

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 Communications, Energy, and Public Utilities Committee

BILL: CS/SB 1202

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Bennett

SUBJECT: Prepaid Wireless Telecommunications Service

DATE: March 4, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Caldwell	CU	Fav/CS
2.			CA	
3.			GO	
4.			JU	
5.			FT	
6.			GA	

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires prepaid wireless E911 fees on prepaid wireless telecommunications services. The regulations and administration of the prepaid wireless E911 fee would resemble existing regulations and administration of the wireless E911 fee on other forms of wireless telecommunication. Retail transactions occurring in Florida would be assessed the prepaid wireless E911 fee at the rate of 1 percent, from which the seller would deduct and retain 3 percent of the fees collected and remit the remaining fees collected to the Department of Revenue (DOR), from which DOR would deduct and retain up to 2 percent of the prepaid wireless E911 funds remitted to it, before remitting the remaining fees to the E911 Board.

This bill substantially amends sections 365.172 and 365.173 of the Florida Statutes.

II. Present Situation:

The Wireless Emergency Communications Act¹ (Act) implemented a statewide E911 system for wireless telephone users. As of March 31, 2008, all 67 counties reported capability to receive a

¹ Ch. 99-367, Laws of Florida; codified in s. 365.172, F.S.

call back number and location provided for the cellular caller from the service provider.² To fund the E911 system, the act imposed a fee, capped at \$.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services.

Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon wire line services, voice services, and other services that have access to E911 service, such as Voice over Internet Protocol. The fee is imposed on wireless services, but not prepaid wireless services.³

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the system and administers the funds derived from the fee. The primary function of the E911 Board (board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The board has the authority to adjust the level of the fee, within the \$.50 cap, once annually.

In 2006, the board was required⁴ to evaluate the 911 revenues and services costs to determine the date the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and board administration costs. In its report, the board concluded that there are insufficient fee revenues collected to cover all county and service provider E911 costs.⁵ The board report also recommended the Legislature consider changing the provisions relating to prepaid calling services so that fees are imposed on users in a fair and consistent manner.

Florida sales tax is imposed on sales of prepaid calling arrangements. Charges for prepaid wireless services are not assessed the communications services tax, nor the E911 fee.

In 2007, the legislature required the board to conduct a study on the collection of E911 fees on the sale of prepaid wireless service.⁶ In its study such collection was deemed to be feasible.⁷ Specifically, the report makes the following conclusions:

1. It is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.
2. Collection of prepaid wireless fees should be as consistent with other E911 fees as can reasonably be done while feasibly collecting E911 fees from the sale of prepaid wireless service.

² Department of Management Services, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911

³ Prepaid wireless service is defined as a "separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount." s. 212.05(1)(e), F.S.; s. 202.11(9), F.S.

⁴ Number 2946 of the 2006-07 General Appropriations Act (HB5001)

⁵ Florida Department of Management Services, E911 Board, "2006 Wireline and Wireless 911 Fee Evaluation Legislative Report," (9/29/06).

⁶ Chapter 2007-78, Laws of Florida; codified by s. 365.172(8)(a), F.S.

⁷ Florida Department of Management Services, E911 Board, "E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis," (12/31/08), p.106.

3. Collection of fees on prepaid wireless service using the collection methods deemed feasible by the study do constitute an efficient use of public funds, given the technological and practical considerations of collecting the fee.
4. Two practices evaluated in the study are deemed tentatively feasible: the Best Practice Menu Flat Fee Collection Method and the Best Practice Statewide Point of Sale Flat Fee Collection Method.
5. The Best Practice Menu Flat Fee Collection Method (BPMFFCM) collects prepaid wireless service E911 fees from end users on a monthly basis. The BPMFFCM allows for a service provider's selection of one collection method from two provided options. Under Option 1 the E911 fee is calculated by dividing the total earned prepaid revenue received by the service provider within the monthly 911 reporting period by \$50.00 and then multiplying that number by the amount of the state 911 charge⁸ of \$.50 per month. Option 2 fee calculations would simply multiply the amount of the state 911 charge for each active prepaid account of the service provider.
6. The Best Practice Statewide Point of Sale Flat Fee Collection Method (BPSOSFFCM) collects prepaid wireless service E911 fees at the point of sale on each transaction involving sales of Florida-based prepaid wireless service by assessing a \$.25 flat fee sales tax surcharge over and beyond sales taxes otherwise due at the point of sale.

III. Effect of Proposed Changes:

Section 1 amends s. 365.172, F.S., to impose a prepaid wireless E911 fee on "prepaid wireless telecommunications service." The bill defines "prepaid wireless telecommunications service" as "a wireless service that allows a caller to dial 911 to access the 911 system," and further specifies that a "prepaid wireless telecommunications service" must meet the requirements of a "prepaid calling arrangement" under s. 212.05(1)(e)1.(I), F.S.

Retail purchases of prepaid wireless telecommunications services from a seller occurring in Florida would be assessed the prepaid wireless E911 fee at the rate of 1% of the amount of the transaction. A retail transaction occurs if it is made in person at a business location in Florida. Retail transactions not occurring in person may be treated as occurring in Florida if the customer's shipping address is in Florida or, if no item is shipped, based on the customer's address or the location associated with the customer's mobile telephone number.⁹ Bundled sales of products would be assessed the fee when a prepaid wireless telecommunications service is sold with one or more products for a non-itemized price, unless the prepaid amount is separately disclosed or reasonably identifiable.

The prepaid E911 fee would not apply to a sale of a prepaid wireless telecommunications service that is not a retail transaction. A sale for resale is not a sale of a prepaid wireless telecommunications service, and would not be subject to the E911 fee. The bill requires DOR to

⁸ As established under s. 365.172, F.S.

⁹ s. 212.05(1)(e)1.a.(II), F.S.

establish procedures for a seller to document that a sale of a prepaid wireless telecommunications service is not a retail sale. The procedures must substantially coincide with sales for resale documentation procedures in s. 212.186, F.S.

The prepaid wireless E911 fee would be collected by the seller from the consumer. The seller would deduct and retain 3 percent of the fees collected, and remit the remaining fees collected to DOR, pursuant to the tax regulations of s. 212.11, F.S. For these purposes, fees collected include any charges the seller is deemed to have collected when the amount is not separately stated on an invoice or similar document. The bill requires DOR to establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the tax imposed under Chapter 212, F.S.

DOR would retain up to 2 percent of the prepaid wireless E911 funds remitted to it for administering the collection and remittance of the prepaid wireless E911 fees. DOR must remit the remaining prepaid wireless E911 fees to the E911 board within 30 days after receipt.

Disclosure of the fee to the consumer is required, which may be accomplished by separately stating it on an invoice or receipt. The bill provides that the amount of the fee collected from the seller is not subject to tax regardless of whether such amount is separately stated on an invoice, receipt, or similar document.

Changes to the E911 fee set by the E911 board would result in a proportional increase or reduction in the prepaid wireless E911 fee. The adjusted rate of prepaid wireless E911 fee would be determined by dividing the amount of the E911 fee by \$50. If the E911 fee decreases to \$.40, the prepaid wireless rate would be decreased to 0.8% ($0.40/50 = 0.008$). Using this formula yields the same result as under option 1 of the BPMFFCM best management practice suggested in the Department of Management Services' 2008 feasibility analysis.¹⁰ The effective date of a change to the prepaid wireless E911 fee is the same as the effective date of the change to the E911 fee or, if later, the first day of the first calendar month to occur at least 60 days after the enactment of the change or notification of a change to the E911 fee.

The bill requires DOR to provide at least 30 days notice of a rate change by posting the rate change on its public website. The audit and appeal procedures from s. 212.13, F.S., would apply to the prepaid wireless E911 fees.

Small retailers¹¹ would have options when remitting the E911 fee to the state. The bill allows a small retailer to remit the prepaid fee annually, retain 25% of the fees during the first year after enactment to offset the costs of setting up their internal system to collect and remit the fee, or allows them the option to pay the amount of the prepaid 911 fee themselves and recover it in their pricing without the need to separately state the fee on the receipt.

Providers and sellers of prepaid wireless telecommunications services would not be liable for damages to any person in connection with the use of 911 or E911 services. The bill prohibits

¹⁰ Specifically, Option 1 of the BPMFFCM. Florida Department of Management Services, E911 Board, "E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis," (12/31/08), p.72.

¹¹ Small retailers refer to those who qualify for quarterly, semiannual or annual filing of their sales tax, pursuant to Chapter 212.11(1)(c) of Title XIV, which establishes monetary thresholds based on past returns.

local governments from levying a prepaid wireless E911 fee or any additional fee on providers or sellers of prepaid wireless telecommunications services for the provision of E911 service.

Section 2 amends Section 365.173, F.S., to reflect changes in numbering made to s. 365.172, F.S., or to conform cross-reference.

Section 3 provides for an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Estimated revenue amounts will be provided by the Revenue Estimating Conference. DOR reports that total estimated expenditures would be \$258,600 in FY09-10, followed by \$234,285 over the next three fiscal years.

B. Private Sector Impact:

The entire impact on the private sector is not well understood.

DOR reports that many providers/sellers of voice communications services currently collecting and remitting the E911 fee to the E911 Board also sell prepaid wireless telecommunications services that will be subject to the prepaid wireless E911 fee remitted to DOR. It may be confusing for providers/sellers to separately account for and remit the E911 fees to two different agencies. It may also be difficult for providers/sellers to differentiate between the two fees, which could cause difficulties in administration of the fees, especially for auditing/enforcement purposes.

C. Government Sector Impact:

DOR reports that the effective date of July 1, 2010 would not provide sufficient time needed to hire and train contract programmers to make the necessary system modifications to the SUNTAX unified tax system. Instead, an effective date of January 1, 2011 would provide sufficient time for implementation.

The bill provides that DOR will distribute funds within 30 days after receipt. Since funds from the fee may be received by DOR on any day during a given month, DOR may be required to make, and the Board is likely to receive, multiple distributions rather than one monthly lump sum distribution. DOR suggests the funds be distributed monthly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on March 4, 2010:

- The Committee Substitute (CS) for SB 1202 addresses issues related to the collection of the fee by retailers. Bundled sales of products would have the 1 percent fee applied to the entire price of the sale when a prepaid wireless telecommunications service is sold with one or more products for a non-itemized price, unless the prepaid amount is separately disclosed or reasonably identifiable. Small retailers have options when remitting the prepaid fee. They may remit the prepaid fee annually, retain 25% of the fees during the first year to offset costs to set up their collection system, or pay the prepaid 911 fee themselves and recover it in their pricing, without separately stating it on their receipt.
- The CS also revises newly-created definitions to make them consistent with existing statutes.

B. Amendments:

None.