

# 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.)

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Prepared By: Children and Families Committee

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BILL: CS/SB 1600

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Child Care Health and Safety

DATE: March 29, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>HA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute for SB 1600 clarifies statutory provisions relating to child care regulation. It extends the current requirements for licensure and renewal of licenses of child care facilities to large family child care homes and to those other family day care homes which are already required to be licensed.

The committee substitute strengthens the enforcement authority of the licensing agencies over child care providers by authorizing the issuance of provisional licenses to large family child care homes and family day care homes required to be licensed. It allows provisional registration for those family day care homes which are not required to be licensed. It provides for revocation of the provisional licenses and registrations.

This committee substitute sets out a range of disciplinary actions available to enforcement authorities and makes those actions applicable to registered as well as licensed child care providers.

The committee substitute resolves the conflict between two inconsistent administrative fine provisions in current law by repealing one of the provisions.

It directs the Department of Children and Families (DCF or the department) to adopt rules to administer enforcement actions regarding child care.

The committee substitute requires DCF to establish a statewide data system to capture violations and penalties imposed in child care settings and to make this information available to the public.

This committee substitute revises provisions relating to the background screening of volunteers in child care settings regulated by DCF to remove conflicting language. It revises provisions relating to DCF's enforcement authority in registered family day care homes to provide the same escalating enforcement options available in other child care settings. Finally, the committee substitute provides DCF with specific rule-making authority relating to safety standards in licensed family day care homes.

The committee substitute also:

- Amends provisions relating to the Teacher Education and Compensation Helps (TEACH) scholarship program to reflect the administration of the program by the Agency for Workforce Innovation (AWI), rather than DCF;
- Removes obsolete language relating to the subsidized child care program from provisions relating to family day care homes; and

The committee substitute transfers the Child Care Program of DCF to AWI.

This committee substitute substantially amends, creates, or repeals the following sections of the Florida Statutes: s. 402.302, 402.3055, 402.308, 402.309 s. 402.310, s. 402.313, and s. 402.3131. Section 402.3105, F.S., is created by the committee substitute. Paragraph (b) of subsection (1) of s. 402.313, F.S., and paragraph (a) of subsection (1) of s. 402.3131, F.S. are repealed.

## II. Present Situation:

The Department of Children and Families is responsible for administering child care regulations in Florida,<sup>1</sup> unless a county has chosen to assume this function pursuant to s. 402.306, F.S.<sup>2</sup> The child care settings to which statutory child care regulation applies are as follows:

- **Child care facilities** provide child care to more than five children who are unrelated to the operator and for whom a payment is received for the care.<sup>3</sup>
- **Family day care homes** are residences where child care is provided for between four and ten children, depending on their ages, from at least two unrelated families for a fee.<sup>4</sup>
- **Large family child care homes** are residences where child care is provided for up to 12 children from at least two unrelated families for a fee, depending on the ages of the children.<sup>5</sup>

### Licensing Requirements:

- **Child care facilities** are required to be licensed unless exempted.<sup>6</sup>
- **Family day care homes** are required to be licensed only under the following circumstances:<sup>7</sup>
  - County licensing ordinances require licensure,

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<sup>1</sup> Sections 402.301 through 402.319, F.S.

<sup>2</sup> Currently, seven counties have chosen to assume the responsibility of regulating child care in their counties.

<sup>3</sup> Section 402.302(1), F.S.

<sup>4</sup> Section 402.302(7), F.S.

<sup>5</sup> Section 402.302(8), F.S.

<sup>6</sup> Licensing standards are set forth in s. 402.305, F.S.

<sup>7</sup> Section 402.313(1), F.S.

- The home is participating in the subsidized child care program,<sup>8</sup> or
- The Board of County Commissioners has passed a resolution requiring licensure.
- **Family day care homes not licensed** must register annually with DCF, providing certain information and complying with statutory requirements such as background screening, training, and maximum number of children in care.<sup>9</sup>
- **Large family child care homes** are required to be licensed.<sup>10</sup>

#### **Licensing Process:**

- The licensure process for a child care facility requires an examination of the child care facility, documentation that the licensing standards have been met, and, for license renewal, verification that the facility continues to meet licensing standards. The application for a child care facility license or renewal includes the owner or operator's attesting to the accuracy of the information and that they have never had a license denied, revoked, or suspended or have been subject to any disciplinary action.<sup>11</sup> This process is outlined only for licensed child care facilities. There are no similar provisions for the licensure application and renewal process for family day care homes and large family child care homes.
- A provisional license may be issued to applicants for child care licensure or to licensees who are unable to conform to all of the required standards if adequate provisions have been made for the health and safety of the child.<sup>12</sup> The statutory section authorizing the issuance of provisional licenses refers only to child care facilities, raising the question as to the authority to issue provisional licenses to licensed family day care homes and large family child care homes.

#### **Renewals of Licenses and Registrations:**

- A license must be renewed annually and requires a reexamination of the facility and determination that the minimum standards continue to be met.<sup>13</sup>
- Registrations must also be renewed annually. The renewal application requires the same information as the original application.<sup>14</sup>

#### **Enforcement:**

The Department of Children and Families has issued administrative guidelines classifying violations into three categories. Decisions about the application of sanctions are governed by these guidelines.

- A Class I violation is considered a violation that is serious in nature and could or does result in death or serious harm to the health, safety, or well-being of a child.
- A Class II violation is a serious violation that does not pose an immediate threat to the safety or health of the children in care but could reasonably be expected to cause harm within 90 days.

<sup>8</sup> Now the early learning program under the Agency for Workforce Innovation.

<sup>9</sup> Sections 402.302(7), 402.302(13), and 402.313, F.S.

<sup>10</sup> Section 402.3131, F.S.

<sup>11</sup> Sections 402.3055 and 402.308, F.S.

<sup>12</sup> Section 402.309, F.S.

<sup>13</sup> Section 402.308, F.S.

<sup>14</sup> Section 402.313(1)(b), F.S.

- A Class III violation is the least serious violation type and is generally related to the maintenance and operation of the child care facility.

While there is statutory authority for imposing the administrative fines and specific penalties, DCF reports there is insufficient authority for development of rules for both classifying the levels of violations and the determination of sanctions based on the classification of the violation.

The sanctions available to licensing authorities are set forth in statute,<sup>15</sup> providing the following options:

- **The imposition of an administrative fine:** Section 402.309, F.S., permits the imposing of a fine of up to \$100 per violation per day and, if the violation causes or could cause death or serious harm, up to \$500 per violation per day. Sections 402.313 and 402.3131, F.S., also provide for imposing administrative fines on family day care homes or large family child care homes not to exceed \$100 for family day care homes and \$1,000 for large family child care homes which conflicts with the fines authorized in s. 402.309, F.S.
- **The denial, suspension, or revocation of a license:** Section 402.309, F.S., authorizes the licensing agency to deny, suspend, or revoke a license. This section does not articulate the licenses to which this provision applies and, while it can be construed to include family day care homes and large family child care homes in addition to child care facilities, this authority is not specified. It has also been reported that since the grounds for which a license may be suspended or revoked are not specified, these sanctions are not applied as often as considered necessary.
- **An injunction to close a child care setting:** Section 402.312, F.S., permits the licensing authority to seek an injunction to close a child care facility, family day care home, or large family child care home for operating without a license or registration, violating the standards which threatens harm to the children, repeated violations of the standards, or continuing to serve children beyond the established closing date.

The current statutory framework for enforcement of child care regulation does not provide clear direction for imposing the specified disciplinary actions in response to the range of violations that occur. Also, the only sanctions available to registered family day care homes not complying with the registration and other statutory requirements are administrative fines and an injunction to close the home. The lack of clear statutory authority has been reported to result in a lack of uniformity in applying sanctions and in a limited ability to impose the type of sanctions that would generate the compliance, in particular, the more severe penalties. This lack of adequate direction is consistent with the findings of the Office of Program Policy Analysis and Government Accountability (OPPAGA) in its November 2000 *Child Care Program Justification Review* which found that the DCF district offices varied in their interpretation of when a violation was to be classified as a Class I, Class II, or Class III. This disparity across districts resulted in enforcement policies for child care licensure that were being applied inconsistently across the state.

#### **Data System:**

The OPPAGA report also identified the lack of adequate statewide information on licensing and enforcement actions as another weakness in DCF's enforcement activities. OPPAGA

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<sup>15</sup> Sections 402.309, 402.312, 402.313, and 402.3131, F.S.

recommended that DCF develop a statewide licensing data system for the child care program that includes not only basic demographic information about regulated child care providers but also specific information about inspections, complaints, violations, and enforcement actions.

The department reports that, since the OPPAGA report was written, it has implemented its Child Care Licensing Information System (CCLIS), containing detailed and accurate information on child care programs and services. Data on the system is available to the public through the internet.<sup>16</sup> This system has been recognized by the United States Government Accountability Office as one of the most innovative and technologically advanced in the nation.<sup>17</sup> While the system does not yet capture specific data on citations and penalties, DCF expects that final administrative actions taken in child care enforcement cases will be available to the public through the website in April 2005.

### **Background Screening of Volunteers**

Current law contains the following conflicting language relating to the background screening of volunteers in a child care setting:

- Pursuant to s. 402.302(3), F.S., volunteers who work more than 40 hours per month are considered “child care personnel” for purposes of background screening. Pursuant to s. 402.305(2), F.S., “child care personnel” are subject to a Level 2 background screening.
- However, s. 402.302(13), F.S., states that screening for volunteers that meet the definition of child care personnel only includes a local criminal records check and a statewide criminal records correspondence check (not an employment history check and federal criminal records check).

### **Enforcement Authority in Registered Family Day Care Homes**

Although statute currently provides a series of enforcement options for non-compliance with uniform child care standards in licensed child care facilities, licensed family day care homes, and large family child care homes; DCF currently has very limited enforcement authority with regard to *registered* family day care homes.<sup>18</sup> Enforcement authority in registered family day care homes is currently limited to either a \$100 fine or injunctive action, without the additional series of escalating enforcement actions available regarding other types of providers (for example, suspension or revocation of a registration).<sup>19</sup>

The department or local licensing agency is authorized to seek an injunction in the circuit court where the facility is located to enjoin continued operation of such family day care home under the following circumstances (s. 402.312, F.S.):

- A family day care home is being operated without a license or registration;

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<sup>16</sup> [www.myflorida.com/childcare](http://www.myflorida.com/childcare)

<sup>17</sup> “Child Care: State Efforts to Enforce Safety and Health Requirements” (GAO-04-786)

<sup>18</sup> Registered family day care homes are those not required to be licensed. According to statute, family day care homes are required to be licensed if a local ordinance so requires or if they participate in the subsidized child care program, s. 402.313(1)(a), F.S. However, DCF has interpreted federal law requiring parents to have free access to subsidized child care programs to supersede the Florida state law, with the practical effect that only those family day care homes which are required to be licensed by local ordinance are required to be licensed. All others are registered.

<sup>19</sup> Section 402.313(1)(b), F.S.

- There is any violation of the standards applied under ss. 402.301-402.319, F.S., which threatens harm to any child in the family day care home;
- A registrant has repeatedly violated the standards provided for under ss. 402.301-402.319; F.S., or
- A family day care home continues to have children in attendance after the closing date established by the department or the local licensing agency.

Section 402.310, F.S., relating to escalating administrative actions (fines, suspension, and revocation) applies specifically to *licensed* child care providers. As a result, DCF's ability to timely and consistently assure the safety of children in care in registered family day care homes is more limited than in other child care settings.

### **Administrative Fines and Penalties**

Current law contains confusing and contradictory provisions regarding fines and penalties for non-compliance with child care standards:

- Section 402.310(1)(a), F.S., which applies only to *licensed* facilities and *licensed* family day care homes, describes a graduated system of penalties for violation of licensing standards. These penalties include denial, suspension, or revocation of the license or the imposition of an administrative fine not to exceed \$100 per violation per day. If the violation could or does cause death or serious harm to a child, the department or local licensing agency may impose an administrative fine not to exceed \$500 per violation per day.
- Section 402.313(1)(b), F.S., authorizes the department or local licensing agency to “impose an administrative fine, not to exceed \$100, for failure to comply with licensure or registration requirements.” This section relates to both licensed and registered family day care homes, so that for licensed family day care homes, it is inconsistent with the provisions of s. 410.310(1)(a), F.S., in that it lacks the authorization denial, suspension or revocation of a license and the provision for increased penalties in more serious offenses. More problematically, this is the only penalty-related provision for registered family day care homes, so that those homes are not subject to the same range of enforcement options as are available to the department or local licensing agency for licensed family day care homes.
- Section 402.3131(1)(a), F.S., authorizes the department or local licensing agency to impose an administrative fine, not to exceed \$1,000, for failure to comply with licensure requirements. This section relates to large family day care homes.<sup>20</sup>

### **Safety Standards in Licensed Family Day Care Homes**

The department currently has the authority to adopt rules relating to minimum safety standards for licensed child care facilities but not licensed family day care homes. The department's rule authority relating to family day care homes is limited to “minimum *health* standards” rather than “*health and safety* standards.” This inconsistency leaves children in family day care homes more vulnerable to the risk (or the potential risk) of harm than children being cared for in other licensed child care settings.

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<sup>20</sup> The difference in the maximum number of children authorized to be cared for in a family day care home (10) and a large day care home (12) is two children, s. 402.302(7) and (8), F.S.

### **Teacher Education and Compensation Helps (TEACH) Program**

The national TEACH program was established in 1989 to address the relationship between low compensation and low rates of retaining child care workers. Under the program, teachers are compensated for receiving additional training and education. Currently, 21 states, including Florida, have established the program. Since 2002, the TEACH program in Florida has been administered by the Agency for Workforce Innovation, pursuant to the General Appropriations Act implementing bill for the past 3 years.

### **Subsidized Child Care Program**

Current law<sup>21</sup> requires that family day care homes participating in the subsidized child care program must be licensed. However, federal regulations adopted in 1998 relating to the subsidized child care program require that parents have an array of choices for this service, including licensed, registered, and informal care arrangements.<sup>22</sup> Because this federal regulation makes unavailable any federal Child Care and Development funds<sup>23</sup> for states which do not allow this choice, the provision requiring licensing of these homes has not been used at least since 1998.

### **III. Effect of Proposed Changes:**

The committee substitute recognizes the current situation in which AWI, rather than DCF, administers the TEACH program.<sup>24</sup>

It amends the statutory provisions affecting enforcement of child care regulation to expand and clarify the authority and actions available to ensure compliance.

The requirements for applicants for child care facility licensure<sup>25</sup> are amended to include that the applicants attest to the accuracy of the information provided regarding any previous denial, revocation, or suspension of a license or disciplinary action by signing an affidavit. Those sections of law<sup>26</sup> which describe the licensure application and renewal process are enlarged to apply to family day care homes and large family child care homes.

The licensing agency is authorized to issue provisional registrations to family day care homes that are unable to conform to statutory requirements, as well as provisional licenses to child care facilities, family day care homes required to be licensed, and large family child care homes. The option of issuing a provisional license if the screening material has been timely submitted but has not been processed is specifically limited to child care facilities.<sup>27</sup> The licensing agency is explicitly authorized to revoke provisional licenses and registrations. The issuance of a provisional license or registration is limited to the initial license or registration or upon renewal

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<sup>21</sup> Section. 402.313, F.S.

<sup>22</sup> 45 CFR, Parts 98 and 99.

<sup>23</sup> For FY 2004-05, Florida received \$234,746,753 in federal Child Care and Development Funds.

<sup>24</sup> This administration has occurred pursuant to the General Appropriations Act implementing bill since 2002.

<sup>25</sup> Section 402.3055, F.S.

<sup>26</sup> Sections 402.3055 and 402.308, F.S.

<sup>27</sup> Family day care homes and large family child care homes are excluded from this option because of the potential danger to the children since there is often only the one person for whom the screening is being processed who is caring for the children.

of the license or registration. The department is directed to adopt rules which provide for the conditions and procedures for issuing, as well as suspending or revoking, a provisional license or registration.

The scope of the disciplinary actions available to licensing authorities<sup>28</sup> is expanded by the committee substitute in three ways:

- The disciplinary actions are applied to registered family day care homes.
- The authority to impose disciplinary actions other than the higher administrative fine if the violation could or does cause death or serious harm is clarified.
- The option of converting a license or registration to probationary status is described. Failure to comply with the terms of the probation may result in the license or registration being suspended or revoked. A license or registration may not remain on probationary status for a period in excess of six months.

The due process requirements set forth for denial, suspension, or revocation of a license or imposition of an administrative fine apply to the new disciplinary actions set out in the committee substitute and to family day care home registrants. The department is directed to develop and adopt rules outlining the grounds under which a license or registration may be denied, suspended, revoked or placed on probationary status. The rules are also to establish a uniform system of procedures for imposing the disciplinary actions, providing for a consistent and progressive application of the disciplinary actions. The department is directed to implement the uniform system of procedures for disciplinary actions by January 1, 2006.

Sections 402.313 and 402.3131, F.S., are amended to repeal the provisions that impose administrative fines on family day care homes and large family child care homes which conflict with the administrative fines permitted by s. 402.310, F.S.

The committee substitute requires that DCF establish and maintain a statewide data system for information relating to violations, citations, and penalties imposed against child care facilities, family day care homes, and large family child care homes. The data system:

- Is required to be designed to enable DCF to monitor and evaluate the district and local licensing agencies' inspections and enforcement of licensing and registration requirements for child care facilities, family day care homes, and large family child care homes.
- Is intended to be a source of information for the licensing agencies to ensure these facilities are complying with the state's regulatory requirements and evaluating facilities for license renewal.
- Must produce statistical information regarding patterns of violations, classes and types of violations, and sanctions imposed.
- Must make the information available to the public pursuant to the public records provisions of ch. 119, F.S.

In maintaining the data base, DCF is required to consult and comply with the requirements of the State Technology Office pursuant to ch. 282, F.S.

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<sup>28</sup> Section 402.310, F.S.

The committee substitute provides that the implementation of the data system is not contingent upon a specific appropriation. These provisions codify the Child Care Licensing Information System already in operation with the addition of capturing and tracking citations and penalties.

#### **Background Screening of Volunteers**

The committee substitute revises s. 402.302(13), F.S., relating to the screening of volunteers, to remove conflicting language. The committee substitute provides for volunteers who meet the definition of “child care personnel” to be subject to the same level of screening as other child care personnel.

#### **Enforcement Authority in Registered Family Day Care Homes**

The committee substitute for Senate Bill 1600 revises current statutory language relating to disciplinary actions; hearings upon denial, suspension, or revocation of a license; and administrative fines to include *registered* family day care homes. This revision will provide DCF the authority necessary to enforce through consistent fines and the ability to revoke or suspend registration the minimum standards for registered family day care homes and ensure greater protection for children in care.

#### **Administrative Fines**

The committee substitute revises current statutory language relating to the maximum amount of administrative fines to provide consistent fines for all provider types. The revision will provide for the imposition of a maximum of \$100 per violation, per day—regardless of the type of child care setting—consistent with guidelines for fines currently imposed upon licensed child care centers.

#### **Safety Standards in Licensed Family Day Care Homes**

The committee substitute revises current statutory language regarding licensed family day care homes to provide rulemaking authority to DCF regarding minimum safety standards.

#### **Subsidized Child Care Program**

The committee substitute removes obsolete language relating to the subsidized child care program from the statutes.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None

**B. Private Sector Impact:**

Licensed and registered family day care homes may be subject to an increased administrative fine since, in rectifying the inconsistent administrative fine provisions, the \$100 limit established in s. 402.313, F.S., is removed and the fine of up to \$100 per violation per day is retained, thus becoming the basis for determining the fine to be imposed. Similarly, large family child care homes may be subject to different administrative fines because the \$1,000 limit in s. 402.3131, F.S., is removed and the fine of up to \$100 per violation per day is retained.

**C. Government Sector Impact:**

The Department of Children and Families predicts no fiscal impact from the enforcement provisions of the committee substitute. The cost to enhance the Child Care Licensing Information System is estimated to be \$18,500 (for system software reconfiguration and modifications to the central database). However, DCF reports that this cost can be accommodated within the existing recurring funds, provided budget reductions do not impact funds available to implement this requirement.

Consistent enforcement actions are potentially a cost-saving measure, preventing costly injunctive relief actions which are the only current remedies for removing the registration of a family day care home.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The committee substitute incorporates the provisions of SB 208, which previously was reported favorably from the Children and Families committee.

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## **VIII. Summary of Amendments:**

None.

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

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