

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1125 Eligibility for Employment as Child Care Personnel

**SPONSOR(S):** Health & Human Services Committee; Criminal Justice Subcommittee; Children, Families & Seniors Subcommittee; McBurney

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1420

| REFERENCE                                    | ACTION           | ANALYST   | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|-----------|---------------------------------------|
| 1) Children, Families & Seniors Subcommittee | 12 Y, 0 N, As CS | Tuszynski | Brazzell                              |
| 2) Criminal Justice Subcommittee             | 13 Y, 0 N, As CS | Cox       | White                                 |
| 3) Health & Human Services Committee         | 16 Y, 0 N, As CS | Tuszynski | Calamas                               |

### SUMMARY ANALYSIS

The federal government works with states to support low-income working families by providing access to child care through the federal Child Care and Development Block Grant (CCDBG). Florida uses CCDBG funds for its 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. Families use these subsidies to purchase child care services from school readiness providers (who in many cases are child care facilities regulated by the Department of Children and Families' Child Care program).

On November 19, 2014, Congress reauthorized the CCDBG program and provided specified provisions to increase health and safety requirements for providers receiving CCDBG funding. The state must implement these requirements to continue receiving CCDBG funding. However, some child care personnel are employed by child care facilities that do not receive CCDBG funding; these facilities and their employees are not subject to the new federal regulations.

Ch. 402, F.S., governs child care, including the requirement for level 2 background screening for child care personnel. Section 435.07, F.S., allows the Secretary of the Department of Children and Families (DCF) to exempt child care personnel applicants who do not pass a background screening from disqualification for employment under certain conditions. If DCF grants exemption, individuals with convictions for crimes such as murder and arson may work as child care personnel.

CS/CS/CS/HB 1125 amends s. 435.07, F.S., to make the new CCDBG background screening requirements apply to all child care personnel regardless of whether their employer child care provider receives federal CCDBG funding. The bill prohibits DCF from granting exemptions for employment as child care personnel to persons who have been:

- Registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) and are subject to the registration requirements under the Adam Walsh Child Protection and Safety Act; or
- Arrested for and are awaiting final disposition of, found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for certain state felonies and misdemeanors enumerated in the bill that are aligned with the crimes listed in the federal requirements.

Individuals who currently have exemptions allowing employment are now prohibited from such employment, and must be rescreened by August 1, 2016. The bill also provides that the language of this bill will supersede the language of CS/HB 7053 if that bill were to pass this session.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2016.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1125e.HHSC

**DATE:** 2/19/2016

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Child Care and Development Block Grant

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to child care. OCC works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.<sup>1</sup>

##### *School Readiness Program*

Florida's Office of Early Learning (OEL)<sup>2</sup> administers the School Readiness program. The School Readiness program is a state-federal partnership between OEL and the OCC.<sup>3</sup> The School Readiness program receives funding from a mix of state and federal sources, including the federal Child Care and Development Block Grant, the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.<sup>4</sup> 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 program utilizes a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.<sup>5</sup> 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 many, but not all, child care providers that provide early learning programs.<sup>6</sup>

On November 19, 2014, the federal Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law. The new law prescribes health and safety requirements that apply to school readiness program providers and requires better information to parents and the general public about available child care choices.<sup>7</sup>

While Florida's school readiness programs meet many of the new federal requirements, specific requirements of the grant will necessitate changes to Florida law. One of those changes is an increase in the requirements for screening all child care personnel to include searches of the National Sex Offender Registry, state criminal records, state sex offender registries, and child abuse and neglect registries of all states in which the child care personnel resided during the preceding five years.<sup>8</sup> It will also require that individuals who are sex offenders or convicted of certain crimes be ineligible for employment with child care providers receiving CCDBG funds.

##### *CCDBG Employment Ineligibility*

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<sup>1</sup> Office of Child Care, *What We Do*, at <http://www.acf.hhs.gov/programs/occ/about/what-we-do> (last visited February 11, 2016).

<sup>2</sup> 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. Ch. 2013-252, Laws of Fla., *codified as s. 1001.213*, F.S.

<sup>3</sup> Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.

<sup>4</sup> Specific Appropriation 88, s. 2, ch. 2014-51, L.O.F.

<sup>5</sup> s. 1002.88(1)(a), F.S.

<sup>6</sup> See ss. 402.301-319, F.S., and Part VI, ch. 1002, F.S.

<sup>7</sup> Office of Child Care, *CCDF Reauthorization*, at <http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization> (last visited February 11, 2016).

<sup>8</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b)

Based on the new requirements of the CCDBG, in order to continue to receive federal funding, the state must make ineligible for employment by school readiness providers any person who is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry<sup>9</sup> establish under the federal Adam Walsh Act,<sup>10</sup> or has been convicted of:

- Murder;
- Child abuse or neglect;
- A crime against children, including child pornography;
- Spousal abuse;
- A crime involving rape or sexual assault;
- Kidnapping;
- Arson;
- Physical assault or battery;
- A drug-related offense committed during the preceding 5 years; or
- A violent misdemeanor committed as an adult against a child, including the following crimes:
  - Child abuse;
  - Child endangerment;
  - Sexual assault; or
  - A misdemeanor offense involving child pornography.<sup>11</sup>

However, these prohibitions on employment will not apply to child care facilities that are not school readiness providers and as such do not receive any CCDBG funds.

### Child Care Licensure

Pursuant to ch. 402, F.S., DCF regulates child care facilities, family day care homes, and large family child care homes, including those entities that are also school readiness providers. One of the statutory requirements is that these providers' personnel shall have good moral character based upon background screening.<sup>12</sup> Additionally, some entities caring for children are not subject to regulation by DCF's child care program but are subject to background screening.<sup>13</sup> Screening must be conducted as provided in ch. 435, F.S., using the level 2 standards for screening set forth in that chapter.<sup>14</sup>

#### *Level 2 Background Screening*

A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>15</sup> The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for DCF. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DCF. DCF then determines if the information contains any employment disqualifiers. DCF must ensure that the applicant has good moral character by determining that the applicant has not been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to, any offense prohibited under 52 Florida statutes relating to offenses such as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and

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<sup>9</sup> 42 U.S.C. § 9858f(c)(1)(C)

<sup>10</sup> The federal Adam Walsh Act, codified in 42 U.S.C. §16911 et seq., provides a comprehensive set of minimum standards for sex offender registration and notification in the United States. These minimum standards address provisions such as the immediate transfer of information between jurisdictions, requirements for website registries, and community notification.

<sup>11</sup> 42 U.S.C. § 9858f(c)(1)(D) and (E)

<sup>12</sup> s. 402.305(2), F.S.

<sup>13</sup> For example, a child care facility that is an integral part of a church or parochial schools meeting certain requirements. s. 402.316, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> s. 435.04, F.S.

lascivious behavior, drugs, and domestic violence.<sup>16</sup> If DCF finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment in child care facilities.

### *Exemptions*

Section 435.07, F.S., allows the Secretary of DCF to exempt applicants from disqualification based on different reasons, including a three-year lapse of time since completion of confinement or supervision for a felony, completion of confinement or supervision for a misdemeanor, legal downgrading of offenses that were felonies when committed but are now considered misdemeanors, and findings of delinquency.<sup>17</sup> DCF is allowed to provide exemptions from disqualification pursuant to s. 435.07, F.S. for child care personnel.<sup>18</sup> An individual who is considered a sexual predator,<sup>19</sup> career offender,<sup>20</sup> or sexual offender (unless not required to register)<sup>21</sup> cannot be exempted from disqualification.<sup>22</sup>

### **Effect of Proposed Changes**

CS/CS/CS/HB 1125 aligns the child care background screening requirements for all child care personnel with the federal requirements for school readiness providers, regardless of whether the child care provider receives federal CCDBG funds.

The bill amends s. 435.07, F.S. to prohibit DCF from granting exemptions for employment as child care personnel to persons who have:

- Registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C), and are subject to the registration requirements under the Adam Walsh Child Protection and Safety Act; or
- Been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for certain state felonies and misdemeanors enumerated in the bill that are aligned with the crimes listed in the federal requirements.

Such individuals are also disqualified from employment even if they had previously received an exemption, and must be rescreened by August 1, 2016. The bill also provides that the language of this bill will supersede the language of CS/HB 7053 if that bill were to pass this session.

The bill provides an effective date of July 1, 2016.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 435.07, F.S., relating to exemptions from disqualification.

**Section 2:** Provides an effective date of July 1, 2016.

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<sup>16</sup> s. 435.04(2), F.S.

<sup>17</sup> s. 435.07(1), F.S.

<sup>18</sup> s. 402.305(2)(b), F.S.

<sup>19</sup> s. 775.261, F.S.

<sup>20</sup> s. 775.261, F.S.

<sup>21</sup> s. 943.0435, F.S.

<sup>22</sup> s. 435.07(4)(b), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Children, Families & Seniors Subcommittee adopted one amendment to HB 1125. The amendment:

- Prohibits DCF from granting exemptions from disqualification to individuals who are sex offenders or have specified convictions, and prohibits such individuals from employment as child care personnel if they already have exemptions.
- Applies standards to all child care personnel instead of just those working in specific types of child care centers statutorily defined as “child care facilities.”

On February 3, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies the persons to which DCF is prohibited from granting an exemption, including persons who have:

- Registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) that is subject to registration requirements under the Adam Walsh Child Protection and Safety Act;
- Arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for any of the above-enumerated:
  - Felony offenses, which are enumerated in 42 U.S.C. s. 9858f(c)(1)(D); or
  - Violent misdemeanor offenses, which are enumerated in 42 U.S.C. s. 9858f(c)(1)(E).

On February 17, 2016, the Health and Human Services Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Moved the prohibition from exemption from the child care licensing chapter to the background screening disqualification chapter;
- Prohibited DCF from granting an exemption from disqualification for persons who have:
  - Registered as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C) that is subject to registration requirements under the Adam Walsh Child Protection and Safety Act;
  - Been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for certain state felonies and misdemeanors enumerated in the bill that are aligned with the crimes listed in the federal requirements.; and
- Required all individuals who currently working in child care under an exemption to be rescreened by August 1, 2016.

The analysis is drafted to the committee substitute.