

STORAGE NAME: h0511z.uco
DATE: June 3, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
UTILITIES AND COMMUNICATIONS
FINAL ANALYSIS**

BILL #: HB 511(Passed as SB 180)

RELATING TO: Public Records/E911 Telephone Number

SPONSOR(S): Representative Logan

COMPANION BILL(S): SB 180 (similar), HB 499 (compare), HB 621 (compare), SB 178 (compare)

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

- (1) UTILITIES AND COMMUNICATIONS YEAS 10 NAYS 0
- (2) COMMUNITY AFFAIRS YEAS 10 NAYS 0
- (3) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
- (4) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
- (5)

I. FINAL ACTION STATUS:

SB 180 was approved by Governor on May 26, 1999 (Chapter 99-202, Laws of Florida).

II. SUMMARY:

The bill creates section 365.174, F.S., establishing a public records exemption for proprietary confidential business information, as follows.

- All proprietary confidential business information submitted by a provider to the Wireless 911 Board ("board") or the Department of Management Services ("department") is confidential and exempt from requirements of public records law and the State Constitution.
- Statistical abstracts of information collected by the board or the department may be released or published, but only when consistent with specified criteria.
- "Proprietary confidential business information," as used in this section is defined.
- The newly created section is subject to the Open Government Sunset Review Act of 1995, and must stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides Legislative findings for public necessity as required by section 24(c), Article I of the Florida Constitution.

The effective date of the bill is July 1, 1999. (The bill provides that this act takes effect "on the same date as Senate Bill 178 or similar legislation, relating to wireless emergency 911 telephone service, takes effect. . ." HB 621 (Chapter 99-367, Laws of Florida) passed the Legislature and is similar to SB 178; thus, the effective date of the bill is July 1, 1999, which is the effective date of HB 621.)

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

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted;
or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Emergency 911 Services

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

HB 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. HB 621 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 would be subject to public disclosure pursuant to s. 24, art. I of the Florida Constitution and s. 119.07, F.S.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Creates section 365.174, F.S., establishing a public records exemption for proprietary confidential business information, as follows:

- All proprietary confidential business information submitted by a provider to the 911 Wireless Board ("board") or the Department of Management Services ("department"), including the name and billing or service addresses of service subscribers, and trade secrets, as defined by statute, is confidential and exempt from specified public records law and the State Constitution.
- Statistical abstracts of information collected by the board or the department may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.
- "Proprietary confidential business information," as used in this section, means customer lists, customer numbers, and other related information, technology descriptions, technical information, or trade secrets, as defined in law, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.
- This section is subject to the Open Government Sunset Review Act of 1995, in accordance with certain public records law, and must stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2: Provides Legislative findings as follows:

- It is a public necessity that trade secret information and proprietary confidential business information be kept confidential when held by the board or the department pursuant to their authority under certain laws.
- Disclosure of trade secret or proprietary confidential business information in an agency's possession would negatively impact the business interest of those providing an agency such information by damaging them in the marketplace, and those entities and individuals disclosing such trade secret or proprietary confidential business information would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions.
- Disclosure of trade secret or proprietary confidential business information would impair competition in the wireless telecommunications service industry.
- The public and private harm in disclosing trade secret or proprietary confidential business information significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secret or proprietary confidential business information.

Section 3: Provides that this act takes effect on the same date as House Bill 178 or similar legislation (HB 621) relating to wireless emergency 911 telephone service takes effect, if such legislation is adopted in the same legislative session or extension of the legislative session. (See section VI. Comments.).

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?

Yes. Individuals will not have access to certain public records.

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

An agency or program is not 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?

Yes. Individuals will not have access to certain public records.

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

No.

4. Individual Freedom:

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

Yes. By exempting specified information from public records laws, the bill will 1) promote the unrestrained use of E911 services to provide expedited medical and law enforcement services to persons in need of emergency assistance; 2) foster competition in the wireless telecommunications services industry; and 3) protect the competitive interests of the providers of such information.

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

Yes. Individuals will not have access to specified public records.

5. Family Empowerment:

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

The bill does not purport 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:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 365.174, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Refer to section B. EFFECT OF PROPOSED CHANGES.

IV. 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

V. 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.

VI. COMMENTS:

The effective date of the bill is tied to the effective date of SB 178, or similar legislation. HB 621 (Chapter 99-367, Laws of Florida) is similar to SB 178. Thus, the effective date of the bill is tied to the July 1, 1999, effective date of HB 621.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House adopted an amendment by the Committee on Community Affairs that removed from the bill everything after the enacting clause. The substance of this amendment is set forth in this analysis at section B. Effect of Proposed Changes.

VIII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Charles Murphy

Patrick L. "Booter" Imhof

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DATE: June 3, 1999

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