

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/SB 1162

SPONSOR: Governmental Oversight & Productivity Committee and Communication and Public Utilities Committee

SUBJECT: Wireless 911 Information/Open Government Sunset Review

DATE: March 4, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Rhea	Wilson	GO	Fav/CS
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute reenacts a public records exemption, preserving confidentiality for proprietary confidential business information submitted to the Wireless 911 Board or the State Technology Office by a wireless telephone service provider. The committee substitute also narrows what is covered by the current exemption by specifying what the phrase “and other related information” was intended to mean in the definition of “proprietary confidential business information” related to customer lists and customer numbers.

The bill reenacts section 365.174 of the Florida Statutes.

II. Present Situation:

Exemption statute

Section 365.174, F.S., provides that all proprietary confidential business information submitted by a wireless service provider to the Wireless 911 Board (board) or the State Technology Office (office), including the name and billing or service addresses of service subscribers, and trade secrets, is confidential and exempt from the open records provisions of the statutes and the constitution. Statistical abstracts of information collected by the board or the office 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” is defined to mean customer lists, customer numbers, and other related information, technology descriptions, technical information, or trade

secrets, 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.

The exemption will be repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

Operations of the board and public records gathered

Enhanced 911 (E911) services include automatic location identification and automatic number identification. The mobile nature of wireless communications service creates complexities in performing these functions and requires equipment and procedures not needed for landline phones.

The Wireless Emergency Communications Act, s. 365.172, F.S., establishes a fee to fund the wireless E911 system and to ensure full recovery for providers and counties, over a reasonable period, of the costs associated with developing and maintaining an E911 system on a technologically and competitively neutral basis.

The wireless 911 fee is a monthly fee of 50 cents per service number, collected by each service provider. Each provider is to deliver revenues from the fee to the Board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of wireless customers whose place of primary use is in each county.

The board administers the funds with oversight by the office. The board disburses funds to the counties and wireless service providers to cover the costs of establishing, maintaining, and operating the E911 system. Funds are distributed to counties based on the number of wireless subscribers in each county and to wireless providers based on sworn invoices of actual costs incurred. The board is to review each service provider's application for funds and approve or reject it, in whole or in part.

The board is also authorized to establish a schedule for implementing E911 service by service area. It may prioritize disbursements to providers and rural counties in order to implement E911 services in the most efficient and cost-effective manner.

The board is also authorized to ascertain the projected costs of establishing and maintaining the E911 system and the projected collections of the fee.

According to the board, the information provided to the board by the service providers contains information on market share and capital and operating costs.

Public records statute review criteria

Section 119.15, F.S., requires that when the Legislature is reviewing a public records exemption before its scheduled repeal, the Legislature is to consider as part of the review process the following questions:

1. What specific records are affected by the exemption?

2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records be readily obtained by alternative means? If so, how?

Section 119.15, F.S., also provides that an exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the purposes set out below and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and 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.
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.

Additionally, the exemption can be no broader than necessary to meet this purpose.

Application of public records review criteria to subject exemption statute

The specific records affected by the exemption are the reports the wireless providers file in connection with remitting fees and relating to costs associated with E911 operations and proposed E911 enhancements in connection with cost recovery. The exemption specifically affects the wireless providers and their customers. The public purpose is to protect wireless providers' proprietary confidential business information and to ensure that the board continues to get the information it needs to administer the Wireless Emergency Telephone System Fund and to oversee operations and expansion of the E911 system. The exemption also expressly protects customer lists and customer wireless phone numbers. The information cannot be obtained elsewhere.

According to the board, the wireless service providers' filings contain information on the providers' customer list, market share, and operational and capital costs. If this information was not kept confidential, other providers could use it to competitive business advantage. As such, the exemption serves the identifiable public purpose of protecting information of a confidential nature concerning entities.

Additionally, if the exemption was not preserved, the providers may be less willing to provide full, accurate information, which may impair the board's ability to administer the Wireless Emergency Telephone System Fund and to oversee operations and expansion of the E911 system. The exemption also serves the identifiable public purpose of allowing the board to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.

Based on the above, the exemption serves an identifiable public purpose. Additionally, the exemption appears to be no broader than necessary to meet this purpose. Statistical abstracts of information collected by the board and other general information about the E911 fund and system are available to anyone interested. The exemption appears to protect only business information and customers' phone numbers, information not otherwise available to the public and for which there is an expectation of confidentiality and privacy.

III. Effect of Proposed Changes:

The bill amends s. 365.174, F.S., deleting the automatic repeal on October 1, 2004, thereby preserving the exemption from public records requirements for proprietary confidential business information submitted by a wireless provider to the board or the office.

The committee substitute also narrows what is covered by the current exemption by specifying what the phrase "and other related information" was intended to mean in the definition of "proprietary confidential business information" related to customer lists and customer numbers.

The bill takes effect October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act of 1995, this bill reenacts and amends s. 365.174, F.S. The bill does not expand the exemptions.

The exemption makes proprietary confidential business information that is reported confidential and exempt. The definition of "proprietary confidential business information" is defined to mean ". . . customer lists, customer numbers, and *other related information*. . . ." Article I, s. 24(c), of the State Constitution, requires exemptions to be no broader than necessary to accomplish the stated purposed of the law. The phrase *other related information* is not particularly specific and could be challenged on grounds of overbreadth.¹ The committee substitute identifies in exemption the specific types of

¹ *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

information that were covered in the phrase *other related information*, thereby narrowing the scope of what could have been included.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill preserves a public records exemption for proprietary confidential business information submitted to the Wireless 911 Board or the State Technology Office by a wireless telephone service provider, thereby preventing potential competitive and economic harm to the provider.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.