

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 668

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee and Senator Book

SUBJECT: Government-sponsored Recreation Programs

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 668 revises the definition of the term “child care facility” to exclude government-sponsored recreation programs. The bill allows counties, municipalities, and school districts to create and operate recreation programs for children at least five years old and requires such programs to offer 4 programming hours per day and to adopt standards of care specifying staffing ratios, minimum staff qualifications, health and safety standards, and level 2 background screening requirement for all staff and volunteers. The bill also requires such programs to notify parents of all children participating in the program that the program is not state-licensed, and the program may not advertise itself as a child care facility. The bill requires the program to provide all parents with the county or municipality’s standards of care.

The bill provides definitions for the terms “summer day camp” and “summer 24-hour camp.” The bill creates s. 402.3132, F.S., to establish minimum requirements and enforcement of regulations over summer day camps and summer 24-hour camps. The bill permits the Department of Children and Families (DCF) or a local licensing agency to maintain all actions necessary to enforce its rules and regulations, including imposing an administrative fine for violation of the screening requirements. All summer day camps and summer 24-hour camps are required to register and be included on DCF’s summer camp listing.

The bill adds “government-sponsored recreation program” to the list of entities to whom notification of the presence of a sexual predator must be given under the Florida Sexual Predators Act.

The bill adds “government-sponsored recreation program” to the facilities to which residency restrictions apply to persons convicted of sex offenses.

The bill includes the property of a “government-sponsored recreation program” among the listing of real property where the sale, manufacture, or delivery of a controlled substance in, on or within 1,000 feet of said property is prohibited

The bill is expected to have an indeterminate positive impact on both the private and government sectors as it allows both sectors better access to federal funds under the Child and Adult Care Food Program. Summer day camps and summer 24-hour camps may incur additional costs to comply with the screening requirements and registering with the DCF for inclusion on its summer camp listing. Likewise, the DCF or local licensing agency may incur additional costs relating to enforcement of the screening requirements, rules and regulations against summer day camps and summer 24-hour camps.

The bill takes effect on July 1, 2020.

II. Present Situation:

Child Care

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.¹

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.² The definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- A school-age child care program is defined as any licensed child care facility serving school-aged children³ or any before and after school programs that are licensed as a child care facility and serve only school-aged children.⁴

¹ Section 402.302, F.S.

² *Id.*

³ Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least five years of age by September 1st of the beginning of the school year and who attends kindergarten through grade five.

⁴ *Id.*

- Any of the after school programs accepting children under the age of the school-age child must be licensed.⁵
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.⁶

Child Care Facilities

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.⁷ The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;⁸
- Summer day camps;⁹
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509, F.S.,¹⁰ which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435, F.S.¹¹

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies¹² approved by the department are the entities responsible for the licensure of such child care facilities.¹³

Child care facilities, as defined in s. 402.302, F.S., are afforded certain statutory protections. Under s. 775.21, The Florida Sexual Predators Act, law enforcement agencies must inform members of the community and the public of a sexual predator’s presence. Upon such notification, the sheriff of the county or the chief of polices of the municipality where the sexual predator temporarily or permanently resides must notify each licensed child care facility, elementary school, middle school and high school within a 1 mile radius of the temporary or

⁵ *Id.*

⁶ *Id.*

⁷ Section 402.302, F.S.

⁸ This term is not defined in ch. 402, F.S. However, s. 409.175(1)(p), F.S., defines the term “summer 24-hour summer camp” to mean recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacation for children who are 5 years of age on or before September 1 and older, that are not exclusively educational.

⁹ This term is not defined in ch. 402, F.S. However, s. 409.175(1)(o), F.S., defines “summer day camp” to mean recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.

¹⁰ “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

¹¹ Section 402.302, F.S.

¹² Currently, there are 5 counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota.

¹³ Section 402.308, F.S.

permanent residence of the sexual predator of the presence of the sexual predator. The information must include:

- The name of the sexual predator;
- A description of the sexual predator, including a photograph;
- The sexual predator's current permanent, temporary, and transient addresses, and descriptions of registered locations that have no specific street address, including the name of the county or municipality if known;
- The circumstances of the sexual predator's offense or offenses; and
- Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

Additionally, child care facilities are among the protected real property in s.775.215, F.S., for which certain residency restrictions apply for persons convicted of certain sex offenses. A person convicted of a violation of ss. 794.011,¹⁴ 800.04,¹⁵ 827.071,¹⁶ 847.0135(5),¹⁷ or 847.0145¹⁸ regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park or playground.¹⁹ Further, a person convicted of any of these offenses in another jurisdiction, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park or playground.²⁰ A person does not violate subsection (2)(a) or (3)(a) if he or she is living in a residence that meets the stator requirements and a school, child care facility, park or playground is subsequently established within 1000 feet of his or her residence.

Section 893.13(1)(c), F.S., provides that, except as authorized by ch. 893, F.S., a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility, or public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. This section specifies certain penalties for a person who violates this paragraph with respect to:

- A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c) 5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.
- A controlled substance named or described in s. 893.03(1)(c), (2)(c) 1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

¹⁴ Sexual battery.

¹⁵ Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

¹⁶ Sexual performance by a child.

¹⁷ Computer pornography, prohibited computer transmissions.

¹⁸ Selling or buying of minors.

¹⁹ Section 775.215(2)(a), F.S.

²⁰ Section 775.215(3)(a), F.S.

- Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 893.13(1)(c), F.S., sets for an exception – providing that its provisions do not apply to a child care facility unless the owner or operator of the facility posts a sign, not less than 2 square feet in size, with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

Additional Exemptions

In 1974 and in 1987, the Legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards. Child care facilities that are an integral part of church or parochial schools and meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.²¹

The Child and Adult Care Food Program

The Child and Adult Care Food Program (the CCFP²²) is a federal program that provides reimbursement aid for nutritious food served in child care centers, afterschool programs, emergency shelters, and adult or child day care programs.²³ The CCFP typically involves four levels of participants: federal, state, the sponsors and the providers. The United States Department of Agriculture funds the CCFP and a federal-state agreement governs the program. Each state designates an agency to administer the federal program. Sponsors are public or nonprofit organizations that, with state approval, disburse federal money to providers for the food they serve.²⁴

Sponsors enter into contracts with the state agency administering the CCFP and perform the oversight and administrative assistance functions otherwise performed by the state agency. In return for their work, a sponsoring organization may take up to 15 percent of the claimed meal reimbursements for the sponsored centers as an administrative fee.²⁵ The providers are the child and adult day care centers, shelters, and afterschool programs that actually serve the meals. Providers may elect not to work with a sponsor and apply directly to the state agency administering the program.

The At-Risk Afterschool Meals program (ARM) is a component of the CCFP which offers funding to qualifying afterschool programs that serve meals and snacks to children in low-

²¹ Section 402.316, F.S.

²² This program commonly referred to as the CACFP, however, in Florida, it is referred to as the Child Care Food Program or CCFP. Thus, for purposes of this analysis the designation of CCFP is used. *See* Section 383.011(1)(i), F.S.

²³ 42 U.S.C. § 1751 et seq.

²⁴ 7 C.F.R. §§ 226.1, 226.6(b)(4); *See* 42 U.S.C. § 1766(f), 42 U.S.C. § 1766(a)(2)(B) and (C).

²⁵ 7 CFR § 226.16(b)(1).

income areas. To be eligible to operate the ARM component of CCFP, the afterschool program must:

- Be organized primarily to provide care for children after school or on the weekends, holidays, or school vacations during the regular school year.
- Provide organized regularly scheduled education or enrichment activities (i.e., in a structured and supervised environment).
- Be located in an attendance area of school an attendance area of school where at least 50 percent or more of the children are eligible for free or reduced price meals.²⁶

Eligible organization must be operated by one of the following:

- Public agencies such as schools or city governments;
- Tax-exempt nonprofit organizations;
- For-profit centers that meet additional requirements²⁷;
- Are currently participating in another Federal program requiring nonprofit status.²⁸

An afterschool program that meets the above requirements must also be licensed or approved by the relevant state or local agency to provide child care services in order to receive CCFP benefits.²⁹ However, where federal, state, or local licensing or approval is not required for the institution, it must meet state or local health and safety standards.³⁰ Thus, where an institution is exempt or meets an exception to the licensure requirement, it may receive funds from CCFP if it meets state or local health and safety standards.

The Department of Health, Bureau of Child Nutrition Programs (DOH) is the agency responsible for administering the CCFP in Florida. It must approve new applications, disburse reimbursement, and review and audit sponsors or providers eligible for assistance through the program.³¹ Currently, there are seven approved sponsoring organization contracting with DOH and participating in CCFP.³²

To participate in Florida's ARM, DOH requires that institution to obtain (i) a child care license from the DCF or local licensing agency; (ii) a letter from DCF or the local licensing agency stating that licensure is not required; or (iii) a Religious-Exempt Accreditation Certificate.³³

²⁶ 7 CFR § 226.2; 7 CFR § 226.17(a) and (b).

²⁷ See 7 CFR 226.2.

²⁸ See 7 CFR § 226.17.

²⁹ 42 USC § 1766 (5).

³⁰ 42 USC § 1766(5)(C).

³¹ See 7 C.F.R. § § 226.4-8; Section 383.011, F.S.

³² See *Becoming a Child Care Food Program Provider*, Contact List of Approved Sponsoring Organizations, <http://www.floridahealth.gov/programs-and-services/childrens-health/child-care-food-program/prospective-contractor.html> (last visited January 28, 2020). The current sponsors are: (i) Family Central, Inc.; (ii) Highland Food Resources, Inc.; (iii) Cornerstone Family Ministries; (iv) Child Care Of Southwest Fl., Inc.; (v) Childhood Development Services, Inc.; (vi) Com. Coord. Care For Children; and (vii) The House Next Door. In June 2019, the for executive director

³³ Section 402.302, F.S.; See Afterschool Meals Program, http://www.floridahealth.gov/programs-and-services/childrens-health/child-care-food-program/AfterSchool%20Meal%20Program/_documents/amp-fact-sheet.pdf (last visited January 26, 2020).

In Florida, many parks and recreation departments operated by local governments offer “government-operated after-school recreation programs.”³⁴ Frequently, these programs are subject to duplicative regulation at the state and local level – such as Level 2 Background Screenings that may be required by a local government as well as by DCF as a condition to licensure. Such costly and burdensome regulation impedes government operated afterschool programs from participating in ARM and receiving CCFP funds.

III. Effect of Proposed Changes:

Section 1 amends s. 402.302, F.S., related to child care facilities, by adding definitions for “government-sponsored recreation programs,” “summer day camp,” and “summer 24-hour camp.” Summer day camp and summer 24-hour camp are defined as having the same meaning as provided in s. 409.175, F.S.

The bill defines a government-sponsored recreation program as a recreation program for school-age children that:

- offers no more than 4 hours of programming per day, however the program may extend its operating hours in order to provide services before school and on teacher planning days, holidays, and breaks that occur during the school year;
- is operated by a county, municipality, or school district that has adopted standards of care by ordinance for the program, which include, but are not limited to, staffing ratios, minimum staff qualifications, level 2 background screening, including a check of the child abuse and neglect and sexual predator registries, for all staff and volunteers, and minimum facility, health, and safety standards;
- has been certified by the county, municipality, or school district for compliance with such standards of care;
- provides notice to the parents of all participating children that the program is not state-licensed or advertised as a child care facility and provides them with the county’s, municipality’s, or school district’s standards of care; and
- Does not receive funding through the federal Child Care Development Block Grant of 2014, cannot contract to provide a school readiness program, and cannot have a Gold Seal Quality Care designation.

The bill, by excluding government-sponsored recreation programs from the definition of child care facility, will eliminate duplicative regulations and costly licensing requirements, thereby allowing such programs to more easily participate in ARM and access CCFP funding.

Section 2 creates 402.3132, F.S., to establish minimum requirements and enforcement of regulations over summer day camps and summer 24-hour camps. The bill specifies that these entities must comply with the screening³⁵ requirements of ss. 402.305 and 402.3055, F.S., and

³⁴ This term is defined by s. 119.071, F.S., to mean “a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.”

³⁵ The term “screening” is defined in s. 402.302(15), F.S., to mean the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to: (a) Employment history checks, including documented attempts to contact each employer that employed the applicant within the preceding 5

meet minimum health, sanitation and safety requirements. The bill provides that a summer day camp or summer 24 hour camp that fails to comply with the screening requirements will lose the ability to operate.

DCF or a local licensing agency is permitted to commence and maintain all actions necessary for the purpose of:

- Protecting the health, sanitation, safety, and well-being of all children under care;
- Enforcing its rules and regulations;
- Making application for injunction; and
- Imposing an administrative fine, not to exceed \$100 per violation, per day, for each violation of the screening of child care personnel provisions pursuant to ss. 402.305 – 402.3055.

The bill requires all summer day camps and summer 24-hour camps are required to register with the DCF and be included in the DCF's summer camp listing.

Section 3 amends s. 775.21, F.S., of the Florida Sexual Predators Act to define “government-sponsored recreation program” and include it as an entity whom must receive notification of the presence of a sexual predator.

Section 4 amends s. 775.215, F.S., to include a government-sponsored recreation program within the residency restrictions applying to persons convicted of sex offenses.

Section 5 amends s. 893.13, F.S.(1), to include the property of a government-sponsored recreation program among the listing of real property where the sale, manufacture, or delivery of a controlled substance in, on or within 1,000 feet of said property is prohibited and within the penalty provisions. The also bill includes the property of a government-sponsored recreation program within the exception found in s. 893.12(1)(c), F.S. Thus, for the penalty provisions to apply, the owner or operator of the government-recreation program must post a sign, not less than 2 square feet in size, with word legend identifying it as a government-sponsored recreation program, on its property in a conspicuous place where the sign is reasonably visible to the public.

Section 6 amends s. 39.201, F.S., relating to mandatory reports of child abuse, to correct a cross-reference.

Section 7 amends s. 402.305, F.S., relating to licensing standards of child care facilities, to correct a cross-reference.

Section 8 amends s. 1002.82, F.S., relating to powers and duties of the Office of Early Learning, to correct a cross-reference.

Section 9 provides an effective date of July 1, 2020.

years and documentation of the findings. (b) A search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill will have an indeterminate positive impact on those entities that qualify to be sponsors under the CCFP. Additionally, privately operated summer day camps and summer 24-hour camps may incur additional costs to comply with the screening requirements and to register with the DCF to be included in its summer camp listing.

C. Government Sector Impact:

The Florida Department of Law Enforcement may see an increased workload through requiring level 2 background screenings for employees of government-sponsored recreation programs, to the extent such screenings are not already required. FDLE, however, is authorized to collect a fee to pay for such screenings. Additionally, local governments will experience an indeterminate positive impact in being able to more easily access CCFP funds. The DCF or local licensing agencies may experience a slightly negative fiscal impact in enforcing the rules and regulations as to summer day camps and 24-hour camps established under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 402.302, 402.316, 39.201, 402.305, and 1002.82 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on February 3, 2020:

- Includes government-sponsored programs among the protections afforded similar child care entities under ss. 775.21 and 775.215, F.S., relating to sexual predators, and s. 893.13, F.S., regarding the sale of drugs within a certain distance of specific types of buildings.
- Defines terms “summer day camp” and “summer 24-hour camp” and creates s. 402.3132, F.S. establishing minimum requirements and enforcement of rules and regulations related to summer day camps and summer 24 hour camps.

CS by Children, Families and Elder Affairs on December 10, 2019:

- Adds school districts to the list of governmental bodies which can oversee a government-sponsored recreation program.
- Removes the exemption from licensure as child-care facilities for government-sponsored recreation programs.

B. Amendments:

None.