

STORAGE NAME: h0931.ca

DATE: April 1, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
Community Affairs
ANALYSIS**

BILL #: HB 931

RELATING TO: Public Swimming Pools

SPONSOR(S): Representative J. Miller

COMPANION BILL(S): SB 1212 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILDREN & FAMILIES YEAS 8 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill would exempt swimming pools at residential child care facilities from regulation by the Department of Health and from the sanitary and safety standards in Chapter 514, Florida Statutes, (F.S.), and Chapter 64E-9, Florida Administrative Code (F.A.C.).

There is a financial impact on the Department of Health of \$1,425 from reduced inspection fees.

The Committee on Children and Families adopted a strike-everything amendment to substantially change the bill to:

- Limit the exemption to agencies that are currently exempt from licensure pursuant to s. S. 409.176, F.S.
- Only exempt pools that are not open to the public.
- Exempt only state pool construction standards, leaving state inspection and requirements related to operations and maintenance in place.
- Remove the fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 409 of the Florida Statutes includes provisions related to residential agencies for children. Section 409.175, F.S., provides for licensure of family foster homes, residential child-caring agencies, and child-placing agencies. Section 409.176, F.S., provides for an exemption from licensure under 409.175, F.S., for residential child-caring agencies and family foster homes. To qualify for the exemption under 409.176(5)(a), these agencies must be "a religious organization that does not directly receive state or federal funds or is a family foster home that is associated with such an organization and does not directly receive state or federal funds." Because of grand fathering limitations in s. 409.176, F.S., the Florida Association of Christian Child Caring Agencies, Inc. is the only such accrediting organization. The association has 8 member pools that face demolition under existing law because they were originally constructed to private pool standards and later became part of a donated facility.

Chapter 514, of the Florida Statutes deals with standards for public swimming and bathing facilities. Pools regulated by chapter 514 must be constructed and operated to meet the minimum health and safety standards of Rule 64E-9, FAC. This includes size, shape, depth, safety equipment, safety markings, filtration, flow rate and proper disinfection requirements. The Department of Health permits and inspects pools at residential child care facilities of at least eight persons at least twice a year to ensure they are operated and maintained in a safe manner. At present, pools at residential child care facilities that house less than eight clients are exempted from the requirements of this law. A variance procedure exists in chapter 64E-9, F.A.C., for individuals who feel that the requirements of the rule impose a hardship.

There are differences between a private pool and a pool built to public pool standards. Public pools are designed by licensed engineers to meet the health and safety standards of Chapter 64E-9, F.A.C. The engineer's pool plans are reviewed by the health department's engineering personnel to ensure compliance with the code. Once the pool is completed, it is inspected by the design engineer and by the health department engineering staff before the pool is to be used. Private pools must be constructed by a contractor licensed pursuant to chapter 489 of the Florida Statutes and must meet local county construction codes. There are no state health or safety requirements for private pools. The Department of Health cites common health and safety problems of private pools as follows:

- Pump and filter systems are frequently not properly sized and sufficient water quality cannot be obtained.
- Properly sized and designed disinfection (chlorine) feeders are often not provided and disinfectant is usually hand fed into the pool after a problem is noted, exposing swimmers to disease and the pool worker to hazardous materials.
- Backyard pool pumps, filters, and disinfection systems are designed to function for the bathing load of an average size family.
- Pool safety markings such as depth markers, step edge markers and slope break markers are not required on private pools. As a result, there have been several recent cases where divers died or were permanently injured (head and neck injuries resulting in paralysis) by improper diving bowl design. The Department of Health reports nine such deaths between 1995 and 1998 in Florida pools.

Public pools are inspected at least twice a year to insure that the pool is operated in a safe and sanitary manner. The department educates the pool owner as to the proper method of maintaining the pool to keep it in compliance with minimum health and safety standards.

B. EFFECT OF PROPOSED CHANGES:

The proposed bill would remove the health and safety protections of chapter 514, F.S., and Department of Health Rule 64E-9, F.A.C., by eliminating both the construction and operation standards. At present, there are no statewide construction or operating standards for private pools. Any pool not regulated by chapter 514, F.S., and Department of Health Rule 64E-9, F.A.C., is

considered a private pool. The Department of Health cites the major impact of this bill as a detriment to the health and safety of the children that are potentially using a substandard swimming pool. Department of Health Rule 64E-9, F.A.C., includes items that protect life, safety, and health, such as not allowing direct suction on the main drain, properly designed filter systems, and properly designed disinfection feeders.

The bill would exempt a "residential child care facility" from the provisions of sections 514.011 and 514.0115, F.S. This term is not defined in statute. However, the following term is defined.

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.--

(2) (j) "**Residential child-caring agency**" means any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or chapter 397.

The only definitions of a residential child care facility in rule are found in s. 65C-14.001 (6) and (9), F.A.C. Section 65C-14.001 (6), F.A.C., which defines a facility as the physical plant of a residential child caring agency and is an abbreviation in the rules for a residential child caring agency. Section 65C-14.001(9), F.A.C., defines a residential child caring agency as any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes which are administered by an agency, emergency shelters which are not in private residences and wilderness camps. Residential child caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 397.081. The Department of Health is concerned that these definitional problems could result in a broad interpretation that would expand the agencies exempted by the bill.

The Department of Health is concerned that the pools this bill would exempt would probably have eight or more children and probably two or more adults. Depending on how access to the pool was controlled, utilization could greatly exceed the size of the average family and the capacity of the pool design and would negatively impact water quality.

The Florida Association of Christian Child Caring Agencies, Inc. are advocates for this bill. Their institutions are exempt from licensure and are registered with the association pursuant to s. 409.176, F.S. The association has accreditation standards and conducts annual inspections related to supervision, securing the facility, minimum safety equipment, and posting of safety rules. The association reports that there have been no deaths or serious injuries at their facilities.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill reduces the Departments of Health and Children and Family Services' authority to set standards and inspect pools at residential facilities for children under chapter 514, F.S.

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(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill allows agencies that provide residential care for children to avoid regulation of pools as public facilities.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 514.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsection 514.011(2), F.S., to remove from the category of "public swimming pool," a pool serving a residential child care facility that is for the exclusive use of the facility's residents and that is not open to the public.

Section 2: Exempts from supervision or regulation a pool serving a residential child care facility that is for the exclusive use of the facility's residents and that is not open to the public.

Section 3: Provides effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The bill would reduce annual revenues to the department by \$1,425 from inspection fees.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The Department of Health notes that owners or operators of affected child care facilities will save the annual \$75 permit fee for each pool. Residential child care facilities constructing new pools would save approximately \$3,500 per pool in construction costs (the average private pool costs approximately \$3,500 less than an equivalent pool built to the current residential care pool standards). The Florida Association of Christian Child Caring Agencies, Inc. notes that savings to agencies with existing pools that do not meet public facility codes will be much greater because they are currently in the position of having to demolish existing pools as well as build a new one. Generally, this will mean that the residence will have no pool.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

The Florida Association of Christian Child Caring Agencies, Inc., who is raising the issues addressed in the bill, does not object to annual health inspections. An amendment to the bill that narrows the exemption to construction codes and to the agencies exempt from licensure (the agencies in this association) would appear to meet the objectives of advocates for the bill. This would affect eight existing pools across the state that are under threat of being demolished.

Discussions with several local Tallahassee pool construction companies indicate that retrofitting existing pools is difficult and that complete replacement would be recommended.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Children & Families adopted an amendment to substantially change the bill to:

- Limit the exemption to agencies that are currently exempt from licensure pursuant to s. S. 409.176, F.S.
- Only exempt pools that are not open to the public.
- Exempt only state pool construction standards, leaving state inspection and requirements related to operations and maintenance in place.

The eight pools currently exempt from state construction standards under the amendment would remain subject to county construction standards.

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VII. SIGNATURES:

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