

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 Finance and Tax Committee

BILL: CS/CS/SB 1202

INTRODUCER: Judiciary Committee, Communications, Energy and Public utilities Committee, and Senator Bennett

SUBJECT: Prepaid Wireless Telecommunication Services

DATE: April 9, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Caldwell	CU	Fav/CS
2.	Howes	Yeatman	CA	Fav/1 amendment
3.	Maclure	Maclure	JU	Fav/CS
4.	Fournier	McKee	FT	Favorable
5.			GA	
6.				

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 provides that collection of an E911 fee from the sale of prepaid wireless service will not occur before July 1, 2013.

The bill also increases to 30 percent, from current law's 20 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvement, or equipment replacement which the county may carry forward into the next calendar year.

The delay in implementation of an E911 fee on prepaid wireless until July 1, 2013 will result in an indeterminate negative impact on state trust fund revenue in FY 2010-11, FY 2011-12, and FY 2012-13.

This bill substantially amends sections 365.172 and 365.173, Florida Statutes.

II. Present Situation:

E911 System; Fees on Sale of Prepaid Wireless Service

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 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 provides that before July 1, 2009, the fee is not applied to 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 on the communications services tax, or the E911 fee.

¹ Chapter 99-367, Laws of Fla., codified in s. 365.172, F.S. Today the statute is cited as the "Emergency Communications Number E911 Act." Section 365.172(1), F.S.

² Florida Dep't of Management Services, *Florida Enhanced 911*, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited Mar. 29, 2010).

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." Section 212.05(1)(e), F.S. See also s. 202.11(9), F.S.

⁴ See proviso language accompany specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

⁵ Florida Dep't of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

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, the collection was deemed to be feasible.⁷ Specifically, the report made the following conclusions:

- It is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.
- 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.
- 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.
- 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.
- The Best Practice Menu Flat Fee Collection Method collects prepaid wireless service E911 fees from end users on a monthly basis. This method 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.
- The Best Practice Statewide Point of Sale Flat Fee Collection Method 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.

The Florida E911 Board reports⁹ that at least one (1) prepaid wireless service provider is remitting the fee on prepaid wireless services. It appears that many prepaid wireless service providers are not remitting the fee at this time; they are waiting for the promulgation of E911 Board rules on the subject. The E911 Board has worked with telecommunications service providers, the Florida Retail Association, and other interested parties to develop a rule that would establish a process for collection and remittance of the E911 fee on prepaid wireless services. At this time, an E911 board rule has not yet been adopted as the nine member E911 board (comprised of four county representatives, four telecommunication industry representatives and the chair, a DMS employee) has not been able to reach consensus with the interested parties on the process of collecting the fee despite holding workshops and/or hearings on the matter.

⁶ Chapter 2007-78, Laws of Fla., codified as s. 365.172(8)(a), F.S.

⁷ Florida Dep't of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, 106 (Dec. 31, 2008), available at http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study (last visited Mar. 29, 2010).

⁸ Section 365.172, F.S.

⁹ March 30, 2010 email communication from Brock Meredith, Deputy Director, Legislative Affairs, Department of Management Services

Distribution of E911 Funds

Funds generated from the E911 fees levied on subscribers are accounted for in the Emergency Communications Number E911 System Fund and segregated into two separate categories: wireless and nonwireless.¹⁰ Sixty-seven percent of the moneys in the wireless category shall be distributed monthly to counties, based on the total number of service identifiers in each county. The county may use these funds to pay for expenditures related to establishing or providing E911 services and contracting for E911 services, as well as to pay for complying with the requirements for E911 service contained in specified Federal Communications Commission orders.¹¹ Ninety-seven percent of the moneys in the nonwireless category shall be distributed monthly to counties based on the total number of service identifiers in each county. The county may use these funds exclusively to pay for expenditures related to establishing or providing E911 services and contracting for E911 services.¹²

A county receiving these moneys must establish a fund to be used exclusively for the receipt and expenditure of the moneys. The county commission shall appropriate the moneys and interest in the fund and incorporate them into the county budget. A county may carry forward up to 20 percent of the moneys disbursed to the county during a calendar year for capital outlay, capital improvements, or equipment replacement, provided expenditures are made for the authorized purposes.¹³

III. Effect of Proposed Changes:

This bill delays until July 1, 2013, collection of an E911 fee from the sale of prepaid wireless service. Current law, s. 365.172(8)(a), F.S., provides that if the E911 Board (Board) determines that such a fee should be collected, it shall collect the fee starting July 1, 2009. In addition to delaying the date to 2013, the bill deletes obsolete references in this section to a study by the Board, because the Board completed its study and concluded in 2007 that collection of the fee is feasible.¹⁴

The bill also amends s. 365.173, F.S., to increase to 30 percent, from current law's 20 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvements, or equipment replacement which the county may carry forward into the next calendar year. The bill retains the requirement that the expenditures must be made for the purposes authorized in statute.

The bill provides for an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁰ Section 365.173(1), F.S.

¹¹ Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

¹² Section 365.173(2)(b), F.S.

¹³ Section 365.173(2)(c), F.S.

¹⁴ See the "Present Situation" section of this bill analysis for a discussion of the Board's conclusions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The delay in implementation of an E911 fee on prepaid wireless until July 1, 2013 will result in an indeterminate negative impact on state trust fund revenue in FY 2010-11, FY 2011-12, and FY 2012-13.

B. Private Sector Impact:

Sales of prepaid wireless service will not be subject to collection of an E911 fee before July 1, 2013.

C. Government Sector Impact:

The amount of revenue available for E911 services will be reduced for the next 3 fiscal years. Counties may carry forward 10 percent more of the funds disbursed to them from the Emergency Communications Number E911 System Fund for capital outlay, capital improvements, or equipment replacement.

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/CS by Judiciary on March 26, 2010:

Rather than requiring E911 fees on prepaid wireless telecommunications service, the committee substitute delays until July 1, 2013, collection of an E911 fee from the sale of prepaid wireless service. In addition, the committee substitute adds a provision authorizing counties to carry forward 10 percent more (30 percent rather than 20 percent under current law) of the funds disbursed to them from the Emergency Communications Number E911 System Fund for capital outlay, capital improvements, or equipment replacement.

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

The committee substitute:

- 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 percent 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.
- Revises newly created definitions to make them consistent with existing statutes.

B. Amendments:

None.