

By the Committee on Communications, Energy, and Public Utilities; and Senator Bennett

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1                                   A bill to be entitled  
2           An act relating to prepaid wireless telecommunications  
3           service; amending s. 365.172, F.S.; revising the  
4           definition of the term "fee"; removing the definition  
5           of the term "prepaid calling arrangements" and  
6           defining the term "prepaid wireless telecommunications  
7           service"; redefining the term "wireless service";  
8           revising powers and duties of the Technology Program  
9           within the Department of Management Services and the  
10          E911 Board to include receiving and managing funds  
11          received from a fee imposed on prepaid wireless  
12          telecommunications service; providing that provisions  
13          for an E911 fee do not apply to such prepaid service;  
14          removing provisions for a study of the feasibility of  
15          collecting a fee for such service; providing  
16          definitions; imposing a prepaid wireless E911 fee on  
17          each retail transaction in this state for prepaid  
18          wireless telecommunications service; providing for  
19          adjustment of the fee when the E911 fee is changed;  
20          requiring the Department of Revenue to notify the  
21          public of any adjustment to the fee; providing for  
22          described retail transactions to be treated as  
23          occurring in this state; providing that the fee is a  
24          liability of the consumer; providing for collection of  
25          the fee by the seller from the consumer; providing for  
26          a statement of the fee to be made by the seller to the  
27          consumer; directing the department to establish  
28          procedures for a seller to document that a sale is not  
29          a retail transaction; providing for the seller to

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30 retain a certain amount of the fees collected and  
31 remit the remaining funds to the department pursuant  
32 to specified provisions; directing the department to  
33 establish registration and payment procedures;  
34 providing for audit and appeal procedures; providing  
35 for application of the fee to the entire nonitemized  
36 price under certain circumstances; providing for  
37 distribution and use of the fees collected; providing  
38 that the fee shall not be included in the base for  
39 measuring any tax, fee, surcharge, or other charge by  
40 the state or any governmental agency; prohibiting a  
41 local governmental agency from levying the fee or an  
42 additional fee on providers and sellers of prepaid  
43 wireless telecommunication service for the provision  
44 of E911 service; providing for the filing of prepaid  
45 wireless E911 fees collected by the seller; limiting  
46 providers' and sellers' liability for damages in  
47 connection with provision of 911 or E911 service;  
48 limiting providers' and sellers' liability for damages  
49 for providing assistance to an investigative or law  
50 enforcement officer; amending s. 365.173, F.S.;  
51 conforming cross-references; providing an effective  
52 date.

53  
54 Be It Enacted by the Legislature of the State of Florida:

55  
56 Section 1. Paragraphs (b), (k), (v), and (hh) of subsection  
57 (3), subsection (4), paragraph (a) of subsection (5), and  
58 subsection (8) of section 365.172, Florida Statutes, are

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59 amended, subsections (9) through (14) are renumbered as  
60 subsections (10) through (15), respectively, and a new  
61 subsection (9) is added to that section, to read:

62 365.172 Emergency communications number "E911."—

63 (3) DEFINITIONS.—Only as used in this section and ss.  
64 365.171, 365.173, and 365.174, the term:

65 (b) "Authorized expenditures" means expenditures of the  
66 fee, as specified in subsection (10) ~~(9)~~.

67 (k) "Fee" means the E911 fee authorized and imposed under  
68 subsection (8) and the prepaid wireless E911 fee authorized and  
69 imposed under subsection (9).

70 (v) "Prepaid wireless telecommunications service calling  
71 arrangements" means a wireless service that allows a caller to  
72 dial 911 to access the 911 system, that is a prepaid calling  
73 arrangement as defined in s. 212.05(1)(e)1.(I), and that must be  
74 paid for in advance and sold in predetermined units or dollars  
75 that decline with use in a known amount ~~has the same meaning as~~  
76 ~~defined in s. 212.05(1)(e).~~

77 (hh) "Wireless service" means "commercial mobile radio  
78 service" as provided under ss. 3(27) and 332(d) of the Federal  
79 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and  
80 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-  
81 66, August 10, 1993, 107 Stat. 312. The term includes service  
82 provided by any wireless real-time two-way wire communication  
83 device, including radio-telephone communications used in  
84 cellular telephone service; personal communications service; or  
85 the functional or competitive equivalent of a radio-telephone  
86 communications line used in cellular telephone service, a  
87 personal communications service, or a network radio access line.

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88 The term does not include wireless ~~providers that offer mainly~~  
89 dispatch service in a more localized, noncellular configuration;  
90 data-only service providers offering only data, one-way, or  
91 stored-voice services on an interconnected basis; ~~providers of~~  
92 air-to-ground services; or public coast stations.

93 (4) POWERS AND DUTIES OF THE OFFICE.—The office shall  
94 oversee the administration of the fee authorized and imposed on  
95 subscribers of voice communications services under subsection  
96 (8) and shall receive and manage funds transferred by the  
97 Department of Revenue from the fee authorized and imposed on  
98 prepaid wireless telecommunications service under subsection  
99 (9).

100 (5) THE E911 BOARD.—

101 (a) The E911 Board is established to administer, with  
102 oversight by the office, the fee imposed under subsection (8),  
103 including receiving revenues derived from the fee and receiving  
104 revenues transferred by the Department of Revenue from the fee  
105 imposed under subsection (9); distributing portions of the  
106 revenues to wireless providers, counties, and the office;  
107 accounting for receipts, distributions, and income derived by  
108 the funds maintained in the fund; and providing annual reports  
109 to the Governor and the Legislature for submission by the office  
110 on amounts collected and expended, the purposes for which  
111 expenditures have been made, and the status of E911 service in  
112 this state. In order to advise and assist the office in carrying  
113 out the purposes of this section, the board, which shall have  
114 the power of a body corporate, has the powers enumerated in  
115 subsection (6).

116 (8) E911 FEE.—

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117 (a) Each voice communications services provider shall  
118 collect the fee described in this subsection. The fee shall not  
119 be assessed on any pay telephone in the state. This subsection  
120 and the fee imposed under this subsection do not apply to  
121 prepaid wireless telecommunications service. Each provider, as  
122 part of its monthly billing process, shall bill the fee as  
123 follows: ~~The fee shall not be assessed on any pay telephone in~~  
124 ~~the state.~~

125 1. Each local exchange carrier shall bill the fee to the  
126 local exchange subscribers on a service-identifier basis, up to  
127 a maximum of 25 access lines per account bill rendered.

128 2. Except in the case of prepaid wireless  
129 telecommunications service, each wireless provider shall bill  
130 the fee to a subscriber on a per-service-identifier basis for  
131 service identifiers whose primary place of use is within this  
132 state. ~~Before July 1, 2009, the fee shall not be assessed on or~~  
133 ~~collected from a provider with respect to an end user's service~~  
134 ~~if that end user's service is a prepaid calling arrangement that~~  
135 ~~is subject to s. 212.05(1)(c).~~

136 a. ~~The board shall conduct a study to determine whether it~~  
137 ~~is feasible to collect E911 fees from the sale of prepaid~~  
138 ~~wireless service. If, based on the findings of the study, the~~  
139 ~~board determines that a fee should not be collected from the~~  
140 ~~sale of prepaid wireless service, it shall report its findings~~  
141 ~~and recommendation to the Governor, the President of the Senate,~~  
142 ~~and the Speaker of the House of Representatives by December 31,~~  
143 ~~2008. If the board determines that a fee should be collected~~  
144 ~~from the sale of prepaid wireless service, the board shall~~  
145 ~~collect the fee beginning July 1, 2009.~~

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- 146       ~~b. For purposes of this section, the term:~~
- 147       ~~(I) "Prepaid wireless service" means the right to access~~
- 148 ~~telecommunications services that must be paid for in advance and~~
- 149 ~~is sold in predetermined units or dollars enabling the~~
- 150 ~~originator to make calls such that the number of units or~~
- 151 ~~dollars declines with use in a known amount.~~
- 152       ~~(II) "Prepaid wireless service providers" includes those~~
- 153 ~~persons who sell prepaid wireless service regardless of its~~
- 154 ~~form, either as a retailer or reseller.~~
- 155       ~~e. The study must include an evaluation of methods by which~~
- 156 ~~E911 fees may be collected from end users and purchasers of~~
- 157 ~~prepaid wireless service on an equitable, efficient,~~
- 158 ~~competitively neutral, and nondiscriminatory basis and must~~
- 159 ~~consider whether the collection of fees on prepaid wireless~~
- 160 ~~service would constitute an efficient use of public funds given~~
- 161 ~~the technological and practical considerations of collecting the~~
- 162 ~~fee based on the varying methodologies prepaid wireless service~~
- 163 ~~providers and their agents use in marketing prepaid wireless~~
- 164 ~~service.~~
- 165       ~~d. The study must include a review and evaluation of the~~
- 166 ~~collection of E911 fees on prepaid wireless service at the point~~
- 167 ~~of sale within the state. This evaluation must be consistent~~
- 168 ~~with the collection principles of end user charges such as those~~
- 169 ~~in s. 212.05(1)(c).~~
- 170       ~~e. No later than 90 days after this section becomes law,~~
- 171 ~~the board shall require all prepaid wireless service providers,~~
- 172 ~~including resellers, to provide the board with information that~~
- 173 ~~the board determines is necessary to discharge its duties under~~
- 174 ~~this section, including information necessary for its~~

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175 ~~recommendation, such as total retail and reseller prepaid~~  
176 ~~wireless service sales.~~

177 ~~f. All subscriber information provided by a prepaid~~  
178 ~~wireless service provider in response to a request from the~~  
179 ~~board while conducting this study is subject to s. 365.174.~~

180 ~~g. The study shall be conducted by an entity competent and~~  
181 ~~knowledgeable in matters of state taxation policy if the board~~  
182 ~~does not possess that expertise. The study must be paid from the~~  
183 ~~moneys distributed to the board for administrative purposes~~  
184 ~~under s. 365.173(2)(f) but may not exceed \$250,000.~~

185 3. Except in the case of prepaid wireless  
186 telecommunications service, all voice communications services  
187 providers not addressed under subparagraphs 1. and 2. shall bill  
188 the fee on a per-service-identifier basis for service  
189 identifiers whose primary place of use is within the state up to  
190 a maximum of 25 service identifiers for each account bill  
191 rendered.

192 4. The provider may list the fee as a separate entry on  
193 each bill, in which case the fee must be identified as a fee for  
194 E911 services. A provider shall remit the fee to the board only  
195 if the fee is paid by the subscriber. If a provider receives a  
196 partial payment for a monthly bill from a subscriber, the amount  
197 received shall first be applied to the payment due the provider  
198 for providing voice communications service.

199 (b) A provider is not obligated to take any legal action to  
200 enforce collection of the fees for which any subscriber is  
201 billed. A county subscribing to 911 service remains liable to  
202 the provider delivering the 911 service or equipment for any 911  
203 service, equipment, operation, or maintenance charge owed by the

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204 county to the provider.

205 (c) For purposes of this section, the state and local  
206 governments are not subscribers.

207 (d) Each provider may retain 1 percent of the amount of the  
208 fees collected as reimbursement for the administrative costs  
209 incurred by the provider to bill, collect, and remit the fee.  
210 The remainder shall be delivered to the board and deposited by  
211 the board into the fund. The board shall distribute the  
212 remainder pursuant to s. 365.173.

213 (e) Effective September 1, 2007, voice communications  
214 services providers billing the fee to subscribers shall deliver  
215 revenues from the fee to the board within 60 days after the end  
216 of the month in which the fee was billed, together with a  
217 monthly report of the number of service identifiers in each  
218 county. Each wireless provider and other applicable provider  
219 identified in subparagraph (a)3. shall report the number of  
220 service identifiers for subscribers whose place of primary use  
221 is in each county. All provider subscriber information provided  
222 to the board is subject to s. 365.174. If a provider chooses to  
223 remit any fee amounts to the board before they are paid by the  
224 subscribers, a provider may apply to the board for a refund of,  
225 or may take a credit for, any such fees remitted to the board  
226 which are not collected by the provider within 6 months  
227 following the month in which the fees are charged off for  
228 federal income tax purposes as bad debt.

229 (f) The rate of the fee shall be set by the board after  
230 considering the factors set forth in paragraphs (h) and (i), but  
231 may not exceed 50 cents per month per each service identifier.  
232 The fee shall apply uniformly and be imposed throughout the



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233 state, except for those counties that, before July 1, 2007, had  
234 adopted an ordinance or resolution establishing a fee less than  
235 50 cents per month per access line. In those counties the fee  
236 established by ordinance may be changed only to the uniform  
237 statewide rate no sooner than 30 days after notification is made  
238 by the county's board of county commissioners to the board.

239 (g) It is the intent of the Legislature that all revenue  
240 from the fee be used as specified in s. 365.173(2)(a)-(i).

241 (h) No later than November 1, 2007, the board may adjust  
242 the allocation percentages for distribution of the fund as  
243 provided in s. 365.173. When setting the percentages and  
244 contemplating any adjustments to the fee, the board shall  
245 consider the following:

246 1. The revenues currently allocated for wireless service  
247 provider costs for implementing E911 service and projected costs  
248 for implementing E911 service, including recurring costs for  
249 Phase I and Phase II and the effect of new technologies;

250 2. The appropriate level of funding needed to fund the  
251 rural grant program provided for in s. 365.173(2)(g); and

252 3. The need to fund statewide, regional, and county grants  
253 in accordance with sub-subparagraph (6)(a)3.b.

254 (i) The board may adjust the allocation percentages or  
255 adjust the amount of the fee, or both, if necessary to ensure  
256 full cost recovery or prevent overrecovery of costs incurred in  
257 the provision of E911 service, including costs incurred or  
258 projected to be incurred to comply with the order. Any new  
259 allocation percentages or reduced or increased fee may not be  
260 adjusted for 1 year. The fee may not exceed 50 cents per month  
261 per each service identifier. The board-established fee, and any

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262 board adjustment of the fee, shall be uniform throughout the  
263 state, except for the counties identified in paragraph (f). No  
264 less than 90 days before the effective date of any adjustment to  
265 the fee, the board shall provide written notice of the adjusted  
266 fee amount and effective date to each voice communications  
267 services provider from which the board is then receiving the  
268 fee.

269 (j) State and local taxes do not apply to the fee.

270 (k) A local government may not levy the fee or any  
271 additional fee on providers or subscribers for the provision of  
272 E911 service.

273 (l) For purposes of this section, the definitions contained  
274 in s. 202.11 and the provisions of s. 202.155 apply in the same  
275 manner and to the same extent as the definitions and provisions  
276 apply to the taxes levied under chapter 202 on mobile  
277 communications services.

278 (9) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.-

279 (a) As used in this subsection, the term:

280 1. "Consumer" means a person who purchases prepaid wireless  
281 telecommunications service in a retail sale.

282 2. "Prepaid wireless E911 fee" means the fee that is  
283 required to be collected by a seller from a consumer in the  
284 amount established under paragraph (b).

285 3. "Provider" means a person who provides prepaid wireless  
286 telecommunications service pursuant to a license issued by the  
287 Federal Communications Commission.

288 4. "Retail transaction" means the purchase of prepaid  
289 wireless telecommunications service from a seller for any  
290 purpose other than resale.

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291 5. "Seller" means a person who sells prepaid wireless  
292 telecommunications service to another person.

293 (b)1.a. There is imposed a prepaid wireless E911 fee at a  
294 rate of 1 percent of each retail transaction occurring in this  
295 state.

296 b. The prepaid wireless E911 fee imposed under sub-  
297 subparagraph a. shall be increased or reduced, as applicable,  
298 upon any change to the E911 fee imposed under subsection (8).  
299 The adjusted rate shall be determined by dividing the amount of  
300 the charge imposed under subsection (8) by \$50. Such increase or  
301 reduction shall be effective on the effective date of the change  
302 to the E911 fee or, if later, the first day of the first  
303 calendar month to occur at least 60 days after the enactment of  
304 such change or notification of a change in the E911 fee as  
305 provided in paragraph (8) (f). The Department of Revenue shall  
306 provide not less than 30 days' notice of such increase or  
307 reduction on its public website.

308 c. For purposes of this subsection, a retail transaction  
309 that is effected in person by a consumer at a business location  
310 of the seller shall be treated as occurring in this state if  
311 that business location is in this state, and any other retail  
312 transaction shall be treated as occurring in this state if the  
313 retail transaction is treated as occurring in this state under  
314 s. 212.05(1) (e) 1.a. (II).

315 d. If prepaid wireless telecommunications service is sold  
316 along with one or more products or services for a single,  
317 nonitemized price, the percentage specified in sub-subparagraph  
318 a. shall apply to the entire nonitemized price unless the seller  
319 elects to apply such percentage to:

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320 (I) The dollar amount of the prepaid wireless  
321 telecommunications service, if such dollar amount is disclosed  
322 to the customer; or

323 (II) The portion of the price that is attributable to the  
324 prepaid wireless telecommunications service, if the seller can  
325 identify such portion by reasonable and verifiable standards  
326 from the seller's books and records that are kept in the regular  
327 course of business for other purposes, including, but not  
328 limited to, nontax purposes. However, if a minimal amount of  
329 prepaid wireless telecommunications service is sold along with a  
330 prepaid wireless device for a single, nonitemized price, the  
331 seller may elect not to apply the percentage specified in  
332 subparagraph a. to such transaction. For purposes of this sub-  
333 sub-subparagraph, an amount of service denominated as 10 minutes  
334 or less or \$5 or less is minimal.

335 2. The prepaid wireless E911 fee is the liability of the  
336 consumer and not the seller or any provider.

337 3. The prepaid wireless E911 fee shall be collected by the  
338 seller from the consumer with respect to each retail transaction  
339 occurring in this state. The amount of the fee shall be  
340 separately stated on an invoice, receipt, or other similar  
341 document that is provided to the consumer by the seller or shall  
342 otherwise be disclosed to the consumer.

343 4. The Department of Revenue shall establish procedures for  
344 a seller of prepaid wireless telecommunications service to  
345 document that a sale is not a retail transaction, which  
346 procedures shall substantially coincide with the procedures for  
347 documenting a sale for resale transaction under s. 212.186.

348 5.a. The seller shall remit to the Department of Revenue

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349 all prepaid wireless E911 fees collected under this subsection,  
350 including all such charges that the seller is deemed to have  
351 collected when the amount of the charge was not separately  
352 stated on an invoice, receipt, or other similar document  
353 provided to the consumer by the seller, except that the seller  
354 shall deduct and retain 3 percent of the fees collected.

355 b. The seller shall remit the fees collected to the  
356 Department of Revenue at the times and in the manner provided  
357 under s. 212.11. The Department of Revenue shall establish  
358 registration and payment procedures that substantially coincide  
359 with the registration and payment procedures that apply to the  
360 tax imposed under chapter 212.

361 c. The audit and appeal procedures applicable under s.  
362 212.13 apply to prepaid wireless E911 fees.

363 6. The Department of Revenue shall retain up to 2 percent  
364 of the funds remitted under this subsection to reimburse its  
365 direct costs of administering the collection and remittance of  
366 prepaid wireless E911 fees. Thereafter, the department shall  
367 transfer all remaining funds remitted under this subsection to  
368 the E911 Board within 30 days after receipt for use as provided  
369 in subsection (5).

370 7. The amount of the prepaid wireless E911 fee that is  
371 collected by a seller from a consumer, regardless of whether  
372 such amount is separately stated on an invoice, receipt, or  
373 similar document provided to the consumer by the seller, shall  
374 not be included in the base for measuring any tax, fee,  
375 surcharge, or other charge that is imposed by this state, any  
376 political subdivision of this state, or any governmental agency.

377 8. A local government may not levy the fee or any

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378 additional fee on providers or sellers of prepaid wireless  
379 telecommunications service for the provision of E911 service.

380 9.a. Notwithstanding subsections (3), (5), and (7), a  
381 seller that qualifies for a quarterly, semiannual, or annual  
382 filing pursuant to s. 212.11(1)(c) shall be governed by the  
383 provisions in this subparagraph.

384 b. The seller may file and remit prepaid wireless E911 fees  
385 to the department annually under procedures developed by the  
386 department.

387 c. The seller may retain 25 percent of all prepaid wireless  
388 E911 fees collected during the first 12 months after July 1,  
389 2010, to offset costs incurred from collecting and remitting  
390 such fees.

391 d. The seller may, in lieu of collecting the prepaid  
392 wireless E911 fee from the customer and separately stating such  
393 fee on the invoice, receipt, or other similar document provided  
394 to the customer, elect to absorb the fee and become solely  
395 liable for remitting such fee to the department.

396 (c)1. A provider or seller of prepaid wireless  
397 telecommunications service shall not be liable for damages to  
398 any person resulting from or incurred in connection with the  
399 provision of, or failure to provide, 911 or E911 service or for  
400 identifying, or failing to identify, the telephone number,  
401 address, location, or name associated with any person or device  
402 that is accessing or attempting to access 911 or E911 service.

403 2. A provider or seller of prepaid wireless  
404 telecommunications service shall not be liable for damages to  
405 any person resulting from or incurred in connection with the  
406 provision of any assistance provided by legal process to any

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407 investigative or law enforcement officer of the United States,  
408 this or any other state, or any political subdivision of this or  
409 any other state in connection with any investigation or other  
410 law enforcement activity by such investigative or law  
411 enforcement officer.

412 Section 2. Paragraphs (a), (b), and (c) of subsection (2)  
413 of section 365.173, Florida Statutes, are amended to read:

414 365.173 Emergency Communications Number E911 System Fund.—

415 (2) As determined by the board pursuant to s.  
416 365.172(8)(h), and subject to any modifications approved by the  
417 board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in  
418 the fund shall be distributed and used only as follows:

419 (a) Sixty-seven percent of the moneys in the wireless  
420 category shall be distributed each month to counties, based on  
421 the total number of service identifiers in each county, and  
422 shall be used exclusively for payment of:

423 1. Authorized expenditures, as specified in s.  
424 365.172 (10) ~~(9)~~.

425 2. Costs to comply with the requirements for E911 service  
426 contained in the order and any future rules related to the  
427 order.

428 (b) Ninety-seven percent of the moneys in the nonwireless  
429 category shall be distributed each month to counties based on  
430 the total number of service identifiers in each county and shall  
431 be used exclusively for payment of authorized expenditures, as  
432 specified in s. 365.172 (10) ~~(9)~~.

433 (c) Any county that receives funds under paragraphs (a) and  
434 (b) shall establish a fund to be used exclusively for the  
435 receipt and expenditure of the revenues collected under

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436 paragraphs (a) and (b). All fees placed in the fund and any  
437 interest accrued shall be used solely for costs described in  
438 subparagraphs (a)1. and 2. The money collected and interest  
439 earned in this fund shall be appropriated for these purposes by  
440 the county commissioners and incorporated into the annual county  
441 budget. The fund shall be included within the financial audit  
442 performed in accordance with s. 218.39. A county may carry  
443 forward up to 20 percent of the total funds disbursed to the  
444 county by the board during a calendar year for expenditures for  
445 capital outlay, capital improvements, or equipment replacement,  
446 if such expenditures are made for the purposes specified in  
447 subparagraphs (a)1. and 2.; however, the 20-percent limitation  
448 does not apply to funds disbursed to a county under s.  
449 365.172(6)(a)3., and a county may carry forward any percentage  
450 of the funds, except that any grant provided shall continue to  
451 be subject to any condition imposed by the board. In order to  
452 prevent an excess recovery of costs incurred in providing E911  
453 service, a county that receives funds greater than the  
454 permissible E911 costs described in s. 365.172(10)(~~9~~), including  
455 the 20 percent carryforward allowance, must return the excess  
456 funds to the E911 board to be allocated under s. 365.172(6)(a).

457  
458 The Legislature recognizes that the fee authorized under s.  
459 365.172 may not necessarily provide the total funding required  
460 for establishing or providing the E911 service. It is the intent  
461 of the Legislature that all revenue from the fee be used as  
462 specified in this subsection.

463 Section 3. This act shall take effect July 1, 2010.