

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill combines Florida's current 911 and E911 statutes, allowing for all uniform E911 fees to be paid to a Board for distribution to counties and wireless providers according to a statutory allocation.

Ensure Lower Taxes-The bill requires the Board, after September 1, 2008, to establish a state-wide E911 fee, which may not exceed the current statutory maximum of 50 cents per month. Four counties currently have 911 fees of less than 50 cents per month. The monthly 911 fee paid in those counties may increase if the Board establishes a statewide fee greater than those counties' current fees. However, the Board may establish a uniform statewide E911 fee of less than 50 cents per month.

Maintain Public Security-The bill updates current 911 and E911 statutes, including amending the types of costs eligible for expenditures from 911 fees to address newer technologies.

B. EFFECT OF PROPOSED CHANGES:

Background

Wireline 911 Service

In 1974, the Legislature enacted the Florida Emergency Telephone Number Act (Act) in s. 364.171, F.S., to designate a statewide emergency telephone number.¹ Following the initial passage of the Act, the state developed a plan for implementing a 911 system. Since 1976, the plan has been updated numerous times to reflect legislative mandates and technological changes.² The State Technology Office (STO), within the Department of Management Services (DMS) was charged with administering this law.³ However, while the STO continues to exist in statute⁴ the administrative aspects of its functions have been transferred to DMS. The 911 programs are now being administered by the Florida Enterprise Information Technology Services Office within DMS. In its current form, this Act provides for the following:

- The STO is required to develop a statewide 911 plan;
- The STO is required to adopt rules and regulations;
- The director of the STO or his or her designee is the Director of the Statewide Emergency Telephone Number Telephone System;
- The STO is required to approve all new or expanded 911 systems;
- 911 shall be the only emergency telephone number published in Florida;
- Counties may impose a 911 fee of up to 50 cents per month per wireline access line, up to a maximum of 25 access lines per account bill rendered.⁵

From 1976 through 1982, the Legislature appropriated money to the Department of General Services (now DMS) to assist counties in implementing a 911 system by helping them recover their nonrecurring costs.⁶

¹ Ch. 74-357, L.O.F.

² *State Technology Office E911 Plan. (E911 Plan)* Available at <http://fcn.state.fl.us/dms/e911/plan.html>.

³ Ch. 74-357, L.O.F., originally required the Communications Division of the Department of General Service to implement the requirements of this Act. In 1992, the Department of General Services became the Department of Management Services. (See ch. 92-276, L.O.F.). In 2001, administration of the 911 system was transferred to the State Technology Office (See ch. 2001-133, L.O.F.).

⁴ Ch. 282, F.S.

⁵ S. 365.171, F.S.

⁶ *E911 Plan*

In 1985, the Legislature allowed the counties to establish a fee of up to 50 cents per month, for up to 18 months, per wireline access line, to cover the non-recurring cost associated with establishing 911 systems.⁷ In 1990, the Legislature extended the collection period to up to 36 months.⁸

In 1987, the Legislature allowed the recurring costs associated with 911 be included in the fees on wireline access lines. Previously, the operational costs for 911 were paid from the county's general revenue fund. The law specified the types of equipment that are eligible for payment from the 911 fees and provided that the total amount collected from a wireline subscriber may not exceed 50 cents per month per line.⁹

In 1991, the Legislature removed a requirement that the Department of General Services annually approve a county's E911 fee and required counties to establish a fund for specified purposes. The law required that an annual audit of the fund be conducted and forwarded to the Department of General Services.¹⁰

Wireless 911 Service

In 1999, the Legislature created the Wireless Emergency Communications Act in s. 365.172, F.S.¹¹ This law established a wireless E911 Fee of 50 cents per month on wireless communications and created the Wireless 911 Board, with oversight by DMS to administer the revenues derived from this fee. The Wireless 911 Board consists of seven members, including the director of the statewide 911 system, who serves as chair, three county 911 coordinators, and three members of the wireless telecommunications industry.¹² The law established an initial allocation of the revenues derived from the Wireless E911 Fee but provided the Board with the authority to modify that allocation. Currently, the Wireless E911 Fee is distributed in the following manner:

- Sixty percent is distributed to counties, based on the number of wireless subscribers in each county, for purposes of providing 911 or E911 service;
- Thirty-five percent is available to distribute to wireless providers in response to sworn invoices for actual costs incurred in providing E911 service. Up to three percent of the funds allocated to providers may be retained by the Wireless E911 Board for administrative costs;
- Five percent is allocated to provide extra assistance to rural counties for providing 911 or E911 Service.¹³

In 2006, the General Appropriations Act contained the following proviso language, concerning the Wireless Emergency Telephone System Trust Fund (Trust Fund):

From the funds provided in Specific Appropriation 2946, from the Wireless Emergency Telephone System Trust Fund, the Wireless 911 Board shall report by September 30, 2006, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives the date that the wireless E911 fee can be reduced to a level which funds all counties' costs, including rural counties' costs, associated with operating and maintaining an E911 system that is technologically and competitively neutral, the providers' costs required to meet the recurring costs of providing E911 service, and the costs for the Board to manage, administer and oversee the receipts and disbursement of the fund. The Wireless 911 Board report shall take into consideration the total revenues generated from both wireless and wireline 911 fees and the total costs to the counties to operate and maintain the wireline and wireless E911 systems.¹⁴

⁷ Ch. 85-317, L.O.F.

⁸ Ch. 90-305, L.O.F.

⁹ *E911 Plan*; Ch. 87-259, L.O.F.

¹⁰ Ch. 91-100, L.O.F.

¹¹ Ch. 99-367, L.O.F.

¹² S. 365.172(5)(b), F.S.

¹³ Wireless E911 Board 2006 Annual Report, February 28, 2007, Available at

<http://fcn.state.fl.us/dms/e911/docs/2006wirelessboardreportfull.pdf>

¹⁴ Ch. 2006-25, L.O.F., specific appropriation 2946 proviso language.

On September 29, 2006, the Wireless E911 Board issued the *2006 Wireline and Wireless Fee Evaluation Legislative Report (Fee Evaluation Report)*.¹⁵ The *Fee Evaluation Report* concluded that the fees collected do not cover all of the costs of the counties and service providers related to E911. The report determined that in fiscal year 2004-2005, the total combined 911 Fee Revenues were approximately \$121 million, while the expenditures were approximately \$168 million.

In its *Fee Evaluation Report*, the Wireless E911 Board made the following recommendations:

- Revise the statutes to ensure that 911 fees are imposed on users in a fair and consistent manner, regardless of technology;
- Update the wireline statute to reflect changes in technology, equipment, and present status of E911 services statewide, and merge wireline and wireless statutes into one comprehensive law
- Modify the current Wireless 911 Board to a 911 Board with oversight of the newly combined statute, with all service providers represented on the Board.
- Reserve the Trust Fund exclusively for E911 systems and services.
- Revise the language related to prepaid wireless E911 fees..

HB 919 addresses the Wireless E911 Board's legislative recommendations, except for the recommendation related to the Trust Fund. The recommendation related to the Trust Fund is addressed in HB 921.

Proposed Changes

The bill amends ss. 365.171 and 365.172, F.S., in order to provide one comprehensive law for the administration and funding of both the wireless and wireline 911 systems.

Legislative Intent

Both the wireless and wireline 911 statutes currently contain language providing legislative intent. The current wireline statute, s. 365.171, F.S., provides that it is the Legislature's intent to establish and implement a cohesive statewide emergency 911 telephone plan to provide citizens with direct access to public safety agencies in order to reduce response time for emergency services.¹⁶

Under the bill, the Legislative intent in the wireline section is expanded to provide that "911" be the designated emergency communications number. Public safety agencies are prohibited from advertising or otherwise promoting the use of another communications number for emergency response services. The bill also replaces the Legislative intent to establish and implement a 911 plan, with the intent to "implement and continually update" the plan.¹⁷

The bill removes the current Statement of Finding and Purpose in s. 365.172(2), F.S., related to wireless E911 service, that it is the Legislature's intent to:

- Establish and implement a comprehensive statewide emergency telephone number system to provide users of voice communications services with rapid direct access to public safety agencies by dialing "911."
- Provide funds to counties to pay certain costs associated with their E911 or 911 systems and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services.

¹⁵ This report can be obtained at the Wireless E911 Board's Website at <http://fcn.state.fl.us/dms/e911/wireless.html>

¹⁶ S. 365.171(2), F.S.

¹⁷ The current Statewide 911 Plan may be found at <http://fcn.state.fl.us/dms/e911/plan.html>.

- Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.

The bill also adds the following statement of legislative intent to s. 365.172(2), F.S., relating to the new E911 Fee to:

- Provide for an E911 board to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all voice communications services providers.
- Ensure that the fee established is used exclusively for recovery by wireless providers and by counties of the costs associated with developing and maintaining E911 systems and networks in a manner that is competitively and technologically neutral as to all voice communications services providers, although the fee will not necessarily provide the total funding required for establishing or providing E911 service.

Definitions

Section 365.172(3), F.S., provides for definitions to be used in ss. 365.171 through 365.174, F.S. The bill adds, amends, or deletes numerous definitions. The bill adds the following definitions:

Authorized Expenditure-expenditures of the fee, as specified in s. 365.712 (9), F.S.

Nonwireless Account-the revenue to the fund received from voice communications services other than the wireless providers.

Prepaid Calling Arrangements-the same meaning as defined in s. 212.05(1)(e), F.S.¹⁸

Service Identifier-the service number, access line, or other unique subscriber identifier assigned to a subscriber and established by the Federal Communications Commission for the purposes of routing calls.

Voice Communications Services-a service that includes the transmission, conveyance, or routing of real-time, two-way voice communications, to a point, or between or among points, by and through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless, or other medium now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, and that includes the ability to receive and terminate voice calls to and from the public switched telephone network. The term includes such transmission, conveyance, or routing of voice communications services in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol service or is classified by the Federal Communications Commission as enhanced or value-added.¹⁹

Voice Communications Service Provider or Provider-any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications service and was assessed the fee by its resale supplier.

Wireless E911 System or Wireless 911 Service-an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by dialing the digits "911."

Wireless Account-the revenue to the fund received by wireless providers.

¹⁸ Section 212.05(1)(e)1.a.(I), F.S., defines "prepaid calling arrangement" as the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.

¹⁹ This definition provides that new technologies such as VoIP are subject to the E911 fee.

Wireless Provider-a person who provides wireless service and:

1. Is subject to the requirements of the order;²⁰ or
2. Elects to provide wireless 911 service or E911 service in this state.

Wireless Service-"commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers only offering data, one-way, or stored voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

The bill amends the following definitions:

Board or E911 Board-the board of directors of the E911 wireless 911 Board established in s. 365.172 (5), F.S.

E911-the designation for an a wireless enhanced 911 system or wireless enhanced 911 service that is an emergency telephone system or service that provides a subscriber with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, F.S., and that provides for automatic number identification and automatic location identification features. E911 service provided by a wireless provider means E911 as defined in the order²¹ in accordance with the requirements of the order.

Fee-the E911 fee authorized and imposed under s. 365.172(8), F.S.

Fund the Wireless Emergency Communications Number E911 Telephone System Fund established in s. 365.173, F.S., and maintained under this section for the purpose of recovering the costs associated with providing 911 service or E911 service, including the costs of implementing the order. The fund shall be segregated into wireless and nonwireless accounts.

Office-the Florida Enterprise Information Technology Services Office or other office within the Department of Management Services, as designated by the secretary of the department State Technology Office.

Order :

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:
 - a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.
 - b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.
 - c. Order No. FCC DA 98-2323 adopted on November 13, 1998.
 - d. Order No. FCC 98-345 adopted December 31, 1998.
2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of wireless 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

The bill also deletes definitions for following terms:

²⁰ The term "order" is defined below.

²¹ The term "order" is defined below.

- Active Prepaid Wireless Telephone
- Prepaid Wireless Telephone Service
- Provider or Wireless Provider
- Service
- Service Number
- Sufficient Positive Balance
- Wireless 911 System or Wireless 911 Service.

Governance

Currently, governance of the wireline and wireless E911 systems is established through ss. 365.171, F.S., and 365.172, F.S., respectively. The bill makes changes to these governance provisions in order to combine these two systems.

State Technology Office

Several subsections of s. 365.171, F.S., relate to the governance of the wireline 911 system by the STO. In general, the STO is responsible for developing, implementing, and coordinating a state “911” system plan. The STO is required to adopt rules relating to the implementation of the plan.²² The STO is required to designate a 911 System Director to coordinate the activities of the 911 system with state, county, local and private agencies. The director is authorized to employ no less than five persons.²³ The STO is also required to coordinate with the Public Service Commission (PSC) to encourage the telephone industry to activate 911 plans²⁴ and approve the establishment or expansion of 911 systems.²⁵ The STO has the authority to apply for and accept federal funding for the development and implementation of a statewide 911 system.²⁶

For wireless communications, the STO oversees the administration of the E911 fee²⁷ and oversees the Wireless 911 Board (Board).²⁸

The bill amends several subsections to provide that the roll of the STO is assumed by the Florida Enterprise Information Technology Services Office (FEITSO) to oversee the administration of the new E911 fee and the new E911 Board. In order to do so, the bill replaces references to the STO with FEITSO.

In order to maintain consistency concerning the oversight and administration of E911 services statewide, the bill amends certain provisions relating to the FEITSO’s governance of the E911 system. The bill provides that the FEITSO will oversee the administration of the E911 fee. The bill also gives the FEITSO oversight over the E911 Board and the authority to designate a 911 director. The FEITSO retains its authority to apply for federal funding to assist in the development of a statewide 911 system.

Counties

Regarding the current wireline 911 fee, counties have the authority to impose a 911 fee and increase or decrease the fee, as long as the fee does not exceed 50 cents per month per line (up to a maximum of 25

²² S. 365.171(4), F.S.

²³ S. 365.171(5), F.S.

²⁴ S. 365.171(7), F.S.

²⁵ S. 365.171(9), F.S.

²⁶ S. 365.171(8), F.S.

²⁷ S. 365.172(4), F.S.

²⁸ S. 365.172(5)(a), F.S.

access lines per account bill rendered).²⁹ The counties are also required to submit an annual report to the STO on the 911 fees and any adjustment to those fees.³⁰

The wireline 911 fee is currently billed to the customer by the local telephone company, and the telephone company remits the fee to the individual counties.

E911 Board

Section 365.172(5), F.S., currently provides for the Wireless E911 Board, to administer the wireless E911 fee. The Board consists of seven members; one is designated by the Secretary of the Department of Management Services, and serves as Chair of the Board. Additionally there are three county 911 Coordinators and three representatives from the wireless telecommunications industry appointed by the Governor. The Board meets at least one day each month to address issues related to Wireless E911. The Board also administers the Wireless Emergency Telephone System Fund provided for in s. 365.173, F.S.

The bill gives the E911 Board oversight of both wireless and nonwireless E911 services. The bill changes the name of the Wireless E911 Board to the E911 Board to reflect its change in authority. It expands the Board's membership to nine members. One of the members will be the system director appointed by the secretary of DMS, who will serve as the chair. The remaining eight members are appointed by the Governor. Four are to be county 911 coordinators recommended by the Florida Association of Counties; two will be local exchange carrier members, one of which must represent the local exchange carrier³¹ having the greatest number of access lines in the state; and two will be from the wireless telecommunications industry, with the recommendation of the Florida Telecommunications Industry Association in consultation with the wireless telecommunications industry. In recommending members from the wireless telecommunications industry, consideration must be given to wireless providers who are not affiliated with local exchange carriers.

Except for the system director, the members of the board are appointed to 4-year terms and many not be appointed for more that two successive terms. Currently, s. 365.172(5)(c), F.S. provides that for purposes of staggering terms, two of the original board members are appointed to 4-year terms, two are appointed to 3-year terms, and two are appointed to 2-year terms. The bill increases the number of original board members appointed to 2-year terms to four.

The bill also provides that the first vacancy in a wireless provider representative position occurring after July 1, 2007, must be filled by appointing a local exchange company representative. Until that appointment is made, only one local exchange company representative will serve on the board, notwithstanding any other provision to the contrary.

Section 365.172(6)(a), F.S., gives the Board its statutory authority. In general, the Board has the authority to:

- Administer the E911 fee;
- Implement, maintain, and oversee the Trust Fund;
- Review and oversee the disbursement of the revenues deposited into the Trust Fund;
- Review documentation submitted by wireless providers which reflect current and projected funds derived from the fee, and the expenses incurred, in order to comply with E911 service requirements;
- Review and approve or reject applications submitted by wireless providers for recovery of monies deposited into the fund;

²⁹ S. 365.171(13), F.S.

³⁰ S. 365.171(13)(a)(3), F.S.

³¹ Section 365.172(3)(o), F.S., defines "local exchange carrier" as a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02, F.S.

- Hire and retain employees;
- Make and enter into contracts;
- Sue and be sued;
- Adopt, use, and alter a common corporate seal;
- Elect or appoint the officers and agents required by the affairs of the board;
- Adopt rules to implement certain statutory sections;
- Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in the state;
- Provide coordination and support for the educational opportunities related to 911 issues for the 911 community;
- Act as an advocate for issues related to 911 system functions, features, and operations to improve the delivery of 911 services;
- Coordinate input from Florida at national forums and associations to ensure that policies related to 911 systems and services are consistent with the policies of the 911 community in the state;
- Work cooperatively with the system director to enhance the state of 911 service and to provide unified leadership for all 911 issues through planning and coordination;
- Do all things necessary or convenient to carry out the powers granted in this section, including but not limited to consideration of emerging technology and related cost savings;
- Secure the services of an independent private attorney.

The bill makes several changes to the Board's authority.

The Board currently has the authority to review and oversee the disbursement of revenues received from the wireless 911 fees, and under the bill, it will now have that authority over wireline 911 fees. The Board has the authority to establish a schedule for implementing wireless E911 service and to prioritize the distribution of revenues to providers and counties in order to implement wireless E911 service in the most efficient and cost-effective manner. Current law allows that revenues in the wireless account that have not been distributed may be used as needed to provide grants to rural counties and loans to medium counties to upgrade their E911 systems. The grants provided to rural counties³² are in addition to disbursements provided for in s. 365.173(2)(c), F.S. The loans to medium counties³³ are based on county hardship criteria as determined by the board, and revenues utilized for this purpose are to be repaid in a manner and timeframe as determined and approved by the Board. The board is required to take all actions within its authority to secure a county's repayment of grant and loan revenues when it is determined that the funds were not utilized for the purpose for which they were provided.³⁴

The bill provides that loans can be made to large counties³⁵ for purposes of upgrading E911 systems, and that counties must use the grant or loan funds only for capital expenditures directly attributable to establishing and provisioning an E911 service, which may include next generation deployment. The bill removes a provision related to grants to rural counties. This provision provides that grants to rural counties are in addition to distributions provided for in s. 365.173(2)(c), F.S., and that revenues utilized for these grants to rural counties and loans medium counties are to be fully repaid in a manner and under a timeframe determined and approved by the Board.

The bill requires the Board to reimburse all costs to a wireless provider before taking any action to transfer additional funds to the counties. After reimbursing all counts to wireless providers, and in the event the Board determines that the revenues in the wireless account exceed the amount needed to reimburse wireless providers, the bill provides that the Board may authorize the transfer of funds to the counties from

³² Section 365.172(2)(y), F.S., defines "rural county" as any county that has a population of fewer than 75, 000.

³³ Section 365.172(2)(q), F.S., defines "medium county" as any county that has a population of 75,000 or more but less than 750,000.

³⁴ S. 365.172(6)(a)3, F.S.

³⁵The law does not define "large county." Based on the definitions of "rural county: and "medium county" it can be inferred that a large county is a county that has a population of 750,000 or more.

the existing funds within the wireless account. The Board shall disburse the funds equitably to all counties pursuant to a timeframe and distribution methodology as established by the Board.

The bill amends the Board's authority to review and approve or reject applications submitted by wireless providers by allowing the Board to meet monthly in the most cost-effective manner, including telephonically, for the business to be conducted. The Board also receives the authority to authorize the transfer of, and distribute, the 911 fee allocation to the counties.

The bill clarifies that the Board's authority to do all things necessary and convenient to carry out its powers must be exercised in a manner that is technologically and competitively neutral to all voice communications service providers, and must take into account the embedded costs in current systems.

Section 365.172(6)(c), F.S., requires the Board, by February 28 of each year to prepare and submit a report to the Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives, reflecting the preceding calendar year's receipts and disbursements, whether the amount of the wireless E911 fee or the allocation percentages have been or should be changes, and any other issue related to E911 services. It also deletes an obsolete provision requiring a complete study of certain issues by February 28, 2001. The bill requires the annual report to provide the status of E911 service in this state. The report is required to include information on the fees collected, expenses incurred, revenues in the fund and whether the fee amount and/or allocation percent were adjusted during the fiscal year.

Fees/Management of Funds

Wireline

Section 365.171(13), F.S., establishes the 911 fee for local exchange companies. This section authorizes counties to impose a 911 fee at a rate of no more than 50 cents per month per access line if the fee is approved by referendum or a majority vote of the board of county commissioners. The proceeds from the 911 fee are to be used only for 911 expenses as provided by law. The statute recognizes that the fee will not necessarily provide total funding for county 911 services/systems.

The monies collected and interest earned in the county's fund are required to be appropriated for 911 purposes by the county commissioners and be included in the annual county budget. The fund is required to be included within the annual financial audit pursuant to s. 218.39, F.S. The audit report must be forwarded to the STO within 60 days of the audit's completion. A county is allowed to carry forward on an annual basis unspent moneys in the fund for allowed expenditures, or it may reduce its 911 fee. The carry forward is limited to 10 percent of the fee billed in the prior year, but the carry forward amounts may be accumulated to allow for capital improvements. The carryover must be documented by a resolution of the board of county commissioners that expresses the purpose of the carryover or by an adopted capital improvement program identifying the project expansion or replacement expenditures for 911 equipment and service features, or both.

The 911 fee carryover surplus cannot be used for any purpose other than for 911 equipment, service features, and installation charges. This section does not prohibit counties from using other sources of revenue for improvements, replacements, or expansions of its 911 system.

The local exchange companies are required to collect the fee as part of their monthly billing process, and shall remit the fee to the counties. The companies may retain one percent of the fees for its administrative costs and have no legal obligation to take legal action to enforce the collection of the fee.

Wireless

For wireless service, s. 365.172(8), F.S., provides that each home service provider shall collect a fee of 50 cents per month on customers whose place of primary use is in Florida. State and local governments are exempt from this fee. The fee is required to be applied uniformly across the state.

The wireless E911 fee was established to ensure full recovery for providers and for counties of the costs associated with developing and maintaining an E911 system on a technologically and competitively neutral basis.³⁶ In addition, state and local taxes do not apply to the fee, and local governments may not levy an additional fee.

Section 365.172(9), F.S., provides for the management of funds related to the wireless E911 fee. The statute requires wireless providers to collect the fee as part of their monthly billing process. Those provisions separately identify the fee separately on the bill. A wireless provider is only required to remit the fee if it is paid by the subscriber and the provider shall apply any partial payment to payment due to providers. Providers are not required to take legal action to enforce the collection of fees. The providers are required to submit quarterly, lists of the names, addresses, and service numbers of subscribers who refuse to pay the E911 fee.

The wireless providers may retain one percent of the fees they collect for administrative costs. The providers are required to remit to the Wireless E911 Board the fees collected within 60 days after the end of month in which the fee was billed, along with a monthly report of the number of customers in each county. If a provider demonstrates that a waiver is necessary and justified, the board may authorize the provider to submit the fees and the number of customers quarterly.

Wireless providers who resell services are required to remit the 911 fee for each customer who has a sufficient positive balance on the last day of each month. The surcharge may be remitted in any manner consistent with the providers existing operating and technological abilities.

Proposed Changes

In order to ensure that all providers are treated in a competitively neutral and consistent matter, the bill deletes the 911 fee provisions in s. 365.171(13), F.S., and subsumes some of those provisions into the wireless E911 fee provisions in s. 365.172(8), F.S.³⁷

The bill provides that each provider of voice communications service, as part of its monthly billing process, is required to bill an E911 fee as follows:

- Local exchange carriers are to bill the fee to subscribers on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.
- Wireless providers are to bill the fee to subscribers on a per-service-identifier basis³⁸ for service; however, prepaid calling arrangements may not be assessed this fee.
- Voice communications services providers other than local exchange carriers and wireless providers are to bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state.

The fee is not to be assessed on any pay telephone. Under the bill, the provider may list the E911 fee as a separate entry on each bill; if it does, the fee must be identified as a fee for E911 services. The provider is to remit the fee only if the fee is paid by the subscriber. If the provider receives a partial payment for a

³⁶ S. 365.173(8)(b), F.S.

³⁷ Some of the provisions related to the collection and distribution of wireline 911 revenues are subsumed in HB 921, relating to wireless communications funds. This bill addresses provisions related to the actual Wireless Emergency Communications Fund contained in s. 365.173, F.S.

³⁸ The service-identifier identifies the primary place of use within the state.

monthly bill, the amount paid is first applied to the payment due to the provider for providing voice communications services.

As with existing wireless and wireline 911 fees, the bill provides that a provider is not obligated to take any legal action to enforce the collection of the E911 fee for which any subscriber is billed. The county remains liable to the person providing the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the person.

Under the bill, state and local governments are not considered subscribers for the purpose of the E911 fee.

Under the bill, each provider is allowed to retain one percent of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder is required to be delivered to the E911 Board and deposited into the fund. The Board is required to distribute the remainder pursuant to s. 365.173, F.S.³⁹

The bill provides that effective September 1, 2007, voice communications services providers billing the fee to subscribers are required to deliver revenues from the fee to the E911 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 service identifiers in each county. Each provider other than a local exchange carrier is required to report the number of service identifiers for subscribers whose place of primary uses is in each county. If a provider chooses to remit any fee amounts to the Board before they are paid by the subscribers, a provider may apply to the Board for a refund of, or take a credit for, any such fees remitted to the board which are not collected by the provider within six months following the month in which the fees are charged off for federal income tax purposes as bad debt.

Under the bill, the rate for the E911 fee remains capped at 50 cents per month per each service identifier. The fee is to be applied uniformly and imposed throughout the state, except for counties that, before July 1, 2007, had adopted an ordinance establishing a fee of less than 50 cents per month per access line.⁴⁰ In those counties, the ordinance-established fee shall apply until the E911 Board makes the adjustment on or after September 1, 2008, at which time the Board is required to adjust the fee for all such counties to the uniform statewide fee level. The Board may not adjust the fee to the uniform statewide fee level before September 1, 2008.

The bill states that it is the Legislature's intent that all revenue from the E911 fee be used as specified in s. 365.173(2)(a) through (e), F.S., which establishes the Trust Fund.⁴¹

The bill provides that no later than September 1, 2007, the Board shall set allocation percentages for distribution of the fund as provided in s. 365.173. When setting the percentages and contemplating any adjustments, the board is required to consider:

- The revenue currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I⁴² and Phase II,⁴³
- The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173, F.S.,⁴⁴ and

³⁹ HB 921 amends s. 365.173, F.S., to provide for the combination of the wireless and wireline 911 statute.

⁴⁰ There are currently four counties that have 911 fees of less than 50 cents per month. These counties are Duval (44 cents), Lee (44 cents), Pasco (40 cents), and Volusia (41 cents). Obtained from <http://fcn.state.fl.us/dms/e911/status.html>

⁴¹ Changes to s. 365.173, F.S., relating to this fund are being addressed in HB 921.

⁴² The Federal Communications Commission defines Phase I as the providers' ability to deliver to the emergency call taker the telephone number of the wireless handset originating a 911 call, as well as the location of the cell site or base station receiving the 911 call. This provides the caller's general location. Wireless E911 Board Annual Report, February 28, 2007.

⁴³ The Federal Communications Commission defines Phase II as the providers' ability to deliver latitude and longitude location information in addition to the telephone number of the handset originating a 911 call.

⁴⁴ The bill provides the cross reference of paragraph (6)(b), which is incorrect.

- The need to fund statewide and county programs or initiatives to assist large and medium counties with systems that would reduce overall costs.

The bill deletes the provision which states that the fee is established to ensure the full recovery of costs to providers and counties for developing and maintaining an E911 system.

The bill provides that the E911 Board may adjust the allocation percentages and/or the amount of the fee, if necessary to ensure full cost recovery or to prevent over recovery of costs incurred or projected to being incurred to comply with the certain FCC orders. Any new allocation percentages or reduced or increased fees may not be adjusted for one year. The fee may not exceed 50 cents per month per each service provider. The Board-established fee, and any board-adjustment of the fee, is required to be uniform across the state, except for the counties identified above. Not less than 90 days before the effective date of any adjustment to the fee, the Board is required to provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the Board is then receiving the fee.

State and local taxes do not apply to the fee, and a local government may not levy the fee or any additional fee on wireless providers or subscribers for the provision of E911 service.

For purposes of this section the definitions contained in s. 202.11, F.S. related to the Communications Services Tax (CST) and the provisions of the CST providing special rules for mobile communications services⁴⁵ apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202, F.S., on mobile telecommunications services.

Authorized Expenditures

Wireline

Section 365.171(13)(a)6, F.S., provides that the existing 911 fee will not necessarily provide the total funding for establishing and providing 911 service. For purposes of this section, 911 service includes functions of database management, call taking, location verification, and call transfer. The following costs directly attributable to the establishment and/or provision of 911 service are eligible for expenditure of moneys derived from the 911 fee:

- The acquisition, implementation, and maintenance of Public Safety Answering Point (PSAP) equipment and 911 service features, as defined in the Florida Public Service Commission's lawfully approved tariffs related to 911 and/or the acquisition, installation, and maintenance of other "911" equipment;
- Salary and associated expenses for 911 call takers for that portion of their time spent taking and transferring 911 calls;
- Salary and associated expenses for a county to employ a full-time equivalent 911 coordinator position and a full-time equivalent staff assistant position per county for the portion of their time administering the 911 system;
- Training costs for PSAP call takers on the proper methods and techniques used in taking and transferring 911 calls;
- Expenses required to develop and maintain all information necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the 911 call taking and transferring function.

In the above areas, the statute names some specific expenses under some of the categories. However, revenues from the fee may not be used to pay for items not listed, including, but not limited to capital or operational costs for emergency responses which occur after the call transfer to the responding public

⁴⁵ S. 202.155, F.S.

safety entity and the costs of constructing, leasing, maintaining, or renovating building, except for building modifications necessary to maintain the security and environmental integrity of the public safety answering point and 911 equipment room.

No wireless telephone service provider is required to participate in any pilot project or to otherwise implement a nonemergency “311” system⁴⁶ or similar nonemergency system.

Wireless

Section 365.173(2)(a)1., F.S., provides that monies distributed to the counties from the Trust Fund may be used for the recurring costs of providing 911 of E911 service as provided in the wireline 911 statute⁴⁷, as discussed above. Section 365.173(2)(c), F.S., provides that monies distributed to wireless providers shall reimburse those providers for the actual costs incurred to provide 911 or E911 service, including costs to design, purchase, lease, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service.

Proposed Changes

The bill moves the authorized expenditures of the E911 fee to s. 365.172(9), F.S. While the general principal as to which expenses are allowed remains the same, the specific items have been updated to allow for E911 and new technologies. Items that are now eligible E911 expenditures include items such as visual call information and storage devices, recording equipment, and telephone devices for the hearing impaired used in the E911 system.

The bill also provides that monies derived from the fee may be used for emergency and disaster recovery mobile E911 PSAPs, next generation E911 database services, next generation E911 equipment, and wireless E911 routing systems.

Liability of Counties

The bill creates s. 365.172(10), F.S., relating to the liability of counties. This subsection provides that counties subscribing to 911 service remain liable to the local exchange carrier for any 911 service, equipment, operation, or maintenance charge owed by the county. This subsection defines “local exchange carrier” as a local exchange telecommunications service provider of 911 services or equipment to any county within its certificated area.

Indemnification of Liability

Section 365.171(14), F.S., authorizes local governments to undertake to indemnify telephone companies against liability in accordance with their tariffs. Wireless and wireline telephone companies are not liable for damages resulting from or in connection with 911 service unless the company acts with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property in providing such services.

The bill deletes s. 365.171(14), F.S., and creates s. 365.172(11), F.S., relating to the indemnification of liability. The bill keeps the existing policy relating to indemnification. The bill also adds a provision providing that the voice communications services provider is not liable for damages to any person resulting

⁴⁶ The Federal Communications Commission designated “311” as a national, voluntary, non-toll, three-digit telephone number for non-emergency access to police and other government services.

⁴⁷ S. 365.171(13)(a)(6., F.S.

from or in connection with the provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

Misuse of E911

Sections 365.171(16), F.S., and 365.172(12), F.S., contain provisions regarding the misuse of 911. The provisions contained in s. 365.171(16), F.S., are removed and subsumed in 365.172(13), F.S. This section provides that the misuse of E911 is a misdemeanor in certain circumstances, and after four convictions is a third-degree felony.

Obsolete Provisions

The bill repeals several obsolete provisions regarding 911 and E911 service. Some of these provisions relate to the initial implementation of 911 service, including provisions relating to existing emergency telephone numbers and counties obtaining approval of a 911 fee through a referendum. An obsolete provision relating to the powers of the Wireless E911 Board, which required the Board to take certain steps by July 1, 2000, is also repealed.

Remaining Authority

The bill retains several provisions in ss. 365.171 and 365.172, F.S, however some of these provisions contain conforming changes. In s. 365.171, F.S., sections related to industry coordination (including coordination with the Public Service Commission), coin telephones, system approval, compliance, federal assistance, and the confidentiality of records are maintained. In s. 365.172, F.S., provisions relating to the Board's authority to secure an independent accounting firm and to facilitate E911 service implementation are also maintained.. In addition, a provision stating that other state laws are not preempted is maintained.

Effective Date

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- | | |
|-----------|--|
| Section 1 | Retitles and amends s. 365.171, F.S., relating to the Emergency Communications Number E911 State Plan. |
| Section 2 | Retitles and amends s. 365.172, F.S., relating to Emergency Communications Number "E911" |
| Section 3 | This act shall take effect upon becoming law. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not met to evaluate the fiscal impact of this bill. DMS estimates that the creation of a statewide E911 Board will result in the following revenue impact to state government:

| | FY 2007-08 | FY 2008-09 | FY 2009-10 |
|------------------------------|-------------------|-------------------|-------------------|
| Total Recurring Revenues | \$ 1,290,000 | \$ 1,350,000 | \$ 1,420,000 |
| Total Non-Recurring Revenues | \$ 0 | \$ 0 | \$ 0 |

These numbers are based on one percent of the estimated E911 fee revenues, which are expected to be roughly \$129 million in FY 2007-08, \$135 million in FY 2008-2009, and \$142 million in FY 2009-2010. Under the bill, one percent is the amount that would be retained by the E911 Board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6).

The \$129 million estimate for FY 2007-08 also accounts for the projected loss in fees from prepaid calling arrangements, and a projected increase in the amount of fee revenues from VoIP subscribers.

According to DMS, the amount of collected revenues will approximately double with the inclusion of the wireline 911 fee. However, this amount would be a direct pass-through to the counties.

2. Expenditures:

DMS estimates that the total administrative expenditures for a statewide E911 Board are \$1,209,989, which includes an increase in the agency's non-operating budget appropriation for its administrative fee (from \$45,000 to \$112,500). However, because \$648,155 of the total expenditure amount is currently in the DMS base budget, the department is requesting the following amount to administer the bill's provisions:

| | FY 2007-08 | FY 2008-09 | FY 2009-10 |
|----------------------------------|-------------------|-------------------|-------------------|
| Total Recurring Expenditures | \$ 561,834 | \$ 561,834 | \$ 561,834 |
| Total Non-Recurring Expenditures | \$ 0 | \$ 0 | \$ 0 |

These expenditures can be broken down into the following two categories:

| | |
|---|------------|
| Salaries and Benefits (for 2.5 new FTEs) | \$ 216,112 |
| Expenses, Other Personal Services, Operating Capital Outlay, and Special Categories | \$ 345,722 |

Currently, the Wireless E911 Board is comprised of three full-time equivalent (FTE) positions. Two of the FTEs sought by DMS are for a Communications Engineer and an Administrative Aide.

Communications Engineer

The Communications Engineer would provide design, engineering, and consultation support for the enhanced 911 program in Florida as required in Chapters 365.171-175, F.S. In particular, some of the main responsibilities for this position would be to:

- Assist in maintaining the Statewide Emergency Telephone Number Plan;
- Develop studies, analyses, and recommendations regarding new technology affecting the state's 911 systems and make recommendations to the 67 counties;
- Review wireless service provider invoices and make recommendations to the Board as to the appropriateness of cost data and compliance with cost recovery proposals;

- Assist in reviewing 911 grant applications and in preparing long-range plans and objectives for statewide or county 911 systems and services; and
- Provide support to the State Emergency Operations Center.

Administrative Aide

The Administrative Aide would be responsible for all administrative aspects of the Board, including advertising public meetings, arranging meeting space and travel/accommodations for Board members, recording Board meetings, typing meeting minutes, reviewing and advising the Board on collections and disbursement processes, etc. In particular, some of the main responsibilities of this position would be to:

- Maintain the confidential E911 Board information as provided in Section 365.174, F.S.;
- Administer daily operational functions as a budget allotment reconciler, purchase requestor, accounts payable and administrative support for the Enterprise Information Technology Services 911 program area;
- Track the monthly revenue payments from the wireless service providers and review the confidential distribution by county for discussion in Board Meetings;
- Process payments or disbursements for E911 Fund in accordance with Section 365.173, F.S., and maintain an automated spreadsheet for this purpose; and
- Coordinate the maintenance and updating of the E911 Web pages and other on-line documents as assigned.

Other Expenses

The remaining expenses for the E911 Board are intended to be used mostly for the following purposes:

- Support;
- Employee training;
- Training plan for 911;
- Coordination;
- Travel; and
- Legal services

DMS states that expenditure increases are likely to be nominal over time.

As stated in HB 921, any remaining funds from the yearly administrative allocations revert back to the Board for reallocations by March 31 of the following year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Staff's preliminary estimate is that this bill will have an indeterminate fiscal impact on local governments. This is based on the provisions of the bill that:

- a. Change control for setting the wireline fee from a local option to an E911 Board issue;
- b. Increase the wireless fee distribution to the counties from 60 percent to 67 percent; and
- c. Reduce the wireline service revenues to the counties from 100 percent to 97 percent; with 1 percent for Board administration and 2 percent for rural county grants from the wireline fee.

However, DMS states that the bill is intended to be revenue-neutral to local governments.

Also, according to DMS, the average increase to individual counties' funding will be about 3 percent. This increase is mostly driven by the growth in wireless services, which exceeds the growth in wireline services.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DMS states that this bill will benefit not only 911 equipment vendors and manufacturers, but also the citizens of the state. Equipment vendors and manufacturers can benefit from the sales and installation of new technology 911 systems. At the same time, citizens can benefit by using an updated 911 system that:

- Utilizes new technology equipment;
- Offers an improved public safety system capable of handling new technology devices; and
- Provides the citizens a Board to address all issues related to the 911 system (both wireline and wireless).

In addition, because the fee would be set at the same amount for all communications services, there should be no appreciable increase in taxes for the private sector or any person or group.

D. FISCAL COMMENTS:

Compliance-related costs are due to the change in the remittance location of the fee. Under this bill, the wireline fee will be remitted to the E911 Board instead of the County. The exact cost impact is a service provider issue and is covered by the existing 1 percent administration allowance on the E911 fee.

The uniform E911 fee may result in a slight fee increase to four counties starting on September 1, 2008, if the fee is raised to the maximum cap amount of 50 cents. These four counties are Duval, Lee, Pasco, and Volusia.⁴⁸

It is unclear who the exemption on prepaid calling arrangements will benefit. To date, a provider of prepaid calling arrangements has notified the Board that it pays the 50 cent subscriber fee out of its revenues. The exemption may benefit the service provider and/or the subscriber.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill and HB 921, relating to the Trust Fund, change the control for setting the wireline fee from a local option amount, up to 50 cents per month, to a uniform statewide amount set by the E911 Board. The bills require 97 percent of this fee to go to the counties, with one percent going to Board administration and two percent going to grants for rural counties.

⁴⁸ There fees are 44 cents for Duval and Lee counties, 40 cents for Pasco county, and 41 cents for Volusia county. Obtained from <http://fcn.state.fl.us/dms/e911/status.html>

However, HB 921 increases the fee distribution to counties from the wireless fee. The distribution of this fee to counties is currently at 60 percent and HB 921 increases it to 67 percent. This is designed to offset using part of the wireline 911 fee for board administration and rural county grants and exempting prepaid wireless service from paying the fee. In addition, the fee would be applied to VoIP and any other voice communications services. According to DMS, it is expected that while the funding to individual counties will differ, the overall funding to counties will increase by about three percent.

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority for counties or municipalities to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill retains the requirement that the office adopt any rules and schedules related to public agencies⁴⁹ for implementing and coordinating the 911 plan.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 930, the bill lacks a reference to the appropriate statutory section. The reference should be s. 365.173, F.S.

D. STATEMENT OF THE SPONSOR

No Statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁴⁹ Section 375.171(3)(c), F.S., defines "Public Agency" as the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within the state which provides, or has the authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.