall be grounds for termination of Gold Seal status until such time as the provider has established a two-year period with no Class 1 violations.
- The child care provider must not have had three or more Class 2 deficiencies (as defined by rule) within the two years preceding application for Gold Seal Quality Care status. Commission of three or more Class 2 violations within a two year period shall be grounds for termination of Gold Seal status until such time as the provider has established a one year period with no Class 2 violations.
- The child care provider must not have been cited for the same Class 3 violation (as defined by rule) three or more times within the two years preceding application for Gold Seal Quality Care status. Commission of the same Class 3 violation three or more times during a two year period

shall be grounds for termination of Gold Seal status until such time as the provider has established a one year period with none of the same type of violation.

According to the Department of Children and Families, these proposed changes are consistent with department and program goals, and are important for the continued protection of children in child care. The bill provides 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.

Background Screening of Volunteers: The bill revises s. 402.302(13), F.S., relating to the screening of volunteers, to remove conflicting language. 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.

Enforcement Authority in Registered Family Day Care Homes: The bill amends s. 402.309, F.S., relating to provisional child care licenses in the following ways:

- Renames the existing “provisional license” as a “probation-status license”.
- Clarifies that a probation status license may be issued to any licensed child care arrangement (licensed center, licensed family day care homes, or licensed large family child care home).
- Authorizes the issuance of a probation status *registration* to a family day care home that is unable to meet child care standards.
- Expands provisions to enable the department to revoke a probation status license (the department already has the authority to *suspend* a provisional license), and to revoke or suspend a probation registration, if periodic inspection or review indicates that insufficient progress has been made toward compliance with licensing or registration standards.
- Requires the department to adopt administrative rules specifying the conditions and procedures under which a probation status license or registration may be issued, suspended, or revoked.

In addition, the bill revises s. 402.310, F.S., relating to disciplinary actions; hearings upon denial, suspension, or revocation of a license; and administrative fines in the following ways:

- Expands enforcement provisions that currently apply to licensed facilities, licensed family day care homes, and large family child care homes to include *registered* family day care homes -- providing the same series of enforcement options for all child care providers.
- Provides for the administrative fine imposed “where the violation could or does cause death or serious harm” [s. 402.310(1)(a), F.S.] to be imposed in addition to, or in lieu of, any other disciplinary action imposed.

According to the Department of Children and Families, the bill 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.

Administrative Fines: The bill revises current statutory language relating to the maximum amount of administrative fines included in ss. 402.313 and 402.3131, F.S., to provide consistent fines for all provider types. The proposed revision provides for the imposition of a maximum of \$100 per violation, per day, regardless of the type of child care setting, which is consistent with guidelines for fines currently imposed upon licensed child care centers.

Safety Standards in Licensed Family Day Care Homes: The bill revises current statutory language regarding licensed family day care homes to provide rulemaking authority regarding minimum safety standards. This will provide safety standards for all child care arrangements to protect the health and safety of all children in care, regardless of the type of setting.

Prolonged Child Care: Allows parents to have their children in a secure, safe, licensed day care when they have to work a 24-hour shift. The bill provides for written certification from the employer that the parent is working a 24-hour shift. It also makes clear that the time a child remains in child care may not exceed 72 hours in a 7 day period.

C. SECTION DIRECTORY:

Section 1: Renumbers and amends s. 402.3017, F.S., transferring the Teacher Education and Compensation Helps scholarship program from DCF to the Agency for Workforce Innovation.

Section 2: Amends s. 402.281, F.S., adding two subsections of law relating to the Gold Seal Quality Care program.

Section 3: Amends s. 402.302, F.S., changing the definition of the term "screening."

Section 4: Amends s.402.309, F.S., adding licensure or registration responsibilities to DCF over child care facilities.

Section 5: Amends s. 402.310, F.S., adding disciplinary sanctions.

Section 6: Amends s. 402.313, F.S., deleting administrative fine requirements related to family day care homes.

Section 7: Amends s. 402.3131, F.S., deleting administrative fine requirements related to large family child care homes.

Section 8: Creates s. 402.317, F.S., adding prolonged child care guidelines.

Section 9: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

DCF offered the following fiscal analysis of HB 1231. This proposal would revise 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).

In addition, Gold Seal child care providers that participate in the school readiness program (i.e., subsidized child care) are eligible for a higher reimbursement rate than those who have not achieved Gold Seal status. If Gold Seal status is “revoked” due to a negative compliance history, that provider would no longer be eligible for the higher reimbursement rate. However, this proposal will not prohibit such a provider from continuing to participate in the subsidy program at the regular reimbursement rate.

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 action requiring the expenditure 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.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department and Children and Families to adopt rules under ss. 120.536(1) and 120.54, F.S., that provide criteria and procedures for reviewing and approving accrediting agencies for participation in the Gold Seal Quality Care program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Future of Florida’s Families Committee adopted a committee substitute to HB 1231. The original bill differs from the committee substitute in the following areas:

- The term “may” was deleted and “shall was inserted to require DCF to adopt rules.

- The term “provisional license” was renamed to “probation-status license” at the request of DCF.
- Allows parents to have their children in a secure, safe, licensed day care when they have to work a 24-hour shift. The change provides for written certification from the employer that the parent is working a 24-hour shift. It also makes clear that the time a child remains in child care may not exceed 72 hours.

This analysis was written to reflect the committee substitute.