



February 15, 2013

SENATE BILL No. 305

DIGEST OF SB 305 (Updated February 13, 2013 7:42 pm - DI 104)

Citations Affected: IC 12-7; IC 12-17.2.

Synopsis: Child care regulation. Specifies requirements that must be met by a child care provider as a condition of eligibility to receive a federal Child Care and Development Fund voucher payment. Sets forth a disciplinary process for suspension or revocation of eligibility. (The introduced version of this bill was prepared by the committee on child care.)

Effective: July 1, 2013.

Holdman, Taylor

January 8, 2013, read first time and referred to Committee on Health and Provider Services.
February 14, 2013, amended, reported favorably — Do Pass.

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SB 305—LS 6113/DI 97+



February 15, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 305

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-7-2-149.1, AS AMENDED BY P.L.143-2011,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 149.1. "Provider" means the following:
4 (1) For purposes of IC 12-10-7, the meaning set forth in
5 IC 12-10-7-3.
6 (2) For purposes of the following statutes, an individual, a
7 partnership, a corporation, or a governmental entity that is
8 enrolled in the Medicaid program under rules adopted under
9 IC 4-22-2 by the office of Medicaid policy and planning:
10 (A) IC 12-14-1 through IC 12-14-9.5.
11 (B) IC 12-15, except IC 12-15-32, IC 12-15-33, and
12 IC 12-15-34.
13 (C) IC 12-17.6.
14 (3) Except as provided in ~~subdivision subdivisions~~ (4) and (6),
15 for purposes of IC 12-17.2, a person who operates a child care
16 center or child care home under IC 12-17.2.
17 (4) For purposes of IC 12-17.2-3.5, a person that:

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- 1 (A) provides child care; and
 2 (B) is directly paid for the provision of the child care under the
 3 federal Child Care and Development Fund voucher program
 4 administered under 45 CFR 98 and 45 CFR 99.
 5 The term does not include an individual who provides services to
 6 a person described in clauses (A) and (B), regardless of whether
 7 the individual receives compensation.
 8 (5) For purposes of IC 12-21-1 through IC 12-29-2, an
 9 organization:
 10 (A) that:
 11 (i) provides mental health services, as defined under 42
 12 U.S.C. 300x-2(c);
 13 (ii) provides addiction services; or
 14 (iii) provides children's mental health services;
 15 (B) that has entered into a provider agreement with the
 16 division of mental health and addiction under IC 12-21-2-7 to
 17 provide services in the least restrictive, most appropriate
 18 setting; and
 19 (C) that is operated by one (1) of the following:
 20 (i) A city, town, county, or other political subdivision of the
 21 state.
 22 (ii) An agency of the state or of the United States.
 23 (iii) A political subdivision of another state.
 24 (iv) A hospital owned or operated by a unit of government
 25 or a building authority that is organized for the purpose of
 26 constructing facilities to be leased to units of government.
 27 (v) A corporation incorporated under IC 23-7-1.1 (before its
 28 repeal August 1, 1991) or IC 23-17.
 29 (vi) An organization that is exempt from federal income
 30 taxation under Section 501(c)(3) of the Internal Revenue
 31 Code.
 32 (vii) A university or college.
 33 **(6) For purposes of IC 12-17.2-2-10, the following:**
 34 **(A) A person described in subdivision (4).**
 35 **(B) A child care center licensed under IC 12-17.2-4.**
 36 **(C) A child care home licensed under IC 12-17.2-5.**
 37 SECTION 2. IC 12-17.2-2-10, AS AMENDED BY P.L.145-2006,
 38 SECTION 94, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2013]: Sec. 10. (a) The division may grant a variance or
 40 waiver of a rule governing ~~child care centers, or child care homes: a~~
 41 **provider**. A variance or waiver granted under this section must
 42 promote statewide practices and must protect the rights of persons

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1 affected by this article.

2 (b) The division may grant a variance to a rule if ~~an applicant for a~~
3 ~~license or a licensee under this chapter~~ **provider** does the following:

4 (1) Submits to the division a written request for the variance in
5 the form and manner specified by the division.

6 (2) Documents that compliance with an alternative method of
7 compliance approved by the division will not be adverse to the
8 health, safety, or welfare of a child receiving services from the
9 applicant for the variance, as determined by the division.

10 (c) A variance granted under subsection (b) must be conditioned
11 upon compliance with the alternative method approved by the division.
12 Noncompliance constitutes the violation of a rule of the division and
13 may be the basis for revoking the variance.

14 (d) The division may grant a waiver of a rule if ~~an applicant for a~~
15 ~~license or a licensee under this chapter~~ **provider** does the following:

16 (1) Submits to the division a written request for the waiver in the
17 form and manner specified by the division.

18 (2) Documents that compliance with the rule specified in the
19 application for the waiver will create an undue hardship on the
20 applicant for the waiver, as determined by the division.

21 (3) Documents that the applicant for the waiver will be in
22 substantial compliance with the rules adopted by the division after
23 the waiver is granted, as determined by the division.

24 (4) Documents that noncompliance with the rule specified in the
25 application for a waiver will not be adverse to the health, safety,
26 or welfare of a child receiving services from the applicant for the
27 waiver, as determined by the division.

28 (e) Except for a variance or waiver of a rule governing child care
29 homes, a variance or waiver of a rule under this section that conflicts
30 with a building rule or fire safety rule adopted by the fire prevention
31 and building safety commission is not effective until the variance or
32 waiver is approved by the fire prevention and building safety
33 commission.

34 SECTION 3. IC 12-17.2-3.5-1, AS AMENDED BY P.L.124-2007,
35 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2013]: Sec. 1. (a) This chapter applies to all child care
37 providers regardless of whether a provider is required to be licensed or
38 registered under this article. However, **except as provided in section**
39 **4(b) of this chapter**, a child care provider that is licensed under
40 IC 12-17.2-4 or IC 12-17.2-5 is considered to be in compliance with
41 this chapter. ~~unless the child care provider is found to be in violation~~
42 ~~of this chapter.~~

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1 (b) If a school age child care program that is:

2 (1) described in IC 12-17.2-2-8(10); and

3 (2) located in a school building;

4 is determined to be in compliance with a requirement of this chapter by
5 another state regulatory authority, the school age child care program is
6 considered to be in compliance with the requirement under this
7 chapter.

8 SECTION 4. IC 12-17.2-3.5-4 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) A provider who:

10 (1) has been convicted of a:

11 (A) felony;

12 (B) misdemeanor related to:

13 (i) the health or safety of a child; or

14 (ii) **welfare fraud;**

15 (C) misdemeanor for operating a child care center without a
16 license under IC 12-17.2-4-35; or

17 (D) misdemeanor for operating a child care home without a
18 license under IC 12-17.2-5-35;

19 (2) ~~employs or otherwise~~ allows an individual who has been
20 convicted of a crime specified under subdivision (1) to:

21 (A) serve as a ~~caregiver to a child in an employee or~~
22 **volunteer in the facility where the provider's care; provider**
23 **operates a child care program; or**

24 (B) reside with the provider, if the provider operates a child
25 care program in the provider's home; or

26 (3) **has had a revocation of eligibility under this chapter**
27 **during the immediately preceding two (2) years; or**

28 ~~(3) (4) fails to meet the requirements set forth in sections 5~~
29 ~~through 12.1~~ of this chapter;

30 is ineligible to receive a voucher payment.

31 (b) A provider whose:

32 (1) license under IC 12-17.2-4 or IC 12-17.2-5; or

33 (2) compliance with this chapter;

34 **is subject to an enforcement action is ineligible to receive a voucher**
35 **payment, regardless of whether the provider meets the**
36 **requirements of this chapter, until the outcome of any proceeding**
37 **under IC 4-21.5 reflects a final determination that the provider's**
38 **license or eligibility is in good standing.**

39 SECTION 5. IC 12-17.2-3.5-4.1 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.1. (a) This section
41 applies to the following:

42 (1) A provider, if the provider is an individual.

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- 1 (2) If a provider operates a child care program in the provider's
- 2 home, an individual who resides with the provider and who is at
- 3 least eighteen (18) years of age.
- 4 (3) An individual who:
- 5 (A) is employed; or
- 6 (B) volunteers;
- 7 ~~as a caregiver~~ at the facility where a provider operates a child care
- 8 program.
- 9 (b) If information used by the division under ~~IC 31-33-17-6(7)~~
- 10 **IC 31-33-26-16(a)(10) or obtained by the division under section 27**
- 11 **of this chapter** indicates that an individual described in subsection (a)
- 12 has been named as ~~an alleged~~ a perpetrator, the following are ineligible
- 13 to receive a voucher payment:
- 14 (1) The individual.
- 15 (2) A provider in whose home the individual resides if the
- 16 provider operates a child care program in the provider's home.
- 17 (3) A provider that:
- 18 (A) employs the individual; or
- 19 (B) allows the individual to volunteer;
- 20 ~~as a caregiver~~ at the facility where the provider operates a child
- 21 care program.
- 22 SECTION 6. IC 12-17.2-3.5-5 IS AMENDED TO READ AS
- 23 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) A provider shall
- 24 have
- 25 ~~(1) working smoke detectors that meet the standards adopted by~~
- 26 ~~rule for smoke detectors in licensed child care homes; and~~
- 27 ~~(2) hot and cold running water~~
- 28 in the area of the facility where the provider operates a child care
- 29 program.
- 30 (b) **A provider shall maintain compliance with food, health,**
- 31 **safety, and sanitation standards as determined by the division**
- 32 **under rules adopted by the division under section 15 of this chapter**
- 33 **or in accordance with a variance or waiver approved by the**
- 34 **division under IC 12-17.2-2-10.**
- 35 (c) **The food, health, safety, and sanitation standards adopted**
- 36 **under subsection (b) must include all of the following**
- 37 **requirements:**
- 38 (1) **Bathroom and hand washing.**
- 39 (2) **Safe conditions in and on the grounds.**
- 40 (3) **Maximum capacity limits for the number of children**
- 41 **receiving care.**
- 42 (4) **Daily activities.**

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(5) Safety of motor vehicles used to transport children.

SECTION 7. IC 12-17.2-3.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. **(a)** A provider shall have written plans for notifying parents regarding the following:

- (1) Illness, serious injury, or death of the provider.
- (2) Care in an emergency.
- (3) Emergency evacuation.

The plan required under subdivision (3) must be posted in a conspicuous location in the facility where the provider operates a child care program.

(b) A provider shall:

- (1) maintain a written child discipline policy;**
- (2) ensure that all employees and volunteers follow the child discipline policy;**
- (3) provide the parent or legal guardian of each child cared for by the provider a written copy of the child discipline policy; and**
- (4) maintain in each child's file a copy of the child discipline policy that has been signed by the parent or legal guardian described in subdivision (3).**

(c) A provider shall allow unscheduled visits by a parent or legal guardian to a facility where the provider operates a child care program during the hours the child care program is in operation.

SECTION 8. IC 12-17.2-3.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) At least one (1) adult individual who maintains annual certification in a course of cardiopulmonary resuscitation applicable to all age groups of children cared for by a provider shall be present at all times when a child is in the care of the provider.

(b) The following apply to an individual who

- (1) is employed or**
- (2) volunteers**

as a caregiver at a facility where a provider operates a child care program:

- (1) The individual shall maintain current certification in first aid applicable to all age groups of children cared for by the provider.**
- (2) If the individual is:**
 - (A) at least eighteen (18) years of age, the individual may act as a caregiver without supervision of another caregiver; or**
 - (B) less than eighteen (18) years of age, the individual may act as a caregiver only if the individual:**

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- (i) is at least fourteen (14) years of age; and
- (ii) is, at all times when child care is provided, directly supervised by a caregiver who is at least eighteen (18) years of age.

(3) Not more than three (3) months after the individual begins employment or volunteer duties, the individual must receive training approved by the division concerning child abuse detection and prevention.

(4) Not more than three (3) months after beginning employment or volunteer duties caring for children who do not yet attend first grade, the individual must receive training approved by the division concerning the department of education's early learning guidelines.

(c) A provider shall:

- (1) maintain at the facility where the provider operates a child care program documentation of all training required by this section; and**
- (2) make the documentation available to the division upon request.**

SECTION 9. IC 12-17.2-3.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. **(a)** A provider shall have at least one (1) working telephone in each facility where the provider operates a child care program.

(b) The telephone required by subsection (a) must be compatible with an automated time and attendance tracking system approved by the division.

SECTION 10. IC 12-17.2-3.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. **(a)** A provider shall provide for a safe environment by ensuring that the following items are placed in areas that are inaccessible to the children in the provider's care:

- (1) Firearms and ammunition.**
- (2) Poisons, chemicals, bleach, and cleaning materials.**
- (3) Medications.**
- (4) Other items determined by the division in rules adopted under section 15 of this chapter to pose a danger to children.**

(b) A provider shall do the following with respect to transporting children away from the facility where the provider operates a child care program:

- (1) Obtain written permission from the child's parent or legal guardian to transport the child.**
- (2) Ensure that the child is transported only by an employee**

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1 **or a volunteer who:**

2 **(A) is at least eighteen (18) years of age;**

3 **(B) holds a valid driver's license; and**

4 **(C) transports the child in a properly licensed and insured**
 5 **motor vehicle.**

6 SECTION 11. IC 12-17.2-3.5-14 IS REPEALED [EFFECTIVE
 7 JULY 1, 2013]. ~~Sec. 14. (a) Notice of a determination made under this~~
 8 ~~chapter must be provided under IC 4-21.5-3-6.~~

9 ~~(b) A person affected by a determination made under this chapter~~
 10 ~~may seek administrative review under IC 4-21.5-3-7.~~

11 SECTION 12. IC 12-17.2-3.5-18 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2013]: **Sec. 18. The division may suspend a**
 14 **provider's eligibility to receive a voucher payment under this**
 15 **chapter for any of the following reasons:**

16 **(1) The provider fails to comply with this chapter.**

17 **(2) The provider is determined by the division to have made**
 18 **false statements in the provider's:**

19 **(A) application for eligibility to receive a voucher**
 20 **payment; or**

21 **(B) records required by the division;**

22 **under this chapter.**

23 **(3) The provider fails to correct a problem identified by the**
 24 **division within the period required by the division.**

25 **(4) Credible allegations of fraud have been made against the**
 26 **provider, as determined by the division.**

27 **(5) Criminal charges of welfare fraud have been filed against**
 28 **the provider.**

29 SECTION 13. IC 12-17.2-3.5-19 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2013]: **Sec. 19. The division may revoke a**
 32 **provider's eligibility to receive a voucher payment under this**
 33 **chapter for any of the following reasons:**

34 **(1) Any of the reasons for suspension described in section**
 35 **18(1) through 18(3) of this chapter.**

36 **(2) Allegations of welfare fraud committed by the provider**
 37 **have been substantiated by the division.**

38 SECTION 14. IC 12-17.2-3.5-20 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2013]: **Sec. 20. The division shall give a**
 41 **provider thirty (30) calendar days written notice by certified mail**
 42 **of an enforcement action against the provider. The provider shall**

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1 also be provided an opportunity for an informal meeting with the
 2 division. The provider must request the informal meeting within
 3 ten (10) working days after receipt of the certified notice.

4 SECTION 15. IC 12-17.2-3.5-21 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2013]: **Sec. 21. (a) An administrative hearing**
 7 **concerning the decision of the division to impose a sanction under**
 8 **this chapter shall be provided upon a written request made by the**
 9 **provider. The request must be made within thirty (30) calendar**
 10 **days after the provider receives a notice under section 20 of this**
 11 **chapter. The written request must be made separately from an**
 12 **informal meeting request made under section 20 of this chapter.**

13 **(b) The administrative hearing shall be held within sixty (60)**
 14 **calendar days after the division receives the written request.**

15 SECTION 16. IC 12-17.2-3.5-22 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2013]: **Sec. 22. The division shall issue a**
 18 **decision within sixty (60) calendar days after the conclusion of a**
 19 **hearing held under section 21 of this chapter.**

20 SECTION 17. IC 12-17.2-3.5-23 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2013]: **Sec. 23. To reinstate a provider's**
 23 **eligibility to receive a voucher payment under this chapter after**
 24 **suspension, the following must occur:**

25 **(1) The provider must, within thirty (30) calendar days after**
 26 **receiving notice of the suspension, submit a plan of corrective**
 27 **action to the division for approval.**

28 **(2) The plan must outline the steps and timetable for**
 29 **immediate correction of the violations that caused the division**
 30 **to suspend the eligibility.**

31 **(3) The division must approve the plan.**

32 SECTION 18. IC 12-17.2-3.5-24 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2013]: **Sec. 24. Following the suspension of**
 35 **a provider's eligibility to receive a voucher payment under this**
 36 **chapter, the division shall do one (1) of the following:**

37 **(1) Reinstate the eligibility.**

38 **(2) Except as provided in subdivision (3), extend the**
 39 **suspension for not more than six (6) months.**

40 **(3) If criminal charges for welfare fraud are pending against**
 41 **the provider, extend the suspension until the criminal matter**
 42 **is resolved.**



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(4) Revoke the eligibility.
SECTION 19. IC 12-17.2-3.5-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 25. (a) After a provider's eligibility to receive a voucher payment under this chapter is revoked or suspended, the division shall publish notice of the revocation or suspension under IC 5-3-1 and notify in writing each parent or legal guardian of a child in the care of the provider that the eligibility has been revoked or suspended, including the reason for the revocation or suspension.**

(b) The written notice shall be sent to the last known address of each person responsible for a child in the care of the provider.

SECTION 20. IC 12-17.2-3.5-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 26. An administrative review and a hearing conducted under this chapter must be conducted under rules adopted by the division under IC 4-22-2.**

SECTION 21. IC 12-17.2-3.5-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 27. (a) Upon receiving notice of a claim of abuse or neglect in a facility where a provider operates a child care program, the department of child services shall:**

- (1) forward a copy of the notice to the division; and**
- (2) conduct an investigation of the claim.**

(b) After an investigation under subsection (a), the department of child services shall make a determination of whether abuse or neglect occurred at the facility.

(c) If the department of child services makes a determination under IC 31-33-8-12 that abuse or neglect at the facility is substantiated, the department shall send a copy of the department's report to the appropriate office of the division.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 305, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 1, delete lines 1 through 17.
- Page 2, delete lines 1 through 2.
- Page 3, delete lines 14 through 42.
- Page 4, delete lines 1 through 21.
- Page 7, delete line 27.
- Page 7, line 28, delete "(5)" and insert "(4)".
- Page 7, line 29, delete "(6)" and insert "(5)".
- Page 7, delete lines 30 through 42.
- Page 8, delete lines 1 through 11.
- Page 9, delete lines 15 through 23.
- Page 9, line 24, delete "(5)" and insert "(3)".
- Page 9, line 28, delete "(6)" and insert "(4)".
- Page 10, delete lines 4 through 42.
- Page 11, delete lines 1 through 17.
- Page 11, delete lines 39 through 42.
- Delete page 12.
- Page 13, delete lines 1 through 25.
- Page 13, delete lines 31 through 42.
- Page 14, delete lines 1 through 28.
- Page 14, delete lines 35 through 37.
- Page 14, line 38, delete "(3)" and insert "(2)".
- Page 15, line 2, delete "(4)" and insert "(3)".
- Page 15, delete lines 4 through 7.
- Page 15, line 8, delete "(6)" and insert "(4)".
- Page 15, line 10, delete "(7)" and insert "(5)".
- Page 15, line 18, delete "18(5)" and insert "18(3)".
- Page 15, line 23, delete "Except as provided in section" and insert "The".
- Page 15, line 24, delete "17 of this chapter, the".
- Page 15, line 36, delete "an order under section 17 of this".
- Page 15, line 37, delete "chapter or".
- Page 17, delete lines 17 through 42.

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Delete pages 18 through 20.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 305 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 9, Nays 0.

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