

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill addresses administration of the 911 Trust Fund, by a single entity established under HB 919, which merges the current wireline and wireless 911 statutes.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1999, the Legislature created s. 365.172, F.S., known as the Wireless Emergency Communications Act¹ (Act) to address issues pertaining to wireless communications and the 911 system. The Act created the Wireless E911 Board (Board) to administer the wireless E911 fees that are established in the Act.

Additionally, the 1999 Legislature created the Wireless Emergency Telephone System Fund (Fund) in s. 365.173, F.S.,² to administer the revenues and distribution of monies collected pursuant to s. 365.172, F.S.

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 distributed to provide extra assistance to rural counties for providing 911 or E911 Service.³

In 2006, the General Appropriations Act contained the following proviso language, concerning the Wireless Emergency Telephone System 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.⁴

¹ Ch. 99-367, L.O.F.

² Ch. 99-203, L.O.F.

³ Wireless E911 Board 2006 Annual Report, February 28, 2007. , Available at <http://fcn.state.fl.us/dms/e911/docs/2006wirelessboardreportfull.pdf>

⁴ Ch. 2006-25, L.O.F., specific appropriation 2946 proviso language.

On September 29, 2006, the Board issued the *2006 Wireline and Wireless Fee Evaluation Legislative Report (Fee Evaluation Report)*.⁵ 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 to merge the wireline and wireless statutes into one comprehensive law;
- Modify the current Wireless 911 Board to an E911 Board with oversight of the newly combined statute, with all service providers represented on the Board;
- Reserve the Fund exclusively for E911 systems and services;
- Revise the language related to prepaid wireless E911 fees.

HB 921 addresses the recommendation related to the Fund. The remainder of the Board's recommendations are addressed in HB 919.

Current Law

Section 365.173, F.S., contains provisions concerning the Wireless Emergency Telephone System Fund. Current law requires that all revenue derived from the wireless E911 fee be deposited into the state treasury on or before the 15th day of each month. The fees must be placed in a special fund designated as the Wireless Emergency Telephone System Trust Fund. This trust fund is created in the State Technology Office (STO)⁶ and all moneys in the fund must be invested by the Chief Financial Officer. All funds are to be expended for E911 service and are not subject to the seven percent General Revenue Surcharge contained in s. 215.20, F.S.

While the Board is authorized to make modifications to the distribution of the funds, the current statute provides for the following distribution rates:

Counties

Pursuant to s. 365.173(2)(a), F.S., 44 percent of the funds shall be distributed to counties based on the number of subscribers, and such funds shall be used for payment of recurring costs of providing 911 or E911 service and costs to comply with the requirements of E911 service contained in certain Federal Communications Commission (FCC) orders and any future rules related to the orders.⁷ Effective September 2005, the Board, pursuant to its authority to modify the distribution percentages, increased the allocation to counties to 60 percent of revenues.⁸

Counties that receive these funds are required to establish a separate fund to be used exclusively for the receipt and expenditures of the revenues collected under this section. All fees placed into the fund and all

⁵ This report can be obtained at the Wireless E911 Board's Website at <http://fcn.state.fl.us/dms/e911/wireless.html>

⁶ While the State Technology Office continues to exist in statute (Ch. 282, F.S.) the administrative aspects of its functions have been transferred to the Department of Management Services. The 911 programs are being administered by the Florida Enterprise Information Technology Services Office within the Department of Management Services.

⁷ The definition of "order" that applies to this section is specific orders and rules of the Federal Communications Commission relating to the provision of wireless 911 services.

⁸ Wireless E911 Board 2006 Annual Report, February 28, 2007. , Available at <http://fcn.state.fl.us/dms/e911/docs/2006wirelessboardreportfull.pdf>

interest accrued are to be used solely for the costs described above. County commissioners are required to appropriate the money collected and interest earned in this fund for these purposes and incorporate it into the annual county budget. The fund is required to be included within its annual financial audit pursuant to s. 218.39, F.S. Two percent of the funds are used to make monthly distributions to rural counties⁹ for the purpose of providing facilities and network service enhancements and assistance for the 911 or E911 systems operated by rural counties. The two percent distribution may also be used by the office to provide reimbursable loans and grants for upgrading 911 systems. Counties are allowed to carry forward up to 30 percent of the total funds disbursed to it by the Board in a given calendar year for expenditures related to capital outlay, capital improvements, or equipment replacement, if the expenditures or made for the purposes specified above.

Wireless Providers

Section 365.172(2)(b), F.S., provides that 54 percent of the funds shall be distributed to providers based on their actual costs, based on sworn invoices, to provide 911 or E911 service, including costs to comply with certain Federal Communications Commission orders. These costs include costs incurred by wireless providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software to provide E911 service. Up to two percent of these funds are to be used for the Board's administration. By August 31 of each year, providers are required to submit an estimate of their expenses. The Board is required to submit a Legislative Budget Request by September 15 of each year. The distribution of monies must be fair and nondiscretionary. If the amount of money requested by providers exceeds the amount in the fund, wireless providers will receive a pro rata share of the amount in the fund and the balance of the payments is carried over until all approved payments are made. Effective September 2005, the Board, pursuant to its authority to modify the distribution percentage, decreased allocation to providers to 35 percent of revenues, with up to three percent of this allocation being retained by the Board for administrative and operational purposes.¹⁰

Rural Counties

Section 365.172(2)(c), F.S., provides that two percent of the fund shall be used to make distributions to rural counties to provide assistance to them for providing facilities and network and service enhancements and assistance for the 911 or E911 systems operated by rural counties and for the provision of grants and loans to rural counties for upgrading 911 systems. However, since September 2005, the Board allocation for grants and loans to rural counties has been five percent of revenues.¹¹

Through fiscal year 2008-2009, the Auditor General is required to annually audit the fund to ensure that monies in the fund are being managed in accordance with this section and s. 365.172, F.S., relating to the wireless emergency communications act. The Auditor General is required to provide the Board an annual report of the audit.

Proposed Changes

The bill makes several changes to s. 365.173, F.S., in order to create one fund for the revenues from the wireless and nonwireless¹² E911 fees.

⁹ The definition of "rural county" that applies to this section is any county that has a population of fewer than 75,000.

¹⁰ Wireless E911 Board 2006 Annual Report, February 28, 2007, available at <http://fcn.state.fl.us/dms/e911/docs/2006wirelessboardreportfull.pdf>

¹¹ Wireless E911 Board 2006 Annual Report, February 28, 2007, available at <http://fcn.state.fl.us/dms/e911/docs/2006wirelessboardreportfull.pdf>

¹² HB 919, defines "nonwireless account" as revenues to the fund received from voice communications services providers other than wireless providers (e.g. wireline, VoIP).

The bill requires that all 911 fee revenues (both wireless and nonwireless) be paid into the treasury on or before the 15th day of each month. The monies must be accounted for in a special fund created in the Florida Enterprise Information Technology Services Office (Office) or other office designated by the Secretary of the Department of Management Services (DMS). The funds must be segregated into separate wireless and nonwireless categories. Subject to any modifications approved by the Board pursuant to its authority, the bill provides for the distribution of the funds.

For the wireless category, 67 percent of the monies are distributed to the counties based on the service identifiers and are to be used as described above. Thirty-percent of the monies in this category are distributed to wireless providers for the expenses authorized; however, the provision providing that a portion of the funds may be retained by the board for administrative purposes has been removed. For wireless providers, in order to receive recovery during any ensuing state fiscal year, a wireless provider must submit all sworn invoices for allowable purchases within the calendar year no later than March 31 of the fiscal year.

Notwithstanding other provisions of law, the amount in the wireless 911 fund as of December 31, 2006, is to be disbursed to wireless providers for the recovery of costs for years up to and including 2006. These providers have until December 31, 2007, to submit sworn invoices to the Board to support the recovery of its costs. The Board may disburse any remaining amounts of the fund associated with 2006 or prior periods in accordance with this subsection after January 1, 2008.

For the nonwireless category, 97 percent of the monies are distributed to counties based on the number of service identifiers in each county. The monies are to be used exclusively for the payment of authorized expenditures.

Counties are still required to establish funds to be used exclusively for the receipt and expenditures of revenue collected from the Fund. The bill changes the percent that may be carried forward to 20 percent,¹³ however, this limitation does not apply to funds distributed to the county under s. 365.172(6)(a)3, F.S.¹⁴ A county may carry forward any percentage of the funds, except that any grant provided shall be subject to any condition set by the Board. In order to prevent overrecovery by the counties, any county that received funds in excess of its E911 costs, including the carryforward allowance, are required to return the excess funds to the Board to be reallocated pursuant to applicable law.

One percent of the monies in the fund are to be retained by the Board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund as well as other activities defined in s. 365.176(6), F.S.¹⁵ Any funds retained for such purposes on one calendar year which are not applied to such costs and expenses by March 31 of the following year are to be redistributed as determined by the Board.

The bill changes the two percent rural county allocation to remove the provision for reimbursable loans and to allow for replacing E911 systems. This conforms to changes to s. 365.172, F.S., contained in HB 919.

The bill provides that up to \$15 million of the existing fund resources are available to cover the lag time for the Board's initial distribution to counties of the wireline fees until the time that the actual wireline revenues are available to the Board for distribution. The funds used for this purpose will be returned to the fund from the actual revenue to the nonwireless category.

If funds are remaining after disbursements from the prior calendar year have been made, the bill allows the Board to distribute funds according to this subsection.

¹³ Current law allows counties to carry forward 10 percent of their nonwireless 911 fee revenue and 30 percent of their wireless E911 fee revenue.

¹⁴ This statute provides for the authority of the Board as it relates for establishing a schedule and prioritizing the disbursement of revenues from the Fund to providers and rural counties.

¹⁵ This statute provides the authority of the E911 Board.

The bill removes the sunset of the Auditor General's annual audit of the Fund through fiscal year 2008-2009. The Auditor General will be required to annually audit the Fund beyond the 2008-2009 fiscal year.

The bill provides for two and one-half full-time equivalent positions, with an associated salary rate of 151,278, and the sum of \$561,834 in recurring funds appropriated for fiscal year 2007-2008, from the Fund from the revenue received pursuant to s. 375.173, F.S., for expenditures related to the creation of the statewide E911 Board.

Effective Date

This act shall take effect upon becoming law if House Bill 919, or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

C. SECTION DIRECTORY:

- Section 1 Retitles and amends s. 365.173, F.S., relating to the Emergency Communications Number E911 System Fund.

- Section 2 Provides an appropriation.

- Section 3 This act shall take effect upon becoming a law, if House Bill 919, or similar legislation is adopted in the same legislative session or an extension thereof and becomes 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 a positive fiscal impact of \$56.8 million to state government from nonwireless fee revenues.

2. Expenditures:

DMS estimates that the total nonwireless fee expenditures associated with this bill are \$56.8 million, thereby resulting in a revenue-neutral scenario to state government.

The bill appropriates \$561,834 in recurring funds for fiscal year 2007-2008 from DMS' Emergency Communications Number 911 System Fund for expenditures related to the creation of the statewide E911 Board. These expenditures can be broken down as follows:

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

The Fiscal Section of HB 919's staff analysis addresses additional information related to the total administrative expenditures for a statewide E911 Board.

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:

- Change control for setting the wireline fee from a local option to an E911 Board issue;
- Increase the wireless fee distribution to the counties from 60 percent to 67 percent; and
- 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.

DMS states that the intent of these provisions is to keep local governments whole. However, DMS also states that there may be an average revenue increase of about 3 percent for counties as a whole. This potential revenue increase could be driven by the growth rate for wireless services, which currently exceeds the growth rate for 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 is 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.

It is unclear who the tax suspension on prepaid calling arrangements will benefit. To date, a service provider has notified the Board that it pays the 50 cent subscriber fee out of their revenues. The suspension 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 919, relating to the emergency communications system, 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 state E911 Board. The bills required 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.

However, this bill increases the fee distribution to counties from the wireless fee. The distribution of this fee to counties is currently at 60 percent and this bill 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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 141 through 145, the bill removes a provision regarding the Auditor General's annual audit of the Fund through fiscal year 2008-2009. There is a similar provision in s. 11.45(2)(e), F.S., relating to the duties of the Auditor General. This provision should be changed to conform to the auditing requirement and the new name of the fund.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, the Committee on Utilities & Telecommunications adopted a strike-all amendment with one amendment. The strike-all amendment, as amended:

- Provides that in order to prevent overrecovery of costs, counties are required to return funds that they receive in excess of costs and the permitted 20 percent carryover.
- Requires wireless providers to submit all invoices for allowable purchases within the calendar year no later than March 31 of the state fiscal year in order to be eligible for recovery during the ensuing state fiscal year.
- Provides that the amount in the wireless fund as of December 31, 2006, shall be disbursed to wireless providers for costs incurred in prior years, up to and including 2006. Wireless providers have until December 31, 2007, to provide the sworn invoices for recovery of these costs.
- Provides that the Board may distribute remaining amount of the wireless 911 fund associated with 2006 or prior periods after January 1, 2008, in accordance with the bill's distribution provisions.
- Provides that up to \$15 million of existing fund resources are available to cover the lag time between the Board's initial disbursement to counties of wireless 911 fees and when the actual revenues are received by the Board. The funds will be returned to the wireless category from the actual remittances by nonwireless carriers.

- Provides that if the fund has any remaining funds after the disbursements for the prior calendar year, the Board may distribute such funds in accordance with this statute.
- Provides for two and one-half positions, with an associated salary rate of 151,278.
- Provides an appropriation of \$561,834 in recurring funds for fiscal year 2007-2008 from the Emergency Communications Number E911 System Fund for expenditures related to the creation of the statewide E911 Board.

In addition, other technical and conforming changes were made.

On April 12, 2007 the Jobs & Entrepreneurship Council adopted the strike-all amendment as amended as a council substitute.