

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7069 PCB EDC 14-01 Early Learning and Child Care Regulation
SPONSOR(S): Education Appropriations Subcommittee, Education Committee, and O'Toole
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	16 Y, 0 N	Beagle	Mizereck
1) Education Appropriations Subcommittee	12 Y, 0 N, As CS	Seifert	Heflin

SUMMARY ANALYSIS

Currently, the state-funded early learning programs, i.e., the School Readiness and Voluntary Prekindergarten Education (VPK) programs, are delivered by a diverse range of providers, including public schools, licensed child care providers, licensed-exempt child care providers, and nonpublic schools. The child health and safety standards applicable to each provider type and the degree to which minimum levels of health and safety are inspected and enforced vary widely. Among other things, the bill increases early learning provider health and safety requirements and personnel quality by requiring:

- Private providers to be licensed or, if the provider is a licensed-exempt faith-based provider or nonpublic school, agree to substantially comply with specified health and safety standards and submit to inspections by the Department of Children and Families (DCF) or local licensing agency.
- Providers to notify parents of health and safety violations and prominently post citations that result in disciplinary action and inspection reports on the premises.
- That providers with Class I violations in the previous year be denied program eligibility unless certain requirements are met.
- By January 1, 2016, personnel to be at least 18 years of age and hold a high school diploma (or equivalent), with exceptions.
- By January 1, 2015, personnel to be trained in first aid and cardiopulmonary resuscitation, with exceptions.
- Personnel to be trained in developmentally appropriate practices aligned to the age and needs of children served by the personnel.
- The Office of Early Learning (OEL) to develop online training on the School Readiness program performance standards and provider personnel to complete the training.

Several bill provisions effect child care regulation in general. Among other things, the bill adds failure to report child abuse as a disqualifying offense for child care employment and requires employment history checks; prohibits licensed child care providers who have been disciplined for serious licensing violations from transferring ownership to relatives in order to remain in business; requires family day care homes (FDCH) to conspicuously post their license or registration on the premises; and requires substitutes for operators of registered FDCHs to meet the same training requirements as substitutes in licensed homes.

The bill reduces regulatory burdens on state agencies and child care providers by authorizing Early Learning Coalitions (ELC) to allow private providers to determine child eligibility for the VPK program; requiring ELCs, OEL, and DCF to cooperate in reducing paperwork and duplicative regulations; expanding DCF's authority to conduct abbreviated inspections; and extending to large family child care homes certain protections regarding zoning, property insurance, and utility rates currently available to FDCHs. Among other terminology changes, the bill directs the Division of Law Revision and Information to change the name of the School Readiness Program to the Child Care and Development Program.

The bill has an indeterminate fiscal impact on state government. Nonpublic schools and license-exempt faith-based providers of state-funded early learning programs may experience increased costs associated with increased health and safety regulation. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect July 1, 2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Early Learning and Child Care Regulation

Present Situation

Florida's Office of Early Learning (OEL)¹ provides state-level administration for two state-funded early learning programs serving preschool age children – the School Readiness program and the Voluntary Prekindergarten Education (VPK) program. Both programs differ in purpose and utilize a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.² The Florida Department of Children and Families Office of Child Care Regulation (DCF), as the agency responsible for the state's child care provider licensing program, regulates child care providers that provide early learning programs.³

School Readiness Program

The School Readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities. The School Readiness Program is a state-federal partnership between OEL and the Office of Child Care of the United States Department of Health and Human Services.⁴ The School Readiness program receives funding from a mixture of state and federal sources, including the federal Child Care and Development Fund (CCDF) block grant, the federal Temporary Assistance for Needy Families (TANF) block grant, and general revenue and other state funds.⁵ The program is administered at the county or regional level by early learning coalitions (ELC).⁶

In order to be eligible to deliver the School Readiness program, a provider must be:

- A licensed child care facility;
- A licensed or registered family day care home (FDCH);
- A licensed large family child care home (LFCCH);
- A public school or nonpublic school;
- A license-exempt faith-based child care provider;
- A before-school or after-school program; or
- An informal child care provider authorized in the state's CCDF plan.⁷

¹ In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE). The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the school readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as* s. 1001.213, F.S.

² Parts V and VI, ch. 1002, F.S.

³ *See* ss. 402.301-319, F.S., and Parts V and VI, ch. 1002, F.S.

⁴ Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q; U.S. Department of Health and Human Services, *Child Care and Development Fund Fact Sheet* (2014), available at http://www.acf.hhs.gov/sites/default/files/assets/FS_OCC_0.pdf.

⁵ Specific Appropriations 78A and 79, s. 2, ch. 2013-40, L.O.F.

⁶ Sections 1002.83-1002.85, F.S. There are currently 31 ELCs, which is the maximum permitted by law. Section 1002.83(1), F.S.; *see* Florida's Office of Early Learning, *Early Learning Coalition Directory* (Feb. 5, 2014), <http://www.floridaearlylearning.com/sites/www/Uploads/files/Parents/CoalitionDirectory.pdf>.

⁷ Section 1002.88(1)(a), F.S. Generally speaking, informal child care is care provided by a relative. *See* Florida's Office of Early Learning, *Child Care and Development Fund State Plan FFY 2014-15*, at 71 (Oct. 1, 2013), available at [http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015 CCDF Plan %20Optimized.pdf](http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/2014-2015%20CCDF%20Plan%20Optimized.pdf).

Voluntary Prekindergarten Education Program

The VPK program is a voluntary, free prekindergarten program offered to eligible four-year old children in the year before admission to kindergarten.⁸ Children enrolled in the VPK program receive instruction in emergent literacy and mathematics skills necessary for kindergarten readiness.⁹ 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. Parents may choose either a school-year or summer program offered by either a public school or private prekindergarten provider.¹⁰ A parent enrolling a child in the VPK program must complete and submit an application to the ELC. Thus, public school and private prekindergarten providers do not determine child eligibility for the program.¹¹

Local oversight of individual VPK program providers is split, with ELCs providing administration over programs delivered by private prekindergarten providers and school districts administering public school VPK programs.¹² Each district school board determines which district schools will offer the school-year and summer VPK programs and such schools must register with the ELC.¹³

The VPK program may be offered by either a private prekindergarten provider or a public school. To offer the VPK program, a private prekindergarten provider must be a:

- Licensed child care facility;
- Licensed FDCH;
- Licensed LFCCH;
- Nonpublic school; or
- License-exempt faith-based child care provider.¹⁴

In addition, a private prekindergarten provider must:

- Be accredited by an accrediting association that is a member of either the National Council for Private School Accreditation, or the Florida Association of Academic Nonpublic Schools, or be accredited by the Southern Association of Colleges and Schools, the Western Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Middle States Association of Colleges and Schools, or the New England Association of Colleges and Schools; and has written accreditation standards that meet the state's licensing requirements and requires at least one onsite visit before accreditation is granted;¹⁵
- Hold a current Gold Seal Quality Care designation;¹⁶ or

⁸ 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. Florida Department of State, Division of Elections, *Voluntary Universal Prekindergarten Education*, <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=34708&seqnum=1> (last visited Feb. 9, 2014).

⁹ Section 1002.67(1)(a), F.S.

¹⁰ Section 1002.53(2)-(3), F.S.

¹¹ Section 1002.53(4), F.S.

¹² Sections 1002.53(6), 1002.55(1), 1002.61(1), and 1002.63(1), F.S.

¹³ Sections 1002.61(3)(a) and (8)(a) and 1002.63(3) and (8)(a), F.S. School districts must offer a summer VPK program and may limit enrollment at individual public schools so long as admission is provided to every eligible student who seeks enrollment in the district's summer program. Sections 1002.53(6)(b) and 1002.61(3)(a), F.S.

¹⁴ Section 1002.55(3)(a) and (h), F.S.; *see also* rule 6M-8.300(3), F.A.C.; s. 402.305, F.S. (child care facilities licensing); s. 402.3025, F.S. (nonpublic schools); s. 402.313, F.S. (FDCH licensing); s. 402.3131, F.S. (LFCCH licensing); s. 402.316, F.S. (faith-based provider exempt from licensure).

¹⁵ Section 1002.55(3)(b)1., F.S.

¹⁶ Section 402.281, F.S.; rule 65C-22.009, F.A.C.; *see also* Florida Department of Children and Family Services, *Gold Seal Quality Care*, <http://www.dcf.state.fl.us/childcare/goldseal.shtml> (last visited Feb. 21, 2014). DCF issues the Gold Seal Quality Care designation to child care facilities, LFCCHs, and FDCHs that are accredited by a nationally recognized accrediting association with standards that meet or exceed DCF-adopted standards. DCF's standards are based upon those of the National Association for the Education of Young Children, National Association of Family Child Care, and National Early Childhood Program Accreditation Commission. Section 402.281(1)-(3), F.S.

- Be licensed and demonstrate to the ELC that the provider meets the VPK program's statutory requirements.¹⁷

Unlicensed (registered) FDCHs and informal child care providers are not eligible to offer the VPK program.¹⁸

Child Care Personnel and Instructor Qualifications

An application for a child care personnel position with a licensed child care facility, FDCH, or LFCCH must require the applicant to disclose, under penalty of perjury, whether he or she has ever worked for a provider that has had its license denied, revoked, or suspended in any state or jurisdiction or if he or she, individually, has been the subject of a disciplinary action or been fined while so employed.¹⁹ Child care employers must conduct employment history checks on prospective employees.²⁰ The law generally requires all employers of employees who are subject to background screening requirements to furnish copies of personnel records of employees and former employees, including records of termination or disciplinary actions, when requested by other employers. The law shields such employers from any liability resulting from such release of employment records, unless the employer maliciously falsifies the records.²¹

Child care personnel employed by licensed child care facilities, licensed and registered FDCHs, LFCCHs, licensed-exempt child care providers, and nonpublic schools and VPK program instructors employed by public schools, must undergo Level 2²² background screening.²³ The Level 2 screening requirement for public school VPK program instructors differs with the screening requirements for other public school instructional personnel. Such personnel are screened against a distinct list of 59 disqualifying offenses.²⁴

Currently, the minimum age for employment as child care personnel is 16 years of age.²⁵ The minimum age for employment in an instructional capacity with a public school district is 18 years of age.²⁶ Licensed child care facility personnel, licensed and registered FDCH operators, and LFCCH operators must complete introductory child care training and .5 unit of continuing education which includes, among other things, early literacy and language development.²⁷ Introductory training for licensed child care facility personnel and LFCCH operators includes developmentally appropriate practices courses for serving infants and toddlers, preschoolers, school-age children, and special needs children.²⁸ There is no requirement that introductory training or continuing education address emergent numeracy skills or that personnel take developmentally appropriate practices courses aligned to the specific age group or child classification to which they are assigned.

A licensed child care facility must have at least one employee on site who is trained in first aid and cardiopulmonary resuscitation (CPR). Operators of licensed FDCHs and LFCCHs and their substitutes

¹⁷ Section 1002.55(3)(b), F.S.

¹⁸ Section 1002.55(3)(a), F.S..

¹⁹ Section 402.3055(1)(b), F.S.

²⁰ Section 402.302(15), F.S.

²¹ Section 435.10, F.S.

²² Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 offenses. *See* s. 435.04, F.S.

²³ Sections 402.302(15)(definition of screening), 402.305(2)(child care facilities), 402.313(3)(FDCH), 402.3131(2)(LFCCH), 1002.55(3)(d)-(e)(private provider of VPK school year program), 1002.61(5)-(6)(public school and private providers of the VPK summer program), and 1002.63(5)-(6), F.S. (public school provider of school year VPK program).

²⁴ Sections 1012.315 and 1012.32, F.S.; rule 6A-5.056(8), F.A.C. (crimes involving moral turpitude).

²⁵ Section 402.305(2)(c), F.S.

²⁶ Section 1012.32(1), F.S.

²⁷ Section 402.305(2)(d)1. and 5., F.S. (licensed child care facilities); s. 402.313(1)(a)6. and (6), F.S. and rule 65C-20.009(3), F.A.C. (FDCH) and 402.3131(5), F.S. and rule 65C-20.013(5), F.A.C. (LFCCH).

²⁸ Section 402.305(2)(d), F.S. and rule 65C-22.003(2)(a)3., F.A.C. (licensed child care facilities); s. 402.3131(3), F.S. and rule 65C-20.013(5)(b), F.A.C. (LFCCH).

must also be trained in these techniques.²⁹ First aid and CPR training are not required for registered FDCH operators and their substitutes.

Currently, the training requirements for substitutes for licensed FDCH operators differentiate between substitutes who work 40 hours or more per month from those who work less. Substitutes who work 40 hours or more per month must take a 30-clock-hour introductory child care course; a .5 continuing education unit early literacy course, and first aid and CPR training. Substitutes who work less than 40 hours per month must take a 6-clock-hour child care rules and regulations course. These training requirements do not apply to substitutes working in registered FDCHs.³⁰

The law specifies minimum allowable educational credentials for VPK program instructors, which vary depending on whether they work for a private or public school provider or teach during a school year or summer program. Such credentials include the child development associate credential, various education and early childhood-related associates or bachelor's degrees, or a Florida professional teaching certificate.³¹ There is no requirement that other child care personnel employed by a VPK program provider or School Readiness program provider hold a high school diploma.

The law requires OEL to develop and adopt standards and benchmarks that address the age-appropriate progress of children in the development of school readiness skills. These standards must be aligned with the performance standards adopted for children in the VPK program and must address:

- Approaches to learning.
- Cognitive development and general knowledge.
- Numeracy, language, and communication.
- Physical development.
- Self-regulation.³²

Each ELC must provide professional development to School Readiness program teachers regarding the OEL-adopted performance standards.³³

Child Health and Safety

State-funded early learning programs are delivered by a diverse range of providers, including licensed child care providers, licensed-exempt child care providers, public schools, and nonpublic schools. The child health and safety standards applicable to each provider type and degree to which minimum levels of health and safety are inspected and enforced vary widely.

Early Learning Providers by Classification³⁴		
Provider Classification	Eligible Providers	
	School Readiness Program	VPK Program
Licensed Child Care Facility	5,413	4,694
Licensed FDCH	1,468	49
Registered FDCH	198	Ineligible
Licensed LFCCH	233	41
Public School	782	1,026
Nonpublic School	224	82
Faith-Based Exempt	221	144
Informal Provider	18	Ineligible

²⁹ Section 402.305(7)(a), F.S.; rule 65C-20.009(3)(c), F.S.

³⁰ Section 402.313(1)(a) and (13), F.S.; rule 65C-20.009(3), F.A.C.

³¹ Section 1002.55(3)(c)1. and (4), F.S.

³² Section 1002.82(2)(j), F.S.

³³ Section 1002.83(13), F.S.

³⁴ Email, Office of Early Learning, Legislative Affairs Director, (Feb. 12, 2014).

Licensed Providers

DCF issues licenses to child care facilities, FDCHs, and LFCCHs. A county may designate a local licensing agency to license such providers if its licensing standards meet or exceed DCF's standards. Five counties have established local licensing agencies – Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota.³⁵

Child care provider licenses must be renewed annually.³⁶ Licensure is optional for FDCHs; however, homes that choose not to be licensed must annually register with DCF or the local licensing agency, as applicable. A county may by ordinance require that FDCHs be licensed. Fifteen counties have enacted such ordinances -- Brevard, Broward, Clay, Duval, Hernando, Hillsborough, Manatee, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Polk, Sarasota, and St. Johns.³⁷ Among other things, licensed child care facilities, FDCHs, and LFCCHs must annually provide information to parents regarding the influenza virus during the months of August and September.³⁸

DCF conducts inspections of all licensed child care providers to determine initial and renewal licensure and periodically assess continued compliance with licensing standards. Licensed child care facilities are inspected three times annually. LFCCHs and licensed FDCHs are inspected twice annually. In each case, the first inspection is an announced initial or renewal licensing inspection. Subsequent inspections are unannounced.³⁹

Licensed child care facilities are inspected based upon 354 total licensing standards in 63 categories. Licensed FDCHs are inspected based upon 261 total standards in 38 categories. LFCCHs are inspected based upon 321 total standards in 55 categories.⁴⁰ Legislation enacted in 1996 directed DCF and local licensing agencies to develop and implement a plan to eliminate duplicative and unnecessary inspections and implement an abbreviated inspection plan for providers with no Class I or Class II violations in a two-year period.⁴¹ DCF's abbreviated inspection plan is only applicable to child care facilities. Abbreviated inspections consist of 39 of the 63 categories of standards and only the initial or renewal licensing inspection is a full inspection.⁴²

DCF rule classifies licensing violations as follows:

- Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child.
- Class II violations are less serious in nature than Class I violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent.
- Class III violations are less serious in nature than either Class I or Class II violations, and pose a low potential for harm to children.⁴³

Class I violations include serious threats to health and safety, e.g., failure to report child abuse, child abuse by child care personnel, leaving children alone with personnel who have not been background

³⁵ Section 402.306(1), F.S.; Department of Children and Families, *Licensing Information*, <http://www.myflfamilies.com/service-programs/child-care/licensing-information> (last visited Feb. 10, 2014).

³⁶ Sections 402.305 and 402.306-402.308, F.S.

³⁷ Section 402.313(1), F.S.; see Department of Children and Families, *Registered Family Day Care Homes*, <http://www.myflfamilies.com/service-programs/child-care/registered-family-day-care> (last visited Dec. 5, 2013).

³⁸ Sections 402.305(9), 402.313(14), and 402.3131(9), F.S.

³⁹ Sections 402.308 and 402.311, F.S. Licensing standards are found throughout ss. 402.301-402.319, F.S., and ch. 65C-22, F.A.C. Prior to 2010, DCF and the Department of Health (DOH) shared responsibility for health/safety inspections of child care facilities. However, legislation enacted that year removed child care facility inspections from the purview of DOH. See, e.g., ss. 17 and 18, ch. 2010-161, L.O.F.; Memorandum of Agreement between DCF and DOH (April 16, 1997).

⁴⁰ *Id.*; ch. 65C-22, F.A.C.

⁴¹ Section 79, ch. 96-175, L.O.F., *codified as* s. 402.3115, F.S.

⁴² Email, Department of Children and Families, Legislative Affairs Director (Dec. 2, 2013).

⁴³ Rule 65C-22.010(1)(d), F.A.C.

screened, transporting children in vehicles without enough seat belts, and leaving a child in a vehicle while on a field trip.⁴⁴

Licensed Child Care Provider Standards By Class of Violation			
Provider Type	Class I	Class II	Class III
Child Care Facility	21 standards	104 standards	229 standards
Family Day Care Home	28 standards	83 standards	150 standards
Large Family Child Care Home	31 standards	96 standards	194 standards

An OEL review of 2012-13 DCF child care licensing inspection results indicates that 106 providers of the School Readiness or VPK programs were issued Class I violations. Since the initial review of the data, eight of the child care providers closed leaving 98 providers with a total of 118 Class I violations. Class I violations were issued for:

- Leaving unscreened individuals alone to supervise children: 25
- Failure to report child abuse: 19
- Inadequate supervision of children in care: 19
- Exceeding vehicle capacity or available child restraints while transporting children: 17
- The number of children in care exceeding licensed capacity: 8
- Misrepresentations by provider personnel to inspectors: 7
- Leaving a child behind in a vehicle: 6
- Use of prohibited forms of discipline: 6
- Records indicating an active employee was convicted of a disqualifying offense: 4
- Child abuse/neglect by a provider: 3
- Failure to follow medication instructions: 3
- Failure to inspect a vehicle after off-loading children: 1
- Total: 118⁴⁵

The law authorizes DCF and local licensing agencies to impose sanctions on child care providers for licensing violations and other misconduct. Sanctions include license suspension or revocation, fines, probation. When cause exists to impose sanctions, DCF or the local licensing agency must provide written notice to the licensee stating the grounds for the sanction and, if requested, grant a hearing on the matter.⁴⁶ The law requires the owner of a licensed child care facility to notify parents of each child in care regarding any transfer of ownership of the facility. The new owner must apply for a new license.⁴⁷ The law does not prohibit the owner of a licensed child care facility from transferring ownership to a relative after having his or her license suspended or revoked or after suspension or revocation proceedings are initiated by DCF or a local licensing agency.

The requirements regarding notifying parents of licensure status and violations vary by child care provider type:

- Each child care facility and LFCCH must conspicuously display on the premises its license.⁴⁸
- Each child care facility must post conspicuously on the premises any citations that resulted in disciplinary action for one-year after its effective date.⁴⁹
- Child care facilities, FDCHs, and LFCCHs must distribute to parents a DCF-developed brochure indicating the licensure status of the provider and that information about the provider's

⁴⁴ See, e.g., Florida Department of Children and Families, *Facility/Center Classification Summary* (July 2012), available at [http://ccrain.fl-dcf.org/\(X\(1\)\)/documents/2/443.pdf#page=1](http://ccrain.fl-dcf.org/(X(1))/documents/2/443.pdf#page=1).

⁴⁵ Email, Office of Early Learning, Legislative Affairs Director (Dec. 4, 2013).

⁴⁶ Sections 402(1)(a), (2), and (3) and 120.60, F.S.

⁴⁷ Section 402.305(18), F.S.

⁴⁸ Section 402.3125(1)(a), F.S. (child care facilities); s. 402.3131(7) and rule 65C-20.013(3)(g), F.A.C. (LFCCHs);

⁴⁹ Section 402.3125(1)(b), F.S.

compliance with applicable state and local requirements (including violations) can be obtained by telephoning DCF or the local licensing agency.⁵⁰

These requirements are inapplicable to license-exempt faith-based providers and nonpublic schools. Such providers delivering the School Readiness program must annually complete a health and safety checklist, which must be posted prominently on the premises where parents can view it. The check list must be submitted to the ELC, but the ELC does not have authority to investigate and verify the accuracy of the information therein.⁵¹

Registered Family Day Care Homes

A registered FDCH must annually register with DCF by submitting the following information:

- The name and address of the home, name of the operator, and number of children served.
- Proof of a written plan to provide a substitute for the operator that includes the name, address, and telephone number of the substitute.
- Proof of screening and background checks.
- Proof that the operator has completed the 30-hour introductory child care training course, as evidenced by passage of a competency examination, and continuing education.
- Proof that immunization records are kept current.⁵²

Substitutes for the operator of a registered FDCH are not currently required to complete any training.⁵³ Operators of FDCHs must annually complete a health and safety self-evaluation checklist. The checklist must be signed by the operator and provided to parents as certification that specified health and safety standards are being met. There is no requirement that the checklist be submitted to DCF, nor does DCF have authority to inspect registered FDCHs.⁵⁴

License-Exempt Faith-Based Providers

Child care facilities that are an integral part of a church or parochial school and accredited by an organization which requires compliance with published health, safety, and sanitation standards are exempt from licensure. DCF does not have authority to investigate whether the accreditor of a faith-based provider actually conducts site visits or otherwise enforces compliance with its health and safety standards.⁵⁵

Public and Nonpublic Schools

The law requires each public and nonpublic school facility to obtain an environmental health inspection by the local county health department⁵⁶ and fire safety inspection by the local fire authority prior to opening and operating in Florida.⁵⁷ Sanitation and safety standards for public and nonpublic school facilities are prescribed in State Board of Education rule and county health departments apply these standards when inspecting facilities.⁵⁸ For public schools, the law requires that these inspections be conducted periodically.⁵⁹ The law is silent regarding the frequency of inspections for nonpublic schools and the Department of Education (DOE) does not verify that nonpublic schools obtain inspections, unless the nonpublic school participates in a state-funded school choice scholarship program, in which

⁵⁰ Sections 402.3125(5), 402.313(9), and 402.3131(6), F.S.

⁵¹ Section 1002.88(1)(c), F.S.

⁵² Section 402.313(1)(a), F.S.

⁵³ *Id.*

⁵⁴ Section 402.313(7), F.S.

⁵⁵ Sections 402.3025 and 402.316, F.S. Faith-based child care facilities must be an integral part of a church or parochial school. Section 402.316(1), F.S.

⁵⁶ Sections 381.006(16) and 1013.12, F.S. Nonpublic schools are also required to register with the DOE. Section 1002.41, F.S.

⁵⁷ Sections 633.206 and 1013.12, F.S.; rule 69A-58, F.A.C. (fire safety in educational facilities).

⁵⁸ See rules 6A-2.0010, 6A-2.0040, and 64E-13.004, F.A.C.

⁵⁹ Section 1013.12, F.S.

case the school must annually submit a compliance form to DOE documenting annual health and fire inspections.⁶⁰

Prior to opening, nonpublic schools must also obtain a signed inspection report from the county or city electrical, plumbing, and building department certifying that the school facility meets local standards for educational facilities. If a public or nonpublic school serves or caters food, Department of Health food safety standards apply and a food permit is required. The local county health department permits and inspects food service at all educational facilities.⁶¹

Nonpublic school programs for children who are at least three years of age, but under five years of age, must substantially comply with minimum child care standards for licensed child care facilities. The law defines “substantial compliance” to mean “that level of adherence which is sufficient to safeguard the health, safety, and well-being of all children under care. Substantial compliance is greater than minimal adherence but not to the level of absolute adherence. Where a violation or variation is identified as the type which impacts, or can be reasonably expected within 90 days to impact, the health, safety, or well-being of a child, there is no substantial compliance.”⁶²

DCF or a local licensing agency must enforce substantial compliance with the standards to protect child health and safety. Enforcement mechanisms include corrective action plans, fines, and seeking a court order to close a school if conditions there pose a threat to child safety. DCF and local licensing agencies must take measures to eliminate duplicative inspections and unnecessary regulation, as practicable. Nonpublic school personnel who misrepresent or fail to disclose information regarding qualification for the licensing exemption or misuse criminal and juvenile delinquency records obtained in employee background screening may be subjected to criminal penalties.⁶³ The “substantial compliance” requirement has only been implemented in four counties.⁶⁴

Effect of Proposed Changes

Currently, the state-funded School Readiness and VPK programs are delivered by a diverse range of providers, including public schools, licensed child care providers, licensed-exempt child care providers, and nonpublic schools. The child health and safety standards applicable to each provider type and degree to which minimum levels of health and safety are inspected and enforced varies widely. This bill holds all providers of state-funded early learning programs accountable to high standards of health and safety and site inspections. It also increases the qualifications and training for child care personnel employed by such providers. The bill empowers parents to make informed child care decisions by requiring that early learning providers cited for health and safety violations notify parents regarding violations. Lastly, while the bill increases health and safety requirements for some providers, a number of the bill’s provisions reduce regulatory burdens on state agencies and child care providers.

The bill makes several terminology changes in statutory sections amended by the bill:

- The “School Readiness program” is changed to the “Child Care and Development program.”
- References to “school readiness” are changed to “child care and development.”
- “Family day care home” is changed to “family child care home.”
- References to “family day care” are changed to “family child care.”

The Division of Law Revision and Information is directed to prepare a reviser’s bill for the 2015 general session to change these terms anywhere else they appear in the Florida Statutes.

⁶⁰ Section 1002.421(2), F.S. State funded scholarship programs include the John M. McKay Scholarships for Students with Disabilities Program and Florida Tax Credit Scholarship Program. Sections 1002.39 and 1002.395, F.S.

⁶¹ Section 381.0072, F.S.; ch. 64E-11, F.A.C

⁶² Section 402.302(17), F.S.

⁶³ Section 402.3025(2)(d), F.S.

⁶⁴ The counties are Broward, Hillsborough, Palm Beach, and Pinellas. Department of Children and Families, *Provider Information*, <https://www.dcf.state.fl.us/programs/childcare/programform.shtml> (last visited Feb. 12, 2014).

Existing terminology is used in the Effect of Proposed Changes section of this bill analysis to avoid confusion.

Health, Safety, and Welfare

The bill maintains eligibility to offer the School Readiness program for public schools, licensed child care facilities, licensed FDCHs and LFCCHs, license exempt faith-based providers, and nonpublic schools. The bill removes registered FDCHs and informal providers as eligible School Readiness program providers.

The bill maintains eligibility to offer the VPK school year program for licensed child care facilities, licensed FDCHs, LFCCHs, license-exempt faith-based providers, and nonpublic schools and the existing requirement that unlicensed providers either be accredited by an authorized accreditor or hold a Gold Seal Quality Care Designation. U.S. Department of Defense (DOD)-certified child development centers operating on military installations are added as a new class of eligible private provider.

The bill requires each School Readiness or VPK program provider to comply with basic health and safety standards and specifies the manner for achieving such compliance. For licensed child care providers, this requirement is met through compliance with applicable licensing standards. For public schools, this requirement is met through compliance with existing public school health and safety requirements. The bill does not specify standards for child development centers operating on military bases. Health and safety in these centers is regulated according to standards adopted by DOD, which, among other things, require centers to be inspected at least four times annually.⁶⁵

Most significantly, license-exempt faith-based providers and nonpublic schools must demonstrate substantial compliance with specified child care licensing standards, i.e, standards related to supervision, transportation, access, health, food and nutrition, personnel screening, and records. The bill grants DCF and local licensing agencies, as applicable, authority to inspect any portion of a license-exempt provider's or a nonpublic school's facility in which early learning programs are delivered.

The bill authorizes DCF or a local licensing agency, as applicable, to issue a certificate of substantial compliance to license-exempt faith-based providers and nonpublic schools that offer the VPK or School Readiness programs. Such a school or provider must obtain the certificate in order to offer the programs. The school or provider must pass a site inspection prior to issuance of the certificate. The certificate is valid for one year and must be renewed annually.

The statutory definition of "substantial compliance" is revised to apply directly to license-exempt faith-based and nonpublic school providers of state-funded early learning programs. Under the bill, "substantial compliance" means "that level of adherence to adopted standards which is sufficient to safeguard the health, safety, and well-being of all children under care." These new requirements may not be applied in a manner that limits or excludes the curriculum provided by a faith-based provider or nonpublic school. The substantial compliance requirement may not be construed to authorize the state, its officers, local licensing agencies, or any ELC to exceed the regulatory authority granted by the bill.

A public school or private School Readiness program provider and private VPK program provider must be denied program eligibility if it has been cited for a class I violation in the 12 months prior to seeking eligibility. An existing provider that is cited for a class I violation may not have its eligibility renewed for a period of 12 months. These requirements do not apply if OEL determines that the violation was reported by the provider and the employee responsible for the violation was terminated or the violation was corrected by the provider. Additionally, such providers must notify parents electronically or in writing when cited for a Class I violation. Notice of Class I violations must be provided within 24 hours of receiving the citation. The bill also requires providers to post citations that result in disciplinary action and inspection reports on the premises in an area visible to parents. Such citations must remain posted for a period of one year. Each inspection report must remain posted until the next inspection report is available, at which time the provider must post the new report. OEL is directed to develop and

⁶⁵ 10 U.S.C. s. 1794; *see, e.g.*, Army Regulation 608-10.

implement best practices for providing parental notifications, including those related to violations, in a parent's native language if the parent's native language is a language other than English.

The bill prohibits the owner of a child care facility, FDCH, or LFCCH from transferring ownership to a relative if the owner has had his or her license suspended or revoked by DCF, has received notice from DCF that reasonable cause exists to suspend or revoke the license, or has been placed on the U.S. Department of Agriculture National Disqualified list. The bill defines "relative" to mean father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

The bill revises the requirement that licensed child care facilities and FDCHs and LFCCHs provide influenza information to parents during August and September each year. Instead, such information must be provided to parents upon enrollment of the child. Thus, children who enroll after August or September will get this information.

Child Care Personnel and Instructors

The bill revises several training requirements and employment qualifications applicable to child care personnel employed by early learning program providers:

- Beginning January 1, 2016, child care personnel employed by a School Readiness provider or private VPK provider must be at least 18 years of age and hold a high school diploma (or equivalent).
- Beginning January 1, 2015, School Readiness provider personnel and private VPK program instructors must complete training in infant and child first aid and CPR within 30 days of employment. Individuals hired on or after January 1, 2015, must complete this training, as a condition of employment, within 30 days of employment.
- School Readiness and VPK program personnel who supervise children must complete the applicable DCF developmentally appropriate practices course within 30 days of being assigned to supervise an age group of children for which such course has not been completed.
- OEL must develop online training on the School Readiness program performance standards and provider personnel must complete the training.

The new minimum age and diploma requirements will not apply to personnel who are not responsible for supervision of children or under direct supervision by a qualified staff member. The CPR/First Aid requirement will not apply to personnel who are not responsible for supervision of children. The bill's changes to training requirements increase the likelihood that individuals caring for children in state-funded early learning programs are able to respond to emergencies that threaten child safety; have basic reading, writing, and speaking ability necessary to teach early literacy skills; and receive training aligned to the age and needs of children served.

Several bill provisions affect all child care personnel while others impact personnel employed by a specified provider classification. Failure to report child abuse is added as an employment disqualifier for all child care personnel statewide, including School Readiness and VPK program personnel and instructors. The bill eliminates Level 2 screening for public school provider employees and instead subjects them to the background screening requirements applicable to public school instructional personnel.

The bill also clarifies the process child care employers must use to conduct employment history checks on prospective employees. Before employing child care personnel, the employer must conduct employment history checks of each of the personnel's previous employers and document the findings. If unable to contact a previous employer, the employer must document efforts to contact the employer.

The bill adds a requirement that introductory child care and continuing education trainings for personnel serving in licensed child care facilities, FDCHs, and LFCCHs include instruction regarding emergent

numeracy skills. This change better aligns this training with skills taught in the School Readiness and VPK programs.

Early Learning Program and Child Care Administration

The bill requires VPK program providers to provide parents information about the provider's program such as child development information, expectations for parent engagement, the daily schedule, and the attendance policy. School Readiness and VPK program provider attendance policies must include procedures for contacting a parent on the second consecutive day a child is absent for which the reason is unknown. The bill expands eligibility for the School Readiness program currently granted to children with disabilities aged three to five to include such children age birth to five.

The bill provides that a charter school that is authorized to provide the VPK program in its charter is part of the school district's VPK program and subject to district oversight. Charter schools not so authorized may still provide the VPK program, but must do so as a private provider.

The bill reduces regulatory burdens on child care providers and state agencies by:

- Authorizing ELCs to allow private providers to determine child eligibility for and enroll children in the VPK program. These providers must maintain enrollment records and ELCs may audit the records in order to detect fraud or errors.
- Requiring ELCs, OEL, and DCF to cooperate in reducing paperwork and duplicative regulation regarding the VPK program.
- Clarifying that worker's and unemployment compensation requirements do not apply to early learning providers who are exempt under state and federal law.
- Eliminating the requirement that School Readiness program providers add the local ELC as an additional insured on its liability insurance policy.
- Expanding DCF's authority to conduct abbreviated inspections to include FDCHs and LFCCHs. These inspections currently apply only to licensed child care facilities with no class 1 or 2 violations in a two year period.

The bill specifically authorizes OEL to hire a general counsel and inspector general. The duties of the Early Learning Advisory Council (ELAC)⁶⁶ are revised to specify that it must provide written input to OEL's executive director regarding early learning program administration, efficient use of funding, professional development, and ELC plans. The bill also charges the executive director with responsibility to call ELAC meetings and determine appropriate levels of administrative support for ELAC.

The bill requires OEL to conduct a two-year pilot project to study the impact of assessing the kindergarten readiness of VPK program participants who are English Language Learners (ELL) in both English and Spanish. Under the pilot, OEL will administer the Florida Assessments for Instruction in Reading and an appropriate assessment in Spanish. OEL must examine the results of the assessments and report its findings annually to the Governor, President of the Senate, and Speaker of the House of Representatives. The purpose of the pilot project is to better ascertain the capabilities and kindergarten readiness of ELLs, which may otherwise be masked by their lack of English proficiency.

The bill also contains several glitch fixes requested by OEL, which, generally speaking, align state law with federal law, the state CCDF plan, or existing administrative practices. Additionally, the bill authorizes ELCs to use School Readiness program quality improvement funds to provide financial support to providers and their staff for, among other things, obtaining a license or accreditation and CPR and first aid training.

⁶⁶ Section 1002.77(1), F.S.
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Family Day Care Homes and Large Family Child Care Homes

The bill requires each FDCH to conspicuously post its license or registration on the premises in an area viewable by parents. The bill also repeals obsolete provisions requiring DCF to conduct a media campaign to inform the public regarding registration and other operational requirements related to FDCHs. This requirement dates back to early codification of FDCHs and has been fulfilled.⁶⁷

The bill codifies the training requirements in DCF rule for licensed FDCH substitutes, which differentiate between substitutes who work 40 hours or more per month from those who work less. The bill requires substitutes in registered FDCHs to complete the same training as substitutes in licensed FDCHs. Currently, there are no training requirements for such substitutes.

Current law provides special benefits to FDCHs regarding zoning, property insurance, and utility rates that are not provided to LFCCHs, likely because LFCCHs were codified after these provisions were enacted.⁶⁸ The law prohibits:

- Counties and municipalities from requiring that FDCHs be commercially zoned;
- Property and casualty insurers from canceling residential insurance coverage solely because the residence operates as a FDCH; and
- Utilities from charging FDCHs commercial utility rates.⁶⁹

The bill extends these zoning, insurance, and utility rate benefits to LFCCHs.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law directing the Division of Law Revision and Information to change the name of the “School Readiness Program” to the “Child Care and Development Program” and the term “family day care home” to “family child care home.”

Section 2. Amends s. 125.0109, F.S., relating to family day care homes; local zoning regulation (counties).

Section 3. Amends s. 166.0445, F.S., relating to family day care homes; local zoning regulation (municipalities).

Section 4. Amends s. 402.302, F.S., relating to child care definitions.

Section 5. Amends s. 402.3025, F.S., relating to public and nonpublic schools.

Section 6. Amends s. 402.305, F.S., relating to licensing standards; child care facilities.

Section 7. Creates s. 402.3085, F.S., relating to a certificate of substantial compliance with minimum child care standards.

Section 8. Amends s. 402.311, F.S., relating to inspection.

Section 9. Amends s. 402.3115, F.S., relating to elimination of duplicative and unnecessary inspections; abbreviated inspections.

Section 10. Amends s. 402.313, F.S., relating to family day care homes.

Section 11. Amends s. 402.3131, F.S., relating to large family child care homes.

⁶⁷ See s. 402.313(11), F.S.

⁶⁸ Compare, e.g., s. 15, ch. 99-304, L.O.F. (LFCCH statute enacted 1999.) with s.3, ch. 86-87, L.O.F. (FDCH county and municipal zoning exceptions enacted 1986.).

⁶⁹ See ss. 125.0109, 166.0445, 627.70161, and 402.313(12), F.S.

- Section 12.** Amends s. 402.316, F.S., relating to licensing exemptions for faith-based child care.
- Section 13.** Amends s. 627.70161, F.S., relating to residential property insurance coverage; family day care homes.
- Section 14.** Amends s. 1001.213, F.S., relating to Office of Early Learning.
- Section 15.** Amends s. 1002.53, F.S., relating to Voluntary Prekindergarten Education Program; eligibility and enrollment.
- Section 16.** Amends s. 1002.55, F.S., relating to school-year prekindergarten program delivered by private prekindergarten providers.
- Section 17.** Amends s. 1002.59, F.S., relating to emergent literacy and performance standards.
- Section 18.** Amends s. 1002.61, F.S., relating to summer prekindergarten program delivered by public schools and private prekindergarten providers.
- Section 19.** Amends s. 1002.63, F.S., relating to school-year prekindergarten program delivered by public schools.
- Section 20.** Amends s. 1002.71, F.S., relating to funding; financial and attendance reporting.
- Section 21.** Amends s. 1002.75, F.S., relating to Office of Early Learning; VPK program powers and duties.
- Section 22.** Amends s. 1002.77, F.S., relating to Florida Early Learning Advisory Council.
- Section 23.** Amends s. 1002.81, F.S., relating to School Readiness program definitions.
- Section 24.** Amends s. 1002.82, F.S., relating to Office of Early Learning; School Readiness program powers and duties.
- Section 25.** Amends s. 1002.84, F.S., relating to early learning coalitions; school readiness powers and duties.
- Section 26.** Amends s. 1002.87, F.S., relating to School Readiness program; eligibility and enrollment.
- Section 27.** Amends s. 1002.88, F.S., relating to School Readiness program provider standards; eligibility to deliver the school readiness program.
- Section 28.** Amends s. 1002.89, F.S., relating to School Readiness program; funding.
- Section 29.** Amends s. 1002.91, F.S., relating to investigations of fraud or overpayment; penalties.
- Section 30.** Amends s. 1002.94, F.S., relating to Child Care Executive Partnership Program.
- Section 31.** Creates an unnumbered section of law directing OEL to conduct a pilot project to study the impact of assessing the early literacy skills of ELLs in both English and Spanish.
- Section 32.** Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes DCF to charge an inspection fee to nonpublic schools and license-exempt faith-based providers of state-funded early learning programs in order to enforce substantial compliance with minimum health and safety standards. The fee must be sufficient to cover costs and may not exceed that charged for child care licensure. Currently, the licensing fee for a child care facility is \$1 per child, based on the licensed capacity of the facility, with a minimum fee of \$25 and a maximum fee of \$100 per facility.⁷⁰

Protections regarding zoning requirements, insurance coverage, and utility rates provided to LFCCHs may result in cost savings. Other bill provisions with positive financial implications on private sector child care providers include:

- Clarifying that worker's and unemployment compensation requirements do not apply to early learning providers who are exempt under state and federal law.
- Eliminating the requirement that School Readiness program providers add the local ELC as an additional insured on its liability insurance policy.

D. FISCAL COMMENTS:

The bill expands DCF's workload by requiring inspection of license-exempt faith-based providers and nonpublic schools. DCF is authorized to charge a fee for these inspections, which should partially offset costs. Additionally, the bill expands DCF's authority to conduct abbreviated inspections to include FDCHs and LFCCHs, which may reduce workload.

The bill extends to LFCCHs the protections that FDCHs currently receive regarding zoning requirements, insurance coverage, and utility rates. Under the bill:

- Local governments are prohibited from requiring that LFCCHs be commercially zoned;
- Property and casualty insurers are prohibited from canceling residential insurance coverage because the residence operates as a LFCCH; and
- Utilities are prohibited from charging LFCCHs commercial utility rates.

The extent to which local governments require LFCCHs to be commercially zoned, property insurers require LFCCHs to obtain additional coverages, and utility companies charge LFCCHs commercial rates is unknown. In order to qualify for licensure as a LFCCH, the home must operate as a licensed FDCH in the two years prior to seeking licensure as a LFCCH. It appears that most local governments, insurers, and utility companies do not treat LFCCHs any differently than FDCHs. There are currently 2,941 licensed FDCHs and 429 LFCCHs operating in Florida. Given the small number of LFCCHs that will receive these protections under the bill, the fiscal impact on counties, municipalities, property insurers, and utility companies is likely minimal.

⁷⁰ Section 402.315(3)(a), F.S.
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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DCF to adopt rules to define and enforce substantial compliance with minimum child care health and safety standards by license-exempt faith-based child care providers and nonpublic schools. This includes the adoption of minimum standards and procedures for inspection and disciplinary actions.

The bill requires DCF to adopt rules establishing criteria and procedures for abbreviated inspections and inspection schedules which provide for both announced and unannounced inspections

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2014, the Education Committee adopted three amendments and reported the proposed committee bill favorably. The amendments added provisions:

- Providing that School Readiness program providers with class I violation must be denied eligibility to offer the program.
- Requiring OEL to develop and implement best practices for providing parental notifications in a parent's native language to a parent whose native language is a language other than English.
- Establishing a two-year pilot project to study the impact of assessing the kindergarten readiness of English Language Learners participating in the VPK program in both English and Spanish.

On March 24, 2014, the Education Appropriations Subcommittee adopted eight amendments and reported the bill favorably as a committee substitute. The amendments added provisions:

- Requesting that the Division of Law Revision and Information change the phrase "family day care" to "family child care."
- Limiting the regulatory authority of local licensing agencies to enforce substantial compliance with minimum child care standards by nonpublic schools and licensed-exempt faith-based child care providers participating in the VPK program or School Readiness program.
- Authorizing DCF and local licensing agencies, as applicable, to issue a certificate of substantial compliance to nonpublic schools and license-exempt faith-based providers participating in the VPK program or School Readiness program.
- Authorizing OEL to allow VPK program or School Readiness program providers that are cited with a Class I violation to remain eligible to offer the programs if they self-reported and corrected the violation.

The amendments removed provisions revising the Rilya Wilson Act and those requiring FDCH substitutes to complete the same training requirements as the operator. Instead, the amendments codified the training requirements in DCF rule for licensed FDCH substitutes, which differentiate between substitutes who work 40 hours or more per month from those who work less. The amendments also required substitutes in registered FDCHs to complete the same training as substitutes in licensed FDCHs.

This bill analysis is drafted to the committee substitute, as passed by the Education Appropriations Subcommittee.