

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1131 Palm Beach County Environmental Control Act, Palm Beach County

**SPONSOR(S):** Berman

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 1 N	Gibson	Hoagland
2) Economic Affairs Committee			

### SUMMARY ANALYSIS

Counties that adopt child care facility licensing standards that meet or exceed the state minimum standards are authorized by law to designate a local licensing agency in their county. Through ch. 59-1698, L.O.F., as amended, Palm Beach County has chosen to administer its own child care facility and child care home licensing program and to provide local regulation of these facilities.

Violations of the special act or the rules and regulations adopted thereto are subject to civil enforcement by the Palm Beach County Environmental Control Officer and the Palm Beach County Environmental Control Act. The local Environmental Control Hearing Board or a circuit court is currently authorized to impose temporary or permanent injunctions and civil fines of up to \$500 per day for a violation of the Environmental Control Act.

The local bill increases the amount of civil fines that a circuit court or the Hearing Board may impose only for violations of ch. 59-1698, L.O.F., as amended, Palm Beach County's special act covering child care facilities and homes and any rules and regulations adopted thereto.

The local bill increases civil fines from the current maximum of \$500 per day for violations of local child care facility rules and regulations as follows:

- for first time violations, not to exceed \$1,000 per day per violation;
- for repeat violations, not to exceed \$5,000 per day per violation;
- for violations that the Hearing Board or the circuit court finds to be irreparable or irreversible in nature, not to exceed \$15,000 per violation.

The local bill also provides a definition for "repeat violation" and removes the requirement for the Environmental Control Officer to be an employee of Palm Beach County.

Due to the increase in civil fines, the local bill may result in a revenue increase for Palm Beach County and may result in an economic disadvantage for individuals or child care facilities found to be in violation.

The local bill takes effect upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation:

#### **Child Care Facilities Regulation**

##### *State Licensing of Child Care Facilities*

Child care licensing is a component of the services provided by the Department of Children and Family Services (DCF). Pursuant to s. 402.305(1), F.S., the DCF establishes licensing standards that must be met by each licensed child care facility in the state. The purpose of this program is to ensure that children are well cared for in a safe, healthy, positive and educational environment by trained, qualified child care staff. The department ensures that licensing requirements are met through on-going inspections of child care facilities and homes.

Section 402.306(1), F.S., provides that counties with child care facility licensing standards that meet or exceed the state minimum standards (chs. 65C-20, 65C-22 and 65C-25, F.A.C.) may designate a local licensing agency in their county. The DCF is responsible for the inspection and licensure of child care facilities in 62 of Florida's 67 counties. The counties of Broward, Hillsborough, Palm Beach, Pinellas and Sarasota have elected to administer their own child care facility licensing programs and to provide regulations of these facilities.<sup>1</sup>

##### *Palm Beach County Licensing and Regulation of Child Care Facilities*

The Board of County Commissioners of Palm Beach County acting as the Child Care Facilities Board is the local licensing agency for child care facilities in the county. The Board has appointed a Child Care Advisory Council (CCAC) to act on its behalf for approving, denying or revoking licenses, and for recommending revisions to local child care rules and regulations.

The Palm Beach County Health Department serves as staff to the CCAC, and is responsible for administering the child care licensing program. This includes conducting inspections of child care centers and family day care facilities to ensure that minimum standards are met and maintained for issuing and renewing licenses. The Department's child care inspectors also provide information, consultations, and technical assistance to licensed facilities and prospective facility owners and operators.

Chapter 59-1698, L.O.F, as amended, provides the legal framework for licensing child care facilities in Palm Beach County. This special act enables the county to create its own local rules and regulations for child care facilities, family day care homes, and large family child care homes.<sup>2</sup> Palm Beach County has

---

<sup>1</sup> See <http://www.dcf.state.fl.us/childcare/licensing.shtml> (last accessed Feb. 2, 2012).

<sup>2</sup>Section 6 of ch. 2010-249, L.O.F., provides: MINIMUM STANDARDS, REASONABLE RULES AND REGULATIONS TO BE PRESCRIBED BY THE BOARD.

1. The Board shall make, adopt, amend, and repeal such rules and regulations as are necessary to protect the health and safety of persons in child care facilities, large family child care homes, or family day care homes; prescribing standards for living quarters, including provisions pertaining to sanitary conditions, light, air, safety, protection from fire hazards, equipment, operation, qualifications and number of staff, and such other matters as may be appropriate to protect the life and health of the occupants thereof. Standards established by rules and regulations of the Board shall meet or exceed state minimum standards, to wit: standards established by the Department of Children and Family Services pursuant to ch. 402, Florida Statutes.

2. The Board may make, adopt, amend, and repeal such rules and regulations as are necessary:

a. To require facilities regulated hereunder to secure liability insurance and set minimum limits and standards for carriers; and,

b. To establish fees for inspection and licensing under this Act.

No such rules and regulations of the Board shall be adopted or become effective until after a public hearing has been held by the Board pursuant to at least one notice published in a newspaper of general circulation in the County at least 10 days prior to the

adopted extensive local regulations for child care facilities that include rules and regulations for: licensing, personnel training, background and screening requirements, supervision and staffing requirements, daily program and discipline requirements, facilities, food service, nutrition, first aid, communicable disease control, record keeping, nighttime childcare, transportation, and field trips and swimming activities.<sup>3</sup>

Members of the Child Care Facilities Board and its representatives are authorized to enter and inspect child care facilities and homes and may question individuals and investigate facts, conditions, and practices or matters as necessary and appropriate to determine if the provisions of ch. 59-1698, L.O.F., as amended and the regulations and rules adopted pursuant to the act are being violated.<sup>4</sup> Enforcement of the child care laws, rules and regulations in Palm Beach County may be accomplished through both civil and criminal enforcement.<sup>5</sup> Civil enforcement is accomplished through the Palm Beach County Environmental Control Officer and the Palm Beach County Environmental Control Act.<sup>6</sup>

### **Palm Beach County's Environmental Control Act**

Palm Beach County's Environmental Control Act (Act), ch. 77-616, L.O.F., as amended<sup>7</sup> provides that it is intended to authorize Palm Beach County's Board of County Commissioners sitting as the Palm Beach County Environmental Control Board (Board) to provide and maintain standards for the citizens and visitors in the county that will insure sanitary practice, protection and preservation of the environment, and freedom of the environment from contaminants, or synergistic agents injurious to human, plant, or animal life, or which unreasonably interfere with the comfortable enjoyment of life or property, or the conduct of business.

The Board is authorized to adopt, revise, and amend ordinances and rules necessary for the implementation and effective enforcement, administration and interpretation of the Environmental Control Act.<sup>8</sup> The Board is required to appoint an Environmental Control Officer (Officer) that is either a lawyer or engineer licensed in the state. Following appointment by the Board, the Officer is an employee of Palm Beach County.<sup>9</sup>

The Officer, in cooperation with the county health director, is responsible for enforcing the Environmental Control Act, all rules and ordinances adopted pursuant to the Act, as well as, all laws of the state and rules of state agencies pertaining to environmental control.<sup>10</sup> The Officer has the ability to enforce the Act through criminal<sup>11</sup> and civil means. After being notified by the County Health Director, of a continual violation which has resulted in environmental damage or a public health threat, the Officer must either file a complaint in circuit court or notify the Board, which must order the violator to appear before it within 45 days to show cause why he or she should not be required to correct the violation and pay civil penalties.

Persons<sup>12</sup> found by the Hearing Board or Circuit Court to be or have been in violation of the Act may have a civil penalty imposed on them not to exceed \$500 for each day of violation. In determining the amount of

---

hearing. When approved by the Board and filed with the Clerk of the County Commission, such rules and regulations shall have the force and effect of law. Until the Board adopts rules and regulations, the State standards aforementioned shall apply to all facilities regulated by this Act.

<sup>3</sup> See PALM BEACH COUNTY RULES AND REGULATION GOVERNING CHILD CARE FACILITIES, *available at*: [www.pbchd.com/childcarerules/](http://www.pbchd.com/childcarerules/) (last accessed February 2, 2012).

<sup>4</sup> S. 8, ch. 2010-249, L.O.F.

<sup>5</sup> A person failing to comply with ch. 59-1698, as amended, is guilty of a second degree misdemeanor. See s. 11, ch. 2010-249, L.O.F.

<sup>6</sup> See s. 10, ch. 2010-249, L.O.F.

<sup>7</sup> Ch. 70-862, L.O.F., created the Palm Beach County Environmental Control Act. The Act was reenacted by ch. 77-616, L.O.F., which was subsequently amended by ch. 79-544, L.O.F., and ch. 90-432, L.O.F.

<sup>8</sup> S. 4(b), ch. 77-616, L.O.F., as amended.

<sup>9</sup> S. 6, ch. 77-616, L.O.F., as amended.

<sup>10</sup> S. 7, ch. 77-616, L.O.F., as amended.

<sup>11</sup> The Officer upon receiving or obtaining notice of a violation of the Act or the rules and regulations adopted thereto, may notify the state attorney to institute criminal prosecution proceedings. See s. 13, ch. 77-616, L.O.F., as amended.

<sup>12</sup> "Persons" is defined by ch. 77-616, L.O.F., as including any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally. In the context of child care facilities, individuals may be found to be

the penalty, the Hearing Board or Circuit Court must consider the nature, duration, and environmental impact of the violation.<sup>13</sup> Currently, no greater fine than \$500 per day may be imposed on a violator regardless of the type of violation or if the violation is a repeat violation. Aggrieved parties, including Palm Beach County, may seek review of a ruling or order of the Hearing Board by writ of certiorari in the circuit court of Palm Beach County.<sup>14</sup> Civil fines collected are deposited into the general fund of Palm Beach County.<sup>15</sup>

### **Child Care Facility Violations in Palm Beach County**

According to Palm Beach County staff, over the years there have been numerous violations of ch. 59-1698, L.O.F., as amended, and the rules and regulations relating to child care facilities and homes adopted thereto. Examples of violations provided by the county include:

- toxins and medications in day care facilities left out and accessible to children;
- children left unsupervised leading to children being harmed or in several cases children engaging in sexual activity due to lack of supervision;
- children with special needs not receiving appropriate supervision resulting in children wandering outside of the facilities into public areas and being placed in harm's way;
- child left on diaper changing table, and subsequently fell off and fractured skull;
- children left in a park after field trips;
- children left and later found by strangers;
- children left in child care facilities after the facilities have closed<sup>16</sup> (many children get transported to facilities and parents have not been able to find them until returning to the closed day care facility);
- instances where children have been duct taped to chairs in an effort to discipline; and
- a number of local instances where children have been left unattended in locked or unlocked vehicles resulting in danger and in death.<sup>17</sup>

#### **Effect of the Local Bill:**

The local bill increases the amount of civil fines that the circuit court and the Environmental Control Hearing Board may impose for violations of ch. 59-1698, L.O.F., as amended, and any rules and regulations adopted thereto covering child care facilities and homes in Palm Beach County. Civil fines may be imposed in addition to both temporary and permanent injunctions.

The local bill increases civil fines from the current maximum of \$500 per day as follows:

- For first time violations, not to exceed \$1,000 per day per violation;

---

violators for individual acts of negligence, whereas a facility may be found to be a violator for violations relating to conditions of the facilities and facility practices and procedures.

<sup>13</sup> S. 17, ch. 77-616, L.O.F., as amended.

<sup>14</sup> S. 12, ch. 77-616, L.O.F.

<sup>15</sup> S. 17, ch. 77-616, L.O.F., as amended.

<sup>16</sup> See Ana M. Valdes, *Daycare Center in Royal Palm Beach Faces Fine Over Boy Left Unattended in Van*, THE PALM BEACH POST, Dec. 8, 2010, available at: <http://www.palmbeachpost.com/news/state/daycare-center-in-royal-palm-beach-faces-fine-1108048.html> (last accessed: Feb. 3, 2012).

<sup>17</sup> See Eliot Kleinberg and Julius Whigham II, *Girl, 2, Found Dead in Van Outside Delray Day Care Center*, THE MIAMI HERALD, Aug. 6, 2010, available at: <http://www.miamiherald.com/2010/08/06/1764278/girl-2-found-dead-in-van-outside.html> (last accessed: Feb. 3, 2012).

- For repeat violations, not to exceed \$5,000 per day per violation;
- For violations that the Hearing Board or the circuit court finds to be irreparable or irreversible in nature, not to exceed \$15,000 per violation.

The local bill also provides a definition for “repeat violation” to mean a violation of a county or state code, ordinance, statute, or rule enacted pursuant to ch. 59-1698, L.O.F., as amended, by a person found by a Hearing Board or the circuit court to have previously violated or who has admitted to violating the same provision within 5 years before the violation. This is notwithstanding whether the violations occurred at different locations.

Lastly, the local bill removes the requirement for the Environmental Control Officer to be an employee of Palm Beach County.

The maximum fine allowed for violations of other portions of the Environmental Control Act is not affected by the local bill and remains at a maximum of \$500 per day.

**B. SECTION DIRECTORY:**

**Section 1:** amends ch. 77-6216, L.O.F., as amended; defines the term “repeat violation”; removes a requirement for the Environmental Control Officer to be a county employee; increases civil fines in circuit court actions; increases civil penalties imposed by the Environmental Control Hearing Board.

**Section 2:** provides that the act takes effect upon becoming a law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 27, 2011.

WHERE? THE PALM BEACH POST, a daily newspaper published in Palm Beach County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

The economic impact statement provided that there may be potential economic disadvantages for individuals or businesses since the new provisions of the act allow for higher fines to be imposed for violations including up to \$1,000 per day per violation for first time violations, up to \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the violation is found to be irreparable or irreversible in nature.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**