

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 517 Licensure of Life Support Services

SPONSOR(S): Health & Human Services Committee, Local Government Affairs Subcommittee; Health Quality Subcommittee; Renner

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Siples	O'Callaghan
2) Local Government Affairs Subcommittee	9 Y, 0 N, As CS	Darden	Miller
3) Health & Human Services Committee	16 Y, 1 N, As CS	Siples	Calamas

SUMMARY ANALYSIS

The provision of emergency medical transportation services are governed by the Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act, found in part III of ch. 401, F.S.

The Department of Health (DOH) licenses basic life support (BLS) service providers, advanced life support (ALS) service providers and air ambulances. All license applicants must meet the minimum standards regarding equipment, vehicles, personnel, services, and insurance established by the DOH. However, BLS and ALS service providers must also obtain a Certificate of Public Convenience and Necessity (COPCN) from the government of each county in which the provider plans to operate.

The bill exempts governmental entities located in a county with three or more independent special fire rescue districts from having to obtain a COPCN to be licensed by the DOH to provide basic or advanced life support nontransport services or a COPCN or other authorization from a county to provide such services in that county.

Pursuant to s. 401.25, F.S., each county may adopt an ordinance establishing the standards for the issuance of a COPCN, taking into consideration state guidelines, recommendations of the local or regional trauma agency, and recommendations of municipalities within its jurisdiction. The bill requires those counties adopting a COPCN ordinance to also consider recommendations of independent special districts providing fire rescue services or air ambulance services within its jurisdiction.

The bill requires a county with three or more independent special fire rescue districts to adopt an ordinance establishing reasonable standards for the issuance of a COPCN for ALS and BLS transport services by January 1, 2017. The ordinance must also provide a quasi-judicial review process for the approval or denial of the application and allow an applicant whose COPCN application is denied to appeal the county commission's decision in the circuit court with jurisdiction over the county. However, a county in which the local planning agency has documented in its land use files that less than 10 percent of the buildable land in the county is vacant is exempt from enacting such an ordinance.

The bill may have an indeterminate, negative fiscal impact on the state court system related to the review of denied COPCN applications in the circuit court having jurisdiction over the county. The bill may have an indeterminate, negative fiscal impact on counties required to adopt such an ordinance and to defend against any action brought pursuant to the enacted ordinance.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Emergency Medical Services

Part III of ch. 401, F.S., governs the provision of emergency medical transportation services in Florida and is titled the "Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act (Act)."¹ The Act establishes the licensing and operational requirements for emergency medical services.

Emergency Medical Services Advisory Council

The Act creates the Emergency Medical Services Advisory Council (Council)² to act as an advisory body to the emergency medical services program within the Department of Health (DOH).³ The Council's duties include:

- Identifying and making recommendations to the DOH regarding the appropriateness of suggested changes to statutes and administrative rules;
- Acting as a clearinghouse for information specific to changes in the provision of medical services and trauma care;
- Providing technical support to the DOH in the areas of emergency medical services and trauma systems design, required medical and rescue equipment, required drugs and dosages, medical treatment protocols and emergency medical services personnel education and training requirements;
- Providing a forum for discussing significant issues facing the emergency medical services and trauma care communities;
- Providing a forum for planning the continued development of the state's emergency medical services system through the joint production of the emergency medical services state plan;
- Assisting the DOH in developing the emergency medical services quality management program;
- Assisting the DOH in setting program priorities; and
- Providing feedback to the DOH on the administration and performance of the emergency medical services program.⁴

Emergency Medical Transportation Services

Basic life support (BLS) service refers to any emergency medical service that uses only basic life support techniques.⁵ BLS includes basic non-invasive interventions to reduce morbidity and mortality associated with out-of-hospital medical and traumatic emergencies.⁶ The services provided may include stabilization and maintenance of airway and breathing, pharmacological interventions, trauma care, and transportation to an appropriate medical facility.⁷

¹ Section 401.2101, F.S.

² Section 401.245(2), F.S. The Council consists of 15 members appointed by the State Surgeon General, except that state agency representatives are appointed by the respective agency heads. Members are typically appointed for four year terms, with the chair being designated by the State Surgeon General and Secretary of Health. Additional members include six ex officio representatives appointed by various other state agency heads.

³ Section 401.245(1), F.S.

⁴ *Id.*

⁵ Section 401.23(8), F.S.

⁶ Section 401.23(7), F.S., and U.S. Department of Transportation, National Highway Safety Administration, *National EMS Scope of Practice Model 23-24*, available at www.nhtsa.gov/people/injury/ems/pub/emtbnscc.pdf (last visited Feb. 9, 2016).

⁷ *Id.*

Advanced life support (ALS) service refers to any emergency medical or non-transport service that uses advanced life support techniques.⁸ ALS includes the assessment or treatment of a person by a qualified individual, such as a paramedic, who is trained in the use of techniques such as the administration of drugs or intravenous fluid, endotracheal intubation, telemetry, cardiac monitoring, and cardiac defibrillation.⁹

Air ambulance service refers to a licensed publicly or privately owned service that operates air ambulances to transport persons requiring or likely to require medical attention during transport.¹⁰ An air ambulance is a fixed-wing or rotary-wing aircraft used for, or intended to be used for, the air transportation of sick or injured persons that require or are likely to require medical attention during transport.¹¹

Licensure

Current law requires providers of basic or advanced life support transportation services to be licensed by the DOH in their respective fields.¹² Air ambulances must also be licensed by the DOH.¹³ The provider must submit an application to the DOH and must include documentation that the applicant meets the requirements for a BLS service or an ALS service.¹⁴ There are currently 233 licensed ALS providers, 8 licensed BLS providers, and 33 licensed air ambulance providers in Florida.¹⁵

To be licensed as a BLS or ALS service, an applicant must comply with the following requirements:

- The ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant meet the statutory requirement and administrative rules for either a BLS service or an ALS service, whichever is applicable;
- Have adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable; and
- A Certificate of Public Convenience and Necessity from each county in which the applicant will operate.¹⁶

In addition to the general licensure requirement, the DOH by rule provides a list of the equipment and supplies with which each BLS vehicle must be equipped and maintained and the equipment and medication with which each ALS vehicle must be equipped and maintained.¹⁷ Each BLS and ALS service must employ or contract with a medical director who is a licensed physician to oversee the services provided.¹⁸

To be licensed as an air ambulance service, an applicant must:

- Submit an application to the DOH with the appropriate fee;
- Specify the location of all required medical equipment and provide documentation that all such equipment is available and in good working order;
- Provide documentation that all aircraft and crew members meet applicable Federal Aviation Administration (FAA) regulations;

⁸ Section 401.23(2), F.S.

⁹ Section 401.23(1), F.S.

¹⁰ Section 401.23(4), F.S.

¹¹ Section 401.23(3), F.S.

¹² Section 401.25(1), F.S.

¹³ Section 401.251, F.S.

¹⁴ *Id.*

¹⁵ E-mail communication with staff of the Department of Health (Nov. 20, 2015) (on file with the Health Quality Subcommittee).

¹⁶ Section 401.25(2), F.S.

¹⁷ Rule 64J-1.002(4) F.A.C. (Basic Life Support Service License – Ground); Rule 64J-1.003(7), F.A.C. (Advanced Life Support Service License – Ground)..

¹⁸ Rule 64J-1.004, F.A.C. The medical director must also be board certified, active in a broad-based clinical medical specialty with experience in prehospital care, and hold a certificate in Advanced Cardiac Life Support or its equivalent.

- Provide proof of adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable;
- Specify whether the service uses either fixed-winged or rotary-winged aircraft, or both; and
- Provide evidence the service has employed or contracted with a medical director, if the service provides interhospital air transport, air transport from one hospital to another facility, air transport from hospital to home, or other similar air transport.¹⁹

The DOH defines by rule the structural, equipment, and supply requirements that air ambulances must meet for licensure.²⁰ An air ambulance service must also have a safety committee and emergency protocols to address, at minimum, emergency procedures when the aircraft is overdue, when radio communications cannot be established, or when aircraft location cannot be verified.²¹

Certificate of Public Convenience and Necessity

A Certificate of Public Convenience and Necessity (COPCN) is a written statement, issued by the governing board of a county, granting permission for an emergency medical service provider to provide authorized services for the benefit of the population of that county or the benefit of the population of some geographic area of that county.²² At the time of licensure, each provider of life support transportation services must have a COPCN from each county in which the provider intends to operate.²³ Section 401.25(6), F.S., authorizes, but does not require, counties to adopt ordinances establishing standards for issuing a COPCN.

Thirty-eight of Florida's sixty-seven counties have adopted ordinances to establish the procedure and set the standards for obtaining a COPCN.²⁴ Although the COPCN ordinances vary from county to county, these ordinances generally provide instructions on the application process, criteria on which the application may be evaluated, and procedures for appealing a denial, suspension, or revocation of a COPCN.

Independent Special Fire Control Districts

An independent special fire control district is an independent special district²⁵ created by special law or general law of local application that provides fire suppression and related activities within its jurisdictional boundaries.²⁶ Currently, there are 53 such districts in Florida.²⁷ The "Independent Special Fire Control District Act" provides the general and special powers for independent fire control districts and addresses governance, district creation and expansion, and funding mechanisms, among other things.²⁸

Quasi-judicial Proceedings

¹⁹ Section 401.251, F.S.

²⁰ Rule 64J-1.005, F.A.C.

²¹ *Id.*

²² Rule 64J-1.001(4), F.A.C.

²³ Section 401.25(2)(d), F.S.

²⁴ See, e.g. Volusia County Code of Ordinances Chapter 46 (Emergency Services); St. Johns County Ordinance No. 2012-20. County ordinances are generally available from Municode (<https://www.municode.com/library/fl> (last visited Feb. 9, 2016)). Some counties have adopted policies or informal procedures to award COPCNs, but have not enacted an ordinance.

²⁵ Pursuant to s. 189.012, F.S., a special district is a unit of local government created for a special purpose and operates within a limited geographical jurisdiction, and an independent special district is a special district that is not a dependent district. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.

²⁶ Section 191.003(5), F.S. The term does not include a municipality, county, dependent special district, a district providing primarily emergency medical services, a community development district, or any other multi-power district performing fire suppression and related services in addition to other services.

²⁷ Florida Department of Economic Opportunity, Special District Information Program, *Official List of Special Districts Online - Directory*, available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm> (last visited February 18, 2016).

²⁸ Chapter 191, F.S.

A quasi-proceeding is one in which notice and a hearing are required and the judgement or decision is based on the showing made at the hearing.²⁹ Such a proceeding allows for record, which is reviewable by an appellate body, to be developed. A circuit court may review the determination of a quasi-judicial proceeding, if provided by general law.³⁰

Effect of Proposed Changes

When applying to the DOH for a license to provide ALS or BLS services, an applicant must submit a COPCN for the counties in which it plans to operate. The bill exempts governmental entities providing BLS or ALS nontransport services in counties in which there are at least three independent fire rescue districts from the requirement to obtain a COPCN for licensure by the department or for authorization to provide such services in such a county.

Each county has the authority to adopt an ordinance providing standards for a COPCN, which takes into account state guidelines, recommendations of local and regional trauma centers, and recommendations of municipalities within its jurisdiction. The bill adds recommendations from independent special districts providing rescue fire rescue services or air ambulance services within its jurisdiction to the recommendations that must be considered when adopting such an ordinance.

In counties in which there are at least three independent special fire rescue districts, the bill requires the governing body of those counties to enact an ordinance or amend an existing ordinance that provides reasonable standards for the issuance of a COPCN for BLS and ALS transport services. In developing the standards, the governing body of each county required to adopt an ordinance must consider state guidelines, the recommendations of the local and regional trauma centers, the recommendations of municipalities within its jurisdiction, and the recommendations from independent special districts providing fire rescue services or air ambulance services within its jurisdiction.

The ordinance must provide a quasi-judicial process for the approval or denial of an application and allow an applicant whose application is denied to appeal the decision to the circuit court with jurisdiction over the county. The bill requires that such an ordinance be enacted or an existing ordinance be amended to meet the bill's provisions by January 1, 2017; however, a county in which the local planning agency has documented in its land use files that less than 10 percent of the buildable land in the county is vacant is exempt from enacting such an ordinance.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 401.25, F.S., relating to licensure as a basic life support or an advanced life support service.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The state court system may see an indeterminate, positive fiscal impact from the collection of filing fees associated with providers filing appeals in circuit court to review the decision of a county commission to deny an application for a COPCN.

2. Expenditures:

²⁹ *De Groot v. Sheffield*, 95 So.2d 912, 915 (Fla. 1957).

³⁰ FLA. CONST. art. V s. 5(b). See also Fla. R. App. P. 9.030(c)(1)(C), and Fla. R. App. P. 9.190 (Judicial Review of Administrative Action, stating the "review of quasi-judicial decisions of any administrative body ... not subject to the Administrative Procedure Act shall be commenced by filing a petition for certiorari ... unless judicial review by appeal is provided by general law.")

The state court system may see an indeterminate, negative fiscal impact from ALS, BLS, or air ambulance providers filing appeals in circuit court to review the decision of a county commission to deny an application for a COPCN.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A county that is required under the bill to enact an ordinance and has not previously enacted an ordinance or needs to amend an existing ordinance establishing standards for issuing a COPCN, as required by the bill, may incur expenses or use resources to enact or amend an ordinance to comply with the bill's provisions.

To the extent that a county commission must defend its decision to deny the award of a COPCN, a county may incur legal fees associated with such a legal action.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Special and Local Laws

A special law "is a statute relating to a particular persons or things or other particular subjects of a class."³¹ A local law is a "statute relating to particular subdivisions or portions of the state, or to particular places of classified locality."³² Article III, Section 10, of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published. Notice of intent to seek enactment of special or local legislation must be published in a newspaper of the county or counties affected by the legislation one time at least 30 days prior to the bill's introduction to the Legislature.³³ In lieu of the notice, a special or local bill may be conditioned upon approval of a referendum by affected voters.³⁴ Even if a bill is enacted as general law, courts will treat it as a special law if its

³¹ *Housing Authority of City of St. Petersburg v. City of St. Petersburg*, 287 So.2d 307, 310 (Fla. 1973) (quoting *Carter v. Norman*, 38 So.2d 30 (Fla. 1948).

³² *Id.*

³³ Section 11.02, F.S. If the affected county does not have a newspaper that is circulated throughout the county, a notice may be posted in three public places of the county, one of which must be the courthouse.

³⁴ FLA. CONST. art. III, s. 10.

effect is more like that of a special law.³⁵ However, if it is possible in the future for others to meet the criteria set forth in the law, then it is a general law and not a special law.³⁶

B. RULE-MAKING AUTHORITY:

The bill does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Health Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required the standards for certificates of public convenience and necessity (COPCN) for basic or advanced life support services and air ambulance services to be objective and address the quality and cost of services.
- Provided that a court's review of a denial of a COPCN is to be based on the standards set forth in the enacted ordinance in the appellant's jurisdiction and state guidelines.

On January 19, 2016, the Local Government Affairs Subcommittee adopted a strike-all amendment. The amendment requires each county that is not a fiscally constrained county to adopt an ordinance concerning COPCNs for basic or advanced life support services, but leaves in place the discretionary authority of current law for fiscally constrained counties to adopt ordinances pertaining to the COPCN application process for basic or advanced life support services. The amendment provides all counties have discretionary authority to adopt ordinances on the application process for COPCNs for air ambulance services. The amendment clarifies that the process for approving or denying an application shall be quasi-judicial. The amendment removes language concerning specific requirements for the ordinance.

On February 17, 2016, the Health and Human Services Committee adopted a strike-all amendment. The amendment:

- Required all counties adopting that opt to enact an ordinance for the issuance of a COPCN to consider the recommendations of consider the recommendations of local independent special districts that provide fire rescue or air ambulance services.
- Provided that a governmental entity located in a county that has at least three independent special fire rescue districts is not required to obtain a COPCN from a county to apply for a license from DOH to provide BLS and ALS nontransport services or to provide such services in that county.
- Required a county having at least three independent special fire rescue districts to an adopt an ordinance or amend an existing ordinance, by January 1, 2017, establishing standards for issuing a COPCN for BLS and ALS transport services, providing a quasi-judicial process for approval and denial of an application, and providing an appeal to the local circuit court.
- Exempts a county that would otherwise be required to adopt an ordinance from the requirement to do so, if the county's local planning agency has documented in its land use files that less than 10 percent of the buildable land in the county is vacant.

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute reported favorably by the Health and Human Services Committee.

³⁵ *Anderson v. Board of Public Instruction for Hillsborough County*, 136 So. 334, 337 (Fla. 1931).

³⁶ *Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc.*, 731 So.2d 21, 25 (Fla. 1st DCA 1999) (citing *Biscayne Kennel Club, Inc. v. Fla. St. Racing Comm'n*, 165 So.2d 762 (Fla. 1964); *Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983); *Summersport Enterprises, Ltd. v. Pari-Mutuel Comm'n*, 493 So.2d 1085 (Fla. 1st DCA 1986); *Dept. of Bus. Reg. v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989)).