

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 380

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Wise

SUBJECT: Certification of Child Welfare Personnel

DATE: March 20, 2011 REVISED: 03/23/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Fav/CS
2.	McKay	Roberts	GO	Favorable
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends legislative intent by eliminating the responsibility of the Department of Children and Family Services (DCF or department) to establish, maintain and oversee child welfare training academies and by requiring that persons providing child welfare services earn and maintain a certification from a third party credentialing entity that is approved by DCF. The bill creates definitions for the terms "child welfare certification," "core competency," "pre-service curriculum," and "professional credentialing entity." The bill also provides requirements for a credentialing entity to secure DCF approval and requires the department to approve core competencies and related pre-service curricula. The use of the Child Welfare Training Trust Fund is amended, and the child welfare training academies are eliminated. The bill provides for entities to contract for training and grants reciprocity to individuals who hold certificates issued by the department for a specified period of time. The bill also eliminates the ability of the department to develop certification programs.

The bill substantially amends ss. 402.40 and 402.731 of the Florida Statutes.

II. Present Situation:

Statewide Training

Currently, the department is required to establish, maintain, and oversee a comprehensive system of child welfare training, and all persons providing child welfare services are required to successfully complete the training program pertinent to their areas of responsibility.¹ The department is also authorized to create certification programs for its employees and service providers to ensure that only qualified employees and service providers provide client services.² Core competencies have been established collaboratively by the department with the stakeholder community and according to the department, community-based care (CBC) agencies and sheriffs' offices can supplement or augment the minimum curriculum standards to meet their local needs.

The department has the authority to develop rules³ that include qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and decertification procedures to be used to determine when an individual no longer meets the qualifications for certification and to implement the decertification of an employee or agent.⁴

The department is also required to establish child welfare training academies to perform one or more of the following: to offer one or more of the developed training curricula; to administer the certification process; to develop, validate, and periodically evaluate additional training curricula determined to be necessary, including advanced training that is specific to a region or contractor, or that meets a particular training need; or to offer any additional training curricula.⁵ The department is required to competitively solicit all training academy contracts.⁶

Department rule defines "certification" as the process whereby an individual must demonstrate the knowledge, skills, abilities and priorities necessary to competently discharge the duties of a Florida child protection professional, as evidenced by the successful completion of all applicable classroom instruction, field training, testing, and job-performance requirements of his or her position classification.⁷ Typically, each individual in a position requiring certification must be certified within one year of the date of hire, or within one year of having successfully completed a post-test or a waiver test, whichever is earlier. Certification is a condition of employment in

¹ See s. 402.40, F.S.

² See s. 402.731, F.S.

³ See ss. 402.40 and 402.731, F.S. On October 14, 2010, a training and certification rule was adopted to carry out the provisions of ss. 402.40 and 402.731, F.S., and codify policy which has been in existence for the past ten years. The rule applies uniform, minimum, initial and on-going training and certification standards to all DCF, community based care and sheriff's office employees working in child welfare. See 65C-33, FAC.

⁴ See s. 402.731, F.S.

⁵ See s. 402.40, F.S.

⁶ *Id.* The department currently has contracts with the University of South Florida and Florida International University, not only to train and certify child welfare trainers, but also to track and document the certification and recertification of all child welfare staff, and to coordinate all registration for, and participation in, the pre-service training and testing of all newly-hired child welfare staff.

⁷ See Chapter 65C-33.001(3), F.A.C.

those positions requiring certification. Absent special circumstances, certification is valid for a period of no longer than three years.⁸

Each type of child protection certification has a different training, testing and certification requirement, all of which are established by the department. Currently, there are 11 types of certification designations for child protection professionals:

- Child Protective Investigator;
- Child Protective Investigations Supervisor;
- Child Protective Investigations Specialist;
- Child Protection Case Manager;
- Child Protection Case Management Supervisor;
- Child Protection Case Management Specialist;
- Child Protection Licensing Counselor;
- Child Protection Licensing Supervisor;
- Child Protection Licensing Specialist;
- Child Protection Specialized Services Professional; and
- Child Welfare Trainer.⁹

According to the department, during calendar year 2010, DCF initially certified 938 and recertified 1,239 child welfare professionals in the investigative, case management, and licensing specialties. Since there are currently approximately 1,475 child protective investigators (employed either through DCF or sheriff's offices) and 2,200 case managers statewide, more than half of the state's child welfare professionals (2,177 or 59%) who are required to be certified are currently certified. The remaining individuals are in the process of achieving certification, because they are staff who are newly hired or who have not yet met minimum certification requirements.¹⁰

In addition, there are currently 344 child welfare professionals who have met certification requirements to be a Child Welfare Trainer. These staff are employed by community-based care agencies, sheriff's offices, or the department; however, child welfare training may be only one of their job duties. Certified child welfare trainers teach the department-approved standard pre-service curriculum, and the content must be delivered in its entirety to all newly-hired child protective investigative and case management staff statewide.¹¹ The intent of this model is to ensure that all necessary statutory, policy, procedural and best practice information is conveyed to child welfare personnel by qualified child welfare trainers and that minimum competency requirements are consistent statewide.¹²

⁸ See Chapter 65C-33.002(7), F.A.C.

⁹ See Chapter 65C-33.002(4), F.A.C.

¹⁰ Department of Children and Family Services. Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.

¹¹ See s.402.40, F.S.

¹² *Id.*

The department reports¹³ that CBCs and sheriff's offices are allowed to contract for or otherwise arrange for additional training or certifications from local or state providers. Funding is provided to regions, circuits, community-based care agencies and sheriffs offices to deliver the department training curriculum to child welfare staff either internally or through contract; however those entities may add to the content to meet any local training need.

Child Welfare Certificate Offered by Schools of Social Work at State Universities

Schools of social work in many of the state's universities offer a child welfare certificate. The department has developed partnerships with these entities in order to coordinate education and training requirements for those students earning social work degrees who want to work in child welfare. For example, the School of Social Work at Florida State University will allow students who successfully pass the pre-service DCF exam to waive the university required certificate exam. Also current employees of the department and the CBCs may be eligible to exempt the university internship requirement.¹⁴

Federal Requirements for Child Welfare Training

Federal regulations require states to prepare a five-year comprehensive Child and Family Services Plan (CFSP),¹⁵ which lays the groundwork for a system of coordinated, integrated, and culturally relevant family-focused services in state child welfare agencies. The Annual Progress and Services Report (APSR) provides yearly updates on the progress made toward accomplishing the goals and objectives in the CFSP. Completion of the APSR satisfies federal regulations by providing updates on a state's annual progress for the previous fiscal year and planned activities for the upcoming fiscal year.^{16,17}

A state's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV-B programs covered by the plan.¹⁸ Training must be an on-going activity and must include content from various disciplines and knowledge bases relevant to child and family services policies, programs and practices.

Training activities in this plan must also be included in the department's Title IV-E training program.¹⁹ These elements are required to receive federal funding. According to the department,

¹³ Department of Children and Family Services. Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.

¹⁴ Florida State University, College of Social Work, Child Welfare Certificate Program. Available at: http://csw.fsu.edu/index.php?clickLink=child_REQ. (Last visited February 3, 2011).

¹⁵ See 45 CFR 1357.15 and 1357.16.

¹⁶ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. Available at: http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2008/pi0803.htm#overview. (Last visited: February 2, 2011).

¹⁷ In order to receive funds for FFY 2011, for Child Welfare Services (title IV-B), Child Abuse Prevention and Treatment Act (CAPTA), Chafee Foster Care Independence Program (CFCIP) and Education and Training Vouchers (ETV) programs, the APSR had to be submitted to the Children's Bureau by June 30, 2010.

¹⁸ See 45 CFR. § 1357.15(t).

¹⁹ See 45 CFR 1356.60(b)(2)..

failure to obtain approval prior to implementation of any changes to the training requirements could jeopardize those resources.²⁰

Child Welfare Training Trust Fund

The Child Welfare Training Trust Fund was created to fund child welfare training, including securing consultants to develop the training system. The trust fund receives one dollar from certain noncriminal traffic infractions,²¹ receives monies from an additional fee on birth certificates and dissolution of marriage filings,²² and may receive funds from any other public or private source.²³

The Florida Certification Board

The Florida Certification Board (FCB or Board) provides a number of certifications, including those for substance abuse counselors, prevention specialists, criminal justice professionals, mental health professionals, and behavioral health technicians in Florida. The Board does not offer or provide child welfare training.²⁴

While the current training and certification program administered by the department meets the entry-level training and testing needs of CBC providers, the FCB's CBC partners indicated a desire to explore the development of an additional level of certification that is specific to child welfare case managers.²⁵ In response, the board added the Child Welfare Case Manager (CWCM) to its professional certification programs. The CWCM certification is a voluntary designation of professional competency.²⁶ The FCB reports that 193 individuals have an active CWCM certification, and almost all of those individuals are employed by CBCs.

III. Effect of Proposed Changes:

Provisions in the bill eliminate the department's child welfare training program and instead require that individuals providing child welfare services earn and maintain a professional certification from a department approved certification entity. The bill also removes the ability of the department to create certification programs, so individuals wanting or needing child welfare certification will have to acquire that certification from a third-party credentialing entity that is approved by DCF.

²⁰ Department of Children and Family Services. Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.

²¹ See ss. 318.14(19)(b) and 318.18, F.S.

²² See ss. 382.0255 and 28.101, F.S.

²³ See s. 402.40, F.S.

²⁴ The Florida Certification Board, Available at: <http://www.flcertificationboard.org/>. (Last visited February 2, 2011).

²⁵ *Id.* The FCB was approached in 2006 by Community Based Care of Seminole, Inc. and Big Bend Community Based Care, Inc. to explore the possibility of creating a Child Welfare Case Manager (CWCM) credential in the state of Florida.

²⁶ *Id.* In order to receive the CWCM, the Board reviews the application portfolio submitted by an applicant, administers the written exam when required, and issues the certification. The department sanctioned training is accepted by the FCB. There is a one time \$150 certification fee, a \$75 exam fee, and a \$125 renewal fee due annually in October. Certified individuals must complete 20 CEUs annually in order to be recertified.

The department reports that the Florida Certification Board is the only “professional credentialing entity” as defined in the bill currently in existence. While the bill provides that credentialing entities shall for a period of no less than a year from the implementation of certification programs grant reciprocity and award certification to individuals in good standing who hold certification issued by the department at no cost to the state or the individual, it remains unclear what the consequences would be in a number of situations. For example:

- The board requires a minimum of a bachelor’s degree in order to meet the requirements for certification.²⁷ This could subject those individuals currently employed who have no degree and are unable to earn a degree within the period of reciprocity to termination from employment and would prevent non-degreed individuals from being hired in the future.
- The board does not currently offer the variety of certifications that are offered by the department, including one for child protective investigators. It is unclear how those individuals would obtain the certifications required for employment in their specific practice areas.

While the bill provides that the department, the CBCs and sheriff’s offices may contract for training, currently, however, neither the Board or any other organization offers child welfare or protective investigator training.

Eliminating the department training program would appear to have some impact on the partnerships the department has with schools of social work at universities.

The bill also broadens the use of the Child Welfare Training Trust Fund, from being used to fund a comprehensive system of child welfare training, including the development of the training and the establishment of training academies, to funding professional development. It is unclear what impact this will have on the trust fund.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ The board requires a minimum of a bachelor’s degree from an accredited college or university in a related or unrelated field. Related fields are social work, psychology, sociology, human services, counseling, child development, education, guidance counseling, public administration, public health administration, criminology, or criminal justice. The Florida Certification Board, Available at: <http://www.flcertificationboard.org/>. (Last visited February 2, 2011).

D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.²⁸ Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."²⁹ The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.³⁰

The bill appears to require the credentialing entities to "establish professional requirements and standards applicants must achieve in order to obtain a child welfare certification," and the bill also deletes a provision authorizing the department to develop "rules that include qualifications for certification, including training and testing requirements." If the bill removes ascertainable minimal standards and guidelines set by the Legislature, and replaces them with the unfixed standards of a private entity, there may be a delegation issue, as such standards may not substitute for and supplant the Legislature's duty to determine the law.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Florida Certification Board charges the individual applicant for the CWCM certification a certification fee, an exam fee if an exam is required, and an annual renewal fee.

While the bill provides for reciprocity for a period of at least a year from the time of implementation of department approved certification programs, all child welfare staff who are required to be certified will eventually have to have obtain, at cost to the individual or the employing entity, certification from a credentialing entity in order to continue to be employed. The bill does not specify who will assume the cost associated with the certification and renewal certification provided through the newly defined professional credentialing entity, but it would appear to be either the individual seeking certification or his or her respective employing agency.

²⁸ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991).

²⁹ *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).

³⁰ *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1st DCA 1985).

C. Government Sector Impact:

While the provisions of the bill will create a fiscal impact on government, the exact amount is unknown. The department has reported³¹ that:

- The proposed changes would reduce department costs in terms of the annual contracts for the development and maintenance of the pre-service curriculum as well as for the Training Academy; this reduction would be approximately \$1.3 million dollars per year, including 10-12 University of South Florida and Florida International University staff. Additional department training and certification costs may be necessary pending or absent an approved professional credentialing entity. However, since the board doesn't provide training and with the elimination of a single, statewide pre-service curriculum as proposed by the bill, this savings would likely be offset by the need for other entities to develop or purchase new pre-service curricula and all accompanying materials, thereby resulting in additional costs to be borne by employing case management agencies. At this time this cost cannot be determined.
- Currently the department provides a number of certifications not provided by any third-party entity. It is not known what the costs would be to develop a third-party credential for those child welfare specializations.
- The department has raised the issue of liability that might have to be assumed by a third-party credentialing entity, community based care agency, or sheriff's office as a result of the decentralization of minimum training standards. It is unknown if third-party credentialing entities will be subject to lawsuits due to malpractice of child welfare professionals certified by those entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It appears that the vendors to be "approved" to supply the services required by the bill need not be selected via competitive solicitation. Section 287.057(3)(f)9., F.S., exempts "child abuse prevention programs" from competitive solicitation, but the services to be supplied by vendors pursuant to the requirements of this bill do not appear to be covered by that exemption. Since the bill strikes some competitive procurement language in lines 154-159, the Legislature may wish to make clear what type of competitive process, if any, is required by this bill.

If more than one vendor is allowed to provide the services required by the bill, it appears possible that more than one set of certification standards might be created.

³¹ Department of Children and Families Staff Analysis and Economic Impact, SB 380, January 25, 2011.

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 8, 2011:

Makes substantial changes to ss. 402.40 and 402.731, Florida Statutes, relating to child welfare training and supervision including:

- Provides that the department work in collaboration with child welfare stakeholders to ensure that child welfare staff have the knowledge and skills to competently provide child welfare services;
- Adds a definition for the terms “core competencies” and “pre-service curricula;
- Provides for the department to approve core competencies and related pre-service curricula;
- Provides that the development of pre-service curricula be a collaborative effort that includes third-party credentialing entities;
- Provides that community-based care agencies, sheriff’s offices, and the department may contract for the delivery of pre-service and any additional child welfare training as long as the curriculum satisfies the approved core competencies;
- Provides that credentialing entities shall for a period of no less than a year from the implementation of certification programs grant reciprocity and award certification to individuals in good standing who hold certification issued by the department at no cost to the state or the individual;
- Restores the department’s rulemaking authority; and
- Eliminates the ability of DCF to create certification programs.

- B. **Amendments:**

None.