

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1043 First-responder Services

**SPONSOR(S):** Thompson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2282

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Military & Local Affairs Policy Committee	9 Y, 6 N, As CS	Noriega	Hoagland
2)	Insurance, Business & Financial Affairs Policy Committee	(W/D)		
3)	Economic Development & Community Affairs Policy Council	(W/D)		
4)	Finance & Tax Council	(W/D)		
5)				

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**SUMMARY ANALYSIS**

This bill prohibits counties and cities from imposing a fee or seeking reimbursement for costs incurred for services provided by first responders in response to a motor vehicle accident, excluding costs of materials to contain or clean up certain hazardous waste, and costs for transportation and treatment provided by ambulance services pursuant to current law.

The bill defines "first responder" as a law enforcement officer, firefighter, or an emergency medical technician or paramedic, including volunteer first responders.

The Revenue Estimating Conference has not met to discuss this bill. However, staff estimates that this bill would have no fiscal impact on state government and an indeterminate negative fiscal impact on local governments, which would result from the bill's prohibition to impose accident response fees for use as a revenue source.

This bill has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Motor Vehicle Accident Response Fees Imposed by Counties and Municipalities

Florida counties and municipalities are afforded broad constitutional and statutory home rule powers with expansive legislative and service delivery authority.<sup>1</sup> Counties have legislative and service delivery authority countywide for county purposes and within the unincorporated area for municipal functions and services.<sup>2</sup> Likewise, municipalities have similar authority within their boundaries.<sup>3</sup>

During the 2008 interim, professional staff with the Senate Committee on Banking and Insurance studied the issue of local governments imposing fees for providing police and fire services to persons involved in motor vehicle accidents and published its report: *Cities and Counties Charging "Accident Response" Fees to Drivers and Insurers* (Issue Brief 2009-303). This report found that, in an effort to balance budgets in order to continue vital services and as an alternative to raising taxes, about two to three dozen counties and cities in the state had begun imposing "accident response fees" on drivers and their insurers for the delivery of police and fire services including personnel, supplies and equipment to the scene of auto accidents within their jurisdictions. Local governments generally take the position that these are not taxes, but user fees charged in exchange for services which benefit the party paying the fee, i.e., the driver involved in an accident, and are applied solely to pay for the cost of the services. In Florida, average police response fees range from \$180 to \$200 per accident while fees range from \$600 to \$800 for fire service responses. The amounts collected are normally placed into a special fund used exclusively for the personnel, supplies and equipment for the police or fire services provided.

Senate professional staff obtained accident response fee ordinances from four counties (Escambia, Martin, Sumter and Washington) and 10 cities (Belleview, Chiefland, Cocoa, Hialeah, Lauderdale Lakes, Longwood, Ocala, Tallahassee, West Melbourne and Winter Park). The county provisions were all enacted within the past two to three years, and only assess fees for fire and rescue services and impose fees on parties to an auto accident regardless of fault. In justifying its accident response fee,

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<sup>1</sup> Article VIII, Florida Constitution. However, such powers cannot be inconsistent with general law.

<sup>2</sup> Chapter 125, F.S.

<sup>3</sup> Chapter 166, F.S.

the Escambia County ordinance provides that it “would not be fair to local property owners” to raise current property taxes to fund fire and rescue services since many of the accidents in the county involve individuals not owning property or paying property taxes in its jurisdiction.<sup>4</sup> This ordinance further provides that should a party (or insurer) not pay the fee, the county may enforce payment by initiating collection procedures or commencing civil action in a court for any amounts due plus administrative collection costs and attorney’s fees and may record a lien upon the individual’s real or personal property. Escambia County imposes its fee on both resident and non-resident drivers/owners (and their insurers); Martin County assesses its fee on non-resident vehicle owners only (not their insurers);<sup>5</sup> Sumter County levies its fee upon non-resident vehicle owners (and their insurers) and only on a resident’s auto insurer;<sup>6</sup> and Washington County imposes its fee on both resident and non-resident drivers/owners (and their insurers), so long as the accident occurs in the unincorporated area of the county.

The amount of the fees imposed range among the jurisdictions: a fire/rescue service fee in Sumter County based on an hourly rate is \$200 (fire chief), \$75 (firefighter), \$500 (rescue vehicle), and \$500 (tanker); in Martin County, the hourly rate is \$700 (vehicle fires), \$500 (simple extrication), and \$1,000 (complex extrication). The Escambia and Sumter county provisions designate third parties to bill and collect the fees whereas Martin and Washington counties operate their own program. According to Martin County representatives, the county collects about 30 to 40 percent of the fees assessed.

Like the county provisions, the municipal accident response fee ordinances were enacted within the past several years, but unlike the county laws, most of the city provisions pertain to police response services.<sup>7</sup> A majority of the cities impose fees on all vehicle owners/drivers (and their insurers) regardless of which driver was at fault<sup>8</sup> while other ordinances specify that the fee will be assessed only against the insurer of the “responsible” party. A few of the provisions impose fees against the at-fault driver, but if there is not a determination of fault, the fee is borne proportionately by all drivers involved. In one city, the fee is charged directly to the responsible driver even if the individual did not have insurance.<sup>9</sup> The Lauderdale Lakes provision imposes its fees against a driver who is under the influence of alcoholic beverages or controlled substances to the extent that his/her normal faculties are impaired and the driver must be the “proximate cause of the accident or a substantial causative factor of an accident.” This ordinance sets forth standards of impairment and testing methods as to the amount of alcohol or controlled substances. Failure to pay the accident response fee constitutes a misdemeanor, punishable upon conviction by a \$500 fine. Typical city fees based on an hourly rate range from \$28 for a police officer and \$154 for a vehicle (Ocala and Longwood) to \$435 for an emergency fire/rescue response to an accident where no injuries are found (Winter Park). According to Ocala authorities, over the past six months they collected 37 percent of accident response fees from insurers.

Florida local governments either administer the billing and collection of accident response fees or utilize the administrative services of third-party vendors who may charge up to ten percent of the collections. The procedure is straightforward: a copy of the police accident report is obtained, which contains the

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<sup>4</sup> Similar language is contained in the Belleview, Chiefland and West Melbourne ordinances.

<sup>5</sup> The Martin County fee is for the extrication of persons from vehicles and the extinguishment of vehicle fires.

<sup>6</sup> Sumter County will not bill drivers/owners who are covered by Medicare or Medicaid if such programs do not provide coverage for auto accident recovery fees.

<sup>7</sup> The Belleview, Chiefland, Ocala and West Melbourne provisions only apply to police services; the Cocoa and Longwood ordinances apply to both police and fire services; the Lauderdale Lakes provision applies to police, fire and emergency medical services (ambulances), the Hialeah law applies to fire and associated emergency response services and the Tallahassee and Winter Park laws only cover fire services.

<sup>8</sup> For example, the City of Tallahassee fire response ordinance applies to “all” motor vehicle accidents and does not mention whether the at-fault driver will pay the fee.

<sup>9</sup> West Melbourne ordinance.

names/addresses of the parties involved (and their insurers),<sup>10</sup> the police or fire services are calculated according to the fee schedule, and the parties (and insurers) are billed depending on the provisions of the particular ordinance. According to representatives with Cost Recovery Corp., a company specializing in police and fire department billing, 56 percent of the auto insurers pay accident response fees (nationwide). Local governments in Florida imposing the accident response fee justify its imposition by stating that fire and police services provided for auto accidents are outside the scope of core law enforcement and fire duties. Traffic crashes are civil situations caused by negligent drivers and the attendant services provided by fire and police do not benefit local taxpayers. Government officials assert that providing accident response services detracts from the ability of fire and police officers to serve and protect their own taxpayers or residents.

Most auto insurers contacted by Senate professional staff have not adopted a consistent approach on the issue of accident response fees, given the lack of statutory direction and the lack of clear case law on the subject. Some insurers evaluate whether to pay the fees on a case by case basis based on the specific circumstances of the accident, the language in the local ordinance and the policy provisions. Many large insurers question the validity of the fees and refuse to pay them, arguing they are improper user fees because local residents already pay for these services through property taxes. Responding to and investigating auto accidents have traditionally been handled by local police and fire departments and such responses have never been covered in insurance policies.

Under Florida's no-fault law, PIP (personal injury protection) covers reasonable medical expenses, including ambulance transportation, but expenses related to accident responses are not covered.<sup>11</sup> Liability coverage pays for damages caused by the insured to another person's vehicle or property (property damage liability) or for injury to others (bodily injury liability) if the insured is legally liable. Insurers contacted by Senate professional staff generally assert that accident response fees are not covered under liability policies. Company representatives argue that if insurers were to start paying these fees, insurance premiums will increase.

#### Authority for Local Governments to Charge Accident Response Fees

Counties and cities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.<sup>12</sup> However, such entities do possess authority to impose user fees or assessments by local ordinance because such authority is within the constitutional and statutory home rule powers of local governments.<sup>13</sup> A key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.<sup>14</sup> On the other hand, a tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or

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<sup>10</sup> Under current law (s. 316.065, F.S.), the driver of a vehicle involved in a crash resulting in injury or death of any persons or damage to any vehicle or other property in an amount of at least \$500 must immediately give notice of the crash to the local police department (if the crash occurs within a city) or to the county sheriff or the Highway Patrol. A violation of this provision constitutes a noncriminal traffic infraction under ch. 318, F.S. Law enforcement officers investigating a motor vehicle crash that resulted in death or personal injury must write a crash report and forward such report within 10 days to the Department of Highway Safety and Motor Vehicles (DHSMV) (s. 316.066, F.S.). Each party to the crash must provide the law enforcement officer with proof of insurance to be included in the crash report (s. 316.066, F.S.).

<sup>11</sup> Florida law only requires drivers to have PIP coverage of \$10,000 and property damage liability coverage of \$10,000. (s. 627.736, F.S.).

<sup>12</sup> Article VII, section 1(a), Florida Constitution.

<sup>13</sup> *City of Boca Raton v. State*, 595 So.2d (Fla. 1992).

<sup>14</sup> *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756 (Fla. 3rd DCA 2002) (holding that a fee charged to pawnshop owners to cover the cost of police inspections of pawn shops is a constitutionally permissible fee and not a tax because the fee is voluntary and benefits the pawnshop owners in a manner not shared by others). User fees are based on the proprietary right of the governing body and are charged in exchange for a particular governmental service that benefits the party paying the fee in a way not shared by other members of society, and are paid by choice in that the party paying the fee has the option of not utilizing the governmental service and thus avoiding the charge. *State v. City of Port Orange*, 650 So.2d (Fla. 1994).

contract of the one on whom it is imposed.”<sup>15</sup> Florida courts have not yet ruled on the issue of whether accident response fees are taxes, which would require general law authorization, or are valid user fees, and Senate professional staff is unaware of any legal challenges to these fees in Florida. Courts may find that accident response fees constitute valid user fees and are not taxes because the fees are voluntary in that they can be avoided by not operating a vehicle in the county/city jurisdictions which impose the fee, and that the fees benefit the persons involved in vehicle accidents in a manner not shared by persons not involved in vehicle accidents.

However, even if accident response fees are found to be valid user fees that can be imposed on drivers/owners involved in accidents, such fees are not necessarily covered by a driver’s auto insurance policy. To the extent these ordinances attempt to create coverage for the imposed fees (by implicating that the fees are part of bodily injury or property damage liability coverages),<sup>16</sup> this attempt infringes upon the Florida Legislature’s exclusive authority to regulate insurance. Local governments cannot legislate on subjects that have been preempted exclusively by the state.<sup>17</sup> Additionally, these ordinances may be subject to a challenge that they impair the obligations of contracts by directly affecting the contractual rights between the insurer and the insured.<sup>18</sup> According to insurers, the standard auto policy does not provide for coverage for accident response fees, and to the extent these ordinances attempt to rewrite the insurance contract to cover a category which was not bargained for by the parties, the constitutional prohibition against laws that impair contracts must be considered.<sup>19</sup>

Auto insurers in some states have successfully challenged the imposition of accident response fees based on equal protection grounds (imposition of the fees only on non-resident as opposed to resident drivers) and under a common law doctrine known as the “free public services doctrine” (also known as the “municipal cost recovery rule”), which provides that a government entity cannot recover from a tortfeasor the costs of public services occasioned by the tortfeasor’s wrongdoing.<sup>20</sup> The theory underpinning the doctrine is that local governments are to provide core services for the public and pay for these services by spreading the costs to all citizens through taxation. Although this doctrine has not been specifically adopted by a Florida court, it has been adopted in other jurisdictions and an argument can be made that the instant fees would be barred under the free public services doctrine.

#### States That Prohibit Accident Response Fees

Five states have banned their local governments from imposing accident response fees primarily because lawmakers view such assessments as invalid or inappropriate user fees. In 2007, Missouri outlawed this practice by prohibiting local entities from imposing such fees on insurers, vehicle owners or drivers for law enforcement agencies responding or investigating motor vehicle accidents. That same year, Pennsylvania prohibited its cities from charging these fees incurred as a result of police responding to a motor vehicle accident. In 2008, Tennessee prohibited local entities from imposing law enforcement accident response fees on insurers, drivers or owners of motor vehicles, but made an exception for ambulance services provided in conjunction with emergency responses to accidents. Indiana also banned its political subdivisions from collecting accident fees from drivers or other persons for police agencies responding to or investigating auto accidents. Georgia’s ban was much broader in

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<sup>15</sup> *Quik Cash*, 811 So.2d at 758-59.

<sup>16</sup> Several of the ordinances state that the fees represent an “add-on cost of the claim for damages to the vehicle, property and/or injuries sustained by the vehicle occupants.”

<sup>17</sup> *Tallahassee Memorial Regional Med. Ctr. Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So.2d 826 (Fla. 1st DCA 1996). The State of Florida has adopted an insurance regulatory scheme that comprehensively regulates all aspects of the insurance contract between the insurer and the insured. See, e.g., Chapter 627, Part XI, F.S., (“Motor Vehicle and Casualty Insurance Contracts”); McCarran-Ferguson Act, 15 U.S.C. 1011 (providing for state regulation of insurance).

<sup>18</sup> Article I, section 10 of the Florida Constitution prohibits laws impairing the obligation of contracts.

<sup>19</sup> *State Farm Mut. Auto. Ins. Co. v. Hassen*, 650 So.2d 128 (2d DCS 1995).

<sup>20</sup> *City of Flagstaff v. Atchison, Topeka & Santa Fe R. Co.*, 719 F.2d 1077 (D.C. Cir. 1984). The Court found that the cost of public services for fire protection is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence created the need for the service.

that it outlawed counties and cities from imposing fees on insurance companies for “any” kind of service provided by local governments for auto accidents, but provided for three exceptions: 1.) where coverage for services was provided by the insurer to the policyholder and services were lawfully billed to the policyholder; 2.) where the policyholder’s medical insurance covered emergency medical services and the policyholder made an assignment to the service provider; or 3.) where other services are provided to the policyholder by the local government that are expressly authorized by state or federal law to be billed directly to the insurer.

### Special Fire Control Districts<sup>21</sup>

Section 191.009, F.S., contains the authority for special fire control districts to assess ad valorem taxes, non-ad valorem special assessments and user fees. Subsection (3)(c) grants the board of the special fire control district the authority to “provide a reasonable schedule of charges for responding to or assisting or mitigating emergencies that either threaten or could threaten the health and safety of persons, property, or the environment, to which the district has been called, including a charge for responding to false alarms.”

### Proposed Changes

This bill creates s. 125.01045, F.S., by prohibiting counties from imposing a fee or seeking reimbursement for any costs or expenses (including personnel, supplies, motor vehicles, or equipment) incurred for services provided by a first responder in response to a motor vehicle accident, except for:

- costs of materials to contain or clean up hazardous waste in quantities reportable to the Florida State Warning Point at the Division of Emergency Management; and
- costs for transportation and treatment provided by ambulance services licensed pursuant to s. 401.23(5).<sup>22</sup>

The bill defines “first responder” as a law enforcement officer defined in s. 943.10, F.S.,<sup>23</sup> a firefighter defined in s. 633.30, F.S.,<sup>24</sup> or an emergency medical technician or paramedic defined in s. 401.23, F.S.,<sup>25</sup> who is employed by the state or a local government. A volunteer law enforcement officer, firefighter or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government.

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<sup>21</sup> The Department of Community Affairs Special District Information Program indicates there are 53 special districts that provide fire control and rescue services and 3 special districts that provide emergency medical services. (<http://www.floridaspecialdistricts.org/OfficialList/report.cfm>) (last visited in March 2009).

<sup>22</sup> Section 401.23(5), F.S., defines “ambulance” or “emergency medical services vehicle” as any privately or publicly owned land or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and is used for, or intended to be used for, land or water transportation of sick or injured persons requiring or likely to require medical attention during transport.

<sup>23</sup> Section 943.10, F.S., defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

<sup>24</sup> Section 633.30, F.S., defines “firefighter” as any person initially employed as a full-time professional firefighter by any employing agency, as defined herein, whose primary responsibility is the prevention and extinguishment of fires, the protection and saving of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as of any law pertaining to the prevention and control of fires.

<sup>25</sup> Section 401.23, F.S., defines “emergency medical technician” as a person who is certified by the Department of Health to perform basic life support pursuant to this part. This section also defines “paramedic” as a person who is certified by the Department of Health to perform basic and advanced life support pursuant to this part.

This bill also creates s. 166.0446, F.S., by prohibiting municipalities from imposing a fee or seeking reimbursement for any costs or expenses (including personnel, supplies or equipment) incurred for services provided by a first responder in response to a motor vehicle accident, except for:

- costs of materials to contain or clean up hazardous waste in quantities reportable to the Florida State Warning Point at the Division of Emergency Management; and
- costs for transportation and treatment provided by ambulance services licensed pursuant to s. 401.23(5).<sup>26</sup>

This provision relating to municipalities defines “first responder” in the same manner as in section 1 of this bill.

The Property Casualty Insurers Association of America (PCI), who is a proponent of this legislation, has compiled a working list of Florida local governments that have considered accident response fees. Of the 29 municipalities on this list, four have adopted accident response fees, two have rejected the imposition of these fees, and the remaining 23 municipalities are still considering the issue. In addition, six counties and two fire districts in Florida are currently considering the imposition of accident response fees.

This bill has an effective date of July 1, 2009.

#### B. SECTION DIRECTORY:

Section 1: creates s. 125.01045, F.S., relating to a prohibition of fees for first-responder services under the statutory provision pertaining to counties.

Section 2: creates s. 166.0446, F.S., relating to a prohibition of fees for first-responder services under the statutory provision pertaining to municipalities.

Section 3: provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Under the provisions of this bill, local governments that assess accident response fees to fund fire and police services will no longer be able to use these fees as a revenue source.

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<sup>26</sup> Section 401.23(5), F.S., defines “ambulance” or “emergency medical services vehicle” as any privately or publicly owned land or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and is used for, or intended to be used for, land or water transportation of sick or injured persons requiring or likely to require medical attention during transport.

2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the provisions of this bill, drivers involved in auto accidents will benefit because local jurisdictions will no longer be allowed to impose accident response fees.

D. FISCAL COMMENTS:

The Office of Insurance Regulation has indicated that this bill would not have an operational impact on the agency.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It appears that this bill will reduce the authority that counties and municipalities have to raise revenues in the aggregate by prohibiting the imposition of a fee or to seek reimbursement for costs or expenses incurred for first responder services. Therefore, this bill may be subject to the mandates provisions of Article VII, section 18 of the Florida Constitution. The Revenue Estimating Conference has not reviewed this bill to determine if this impact is expected to be significant, thus requiring a two-thirds vote of the membership of each house of the Legislature for approval; or if the impact is expected to be insignificant, which would exempt this bill from a two-thirds vote.

2. Other:  
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill sponsors may want to consider amending the bill to apply the prohibition on the imposition of fees to special fire control districts providing emergency rescue or first-responder services.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Military & Local Affairs Policy Committee adopted one amendment and reported the bill favorably as a Committee Substitute.

This amendment excluded the following items from the prohibition of fees for first-responder services:

- the assessment of a "tax;"
- equipment in response to a fire or other emergency; and



- language related to insurance company coverage and billing.

In addition, the amendment provided that cities and counties may impose a fee or seek reimbursement for:

- costs of materials to contain or clean up certain hazardous waste; and
- costs for transportation and treatment provided by ambulance services pursuant to current law.

This analysis reflects the amendment adopted by the Military & Local Affairs Policy Committee.