

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Wireless Emergency Communications Act established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a fee, capped at \$.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. As of March 31, 2008, all 67 counties reported capability to receive a call back number and location provided for the cellular caller from the service provider.

Section 365.171(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but is not currently imposed on prepaid wireless services.

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the \$.50 cap, once annually.

In 2006, the Board was required to evaluate the 911 system revenues and services costs to determine the date that the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and Board administration costs. In its report, the Board concluded that there were insufficient fee revenues collected to cover all county and service provider E911 costs.

In its report, the Board also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees are imposed on users in a fair and consistent manner. At that time, E911 fees for prepaid wireless service were remitted based upon each prepaid wireless telephone associated with this state, for each wireless service customer that had a sufficient positive balance as of the last day of each month. Recognizing that direct billing may not be possible, the law provided that the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid wireless subscriber's account.

In 2007, the Legislature suspended collection of E911 fees on prepaid wireless service until July 1, 2009, and required the board to conduct a study on the collection of E911 fees on the sale of prepaid wireless service. The resulting report concluded that it is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis. The report deemed two potential collection methods to be tentatively feasible: the Best Practice Menu Flat Fee Collection Method and the Best Practice Statewide Point of Sale Flat Fee Collection Method.

The Best Practice Menu Flat Fee Collection Method (Menu Collection Method) collects prepaid wireless service E911 fees from end users on a monthly basis. The Menu Collection Method allows for a service provider's selection of one collection method from two provided options. Under the first option, the E911 fee is calculated by dividing the total earned prepaid revenue received by the service provider within the monthly 911 reporting period by \$50.00 and then multiplying that number by the amount of the state 911 charge of \$.50 per month. The second option would calculate the fee by multiplying the amount of the state 911 charge for each active prepaid account of the service provider.

The Best Practice Statewide Point of Sale Flat Fee Collection Method (Point of Sale Collection Method) collects prepaid wireless service E911 fees at the point of sale on each transaction involving sales of Florida-based prepaid wireless service by assessing a \$.25 flat fee sales tax surcharge over and beyond sales taxes otherwise due at the point of sale.

Effect of Proposed Changes

The bill imposes a prepaid wireless E911 fee on "prepaid wireless telecommunications service." The bill defines "prepaid wireless telecommunications service" as "a wireless service that allows a caller to dial 911 to access the 911 system," and further specifies that a "prepaid wireless telecommunications service" must meet the requirements of a "prepaid calling arrangement" under s. 212.05(1)(e)1.(I), F.S.

Retail purchases of prepaid wireless telecommunications services from a seller occurring in Florida would be assessed the prepaid wireless E911 fee at the rate of 1% of the amount of the transaction. A retail transaction occurs if it is made in person at a business location in Florida. Retail transactions not occurring in person may be treated as occurring in Florida if the customer's shipping address is in Florida or, if no item is shipped, based on the customer's address or the location associated with the customer's mobile telephone number.

The prepaid E911 fee would not apply to a sale of a prepaid wireless telecommunications service that is not a retail transaction. A sale for resale is not a sale of a prepaid wireless telecommunications service, and would not be subject to the E911 fee. The bill requires DOR to establish procedures for a seller to document that a sale of a prepaid wireless telecommunications service is not a retail sale. The procedures must substantially coincide with sales for resale documentation procedures in s. 212.186, F.S.

The prepaid wireless E911 fee would be collected by the seller from the consumer. The seller would deduct and retain 3 percent of the fees collected, and remit the remaining fees collected to DOR, pursuant to the tax regulations of s. 212.11, F.S. For these purposes, fees collected include any charges the seller is deemed to have collected when the amount is not separately stated on an invoice or similar document. The bill requires DOR to establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the tax imposed under Chapter 212, F.S.

DOR would retain up to 2 percent of the prepaid wireless E911 funds remitted to it for administering the collection and remittance of the prepaid wireless E911 fees. DOR must remit the remaining prepaid wireless E911 fees to the E911 board within 30 days after receipt. Disclosure of the fee to the consumer is required, which may be accomplished by separately stating it on an invoice or receipt. The bill provides that the amount of the fee collected from the seller is not subject to tax regardless of whether such amount is separately stated on an invoice, receipt, or similar document.

Changes to the E911 fee set by the E911 board would result in a proportional increase or reduction in the prepaid wireless E911 fee. The adjusted rate of prepaid wireless E911 fee would be determined by dividing the amount of the E911 fee by \$50. For example, if the E911 fee decreases from \$.50 to \$.40, the prepaid wireless rate would be decreased to 0.8% (\$.40/\$50 = 0.008). The effective date of a change to the prepaid wireless E911 fee is the same as the effective date of the change to the E911 fee or, if later, the first day of the first calendar month to occur at least 60 days after the enactment of the change or notification of a change to the E911 fee. The bill requires DOR to provide at least 30 days notice of a rate change by posting the rate change on its public website. The audit and appeal procedures from s. 212.13, F.S., would apply to the prepaid wireless E911 fees.

Providers and sellers of prepaid wireless telecommunications services would not be liable for damages to any person in connection with the provision of 911 or E911 services. The bill prohibits local governments from levying a prepaid wireless E911 fee or any additional fee on providers or sellers of prepaid wireless telecommunications services for the provision of E911 service.

B. SECTION DIRECTORY:

Section 1. Amends s. 365.172, F.S., relating to the emergency communications number “E911” to establish a prepaid wireless E911 fee.

Section 2. Amends s. 365.173, F.S., relating to the Emergency Communications Number E911 System, Fund, to conform cross-references.

Section 3. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Management Services (DMS) estimates total revenues collected from the prepaid wireless E911 fee to be \$5-11 million in FY10-11, \$6-12 million in FY11-12, and \$7-13 million in FY12-13. After 3 percent of these revenues are retained by sellers of prepaid wireless service, the Department of Revenue would retain up to 2% of the remaining funds. After that, the remaining funds would be submitted to the E911 Board (which retains 1% to cover administration costs) to administer and fund the E911 system.

2. Expenditures:

The Department of Revenue (DOR) estimates that total expenditures to implement the bill would be \$258,600 in FY09-10, and \$114,285 in FY10-11. Of these amounts, the DOR estimates \$60,000 in recurring expenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Revenues from collection of the prepaid wireless E911 fee would be distributed by the Board to counties to cover authorized E911 system costs. The percentage of funds distributed to counties will depend upon whether the fees are placed in the “wireless category” (67% to counties) or “non-wireless category” (97% to counties) of the E911 System Fund established in s. 365.173, F.S. This is not specified in the bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely impose costs on retail sellers of prepaid wireless telecommunications services to collect and account for the prepaid wireless E911 fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DOR reports that the bill does not specify a fund in which the revenues from the prepaid wireless E911 fee must be deposited.

The DOR reports that the effective date of July 1, 2010, will not allow sufficient time for DOR to prepare to implement the bill. The DOR suggests an effective date of January 1, 2011.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES