

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 742

INTRODUCER: Judiciary Committee; Community Affairs Committee; and Senator Hutson

SUBJECT: Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
4.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 742 requires counties to adopt new ordinances or amend existing ones to comply with the provisions of the bill for the issuance of certificates of public convenience and necessity (COPCN) for basic and advanced life support services. Those ordinances must be in effect by January 1, 2017. However, the bill exempts fiscally constrained counties from the requirements.

A county ordinance complying with the bill must:

- Provide a quasi-judicial process for the issuance or denial of an application for a COPCN.
- Authorize an applicant who maintains fire rescue infrastructure and provides first response to appeal the denial of a COPCN to the circuit court.

A county in developing the standards above must consider the recommendations of independent special districts providing fire rescue services, in addition to state guidelines and the recommendations of entities identified in existing law.

As for COPCNs for basic and advanced life support services, the bill requires the same criteria for air ambulance services regarding recommendations of independent special districts providing fire rescue services. However, the bill does not likewise require a quasi-judicial process or the right of appeal to the circuit court for air ambulance providers.

II. Present Situation:

Basic and Advanced Life Support Services

Prehospital life support services fall into two general categories, basic life support services (BLS) and advanced life support services (ALS). BLS is medical care that is used to assure a patient's vital functions until the patient has been transported to appropriate medical care.¹ ALS is sophisticated care using invasive methods, such as intravenous fluids, medications and intubation.² ALS can be performed in a ground ambulance or a helicopter and is usually implemented by physicians or paramedics.³ BLS is typically performed by paramedics or emergency medical technicians (EMT).⁴

In Florida, providers of both BLS and ALS must be licensed by the Department of Health (DOH).⁵ To be licensed, an applicant must pay the license fee,⁶ provide evidence of adequate liability insurance coverage, have a COPCN from each county in which the applicant wishes to operate, and meet the minimum standards applicable to the type of service the applicant wishes to provide.⁷ Licenses for BLS and ALS must be renewed every 2 years.⁸

Certificates of Public Convenience and Necessity for the Provision of Basic or Advanced Life Support Services and Air Ambulance Services

A COPCN is defined as a written statement or document, issued by the governing board of a county, granting permission for an applicant or licensee to provide services authorized under such license for the benefit of the population of that county or an area within the county.⁹ To be licensed to provide basic or advanced life support services or air ambulance services, an applicant must have a COPCN from each county in which the applicant will provide services.¹⁰

¹ Ryyänen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62. Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited Jan. 15, 2016).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 401.25(1), F.S.

⁶ The license fee is \$660 for a BLS provider and \$1,375 for an ALS or Air license provider, plus \$25 for each vehicle permit. See <http://www.floridahealth.gov/licensing-and-regulation/ems-service-provider-regulation-and-compliance/index.html> (last visited Jan. 15, 2016).

⁷ Minimum standards include an approved radio communications system; trauma transport protocols; compliance with minimum vehicle requirements; and adequate staffing including at least one EMT per ambulance for BLS, at least one EMT and one paramedic per ambulance for ALS, and at least one paramedic for air transport. ALS providers are also required to have a medical director with a Drug Enforcement Agency license number. See Rules 64J-1.002, 64J-1.003, and 64J-1.005, F.A.C.

⁸ Florida Department of Health, *EMS Service Provider Licensing*, <http://www.floridahealth.gov/licensing-and-regulation/ems-service-provider-regulation-and-compliance/index.html> (last visited Jan. 15, 2016).

⁹ Rule 64J-1.001(4), F.A.C.

¹⁰ Section 401.25(2)(d), F.S.; Specifically for air ambulance services, the requirement to obtain a COPCN may be preempted by the federal Airline Deregulation Act of 1978 (ADA). The ADA restricts states from regulating matters related to airline pricing, routes, and services. In general, states are allowed to regulate the medical aspects of air ambulance services while the aviation components are regulated by the Federal Aviation Administration. Courts have found in other states (most recently in North Carolina) that certificate of need regulation of air ambulance providers is expressly preempted to the federal government and the Federal Department of Transportation has advised that this preemption also applies to COPCN laws. For

Counties are allowed, but not required, to adopt ordinances to provide reasonable standards for the issuance of COPCNs. In adopting such ordinances, the counties must consider state guidelines, the recommendations of the local or regional trauma agency, and the recommendations of municipalities within their jurisdiction.¹¹

County ordinances regarding COPCNs vary in detail from county to county. Of the counties surveyed, all ordinances detail specific application requirements, typically including forms required to be filed with the county and application review criteria.¹² County ordinances may require the county to consider the recommendation of various entities regarding approval or denial of an application.¹³

The amount of detail required for a COPCN application also varies from county to county, but generally includes proof that the applicant has all necessary licenses as well as meets all state criteria standards for the provision of ALS or BLS services. Also included in some ordinances are revocation criteria, responsibilities conveyed on the holder of a COPCN, and a ban on the sale or reassignment of COPCNs. Additionally, the length of time that a COPCN lasts before it expires varies. For example, in Volusia County COPCNs expire after 2 years, in Broward County for ALS after 3 years and for BLS after 5 years, and in Miami-Dade County the COPCNs last for 3 years.

Fiscally Constrained Counties

A fiscally constrained county is a county:

- That is entirely within a rural area of opportunity designated by the Governor; or
- For which millage will raise no more than \$5 million in revenue based on certified taxable value.¹⁴

a detailed analysis of this issue, see the United States Government Accountability Office Report on “Air Ambulance: Effects of Industry Changes on Services Are Unclear,” GAO-10-907, pp. 20-25 and Appendix III (Sep. 2010), <http://www.gao.gov/new.items/d10907.pdf>.

¹¹ Section 401.25(6), F.S.

¹² Counties surveyed include Volusia (Sec. 46-92 Volusia County Code of Ordinances), Broward (Sec. 3½, Broward Cty. Code of Ordinances), Miami-Dade (Ch. 4 Art. I, Miami-Dade Cty. Code of Ordinances), Wakulla (Ch. 11.5 Art. III, Wakulla Cty. Code of Ordinances), Baker (Ch. 16, Art. III, Baker Cty. Code of Ordinances), and Collier (Ch. 50 Art. III, Collier Cty. Code of Ordinances). Counties without ordinances include, but are not limited to, Columbia, Franklin, Levy, and Gadsden Counties (Conversation with Susan Harbin, Florida Association of Counties (Jan. 19, 2016).

¹³ For example, the Broward County ordinance requires the trauma management agency to make a recommendation on renewals of certificates and licenses for nonemergency medical transport services (Sec. 3½-15(b), Broward Cty. Code of Ordinances). Volusia County requires the county to consider application recommendations from current providers or operators in the county (Sec. 46-92(i), Volusia Cty. Code of Ordinances). Wakulla County requires review and comments on applications for ambulance services by various entities: the county fire volunteer department, two municipalities within its jurisdiction, and the county department of emergency management services (Sec. 11.5.058, Wakulla Cty. Code of Ordinances).

¹⁴ Section 218.67(1), F.S. The Governor designates a county as a fiscally constrained county under the same criteria as that used for the Rural Economic Development Initiative (Section 286.0655, F.S.)

Independent Special Districts

A special district is a unit of local government created for a special purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.¹⁵

Special districts can be either independent or dependent. A dependent special district is a district that has one of the following characteristics:

- The membership of the governing body is identical to that of the governing body of a single county or a municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.

An independent special district is a special district that does not qualify as a dependent special 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.¹⁶

Quasi-judicial Proceedings

Hearings may be classified as legislative, executive, or quasi-judicial in nature.

If a local tribunal acts in a quasi-legislative capacity, the avenue of appeal is typically to circuit court through an action for a declaratory judgment. However, if the local tribunal acts in a quasi-judicial capacity, petitioners have two options to appeal in the circuit court, a complaint for declaratory judgment or a writ of certiorari.¹⁷

The term “quasi-judicial” generally refers to “judicial decisions taken by an administrative agency.”¹⁸ Some modicum of due process is required for quasi-judicial hearings. “A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard.”¹⁹

Ex-parte communications are generally forbidden in the quasi-judicial process. Evidence of ex-parte communications made to a body acting quasi-judicially creates a presumption of prejudice. The presumption is rebuttable.²⁰

A petitioner must exhaust all administrative remedies in appealing a decision issued by a quasi-judicial entity. After exhausting administrative remedies, a petitioner may seek an appellate-level

¹⁵ Section 189.012(6), F.S.

¹⁶ Section 189.012(2) and (3), F.S.

¹⁷ *ABCs of Local Land Use and Zoning Decisions*, 84 FLA. B.J. 20 (Jan. 2010).

¹⁸ BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁹ *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).

²⁰ *Id.* at 1343-1344.

review only on a writ of certiorari²¹ to a District Court of Appeal.²² Still, a petitioner may have a right to appeal the decision of the quasi-judicial proceeding to a circuit court if provided by general law.²³

The appropriate standard of review by a circuit court accepting a writ of certiorari to review a local government action is limited to whether:

- Procedural due process is provided;
- Essential elements of law have been observed; and
- Administrative findings and judgment are supported by competent, substantial evidence.²⁴

In 1982, a Florida appellate court in 1982 reviewed a decision made by a county council to deny a COPCN application of a potential provider for emergency medical transportation services.²⁵ The court ruled that proceedings held by counties on COPCN applications are quasi-legislative or quasi-executive, rather than quasi-judicial proceedings. As such, these hearings are not subject to certiorari review by the circuit court.²⁶

In 2013, a circuit court denied a petition for a writ of certiorari filed by an ambulance transport provider challenging the denial of a COPCN.²⁷ The county denied the COPCN application of the provider at a hearing after other hearings on the matter.²⁸ However, the court concluded that denial of the writ was required because the hearings were not quasi-judicial in nature. The hallmarks of a quasi-judicial hearing, according to the court, include:

- The opportunity to cross-examine witnesses;
- Ex-parte communications are banned; and

The hearing is subject to certiorari review.²⁹

III. Effect of Proposed Changes:

The bill requires counties to adopt new ordinances or amend existing ones to comply with the provisions of the bill for the issuance of certificates of public convenience and necessity (COPCN) for basic and advanced life support services. Those ordinances must be in effect by January 1, 2017. However, the bill exempts fiscally constrained counties from the requirements.

A county ordinance complying with the bill must:

- Provide a quasi-judicial process for the issuance or denial of an application for a COPCN.
- Authorize an applicant who maintains fire rescue infrastructure and provides first response to appeal the denial of a COPCN to the circuit court.

²¹ A writ of certiorari is an appeal authorized at the discretion of an appellate court. Therefore, the appellate court must grant the writ of certiorari to the petitioner for the petitioner to proceed.

²² Bruce Epperson, *Redefining "Quasi-Judicial": The Diminishing Role of Quasi-Judicial Determinations in Local Government Personnel Actions*, 80 FLA. B.J. 59, 61 (July/Aug. 2006).

²³ Art. V., Sect. 5(b), FLA. CONST.

²⁴ *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

²⁵ *County of Volusia v. City of Daytona Beach*, 420 So. 2d 606, 606, 608 (Fla. 5th DCA 1982).

²⁶ *Id.* at 611.

²⁷ *Bonita Springs Fire Control and Rescue District v. Lee Cty.*, Case No. 13CA1115 (Fla. 20th Jud.Cir.Ct. 2013).

²⁸ *Id.* at 9.

²⁹ *Id.* at 3-5.

A county in developing the standards above must consider the recommendations of independent special districts providing fire rescue services, in addition to state guidelines and the recommendations of entities identified in existing law.

As for COPCNs for basic and advanced life support services, the bill requires the same criteria for air ambulance services regarding recommendations of independent special districts providing fire rescue services. However, the bill does not likewise require a quasi-judicial process or the right of appeal to the circuit court for air ambulance providers.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because the bill requires counties to adopt ordinances for the issuance of COPCNs, the bill falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. Subsection (d) provides an exemption from this prohibition for laws determined to have an “insignificant fiscal impact.” If a fiscal impact is not greater than the average statewide population for the applicable fiscal year³⁰ times \$0.10, the impact is insignificant and therefore exempt from mandates requirements. The fiscal impact of this bill is indeterminate, but if the cost of enacting or revising an ordinance exceeds the threshold for an insignificant impact, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

Fiscally constrained counties, however, are exempt from the requirements of the bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁰ Based on the Demographic Estimating Conference’s population adopted annually. The post-conference packet can be found at: <http://edr.state.fl.us/Content/conferences/population/index.cfm>.

B. Private Sector Impact:

The bill may result in more competition for COPCNs or more businesses having a COPCN to provide basic and advanced life support services. These competitive factors may impact the profitability of businesses providing basic and advanced life support services or the cost of services to consumers.

C. Government Sector Impact:

The Department of Health indicates that it expects no impact from the provisions of this bill.³¹

The Office of the State Courts Administrator indicates that it expects an increase in court workload and judicial time due to the right of appeal to circuit courts. However, fiscal impact is unknown due to the unavailability of data needed to determine fiscal impact.³²

The bill may have a negative fiscal impact on counties that are required to create or revise ordinances for the issuance of COPCNs in compliance with the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 401.25 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on January 20, 2016:**

- Provides an exemption to fiscally constrained counties from the requirement that counties adopt or amend ordinances that comply with the bill;
- Clarifies that county ordinances on COPCNs for basic and advanced life support services be in compliance by January 1, 2017; and
- Deletes the requirement that counties provide standards for COPCNs which are objective.

CS by Community Affairs on January 11, 2016:

³¹ Department of Health, *2016 Agency Legislative Bill Analysis*.

³² The Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Jan. 16, 2016).

Requires counties having COPCN ordinances to amend them if they are not in compliance with certain standards. If existing ordinances are in compliance, no action needs to be taken. Ordinances must provide a quasi-judicial process for approval or denial of an application for a COPCN, and authorize applicants currently maintaining fire rescue infrastructure and providing first response in the county to appeal the county's decision to the circuit court. Requires that any county ordinances for COPCNs be objective.

B. Amendments:

None.