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BILL ANALYSIS

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House Bill 5110 (Substitute H-1 as reported without amendment)

Sponsor: Representative Jerry O. Kooiman

House Committee: Family and Children Services

Senate Committee: Families and Human Services

Date Completed: 10-17-05

### **RATIONALE**

The child care licensing Act provides for the licensing of child care organizations, including child care centers. There has been some confusion about whether before- and after-school programs are considered to be child care centers, and are required to be licensed under the Act. Conflicting policies have been imposed at different times. Prior to 2000, before- and after-school programs were allowed some variances in meeting the licensing requirements by the Department of Consumer and Industry Services (DCIS) (now the Department of Labor and Economic Growth). Starting in 2000, however, the DCIS announced that these programs were required to meet all of the licensing requirements under the Act. (Since then, the Department of Human Services has become responsible for licensing child care organizations.)

Because of budget constraints, some programs that previously had been allowed variances reportedly found it difficult to meet the new requirements. Some people were concerned that the financial strain of meeting the newly enforced licensing requirements would force some of the programs to close. To address the issue, the Legislature passed Public Acts 695 and 696 of 2002, allowing a program that is associated with a school and meets certain other requirements to apply for an exemption from the requirements under the licensing Act. (For a further description of the 2002 Acts, please see **BACKGROUND.**) Since programs granted such an exemption are no longer regulated or licensed under the Act, before- and after-school programs operated by schools are treated differently than child care centers operating

independently, and some programs are required to be licensed and others are not. Some believe that the child care licensing Act should contain uniform licensing requirements for child care centers.

### **CONTENT**

**The bill would amend the child care licensing Act to do the following:**

- **Amend the definition of "child care center" or "day care center" to include before- and after-school programs and exclude programs primarily focused on training in a specific subject, or primarily consisting of group athletic or social activities sponsored by an organized club or hobby group.**
- **Allow exemptions from required inspections and on-site visits for child care facilities if the programs or facilities have been in operation for at least two years and have not violated the Act or rules under it during the past two years.**
- **Delete exemptions from the Act for school-operated facilities or programs that have been in operation for at least four years and have not violated the Act or rules during the past four years.**
- **Provide that a facility or program exempt from inspections and on-site visits would not be subject to licensing reviews.**
- **Allow the Department of Human Services to rescind an exemption for a willful and substantial violation.**

## Child Care Centers

The Act defines “child care center” or “day care center” as a facility, other than a private residence, receiving one or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, subject to several exclusions. One of the exclusions applies to a facility or program for school-age children, operated at a school, by a public school or by a person under contract with the school, in accordance with Section 1285a(2) of the Revised School Code (which provides for before- and after-school programs) if that facility or program has been granted an exemption from inspections and on-site visits required by the Act. The bill would remove that provision.

Under the bill, a “child care center” or “day care center” would not include the following:

- A program that was primarily supervised, school-age-child-focused training in a specific subject, including dancing, drama, music, or religion. This exclusion would apply only to the time a child was involved in supervised, school-age-child focused training.
- A program that primarily consisted of group athletic or social activities for school-age children sponsored by or under the supervision of an organized club or hobby group, including youth clubs, scouting, and school-age recreational or supplementary educational programs. This exclusion would apply only to the time the school-age child was engaged in the group athletic or social activities and if the school-age child could come and go at will.

(The bill would define “school-age child” as a child who is eligible to be enrolled in a grade of kindergarten or above, but is less than 13 years of age.)

The Act defines “children’s camp”, in part, as a residential, day, troop, or travel camp conducted in a natural environment for more than four school-age children. The bill would refer to a residential, troop, or travel camp that provides care and supervision for more than four children, removing the references to a day camp and school-age children.

## Inspections & On-Site Visits

The Act requires the Department of Human Services (DHS), before issuing or renewing a license for a child care organization (which includes a child care center or day care center), to investigate the applicant’s activities and proposed standards of care and make an on-site visit to the organization.

The Act allows the DHS, upon request, to exempt from the Act a facility or program that meets all of the following criteria:

- The facility or program is for school-age children at a school, operated at a school by a public school or by a person or entity under contract with the school.
- The facility or program is currently operating and has been in operation for a minimum of four years before the application date.
- During the four years before the application date, the facility or program has not had a substantial violation of the Act, rules promulgated under it, or terms of an approval under the Act.
- The school board or board of directors adopts a resolution supporting the application for exemption.

The bill, instead, would allow the DHS to grant an exemption from the inspections and on-site visits required under the Act. To be eligible for the exemption, the program or facility would not have to be operated at a school by a public school or by someone under contract within a school. It would have to be in operation for a minimum of two years rather than four, and during the two years before the application date, the facility or program could not have had a substantial violation of the Act, rules promulgated under it, or the terms of a licensure or approval under the Act. A school board, board of directors, or governing body would have to adopt a resolution supporting the application for exemption from inspections and on-site visits.

The bill would require that a facility or program granted an exemption maintain status as a licensed or approved program under the Act, and continue to meet the requirements of the Act, the rules, or the terms of a license or approval under the Act. When a violation of the Act or a rule was

alleged, a facility or program granted an exemption would be subject to an investigation by the DHS.

A facility or program granted an exemption under the bill would not be subject to interim or annual licensing reviews. The facility or program would be required to submit documentation annually demonstrating compliance with the requirements of the Act, the rules promulgated under it, or the terms of a license or approval granted under the Act.

The DHS could rescind an exemption if a facility or program willfully and substantially violated the Act, the rules, or the terms of a license or approval granted under the Act.

MCL 722.111

## **BACKGROUND**

Prior to 2000, the DCIS, which was responsible for the licensing of child care centers, was in the practice of granting variances from the rules promulgated under the child care licensing Act to before- and after-school programs. For example, school districts often operated multisite programs, offering services at more than one elementary school within the school district, all overseen by one program coordinator. The rules state that the program director must be present full time for programs operating less than six continuous hours, but that requirement was waived for before- and after-school programs. Similarly, the rules state that program directors must have completed at least 60 semester hours at an accredited college or university, and completed at least 12 semester hours in child development, child psychology, or early childhood education. The DCIS granted before- and after-school programs variances from that requirement to allow some flexibility in hiring.

In July 2000, the DCIS announced that the practice of granting variances from the rules promulgated under the Act was unlawful, and the Department's licensing agents would no longer continue the practice. The DCIS would require before- and after-school programs to meet all of the licensing requirements under the Act. This decision raised some concern that low-income school districts would not be able to afford the additional cost of meeting all of the

requirements and would be forced to close their programs.

In response to those concerns, Public Acts 695 and 696 of 2002 amended the Revised School Code and the child care licensing Act, respectively, exempting before- and after-school child care programs operated by school districts or charter schools from regulation under the child care licensing Act if a program has been in operation for four years, and has not had a substantial violation of the rules or requirements under the Act during the previous four years. The revised language specifically excludes from the definition of "child care center" a facility or program for school age children that is operated by a public school or by a person or entity under contract with the school, if the program has been granted an exemption under the Act.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would eliminate confusion in the current law regarding the licensing requirements for before- and after-school programs, explicitly including the programs in the definition of "child care center" and thus requiring all child care centers to be licensed. Currently, a program operated by a school may apply for a total exemption from the licensing requirements after four years. After an exemption is granted, then there is no oversight of the program, and no way of monitoring its operations. The bill would require all programs to be licensed, setting a uniform standard for all child care centers, rather than having different standards for child care centers located in and operated by a school.

The bill also would make the licensing process less onerous to child care centers, allowing exemptions from the annual inspection and on-site visits if a child care center met certain conditions. A center would have some flexibility in how it met the licensing requirements, either through the annual review and on-site visits and inspection, or, if the program were granted an exemption, by submitting an annual report to the Department of Human Services. The bill would provide more local

control of these programs, allowing for oversight by a local governing body or a school board.

### **Supporting Argument**

The bill could benefit child care centers wishing to apply for Federal 21st Century Community Learning Center funds, competitive after-school program funding, and Federal funding for food programs. In the Michigan After-School Initiative 2003 report, lack of funding was identified as the largest barrier to centers' offering after-school programs in Michigan. In order to qualify for Federal funding, child care centers must be licensed by the State. This bill would ensure that all child care centers were licensed, allowing them to apply for such supplemental funding, if they otherwise qualify.

According to the report, "There is a growing body of evidence suggesting youth are most at risk during the after-school hours and that many are at risk of academic failure...During the hours of 3 p.m. - 6 p.m., the occurrence of juvenile crime triples." By improving the ability of some organizations to secure funding for after-school programs, the bill would expand their potential to help schoolchildren stay out of trouble and overcome barriers to learning.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bill would have not a fiscal impact on State or local government. Currently, before- and after-school programs that receive funding from the Department of Human Services must be licensed and renew their license every two years. The bill would not waive the licensure and renewal requirements for the programs.

Fiscal Analyst: Constance Cole

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.