

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 742

INTRODUCER: Senator Hutson

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

DATE: January 8, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 742 amends s. 401.25, F.S., to require, rather than allow, counties to adopt ordinances for reasonable standards for the issuance of certificates of public convenience and necessity (COPCN) for the provision of basic or advanced life support services or air ambulance services. The bill details certain standards that must be included in such an ordinance and also provides an appeals process for applicants whose COPCNs are denied by a county.

**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 which is used to assure a patient's vital functions until the patient has been transported to appropriate medical care.<sup>1</sup> ALS is sophisticated care using invasive methods, such as intravenous fluids, medications and intubation.<sup>2</sup> ALS can be performed in a ground ambulance or a helicopter and is usually implemented by physicians or paramedics.<sup>3</sup> BLS is typically performed by paramedics or emergency medical technicians (EMT).<sup>4</sup>

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<sup>1</sup> Ryyänänen, 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 Nov. 23, 2015).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

In Florida, providers of both BLS and ALS must be licensed by the Department of Health (DOH).<sup>5</sup> In order to be licensed, an applicant must pay the license fee,<sup>6</sup> 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.<sup>7</sup> Licenses for BLS and ALS must be renewed every two years.<sup>8</sup>

### **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.<sup>9</sup> In order to be licensed to provide basic or advanced life support services or air ambulance services an applicant must have obtained a COPCN from each county in which the applicant will provide services.<sup>10,11</sup> 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.<sup>12</sup>

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.<sup>13</sup> The application review criteria typically require that applications be sent to each municipality within the county and the

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<sup>5</sup> Section 401.25, F.S.

<sup>6</sup> 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 December 8, 2015).

<sup>7</sup> 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.

<sup>8</sup> 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 December 8, 2015).

<sup>9</sup> Rule 64J-1.001, F.A.C.

<sup>10</sup> Section 401.25(2)(d), F.S.

<sup>11</sup> 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 a detailed analysis of this issue, please see the United States Government Accountability Office Report on “Air Ambulance: Effects of Industry Changes on Services Are Unclear,” GAO-10-907, Sep. 2010, pp. 20-25 and Appendix III. Available at <http://www.gao.gov/new.items/d10907.pdf> (Last visited on Dec. 8, 2015).

<sup>12</sup> Section 401.25(6), F.S.

<sup>13</sup> Counties surveyed include Volusia (Sec. 46-92 Volusia County Code of Ordinances), Broward (Ch. 3½, Broward County Code of Ordinances), Miami-Dade (Ch. 4 Art. I, Miami-Dade County Code of Ordinances), Wakulla (Ch. 11.5 Art. III, Wakulla County Code of Ordinances), Baker (Ch. 16, Art. III, Baker County Code of Ordinances), and Collier (Ch. 50 Art. III, Collier County 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 on Nov. 30, 2015*).

municipalities then make recommendations on the application. Such recommendations must be taken into account when deciding to grant or deny the COPCN.

The amount of detail required to be filed with 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. Obtaining a COPCN is a condition precedent to being licensed by the state to provide BLS or ALS services.<sup>14</sup> Also included in such ordinances were 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 two years, in Broward County after three years, and in Miami-Dade County the COPCNs last until they are revoked.

### **Writ of Certiorari and Appeal Process**

A writ of certiorari is an extraordinary remedy authorized by the Florida Constitution,<sup>15</sup> by which an upper court can direct a lower tribunal to send up the record of a pending case so the upper court can evaluate the proceedings.<sup>16</sup> It functions as a safety net and allows the upper court to halt a miscarriage of justice where no other remedy exists.<sup>17</sup> In Florida, a writ of certiorari provides review of three main categories of judgments or orders: quasi-judicial actions, decisions of circuit courts acting in their appellate capacity, and nonfinal orders of lower tribunals other than those subject to interlocutory appeal under Fla. R. App. P. 9.130.<sup>18</sup> Some Florida statutes provide for certiorari review of decisions of certain state agencies or local entities.<sup>19</sup> Florida courts have certiorari jurisdiction to review quasi-judicial actions of counties, even those not expressly subject to the Florida Administrative Procedure Act.<sup>20,21</sup> Certiorari review is discretionary, but the Florida Supreme Court has interpreted the rule to provide certiorari review of final local agency action as a matter of right.<sup>22</sup> In order to obtain review of a quasi-judicial act of a county, the aggrieved party must file a petition for writ of certiorari in the appropriate circuit court within 30 days of rendition of the adverse order.<sup>23</sup>

Currently, if a COPCN is denied, there is no specific process for appeal detailed in the Florida statutes.

### **III. Effect of Proposed Changes:**

The bill amends s. 401.25, F.S., to require, rather than allow, each county to adopt ordinances for the issuances of COPCNs for the provision of basic or advanced life support services or air ambulance services. The bill details that such ordinances must include standards regarding

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<sup>14</sup> Section 46-80(4), Volusia County Code.

<sup>15</sup> FLA. CONST., art. V, s. 5 (1972).

<sup>16</sup> 3 Fla. Jur 2d Appellate Review s. 464 *Generally* 5(b) (2015).

<sup>17</sup> *Id.*

<sup>18</sup> Valeria Hendricks, *Writ of Certiorari in Florida*, Florida Appellate Practice §11.2 (Fla. Bar CLE 9th ed. 2014).

<sup>19</sup> See s. 322.41, F.S., s. 337.404, F.S., and s. 163.3215, F.S.

<sup>20</sup> Hendricks at §11.3.

<sup>21</sup> Ch. 120, F.S.

<sup>22</sup> *Haines City Community Development v. Heggs*, 658 So.2d 523 (Fla. 1995).

<sup>23</sup> Fla. R. App. P. 9.100 (a), (c)(2), 9.020 (i).

trained personnel staffing, equipment, and response times to life support calls. Additionally, when developing standards for COPCNs, the bill adds the requirement that the counties consider the recommendations of independent special fire control districts within their jurisdiction.<sup>24</sup>

The bill creates an appeals process specific to COPCN denials. If a COPCN is denied, the bill allows the applicant to appeal the decision by filing a writ of certiorari with the circuit court that has jurisdiction over the county. The bill requires that the county grant the applicant's COPCN if the court record in the proceeding shows that the applicant will provide a level of service superior to that of the current county provider, as measured by the county standards, at equal or lower cost.

The provisions in the bill take effect on July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Since the bill requires counties to adopt ordinances for the issuance of COPCNs, it 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." The fiscal impact of this bill is indeterminate (because some counties already have their own COPCN ordinances), but if it exceeds the insignificant threshold the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill may have a positive fiscal impact on a COPCN applicant whose application is required to be accepted under the appeals process provided in the bill. Consequently, if

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<sup>24</sup> Currently, counties must consider state guidelines (state guidelines are the minimum licensure standards for ALS, BLS, and air transport services), the recommendations of the regional or local trauma agency, and the recommendations of municipalities within their jurisdiction. *See email from Paul Runk, Deputy Director, Legislative Planning Director, DOH, (Nov. 25, 2015).*

such application is required to be accepted, the bill could have a negative fiscal impact on the current holder of a COPCN in that county.

C. **Government Sector Impact:**

The bill may have a minor negative fiscal impact on counties that are required to create or revise ordinances for the issuance of COPCNs under the provisions in 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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.