

**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 Appropriations Subcommittee on Education

**BILL:** CS/CS/SB 1722

**INTRODUCER:** Appropriations Subcommittee on Education; Committee on Education; and Senator Legg

**SUBJECT:** Early Learning

**DATE:** April 16, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	<b>Fav/CS</b>
2.	Frye	Elwell	AED	<b>Fav/CS</b>
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/CS/SB 1722 changes the governance structure of the Office of Early Learning.

The bill has an insignificant fiscal impact on the Office of Early Learning. See Section V. The bill increases accountability and transparency in the administration of early learning programs:

- Moving the School Readiness program from Chapter 411 to the school code under Chapter 1002.
- Establishing the Office of Early Learning within the Department of Education’s Office of Independent Education and Parental Choice; providing powers and duties.
- Providing that the Office of Early Learning must independently exercise all power, duties, and functions prescribed by law and must not be construed as part of the K-20 education system.
- Clarifying that participation in the School Readiness program does not expand the regulatory authority of the state, its officers, or an early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements outlined for this program.

- Requiring the Office of Early Learning to: adopt a list of approved curricula and a process for the review and approval of a provider's curriculum that meets the performance standards; identify a preassessment and postassessment for school readiness program participants; adopt a statewide, standardized contract to be used by coalitions with each school readiness program provider; coordinate with other agencies to perform data matches on individuals or families participating in the School Readiness program.
- Revising procurement and expenditure requirements for early learning coalitions.
- Removing the requirement for the annual submission of a funding formula by the Office of Early Learning.
- Revising the methodology for calculating the market rate schedule to require that the Office of Early Learning biennially calculate the market rate at the average of the market rate by program care level and provider type in a predetermined geographic market.
- Revising the eligibility criteria for the enrollment of children in the School Readiness program.
- Providing for the allocation of School Readiness program funds as specified in the General Appropriations Act.
- Requiring the Office of Early Learning and each early learning coalition to limit expenditures to no more than 22 percent of funds for any combination of administrative costs, nondirect services, and quality activities in any fiscal year.
- Including provisions for fraud investigations and penalties for School Readiness program providers and parents who knowingly submit false information related to child eligibility and attendance in a school readiness program.
- Requiring private providers to maintain a minimum level of general liability insurance consistent with the requirements of private school readiness program providers, including any required workers' compensation and any required reemployment assistance or unemployment compensation.
- Requiring the Early Learning Advisory Council to periodically analyze and provide recommendations to the office on the effective and efficient use of local, state and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans.

The effective date of the bill is July 1, 2013.

The bill creates section 1001.213 and part VI of chapter 1002, consisting of sections 1002.81-1002.96, amends sections 11.45, 20.15, 196.198, 216.136, 402.281, 402.302, 402.305, 445.023, 490.014, 491.014, 1001.11, 1002.51, 1002.53, 1002.55, 1002.57, 1002.59, 1002.61, 1002.63, 1002.66, 1002.67, 1002.69, 1002.71, 1002.72, 1002.75, 1002.77, 1002.79, transfers, renumbers, and amends section 411.011 as 1002.97, and repeals sections 411.01, 411.0101, 411.01013, 411.01014, 411.01015, 411.0102, 411.0103, 411.0104, 411.0105, and 411.0106 of the Florida Statutes.

## **II. Present Situation:**

Early learning programs consist of the Voluntary Prekindergarten Education program and the School Readiness program.

## Florida's Office of Early Learning

In 2011, the Legislature transferred the Office of Early Learning, currently called Florida's Office of Early Learning (FL's OEL), from the Agency for Workforce Innovation to the Department of Education (DOE) as a separate budget entity, not subject to control, supervision, or direction by the DOE or the State Board of Education in any manner including, but not limited to, personnel, purchasing, transactions involving personal property, and budgetary matters. The office director is appointed by the Governor and confirmed by the Senate, serves at the pleasure of the Governor, and is the agency head of the office for all purposes. The office is subject to review and oversight by the Chief Inspector General or his or her designee.<sup>1</sup>

Florida's OEL is Florida's lead agency for administering the federal Child Care and Development Fund (CCDF) block grant from which funds are used to implement the school readiness program.<sup>2</sup>

Current law directs the Florida's OEL to establish a unified approach to the state's school readiness efforts by adopting specific system support services for the state's school readiness programs.<sup>3</sup> System support services include, but are not limited to:

- Child care resource and referral services.
- Warm-Line services.<sup>4</sup>
- Eligibility determinations.
- Child performance standards.
- Child screening and assessment.
- Developmentally appropriate curricula.
- Health and safety requirements.
- Statewide data system requirements.
- Rating and improvement systems.<sup>5</sup>

Additionally, Florida's OEL must develop and adopt performance standards and outcome measures for school readiness programs. Child performance standards must describe age-appropriate progress of children in the development of school readiness skills. The performance standards for children from birth to age five must be integrated with the performance standards adopted by the DOE for the VPK program.<sup>6</sup> Florida's OEL has developed and adopted a "robust set of child expectations for children, birth to five years of age."<sup>7</sup>

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<sup>1</sup> Section 12, ch. 2011-142, codified at s. 20.15(3)(h), F.S. Florida's OEL is distinct from DOE's Office of Early Learning, Department of Education, Early Learning/Prekindergarten, <http://www.fldoe.org/earlyLearning/> (last visited March 28, 2013).

<sup>2</sup> The law directs the Governor to designate Florida's OEL as the lead agency for administering the Child Care and Development Fund (CCDF). Section 411.01(4)(c), F.S.

<sup>3</sup> Section 411.01(4)(d)3., F.S.

<sup>4</sup> OEL is required to contract with the "statewide resource information and referral agency" to establish a statewide toll-free Warm-line for the purpose of assisting child care providers in serving children with disabilities and special needs. Section 402.3018, F.S.

<sup>5</sup> Section 411.01(4)(d)3.a.-i., F.S.

<sup>6</sup> Section 411.01(4)(d)8., F.S.; *see also* Florida's Office of Early Learning, *Early Learning Services – Birth to Five Standards*, <http://flbt5.floridaearlylearning.com/Default.aspx> (last visited April 16, 2013). The performance standards address the following school readiness skills: compliance with rules, limitations, and routines; ability to perform tasks; interactions with

Florida's OEL administers the School Readiness program at the state level and coordinates with the ELCs in providing school readiness services on a full-day, full-year, full-choice basis to enable parents to work and be financially self-sufficient.<sup>8</sup> The office must, every two years, review ELCs and school readiness plans and approve such plans.<sup>9</sup> Additionally, Florida's OEL must provide technical assistance and training to the Early Learning Coalitions (ELCs or coalitions) and monitor and evaluate the ELCs' administration of the School Readiness and VPK programs.<sup>10</sup> Florida's OEL must also work with the ELCs to provide training and support for parental involvement in children's early education and to provide family literacy activities and services.<sup>11</sup>

### **Voluntary Prekindergarten Education Program**

In 2004, the Legislature established the Voluntary Prekindergarten Education program (VPK program), a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.<sup>12</sup> A child must be a Florida resident and attain four years of age on or before September 1 of the academic year to be eligible for the VPK program.<sup>13</sup> Parents may choose either a school year or summer program offered by either a public school or private prekindergarten provider.<sup>14</sup> The child remains eligible for the VPK program until he or she is eligible for kindergarten in a public school or is admitted to kindergarten, whichever

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adults; interactions with peers; ability to cope with challenges; self-help skills; ability to express the child's needs; verbal communication skills; problem-solving skills; following of verbal directions; demonstration of curiosity, persistence, and exploratory behavior; interest in books and other printed materials; paying attention to stories; participation in art and music activities; and ability to identify colors, geometric shapes, letters of the alphabet, numbers, and spatial and temporal relationships. Section 411.01(4)(j), F.S.

<sup>7</sup> Email, Florida's Office of Early Learning (April 5, 2013), on file with the Appropriations Subcommittee on Education staff; *see also* Florida's Office of Early Learning, *Early Learning Services – Birth to Five Standards*, <http://flbt5.floridaearlylearning.com/Default.aspx> (last visited April 16, 2013).

<sup>8</sup> Section 411.01(4)(a), F.S.

<sup>9</sup> Section 411.01(4)(d)2., F.S.

<sup>10</sup> Section 411.01(4)(d)6., (l) and (n), F.S.; *see also* ss. 1002.55(1) and 1002.61(1)(b), F.S. Florida's OEL and the ELCs must coordinate with the Department of Children and Family Services to minimize duplicating interagency activities, health and safety monitoring, and acquiring and composing data pertaining to child care training and credentialing. Section 411.01(4)(d)7., F.S.

<sup>11</sup> Section 411.01(4)(n), F.S.

<sup>12</sup> Section 1, ch. 2004-484, L.O.F.; part V, ch. 1002, F.S.; *see also* Art. IX, s. 1(b)-(c), Fla. Const. The VPK program originated from a ballot initiative proposing an amendment to the Florida Constitution in the November 2002 general election. The amendment required the Legislature to establish a free prekindergarten education program for every four-year old child residing in Florida by the 2005 academic year. Voters approved the amendment by a total of 59 percent for to 41 percent against. Art. IX, s. 1(b)-(c), Fla. Const.; *see also* Florida Department of State, Division of Elections, *Voluntary Universal Prekindergarten Education*, <http://election.dos.state.fl.us/reports/pdf/02annrpt.pdf> (last visited March 28, 20 13).

<sup>13</sup> Section 1002.53(2), F.S.

<sup>14</sup> Section 1002.53(3), F.S. In 2010, the Legislature established a specialized instructional services program for children with disabilities as an option under the VPK program. Section 3, ch. 2010-227, *codified at* s. 1002.53(3)(d), F.S. Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK program and has a current Individual Education Plan (IEP) developed by the district school board. Specialized instructional services include applied behavior analysis, speech-language pathology, occupational therapy, and physical therapy. The Florida Department of Education is responsible for approving public and private program providers. Section 1002.66, F.S. Once this program is implemented, children who participate in the program will be eligible to receive a McKay Scholarship to enroll in and attend a private school. Section 1002.39(2)(a)1., F.S.

occurs first.<sup>15</sup> A child may not attend the summer VPK program earlier than the summer immediately before the academic year in which the child becomes eligible for kindergarten.<sup>16</sup>

Department of Education (DOE, through its Office of Early Learning, distinct from Florida's Office of Early Learning), Florida's OEL, and Department of Children and Families (DCF) each play a role in the state-level oversight of the VPK program. DOE is responsible for the programmatic requirements for the VPK program.<sup>17</sup> Florida's OEL governs the day-to-day operations of the VPK program.<sup>18</sup> DCF administers the state's child care provider licensing program and posts VPK program provider profiles on its Internet website.<sup>19</sup>

### **School Readiness Program**

Established in 1999,<sup>20</sup> the School Readiness program provides subsidies for early childhood education and child care services to children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.<sup>21</sup>

The School Readiness program is a state-federal partnership between Florida's OEL and the Office of Child Care of the United States Department of Health and Human Services.<sup>22</sup>

Federal regulations governing the CCDF block grant,<sup>23</sup> the primary funding source for the School Readiness program, authorize states to use grant funds for child care services, if:<sup>24</sup>

- The child is under 13 years of age, or at the state's option, under age 19 if the child is physically or mentally incapable of caring for himself or herself or under court supervision;
- The child's family income does not exceed 85 percent of the state's median income for a family of the same size; and
- The child:
  - Resides with a parent or parents who work or attend job training or educational programs; or
  - Receives, or needs to receive, protective services.

<sup>15</sup> Section 1002.53(2), F.S. Children who attain five years of age on or before September 1 of the academic year are eligible for admission to public kindergartens. Section 1003.21(1)(a)2., F.S.

<sup>16</sup> Section 1002.61(2)(c), F.S.

<sup>17</sup> Sections 1002.57(1), 1002.59, 1002.67(1)-(2) and (4), 1002.69(1) and (5), 1002.73, and 1007.23(6), F.S.

<sup>18</sup> Section 1002.75(2), F.S.

<sup>19</sup> Sections 402.301-402.319, F.S.; *see also* Florida Department of Children and Family Services, *Provider Search*, <http://dcfsanswrite.state.fl.us/Childcare/provider> (last visited March 28, 2013).

<sup>20</sup> Section 1, ch. 99-357, L.O.F.

<sup>21</sup> Section 411.01(6), F.S.

<sup>22</sup> U.S. Department of Health and Human Services, *Office of Child Care: About*, <http://www.acf.hhs.gov/programs/occ/about> (last visited March 28, 2013).

<sup>23</sup> 45 C.F.R. parts 98 and 99.

<sup>24</sup> 45 C.F.R. s. 98.20(a). Florida's CCDF state plan for FY 2012-2013 defines physical or mental incapacity as "a developmental delay or established physical or mental condition. Mild or moderate emotional problems as certified by a licensed psychiatrist, psychologist, or licensed mental health professional." Florida's Office of Early Learning, Child Care and Development Fund State Plan, *CCDF Plan FFY 2012/13 Part 2-CCDF Subsidy Program Administration*, available at [http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012\\_2013Part2-CCDFSubsidyProgramAdministration.pdf](http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012_2013Part2-CCDFSubsidyProgramAdministration.pdf); *see also* rule 6M-4.200(1), F.A.C.

Within these broad federal eligibility categories, Florida law specifies that the School Readiness program is established for children from birth to school entry.<sup>25</sup>

Florida's OEL administers the program at the state level, including statewide coordination of the ELCs.

### *Funding*

Funding for the School Readiness program is provided annually in the General Appropriations Act (GAA).<sup>26</sup> For the 2012-2013 fiscal year, a total of \$581.5 million was appropriated for the School Readiness Program from state and federal funds, including \$341.7 million from the CCDF block grant, \$98 million from the TANF block grant, \$141.3 million from the state's General Revenue Fund, and \$500,000 from other federal fund sources. Florida statute requires that the OEL shall establish a formula for the allocation of all state and federal school readiness program funds provided for children participating in the School Readiness program. The formula is required to be based on equity and must be submitted to the Governor and the Legislature by January 1 of each year.<sup>27</sup> Funding allocations for the 2012-2013 fiscal year were derived from the formula submitted to the Governor and Legislature as of January 1, 2012.

### *Market Rate*

Florida's OEL is responsible for annually calculating a prevailing market rate schedule as a provision of the Child Care and Development Block Grant that must include county by county rates by provider type including licensed child care facilities; religious exempt facilities, public and non-public schools, large family day care homes, family day care homes and those who hold a Gold Seal quality Care Designation under section 402.281, Florida Statutes. The prevailing market rate must also differentiate rates by care level to include infants, toddlers, pre-school age, and school-age children. The prevailing market rate schedule is required to be set at the 75th percentile of a reasonable frequency distribution based exclusively on the prices charged for child care services. Each ELC must utilize the prevailing market rate schedule to set the coalition's School Readiness program provider payment rates.

### **Early Learning Coalitions**

Each ELC administers the School Readiness program,<sup>28</sup> the VPK program,<sup>29</sup> and the state's child care resource and referral network in its county or multicounty region.<sup>30</sup> There are currently 31 ELCs.<sup>31</sup> Each ELC is governed by a board of directors comprised of various stakeholders and

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<sup>25</sup> Section 411.01(6), F.S.

<sup>26</sup> Specific Appropriation 75, ch. 2012-118, Laws of Florida.

<sup>27</sup> Section 411.01(9), Florida Statutes.

<sup>28</sup> Section 411.01(5), F.S.

<sup>29</sup> Sections 1002.55(1) and 1002.61(1)(b), F.S.

<sup>30</sup> Section 411.0101, F.S.

<sup>31</sup> Florida's Office of Early Learning, *Early Learning Coalition Directory (Revised 4/3/2013)*, <http://www.floridaearlylearning.com/Documents/All-Contact/CoalitionDirectory.pdf>, (last visited April 9, 2013). Florida law permits the establishment of 31 or fewer ELCs. Section 411.01(5)(a)2.a., F.S.

community representatives. Three members of each board, including the chair, are appointed by the Governor.<sup>32</sup>

Each ELC must serve a minimum of 2,000 children based upon the average number of children served per month by the coalition's School Readiness program during the previous 12 months.<sup>33</sup> If an ELC serves fewer than 2,000 children, "the coalition must merge with another county to form a multicounty coalition."<sup>34</sup> Florida's OEL must waive the merger requirement if certain criteria are met.<sup>35</sup>

An ELC may participate in the School Readiness program if the coalition's School Readiness plan is approved by Florida's OEL.<sup>36</sup> The plan must, at a minimum, contain the following elements: alignment to the statutory requirements and system support services, performance standards, and outcome measures; instruction to enable children from birth through five years of age to meet the performance standards; and feedback regarding the plan from the local community.<sup>37</sup> Florida's OEL must adopt rules establishing school readiness program plan approval criteria<sup>38</sup> which must include the following minimum standards for the School Readiness program:<sup>39</sup>

- A community plan that addresses the needs of eligible children and providers within the coalition's county or multicounty region.
- A sliding fee scale establishing a copayment for parents based upon their ability to pay, which is the same for all program providers.<sup>40</sup>
- A choice of settings and locations in licensed, registered, religious-exempt, or school-based programs to be provided to parents.
- Specific eligibility priorities for children in accordance with the law.
- Performance standards and outcome measures adopted by Florida's OEL.
- Payment rates adopted by the ELCs and approved by Florida's OEL.
- Direct enhancement services for families and children.<sup>41</sup>

<sup>32</sup> Section 411.01(5)(a)4.-6., F.S.

<sup>33</sup> Section 411.01(5)(a)2.b., F.S.

<sup>34</sup> Section 411.01(5)(a)3., F.S. Florida's OEL must adopt procedures for merging ELCs.

<sup>35</sup> Section 411.01(5)(a)3.a.-c., F.S. Florida's OEL must waive the merger requirement if it determines that the ELC has substantially implemented its school readiness plan; the ELC demonstrates to Florida's OEL its ability to effectively and efficiently implement the VPK Program; and the ELC demonstrates to Florida's OEL its ability to perform its duties in accordance with the law.

<sup>36</sup> Section 411.01(5)(d)1., F.S.

<sup>37</sup> Section 411.01(5)(d)2.a.-c., F.S.

<sup>38</sup> Florida's OEL held rule workshops for the school readiness plan in February 2012 and received the transcript from the workshop on March 14, 2012. Florida's OEL staffs are in the process of analyzing comments and preparing rule. E-mail, Florida's Office of Early Learning (Aug. 21, 2012), on file with the Appropriations Subcommittee on Education staff.

<sup>39</sup> Section 411.01(5)(d)4., F.S.

<sup>40</sup> Each ELC is required to adopt, subject to approval by Florida's OEL, a copayment charged to the parent of a child enrolled in the School Readiness Program. Section 411.01(5)(d)4.b., F.S. The co-payment is based on the parent's income and family size. Rule 6M-4.400(1), F.A.C. A School Readiness Program provider receives payment for school readiness services from the ELC and is responsible for collecting the co-payment directly from the parent. Rule 6M-4.401, F.A.C. A School Readiness Program provider is not prohibited from charging parent fees in addition to the co-payment. Rule 6M-4.400(4), F.A.C.

- The business organization of the ELC.
- The implementation of locally developed quality programs in accordance with the requirements adopted by Florida's OEL regarding the expenditure of funds for improving the quality of child care within the state.

Each ELC must implement a comprehensive program of school readiness services to achieve the performance standards and outcome measures. At a minimum, the comprehensive program must contain the following system support service elements: use of a developmentally appropriate curriculum, character development education; age appropriate screening and assessment; appropriate staff to children ratio; a healthy and safe learning environment; and a resource and referral network<sup>42</sup> and a regional Warm-Line<sup>43,44</sup>.

Florida law requires each ELC to include a "choice of settings and locations in licensed, registered, religious-exempt, or school-based programs."<sup>45</sup> A wide range of public and private providers of early childhood education and child care services participate in the School Readiness program, including:

- Public and private schools;
- Licensed child care facilities and large family child care homes;
- Licensed and registered family day care homes;
- Faith-based child care facilities and after-school programs, which are both exempt from licensure; and
- Informal providers<sup>46</sup> (e.g., in-home and relative care).<sup>47</sup>

In FY 2011-12, a total of 10,844 child care providers participated in the School Readiness program, including 1,013 public schools; 6,508 private providers; and 3,043 family day care homes. Of these providers, 836 were faith-based.<sup>48</sup>

Child care providers who provide school readiness services are regulated by the DCF.<sup>49</sup>

<sup>41</sup> "Direct enhancement services for families may include parent training and involvement activities and strategies to meet the needs of unique populations and local eligibility priorities. Enhancement services for children may include provider supports and professional development approved in the plan by [Florida's] OEL." Section 411.01(5)(d)4.g., F.S.

<sup>42</sup> The statewide child resource and referral network is established to assist parents in making an informed choice regarding child care. Section 411.0101(1), F.S.

<sup>43</sup> The statewide toll-free Warm-Line is established to provide assistance to child care centers and family day care homes regarding health, developmental, disability, and special needs issues of children served by such providers. Section 411.01015(1), F.S.

<sup>44</sup> Section 411.01(5)(c)2., F.S.

<sup>45</sup> Section 411.01(5)(d)4.c., F.S.

<sup>46</sup> Florida's Office of Early Learning, Child Care and Development Fund State Plan, *CCDF Plan FFY 2012/13 Part 3-Health and Safety and Quality Improvement Activities*, available at [http://www.floridaearlylearning.com/EarlyLearning/OEL\\_SysDev\\_CCDF.html](http://www.floridaearlylearning.com/EarlyLearning/OEL_SysDev_CCDF.html).

<sup>47</sup> Section 411.01(5)(d)4.c., F.S. Federal regulations governing the CCDF block grant, in effect, require the School Readiness Program to serve children in center-based child care, group home child care, family child care, and in-home child care. 45 C.F.R. s. 98.30(e)(1).

<sup>48</sup> Email, Office of Early Learning (April 4, 2013), on file with the Appropriations Subcommittee on Education staff.

<sup>49</sup> Chapter 402, F.S.

### **Child Care Executive Partnership**

The purpose of the Child Care Executive Partnership Program is to utilize state and federal funds as incentives for matching local funds derived from local governments, employers, charitable foundations, and other sources so that Florida communities may create local flexible partnerships with employers.<sup>50</sup> The Child Care Executive Partnership governs this program.<sup>51</sup> Current duties and responsibilities of the partnership include:<sup>52</sup>

- Assisting in the formulation and coordination of the Florida's child care policy.
- Adopting an official seal.
- Soliciting, accepting, receiving, investing, and expending funds from public or private sources.
- Contracting with public or private entities as necessary.
- Approving an annual budget.
- Carrying forward any unexpended state appropriations into succeeding fiscal years.
- Providing a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, on or before December 1 of each year.

### **Educational Property**

An educational institution and its property are exempt from ad valorem tax in Florida. Educational institutions often separate their property into separate corporate entities for business planning purposes. In an effort to address this situation, Florida also exempts property that is not directly owned by the educational institution, as long as the property is used exclusively for educational purposes and is owned by the identical owners of the educational institution.<sup>53</sup> A recent Attorney General's opinion concluded that this exemption does not apply if both the property and the educational institution are in separate corporations and those corporations are owned by the identical people.<sup>54</sup>

### **Gold Seal Quality Care Designation**

In order to be approved by the Department of Children and Families for participation in the Gold Seal Quality Care program, a child care facility, large family child care home, or family day care home must be accredited by a nationally recognized accrediting association approved by the Department of Children and Families.<sup>55</sup>

In approving accrediting associations, the Department of Children and Families must consult with the Department of Education, the Florida Head Start Directors Association, the Florida Association of Child Care Management, the Florida Family Day Care Association, the Florida Children's Forum, the Early Childhood Association of Florida, the Child Development

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<sup>50</sup> Section 411.0102(2), F.S.

<sup>51</sup> Section 411.0102(3), F.S.

<sup>52</sup> Section 411.0102(4)(d), F.S.

<sup>53</sup> Section 196.198, F.S.

<sup>54</sup> Op. Att'y Gen. Fla. 2012-15

<sup>55</sup> Section 402.281(1)(b), F.S.

Education Alliance, providers receiving exemptions under section 402.316, Florida Statutes, and parents.<sup>56</sup>

### **Afterschool Meals Program**

The federally funded Afterschool Meal Program (AMP) was expanded to Florida and the rest of the nation by Congress in December 2010. Prior to that time, pilot programs existed in only 13 states and the District of Columbia. The federal regulations governing the program do not require child care licensure but do require AMP sites to meet state and local health and safety standards to participate.<sup>57</sup>

### **III. Effect of Proposed Changes:**

CS/CS/SB 1722 changes the governance structure of the Office of Early Learning (OEL) and increases accountability and transparency in the administration of early learning programs: Voluntary Prekindergarten Education program (VPK program) and School Readiness program.

#### **Governance**

CS/CS/SB 1722 creates the Office of Early Learning (OEL or office) within the DOE's Office of Independent Education and Parental Choice. The OEL will be administered by an Executive Director who is fully accountable to the Commissioner of Education. The office will be responsible for administering both the VPK and the school readiness programs at the state level and will independently exercise all powers, duties, and functions prescribed by law, but is not to be construed to be a part of the K-20 education system. Moreover, participation in the School Readiness program must not expand the regulatory authority of the state, its officers, or any ELC to impose any additional regulation on providers beyond those necessary to enforce the requirements of law.

The bill requires the OEL, in collaboration with the Commissioner of Education, to develop a reorganization plan for the office by October 1, 2013. The plan must include the following:

- Any changes made prior to July 1, 2013;
- Personnel, purchasing, and budgetary matters and their alignment with the duties and responsibilities of the office;
- A report of all outstanding contractual obligations; and
- Recommendations for statutory and budgetary changes.

The plan must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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<sup>56</sup> Section 402.281(3)(b), F.S.

<sup>57</sup> The Healthy, Hunger-Free Kids Act of 2010 (P.L. 111-296)

## **Accountability**

The bill includes several accountability provisions for the OEL, ELCs, and VPK and School Readiness program providers.

### *Office of Early Learning*

The bill requires the OEL to:

- Administer requirements of the VPK program.
- Adopt by rule a standard statewide provider contract for the VPK and School Readiness programs. The contract must include provisions for probation, termination for cause, and emergency termination of a provider's contract.
- Adopt a uniform chart of accounts for budgeting and financial reporting.
- Coordinate with other state and federal agencies to perform data matches to verify children's eligibility to participate in the School Readiness program.
- Establish procedures for the annual calculation of the average market rate.
- Adopt specific program support services.
- Provide technical assistance to coalitions on anti-fraud plans.
- Develop and adopt a health and safety checklist for license exempt providers that does not exceed current licensing standards for child care facilities.
- Select valid, reliable, and developmentally appropriate assessments for use as pre- and post-assessment for the age ranges specified in the coalition's plans.
- Adopt standardized monitoring procedures for coalitions to use to monitor providers.
- Collaborate with the Bureau of Federal Education Programs within the Department of Education to coordinate readiness and voluntary prekindergarten services to the populations served by the bureau, including students served through the homeless education program.
- Provide for the administration of the statewide toll-free Warm-Line.

The OEL must continue to establish a unified approach to coordinate a comprehensive early learning program and adopt specific program support services for the School Readiness program, including:

- A statewide data information program that includes:
  - Eligibility requirements.
  - Financial reports.
  - Program accountability measures.
  - Child progress reports.
- Child care resource and referral services
- A single point of entry and uniform waiting list.

In addition, the OEL may provide technical assistance and guidance on additional support services to complement the School Readiness program, including:

- Rating and improvement systems.
- Warm-Line services.

- Anti-fraud plans.
- School readiness program standards.
- Child screening and assessments.
- Training and support for parental involvement in children's early education.
- Family literacy activities and services.

### *Early Learning Coalitions*

The bill revises the membership of the ELCs by updating terminology used to refer to Florida College System institution president, instead of a community college president. The bill also requires the ELCs to:

- Implement an age-appropriate pre- and post-assessment of children, if specified in the coalition's approved school readiness plan. ELCs cannot require providers to administer pre- and post-assessments.
- Require a parent to be in good standing on copayment obligations with a school readiness program provider prior to transferring to another school readiness program provider.
- Provide a timeframe within which attendance records may be altered or amended.
- Comply with federal and state procurement requirements.
- Provide proper information technology controls.
- Develop written policies, procedures, and standards for monitoring vendor contracts.
- Monitor providers in accordance with the applicable coalition's plan, or in response to complaints from parents, using the standard monitoring tool adopted by the office. Providers to be determined high-risk as demonstrated by substantial findings of violations of federal law or general or local laws of the state must be monitored more frequently. Providers with three consecutive years of compliance may be monitored biennially.
- Implement an anti-fraud plan addressing specific components.
- Specify components for the annual report that is submitted to the office by October 1.
- Requiring each ELC to use a coordinated, professional development system that supports the achievement and maintenance of core competencies by school readiness program teachers in helping children attain the performance standards adopted by the office.

ELCs must maintain direct enhancement services at the local level and provide access to such services in all 67 counties. The required annual report to the OEL must include an evaluation of the ELC's direct enhancement services.

### *School Readiness Program Plans*

The OEL must adopt rules prescribing the standardized format and required content of school readiness program plans. The bill provides additional accountability by:

- Requiring ELCs to submit a school readiness program plans biennially before the expenditure of funds.
- Prohibiting an ELC from implementing the coalition's school readiness program until the plan is approved.

- Prohibiting an ELC from implementing any changes to its plan, until the changes are approved by the OEL. Each ELC plan must include:
  - The coalition's operations, including the coalition's membership and business organization.
  - The coalition's articles of incorporation and bylaws, as appropriate.
  - The minimum number of students to be served.
  - The coalition's procedures for implementing all requirements of administering the School Readiness program.
  - A detailed description of the coalition's quality activities and services.
  - A detailed budget outlining the estimated expenditures for state, federal, and local maintenance of effort and matching funds at a specific level of detail.
  - A detailed accounting of all revenues and expenditures during the previous state fiscal year, in a format described by the OEL.
  - Updated policies and procedures.
  - A description of the procedures for monitoring school readiness program providers or for responding to complaints from parents.
  - Documentation that the coalition has solicited and considered comments regarding the proposed school readiness program plan from the local community.

If the OEL determines during the review of school readiness program plans, or through monitoring and performance evaluations, that an ELC has not substantially implemented the coalition's plan, has not substantially met the performance standards and outcome measures, or has not effectively administered the School Readiness or VPK program, the office may temporarily contract with a qualified entity to continue providing services until the ELC is reestablished and a new school readiness program plan is approved.

#### *Annual Report*

The bill requires the OEL to collect and report data on coalition delivery of early learning programs to be implemented beginning July 1, 2014, and results included in the OEL's annual report. The OEL report must include, but not be limited to, the following elements:

- Progress toward reducing the number of children on the waiting list.
- The percentage of students served compared to the number of administrative staff and overhead.
- The percentage of students served compared to the total number of children under the age of five years below 150 percent of the federal poverty level.
- Provider payment process.
- Fraud intervention.
- Child attendance and stability.
- Use of child care resource and referral.
- Kindergarten readiness outcomes.

#### *School Readiness Program Participation Eligibility*

The bill establishes, effective August 1, 2013, or upon reevaluation of eligibility of children served, the following priorities for participation in the School Readiness Program:

- First priority must be a child under 13 from a family that includes a parent who is receiving Temporary Assistance for Needy Families (TANF) and is subject to the federal work requirements.
- Second priority must be an at-risk child under 9 years of age.
- Third priority must be a child from, birth to beginning of school year for which the child is eligible for kindergarten, from a working family that is economically disadvantaged and may include such children's eligible siblings who are eligible to enter kindergarten through the summer before sixth grade, provided that the ELC uses local revenues first; The child's eligibility ceases if the child's family income exceeds 200 percent of the federal poverty level.
- Fourth priority must be a child aged 9 through 13, who is at risk; a child eligible under this priority whose sibling is enrolled in the School Readiness program shall be given priority over other children.
- Fifth priority must be a child younger than 13 years of age from a working family that is economically disadvantaged; a child eligible under this priority whose sibling is enrolled in the School Readiness program shall be given priority over other children. The child's eligibility is no longer eligible if the family income exceeds 200 percent of the federal poverty level.
- Sixth priority must be a child who has special needs, has been determined eligible as a student with a disability, has a current individual education plan with a Florida school district, and is not younger than 3 years of age. The child remains eligible until he or she is eligible for admission to kindergarten.
- Seventh priority must be a child of a parent who transitions from the work program into employment as described in s. 445.032, F.S.
- Last priority must be for a child who is also concurrently enrolled in the Head Start program and the VPK program.

Additionally, the bill requires:

- Coalitions to enroll children in accordance with the specified eligibility priorities;
- Parents the opportunity to reestablish employment within 60 days (instead of the current 30 days for break in employment or 60 days for temporary break in employment due to medical reasons<sup>58</sup>);
- Disenrollment of children to occur in reverse order of the specified eligibility priorities, beginning with children from families with the highest family incomes;
- A notice of disenrollment be sent to the parent and school readiness program provider at least 2 weeks before disenrollment; and
- Providers to report to the coalition for determination of need for continued care if a child has been absent for five consecutive days without any parental notification.

### *Provider Standards and Eligibility*

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<sup>58</sup> Florida's Office of Early Learning, *Part 2: CCDF Subsidy Program Administration*, available at [http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012\\_2013Part2-CCDFSubsidyProgramAdministration.pdf](http://www.floridaearlylearning.com/Documents/SysDev-CCDF/2011-2013/CCDF2012_2013Part2-CCDFSubsidyProgramAdministration.pdf).

In addition to current standards and requirements for providers, the bill requires that providers:

- Maintain a minimum general liability insurance coverage of \$100,000 and general aggregate coverage of \$300,000 that includes coverage of transportation if students are transported by the provider. The OEL may authorize lower limits upon request, as appropriate.
- Must add the coalition as a named certificateholder and as an additional insured.
- Maintain any required worker's compensation insurance and any required unemployment compensation insurance.
- Maintain the coverage for the entire period of the provider contract with the coalition.
- Notify the coalition, with a minimum of ten calendar days' advance written notice, of cancellation or changes to coverage.
- Make provisions for coalitions to revoke provider's eligibility for five years if the provider fails or refuses to comply with the law or the statewide contract.
- Include school readiness program activities to foster brain development in infants and toddlers by providing an environment rich in language and music; stimulating visual, tactile, auditory, and linguistic senses; and include 30 minutes of reading to children each day.
- Administer preassessments and postassessments that are approved by the OEL, if such providers choose to administer such assessments.

#### *School Readiness Program Funding*

The bill provides that School Readiness program funding shall be allocated to the ELCs as provided in the General Appropriations Act (GAA). The bill also removes the requirement for the annual submission of a funding formula by the OEL. Beginning in the 2014-2015, fiscal year all funding appropriated in the GAA shall be allocated using the average prior year enrollment and the uniform waiting list, as adopted by the School Readiness Estimating conference, and the average market rate.<sup>59</sup>

The bill requires the OEL and each ELC to limit its expenditures to no more than 22 percent of funds for any combination of administrative costs, nondirect services, and quality activities for any fiscal year. No more than 5 percent may be used for administrative costs. Coalitions must place the highest priority for the expenditure of funds on providing direct services for eligible children in the School Readiness program.

The bill specifies that activities to improve the quality of child care must be limited to:

- Developing, operating, expanding, and coordinating resource and referral program.
- Awarding grants to School Readiness program providers to assist the providers in meeting the state requirements for child care performance standards, implementing developmentally appropriate curricula and related classroom supports, providing literacy supports, and providing professional development.
- Providing training and technical assistance for School Readiness program providers, staff, and parents on standards, child screenings, child assessments, curricula, charter development,

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<sup>59</sup> Section 216.136(8)(a), F.S.

teacher-child interactions, age-appropriate discipline practices, health and safety, nutrition, first aid, recognition of communicable diseases, and child abuse detection and prevention.

- Funding for quality activities for infants and toddler care, to meet applicable federal requirements.
- Improving the monitoring of compliance with state and local requirements.
- Responding to Warm Line requests by providers and parents regarding children in the School Readiness program.

The bill defines nondirect services to include, but not be limited to:

- Assisting families in completing the required application.
- Determining child and family eligibility.
- Recruiting eligible child care providers.
- Processing and tracking attendance records.
- Developing and maintaining a statewide information system.

The bill prohibits the use of state funds for the purchase or improvement of land or for the purchase of buses. However, funds may be expended for minor remodeling and upgrading of child care facilities so that School Readiness program providers are able to meet the state and local child care standards including health and safety requirements.

#### *School Readiness Program Prevailing Market Rate*

The bill defines market rate as the price that a child care or early childhood education provider charges for full-time or part-time daily, weekly, or monthly child care or early childhood education services. Additionally, average market rate is defined in the bill as the biennially determined average of the market rate by program care level and provider type in a predetermined geographic market. The bill requires the funding for the School Readiness program to be allocated to the ELCs in accordance with the specified requirements and the GAA.

#### *Investigations of Fraud*

The bill requires the OEL to coordinate with federal and state agencies to perform data matches to verify the eligibility of individual and families regarding participation in the School Readiness program. Fraudulent information submitted by a school readiness program provider or parent must be considered a misdemeanor of the first degree, which may include a fine up to \$1,000 and imprisonment not exceeding 1 year. Additionally, the bill:

- Defines “fraud” and the processes to investigate and refer fraud to Department of Financial Services for criminal investigation or to the applicable coalition.
- Applies the provisions and consequences regarding fraud to coalitions, recipients and providers.
- Provides that coalitions may suspend or terminate a provider from participation in School Readiness or the Voluntary Prekindergarten program if it has reasonable cause to believe that the provider has committed fraud.
- Removes a provider from eligibility to deliver program services or receive federal or state funds for a period of 5 years if the provider is convicted of fraud.

- Prohibits coalitions from contracting with a provider who is on the U.S. Department of Agriculture disqualified list.
- Requires coalitions to adopt an anti-fraud plan.
- Specifies that a person who commits an act of fraud is subject to the penalties provided in s. 414.39, F.S.<sup>60</sup>

The bill also requires the Early Learning Advisory Council (ELAC) to periodically analyze and provide recommendations to the OEL regarding the effective and efficient use of local, state and federal funds; the content of professional development training programs; and best practices for the development and implementation of coalition plans.

The bill requires that the chair of the ELAC appointed by the Governor and members appointed by the presiding officers of the Legislature be from the business community.

### **Transparency**

The bill includes several provisions that increase transparency by:

- Requiring the OEL to publish an annual report on the office's website by January 1. The report must include a summary of coalitions' annual report, a statewide summary, an analysis of early learning activities throughout the state with specified components, and a summary of activities and expenditures regarding the Child Care Executive Partnership Program.
- Requiring the OEL to review ELCs' delivery of the early learning programs.
- Requiring the OEL to review and adopt minimum performance standards for VPK.
- Requiring the OEL to include a summary of activities and expenditures related to the Child Care Executive Partnership Program in the annual report.
- Requiring ELCs to comply with specific requirements before contracting with a member of the coalition or a relative which includes approval of the contract by the office.
- Requiring the ELCs to comply with the tangible personal property requirements of chapter 274 and rules there under.
- Requiring VPK instructors to complete an online training course on the performance standards by July 1, 2014.
- Clarifying that participation in the School Readiness program does not expand the regulatory authority of the state, its officers, or any early learning coalition to impose any additional regulation on providers beyond those necessary to enforce the requirements set forth for administration of the School Readiness program.
- Revising provisions regarding the accrediting organizations recognized under the Gold Seal Quality Care program.

### **Child Care Executive Partnership**

The bill removes from duties of the Child Care Executive Partnership, requirements regarding formulation and coordination of the state's child care policy and adopting an official seal, and

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<sup>60</sup> Fraud of less than \$200 is a misdemeanor of the first degree and \$200 or more is a felony of the third degree.

instead, directs the partnership to make recommendations concerning the implementation and coordination of the School Readiness program.

### **Educational Property**

The bill extends the educational institution exemption to include situations when the property and the educational institution are owned by separate legal entities and those legal entities are owned by the identical people.

### **Gold Seal Quality Care Designation**

The bill removes the requirement for the accrediting association to be “nationally recognized,” but it must still be approved by the Department of Children and Families. In approving accrediting associations, the Department of Children and Families must consult with the Florida Association of Academic Nonpublic Schools and the Association of Early Learning Coalitions in addition to the entities specified in Section 402.281(3)(b), Florida Statutes.

### **After School Meals Program**

The bill authorizes after-school programs that are excluded from licensure to provide snacks and meals through the federally funded After School Meal Program (AMP) meals administered by the Department of Health if the programs are in good standing with the Department of Health and the meals meet the AMP requirements.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

The Revenue Estimating Conference has not completed its review of the provisions of this bill that exempt certain commonly-owned property used for educational purposes. Staff estimates that these changes will reduce local government property tax revenue by an insignificant amount (less than \$50,000).<sup>61</sup>

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<sup>61</sup>Staff analysis, Senate Bill 1830, April 15, 2013.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of this bill on the Department of Education and the Office of Early Learning is insignificant.

**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.)

**CS by Appropriations Subcommittee on Education on April 17, 2013:**

The committee substitute differs from CS/SB 1722 in that the committee substitute:

- Changes the governance structure of the Office of Early Learning by establishing the office within the Department of Education’s Office of Independent Education and Parental Choice.
- Includes several accountability and transparency provisions to promote effective and efficient administration of VPK program and School Readiness programs.
- Includes provisions regarding educational property and after-school meals program.

**CS by Committee on Education on April 1, 2013:**

The committee substitute differs from SB 1722 in that the committee substitute:

- Changes the governance structure of the Office of Early Learning by establishing the Office of Early Learning within the Office of the Commissioner of Education.
- Enhances the accountability of early learning programs by requiring the Office of Early Learning to administer the School Readiness and VPK programs and keeping the administrative staff for such programs to the minimum necessary to administer the duties of the office.

Provides roles and responsibilities for the Office of Early Learning and early learning coalitions.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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