

STORAGE NAME: h0511.uco

DATE: March 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
ANALYSIS**

BILL #: HB 511

RELATING TO: Public Records

SPONSOR(S): Representative Logan

COMPANION BILL(S): SB 180(s)

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

- (1) UTILITIES AND COMMUNICATIONS
 - (2) COMMUNITY AFFAIRS
 - (3) GOVERNMENT OPERATIONS
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill provides that specified forms of information obtained by a public agency, public safety agency, or county for the purposes of providing services in an emergency is confidential and exempt from the public records law. Specifically, information (or a portion thereof) is confidential and exempt if it would reveal the name, address, or telephone number of , or personal information about, or may identify, any person who requests emergency service or who reports an emergency by accessing an enhanced 911 ("E911") telephone system. However, such information may be disclosed to a public safety agency and the exemption applies only while such information is in the custody of the public agency, public safety agency, or answering point that receives the initial E911 telephone call.

The bill provides that all proprietary and confidential information submitted by a wireless telecommunications provider to the board (created by HB 621) or to the Department of Management Services, is exempt from Section 119.07(1), Florida Statutes and Section 24(a), Article I of the Florida Constitution. This exemption includes names and addresses of wireless service subscribers and trade secrets. Statistical abstracts may be released but only in a manner that does not identify or allow identification of subscribers, their service numbers, or revenues attributable to any wireless provider.

The bill defines "proprietary information" to mean customer lists and related information, technology descriptions, technical information, trade secrets, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or its employees, directors, officers, or agents.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act of 1995 and will stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides that the exemption from public records law provided by the act "promotes the unrestrained use of E911 services to provide expedited medical and law enforcement services to persons in need of emergency assistance" and that the proprietary information exemption is necessary "to foster competition in the wireless telecommunications services industry and to protect the competitive interests of the providers of such information."

The bill is to take effect on the same date that HB [621] or similar legislation relating to wireless E911 service takes effect if such legislation is adopted this session or during an extension of this session.

The bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

House Bill 621 has been filed to address the funding of wireless E911 service within Florida in compliance with Federal Communications Commission ("FCC") standards adopted in FCC Docket Number 94-102.

HB 621 anticipates the collection of information about wireless providers and their customers that is necessary to fund E911 service. The bill also anticipates the electronic delivery of information about customers necessary to provide E911.

Because this information will be collected and processed by government entities, absent a public records exemption, it will subject to be public disclosed pursuant to s. 24, art. I of the Florida Constitution and s. 119.07, F.S.

Existing Section 365.171(15), Florida Statutes provides that specified information about any person requesting emergency service or reporting an emergency by calling "911" is confidential.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that information obtained by a public agency, public safety agency, or county for the purposes of providing services in an emergency will be confidential and exempt from s. 119.07(1), F.S., and s. 24(a), art. I of the Florida Constitution .

Specifically, any record, recording or information or portion thereof is confidential and exempt if would reveal the following about any person who requests emergency service or who reports an emergency by accessing an enhanced 911 telephone system:

name,
address,
telephone number,
personal information, or
information that may identify the person.

However, such information may be disclosed to a public safety agency. The exemption applies only while such information is in the custody of the public agency, public safety agency, or answering point that receives the initial E911 telephone call.

All proprietary and confidential information submitted by a wireless provider to the board (created by HB 621) or to the Department of Management Services will be exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), art. I of the Florida Constitution. The exemption will include names and addresses of subscribers, and trade secrets. Statistical abstracts may be released but only in a manner that does not identify or allow identification of subscribers, their service numbers, or revenues attributable to any wireless provider.

Proprietary information will mean customer lists and related information, technology descriptions, technical information, trade secrets, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or its employees directors, officers, or agents.

The exemption will be subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The exemption from public records law provided by the bill will promote "the unrestrained use of E911 services to provide expedited medical and law enforcement services to persons in need of emergency assistance." The proprietary information exemption is determined to be necessary "to foster competition in the wireless telecommunications services industry and to protect the competitive interests of the providers of such information."

The exemption will take effect on the same day that substantive legislation on wireless E911 takes effect, provided such legislation passes this session or an extension of this session.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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:

Article I, section 24(c) of the Florida Constitution requires that exemptions to the constitutional right to inspect public records right may be created by general law provided that the "law must state with specificity the public necessity justifying the exemption" and that the exemption must "be no broader than necessary to accomplish the stated purpose of the law." Based on a literal reading, the "necessity" language in the bill applies to proprietary information about providers but not to information about those calling E911 for emergency assistance.

The bill exempts proprietary and confidential information submitted by a provider to the board administering the program. The bill defines "proprietary" but does not define "confidential." Because the Florida Constitution requires that exemptions be no broader than required to accomplish the legislative finding of necessity, failure to define "confidential" may be viewed by a court as resulting in an overly broad exemption. See *e.g.*, *Halifax Hospital Medical Center v. News-Journal Corporation*, Case No. 92,047 (January 21, 1999 Fla.) (Holding a statute containing an exemption to be unconstitutional for failure to define "critical and confidential" when those terms were used to describe information that was to be protected from public disclosure. In reaching its decision the Florida Supreme Court reasoned that "in enacting exemptions to Florida's public disclosure laws, the legislature has an express constitutional obligation to tailor such an exemption so that it is no broader than necessary to accomplish the exemptions stated purpose.").

The bill has a blank reference to the substantive Wireless E911 bill that should be amended to reference HB 621.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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