



**House
Legislative
Analysis
Section**

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**PUBLIC SCHOOL CHILD CARE
PROGRAM REGULATIONS**

**House Bill 5583 as enrolled
Public Act 695 of 2002
Sponsor: Rep. Joanne Voorhees**

**House Bill 5584 as enrolled
Public Act 696 of 2002
Sponsor: Rep. Gilda Jacobs**

**Second Analysis (1-22-03)
House Committee: Education
Senate Committee: Families, Mental
Health and Human Services**

THE APPARENT PROBLEM:

Child care centers and programs that are operated by public school districts are regulated under Public Act 116 of 1973, the Child Care Licensing Act. In fact, over 1,500 public school buildings are licensed to provide a "child care center," and enforcement of the law is provided by the Department of Consumer and Industry Services (DCIS). Recently, DCIS announced changes in the way its licensing agents will enforce the child care center regulations that a program must meet in order to be certified.

Since 1980, the DCIS has granted variances from some regulations, in order to accommodate programs operated by school districts to provide before- and after-school care. Often a school district sponsors a multi-site program in the district's elementary schools for a few hours before and after the regular school day, and generally all of the sites are supervised by one teacher who is hired as a program coordinator, and who travels between the buildings. This method of program coordination requires a variance, because under the DCIS rules each site that offers child care for less than six continuous hours each day is required to have a program director on site during all its hours of operation. Further and under the rules, that program director must have formal training in child development. See *BACKGROUND INFORMATION* below. These rules are in place to ensure that children are always supervised by a capable adult who is responsible for their safety and well-being. However, variances from these rules have been customarily granted to school districts, so that they have more flexibility when they hire program directors and site supervisors

for their child care programs that operate before and after school.

On July 1, 2000, DCIS announced its intent to enforce its rules regarding program directors for school-based child care programs, rather than granting variances as had been its custom. In order to keep school-based programs operating, DCIS encouraged the programs' directors to seek provisional certification for their programs, and then to submit compliance plans so that full compliance with the rules could be achieved in the near future.

Some spokespeople from school districts have testified that the new requirements are onerous, citing their cost. They also say that passing along the additional cost to parents via a fee increase would deny access to those most in need of the programs' services. According to committee testimony, one school district has already closed one of its sites, and another has indicated that compliance with the requirements would force them to abandon all of their programs for before- and after-school care. To ensure that high quality before- and after-school programs continue, and to establish appropriate standards for regulation, legislation has been introduced.

THE CONTENT OF THE BILLS:

The bills would set standards for kindergarten to grade eight (K to 8) before- and after-school child care programs operated by school districts, public school academies (customarily called charter schools) and intermediate school districts, whether directly or

House Bills 5583 and 5584 (1-22-03)

under contractual arrangements. The bills also would exempt these programs from regulatory oversight by the Department of Consumer and Industry Services. The bills are tie-barred to each other so that neither would become law unless the other also were enacted.

House Bill 5583 would amend the Revised School Code (MCL 380.1285a) to clarify the regulation of a child care center operated by a public school district or charter school. Currently if a school district or intermediate school district operates a child care center, that center is subject to the requirements of Public Act 116 of 1973, the Child Care Licensing Act. House Bill 5583 would retain this provision, but make an exception for before- and after-school care programs operated by school districts, if they had received a waiver (described under House Bill 5584, below).

Further, the bill specifies that beginning July 1, 2003, if a school district, public school academy, or intermediate school district operated or contracted for the operation of a before- or after-school program for children in grades K to 8, and if the program was exempt from child care center approval as provided under Public Act 116 of 1973, then all of the following would apply to its operation:

(a) the program would be required to meet all of the following staffing requirements:

i) have at least two adult program staff members present at all times when children are present;

ii) have a child-to-adult program staff member ratio that met the following: a) for grades K to 3, was no greater than the lesser of either 20 children to 1 adult program staff member, or the average pupil-to-teacher ratio during school hours in that school district, public school academy, or intermediate school district in regular K to 3 classrooms; and for children in grades 4 to 8, was no greater than the lesser of either 25 children to one adult program staff member or the average pupil-to-teacher ratio during school hours in that school district, public school academy, or intermediate school district in regular grade 4 to 8 classrooms; and,

iii) within three months after he or she had begun to work in the program, each adult program staff member held a valid certification in cardiopulmonary resuscitation and basic first aid, issued by the American Red Cross, American Heart Association, or a comparable organization or institution approved by the department.

(b) the program would have to be located at school in facilities comparable to rooms used by pupils during the regular school day;

(c) the program would have to provide daily activities and relationships that offered each child in the program opportunities for physical development, social development including positive self-concept, and intellectual development;

(d) if food was served, the food service would be required to comply with the same nutrition requirements that apply to food service by the school district, public school academy, or intermediate school district during the regular school day;

(e) if the school district, public school academy, or intermediate school district used its employees to staff the program, then before assigning a staff member to work in the program the district would be required to comply with provisions of the Revised School Code that require criminal history checks, as if the individual were being hired as a teacher. If the district or charter school contracted for the operation or staffing of its program, then the contract would be required to contain assurance that the contracting person or entity complied with these requirements before assigning an individual to work, and to the same extent as if the district were employing a teacher. Under the bill, the Department of State Police would be required to provide information to a school district, charter school, intermediate school district, or contracting person requesting information, to the same extent and as if the request were being made by a school district or charter school;

(f) the board of the school district or intermediate school district, or the board of directors of a public school academy, in consultation with the director of the program and the principal of the school at which the program was operated, would be required to develop, adopt, and annually review a policy concerning the program that, at a minimum, addressed safety procedures for the program, including first aid, food safety, discipline, dispensing and storage of medication, and access to student emergency information and telephones;

(g) not later than September 1 of each school year, the board of the district or the board of directors of the academy would be required to adopt and submit to the secretary of the intermediate school board a resolution affirming that the program and its corresponding policies complied with all state requirements. This submission would be required to

include the safety procedures program policy described in (f), above; and,

(h) the board of the school district or intermediate school district, or board of directors of the public school academy would be required to make available to the public copies of the policy described in (f), above, and of any annual reviews or revisions.

Finally, not later than April 1, 2003, the Department of Education, in consultation with the Department of Consumer and Industry Services, would be required to develop and make available to the public model standards for before- and after-school program policy that addressed human relationships; the indoor environment; the outdoor environment; activities; safety, health, and nutrition; and administration. In developing the model standards, the department would be required to give substantial consideration to similar factors in the requirements placed on child care centers under Public Act 116 of 1973.

The bill specifies that a school district or intermediate school would not be required to follow the model standards. However, under the bill and beginning July 1, 2003, the board of a school district or intermediate school district, or board of directors of a public school academy, would be required to ensure that any written information published or distributed concerning a before- or after-school program it operated would include a statement in at least 10-point type, notifying the public whether the program followed or deviated from the model standards developed by the department.

House Bill 5584 would amend Public Act 116 of 1973, the Child Care Licensing Act (MCL 722.111), to expand the exceptions under the definition of “child care center” or “day care center” to include an exception for certain facilities or programs for school-age children that were operated at school by a public school, or by a person or entity with whom a public school contracted for services.

More specifically and currently under the law, “child care center” or “day care center” does not include the following: a) a Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are in attendance for not more than three hours per day for an indefinite period, or not more than eight hours per day for a period not to exceed four weeks during a 12-month period; or, b) a facility operated by a religious organization where children are cared for not more than three hours while people responsible for the children are attending religious

services. Under the bill, these exceptions would be retained, and in addition a third exception would be created, beginning July 1, 2003, for a facility or program for school-age children that was operated at school by a public school or by a person or entity with whom a public school contracted for services, in accordance with section 1285a(2) of the Revised School Code, if that facility or program has been granted an exemption.

Further, the bill specifies that a facility or program for school-age children operated at school that has been in operation and approved for a minimum of four years could apply to the Department of Consumer and Industry Services to be exempt from this act. The department would be required to respond to a request for an exemption within 45 days from the date a completed application was received. Under the bill, the department could exempt a facility or program that met all of the following criteria: a) the facility or program had been in operation and approved for a minimum of four years before the application date; b) during the four years before the application date, there had been no substantial violation of the act, rules promulgated under the act, or the terms of an approval under the act; and c) the school board or board of directors had adopted a resolution supporting the application for exemption.

In addition, the bill would alter the definition of “minor child” under this subparagraph, to exempt a resident in a child caring institution, children’s camp, foster family home, or foster family group home, if the minor child was 18 years of age or older and had been placed in the child caring institution, foster family home, or foster family group home pursuant to an adjudication under section 2(a) of Chapter XIIa of the Probate Code, or section 1 of Chapter IX of the Code of Criminal Procedure.

Finally, the bill would also update a reference to the state agency responsible for administering the (non-school-based child care) licensing program by deleting a reference to the Department of Social Services, and referring instead to the Department of Consumer and Industry Services.

BACKGROUND INFORMATION:

Program director qualifications and credentials. According to committee testimony, the DCIS will enforce a regulation in effect since June 4, 1980 (and amended on April 11, 2001 to include Montessori teachers) that an on-site child care center director have a particular set of credentials. Specifically, R 400.5103 Program Director, or Rule 103, says:

(1) A program director shall be present full time for programs operating less than six continuous hours. In programs operating for six or more continuous hours a program director shall be present not less than six hours per day when children are present.

(2) With respect to the qualifications for program director, a center shall ensure compliance with one of the following requirements:

a. A program director shall have completed not less than 60 semester hours of credit at an accredited college or university and shall have completed not less than 12 semester hours in child development, child psychology, or early childhood education.

b. A program director shall have been awarded the child development associate credential (CDA) awarded by the council for early childhood professional recognition or similar credential approved by the department and shall have completed not less than 12 semester hours in child development, child psychology, or early childhood education at an accredited college or university.

c. A program director shall have been awarded a Montessori credential by a Montessori teacher training institution recognized by the Montessori accreditation council for teacher education (MATCE).

Note: R 400.5302(2) provides that if a center exclusively serves children 6-17 years of age, then the program director may substitute credits in elementary education, physical education or recreation for any of the 12 semester hours required by R 400.5103(2).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 5583 would result in minimal costs for the Department of Education. (1-22-03)

ARGUMENTS:

For:

This legislation puts in place before- and after-school child care standards for school-based programs. Generally, the standards that are specified in the bills are comparable to those that apply during the school day. More specifically, House Bill 5583 provides for at least two adult program staff members when students are present; student-to-teacher staffing ratios

that are comparable to those elsewhere in the school for grades K-3, and grades 4-8; comparable rooms and facilities before, during and after the school day; employee criminal records checks identical to those conducted for teachers and administrators; and a safety and emergency program policy that includes, among other things, staff trained in CPR and first aid, as well as training to ensure the proper dispensing of medicine. It also would require the Department of Education to develop a model before- and after-school program policy that addressed human relationships; the indoor and outdoor environments; safety, health, and nutrition; and administration. If food service were provided, it would have to be comparable to that provided during the school day. Overall, these standards would serve as the safeguards that educators declare to be necessary for programs offered in school buildings during the extended school day. They would be available to the public, and if a program did not meet the state standards, the public would be informed about the ways it did not.

For:

Identical bills were introduced earlier in the 2001-2002 legislative session as House Bills 4617 and 4619. After passing the House unanimously, substitute versions of the bills--the so-called Hammerstrom Substitutes--were sent from the Senate Committee on Families, Mental Health and Human Services to the Senate floor, defeated, and then left pending on the calendar, awaiting a motion to reconsider. According to those who opposed the re-introduction of the bills in their original form in order to by-pass the Senate versions of the original legislation, the Senate substitutes were better bills, since they reinstated important protections that exist now for children with respect to facilities, program, and basic needs, by moving those protections from the Child Care Licensing Act to the Revised School Code. Further, the Senate substitutes required school districts to explain to parents the ways their before- and after- care programs compared with the state's model program. However, this second set of bills has now been amended to incorporate many of the provisions of the "Hammerstrom Substitutes," and consequently, the legislation provides more protection and a higher standard of care for youngsters than did these bills when they were re-introduced in the House.

Against:

Although these bills were amended to include important educational and safety standards, they do not yet have adequate standards to ensure the health

and safety of young children. As the bills were originally introduced, the Michigan Association for the Education of Young Children noted that they failed to meet the standards contained in 32 sections of the Child Care Licensing Act. Some of those standards have now been incorporated into the bill—for example, staff background checks (for staff other than teachers); and, opportunities for program participants’ developmental growth in four skill areas (intellectual, social, emotional, and physical/motor). However, other important standards have not been included—for example, ongoing staff training; parent participation; health of staff and volunteers; child placement contracts; sleeping equipment; duty to provide children’s health records; all transportation rules; all field trip rules; and, all environmental rules. Further and equally troubling to those who oppose the bills, there would be no state oversight of the before- and after-school child care programs, since the model policies that would be developed by the Department of Education are designed for voluntary use and compliance.

Against:

The League of Women Voters position on children and youth notes the need for *one* uniform and high-quality set of standards vigorously enforced by a state agency, to govern all child care programs without regard for their location and sponsoring agency.

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.