

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 1682
INTRODUCER: Senator Joyner
SUBJECT: Religious-exempt Child Care Programs
DATE: March 27, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1682 creates a definition of the term “boarding school” in s. 402.302, F.S., and requires that boarding schools meet certain specified requirements.

The bill also makes changes to provisions in the law related to child care facilities that are currently covered by the religious exemption under s. 402.316, F.S., that include:

- Adding boarding schools to the types of entities that are eligible for a religious exemption;
- Requiring religious-affiliated child care programs, weekday preschool programs, and boarding schools to be members or participants of, or be accredited by, an accrediting agency recognized by the Department of Children and Family Services (DCF or the department) in order to qualify for the religious exemption from licensure;
- Establishing requirements for an accrediting agency to be recognized. These accrediting requirements would generally apply the minimum standards for licensed child care facilities to religious-exempt programs, with certain exemptions, and would require the accrediting agencies to mandate that religious-exempt programs comply with the agency’s accrediting standards; and
- Providing that, in any county in which there is a local licensing agency approved by the department, the local licensing agency may continue to recognize a county based accrediting agency for religious exemption.

The bill is expected to have a fiscal impact on the state and provides for an effective date of July 1, 2013.

This bill substantially amends sections 402.302 and 402.316 of the Florida Statutes.

II. Present Situation:

Residential Services for Children

Currently, residential facilities serving children are either licensed by the Department of Children and Families (DCF), registered with the Florida Association of Christian Child Caring Agencies (FACCCA), or registered with the Department of Education (DOE) as a boarding school.

Boarding Schools

Current law requires all boarding schools to register with the Department of Education (DOE), and obtain accreditation within three years of registering. Approved accreditation consists of two parts:

- Academic accreditation by either the Florida Council of Independent Schools, or the Southern Association of Colleges and Schools; and
- Residential accreditation by the Council on Accreditation, the Commission on Accreditation of Rehabilitative Facilities, or the Coalition for Residential Education.^{1,2}

To operate legally in the state of Florida as a boarding school, a school must take the following steps:

- Seek academic accreditation from one of the legislatively approved accrediting agencies;
- Seek residential accreditation from one of the legislatively approved accrediting agencies and;
- Register with the DOE as a school to receive a school number. Schools must indicate whether they provide residential care for their students when completing the annual online survey.³

A boarding school has 3 years to complete the accreditation process.

A facility wishing to operate as a boarding school can seek exemption from licensure and accreditation by operating under s. 409.176, F.S., which requires registering with a qualified association to provide 24 hour residential care for children. The registration occurs online and does not require any facility inspections by the Department of Education. An annual online survey (which is the same as the initial registration form) is also required by DOE.⁴

¹ Section 409.175(2)(b), F.S.

² DCF General Counsel issued a memo in December, 2012, clarifying that the intent of the statute is for boarding schools to seek both academic and residential accreditation. Department of Children and Families, HB 7129 Staff Analysis and Economic Impact (March 18, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

³ The registration occurs online and does not require any facility inspections by the Department of Education. An annual online survey (which is the same as the initial registration form) is also required by DOE.

⁴ Section 1002.42(b), F.S.

Boarding schools must provide proof of accreditation or documentation of the accreditation process upon request. A boarding school that cannot produce the required documentation or that has not registered with the DOE shall be considered to be providing residential group care without a license. DCF can impose administrative sanctions or seek civil remedies for noncompliance with statutory requirements for boarding schools.⁵

Registration of Residential Child Caring Agencies and Family Foster Homes

Section 409.176, F.S. requires registration of residential child-caring agencies and family foster homes. This requirement applies to a facility which is a religious organization that does not directly receive state or federal funds or is a family foster home that is associated with such an organization and does not directly receive state or federal funds. These are referred to in statute as Type II facilities.⁶ These facilities are also exempted from licensure by DCF as long as they become registered under s. 409.176, F.S.

These facilities must be registered by a Florida Statewide Childcare Organization which was in existence on January 1, 1984. The only organization currently used is the Florida Association of Christian Child Caring Agencies (FACCCA).^{7,8} The standards for registration used by FACCCA are required to be in substantial compliance to similar standards used to license similar child caring agencies. DCF is charged in statute to determine that the standards are in compliance and thereafter receives updates to the standards within 10 days of adoption.⁹

The registered facilities must enter into contracts with parents, guardians or others with legal custody prior to the child entering a facility. FACCCA is required to notify DCF when there is a violation of requirements in s. 409.176, F.S., which threatens harm to a child.¹⁰ DCF is to notify the state attorney when there is a violation of law reported and shall file civil suit when needed to stop the facility from continuing care.¹¹ DCF also has authority to institute injunctive proceedings in court to enforce requirements of s. 409.176, F.S., or terminate facility operations.¹²

Religious-Exempt Child Care Facilities

Background

Since 1974, the Legislature has mandated the statewide licensure of child care facilities.¹³ These “child care facilities” are defined to include any child care center or child care arrangement that provides child care for more than five children unrelated to the operator and which receives a

⁵ Section 409.175, F.S.

⁶ Section 409.176(4), F.S.

⁷ Section 409.176(5)(b), F.S.

⁸ Florida Association of Christian Child Caring Agencies, available at http://www.faccca.com/about_us (last visited March 22, 2013).

⁹ Section 409.176(5)(b), F.S.

¹⁰ Section 409.176(10), F.S.

¹¹ *Id.*

¹² Section 409.176(9), F.S.

¹³ Chapter 74-113, Laws of Fla.

payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.¹⁴

The 1974 legislation, however, exempted from licensure a child care facility that is an integral part of a church or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation.¹⁵ This exemption for these child care facilities (commonly referred to as “religious-exempt” facilities) remains under current law. Child care personnel operating religious-exempt facilities must complete the same background-screening requirements as child care personnel in licensed child care facilities.¹⁶ In addition, religious-exempt facilities must comply with the requirements of local governments for health, sanitation, and safety.¹⁷

For those child care facilities required to be licensed, DCF is required to establish minimum licensing standards.¹⁸ These minimum licensing standards are not required for religious-exempt facilities. Instead, current law requires a religious-exempt facility to be accredited by, or a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation. However, current law does not provide minimum accrediting standards or provide a mechanism to certify whether an accrediting organization’s requirements are met by a religious-exempt facility.

Religious-exempt facilities may choose to be licensed but cannot withdraw from licensure once they are licensed.¹⁹ Currently there are 476 facilities have chosen to be religious-exempt facilities.²⁰ The department is responsible for ensuring compliance with background screening requirements in religious exempt programs as well as determining if a program meets the statutory definition of exemption from licensure. DCF does not conduct inspections of providers described in s. 402.316, F.S.²¹

Accrediting Agencies

In addition to minimum health, sanitation, and safety requirements of the applicable local governing body, religious exempt child care providers in Florida are regulated by standards established by religious accrediting agencies. Current law does not require these standards to meet any objective minimum standard, nor does it provide any mechanism to ensure accrediting agencies enforce compliance with their standards.²² The department reports that the absence of uniform minimum standards and consistent oversight has produced a wide spectrum of quality among religious-exempt facilities and accrediting agencies. While Florida has many excellent

¹⁴ Section 402.302(2), F.S.

¹⁵ Section 16(1), ch. 74-113, Laws of Fla.

¹⁶ Section 402.316(1), F.S.

¹⁷ *Id.*

¹⁸ Section 402.305(1), F.S.

¹⁹ Section 402.316(3), F.S.

²⁰ E-mail from Gina Sisk, Department of Children and Families (March 27, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²¹ Department of Children and Families, SB 1682 Staff Analysis and Economic Impact, (March 8, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

²² Section 402.316, F.S.

religious-exempt child care facilities which provide care which equals the very best licensed facilities, it also has some very poor facilities where children in care are at an elevated risk of harm. DCF generally learns of these facilities through complaints or calls to the abuse hotline, but is limited in its ability to address concerns.²³

There is similar variability among religious-exempt accrediting agencies. In order to be “recognized,” these agencies “must publish and require compliance with standards for health, safety, and sanitation” for those child care providers they accredit. The statute does not authorize DCF to preclude any accrediting agency from operating, or to consider an accrediting agency’s size, experience, qualifications, credentials, or any other factor which may indicate competence or lack thereof.²⁴ DCF reports that nothing prevents any individual from printing a set of standards and declaring himself or herself an accrediting agency. As a result, there are professional and efficient accrediting agencies with knowledgeable staff committed to ensuring quality care; some mediocre accrediting agencies; and some poor agencies.²⁵

Religious Exempt Provider Complaints to the Department

Complaints to DCF that allege a violation of background screening requirements for child care personnel in a religious exempt child care facility require an onsite review by DCF circuit licensing staff as well as verification of documentation regarding the facility, including the name of the Religious Accrediting Agency (RAA) that accredits it.²⁶

Complaints to the department that involve a violation of a licensing standard other than background screening in regards to a religious exempt child care facility are directed to the appropriate RAA. DCF licensing staff documents the complaint and provide a copy to the RAA to ensure the report is received. If the complaint involves a fire safety issue, the same protocols are implemented and licensing staff provide a copy of the complaint to the applicable fire inspection unit.²⁷

Complaints to the department that allege child abuse or neglect in a religious exempt child care facility are directed to the central abuse hotline. DCF licensing staff documents the details and contacts the hotline to ensure reporting. County/circuit child abuse investigation staff conducts an onsite investigation of each report received. Child abuse and neglect findings are confidential and are not released to a RAA. However, if there are verified findings and judicial action is taken to close religious exemption from licensure program, the appropriate RAA is notified.²⁸

The department reports that in recent years, upon investigating complaints about particular religious exempt facilities, it has found that a given facility does not appear to meet the statutory criteria for being an integral part of a church or parochial school. DCF also sometimes finds

²³ Department of Children and Families, *SB 1682 Staff Analysis and Economic Impact*, (March 8, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

²⁴ Section 402.316, F.S.

²⁵ Department of Children and Families, *SB 1682 Staff Analysis and Economic Impact*, (March 8, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

religious exempt facilities do not appear to be following any published standards of care. Current law provides no minimum standards for religious exempt facilities and provides no mechanism to ensure that such facilities operate in compliance with any standards.²⁹

Minimum Licensing Standards for Child Care Facilities

Current law establishes a framework for the department's minimum standards required for licensed child care facilities and provides certain minimum requirements that must be included within the department's rules.³⁰ This framework includes minimum requirements for each of the following regulatory criteria:³¹

- **Personnel:** Qualifications for child care personnel, including background screening, age requirements, training, continuing education, and staff credentials;
- **Staff-to-children ratios:** Staff-to-children ratios, which require greater supervision for younger children;
- **Physical facilities:** Physical facilities, including requirements for building conditions, play space, bathroom facilities, and equipment;
- **Square footage:** Square footage per child for indoor floor space and outdoor play area;
- **Sanitation and safety:** Sanitation and safety, including first aid treatment, emergency procedures, sanitary and safety conditions, and pediatric cardiopulmonary resuscitation;
- **Nutritional practices:** Provision of meals and snacks that meet nutritional needs of children;
- **Admissions and recordkeeping:** Requirements for periodic health examinations, immunizations, and maintenance of emergency information and health records;
- **Transportation safety:** Requirements for seat belts in vehicles, annual inspections of vehicles, limits on the number of children in vehicles, and accountability for children being transported;
- **Parental access:** Reasonable parental access to the facility while the child is in care;
- **Child discipline:** Age-appropriate, constructive disciplinary practices and notification to parents of these practices;
- **Plan of activities:** Daily plan of varied activities, including active and quiet play opportunities appropriate to the age of the child;
- **Urban child care facilities:** Modified licensing standards for child care facilities located in urban areas;
- **Evening and weekend child care:** Modified licensing standards for child care facilities providing evening or weekend child care; and
- **Transfer of ownership:** Parental notification of the transfer of ownership of a child care facility.

With the exception of requirements for background screening of child care personnel, these minimum standards do not apply to religious-exempt facilities unless required by a facility's accrediting organization.³²

²⁹ *Id.*

³⁰ Section 402.305, F.S.

³¹ *Id.*

³² Section 402.316(1), F.S.

Exemptions from Licensure

Under current law, child care facilities must be licensed by DCF and meet certain minimum licensing standards adopted by the department³³ unless the facility is specifically exempted from the definition of a child care facility, is exempted from licensure, or does not provide services considered to be “child care.”³⁴ The following facilities or programs are not required to be licensed:

- **Exempted from the definition of a child care facility:**³⁵
 - Public schools and nonpublic schools and their integral programs which must follow the provisions of s. 402.3025, F.S.
 - Summer camps having children in full-time residence;
 - Summer day camps;
 - Vacation Bible schools; and
 - Child care services for guests in transient public lodging establishments.
- **Exempted from licensure:**
 - Public schools programs for children in grades kindergarten (five years of age) or higher, programs for children three years to five years of age operated and staffed by the public school, and programs for preschool children with disabilities who are younger than three years of age;³⁶
 - Nonpublic schools programs for children in grades kindergarten (five years of age) or higher and, if a majority of the children enrolled in the nonpublic school are five years of age or older, programs for children three years to five years of age operated and staffed by the nonpublic schools;³⁷ and
 - Child care facilities that are religious exempt facilities because they are an integral part of a church or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation.³⁸
- **Does not provide “child care”:**
 - Membership organizations affiliated with national organizations which do not provide child care, whose primary purpose is providing activities contributing to the development

³³ The licensure of child care facilities is administered by the Child Care Services Program Office of the department or, in seven counties (Alachua, Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) by local licensing agencies that have licensing standards meeting or exceeding the department’s minimum standards (*see* ss. 402.306 and 402.307, F.S.).

³⁴ Under current law, the term “child care” means 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 (*see* s. 402.302(1), F.S.).

³⁵ Section 402.302(2), F.S.

³⁶ Sections 402.302(2)(a) and 402.3025(1)(a), F.S.

³⁷ Sections 402.302(2)(a) and 402.3025(2)(b) and (c), F.S.

³⁸ Section 402.316, F.S.

- of good character or sportsmanship or to the education or cultural development of minors;³⁹ and
- After-school programs that do not provide child care.⁴⁰

In addition, current law provides for separate licensure or registration requirements for family day care homes, large family child care homes (s. 402.3131, F.S.), and specialized child care facilities for the care of mildly ill children.⁴¹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 402.302, F. S., to create a definition of the term “boarding school” in s. 402.302, F.S., and require that boarding schools meet certain specified requirements. The newly created definition and requirements to be met by boarding schools is identical to provisions in s. 409.175, F.S.

Section 2 of the bill amends s. 402.316, F.S. to substantially revise the licensure exemption for religious-affiliated child care facilities in s. 402.316, F.S. Those revisions include:

Religious-Exempt Child Care Programs

- The religious exemption applies to a child care program, weekday preschool program, or boarding school that is an integral part of any established religious school or congregation conducting regularly scheduled classes, courses of study, or educational programs. Thus, the bill extends the religious exemption under current law to programs that are an integral part of a temple;⁴²
- To qualify for the religious exemption, the bill requires a religious program to be a member or participant of, or accredited by, a state, regional, or national accrediting agency that is recognized by DCF.⁴³
- Requirements under current law that child care personnel in religious-exempt programs must undergo background screenings and that religious-exempt programs may choose to be licensed are retained in the bill; however, the bill deletes a requirement in current law that religious-exempt programs may not withdraw from licensure once they choose to be licensed;⁴⁴
- The bill requires each religious-exempt program to display a certificate of compliance issued by a recognized accrediting agency in a conspicuous location in the facility. The bill also specifies that failure to post the certificate will result in an administrative action determined by the program’s accrediting agency.

³⁹ Section 402.301(6), F.S.

⁴⁰ Sections 402.3045 and 402.305(1)(c), F.S.

⁴¹ Sections 402.313, 402.313, and 402.305(17), F.S., respectively.

⁴² Under current law, the religious exemption applies to a facility that is an integral part of a church or parochial school conducting regularly scheduled classes, courses of study, or educational programs (s. 402.316, F.S.).

⁴³ Under current law, accrediting organizations are not required to be recognized by the department. (s. 402.316, F.S.).

⁴⁴ Section 402.316(3), F.S.

County Based Religious Accrediting Agencies for Religious Exemption

- The bill provides that, in any county in which there is a local licensing agency approved by the department, the local licensing agency may continue to recognize a county based accrediting agency for religious exemption.

Recognition of Accrediting Agencies

- The bill directs DCF to verify an accrediting agency as a recognized accrediting agency if the agency:
 - Adopts minimum accrediting standards for religious-exempt programs which meet or exceed the department's minimum standards for licensed child care facilities, except for standards governing child discipline, urban child care facilities, specialized child care facilities for the care of mildly ill children, or parental notification of the transfer of ownership of a child care facility;
 - Publishes the minimum accrediting standards and requires each religious-exempt program to comply with those standards;
 - Requires each religious-exempt program to comply with the requirements of local governments for health, sanitation, and safety, including minimum requirements for environmental health, fire safety, zoning, and building codes; and stipulates that local governments have the authority to enforce such codes;
 - Requires each religious-exempt program to inform parents that the program is exempt from licensure but meets the minimum standards of the accrediting agency;
 - Conducts an initial on-site review of each religious-exempt program and annually receives a notarized statement from each religious-exempt program verifying compliance with applicable state laws and the accrediting agency's published minimum standards and;
 - Requires each religious-exempt program to mandate the child care personnel employed by the program comply with standards that meet or exceed the training requirements for child care personnel in licensed child care facilities.

Although the religious exemption in current law requires accrediting organizations to publish and require compliance with standards for health, safety, and sanitation (s. 402.316(1), F.S.), current law does not require the accrediting organizations to adhere to the department's minimum standards for licensed child care facilities. The bill will consequently require religious-exempt programs to comply with certain minimum standards that may not be required by accrediting organizations under current law.

Phase-In of Training and Credentialing Requirements

- The bill requires recognized accrediting agencies to mandate that child care personnel employed by religious-exempt programs begin a 40-clock-hour introductory course in child care, approved by DCF, by October 1, 2013, or within 90 days after employment.
- The bill requires recognized accrediting agencies to mandate that religious-exempt programs meet or exceed the requirements for staff credentials which apply to licensed child care facilities by July 1, 2016. Under current law, a licensed child care facility operating eight

hours or more per week must have, for every 20 children, at least one child care personnel who has a child development associate or equivalent credential.⁴⁵ The bill also directs the department and the accrediting agencies to work collaboratively to expedite the approval of equivalency programs developed by the accrediting agencies.

Limitation on the Department's Authority

- The bill specifies that these provisions do not authorize DCF to regulate or control an accrediting agency or to regulate or control the governance, religious curriculum, academic curriculum, testing or assessments, evaluation procedures, academic requirements of the staff, discipline, or hiring practices of a religious-exempt program.

Revision of Minimum Licensing Standards

- The bill requires DCF to distribute each revision made to the department's minimum standards for licensed child care facilities to each recognized accrediting agency within 30 days after the revision is adopted.
- The bill specifies that each recognized accrediting agency must, within 30 days after receipt of the revised minimum standards, notify the department that the agency has notified each religious-exempt program of the revised standards. The bill directs that the revised standards be incorporated into the next revision of the accrediting agency's minimum standards.

Notices and Annual Reports

- The bill requires each recognized accrediting agency to submit an annual report to DCF. The report must include an updated listing of the accrediting agency's religious-exempt programs.
- The bill requires recognized accrediting agencies to notify the department within 30 days after a new religious-exempt program comes into affiliation with the agency or after a program terminates its affiliation. The bill also requires a religious-exempt program to provide 30 days advance notice to the accrediting agency before transferring to another accrediting agency.

Agencies Prohibited from Accrediting Their Own Religious-Exempt Programs

- The bill prohibits a recognized accrediting agency from owning, operating, or administering a religious-exempt program under its certificate of approval.

Annual Meeting

- The bill requires DCF to facilitate an annual meeting with the accrediting agencies, health and safety officials, and child advocates to exchange ideas for ensuring the health and safety of children in child care and preschool programs.

⁴⁵ Section 402.305(3), F.S.

Section 3 of the bill provides an effective date of July 1, 2013.

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:

The question of government authority to regulate religious-affiliated child care facilities or to exempt these religious-affiliated facilities from licensure, under the Free Exercise Clause and Establishment Clause of the First Amendment to the federal constitution has been addressed by several federal courts. In *North Valley Baptist Church V. McMahon*, 696 F. Supp. 518 (E.D. Calif. 1988), the court held that a California law requiring religious-affiliated day care centers and preschools to be licensed and adhere to state regulations did not violate the Free Exercise Clause or the Establishment Clause. In *Forest Hills Early Learning Center V. Grace Baptist Church*, 846 F.2d 260 (4th Cir. 1988), the U.S. Court of Appeals for the Fourth Circuit held that a Virginia law exempting religious-affiliated child care centers from the state's licensing requirements did not violate the Establishment Clause. Citing *Forest Hills*, in *Forte V. Coler*, 725 F. Supp. 488 (M.D. Fla. 1989), the court upheld Florida's religious exemption, ruling that the state's law exempting child care facilities that are an integral part of church or parochial schools from compliance with state licensing requirements did not violate the Establishment Clause.

The bill does not require the licensure of religious-affiliated child care programs but requires these programs to comply with many of the state's licensing requirements through accrediting standards adopted by accrediting agencies recognized by the department.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill does not require the licensure of religious-affiliated child care programs but requires these programs to comply with many of the state's licensing requirements

through accrediting standards adopted by accrediting agencies recognized by the department. Although the religious exemption in current law requires accrediting organizations to publish and require compliance with standards for health, safety, and sanitation (s. 402.316(1), F.S.), current law does not require the accrediting organizations to adhere to the department’s minimum standards for licensed child care facilities. The bill consequently would require some portion of the 520 religious-exempt facilities in this state to comply with minimum standards that may not be required by accrediting organizations under current law. Compliance with the department’s minimum standards would likely cause these religious-exempt facilities to incur costs not required under current law.

Some religious-exempt programs may, however, qualify for exemption from licensure as nonpublic schools (see ss. 402.302(2)(a) and 402.3025(2)(b) and (c), F.S.). These programs would not be subject to the minimum standards required by the bill.

C. Government Sector Impact:

Fiscal Impact	Fiscal Year 2013-14			
	FTE	GR	Trust	Total
Accrediting agencies workload increase	1	\$76,886	\$0	\$76,886
Total	1	\$78,886	\$0	\$76,886

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.