

CHAPTER 85-427

Senate Bill No. 666

An act relating to Indian River County; creating the Indian River County Environmental Control Board; providing short title; providing for declaration of intent; providing definitions; providing for an environmental control board; providing organization, duties, and powers; providing for environmental control officer appointment, duties, and powers; providing limitations; providing for hearing board organization, duties, and powers; providing for appeals from actions or decisions of environmental control officers; providing procedure; providing for

civil enforcement; providing for enforcement of hearing board orders and injunctive relief; providing civil penalties; providing for civil fines to be liens; providing for refusal to obey subpoenas; providing for construction in relation to other law; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short Title.--This act shall be known and may be cited as the "Indian River County Environmental Control Act."

Section 2. Declaration of Legislative Intent.--The Legislature finds and declares that the reasonable control of activities which are causing or may cause pollution or contamination of the environment is necessary for the protection and preservation of the public health, safety, and general welfare. It is the intent and purpose of this act to authorize the Board of County Commissioners of Indian River County sitting as the Indian River County Environmental Control Board to provide and maintain for the citizens and visitors of said county standards which will insure sanitary practice 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.

Section 3. Definitions.--The following words as used in this act shall have the following meanings:

(1) "Environment" shall include, but not be limited to, man's surroundings which affect human health and welfare, plant or animal life, and the reasonable enjoyment of life or property, or the conduct of business.

(2) "Pollution" is the presence in the environment of any one or more substances or contaminants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property.

(3) "Contaminant" is any substance which is harmful to plant, animal, or human life.

(4) "Board" shall mean the Indian River County Environmental Control Board.

(5) "Persons" shall be construed to include 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.

(6) "Hearing Board" means the Indian River County Environmental Control Hearing Board.

(7) "County Health Director" means the Director of the Indian River County Health Department or his duly authorized representative.

(8) "Violation of this act" shall mean violation of the terms of this act or violation of any county ordinance regarding environmental control or rule of the Environmental Control Board promulgated

hereunder or violation of any law of the state or rule of a state agency, including the Department of Environmental Regulation and the Department of Health and Rehabilitative Services, pertaining to environmental control or violation of a Hearing Board Order.

(9) "Rule" means the whole or a part of the Board's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Board.

Section 4. Indian River County Environmental Control Board; Organization.--

(1) The Board is established pursuant to this act and shall consist of the five members of the Board of County Commissioners of Indian River County who shall serve without compensation.

(2) The presence of three members of the Board shall constitute a quorum necessary to hold a meeting and take any action. A majority vote of the membership shall be necessary to take any action. The members of the Board shall annually elect a chairman who shall serve at the will of the Board. The chairman may call meetings of the Board, and meetings may be called by written notice signed by three members, and the Board at any meeting may fix and call a meeting on a future date. Minutes shall be kept of all meetings of the Board. All meetings shall be public.

Section 5. Environmental Control Board; Duties and Powers.--The Board shall have the following duties, functions, powers, and responsibilities.

(1) The Board shall adopt, revise, and amend from time to time appropriate rules necessary for the implementation and effective enforcement, administration, and interpretation of the provisions of this act, and shall provide for the effective and continuing control and regulation of the environment in the county within the framework of this act. When approved by the Board and filed with the Clerk of the Board of County Commissioners, and adopted as per the following, such rules shall have the force and effect of law:

(a) Prior to the adoption, amendment, or repeal of any such rule, the Board shall give public notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, and a summary of the proposed rule, and shall cite this act as specific legal authority under which its adoption is authorized. The notice shall contain the location where the text of the proposed rule can be obtained if such text is not included in the notice. The notice shall be mailed to persons who have made requests of the Board for advance notice of its proceedings at least 14 days prior to such mailing. Notice shall be given by publication at least once, 15 days in advance, in a newspaper of general circulation in the County.

(b) Any person regulated by the Board or having a substantial interest in a Board rule may petition the Board to adopt, amend, or repeal or rule. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days after the date of filing a petition, the Board shall initiate rulemaking proceedings under this act, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial. In addition, the Board shall require from those proposing a rule or

change an estimate of the economic impact of the proposed rule on all persons affected by it.

(c) The Board shall keep a complete record of all rulemaking proceedings. In such proceedings, the Board may take notice of any material which may be judicially noticed without further proof thereof, and it shall provide that materials so recognized and any evidence presented shall be incorporated into the record of the proceedings. The Board, in rulemaking proceedings, shall not be bound by strict rules of evidence and procedure.

(d) The Board shall comply with the rules and procedure of the County Commission unless other rules are adopted to govern proceedings.

(e) The Board, at the conclusion of the public hearing, shall adopt, reject, or adopt as amended a rule. Such rule shall be filed with the Clerk of the Board of County Commissioners.

(f) The proposed rule shall become effective 20 days after being filed or on a later date specified in the rule. After the notice required in paragraph (a) and prior to adoption, the Board may withdraw the rule, and may make such changes in the ordinance or rule as are supported by the record of public hearings held on the rule and technical changes which do not affect the substance of the rule. Changes supported by the record of a hearing may include withdrawal of the rule in whole or in part. After a rule has been adopted, it may be repealed or amended only through regular rulemaking procedures.

(2) The Board may make continuing studies and periodic reports and recommendations for the improvements of environmental control in the county, and establish air, water, and environmental quality standards in the county, and shall work in cooperation with the appropriate state and federal agencies interested in the field of environmental control.

(3) The Board may adopt a seal and alter it.

(4) The Board may perform such other duties, functions, and responsibilities as may become necessary to contribute to improvement in the control of the environment in Indian River County.

Section 6. Environmental Control Officers; Appointment.--The Board shall appoint an Environmental Control Officer. In so doing, the Board shall consider the recommendation of the County Health Director. The Board shall give due consideration to the qualifications and experience of said applicant in the field of environmental control.

Section 7. Environmental Control Officer; Duties and Powers.--The duties, functions, powers, and responsibilities of the Environmental Control Officer shall include the following:

(1) In cooperation with the County Health Director, enforcing the provisions of this act and county ordinances, adopting enforcement procedures provided herein, and rules promulgated, and all laws of the state and rules of state agencies, including the Department of Environmental Regulation and the Department of Health and Rehabilitative Services, pertaining to environmental control.

(2) Conducting investigations and recommending legal proceedings to abate violations of this act in accordance with the law of the State of Florida and the provisions of this act.

(3) Cooperating with industry, business, institutions, governmental agencies, and other interested parties in accomplishing effective environmental control.

(4) Publicizing and disseminating information to the public concerning the environment and recommending methods for its control.

(5) Enlisting and encouraging public support, and the assistance of civic, technical, scientific, and educational organizations, and the cooperation of industrial and business enterprises and organizations.

(6) Making periodic reports concerning the status of the environment in Indian River County and the enforcement of the provisions of this act and recommendations concerning the improvement of environmental control. Such reports shall be filed with the Board and be made available to other governmental agencies which may be interested.

(7) Exercising additional powers to be described hereunder.

Section 8. Limitations.--The Board may not adopt or enforce any rule relating to:

(1) Agricultural operations in the growing, harvesting, or processing of crops and the raising of fowls or animals.

(2) Use of equipment in the performance of such agricultural operations.

(3) Barbecue equipment or outdoor fireplaces used for noncommercial purpose.

(4) Agricultural land clearing operations or agricultural land grading.

(5) Incinerators and heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families.

(6) Fires set or permitted by any public officer, board, council, or commission when such fire is set or permission given in the performance of such duty of the officer, board, council, or commission for the purpose of weed abatement, the prevention or elimination of the fire hazard, or the instruction of employees in the methods of firefighting which is in the opinion of such officer, board, council, or commission necessary, or from fires set pursuant to permit for purpose of instruction of employees of private industrial concerns in methods of firefighting, or for civil defense instruction.

(7) The use of orchard or citrus grove heaters which do not produce unconsumed solid carbonaceous matter at a rate in excess of 1 gram per minute.

(8) Odors emanating from agricultural operations in the growing, harvesting, or processing of crops or raising of fowls or animals.

(9) Projects of the Department of Transportation.

(10) Water Control Districts as governed by the provisions of Chapter 298, Florida Statutes.

(11) Mosquito Control Districts.

Section 9. Hearing Board; Organization.--The Board shall appoint a five-member Hearing Board, the members of which shall have the following qualifications and terms of office:

(1) Members of the Hearing Board shall be residents and registered voters of the County. Members of the Hearing Board, while serving, shall not become candidates for the election to any public office, nor hold any other appointive office or position under federal, state, county, or municipal government, except for an office or position on a governmental board having advisory powers only. Appointments shall be made by the Board on the basis of experience or interest in the field of environmental control. The composition and representative membership of the Hearing Board shall be as follows:

(a) One member shall be a lawyer (duly licensed to practice law in the State of Florida) recommended to the Board by the County Bar Association.

(b) One member shall be a medical doctor, recommended to the Board by the County Medical Society.

(c) One member shall be an engineer, recommended to the Board.

(d) Two members shall be citizens not holding elective office.

(2) The members of the Hearing Board shall elect a chairman. The presence of three or more members shall constitute a quorum of the Hearing Board. A majority vote of the membership shall be necessary to take any action. Members shall serve without compensation, but may be reimbursed for such travel expenses, mileage expenses, and/or per diem expenses as may be authorized by the Board. The chairman may call hearings by the Hearing Board and hearings may be called by written notice signed by at least three members of the Hearing Board and the Hearing Board at any hearing may fix and call a hearing on a future date. Minutes shall be kept of all hearings by the Hearings Board. All hearings shall be public. The Board of County Commissioners shall provide adequate and competent clerical and administrative personnel as may be reasonably required by the Hearing Board for the proper performance of its duties.

Section 10. Hearing Board; Duties and Powers.--The Hearing Board shall have the following duties, functions, powers, and responsibilities:

(1) To hear appeals by persons aggrieved by actions or decisions of the Environmental Control Officer not already referred to the state attorney for criminal prosecution; consider the facts material to such appeals, and render a decision promptly. Such decision may affirm, reverse, or modify the action or decision appealed from, provided that such decision shall not be in conflict with the provisions of this act.

(2) To conduct due process hearings into the merits of alleged violations of this act.

(3) To issue, after due process hearing, injunctive orders including orders providing for affirmative relief, against persons found to be in violation of this act.

(4) After due public hearing upholding a violation, to reach a decision setting forth such findings of fact and conclusions of law as are required in view of the issues presented. The decision shall contain an order which may be framed in the manner of a writ of injunction requiring the violator to conform with either or both of the following requirements:

(a) To refrain from committing, creating, maintaining, or permitting the violation.

(b) To take such affirmative action as the Hearing Board deems necessary and reasonable under the circumstances to correct such violation.

(5) To issue orders imposing civil penalties of up to \$500 for each day of violation against persons found to have violated this act.

(6) To issue subpoenas to command the appearance of any persons before a hearing at a specified time and place to be examined as witnesses. Such subpoenas may require such persons to produce all books, papers, and documents in their possession or under their control material to such hearings.

(7) To administer oaths to any or all persons who are to testify before the Hearing Board.

(8) To adopt rules for the conduct of its hearings not inconsistent with the provisions of this act.

Section 11. Appeals from Actions or Decisions of Environmental Control Officer; Procedure.--Any persons aggrieved by an action or decision of the Environmental Control Officer not already referred to the state attorney for criminal prosecution may appeal to the Hearing Board by filing, within 10 days after the date of the action or decision complained of, a written notice of appeal which shall set forth concisely the action or decision appealed from and the reasons or grounds for the appeal. The Hearing Board shall set such appeal for hearing at the earliest possible date, and cause notice thereof to be served upon the appellant and the Environmental Control Officer.

Section 12. Criminal Enforcement; Procedure.--

(1) Whenever the Environmental Control Officer has received or obtained evidence that a specific violation of this act which constitutes a crime has been committed, the Environmental Control Officer may notify the state attorney of Indian River County of such violation. Such notice shall contain a description of the violation, the date of the violation, the location of the violation, and the name and address of the violator.

(2) Upon receipt of such notice, the state attorney may institute proceedings in the criminal court of record for prosecution of this violation.

Section 13. Civil Enforcement; Procedure.--

(1) It shall be the duty of the County Health Director, with the advice and assistance of the Environmental Control Officer, to determine compliance with the terms of this act.

(2) If any person is in violation of the provisions of this act, the County Health Director may give the violator reasonable time, by formal notice, within which to correct such violation. Should the violation continue beyond the time specified for correction, the County Health Director shall notify the Environmental Control Officer in writing of such failure to correct the violation. If any person has been in violation of this act for conducting an activity without benefit of or in violation of the terms of a required permit, or has been in violation of this act for conducting an activity which resulted in environmental damage or public health threat, the County Health Director, in lieu of or in addition to the above procedure for formal notice, may notify the Environmental Control Officer in writing of the violation.

(3) Upon the County Health Director's notice of a failure to correct violation or notice of an activity conducted without or in violation of a required permit, or an unlawful activity which resulted in environmental damage or a public health threat, the Environmental Control Officer shall notify the Hearing Board which shall, within 45 days after such notice, order the violator to appear before it to show cause why he should not be required to correct the violation and pay civil penalties. Any hearing shall be conducted in accordance with section 10 of this act.

(4) If after due process hearing the Hearing Board upholds the violation, the Hearing Board shall reach a decision setting forth findings of fact and such conclusions of law as are required in view of the issues submitted. Such decisions shall be rendered in accordance with sections 10 and 15 of this act.

Section 14. Enforcement of Hearing Board Orders and Injunctive Relief.--If preventive or corrective measures are not taken or any civil penalty imposed is not forfeited in accordance with any order of the Hearing Board, or if the Environmental Control Officer finds that a violation of the provisions of this act exists so as to create an emergency requiring immediate action to protect human health or welfare, or to prevent irreparable environmental damage, the Environmental Control Officer may institute proceedings in the circuit court for Indian River County to abate violations of this act or enforce orders of the Hearing Board. Such relief may include both temporary and permanent injunctions. Any proceedings initiated under this section shall be brought for and in the name of Indian River County.

Section 15. Violations; Civil Penalties.--Any person found by the Hearing Board to be or have been in violation of this act may have imposed against him a civil penalty not to exceed \$500 for each day of violation. In determining the amount of such civil penalty, the Hearing Board shall consider the nature, duration, and environmental impact of such violation. The Hearing Board shall incorporate the amount of the penalty imposed in its final decision and order finding such person in violation. All civil penalties collected under this section shall be paid into the general fund of Indian River County.

Section 16. Civil Fines to be Liens.--Any fine imposed by order of the Hearing Board shall, upon expiration of the time for appeal and the filing of said order with the clerk of the circuit court,

become a statutory lien against any and all property of the respondent.

Section 17. Refusal to Obey Subpoena Issued by the Hearing Board.--

(1) Whenever any person duly subpoenaed to appear and give evidence or to produce any books and papers before the Hearing Board neglects or refuses to appear, or to produce any books or papers, as required by the subpoena, or refuses to testify or to answer any question which the Hearing Board decides is proper and pertinent, he shall be deemed in contempt, and the Hearing Board shall report the fact to the judge of the circuit court for the district in which the person resides.

(2) Upon receipt of the report, the judge of the circuit court may issue an order directed to the sheriff of Indian River County commanding the sheriff to forthwith bring such person before the judge who entered the order.

(3) On the return of the order and the production of the body of the person charged, the person charged may purge himself of contempt in the same way and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a circuit court of the state.

Section 18. Construction in Relation to Other Law.--It is the purpose of this act to provide additional cumulative remedies to control the environment of this county. Nothing contained herein shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act, or any act done by virtue thereof, be construed as estopping the state or any municipality or person affected by environmental pollution, in the exercise of its or his rights in equity or under common law or statutory law to suppress nuisances to abate environmental pollution.

Section 19. Powers of Health Department.--Nothing in this act shall limit or reduce the powers of the Indian River County Health Department pursuant to interlocal agreement, general or special law, or any other source of authority.

Section 20. If any provisions of this act or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 21. This act shall take effect 30 days after becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 7, 1985.