

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SLC 07-09 Early Learning
SPONSOR(S): Schools & Learning Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council		Gillespie	Cobb
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The proposed council bill (PCB) implements Idea No. 5 of the *100 Innovative Ideas for Florida's Future*¹ by revising requirements for the Voluntary Prekindergarten Education (VPK) Program and the associated child care licensing laws. The PCB:

- Requires the Agency for Workforce Innovation (AWI), by July 1, 2010, to replace the agency's current data system with an Early Learning Information System (ELIS) for supporting the state's early learning programs;
- Creates a Chancellor of Early Learning within the Governor's office to facilitate interagency coordination among the Department of Education (DOE), AWI, and the Department of Children and Family Services (DCF) for administering the state's early learning programs and child care regulation;
- Requires the Chancellor of Early Learning to establish a 5-year strategic plan for the state's early learning programs and child care regulation;
- Provides an appropriation and authorizes positions for the Chancellor of Early Learning's office, but does not specify the amount of the appropriation or the number of positions;
- Requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor and Legislature concerning the administrative expenditures of the VPK program, including nondirect services;
- Establishes background-screening requirements for child care personnel (substantially based on DCF's current rules) and aligns the background-screening requirements for prekindergarten instructors in the VPK program to those requirements for child care personnel;
- Deletes a requirement that private providers and public schools collect and keep monthly attendance forms signed by parents and requires AWI and the early learning coalitions to use enrollment procedures that maximize convenience for parents, private providers, and public schools, while minimizing fraud;
- Encourages the VPK program to be taught in English and other languages and requires advertising and outreach for the VPK program to concentrate on families who speak other languages and communities where additional assistance is needed;
- Clarifies provisions in current law which prohibit fees or charges for the VPK program and encourages early learning coalitions and school districts to create voluntary transportation systems for the VPK program; and
- Authorizes DOE and DCF to adopt rules subject to recent objections by the Joint Administrative Procedures Committee.

¹ The Honorable Marco Rubio, Speaker, Florida House of Representatives, *100 Innovative Ideas for Florida's Future* 18 (Regnery Publishing 2006); see <http://www.100ideas.org> (last visited Mar. 28, 2007).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The PCB creates a Chancellor of Early Learning within the Executive Office of the Governor.

Empower Families: The PCB requires the establishment of an Early Learning Information System (ELIS) that, among other things, will publish information about the educational impact of early learning programs on an Internet website.

Maintain Public Security: The PCB standardizes background screening requirements for child care personnel and prekindergarten instructors.

B. EFFECT OF PROPOSED CHANGES:

100 Innovative Ideas for Florida's Future:

In *100 Innovative Ideas for Florida's Future*, Idea No. 5 challenges Florida to make the Voluntary Prekindergarten Education (VPK) Program a global model for school readiness.² The idea includes three recommendations for the VPK program:

- Develop a data system for the VPK program which is comparable to the current data system for the K-12 education system and stimulate careful research on the best ways to measure the VPK program's educational impact;
- Reevaluate the governance structure for the VPK program to ensure efficiency and accountability; and
- Remove any participation obstacles for those students in most need of services from the VPK program.

Voluntary Prekindergarten Education Program:

In 2002, the voters of Florida approved an amendment to the State Constitution which required the Legislature to establish a prekindergarten program for every 4-year-old child in the state.³ The amendment specified that the prekindergarten program must be voluntary, high quality, free, and delivered according to professionally accepted standards.⁴ In December 2004, to implement the constitutional amendment, the Legislature created the Voluntary Prekindergarten Education (VPK) Program.⁵ The VPK program allows a parent to enroll his or her child in a voluntary, free prekindergarten program offered during the year before the child is eligible for admission to kindergarten. The program gives parents of eligible children a choice among three program options:⁶

- A 540-instructional-hour school-year VPK program delivered by a private provider;⁷
- A 300-instructional-hour summer VPK program delivered by a public school or private provider;⁸ or
- A 540-instructional-hour school-year VPK program delivered by a public school (if offered in a school district that meets class-size reduction requirements).⁹

² *Id.* (see Rubio, *supra* note 1).

³ Section 1(b) and (c), Article IX of the State Constitution.

⁴ *Id.*

⁵ Chapter 2004-484, Laws of Florida; part V of chapter 1002, Florida Statutes.

⁶ Section 1002.53, Florida Statutes.

⁷ Section 1002.55, Florida Statutes.

⁸ Section 1002.61, Florida Statutes.

Early Learning Information System:

Present Situation:

Before 1999, the Department of Children and Family Services (DCF) administered the former subsidized child care program.¹⁰ To support the program, especially payment of participating child care providers, DCF developed an information system known as the Enhanced Field System (EFS).

In 1999, the Legislature created the Florida Partnership for School Readiness and transferred the state's early learning programs and the EFS data system to the partnership.¹¹ In 2002, the partnership decided to replace EFS with a School Readiness Information System (SRIS), but in 2003, the partnership instead pursued plans for an Internet-based version of EFS known as "WebEFS." However, in 2004, the partnership moved forward with plans to replace EFS with SRIS and ultimately canceled the WebEFS project.

In 2004, in legislation creating the VPK program, the Legislature abolished the former Florida Partnership for School Readiness and assigned the state's early learning programs to the Agency for Workforce Innovation (AWI).¹² In 2005, AWI began development of the Early Learning Information System (ELIS, pronounced "Ellis") to replace EFS.

In 2005, the Legislature provided \$5.987 million for the ELIS project (\$1 million for the development of functional requirements and implementation processes and \$4.987 million for system implementation).¹³ Throughout 2005, AWI prepared procurement documents and submitted required plans to the Technology Review Workgroup (TRW).

In 2006, the Legislature continued the 2005 appropriation for the ELIS project.¹⁴ During this period, AWI initiated data quality and business process standardization projects to prepare for ELIS implementation. The agency also awarded a bid to a vendor for development of the ELIS functional requirements but canceled contract negotiations when a potential conflict of interest was discovered.

In August 2006, AWI reissued procurement documents for the functional requirements but added nonfunctional requirements and business process improvements to the procurement. In October 2006, AWI selected a vendor and awarded a contract. However, in November 2006, AWI placed the vendor under a corrective action plan due to poor performance. In December 2006, AWI informed the vendor of the agency's intent to terminate the contract, and, in January 2007, the vendor terminated the contract. In March 2006, AWI reissued the procurement documents with an expanded scope of work. The agency is currently conducting pre-bid conferences with interested vendors as they prepare their bid submissions.

Proposed Changes:

The proposed council bill (PCB) requires AWI to establish the Early Learning Information System (ELIS) to support the state's early learning programs. The ELIS system must:

- Have a centralized database and data warehouse;
- Support core functions of the current EFS data system for payment of providers;

⁹ Section 1002.63, Florida Statutes.

¹⁰ See former section 402.3015, Florida Statutes (1998).

¹¹ Chapter 99-357, Laws of Florida.

¹² Chapter 2004-484, Laws of Florida; section 411.01, Florida Statutes.

¹³ Section 42, *General Appropriations Act for Fiscal Year 2005-2006*, chapter 2005-70, Laws of Florida.

¹⁴ Section 44, *General Appropriations Act for Fiscal Year 2006-2007*, chapter 2006-25, Laws of Florida.

- Collect information for robust analysis of child developmental growth and the state's return on investment;
- Integrate compatibility of data elements among AWI, DCF, and the Department of Education (DOE);
- Allow AWI and DOE to jointly conduct longitudinal tracking of child performance through grade 3;
- Provide for the transfer of screening and assessment results to kindergarten programs; and
- Measure the educational impact of programs and publish the results on an Internet website for parents.

The PCB requires AWI to establish a project timeline for ELIS which provides for the system to be fully operational by July 1, 2010. The PCB also directs AWI to submit quarterly reports on ELIS projects to the Governor, Legislature, Chancellor of Early Learning, Technology Review Workgroup, and State Technology Office. If AWI changes the project timeline, the PCB requires the quarterly report to specify reasons for the change.

The PCB does not provide an appropriation for the ELIS project.

Governance of Early Learning and Child Care:

Present Situation:

Agency for Workforce Innovation; early learning coalitions.—The Office of Early Learning¹⁵ within the Agency for Workforce Innovation (AWI) administers several of the state's early learning programs, including school readiness programs,¹⁶ the child care resource and referral network,¹⁷ and the VPK program. Thirty-one early learning coalitions are regionally established in communities to administer early learning programs at the local level.¹⁸ In addition, the Florida Early Learning Advisory Council submits early learning policy recommendations to AWI and DOE.¹⁹

For fiscal year 2006-2007, AWI and the early learning coalitions are provided a total of \$1.063 billion for early learning programs.²⁰ Of these funds, \$393.1 million is provided for the VPK program from the state's General Revenue Fund. School readiness programs are provided a total of \$664.2 million from a mixture of state and federal funds, including \$367.9 million from the federal Child Care and Development Fund (CCDF) block grant, \$111.7 million from the federal Temporary Assistance for Needy Families (TANF) block grant, \$182.4 million from the state's General Revenue Fund, and \$2.2 million from other fund sources. In addition, AWI was provided almost \$6 million for development of the Early Learning Information System (ELIS).

Under current law, AWI administers the operational requirements of the VPK program at the state level.²¹ Current law also directs early learning coalitions to administer VPK programs delivered by

¹⁵ Section 20.50(2)(c)3., Florida Statutes.

¹⁶ In 1999, the Legislature enacted the School Readiness Act (section 411.01, Florida Statutes), which consolidated the state's early childhood education and child care programs into one integrated program of school readiness services. Chapter 99-357, Laws of Florida. A child whose parent receives temporary cash assistance subject to federal work requirements, who is at risk of abuse or neglect, or whose family is economically disadvantaged (family income does not exceed 150 percent of federal poverty level) is generally eligible for school readiness programs. Section 411.01(6) and (11), Florida Statutes.

¹⁷ See section 402.27, Florida Statutes.

¹⁸ Each early learning coalition is composed of 18 to 35 members. Section 411.01(5)(a)4., Florida Statutes. The chair and two additional members of a coalition are appointed by the Governor, and the remaining members are appointed locally. Section 411.01(5)(a)5. and 6., Florida Statutes.

¹⁹ The Florida Early Learning Advisory Council is composed of a chair appointed by the Governor; the chairs of the 31 early learning coalitions, who are appointed by the Governor; one member appointed by the President of the Senate; and one member appointed by the Speaker of the House of Representatives. Section 1002.77(2), Florida Statutes.

²⁰ Agency for Workforce Innovation; Specific Appropriations 2299-2310, *General Appropriations Act for Fiscal Year 2006-2007*, chapter 2006-25, Laws of Florida.

²¹ Section 1002.75(1), Florida Statutes.

private providers at the local level.²² Under rules adopted by AWI,²³ the early learning coalitions determine the eligibility of children, private providers, and public schools for the VPK program; document child attendance; pay providers and schools; and verify the compliance of private providers with program requirements (i.e., monitoring).²⁴

Department of Education; school districts.—In addition to its duties for administering Florida’s K-20 education system, the Department of Education (DOE) is responsible for administering the accountability requirements of the VPK program at the state level.²⁵ An office of early learning²⁶ organized by DOE within the office of the Commissioner of Education adopts child performance standards for the VPK program,²⁷ administers the statewide kindergarten screening, calculates the kindergarten readiness rates of private providers and public schools in the VPK program, approves prekindergarten director credentials, and approves emergent literacy training courses required for prekindergarten instructors.²⁸ School districts administer VPK programs delivered by public schools at the local level.²⁹

Department of Children and Family Services; local licensing agencies.—Florida’s child care licensing regulations generally govern the health, safety, sanitation, nutrition, physical surroundings, and child development needs of children receiving child care services; child care personnel requirements (e.g., training, professional credentials, and background screening); and staff-to-children ratios.³⁰ Except for certain facilities that are exempt from licensure (i.e., faith-based child care facilities), all child care facilities in the state must be licensed.³¹ Specialized child care facilities for the care of mildly ill children and large family child care homes must also be licensed.³² Depending on local requirements, family day care homes must either be licensed or registered.³³

The licensure or registration of child care providers is administered by the Child Care Services Program Office of the Department of Children and Family Services (DCF) 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 state’s minimum standards.³⁴

Proposed Changes:

The proposed council bill (PCB) creates a Chancellor of Early Learning to facilitate interagency coordination among DOE, AWI, and DCF for early learning programs and child care regulation. The chancellor is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The chancellor is to be the state’s principal advocate for early learning and child care and advises the Governor and Legislature. The PCB specifies that the chancellor does not have authority to control the staffing, expenditures, or other powers of DOE, AWI, or DCF.

The PCB requires the Chancellor of Early Learning to establish a 5-year strategic plan for early learning and child care programs, which must be revised at least once every 5 years.

²² Sections 1002.55(1) and 1002.61(1)(b), Florida Statutes.

²³ Chapter 60BB-8, Florida Administrative Code.

²⁴ Section 1002.75 (2), Florida Statutes.

²⁵ Section 1002.73(1), Florida Statutes.

²⁶ The office of early learning organized within DOE is distinguished from AWI’s Office of Early Learning created under section 20.50(2)(c)3., Florida Statutes. *Cf.* note 15.

²⁷ Section 1002.67(1), Florida Statutes.

²⁸ Section 1002.73(2), Florida Statutes.

²⁹ Sections 1002.61(1)(a) and 1002.63(1), Florida Statutes.

³⁰ *See, e.g.,* sections 402.305, 402.313, and 402.3131, Florida Statutes.

³¹ Sections 402.305 and 402.312, Florida Statutes.

³² Sections 402.305(17), 402.312, and 402.3131, Florida Statutes.

³³ Sections 402.312 and 402.313, Florida Statutes.

³⁴ Sections 402.306 and 402.307, Florida Statutes.

The PCB provides an appropriation and authorizes positions for the chancellor's office, but does not specify the amount of the appropriation or the number of positions.

Administrative and Other VPK Program Costs:

Present Situation:

In the General Appropriations Act, an early learning coalition is provided funding equal to 5 percent of the base student allocation for the VPK program to fund administrative and other program costs.³⁵ By comparison, the early learning coalitions are permitted up to 19 percent of school readiness funds for administering the school readiness programs, which includes a 5-percent cap on administrative expenditures.^{36,37} Coalitions are permitted to use the remaining 14 percent for "nondirect services," which include, but are not limited to, child and provider eligibility determinations, processing payments for providers, onsite inspections of providers for compliance with program requirements, advertising and other outreach for parents, and training and technical assistance for providers.

Proposed Changes:

The PCB directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor and Legislature by December 31, 2007, on the administrative expenditures of the VPK program and the appropriate limit for these expenditures.

Background Screening of Child Care Personnel and Prekindergarten Instructors:

Present Situation:

Current laws regulating child care require that child care personnel and certain volunteers must undergo background screening, including personnel and volunteers in licensed child care facilities,³⁸ licensed or registered family day care homes,³⁹ and licensed large family child care homes.⁴⁰ In addition, child care personnel in faith-based child care facilities, which are exempt from licensure, must also undergo background screening.⁴¹

Current law specifies that "screening" means assessing the background of child care personnel and volunteers, including, but not limited to, employment history checks, local criminal records checks through local law enforcement agencies, fingerprinting, statewide criminal records checks through the Department of Law Enforcement (FDLE), and federal criminal records checks through the Federal Bureau of Investigation (FBI).⁴²

³⁵ Specific Appropriation 89, *General Appropriations Act for Fiscal Year 2006-2007*, chapter 2006-25, Laws of Florida; *see also* section 1002.71(7), Florida Statutes.

³⁶ Section 411.01(9)(d), Florida Statutes.

³⁷ Federal regulations governing the Child Care and Development Fund (CCDF) block grant, which provides a substantial part of the funding for Florida's school readiness programs, limits expenditures on administrative activities to 5 percent of CCDF funds. Title 45, Code of Federal Regulations, sections 98.50(d) and 98.52(a). Federal regulations also require that at least 70 percent of CCDF funds be used for direct child care services (Title 45, Code of Federal Regulations, section 98.50(e)) and at least 4 percent of CCDF funds be used for "activities to improve the quality of child care" (Title 45, Code of Federal Regulations, sections 98.50(c) and 98.51(a)). After accounting for these requirements, together with approximately an additional 7 percent of the CCDF funds that must be expended according to certain federal restrictions and earmarks, the Agency for Workforce Innovation estimates that an early learning coalition is permitted to use up to 14 percent of CCDF funds on nondirect services.

³⁸ Sections 402.302(3) and 402.305(2)(a), Florida Statutes.

³⁹ Section 402.313(1)(a)5., Florida Statutes.

⁴⁰ Section 402.3131(2), Florida Statutes.

⁴¹ Section 402.316(1), Florida Statutes.

⁴² Section 402.302(13), Florida Statutes.

To administer the screening requirements in law, DCF adopted rules establishing specific background-screening requirements.⁴³ The rules require a person subject to screening to undergo employment history checks for the previous 2 years at a minimum, which must include at least the last three jobs; fingerprinting; and Level 2⁴⁴ screening checks through local law enforcement, FDLE, and the FBI.⁴⁵ The rules also require rescreening through local law enforcement and FDLE (excludes FBI) every 5 years after the initial Level 2 screening. If screened personnel have a break in employment from the child care industry which exceeds 90 days, the rules require rescreening for the same checks as initial screening (includes FBI). The rules also require screened personnel to annually sign an affidavit of good moral character.

Background screening forms adopted by DCF reflect that fingerprint cards must be submitted to FDLE for background screening by the 10th day after the person's employment date.⁴⁶ The forms also reflect that local criminal records checks are due in the employee's personnel file by the 10th day from the employment date.⁴⁷

Processing of Background Checks:

To process an employee's background screening under child care regulations, child care providers obtain fingerprint cards from DCF's Family Safety Program Office. The child care provider gives a blank fingerprint card to the employee, who reports to a local law enforcement agency for fingerprinting and returns the completed card with fingerprints to the child care provider. The child care provider submits the fingerprint card with a processing fee to FDLE for state processing. If the fingerprints are not legible, the fingerprint card is rejected and must be resubmitted. If the fingerprints are legible, upon completing a state criminal records check, FDLE mails the results of the state check to the child care provider and submits the fingerprint card to the FBI for federal processing through the National Crime Information Center (NCIC). Instead of fingerprint cards, electronic submission of fingerprints is also permitted.

Under federal law, the FBI's Criminal Justice Information Services Division is authorized to exchange records in the NCIC databases "with, and for the official use of, authorized officials of the ... the States."⁴⁸ The exchange of records is subject to cancellation if dissemination of the records is made outside of the receiving departments or related agencies.⁴⁹ Consequently, upon the FBI's completion of the federal check, the results of a federal criminal records check are provided to DCF (or the local licensing agency in some counties) because it is a governmental agency, not the child care provider that submitted the screening request.

Upon receiving results of a federal criminal records check, DCF or the local licensing agency reviews the screening results. If the results do not show any criminal offenses that would disqualify an employee,⁵⁰ DCF or the local licensing agency issues a "clearance letter" to the child care provider. If a disqualifying offense is found, a clearance letter is not issued and the employee may

⁴³ Rules 65C-20.008(4) and 65C-22.006(5)(d), Florida Administrative Code.

⁴⁴ Section 435.01, Florida Statutes, specifies that chapter 435, Florida Statutes, applies whenever a background screening for employment is required by law for employment, unless otherwise provided by law. Section 435.04(1), Florida Statutes, provides the requirements for Level 2 screenings, which include fingerprinting, statewide criminal and juvenile records checks through FDLE, federal criminal records checks through the FBI, and which may include local criminal records checks through local law enforcement agencies.

⁴⁵ *Id.*

⁴⁶ Florida Department of Children and Family Services, *Form CF-FSP 5131* (Feb. 2004), available at <http://www.dcf.state.fl.us/childcare/docs/FSP5131.pdf>.

⁴⁷ *Id.*

⁴⁸ Title 28, United States Code, section 534(a)(4).

⁴⁹ Title 28, United States Code, section 534(b).

⁵⁰ See section 435.04(2), Florida Statutes.

not be employed⁵¹ unless he or she is granted an exemption from disqualification through an appeals process.⁵²

Background Screening of Prekindergarten Instructors:

In 2004, the Legislature established requirements for background screening of prekindergarten instructors in the VPK program.⁵³ The requirements specify that a prekindergarten instructor must be of good moral character, must undergo a Level 2 screening before employment, and must be rescreened at least once every 5 years. As previously discussed, a Level 2 screening includes fingerprinting, statewide criminal and juvenile records checks through FDLE, federal criminal records checks through the FBI, and may include local criminal records checks through local law enforcement agencies.⁵⁴

To administer these requirements, the Agency for Workforce Innovation made two interpretations:

- For a prekindergarten instructor to undergo screening before employment, the private provider or public school must receive the instructor's screening results (including the clearance letter from DCF or local licensing agency based on the FBI screening results) before the instructor begins VPK instruction for children; and
- The 5-year rescreening for a prekindergarten instructor includes all of the required elements of the initial Level 2 screening, including a federal criminal records check through the FBI.

As a result of the screening requirements for the VPK program under these two interpretations, child care providers confront inconsistencies between the state's licensing requirements and the VPK program.

First, under the state's licensing laws, child care personnel may begin to work in a licensed child care facility while their background screenings are processed. However, the child care facility must receive the screening clearances before allowing the child care personnel to work as prekindergarten instructors for the VPK program.

Second, the state's licensing laws require child care personnel to be rescreened every 5 years through local law enforcement and FDLE. Rescreening through FDLE involves a "name search" in which the applicant's name, date of birth, and other information are used to query statewide criminal records. For the VPK program, the child care personnel working as prekindergarten instructors are required to be rescreened every 5 years through local, state, and federal checks. Since FDLE generally does not keep fingerprint cards for more than a few months, and because federal background checks require FDLE to submit fingerprints to the FBI, prekindergarten instructors must be refingerprinted to be rescreened.

A person who is found guilty of, regardless of adjudication, or enters a plea of nolo contendere or guilty to, a disqualifying offense listed in section 435.04(2), Florida Statutes, is disqualified from employment as a prekindergarten instructor in the VPK program.⁵⁵ Further, a prekindergarten instructor committing a disqualifying offense must be terminated from employment as a prekindergarten instructor.⁵⁶ However, like child care personnel, a prekindergarten instructor may seek an exemption from disqualification through an appeals process.⁵⁷

Background Screening of Public School Personnel:

⁵¹ See sections 435.06(2) and 402.3055(2)(g), Florida Statutes.

⁵² See section 435.07, Florida Statutes.

⁵³ Sections 1002.55(3)(d), 1002.61(5), and 1002.63(6), Florida Statutes.

⁵⁴ Section 435.04(1), Florida Statutes.

⁵⁵ Sections 435.04(2), 1002.55(3)(d), 1002.61(5), and 1002.63(6), Florida Statutes.

⁵⁶ Section 435.04(2) and 435.06, Florida Statutes.

⁵⁷ Section 435.07, Florida Statutes.

Public school employees, both instructional⁵⁸ and noninstructional,⁵⁹ must be of good moral character and undergo background screening.⁶⁰ Screening for school employees require fingerprinting, statewide criminal records checks through FDLE, and federal checks through the FBI.⁶¹ School employees must also undergo rescreening every 5 years for state and federal checks,⁶² however, unlike child care personnel, current law requires FDLE to retain the fingerprints of school personnel in the statewide automated fingerprint identification system (AFIS).⁶³ In addition, current law requires FDLE to search all arrest fingerprint cards against the fingerprints in AFIS.⁶⁴

Unlike child care personnel and prekindergarten instructors, school employees are not disqualified from employment for the offenses listed in section 435.04(2), Florida Statutes, but instead a school district is prohibited from employing a person that the district determines to have been convicted of a crime involving “moral turpitude.”

School employees typically submit fingerprints for background screening through the school district, and the school district serves as the governmental agency responsible for receiving results of federal criminal records checks from the FBI. To document the compliance of school employees with VPK program requirements, most school districts issue clearance letters to the early learning coalition attesting that the districts’ prekindergarten instructors are screened.

To be certified to teach, the screening results for an instructional employee must be received from FDLE and the FBI.⁶⁵ Except for teacher certification, school employees are required to be screened “upon employment or engagement to provide services.”⁶⁶

Summary of Background-Screening Requirements:

Child Care Regulations	VPK Program Requirements	Public School Personnel
Child care personnel must annually sign an affidavit of good moral character	Prekindergarten instructors must be of good moral character	School employees must be of good moral character
Initial screening includes employment history checks, local criminal records checks, statewide checks through FDLE, and federal checks through FBI	Initial screening includes local criminal history checks, statewide checks through FDLE, and federal checks through FBI (does not include employment history checks)	Initial screening includes statewide criminal history checks through FDLE and federal checks through FBI (does not include employment history checks or local criminal records checks)
Fingerprint card must be submitted to FDLE by 10th day after employment	Fingerprint cards must be submitted to FDLE, processed by FDLE, subsequently submitted to the FBI, processed by the FBI, received by DCF, and clearance letter received from DCF before employment of the prekindergarten instructor	Screening results from FDLE and FBI must be received for teacher certification
Local criminal history check due in employee’s personnel file by 10th day after employment		School employees must be screened upon employment or engagement to provide services

⁵⁸ Section 1012.56(9), Florida Statutes.

⁵⁹ Section 1012.465, Florida Statutes.

⁶⁰ Section 1012.32, Florida Statutes.

⁶¹ Flush-left provisions of section 1012.32(2), Florida Statutes.

⁶² Sections 1012.456(2) and 1012.56(9)(b), Florida Statutes.

⁶³ Section 1012.32(3)(a), Florida Statutes.

⁶⁴ Section 1012.32(3)(b), Florida Statutes.

⁶⁵ Section 1012.56(9)(b), Florida Statutes.

⁶⁶ Section 1012.32(1) and (2), Florida Statutes.

Child Care Regulations	VPK Program Requirements	Public School Personnel
Rescreening required every 5 years for local and FDLE checks (FBI check not required for rescreening)	Rescreening required every 5 years for local, FDLE, and FBI checks	Rescreening required every 5 years for FDLE and FBI checks (local checks not required)
Rescreening is a name search which does not require fingerprinting	Fingerprinting required for rescreening because FDLE does not retain fingerprints, which are necessary for FBI check	FDLE required to retain fingerprints of school personnel and search all arrest fingerprint cards against fingerprints on file
Rescreening of local, FDLE, and FBI checks required if employee has a break in service from the child care industry which exceeds 90 days	Not specified	Not specified
Child care personnel must be denied employment or terminated if screening results show certain criminal offenses listed in law, unless an exemption is granted	Prekindergarten instructors must be denied employment or terminated if screening results show certain criminal offenses listed in law, unless an exemption is granted	School districts are prohibited from hiring a person convicted of a crime involving moral turpitude, subject to appeal of the employment decision

Proposed Changes:

The proposed council bill (PCB) establishes background-screening requirements for child care personnel under the state's child care licensing requirements. The PCB also requires prekindergarten instructors in the VPK program to comply with the screening requirements that the PCB establishes for child care personnel, thereby establishing uniform requirements for both child care personnel and prekindergarten instructors:

- Initial screening is conducted upon employment;
- Initial screening includes fingerprinting, affidavit of good moral character, employment history checks of employers from previous 2 years, and criminal history checks by local law enforcement, FDLE, and the FBI;
- Rescreening every 5 years includes affidavit of good moral character, criminal history checks by local law enforcement and FDLE (no refingerprinting or FBI checks);
- A break in employment which exceeds 90 days requires initial screening;
- Rescreening every 5 years of school employees by school districts (criminal history checks by FDLE and FBI) satisfy child care and VPK screening requirements; and
- School employees screened through a school district are not refingerprinted if fingerprints are kept on file by FDLE and continuously screened against arrest records as required by current law.

In effect, the PCB changes current laws, rules, and practices as follows:

- Screening requests for prekindergarten instructors in the VPK program may be submitted upon employment instead of before employment, thereby allowing the instructors to begin teaching while the background screening is processed;
- Employment history checks of employers from the previous 2 years are required for prekindergarten instructors, which is not currently required for the VPK program but is a requirement for child care personnel;
- Invalidates a current requirement in DCF's rules which mandates that screening for child care personnel include employment history checks for at least three employers, which currently requires the checks to extend beyond 2 years of employment history;

- Requires rescreening every 5 years to include local criminal history checks through local law enforcement and state checks through FDLE, but eliminates a requirement that rescreening include refingerprinting and federal checks through the FBI for prekindergarten instructors in the VPK program; and
- Exempts school employees who are screened and rescreened through a school district from child care and VPK screening requirements, which generally conforms to current practice.

Other VPK Reforms:

Monthly attendance forms.—Current law requires parents of children enrolled in the VPK program to sign a monthly form certifying the parent’s choice of the private provider or public school and verifying the child’s attendance for the previous month, which current law requires the provider or school to keep on file for 2 years.⁶⁷ A similar form is required upon a child’s initial enrollment in the program.⁶⁸ Early learning coalitions currently use other methods to verify attendance for audit purposes, including auditing of daily sign-in/sign-out logs. The PCB deletes the requirements for the forms.

Enrollment procedures.—Current law requires AWI to adopt procedures for enrolling children in the VPK program.⁶⁹ The agency’s rules establishing the enrollment procedures currently require a child’s parent to participate in a face-to-face parent consultation conducted by the early learning coalition.⁷⁰ In response to requests that private providers and public schools be able to receive child applications from parents on behalf of the coalitions, AWI has proposed a 2-year child registration pilot project in Baker, Bradford, Clay, Collier, Gadsden, Glades, Hendry, Jefferson, Lee, Leon, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Osceola, Wakulla, Walton, St. Lucie, and Taylor counties.⁷¹ The PCB requires AWI and the early learning coalitions to use enrollment procedures that maximize parent convenience and administrative efficiency for private providers and public schools, while minimizing the potential for fraud.

Language of VPK instruction.—Current law does not specify that the VPK program must be taught in English, nor does current law prohibit a private provider or public school from teaching the program in a language other than English. In addition, current law does not provide for additional funding of a private provider or public school serving limited English proficient (LEP) students. The PCB encourages private providers and public schools to use curricula for the VPK program which include instruction in both English and the language spoken by families in the program.

Advertising and outreach.—Current law does not require AWI or the early learning coalitions to advertise the VPK program or conduct outreach activities for the program. However, both AWI and the coalitions have expended some funds for advertising and outreach. The PCB requires that a proportional share of advertising and outreach efforts for parents must concentrate on families who speak a language other than English and concentrate on communities where additional assistance is needed, as determined by the State Board of Education, based on child scores on the statewide kindergarten screening.

Prohibited VPK charges.—As previously discussed, the State Constitution requires the VPK program to be “free.”⁷² To implement this constitutional requirement, current law prohibits a private provider or public school from requiring payment of a fee or charge for the VPK program.⁷³ Current law also prohibits a private provider or public school from requiring a child to pay for “supplemental services” as a condition of the provider or school enrolling the child in the VPK program. Since many VPK programs are provided at 3 instructional hours per day, many parents choose to contract and pay for a full day of services beyond the 3 instructional hours. In effect, current law prohibits the private provider or public

⁶⁷ Section 1002.71(6)(b), Florida Statutes.

⁶⁸ Section 1002.53(4)(b), Florida Statutes.

⁶⁹ Section 1002.75(2)(a), Florida Statutes.

⁷⁰ Rule 60BB-8.202(1)(b)2., Florida Administrative Code.

⁷¹ See proposed rule 60BB-8.2015, Florida Administrative Code.

⁷² Section 1(b), Article IX of the State Constitution.

⁷³ Section 1002.71(8)(a), Florida Statutes.

school from denying a child enrollment unless the parent chooses to contract and pay for a full day of services. The PCB clarifies that private providers and public schools may not require parents to pay for “full-day,” “extended-day,” or other additional services as a condition of the child’s enrollment in the VPK program. The PCB also specifies that a private provider or public school may not require a parent to pay for the additional services as a condition of a child’s continued enrollment in the program.

VPK transportation system.—Current law does not require private providers or public schools to transport children to and from the VPK program. Further, current law specifies that a parent is responsible for the transportation of his or her child.⁷⁴ Although current law allows a private provider or public school to use VPK funds for transportation,⁷⁵ additional funding has not been appropriated for VPK transportation. The PCB encourages early learning coalitions and school districts to coordinate transportation systems for the VPK program which allow private providers and public schools to voluntarily provide VPK transportation using funds provided by the providers and schools.

Rule Objections by the Joint Administrative Procedures Committee:

On March 12, 2007, the Joint Administrative Procedures Committee (JAPC) reviewed objections to rules of the Department of Education (DOE) and the Department of Children and Family Services (DCF) concerning early learning and child care. The proposed council bill (PCB) addresses the objections as follows:

- Under current law, a private provider in the VPK program is required to have a prekindergarten director who has a prekindergarten director credential approved by DOE which meets or exceeds the requirements for the child care facility director credential approved by DCF.⁷⁶ To meet this requirement, DOE has established a VPK director endorsement and requires prekindergarten directors to obtain DCF’s child care facility director credential and earn the VPK director endorsement. Instead of establishing a system for issuing the VPK director endorsement, DOE and DCF administratively agreed that DCF would issue the VPK director endorsement using its existing infrastructure for issuing child care facility director credentials. JAPC raised objections to one DOE rule, which specified that DCF issues the VPK director endorsement.⁷⁷ The PCB authorizes DOE to allow DCF to issue the VPK director endorsement.
- Under current law, DCF has authority to exempt child care personnel in a child care facility from parts of the child care introductory course, if the personnel pass a competency examination or have certain educational credentials (e.g., postsecondary degree in early childhood education).⁷⁸ JAPC raised objections to proposed revisions of three rules⁷⁹ that, among other things, allow DCF to similarly exempt operators of family day care homes and large family child care homes from part of the introductory course. The PCB authorizes DCF to exempt operators of family day care homes and large family child care homes from the same parts of the introductory course, if the operators meet the same exemption criteria that apply to child care personnel.

Effective Date:

The PCB provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Creates section 14.204, Florida Statutes, creating a Chancellor of Early Learning within the Executive Office of the Governor.

⁷⁴ Section 1002.71(9), Florida Statutes.

⁷⁵ *Id.*

⁷⁶ Sections 1002.55(3)(f) and 1002.57, Florida Statutes.

⁷⁷ Rule 6A-6.040, Florida Administrative Code.

⁷⁸ See flush-left provisions of section 402.305(2)(d)1., Florida Statutes.

⁷⁹ Rules 65C-20.009(3)(a)1.a. and b., 65C-20.013(5)(b)1.c. II, III, and IV, and 65C-22.003(7)(d)3.,4.,5., Florida Administrative Code.

Section 2.-5., 7.-8., 11. Amend sections 402.302, 402.3025, 402.305, 402.3054, 402.308, 402.309, and 402.316, Florida Statutes, providing conforming changes to the background-screening requirements for child care personnel revised in section 6 of the PCB.

Section 6. Amends section 402.3057, Florida Statutes, establishing background-screening requirements for child care personnel and prekindergarten instructors.

Section 9.-10. Amends sections 402.313 and 402.3131, Florida Statutes, allowing DCF to exempt operators of family child care homes and large family child care homes from certain training requirements under specified conditions and providing conforming changes to revisions in section 6 of the PCB.

Section 12. Amends section 1002.53, Florida Statutes, revising enrollment procedures for the VPK program and establishing requirement for advertising and outreach of the VPK program.

Section 13., 15.-16. Amends sections 1002.55, 1002.61, and 1002.63, Florida Statutes, requiring background screening of prekindergarten instructors to conform to requirements for background screening of child care personnel, as revised in section 6 of the PCB.

Section 14. Amends section 1002.57, Florida Statutes, allowing DOE to authorize DCF to issue prekindergarten director credentials.

Section 17. Amends section 1002.67, Florida Statutes, encouraging private providers and public schools to provide for VPK instruction in English and other languages.

Section 18. Amends section 1002.71, Florida Statutes, deleting requirements for a monthly attendance form signed by parents, clarifying provisions prohibiting fees or charges for the VPK program, and encouraging the creation of VPK transportation systems.

Section 19. Amends section 1002.77, Florida Statutes, revises duties of the Florida Early Learning Advisory Council to reflect the creation of a Chancellor of Early Learning in section 1 of the PCB.

Section 20. Creates an unnumbered section requiring the establishment of the Early Learning Information System (ELIS).

Section 21. Creates an unnumbered section directing the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of VPK administrative expenditures for nondirect services.

Section 22. Provides an appropriation.

Section 23. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The PCB requires the Agency for Workforce Innovation to establish an Early Learning Information System (ELIS). A review of AWI's 2006-2007 legislative budget request by the Technology Review Workgroup (TRW) specified that AWI estimated the total nonrecurring project cost for ELIS at

approximately \$14.38 million. However, TRW observed that the estimate cannot be acknowledged with confidence due to lack of a clear project scope and incomplete functional requirements. TRW specified that the actual project cost could vary between 50 to 100 percent of AWI's estimate. In addition, TRW reported that AWI estimated recurring costs of \$2.4 million annually to maintain ELIS and that AWI specified that the agency anticipates incurring approximately the same recurring costs for ELIS that it incurs for maintaining the EFS system. However, TRW related that the project is not yet at a stage in which maintenance costs and staffing support could be accurately estimated.

The PCB does not provide an appropriation for the ELIS project.

The PCB also creates a Chancellor of Early Learning within the Executive Office of the Governor. The PCB provides an appropriation and authorizes positions for the chancellor's office, but does not specify the amount of the appropriation or the number of positions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB will reduce the amount of funds that private providers in the VPK program (or their prekindergarten instructors) expend on processing fees for rescreening by federal criminal records through the FBI.

The PCB reduces the administrative costs incurred by private providers and public schools in the VPK program by eliminating a requirement that parents sign a monthly form certifying their selection of private provider or public school and verifying the children's attendance for the previous month, which current law requires the provider or school to keep on file for 2 years.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCB does not create new rulemaking authority, although the PCB will require the Agency for Workforce Innovation to amend its rules governing the VPK program and will require the Department of Children and Family Services to amend its rules governing child care licensing.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable for proposed council bill.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES