

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 158

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Religious-Exempt Child Care Programs

DATE: February 2, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 158 requires religious-affiliated child care programs and weekday preschool programs to be a member or participant of, or be accredited by, an accrediting agency recognized by the Department of Children and Family Services in order to qualify for the religious exemption from licensure as a child care facility. The committee substitute also establishes requirements for an accrediting agency to be recognized. These accrediting requirements would generally apply the minimum standards for licensed child care facilities to religious-exempt programs, with certain exemptions, and would require the accrediting agencies to mandate that religious-exempt programs comply with the agency's accrediting standards.

This committee substitute substantially amends section 402.316, Florida Statutes.

II. Present Situation:

Religious-Exempt Child Care Facilities

Since 1974, the Legislature has mandated the statewide licensure of child care facilities.¹ These "child care facilities" include any child care center or child care arrangement that provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit (s. 402.302(2), F.S.).

¹ See ch. 74-113, L.O.F.

The 1974 legislation, however, exempted from licensure a child care facility that is an integral part of a church or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation.² This exemption for these child care facilities (commonly cited as “religious-exempt” facilities) remains under current law, except that the child care personnel operating religious-exempt facilities must complete the same background-screening requirements applying to child care personnel in licensed child care facilities (s. 402.316(1), F.S.). In addition, religious-exempt facilities must comply with the requirements of local governments for health, sanitation, and safety.

For those child care facilities required to be licensed, the Department of Children and Family Services must adopt rules prescribing minimum licensing standards required for these facilities (s. 402.305(1), F.S.). These minimum licensing standards are not required for religious-exempt facilities; rather, these religious-exempt facilities must adhere to the standards of its accrediting organization. Although current law requires a religious-exempt facility to be accredited by, or a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation, current law does not provide minimum accrediting standards or provide a mechanism to certify whether an accrediting organization’s requirements are met by a religious-exempt facility.

Religious-exempt facilities may choose to be licensed but cannot withdraw from licensure once they are licensed (s. 402.316(3), F.S.). Of the 1,468 child care facilities in the state which are eligible for the religious exemption under s. 402.316, F.S., currently 1,012 facilities have chosen to be licensed child care facilities and 456 facilities have chosen to be religious-exempt facilities.

Minimum Licensing Standards for Child Care Facilities

Current law establishes a framework for the department’s minimum standards required for licensed child care facilities and provides certain minimum requirements that must be included within the department’s rules (s. 402.305, F.S.). This framework includes minimum requirements for each of the following regulatory items:

- **Personnel.**—Qualifications for child care personnel, including background screening, age requirements, training, continuing education, and staff credentials (s. 402.305(2) and (3), F.S.);
- **Staff-to-children ratios.**—Staff-to-children ratios, which require greater supervision for younger children (s. 402.305(4), F.S.);
- **Physical facilities.**—Physical facilities, including requirements for building conditions, play space, bathroom facilities, and equipment (s. 402.305(5), F.S.);
- **Square footage.**—Square footage per child for indoor floor space and outdoor play area (s. 402.305(6), F.S.);
- **Sanitation and safety.**—Sanitation and safety, including first aid treatment, emergency procedures, sanitary and safety conditions, and pediatric cardiopulmonary resuscitation (s. 402.305(7), F.S.);

² Section 16(1), ch. 74-113, L.O.F.

- **Nutritional practices.**—Provision of meals and snacks that meet nutritional needs of children (s. 402.305(8), F.S.);
- **Admissions and recordkeeping.**—Requirements for periodic health examinations, immunizations, and maintenance of emergency information and health records (s. 402.305(9), F.S.);
- **Transportation safety.**—Requirements for seat belts in vehicles, annual inspections of vehicles, limits on the number of children in vehicles, and accountability for children being transported (s. 402.305(10), F.S.);
- **Parental access.**—Reasonable parental access to the facility while the child is in care (s. 402.305(11), F.S.);
- **Child discipline.**—Age-appropriate, constructive disciplinary practices and notification to parents of these practices (s. 402.305(12), F.S.);
- **Plan of activities.**—Daily plan of varied activities, including active and quiet play opportunities appropriate to the age of the child (s. 402.305(13), F.S.);
- **Urban child care facilities.**—Modified licensing standards for child care facilities located in urban areas (s. 402.305(14), F.S.);
- **Evening and weekend child care.**—Modified licensing standards for child care facilities providing evening or weekend child care (s. 402.305(16), F.S.); and
- **Transfer of ownership.**—Parental notification of the transfer of ownership of a child care facility (s. 402.305(18), F.S.).

With the exception of requirements for background screening of child care personnel, these minimum standards do not apply to religious-exempt facilities (s. 402.316(1), F.S.).

Exemptions from Licensure

Under current law, child care facilities must be licensed by the Department of Children and Family Services and meet certain minimum licensing standards adopted by the department (ss. 402.305 and 402.312, F.S.),³ unless the facility is specifically excepted from the definition of a child care facility, is exempted from licensure, or does not provide services considered to be “child care.”⁴ The following facilities or programs are not required to be licensed:

Excepted from the definition of a child care facility.—

- Summer camps having children in full-time residence (s. 402.302(2)(b), F.S.);
- Summer day camps (s. 402.302(2)(c), F.S.);
- Vacation Bible schools (s. 402.302(2)(d), F.S.); and
- Child care services for guests in transient public lodging establishments (s. 402.302(2)(e), F.S.).

³ The licensure of child care facilities is administered by the Child Care Services Program Office of the Department of Children and Family Services or, in seven counties (Alachua, Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) by local licensing agencies that have licensing standards meeting or exceeding the department’s minimum standards (see ss. 402.306 and 402.307, F.S.).

⁴ Under current law, the term “child care” means 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 (s. 402.302(1), F.S.).

Exempted from licensure.—

- *Public schools.*—Programs for children in grades kindergarten (5 years of age) or higher, programs for children 3 years to 5 years of age operated and staffed by the public school, and programs for preschool children with disabilities who are younger than 3 years of age (ss. 402.302(2)(a) and 402.3025(1)(a), F.S.);
- *Nonpublic schools.*—Programs for children in grades kindergarten (5 years of age) or higher and, if a majority of the children enrolled in the nonpublic school are 5 years of age or older, programs for children 3 years to 5 years of age operated and staffed by the nonpublic school (ss. 402.302(2)(a) and 402.3025(2)(b) and (c), F.S.); and
- *Religious-exempt facilities.*—Child care facilities that are an integral part of church or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation (s. 402.316, F.S.).

Does not provide “child care.”—

- *Membership organizations.*—Membership organizations affiliated with national organizations which do not provide child care whose primary purpose is providing activities contributing to the development of good character or sportsmanship or to the education or cultural development of minors (s. 402.301(6), F.S.); and
- *After-school programs.*—After-school programs that do not provide child care (ss. 402.3045 and 402.305(1)(c), F.S.).

In addition, current law provides for separate licensure or registration requirements for family day care homes (s. 402.313, F.S.), large family child care homes (s. 402.3131, F.S.), and specialized child care facilities for the care of mildly ill children (s. 402.305(17), F.S.).

III. Effect of Proposed Changes:**Religious-Exempt Child Care Programs**

The committee substitute substantially revises the licensure exemption for religious-affiliated child care facilities in s. 402.316, F.S. The bill specifies that this religious exemption applies to a child care program or weekday preschool program that is an integral part of an established church, temple, or parochial school conducting regularly scheduled classes, courses of study, or educational programs. Thus, the committee substitute extends the religious exemption under current law to programs that are an integral part of a temple.⁵

To qualify for the religious exemption, the committee substitute requires a religious program to be a member or participant of, or accredited by, a state, regional, or national accrediting agency that is recognized by the Department of Children and Family Services.⁶

The committee substitute retains requirements under current law that child care personnel in religious-exempt programs must undergo background screenings and that religious-exempt

⁵ Under current law, the religious exemption applies to a facility that is an integral part of a church or parochial school conducting regularly scheduled classes, courses of study, or educational programs (s. 402.316, F.S.).

⁶ Under current law, accrediting organizations are not required to be recognized by the department (s. 402.316, F.S.).

programs may choose to be licensed; however, the committee substitute deletes a requirement in current law that religious-exempt programs may not withdraw from licensure once they choose to be licensed (see s. 402.316(3), F.S.).

The committee substitute requires each religious-exempt program to display a certificate of compliance issued by a recognized accrediting agency in a conspicuous location in the facility. The committee substitute also specifies that failure to post the certificate will result in an administrative action determined by the program's accrediting agency.

The committee substitute provides that a religious-exempt program is solely responsible for its day-to-day operations and compliance with applicable state laws and the minimum standards of its accrediting agency.

Recognition of Accrediting Agencies

The committee substitute directs the Department of Children and Family Services to maintain a list of all recognized accrediting agencies and specify the agencies' standards. The committee substitute requires the department to review the minimum standards adopted by each accrediting agency seeking to be recognized and requires the department to recognize an accrediting agency, if the agency:

- **Minimum standards.**—Adopts minimum accrediting standards for religious-exempt programs which meet or exceed the department's minimum standards for licensed child care facilities, except for standards governing child discipline, urban child care facilities, specialized child care facilities for the care of mildly ill children, or parental notification of the transfer of ownership of a child care facility;
- **Require compliance.**—Publishes the minimum accrediting standards and requires each religious-exempt program to comply with those standards;
- **Review of minimum standards.**—Submits a copy of its published accrediting standards to the department for review, which must be reviewed by the department within 30 days after submission;
- **Local requirements.**—Requires each religious-exempt program to comply with the requirements of local governments for health, sanitation, and safety, including minimum requirements for environmental health, firesafety, zoning, and building codes;
- **Parental notification.**—Requires each religious-exempt program to inform parents that the program is exempt from licensure but meets the minimum standards of the accrediting agency;
- **Verification of compliance.**—Conducts an initial on-site review of each religious-exempt program and annually receives a notarized statement from each religious-exempt program verifying compliance with applicable state laws and the accrediting agency's published minimum standards; and
- **Training of child care personnel.**—Requires each religious-exempt program to mandate the child care personnel employed by the program to comply with standards that meet or exceed the training requirements for child care personnel in licensed child care facilities.

Although the religious exemption in current law requires accrediting organizations to publish and require compliance with standards for health, safety, and sanitation (s. 402.316(1), F.S.), current law does not require the accrediting organizations to adhere to the department's minimum standards for licensed child care facilities. The committee substitute would consequently require religious-exempt programs to comply with minimum standards that may not be required by accrediting organizations under current law.

Phase-In of Training and Credentialing Requirements

The committee substitute requires recognized accrediting agencies to mandate that child care personnel employed by religious-exempt programs begin a 40-clock-hour introductory course in child care, approved by the Department of Children and Family Services, by October 1, 2004, or within 90 days after employment and complete the training within 1 year after the date the training begins.

In addition, the committee substitute requires recognized accrediting agencies to mandate that religious-exempt programs meet or exceed the requirements for staff credentials which apply to licensed child care facilities by July 1, 2008. Under current law, a licensed child care facility operating 8 hours or more per week must have, for every 20 children, at least one child care personnel who has a child development associate (CDA) credential or an equivalent credential (s. 402.305(3), F.S.). The committee substitute also directs the department and the accrediting agencies to work collaboratively to expedite the approval of equivalency programs developed by the accrediting agencies.

Limitation on the Department's Authority

The committee substitute specifies that these provisions do not authorize the Department of Children and Family Services to regulate or control an accrediting agency or to regulate or control the governance, religious curriculum, academic curriculum, testing or assessments, evaluation procedures, academic requirements of the staff, discipline, or hiring practices of a religious-exempt program.

Revision of Minimum Licensing Standards

The committee substitute requires the Department of Children and Family Services to distribute each revision made to the department's minimum standards for licensed child care facilities to each recognized accrediting agency within 30 days after the revision is adopted.

The committee substitute specifies that each recognized accrediting agency must, within 30 days after receipt of the revised minimum standards, notify the department that the agency has notified each religious-exempt program of the revised standards. The committee substitute directs that the revised standards be incorporated into the next revision of the accrediting agency's minimum standards.

Notices and Annual Reports

The committee substitute requires each recognized accrediting agency to submit an annual report to the Department of Children and Family Services. The report must include an updated listing of the accrediting agency's religious-exempt programs. The committee substitute requires recognized accrediting agencies to notify the department within 30 days after a new religious-exempt program comes into affiliation with the agency or after a program terminates its affiliation. The committee substitute also requires a religious-exempt program to provide 30 days' advance notice to the accrediting agency before transferring to another accrediting agency.

Agencies Prohibited from Accrediting Their Own Religious-Exempt Programs

The committee substitute prohibits a recognized accrediting agency from owning, operating, or administering a religious-exempt program under its certificate of approval.

Annual Meeting

The committee substitute requires the Department of Children and Family Services to facilitate an annual meeting with the accrediting agencies, health and safety officials, and child advocates to exchange ideas for ensuring the health and safety of children in child care and preschool programs.

Effective Date

The committee substitute provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The questions of government authority to regulate religious-affiliated child care facilities, or to exempt these religious-affiliated facilities from licensure, under the Free Exercise Clause and Establishment Clause of the First Amendment to the federal constitution has been addressed by several federal courts. In *North Valley Baptist Church v. McMahon*, 696 F. Supp. 518 (E.D. Calif. 1988), the court held that a California law requiring

religious-affiliated day care centers and preschools to be licensed and adhere to state regulations did not violate the Free Exercise Clause or the Establishment Clause. In *Forest Hills Early Learning Center v. Grace Baptist Church*, 846 F.2d (4th Cir. 1988), the U.S. Court of Appeals for the Fourth Circuit held that a Virginia law exempting religious-affiliated child care centers from the state's licensing requirements did not violate the Establishment Clause. Citing *Forest Hills*, in *Forte v. Coler*, 725 F. Supp. (M.D. Fla. 1989), the court upheld Florida's religious exemption, ruling that the state's law exempting child care facilities that are an integral part of church or parochial schools from compliance with state licensing requirements did not violate the Establishment Clause.

The committee substitute does not require the licensure of religious-affiliated child care programs but requires these programs to comply with many of the state's licensing requirements through accrediting standards adopted by accrediting agencies recognized by the Department of Children and Family Services.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute does not require the licensure of religious-affiliated child care programs but requires these programs to comply with many of the state's licensing requirements through accrediting standards adopted by accrediting agencies recognized by the Department of Children and Family Services. Although the religious exemption in current law requires accrediting organizations to publish and require compliance with standards for health, safety, and sanitation (s. 402.316(1), F.S.), current law does not require the accrediting organizations to adhere to the department's minimum standards for licensed child care facilities. The committee substitute would consequently require some portion of the 456 religious-exempt facilities in this state to comply with minimum standards that may not be required by accrediting organizations under current law. Compliance with the department's minimum standards would likely cause these religious-exempt facilities to incur costs not required under current law.

Some religious-exempt programs may, however, qualify for exemption from licensure as nonpublic schools (see ss. 402.302(2)(a) and 402.3025(2)(b) and (c), F.S.). These programs would not be subject to the minimum standards required by the committee substitute.

C. Government Sector Impact:

The committee substitute requires the Department of Children and Family Services to process requests for recognition of religious accrediting agencies, to review the agencies' published accrediting standards and recognize qualified agencies, to maintain a list of all recognized accrediting agencies, to distribute changes in the department's licensing

standards to the accrediting agencies, and to facilitate an annual meeting with the accrediting agencies, health and safety officials, and child advocates. Except for facilitating an annual meeting (the department reports that it facilitates a meeting with the child care industry about once every 3 years), the department reports that it currently performs many of these responsibilities in cooperation with religious accrediting organizations. The department consequently estimates that the committee substitute would not impose any substantial additional administrative costs on the department and that the functions required by the committee substitute may be absorbed within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
