

STORAGE NAME: h1513z.ca
DATE: May 20, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: HB 1513
RELATING TO: Local Governments
SPONSOR(S): Representative Patterson
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC)
 - (2) JUDICIARY (CJC)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill precludes units of local government from contracting with certain entities, such as private providers, to supply emergency medical services and fire protection services without a majority voter approval at a general or special election.

This bill may have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill requires local government to hold referendums, whenever they want to contract with certain designated entities. This bill potentially impedes the activities of private sector industry.

B. PRESENT SITUATION:

Chapter 125.0101(1), F.S., provides that “. . . the legislative and governing body of a county shall have the power to contract with a municipality or special district within the county for fire protection . . . and other essential facilities and municipal services.” No statute currently exists which specifically limits the local government/provider relationship for emergency medical or fire control services. Currently, local governmental entities appear to be free to contract with any qualified provider, public or private, for fire control and emergency medical services. Typically, elected officials at the city and county level decide on providers.

Chapter 401.23, F.S., addresses mutual aid agreements. Section 16 defines a mutual aid agreement as “a written agreement between two or more entities whereby the signing parties agree to lend aid to one another under conditions specified in the agreement and as sanctioned by the governing body of each affected county.”

Chapter 401.26, F.S., provides that licensees must possess valid permits for transport vehicles, advanced life support nontransport vehicles, and aircraft. The Department of Health is charged with issuing these permits. Chapter 401.33, F.S. exempts the following from the permit requirement: “A vehicle rendering services as an ambulance during a major catastrophe or emergency when ambulances with permits based in the locality of the catastrophe or emergency are incapacitated or insufficient in number to render the services needed.”

Chapter 401.2701, F.S., provides a description of credentials required for an accepted emergency medical services training program. These programs train and certify emergency medical technicians and paramedics, with oversight from the Departments of Education and Health.

Section 633.35, F.S., charges the Division of State Fire Marshal of the Department of Insurance with the responsibility of developing a firefighter training program, to produce certified firefighters.

C. EFFECT OF PROPOSED CHANGES:

This bill encourages local governments to contract with public service providers by prohibiting a local government from providing fire and emergency medical services through a private provider unless approved by the voters. This bill potentially facilitates a more interconnected network among local government, state government and local and state agencies.

This legislation may lead to confusion regarding existing contracts. The bill, as introduced, does not contain any clarifying language addressing whether or not existing contracts are subject to referendum approval.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Defines the following:

Emergency medical services: The treatment of life-threatening medical emergencies by endotracheal intubation, administration of drugs or intravenous fluids, telemetry, cardiac monitoring and defibrillation, or the treatment of medical emergencies by a qualified person through patient assessment, cardiopulmonary resuscitation, splinting, obstetrical procedure, bandaging, administering of oxygen, medical antishock trouser application, subcutaneous injection to treat an anaphylactic reaction, and other procedures as contained in the Emergency Medical Technician Basic Training Course Curriculum of the United States Department of Transportation; references Department of Health rules as authority.

Emergency medical services personnel: Persons who are Department of Health certified to provide emergency medical services.

Firefighter: A full-time professional certified under s. 633.35, F.S., who works to prevent and extinguish fires, protect and save life and property, and enforce municipal, county and state fire codes, and any fire control laws.

Fire protection services: To prevent and extinguish fires, protect and save lives and property, and enforce municipal, county, and state fire codes and fire control laws.

Unit of local government: All levels of local governments, including special districts and local agencies.

Precludes a local government that provides fire protection and/or emergency medical services from contracting with an entity that is not a local government, a department of local government, or a state or federal agency that provides fire protection or emergency medical services, at a profit, by contract or other negotiation, without majority voter approval at the next general or special election.

Section 2 -- Provides for an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill should not create any additional revenues.

2. Expenditures:

This bill may increase expenditures, related to the cost of providing a referendum, such as public notice, etc. Additionally, local government must pay for the cost of the election itself, where a special election is held solely for this purpose. These costs result anytime a local government seeks to contract with a certain entity, other than those designated in the bill.

This bill may also preclude local governments from availing themselves of a lower cost service from a private provider. This is particularly the case with time-sensitive catastrophic situations, such as hurricanes, flooding and wildfires, where government does not have the option of waiting for a referendum.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill potentially results in significant fiscal impact on affected private industry service providers. Local governments, reluctant to hold referendums on this issue, may opt to forego contracting with these providers altogether.

According to a representative from the Department of Health, presently, about 25 percent of emergency medical service providers are private providers.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill requires cities or counties to . . . take action that requires expenditure of money, i.e., voter approval. However, it may be exempt from the provisions of Article VII, S. 18 (a), Florida Constitution, as the fiscal impacts appear insignificant (\$1.5 million in the aggregate).

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill may raise a constitutional concern as relates to potential interference with contracts. There is no exemption for existing contracts. Article I, Section 10 of the Florida Constitution provides, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." In In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla.1987), the Court issued an advisory opinion (non-binding) addressing the application of a newly-created statute to an existing contract. In this case, the legislation required prime contractors to pay a tax on certain services provided. Though contract rights are certainly subject to state taxation, the Court conceded, retroactive application unconstitutionally impairs contracts.

Existing contract rights are not untouchable, however. Legislative action which alters existing remedies, such as statutes of limitations, will most likely be found constitutional as applies to existing contracts. Ruhl v. Perry, 390 So.2d 353 (Fla. 1980). In this case, the Court did note the existence of a one-year savings clause, however.

The Fourth District Court of Appeal held that where a city ordered a referendum on the sale of municipal property, this did not unconstitutionally impair an existing contract. Brooks v. Watchtower Bible and Tract Society of Florida, 706 So.2d 85 (Fla. 4th DCA 1998). Noteworthy in the Court's analysis was the local public significance of the purchase and the presence of a remedy provision in the contract (this particular contract provided for specific performance).

The Third District Court of Appeal employed a balancing test in analyzing the issue of contract impairment. Yellow Cab Co. Of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d DCA 1982). Here, the Court balanced the nature and extent of impairment with the level of importance of the state's interest. Incorporating the language in the Pomponio decision, the Court offered a detailed inquiry:

- (a) Was the law enacted to deal with a broad generalized economic or social problem?

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- (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by this state?
- (c) Does the law affect a temporary alteration of the contractual relationship...or does it work a severe, permanent, and immediate change...irrevocably and retroactively?

Pomponio v. Cladrige of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1980).

Here, this legislation addresses a specific type of contract, that of emergency management and fire control services. As this bill does not alter a general provision, such as a statute of limitations time period, Ruhl may not be relevant. Likewise, Watchtower may not apply as the facts of the case involved a city, rather than a state, imposition of a referendum. A court will likely pay a city greater deference in deciding whether to pursue public consensus. Should Watchtower apply, however, each contract may be subject to review on a case-by-case basis, to see whether the contract contains a remedy provision. Under the Yellow Cab Co. analysis, if challenged, the state must first show that this legislation addresses an economic or social issue. Under the second prong, it does not appear that any regulation currently exists which limits local government's ability to choose a provider for these services. Regarding the last factor, change to the contractual relationship, arguably, this bill only temporarily modifies a contract between a local government and private provider. Majority vote approval validates the relationship and provides for its continuation.

B. RULE-MAKING AUTHORITY:

The definition for unit of local government includes local agencies. So, agencies are subject to the local referendum requirement contained in the bill. The language addressing the referendum, and its timing, appears to provide clear guidance to agencies.

C. OTHER COMMENTS:

A representative of the Florida Association of Counties states that they are opposed to this bill.

A representative of the Florida Ambulance Association states that they are opposed to this bill.

Both representatives oppose this bill for some of the same issues raised in this analysis and additionally express these concerns:

This legislation interferes with the ability of local government to contract with private entities. Local governments substantially rely on private providers now.

There is confusion regarding what a unit of local government includes. Is a Community Development District included in this legislation? How are local agencies and local government bodies defined? Certain homeowner's associations may be affected by this legislation.

The bill fails to consider interlocal agreements and mutual aid agreements, especially when there are emergencies.

There is no grandfather clause for existing contracts. This exposes local government to potentially considerable breach of contract penalties.

A representative of the Florida Firefighters' Association expresses support for this bill. In requiring voter approval, this legislation facilitates public notice and accountability.

A position statement from the Department of Health contains the following additional concerns:

It is unclear whether the current certificate of public convenience and necessity (COPCN) process constitutes the provision of services "under a contract or other agreement for profit." Some emergency medical services are provided for under COPCN and contract, while others are provided for under a COPCN alone. It is unclear if the bill addresses contracts with private not-for-profit entities.

It is unclear if the bill requires a referendum or special election with each subsequent contract or if a one-time majority vote to procure services from the private sector is sufficient.

This bill creates definitions that are not included in the statutes governing emergency medical services and fire prevention and control.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Community Affairs

The Committee on Community Affairs adopted an amendment which provides that the referendum requirement will not apply to existing contracts, not including extensions of contracts. No further action was taken by the House on the amendment as the Committee temporarily deferred the bill.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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