



Senate Education Committee

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BILL SUMMARY
Senate Bill 1134, Printer's No. 1341
Prime Sponsor: Corman

A. SYNOPSIS:

SB 1134 amends the Public School Code (School Code) to prohibit the Commonwealth from mandating or approving specific aspects of any religious pre-kindergarten, pre-school, nursery school, before-school or after-school program or summer school program without the consent of the religious entity. The bill also provides for the regulation and oversight of such programs by the Pennsylvania Department of Education (PDE).

B. BILL ANALYSIS:

SB 1134 amends section 1327 of the School Code to prohibit the Commonwealth from mandating or approving the course or program content, faculty, staff or disciplinary requirements of any religious pre-kindergarten, pre-school, nursery school, before-school or after-school program or summer school program without the consent of the religious entity, provided that such programs and schools shall be subject to the background check requirements of the School Code and provisions of 23 Pa. C.S. Ch. 63 (related to child protective services).

In addition, the bill amends the School Code to insert a new Article XIII-B, Religious Child-Care Facilities and Religious Child Development Facilities. The new Article XIII-B provides as follows:

- Duties of religious child development facilities: The following apply to a religious child development facility (*i.e.*, a prekindergarten, preschool, nursery school, before-school program, after-school program or summer school program operated, supervised or controlled by or affiliated with a bona fide church, association of churches or other religious body that is tax-exempt and which enrolls children who are two years, four months of age and older):
 - The facility must comply with provisions of the School Code and 23 Pa.C.S. Ch. 63 relating to criminal background checks, child abuse checks and child abuse reporting.
 - The facility must comply with all laws related to health and safety that currently apply to nonpublic, nonlicensed religious schools.

- The administrator or chief executive officer of the facility must file an initial affidavit with PDE attesting to the facility's compliance with these provisions and also must file a supplemental affidavit when an amendment to the initial filing is required.
- Duties of religious child care facilities: The following apply to a religious child care facility (*i.e.*, a premises, other than a religious child development facility, in which care in lieu of parental care is given for part of the day to children under 16 away from their own homes that is operated, controlled or supervised by or affiliated with a bona fide church, association of churches or other religious body that is tax-exempt and in which child care is provided as part of the religious mission of the church, association of churches or other religious body):
 - The facility must comply with applicable provisions of 23 Pa.C.S. Ch. 63 (relating to child protective services), including criminal background checks, child abuse checks and child abuse reporting.
 - The facility must be supervised by a director and have: (1) one or more persons holding a current certificate of completion of pediatric first aid training at the facility when children are in care; and (2) at least one person at the facility holding a current certificate of completion of training in infant and child CPR when a child, whose physician has determined that the child is at increased risk for needing heart resuscitation, is in care.
 - All children must be directly supervised by a staff person. For children under five, staff must be in the same room or area with the children and must be able to see, hear and assess the children without the use of a monitoring device. If a child is using the toilet, the staff member must be able to hear the child.
 - Staff-to-child ratios must be as follows:
 - Birth to age 1: One staff person for every four children.
 - Age 1 to age 2: One staff person for every five children.
 - Age 2 to age 3: One staff person for every six children.
 - When swimming or wading:
 - Birth to age 1: One staff person for every child.
 - Age 1 to age 3: One staff person for every two children.
 - Age 3 to age 6: One staff person for every five children.
 - School-age: One staff person for every eight children.
 - Mixed age groups with no children under age 3: The staff ratio applicable to the majority of children of the same age applies.
 - Parents and adult volunteers present where the swimming or wading occurs may be counted for determining water safety ratios.
 - At least one person certified in lifeguard training must be present when children are swimming.
 - When napping, above 12 months: A staff person may care for twice the number of children as would otherwise be allowed.
 - The facility must file affidavits as follows:
 - The facility must annually file an affidavit with PDE stating the following:
 - The name, address and telephone number of the facility.
 - The name and address of the religious entity or entities that control, operate or supervise the facility, or with which the facility is affiliated.

- The name of the director or chief administrator of the facility.
 - That the facility is in compliance with applicable Federal and State civil rights statutes.
- The facility must file an amended affidavit with PDE within 30 days if any information contained in the annual affidavit changes.
- PDE may not charge the facility a fee for filing the affidavit.
- Autonomy of religious child care and child development facilities:
 - Except as provided in this article, PDE has no authority over, nor shall PDE attempt to exercise authority over, a religious child care facility or religious child development facility (hereafter in this summary, together called “facility” or “facilities”):
 - Except as provided in this article, neither the Commonwealth nor any political subdivision has authority over, nor shall either attempt to exercise authority over, the program, curriculum, ministry, staff qualifications, staffing requirements, disciplinary requirements, teaching or instruction offered in a facility.
 - Except as provided in this article, neither the Commonwealth nor any political subdivision may interfere with the liberty of a facility to apply religious criteria in the employment or selection of staff or to establish and apply religious criteria in the admission to, or retention of, children in the facility’s program.
 - A facility shall not be subject to any requirements of, or regulations issued under, the Public Welfare Code relating to child care facilities, nor shall a facility be subject to any ordinances or regulations adopted by any political subdivision relating to the operation of child care facilities.
 - A facility shall comply with generally applicable State statutes and regulations relating to health and safety promulgated by the Department of Agriculture, the Department of Environmental Protection, the Department of Health, the Department of Labor and Industry, the Department of Transportation or any political subdivision, and with generally applicable health and safety or building and zoning requirements adopted by a political subdivision.
 - A facility shall comply with applicable regulations promulgated by PDE relating to inspection and compliance with this article.
 - Nothing in this article shall be construed to grant PDE the authority to require a facility to obtain a license or other form of certification as a precondition to its operation or continued operation.
 - Nothing in this article shall be construed to prevent a facility from voluntarily obtaining a certificate of compliance or license from the Department of Public Welfare (DPW) under the Public Welfare Code in lieu of filing under this article and of complying with this article.

- Penalties: A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function, the person makes a knowingly false statement in an affidavit required under this article.
- Eligibility for government assistance:
 - A facility that files an affidavit under this article and is in substantial compliance with the School Code shall be deemed an eligible provider of child care services for which Federal, State or local assistance is available to parents; provided that no such assistance shall be deemed to be assistance to the facility.
 - No Commonwealth agency may submit any State plan to the Federal Government for funding of child care services that would limit the ability of facilities to accept certificates, vouchers or other forms of disbursement provided to parents for child care services unless such limits are expressly required by Federal law.

The bill takes effect in 60 days.

C. SUMMARY OF RELEVANT EXISTING LAW:

Currently, religious child care and child development facilities are regulated by DPW under the Public Welfare Code, as are secular child care and child development facilities.

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO SENATE BILL NO. 1134

Sponsor:

Printer's No. 1341

1 Amend Bill, page 1, lines 5 and 6, by striking out "further "
2 in line 5 and "providing for compulsory school attendance;" in
3 line 6

4 Amend Bill, page 1, lines 11 through 20; page 2, lines 1
5 through 30; page 3, lines 1 through 13, by striking out all of
6 said lines on said pages and inserting

7 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
8 as the Public School Code of 1949, is amended by adding a
9 section to read:

10 Section 1338.3. Religious Educational Facilities.--(a) It
11 is the policy of the Commonwealth to preserve the primary right
12 and the obligation of the parent or parents, or person or
13 persons in loco parentis to a child, to choose the education and
14 training for such child.

15 (b) Nothing contained in this act or any law of this
16 Commonwealth shall empower the Commonwealth or any of its
17 officers, agencies or subdivisions to mandate or approve the
18 course or program content, curriculum, faculty, staff, training
19 or principles of religious development or spiritual formation of
20 any religious pre-kindergarten, pre-school, nursery school,
21 before-school or after-school program or summer school program
22 operated by any church, association of churches or other
23 religious order, body or institution which qualifies for
24 exemption from taxation under section 501(c)(3) or (d) of the
25 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
26 501) without the consent of the religious entity.

27 (c) The religious entities referred to in subsection (b)
28 shall be subject to the applicable background check and child
29 abuse reporting requirements of this act and 23 Pa.C.S. Ch. 63
30 (relating to child protective services).

31 (d) Nothing contained in this section shall be construed to
32 prevent the Commonwealth from:

33 (1) Adopting or enforcing any rules which prevent physical
34 threats to the health or safety of individuals or unsanitary or

1 dangerous conditions in facilities which, prior to the effective
2 date of this section, are licensed or supervised under the act
3 of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare
4 Code."

5 (2) Imposing any staff-child ratio requirements or staff
6 training requirements that are required to prevent physical
7 threats to the health or safety of individuals or unsanitary or
8 dangerous conditions in facilities which, prior to the effective
9 date of this section, are licensed or supervised under the
10 "Public Welfare Code."

11 Amend Bill, page 10, line 16, by striking out "disciplinary
12 requirements" and inserting

13 principles of religious development or religious
14 formation

15 Amend Bill, page 12, by inserting between lines 24 and 25
16 Section 1308-B. Regulations.

17 (a) General rule.--Upon the effective date of this section,
18 the State Board of Education, in consultation with the
19 department, Department of Public Welfare, Department of Labor
20 and Industry and other interested parties shall promulgate
21 regulations pursuant to the act of June 25, 1982 (P.L.633,
22 No.181), known as the Regulatory Review Act, to further provide
23 for the implementation of additional health and safety measures
24 that are necessary for religious child development facilities
25 and religious child-care facilities.

26 (b) Inspections.--The department is authorized to use the
27 inspection services of the Department of Public Welfare in
28 carrying out any inspections required under this article.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1134 Session of 2011

INTRODUCED BY CORMAN, SCARNATI, BROWNE, BRUBAKER, ERICKSON,
FOLMER, ORIE, RAFFERTY, SOLOBAY, TOMLINSON, WASHINGTON,
WAUGH, KASUNIC, ROBBINS AND PICCOLA, JUNE 14, 2011

REFERRED TO EDUCATION, JUNE 14, 2011

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in pupils and attendance, further
6 providing for compulsory school attendance; providing for the
7 regulation of religious child-care facilities and religious
8 child development facilities; and imposing penalties.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 1327(b) of the act of March 10, 1949
12 (P.L.30, No.14), known as the Public School Code of 1949,
13 amended December 15, 1986 (P.L.1602, No.178), is amended to
14 read:

15 Section 1327. Compulsory School Attendance.--* * *

16 (b) A child enrolled in a day school which is operated by a
17 bona fide church or other religious body, and the parent,
18 guardian or other person having control or charge of any such
19 child or children of compulsory school age shall be deemed to
20 have met the requirements of this section if that school

1 provides a minimum of one hundred eighty (180) days of
2 instruction or nine hundred (900) hours of instruction per year
3 at the elementary level or nine hundred ninety (990) hours per
4 year of instruction at the secondary level and:

5 (1) At the elementary school level, the following courses
6 are taught: English, to include spelling, reading and writing;
7 arithmetic; science; geography; history of the United States and
8 Pennsylvania; civics; safety education, including regular and
9 continuous instruction in the dangers and prevention of fires;
10 health and physiology; physical education; music; and art.

11 (2) At the secondary school level, the following courses are
12 offered: English, to include language, literature, speech and
13 composition; science, to include biology and chemistry;
14 geography; social studies, to include civics, economics, world
15 history, history of the United States and Pennsylvania; a
16 foreign language; mathematics, to include general mathematics
17 and statistics, algebra and geometry; art; music; physical
18 education; health and physiology; and safety education,
19 including regular and continuous instruction in the dangers and
20 prevention of fires.

21 The requirements contained in sections 1511 and 1605 of this act
22 shall not apply to such schools. The notarized affidavit of the
23 principal of any such school, filed with the Department of
24 Education and setting forth that such subjects are offered in
25 the English language in such school, whether it is a nonprofit
26 organization, and that such school is otherwise in compliance
27 with the provisions of this act, shall be satisfactory and
28 sufficient evidence thereof. It is the policy of the
29 Commonwealth to preserve the primary right and the obligation of
30 the parent or parents, or person or persons in loco parentis to

1 a child, to choose the education and training for such child.
2 Nothing contained in this act or any law of this Commonwealth
3 shall empower the Commonwealth, any of its officers, agencies or
4 subdivisions to mandate or approve the course or program
5 content, faculty, staff or disciplinary requirements of any
6 religious school referred to in this section or religious pre-
7 kindergarten, pre-school, nursery school, before-school or
8 after-school program or summer school program without the
9 consent of said school or religious entity; Provided, however,
10 that all such religious schools or entities shall be subject to
11 the applicable background check requirements of this act and 23
12 Pa.C.S. Ch. 63 (relating to child protective services).

13 * * *

14 Section 2. The act is amended by adding an article to read:

15 ARTICLE XIII-B

16 RELIGIOUS CHILD-CARE FACILITIES AND

17 RELIGIOUS CHILD DEVELOPMENT FACILITIES

18 Section 1301-B. Declaration of policy.

19 The General Assembly finds and declares as follows:

20 (1) A significant number of parents choose to enroll
21 their children in religious child-care facilities and
22 religious child development facilities where education,
23 training, values and guidance that are consistent with the
24 religious views and beliefs of the parents will be imparted
25 to their children.

26 (2) It is the policy of the Commonwealth to preserve the
27 primary right of parents to choose the education, training
28 and care of their children.

29 (3) Nonprofit religious child-care facilities and
30 religious child development facilities believe the provision

1 of child care and development services at a reasonable cost
2 to parents to be part of their religious mission to assist
3 parents in the care and upbringing of their children.

4 (4) Because of the religious nature of such facilities,
5 it is the policy of the Commonwealth to refrain from
6 subjecting them to unnecessary regulation and undue
7 governmental intrusion, particularly in religiously sensitive
8 areas relating to the selection of employees, program content
9 and guidance.

10 (5) At the same time, the Commonwealth has a duty to
11 protect the health and safety of children whose parents
12 choose to utilize religious child care and child development
13 services by assuring that religious child care and child
14 development providers comply with minimum health and safety
15 requirements.

16 (6) It is the intent of the General Assembly to balance
17 these interests in protecting parental choice, religious
18 freedom and child safety at religious child-care facilities
19 and religious child development facilities by enacting the
20 provisions of this article to govern the operation of
21 religious child-care facilities and religious child
22 development facilities.

23 Section 1302-B. Definitions.

24 The following words and phrases when used in this article
25 shall have the meanings given to them in this section unless the
26 context clearly indicates otherwise:

27 "Aide." An individual who:

28 (1) Assists in the provision of care for children at a
29 facility.

30 (2) Is at least 16 years of age.

1 (3) Has had at least 12 hours of orientation on facility
2 procedures.

3 (4) Has completed general first aid and fire safety
4 training.

5 (5) Is directly supervised by a primary caregiver or
6 director.

7 "Caregiver." An individual who provides child-care services
8 to children at a religious child-care facility.

9 "Child care." Care in lieu of parental care given for part
10 of the 24-hour day to children under 16 years of age away from
11 their own homes other than at religious child development
12 facilities.

13 "Department." The Department of Education of the
14 Commonwealth.

15 "Direct supervision." Oversight of a caregiver by a
16 supervisor who:

17 (1) is onsite;

18 (2) knows the whereabouts of the supervised caregiver;
19 and

20 (3) is responsible for the proper execution of the
21 supervised caregiver's duties, regardless of whether the
22 supervisor is physically present with the supervised
23 caregiver at all times.

24 "Director." An individual who:

25 (1) Is in charge of a religious child-care facility.

26 (2) Is at least 21 years of age.

27 (3) Has completed a program of instruction in general
28 first aid training, including instruction in childhood injury
29 prevention and infectious diseases.

30 (4) Has had fire safety training and at least 1,000

hours of experience in teaching or working with children.

"Primary caregiver." An individual who:

(1) Is responsible for the care of children at a facility.

(2) Is at least 18 years of age.

(3) Has had general first aid and fire safety training.

(4) Has had at least 200 hours of experience in teaching or working with children.

"Religious child-care facility." A premises, other than a religious child development facility, in which care in lieu of parental care is given for part of the 24-hour day to children under 16 years of age away from their own homes:

(1) That is operated or controlled or supervised by, or is affiliated with, a bona fide church, association of churches or other religious body that is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(2) In which child care is provided as part of the religious mission of the church, association of churches or other religious body.

"Religious child development facility." A prekindergarten, preschool, nursery school, before-school program, after-school program or summer school program that is operated, supervised or controlled by, or is affiliated with a bona fide church, association of churches or other religious body that is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), and which enrolls children who are two years four months of age and older.

"Staff person." An individual who may be counted for

purposes of compliance with the staff-to-child ratios required by this article. The term includes a director, primary caregiver or aide and may also include an individual who meets those qualifications but does not receive compensation for the individual's services.

Section 1303-B. Duties of religious child development facilities.

(a) Child protective services law.--A religious child development facility shall comply with applicable provisions of this act and of 23 Pa.C.S. Ch. 63 (relating to child protective services) relating to obtaining criminal background and child abuse checks for employees and for reporting child abuse.

(b) Health and safety requirements.--A religious child development facility shall comply with all laws relating to the health and safety of the children enrolled therein that are applicable to those nonpublic, nonlicensed religious schools that are described in section 1327(b).

(c) Affidavit.--The administrator or chief executive officer of a religious child development facility shall file an initial affidavit with the department attesting to the facility's compliance with the requirements of this section and shall file a supplemental affidavit for any change or amendment to the initial filing.

Section 1304-B. Duties of religious child-care facilities.

(a) Child protective services law.--A religious child-care facility shall comply with applicable provisions of 23 Pa.C.S. Ch. 63 (relating to child protective services), including requirements for obtaining criminal background and child abuse checks for employees and for reporting child abuse.

(b) Staffing.--

1 (1) A religious child-care facility shall be supervised
2 by a director and shall have:

3 (i) One or more persons who hold a current
4 certificate of completion of pediatric first aid training
5 at the facility when children are in care.

6 (ii) At least one person at the facility who holds a
7 current certificate of completion of training in infant
8 and child cardiopulmonary resuscitation (CPR) when a
9 child, whose physician has determined that the child is
10 at increased risk for needing heart resuscitation, is in
11 care at the facility.

12 (2) All children shall be directly supervised by a staff
13 person. With respect to children under five years of age,
14 direct supervision requires that staff be in the same room or
15 child-care area with the children and be able to see, hear
16 and assess the supervised children without use of a
17 monitoring device. While such children are using the toilet,
18 direct supervision shall be satisfied if staff is able to
19 hear the children.

20 (3) A religious child-care facility shall provide one
21 staff person for every four children who are from birth to
22 one year of age; one staff person for every five children who
23 are between one and two years of age; and one staff person
24 for every six children between two and three years of age.
25 All children shall be directly supervised by a staff person.

26 (4) (i) When children are swimming or wading, the
27 religious child-care facility shall provide one staff
28 person for every child from birth to one year of age; one
29 staff person for every two children who are between one
30 and three years of age; one staff person for every five

children between three and six years of age; and one staff person for every eight school-age children.

(ii) If children are in mixed age groups with no children younger than three years of age in care, the staff ratio applicable for the majority of children at the same age in care shall apply.

(iii) Parents and adult volunteers who are present where the swimming or wading occurs may be counted for purposes of determining water safety ratios.

(iv) At least one person certified in lifeguard training must be present when children are swimming.

(5) When children above the age of 12 months are napping, a staff person may provide care for twice the number of such children which would otherwise be allowed by the ratio applicable to them.

(c) Affidavit from facility.--

(1) A religious child-care facility shall annually file an affidavit with the department which states the following:

(i) The name, address and telephone number of the facility.

(ii) The name and address of the religious entity or entities that control, operate or supervise the facility, or with which the facility is affiliated.

(iii) The name of the director or chief administrator of the facility.

(iv) That the facility is in compliance with applicable Federal and State civil rights statutes.

(2) A religious child-care facility shall file an amended affidavit with the department within 30 days if any information contained in the affidavit, which previously was

1 submitted, changes.

2 (3) The department may not charge religious child-care
3 facilities a fee for filing the affidavit required under this
4 section.

5 Section 1305-B. Autonomy of religious child-care and child
6 development facilities.

7 (a) Department.--Except as set forth in this article, the
8 department has no authority over, nor shall it attempt to
9 exercise authority over, a religious child-care facility or
10 religious child development facility.

11 (b) Commonwealth and political subdivisions.--Except as set
12 forth in this article, neither the Commonwealth nor any
13 political subdivision has authority over, nor shall either
14 attempt to exercise authority over, the program, curriculum,
15 ministry, staff qualifications, staffing requirements,
16 disciplinary requirements, teaching or instruction offered in a
17 religious child-care facility or religious child development
18 facility.

19 (c) Employment and admissions.--Neither the Commonwealth nor
20 any political subdivision may interfere with the liberty of a
21 religious child-care facility or religious child development
22 facility to apply religious criteria in the employment or
23 selection of individuals who serve as staff or administrators in
24 the facility or with the liberty of a religious child-care
25 facility or religious child development facility to establish
26 and apply religious criteria in the admission to, or the
27 retention of, children in the facility's program.

28 (d) Preemption.--

29 (1) A religious child-care facility or religious child
30 development facility shall not be subject to any requirements

1 of, or regulations issued under, the act of June 13, 1967
2 (P.L.31, No.21), known as the Public Welfare Code, relating
3 to child care facilities. Nor shall a religious child-care
4 facility or religious child development facility that is
5 subject to this article be subject to any ordinances or
6 regulations adopted by any political subdivision relating to
7 the operation of child-care facilities.

8 (2) A religious child-care facility or religious child
9 development facility shall comply with generally applicable
10 State statutes and regulations relating to health and safety
11 promulgated by the Department of Agriculture, the Department
12 of Environmental Protection, the Department of Health, the
13 Department of Labor and Industry, the Department of
14 Transportation or by any political subdivision, and with
15 generally applicable health and safety requirements or
16 generally applicable building and zoning requirements adopted
17 by a political subdivision.

18 (3) (i) A religious child-care facility or religious
19 child development facility shall comply with applicable
20 regulations promulgated by the department relating to
21 inspection and compliance with the provisions of this
22 article.

23 (ii) Nothing in this article shall be construed to
24 grant the department the authority to require a religious
25 child-care facility or religious child development
26 facility to obtain a license or other form of
27 certification as a precondition to its operation or its
28 continued operation.

29 (4) Nothing in this article shall be construed to
30 prevent a religious child-care facility or religious child

1 development facility from voluntarily obtaining a certificate
2 of compliance or license from the Department of Public
3 Welfare under the Public Welfare Code in lieu of filing
4 pursuant to this article and of complying with this article.

5 Section 1306-B. Penalties.

6 A person commits a misdemeanor of the second degree if, with
7 intent to mislead a public servant in performing his official
8 function, the person makes a knowingly false statement in an
9 affidavit required to be filed by this article.

10 Section 1307-B. Eligibility for governmental assistance.

11 (a) General rule.--A religious child care facility or
12 religious child development facility that files an affidavit
13 under this article and is in substantial compliance with this
14 act shall be deemed an eligible provider of child-care services
15 for which Federal, State or local assistance is available to
16 parents; Provided, however, that no such assistance shall be
17 deemed to be assistance to the facility itself.

18 (b) Limitation.--No agency of the Commonwealth may submit
19 any State plan to the Federal Government for funding of child-
20 care services which would limit the ability of religious child-
21 care facility or religious child development facilities to
22 accept certificates, vouchers or other forms of disbursement
23 provided to parents for child-care services unless such limits
24 are expressly required by Federal law.

25 Section 3. This act shall take effect in 60 days.