

**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.)

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

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**BILL:** CS/SB 668

**INTRODUCER:** Children, Families, and Elder Affairs Committee and Senator Book

**SUBJECT:** Government-sponsored Recreation Programs

**DATE:** January 31, 2020      **REVISED:** \_\_\_\_\_

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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 will have an indeterminate positive impact on both the private and government sector as it allows both sectors better access to federal funds under the Child and Adult Care Food Program. The bill is not expected to have an impact on state revenues or expenditures.

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.<sup>1</sup>

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.<sup>2</sup> 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 children<sup>3</sup> or any before and after school programs that are licensed as a child care facility and serve only school-aged children.<sup>4</sup>
- Any of the after school programs accepting children under the age of the school-age child must be licensed.<sup>5</sup>
- 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.<sup>6</sup>

### 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.<sup>7</sup> 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;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and

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<sup>1</sup> Section 402.302, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> 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.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 402.302, F.S.

- Operators of transient establishments, as defined in chapter 509, F.S.,<sup>8</sup> 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.<sup>9</sup>

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 agencies<sup>10</sup> approved by the department are the entities responsible for the licensure of such child care facilities.<sup>11</sup>

### **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.<sup>12</sup>

### **The Child and Adult Care Food Program**

The Child and Adult Care Food Program (the CCFP<sup>13</sup>) 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.<sup>14</sup> 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.<sup>15</sup>

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% of the claimed meal reimbursements for the sponsored centers as an administrative fee.<sup>16</sup> The providers are the child and adult day care centers, shelters, and afterschool programs that actually serve the meals.

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<sup>8</sup> “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.

<sup>9</sup> Section 402.302, F.S.

<sup>10</sup> Currently, there are 5 counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota.

<sup>11</sup> Section 402.308, F.S.

<sup>12</sup> Section 402.316, F.S.

<sup>13</sup> 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..

<sup>14</sup> 42 U.S.C. § 1751 et seq.

<sup>15</sup> 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).

<sup>16</sup> 7 CFR § 226.16(b)(1).

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-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.<sup>17</sup>

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 requirements<sup>18</sup>;
- Are currently participating in another Federal program requiring nonprofit status.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> Currently, there are seven approved sponsoring organization contracting with DOH and participating in CCFP.<sup>23</sup>

To participate in Florida's ARM, DOH requires that institution to obtain (i) a child care license from the Department of Children and Families (DCF) or local licensing agency; (ii) a letter from

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<sup>17</sup> 7 CFR § 226.2; 7 CFR § 226.17(a) and (b).

<sup>18</sup> See 7 CFR 226.2.

<sup>19</sup> See 7 CFR § 226.17.

<sup>20</sup> 42 USC § 1766 (5).

<sup>21</sup> 42 USC § 1766(5)(C).

<sup>22</sup> See 7 C.F.R. § § 226.4-8; Section 383.011, F.S.

<sup>23</sup> 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

DCF or the local licensing agency stating that licensure is not required; or (iii) a Religious-Exempt Accreditation Certificate.<sup>24</sup>

In Florida, many parks and recreation departments operated by local governments offer “government-operated after-school recreation programs.”<sup>25</sup> 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 a definition for “government-sponsored recreation programs.” 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** amends s. 39.201, F.S., relating to mandatory reports of child abuse, to correct a cross-reference.

**Section 3** amends s. 402.305, F.S., relating to licensing standards of child care facilities, to correct a cross-reference.

<sup>24</sup> 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](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).

<sup>25</sup> 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.”

**Section 4** amends s. 1002.82, F.S., relating to powers and duties of the Office of Early Learning, to correct a cross-reference.

**Section 5** provides an effective date of July 1, 2020.

**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.

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.

**VI. Technical Deficiencies:**

By removing government-sponsored recreation programs from the definition of “child care facility”, these newly defined programs lose protections afforded 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. Thus, it is suggested that consideration be given to amending these sections to specifically include government-sponsored recreation programs.

**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 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.