SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1748

SPONSOR: Judiciary Committee, Health, Aging, and Long-Term Care Committee, Senators Jones and Lynn

SUBJECT: Multiservice Senior Centers

DATE: March 23, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parham	Wilson	HC	Favorable/CS
2.	Cibula	Lang	JU	Favorable/CS
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 1748 redefines the term "multiservice senior center" as a community facility that organizes and provides a broad spectrum of services, including health, mental health, social, nutritional, and educational services and recreational activities and facilities for persons 60 years of age or older.

The committee substitute for committee substitute also appropriates $270,000 to the Department of Elderly Affairs (Department) to purchase automated external defibrillators (AED) for placement in multiservice senior centers. A multiservice senior center may purchase an AED from the Department for half of the cost of the AED. A multiservice senior center located in a rural community may request a free AED from the Department. Senior centers having an AED are required to ensure that their personnel are trained to use the device. The location of the AED must be registered with the local emergency medical services medical director. The committee substitute for committee substitute extends immunity under the Good Samaritan Act and the Cardiac Arrest Survival Act from civil liability to an employee or volunteer of a senior center who uses an AED to provide medical care.

This bill substantially amends s. 430.203 and s. 430.206 of the Florida Statutes.

II. Present Situation:

Multiservice Senior Centers

Multiservice senior centers provide information and programs for seniors across the state. Senior centers are sites for community-based health promotion activities as well as places to make new

friends, strengthen social networks, and prevent premature institutionalization. Senior centers facilitate, promote, and provide wellness and aging programs, services and resources through educational, social, recreational, and health activities. They are often funded through city general revenue funds and local block grants. Approximately 155 senior centers currently operate in Florida. Section 430.203(10), F.S., provides a definition for the term "multiservice senior center" and s. 430.206, F.S., provides guidelines for access to multiservice senior centers by functionally impaired and infirm elderly persons.

Automated External Defibrillators

Each year in the U.S., sudden cardiac arrest strikes more than 350,000 people, making it the single leading cause of death. Sudden cardiac arrest is usually caused by a condition called ventricular fibrillation. This is a condition where the normal flow of electrical impulses in the heart is disturbed and the heart muscle goes into an uncoordinated electrical activity or fibrillation. Due to the unexpectedness with which sudden cardiac arrest strikes, most of its victims die before reaching a hospital. Experts warn that a victim's chances of survival decrease by 7 to 10 percent for each minute that passes without defibrillation. The victim's best chance of survival is when defibrillation occurs within 4 minutes after the cardiac arrest.[1] Few attempts at resuscitation succeed after 10 minutes have elapsed.[2]

An automated external defibrillator (AED) administers an electric current to the heart muscle which momentarily stuns the heart and gives it an opportunity to resume a normal rhythm; a process known as defibrillation. The device's built-in computer is able to assess the patient's heart rhythm and determine whether defibrillation is needed, and will administer the appropriate level of shock. In 1996, an AED device came on the market, the manufacturer of which refers to the product as "completely automated," with a single-button design, with non-polarized electrodes, and with step-by-step voice instructions. This device is not designed to administer a shock unless it detects a lethal heart rhythm. According to the American Heart Association, a victim's chance of survival is greater than 50 percent with early defibrillation.

The number of automatic external defibrillators obtained for on-premises use by various community organizations has increased, in part, as the result of the American Heart Association's campaign to encourage associations or other population centers to have the device available. The result of a recent study funded by the National Heart Lung and Blood Institute, in cooperation with the American Heart Association, shows an increased survival rate for locations with AEDs.[3] The study was designed to determine the effectiveness of deploying AEDs in public access areas with trained laypersons to improve the survival rates for victims of sudden cardiac arrest. The results of the study showed not only an increase in survival rates for public access sites with AEDs, but also that there were few adverse events and no cases of the devices delivering a shock inappropriately.[4]

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[1] See *Fact Sheets: Automatic External Defibrillators*, American College of Emergency Physicians, http://www.acep.org/1,2891,0.html (visited Feb. 9, 04).
[2] See *Cardiac Arrest: AHA Recommendation*, American Heart Association, http://www.americanheart.org/presenter.jhtml?identifier=4481 (visited Feb. 10, 2004).
[3] See *Use of Public Access Defibrillators Doubles Survival From Sudden Cardiac Arrest*, National Center for Early Defibrillation (Nov. 11, 2003), http://www.early-defib.org/news.asp?news_id=105 (visited Feb. 9, 2004).
[4] See *id.*

Liability Associated with Automated External Defibrillators

Part I of ch. 768, F.S., provides the state's general negligence law. Section 768.13, F.S., the Good Samaritan Act, provides immunity from civil liability to any persons, including those licensed to practice medicine, who gratuitously and in good faith, render emergency care or treatment either in direct response to emergency situations related to and arising out of a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment.

Based on the development of AED technology and in an effort to reduce the death rate associated with sudden cardiac arrest, the Legislature enacted s. 401.291, F.S., in 1990. This law broadened the list of persons authorized to use an AED to include first responders. First responders include police officers, firefighters, and citizens who are trained as part of locally coordinated emergency medical services response teams. In order to qualify to use an AED, a first responder had to meet specific training requirements including certification in cardiopulmonary resuscitation or successful completion of an 8-hour basic first aid course that included cardiopulmonary resuscitation training, demonstrated proficiency in the use of an automatic or semiautomatic defibrillator, and successful completion of at least 6 hours of training in at least two sessions, in the use of an AED. The local Emergency Medical Services (EMS) medical director or another physician authorized by the medical director must authorize the use of an AED by a first responder.

Chapter 97-34, Laws of Florida, expanded the deregulation of the use of an AED by repealing s. 401.291, F.S., and enacting s. 401.2915, F.S., to specify legislative intent that an AED may be used by any person for the purpose of saving the life of another person in cardiac arrest. Under s. 401.2915, F.S., the user of an AED is required to successfully complete an appropriate training course in cardiopulmonary resuscitation, or a basic first aid course that includes cardiopulmonary resuscitation, and demonstrate proficiency in the use of an AED. In addition, any person or entity in possession of an AED is encouraged to register the device with the local EMS medical director, and any person who uses an AED is required to activate the EMS system as soon as possible.

In 2001, the Legislature enacted s. 768.1325, F.S., the Cardiac Arrest Survival Act (act). For purposes of the act, Florida Statutes define an AED as a defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation and is capable of determining whether defibrillation should be performed; and
- After determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.[5]

The act provides that any person who uses or attempts to use an AED on a victim of a perceived medical emergency[6], without objection of the victim, is immune from civil liability for any harm

[5] s. 768.1325(2)(b), F.S.

resulting from the use or attempted use of the device. Further, any person who acquired the device is immune from liability if the harm did not result from the failure to:

- Notify the local EMS medical director of the most recent placement of the device within a reasonable period of time;
- Properly maintain and test the device; or
- Provide appropriate training to the employee or agent who used the device on the victim.[7]

However, this immunity does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the victim's safety or rights;
- The person is a licensed or certified health professional who used the AED while acting within the scope of his or her license or certification;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care, and the harm was caused by an employee or agent of the entity;
- The person is an acquirer of the device who leased the device for compensation to a health care entity without selling the device to the entity; or
- The person is the manufacturer of the device.[8]

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorized the Florida Legislature in 1868 to waive sovereign immunity by stating that, "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating." The doctrine of sovereign immunity prohibits lawsuits in state court against a state government and its agencies and subdivisions without the government's consent. Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state and its agencies and subdivisions. Section 768.28(5), F.S., imposes a $100,000 limit on the government's liability to a single person. For claims arising out of a single incident, the limit is $200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claim bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

The second form of sovereign immunity potentially available to private entities under contract with the government is set forth in s. 768.28(9), F.S. It states that agents of the state or its subdivisions are not personally liable in tort; instead, the government entity is held liable for its

[6] A perceived medical emergency, for purposes of the act, means circumstances where an individual's behavior leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response relating to the heart or other cardiopulmonary function [s. 768.1325(2)(a), F.S].
[7] s. 768.1325(3), F.S.
[8] s. 768.1325(4), F.S.

agent's torts. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.[9] The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. In the event, however, that the evidence of an agency is susceptible of only one interpretation the court may decide the issue as a matter of law.[10]

Rural Communities

Section 288.0656(2)(b), F.S., provides that a "rural community" means:

- A county with a population of 75,000 or less;
- A county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less;
- A municipality within a county described in one of the first two bullet points above; or
- An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (a) of s. 288.0656(2), F.S. and verified by the Office of Tourism, Trade, and Economic Development.

For purposes of this paragraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901, F.S. There are 33 counties that meet the definition of rural county in s. 288.0656(2)(b), F.S.

III. Effect of Proposed Changes:

The Committee Substitute for Committee Substitute for Senate Bill 1748 redefines the term "multiservice senior center." The committee substitute for committee substitute also subsidizes the cost of automated external defibrillators (AED) for multiservice senior centers, mandates senior centers having an AED train their employees in the use of an AED, mandates that senior centers register the location of an AED, and provides immunity from civil liability to employees or volunteers of a senior center who use an AED.

The term "multiservice senior center" is redefined by the committee substitute for committee substitute as:

> a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health, including mental health, social, nutritional, and education services and the provision of facilities for recreational activities for persons 60 years of age or older.

Existing s. 420.203(10), F.S., defines "multiservice senior center" as a "facility that serves as the focal point for *housing* and services to persons 60 years of age or older." Emphasis added. The

[9] *Goldschmidt v. Holman,* 571 So.2d 422 (Fla. 1990).
[10] *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996). See also *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997).

committee substitute for committee substitute does not indicate whether the deletion of the word "housing" from the definition of multiservice senior center is meant to eliminate a service offered by a senior center or whether housing is among the "broad spectrum of services" offered by a multiservice senior center.

The committee substitute for committee substitute also appropriates $270,000 to the Department of Elderly Affairs (Department) to purchase automated external defibrillators (AED) for placement in multiservice senior centers. A multiservice senior center may purchase an AED from the Department by reimbursing the Department for half of the cost of the AED. A multiservice senior center located in a rural community may request a free AED from the Department. The AEDs, under the committee substitute for committee substitute, are available to senior centers on a first-come, first-served basis.

Senior centers having an AED are required to ensure that their personnel are trained to use the device. The location of the AED must be registered with the local emergency medical services medical director. The committee substitute for committee substitute extends immunity under the Good Samaritan Act and the Cardiac Arrest Survival Act from civil liability to an employee or volunteer of a senior center who uses an AED to provide medical care. The committee substitute for committee substitute authorizes the Department to adopt rules to implement provisions mandating the training of senior center personnel and registration of the location of AEDs.

The committee substitute for committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None. The provisions of this committee substitute for committee substitute have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None. The provisions of this committee substitute for committee substitute have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

None. The provisions of this committee substitute for committee substitute have no impact on the trust fund restrictions under the requirements of Article III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This committee substitute for committee substitute will benefit manufacturers and/or distributors of automated external defibrillator s (AED) by encouraging their placement of AEDs in multiservice senior centers.

This committee substitute for committee substitute may have a fiscal impact on local governments, depending on how much they contribute to funding a senior center in their area. The committee substitute for committee substitute requires senior centers that are not located in rural areas to reimburse the Department of Elder Affairs (Department) for 50 percent of the cost of an AED purchased through the cost-sharing program created by the bill. However, the bill only *encourages* senior centers to purchase AEDs, so any fiscal impact incurred is optional.

C. Government Sector Impact:

The bill appropriates $270,000 from the General Revenue Fund to the Department for the purpose of implementing the act during the 2004-2005 fiscal year.

According to the Department, AEDs range in price from $2,119 to $2,495 per AED. Depending on which AED model was purchased, the Department could purchase from 216 to 254 AEDs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.