

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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 does not appear to expand individual freedom because it eliminates an individual’s ability to sue a private emergency medical dispatcher for negligence.

B. EFFECT OF PROPOSED CHANGES:

Emergency Medical Dispatch (EMD): Currently, emergency medical dispatch is neither defined nor regulated by statute. The emergency telephone number ‘911’ was created to provide citizens with rapid direct access to public service agencies with the objective of reducing the response time to emergency situations.¹

Proposed Changes: Creates the Emergency Medical Dispatch Act. This bill does not regulate emergency medical dispatch, though it does require emergency medical dispatchers to be certified; it is unclear how such certification would occur. The bill does provide definitions (as follows), immunity, and access to Department of Health emergency medical services grants. The bill defines the following terms:

- “Emergency medical dispatch” – the function of utilizing established EMD protocols for providing prompt and accurate processing of emergency calls.
- “Emergency medical dispatcher” – a public safety telecommunicator who is trained and certified in EMD.
- “Emergency medical dispatch agency” –includes both private and public entities responsible for EMD.
- “Emergency medical dispatch protocol” - guidelines for dispatch which are consistent with standards set forth by the American Society for Testing and Materials or the National Highway Traffic Safety Administration and which are incorporated into EMD training.
- “Harm” –includes damages or loss of any type, including physical, non-physical, economic, non-economic, actual, compensatory, consequential, incidental, and punitive damages.

Immunity: Currently, governmental agencies are immune from liability, and not required to pay any claim which exceeds \$100,000 per person or \$200,000 per incident.² There is neither a common law nor statutory duty for a law enforcement agency to respond to a 911 call absent a ‘special duty’ owed to a person in peril.³ Whether a ‘special duty’ exists to respond to a 911 call has not been directly answered by the Florida Supreme Court, though the court has taken oral argument on the question and

¹ See s. 365.171, F.S.

² See Article 10, Section 13 of the State Constitution (the state may waive its immunity through an enactment of general law); and s. 768.28(5), F.S. (state and local government entities are liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, subject to the \$100,000/\$200,000 limitation on liability.)

³ See *Everton v. Willard*, 468 So.2d 936 (Fla. 1985) (A law enforcement officer’s duty to protect the citizens is a general duty owed to the public as a whole; no duty of care is created absent a special duty to the victim.)

has not yet issued an opinion.⁴ Private emergency dispatch operators are currently liable for negligence.

Statutory immunity has also been granted to privatized foster care providers,⁵ persons who assist in containing hazardous spills,⁶ good Samaritans,⁷ volunteer team physicians,⁸ and volunteers for non-profit organizations.⁹

Proposed Changes: The bill provides civil immunity to any emergency medical dispatcher, public or private, who utilizes EMD protocols. The bill also provides immunity for an EMD agency, its agents, or employees if the harm was not due to proper training, implementation of standard practices and management, or utilization of standard practices. The bill provides an exception to immunity if the harm was caused by willful or criminal misconduct, gross negligence, or a conscious, flagrant indifference to or reckless disregard for the rights or safety of the victim.

Emergency Medical Services Grant: Currently, the Department of Health is authorized to make grants to local agencies and emergency services organizations to assist in providing emergency medical services.¹⁰ The grant agreement requires, among other things, that all emergency vehicles and attendants must conform to state standards established by law or department rule.¹¹

Proposed Changes: This bill amends s. 401.111, F.S., to include emergency medical dispatch as an emergency medical service for which a grant could be awarded.

C. SECTION DIRECTORY:

Section 1 creates s.768.1335, F.S., the 'Emergency Medical Dispatch Act'; defines terms; and provides immunity.

Section 2 amends s. 401.111, F.S., to include emergency medical dispatch in Department of Health grants.

Section 3 provides an effective date of September 11, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Health reports that this bill has no fiscal impact on the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁴ See *State Department of Highway Patrol v. Pollack*, 745 So.2d 446 (Fla. 3rd DCA 1999); review granted 760 So.2d 947(Fla. 2000); 760 So.2d 948 (Fla. 2000); 799 So.2d 218 (Fla. 2001) (The 3rd DCA held that violation of FHP's internal operating procedures in failing to dispatch an officer was not sufficient to impose liability; Pollack appealed arguing that dispatch is an operational duty for which immunity should not apply. Oral argument was held on February 6, 2002; an opinion has not yet been issued.)

⁵ See s. 409.1671, F.S.

⁶ See s. 768.128, F.S.

⁷ See s. 768.13, F.S.

⁸ See s. 768.135, F.S.

⁹ See s. 768.1355, F.S.

¹⁰ See s. 401.111, F.S.

¹¹ See s. 401.117, F.S.

2. Expenditures:

Any local government choosing to use an emergency medical dispatch protocol would have to train personnel. The American Heart Association reports that such training costs between \$250 - \$670 per person. However, the bill provides for grants that might offset such costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any private entity choosing to use an emergency medical dispatch protocol would have to train personnel. The American Heart Association reports that such training costs between \$250 - \$670 per person. However, the bill provides for grants that might offset such costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Access to Courts: The Florida Constitution provides that the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.¹² Where citizens have enjoyed a historical right of access to the courts, the Legislature may only eliminate a judicial remedy under two circumstances: 1) a valid public purpose coupled with a reasonable alternative; or 2) overriding public necessity.¹³ In providing immunity to private emergency medical dispatchers, it would appear that this bill has eliminated a judicial remedy.

The 'whereas' clauses included in the bill might be found to evidence overriding public necessity, which would authorize the Legislature's elimination of a judicial remedy. If the promotion of emergency medical dispatch programs are not found to be an overriding public necessity, then it would appear that this section of the bill violates the access to courts provision of the Florida constitution.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Whereas clauses: Several 'whereas' clauses might create a cause of action where none previously existed (lines 66-67 and 59-62) or might be used as evidence against a governmental entity (lines 18-19, 28-29, 30-31, 34-36). The bill sponsor has filed an amendment which removes these clauses.

¹² See Article 1, Section 21 of the State Constitution.

¹³ See *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES