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.)

Prepared By: Community Affairs Committee

BILL:	CS/SB 620
SPONSOR:	Communications & Public Utilities Committee and Senator Bennett
SUBJECT:	Wireless Emergency Telephone System
DATE:	March 17, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Halloran	Caldwell	CU	**Fav/CS**
2.	Herrin	Yeatman	CA	**Pre-meeting**
3.			GO	
4.			GE	
5.				
6.				

I. Summary:

This committee substitute (CS) adds various definitions to s. 365.172, F.S. It also modifies the standards that local governments must apply to wireless providers in regulating the placement, construction, or modification of wireless communications facilities. The CS modifies existing provisions for collocation and bifurcates collocations into three types- those on existing towers that meet certain conditions, those on existing structures that meet certain conditions, and all other collocations. It also adds language stating that the owner of the existing tower on which a collocation is to be located is still responsible for complying with the conditions that were placed on the tower when it was approved. It limits the term "local government" and excludes airports from the definition of "local government" for the purposes of subsection (11) of 365.172 F.S., only.

The CS sets forth the procedures for local governments and wireless providers to follow in regards to submission of applications and notification of deficiencies in applications. It also provides time limits local governments must follow in granting or denying properly completed applications. The CS also limits restrictions on setback distances, placement in residential areas, fees, and structural or construction standards that local governments may impose upon wireless providers.

The CS also gives the Wireless E911 Board the authority to utilize revenues from the Wireless Providers Trust Fund to provide grants to rural counties and loans to medium counties to upgrade their E911 systems. It allows the Wireless E911 Board to hire an independent executive director and to acquire the services of an independent private attorney. Wireless E911 provisions are also amended to say that state and local governments are not customers for the purposes of E911 fees.

The CS modifies s. 365.173, F.S., to direct county receipt and expenditure of E911 funds. It also provides that the Wireless Emergency Telephone System Fund is to be incorporated into the annual county budget and the county financial audit. The CS removes the annual audit of the Wireless Emergency Telephone System Fund from the duties of the Auditor General. It also revises the fees imposed for commercial mobile radio service providers and providers of interexchange telecommunications services, pursuant to s. 364.02, F.S.

The CS amends subparagraph (6) of section 365.171, F.S., removing nonemergency 311 systems and other nonemergency systems as expenses for which 911 fees may be used. It also removes obsolete language for a pilot project ending June 30, 2003.

The CS amends s. 337.401, F.S., to eliminate any reference to local government zoning authority in the section of the statute dealing with the use of rights-of-way.

The CS substantially amends the following sections of the Florida Statutes: 11.45, 364.02, 365.171, 365.172, 365.173, and 337.401.

II. Present Situation:

Federal Rules

The Federal Communications Commission (FCC) has established rules concerning 911 services from wireless providers.[1] The two-phase program promulgated by the FCC for enhanced 911 (E911) services is as follows:

Phase I- Within six months of a request, a wireless provider must be able to provide the Public Safety Answering Point (PSAP) with the telephone number of the call originator and the location of the cell site or base station receiving the call from a mobile handset.[2]

Phase II- Requires wireless providers to provide location information within 50 to 300 meters, depending on the technology being used. The FCC has set December 31, 2005, as the nationwide completion date for Phase II.[3]

Statutory History

In 1999, the Legislature created s. 365.172, F.S., known as the Wireless Emergency Communications Act[4] (Act), to address issues pertaining to wireless 911 services. The Act created the Wireless E911 Board (Board) that is responsible for administering the wireless E911 fees established in the Act. The fee is 50 cents per month on each telephone service number. The fee is collected by the service providers as part of their monthly billing. The collected fees, minus one percent retained as reimbursement for administrative costs, are delivered to the Board.

[1] See generally, s. 47 C.F.R. 28.18
[2] 47 C.F.R. s. 20.18(d)
[3] 47 C.F.R. s. 20.18(g)(1)
[4] Ch. 99-367, Laws of Florida

Fees collected by the Board are deposited into the Wireless Emergency Telephone System Fund (Fund), created in 1999 in s. 365.173, F.S.[5] The fund is used to manage the revenues and distribution of monies collected pursuant to s. 365.172, F.S. Forty-four percent of the fees is distributed each month to counties for payment of 911 service costs, fifty-four percent is distributed to 911 providers, and two percent is distributed to rural counties to provide facilities, network, and service enhancements and assistance for 911 systems. The Board receives its funding by retaining up to two percent of funds allocated to 911 service providers. These fees are to be used for costs and expenses incurred in managing, administering, and overseeing the receipts and disbursements from the Fund. Section 365.173, F.S., allows counties to carry forward, for up to three successive calendar years, up to 30 percent of the funds disbursed for that county for capital outlay, capital improvements, or equipment replacements. The statute also requires the Auditor General to annually audit the Fund.

In 2003, s. 365.172, F.S., was amended.[6] Language was added regarding the collection of the fee from prepaid wireless customers. The Board was authorized to: 1) provide technical assistance concerning the deployment of the 911 system, 2) provide for educational opportunities related to 911 issues for the 911 community, 3) advocate for 911 issues, and 4) to work cooperatively with the system director to enhance 911 services and provide unified leadership on 911 issues.

Additionally, the 2003 law created subsection 365.172(11), F.S., concerning the facilitation of wireless E911 service implementation. The law:

- Encourages collocation among wireless providers by making the collocation of wireless facilities on an existing structure exempt from land development regulations pursuant to s. 163.3203, F.S., provided that the height of the structure does not increase. Construction of the facility is still subject to existing permits and local building regulations.
- Prohibits local governments from requiring wireless providers to provide evidence of compliance with federal regulations, except for FCC licensure. The local government may request that the FCC provide information as to the provider's compliance with federal regulations, as authorized by federal law.
- Requires a local government to grant or deny a properly completed application for the collocation of wireless facilities within 45 business days, provided that the application complies with local zoning ordinances, land and building regulations, and aesthetic requirements.
- Requires local governments to notify applicants within 20 business days as to whether or not its application was properly submitted. Such determination shall not be deemed as an approval of the application. However, the notification shall indicate with specificity any deficiencies which, if cured, shall make the application properly completed.

[5] Ch. 99-203, Laws of Florida
[6] Ch. 2003-182, Laws of Florida

- Deems automatically approved properly completed applications that are not timely granted or denied, but provides for an extension to the next regularly scheduled meeting if local government procedures require action by its governing body.
- States that for the waiver of a timeframe to be effective, it must be voluntarily agreed to by the applicant and the local government; except that a one time waiver may be required in the event of a declared emergency that directly affects the administration of all permitting activities of the local government.
- Deems any additional wireless communications facilities required at a secured equipment compound to meet federal Phase II E911 requirements a permitted use or activity, but local land development and building regulations apply, as well as aesthetic requirements.
- Requires the Department of Management Services (DMS) to negotiate leases for wireless communications facilities to be placed on state-owned property not acquired for transportation purposes, and requires the Department of Transportation (DOT) to negotiate leases for wireless communications facilities to be placed on state-owned rights-of-way.
- Requires wireless providers to report to the Board any unreasonable delays experienced within counties or municipalities in locating wireless telecommunications facilities necessary to provide the needed coverage for compliance with federal Phase II E911 requirements by September 1, 2003. The provider shall also provide this information to the specifically identified county or municipality by the same date. This allows the Board to establish a subcommittee, consisting of representatives from the wireless industry, cities, and counties, in order to institute a balance between the provider's responsibilities and county or municipal zoning and land use requirements.
- Requires the subcommittee to develop recommendations for the Board and municipalities and counties to consider in complying with federal Phase II E911 requirements. The recommendations are to be included in the Board's annual report to the Governor and Legislature which was filed on February 28, 2004.

February 2004, Wireless E911 Board Annual Report

According to its February 2004, Annual Report, the Board received 19 reports[7] of unreasonable delay in complying with federal Phase II E911 requirements. The Board established a subcommittee to develop recommendations addressing the various issues brought up by the industry. Based on the industry's reports, supplemental reports, local government responses, and mini-hearings, the subcommittee determined that there were not any consistent, statewide problems causing unreasonable delays in the implementation of E911 telecommunications facilities.

III. Effect of Proposed Changes:

Section 1 amends s. 11.45(2)(e), F.S., to delete the requirement that the Auditor General annually conduct an audit of the Wireless Emergency Telephone System Fund. This change incorporates recommendations by the Auditor General and the Wireless 911 Board.

[7] The reports were for nine counties (Alachua, Collier, Flagler, Jackson, Lee, Liberty, Miami-Dade, Pasco, and Sarasota), nine municipalities (Anna Maria, Deltona, Jacksonville, Key West, Lake Mary, Ormond Beach, Quincy, Sarasota, and Tarpon Springs), and one state park (Butler Beach).

Section 2 amends the definition of "telecommunications company" in s. 364.02(13), F.S., to remove the provision that commercial mobile radio service providers are liable for any fees imposed pursuant to s. 364.336, F.S. That section allows the Florida Public Service Commission to impose Regulatory Assessment Fees on wireless providers. Since the PSC does not have jurisdiction over these providers, these fees were never imposed.

Section 3 amends s. 365.171(13)(a), F.S., deleting eligibility of expenses for nonemergency 311 systems and other nonemergency systems for which 911 fees may be used as part of a pilot project ending June 30, 2003.

Section 4 amends s. 365.172, F.S., to further facilitate E911 service while balancing the public interest served by zoning and land development regulations.

The CS adds definitions that apply to the siting process as follows:

- "Building-permit review" - a review for compliance with building construction standards adopted by the local government under ch. 553, F.S., which does not include a review for compliance with land development regulations.
- "Collocation" - the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antenna(e). The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna(e).
- "Designed Service" - the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.
- "Existing structure" - a structure that exists at the time an application for permission to place antenna(e) on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antenna(e) in compliance with applicable codes.
- "Historic building, structure, site, object or district" - any building, structure, site, object or district that has been officially designated as a historic building, historic structure, historic site, historic object or historic district through a federal, state, or local designation program.
- "Land development regulations" - any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building-construction standard adopted under and in compliance with ch. 553, F.S.
- "Medium county" - any county that has a population of 75,000 or more but less than 750,000.
- "Office" – the State Technology Office.
- "Tower" - any structure designed primarily to support a wireless provider's antenna(e).
- "Wireless communications facility" - any equipment or facility used to provide service, and may include, but is not limited to, antenna(e), towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility

on an existing structure does not cause an existing structure to become a wireless communications facility.

The CS creates standards to apply to local government's regulation of the placement, construction, or modification of wireless communications facilities. The CS exempts airports from these standards. It separates collocations into three types: those on existing towers that meet certain conditions, those on other existing structures that meet certain conditions, and all other collocations.

Collocations on towers, including nonconforming towers, that do not increase the height of the tower, do not increase the ground space area approved in the site plan, and are of a design and configuration consistent with all applicable regulations and restrictions applied to the initial antenna(e), are subject only to building-permit review. Such collocations are not subject to any land development regulation, design or placement requirements that are more restrictive than those in effect at the time of the initial antenna(e) placement approval and are not subject to a public hearing or input. Additionally, the collocations are subject to design and aesthetic requirements imposed by the local government at the time the initial antenna(e) were placed on the tower, but are not subject to procedural requirements in the local government's regulations, restrictions, or conditions if those requirements are inconsistent with this section.

Collocations on all other existing structures, except for an historic building, structure, site, object or district, that do not increase the height of the existing structure, do not increase the ground space area approved in the site plan, are of a design and configuration consistent with all structural or aesthetic design requirements, regulations and restrictions applied to initial antenna(e), are subject to no more than building-permit review and an administrative review without public hearing or input.

All other collocations are subject to full review under the local government's requirements, as if they are not a collocation, but rather, the first antenna being placed on the structure.

If a portion of the collocation does not meet the requirements, only that portion is subject to the local government's regulation of an initial placement. The portions that meet local government requirements are subject to a simpler review.

The owner of the existing tower on which an antenna is proposed to be collocated is still responsible for complying with the conditions that were placed on the tower when it was approved, as long as those conditions do not conflict with this statute.

An existing tower, including a nonconforming tower, may be replaced or structurally modified to permit collocation through no more than an administrative review, with no public hearing or input, provided that certain criteria are met. The overall height cannot be increased; and, if the tower is being replaced, the replacement tower may be structurally modified to permit collocation if it is a monopole, or if the existing tower is a camouflaged tower, if the replacement tower is a like-camouflaged tower.

The CS limits a local government's authority to evaluate a wireless provider's application for placement of a wireless facility to issues concerning land development and zoning. A local

government may not require information on, or evaluate the provider's business need for a location unless the wireless provider voluntarily offers the information. A local government may not request information or evaluate a provider's service quality or network design unless the information directly relates to a specific land development or zoning issue.

Any setback or distance separation requirements for a tower are to be the minimum necessary to satisfy structural safety or aesthetic concerns.

A local government may exclude the placement of wireless facilities in residential areas or residential zoning districts, but only in a manner that does not constitute an actual or effective prohibition of the provider's designed service in that residential area or zoning district. If the residential area cannot reasonably be served, the local government and the provider must work together to find a suitable location to provide the provider's service to the residential area. However, the local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination.

Local governments may impose a reasonable fee on wireless providers for review and permitting of wireless facilities, only if similar fees or requirements are imposed on applicants seeking similar zoning, land use, or building-permit reviews. Fees for an application review by consultants or experts on behalf of a local government may be assessed, only if it is tied to a specifically identified expense incurred in the review. A reasonable surety requirement may be imposed to ensure the removal of abandoned wireless facilities.

A local government may impose design requirements, such as requirements for designing towers to support collocation or aesthetic requirements, except as limited elsewhere in this section. However, a local government may not impose, or require information on compliance with, building code type standards for the construction or modification or wireless communications facilities beyond those adopted by the local government under ch. 553, F.S., and that apply to all similar types of construction.

Current law provides that local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations. However, the CS authorizes a local government to require a wireless provider to provide evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. s. 77, as amended, and of FCC authorized spectrum use.

Local governments must grant or deny each properly completed application for a collocation within the normal timeframe for a similar building permit review but in no case later than 45 business days after the application is determined to be properly completed.

Local governments must grant or deny each properly completed application for any other wireless communications facilities within the normal time frame for a similar building permit review but no later than 90 business days after the application is determined to be properly completed.

An application is deemed submitted or resubmitted on the date it is received by local government. Current law requires that the local government notify the applicant, in writing,

within 20 business days after the application is initially submitted as to whether the application is properly completed. This CS provides that, if the application is incomplete, the local government must notify the applicant of the deficiency within 20 business days after the date the application is initially submitted or additional information is resubmitted. If the local government does not notify the applicant within 20 days, the application is deemed complete for administrative purposes only. However, this determination shall not be deemed as an approval of the application. The local government notification must indicate with specificity any deficiencies in the required documents or in the content of the required documents which, if cured, make the application properly completed. Upon resubmission, the local government shall notify the applicant, in writing, within 20 business days whether the application is properly completed or if there are any remaining deficiencies. Any deficiencies in document type or content not specified by the local government do not make an application incomplete and are waived. If a specified deficiency is not properly cured when the applicant resubmits the application to comply with the notice of deficiencies, the local government may continue to request the information until the specified deficiency is cured. The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed. If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframe, the application shall be deemed automatically approved.

The CS deletes a provision stating that additional wireless communications facilities required within the existing site shall be deemed a permitted use or activity.

The CS provides that, except for a tower, the replacement or modification of wireless communications facilities that results in a facility not readily discernibly different in size, type, and appearance, and the replacement or modification of equipment that is not visible from the outside of the site, is subject to no more than a building permit review.

The CS creates a cause of action for any person adversely affected by a local government's action or failure to act in the review or regulation of wireless communication facilities. The adversely affected person may bring an action in a court of competent jurisdiction, following the exhaustion of all administrative remedies. The court is to consider the matter on an expedited basis.

The CS deletes an existing provision allowing a wireless provider to report to the Board locations where it has experienced unreasonable delay in locating wireless telecommunications facilities necessary to comply with FCC Phase II requirements no later than September 1, 2003. Since the subcommittee formed to address siting-process issues found that there was no consistent pattern indicating a uniform statewide problem causing "unreasonable delays," the provision allowing reporting to the Board is now obsolete.

The CS amends s. 365.172(6), F.S., to authorize the Wireless E911 Board to utilize revenues from the Wireless Providers Trust Fund to provide grants to rural counties and loans to medium counties to upgrade their E911 systems. Revenues used for this specified purpose are to be fully repaid in a manner and timeframe as approved by the Board. It also allows the Board to hire or retain an independent executive director, who must have experience in telecommunications and

911 issues. Finally, the CS gives the Board the authority to secure the services of an independent, private attorney via invitation to bid, requests for proposals, invitation to negotiate, or professional contracts for legal services already established at the Department of Management Services. At this time, the administrative functions of the Board are being performed by the State Technology Office and the Attorney General's Office provides legal counsel.

The CS amends s. 364.172(8)(a), F.S., to provide that, for purposes of payment of E911 fees, state and local governments are not considered customers, and consequently, state and local governments are not subject to the Wireless E911 fee. This is consistent with a 1987 Attorney General's Opinion that state agencies may not be required to pay the 911 fee imposed by s. 365.171(13), F.S. AGO 87-29.

Section 5 amends subsections (2) and (3) of 365.173, F.S., relating to the Wireless Emergency Telephone System Fund. The CS requires any county that receives these funds to establish a fund to be exclusively used for the receipt and expenditure of 911 revenues collected. The fees placed in the fund, along with any interest accrued, must be used for recurring costs of operating 911 or E911 service or complying with FCC orders and rules pertaining to wireless E911 requirements. The county commissioners are to appropriate the money collected and interest earned for the required purposes and incorporate it into the annual county budget.

The CS also deletes a limit on the carry forward of funds distributed to the county by the board for capital outlay, capital improvements, or equipment replacement to three successive calendar years and 30 percent of the total funds disbursed.

The CS adds language to include the audit of the Wireless Emergency Telephone System Fund with the county's financial audits to be performed in accordance with s. 218.39, F.S., and removes the audit from the purview of the Auditor General. The Auditor General recommended this change.

Section 6 amends s. 337.401(3)(a)1, F.S., relating to utilities use of rights-of-ways. That subparagraph currently requires that local governments treat providers of communications services in a nondiscriminatory manner and prohibit requiring an individual license or franchise as a condition of use of rights-of-way. The CS deletes from this subparagraph a provision that the subparagraph is not intended to limit or expand existing zoning and land use authority of a municipality or county and that no such zoning or land use authority may require an individual license, franchise, or other agreement, as prohibited by the section.

Section 7 provides that the CS takes effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

With fewer restrictions, the CS makes it easier for wireless communications providers to site E911 facilities.

C. Government Sector Impact:

While the CS removes any obligation that commercial mobile radio service providers have in paying Regulatory Assessment Fees imposed by the PSC, this fee has never been imposed. So, there should be no impact on revenues in that regard. However, local governments may lose revenue if they are currently requiring wireless providers to pay higher permit fees than they are requiring other entities to pay for permit reviews.

The CS allows the Board to hire an Executive Director and outside counsel. If the Board hires a director and an independent attorney, there will be salary and benefit expenditures associated with the positions. There may be some cost savings with removing the requirement that the Auditor General annually audit the Wireless Emergency Telephone System Fund. The CS also exempts local governments from paying wireless E911 fees, which may provide savings to local governments. Yet, there may be some additional expenses associated with incorporating the wireless E911 fees into the county's annual audit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.