

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1783 (PCB SA 04-07) Wireless 911 Board Info./OGSR
SPONSOR(S): State Administration and Benson
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 1162 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Bond</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law establishes the Wireless 911 Board, which is charged with helping to create and maintain an enhanced 911 system for cellular telephones (commonly referred to as E911). This bill reenacts and narrows the public records exemption for proprietary confidential business information held by the Board.

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact this exemption, it is automatically repealed on October 1, 2004.

This bill may have a minimal non-recurring negative fiscal impact on state government expenditures. This bill does not appear to have a fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1783.sa.doc
DATE: March 17, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Emergency Telephone Act (s. 365.171, F.S.) establishes and implements a statewide emergency telephone number system, administered through the counties, to provide citizens with rapid direct access to public safety agencies by dialing the telephone number "911" on landlines (a telephone wired to a fixed location). Using a form of caller ID technology, cross-referenced to the service address, 911 calls from landlines can provide law enforcement, fire, medical, rescue and other emergency services location information for the phone that has dialed 911. Florida achieved 100% coverage of landline access to 911 in 1998.

Unlike landlines, location information on cellular telephones cannot be determined by a simple cross-reference. The Federal Communications Commission issued a directive requiring implementation of systems to provide location information for a cellular telephone that has initiated a 911 emergency call.¹ The directive required that, by October 1, 1997, cellular carriers must have initiated actions necessary to relay a caller's Automatic Number Identification (ANI) and the location of the cell site receiving a 911 call. These capabilities are designed to allow for call back to the phone placing the 911 call if disconnected, and to help identify the approximate location of the caller. The directive further required that, by October 1, 2002, cellular carriers have the capability to identify the latitude and longitude of the mobile units making 911 calls within a radius of no more than 125 meters. This deadline has been extended from October 1, 2002, to December 31, 2005. An enhanced 911 system for locating a cellular telephone making a 911 call is known as an "E911" system.

Florida enacted the Wireless Emergency Communications Act² as a means of complying with the FCC directive. A fee of 50 cents per cellular telephone account per month is imposed by cellular providers, and paid to the E911 Board, for use in creating and funding E911. The board is administratively housed within the State Technology Office. Of the fees collected, 44% is reserved for use by the counties in implementing E911, 52.92% is available to cellular telephone companies to reimburse such companies for the actual costs of E911 systems, 1.08% of the fees may be retained by the Wireless 911 Board for expenses³; and the remaining 2% of the fees are for distribution to rural counties for use in their 911 systems (regular or wireless). As of December 2002, there were 7,824,987 wireless accounts in Florida.

¹ Memorandum Opinion and Order FCC 97-402.

² Chapter 99-367, L.O.F., codified at s. 365.172, F.S.

³ The 1.08% for administrative expenses is a maximum. The portion of the 1.08% not used for administrative expenses is returned to the trust fund and available for distribution to cellular providers.

Administering the E911 system requires the state and local governments to collect proprietary confidential business information from cellular telephone companies. The amount of the tax collected and paid over by a company could be used by competitors to determine the number of subscribers that a company has. Technical details relating to system construction, tower usage, call routing, call timing, and other similar technical details must be known to state and local governments to determine the location of a cell phone, but are confidential and proprietary to cell phone companies because disclosure of those facts could be used by a competitor. Disclosure of such technical details may also present a security risk endangering the security of such communications or even endangering the system itself.

Effect of Bill

This bill amends s. 365.174, F.S., to narrow the public records exemption by changing the definition of the "proprietary confidential business information". The bill removes the overly broad phrase "other related information" and substitutes the narrower phrase "individual or aggregate customer data by location, usage and capacity data, network facilities used to serve subscribers".

This bill also reenacts s. 365.174, F.S., by removing the October 1, 2004 repeal date.

C. SECTION DIRECTORY:

Section 1 amends s. 365.174, F.S., to narrow the exemption and remove repeal date.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill appears to require a minimal negative non-recurring expenditure by state government. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate a local government expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to require a minimal negative non-recurring expenditure by persons in the private sector. See Fiscal Comments.

D. FISCAL COMMENTS:

This bill may represent a minimal non-recurring negative fiscal impact on state government and private sector expenditures. A bill enacting or amending public records law causes a non-recurring negative

fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as employees would have to be informed that formerly exempt records are now open. Because this bill slightly amends the exemption, employee training by governments and private sector entities involved in the eminent domain process will be required, and it is possible that the training required to recognize these changes may exceed what such entities may have had to pay in training should the exemption have simply expired. There is no apparent means of estimating these costs, although such costs do not appear substantial.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁴ Section 119.15, F.S.