

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 163 Prepaid Wireless Telecommunications Service
SPONSOR(S): Finance & Tax Council; Energy & Utilities Policy Committee and Gibbons
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1202

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|-------------------------|-----------------|-----------------|
| 1) | <u>Energy & Utilities Policy Committee</u> | <u>9 Y, 0 N, As CS</u> | <u>Keating</u> | <u>Collins</u> |
| 2) | <u>Finance & Tax Council</u> | <u>12 Y, 0 N, As CS</u> | <u>Aldridge</u> | <u>Langston</u> |
| 3) | <u>Governmental Affairs Policy Committee</u> | <u></u> | <u>Keating</u> | <u>Hamby</u> |
| 4) | <u></u> | <u></u> | <u></u> | <u></u> |
| 5) | <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

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. 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 collected 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.

The bill provides that the E911 fee shall not, before July 1, 2013, be assessed on or collected from providers with respect to prepaid calling arrangements subject to s. 212.05(1)(e), F.S. The bill further provides that the Board shall collect the fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service. The bill strikes obsolete language requiring the Board to conduct a study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service, as the Board has already completed such a study.

The bill increases to 30 percent, from current law's 20 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvement, or equipment replacement which the county may carry forward into the next calendar year.

The Revenue Estimating Conference estimates that the bill will have no impact on General Revenue or direct impacts on local government revenues. The estimated negative indeterminate impact on state trust funds in FY 2010-2011, will have an indirect negative impact on revenues received by local governments.

Because the bill provides no guidelines for the E911 Board to determine whether a fee should be collected, it appears to include an invalid delegation of legislative authority.

The effective date of the bill is July 1, 2010.

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 Act¹ 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.²

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 services³.

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 required⁴ 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.⁵

¹ Chapter 99-367, L.O.F., codified in s. 365.172, F.S. Today the statute is cited as the "Emergency Communications Number E911 Act." Section 365.172(1), F.S.

² Florida Dep't of Management Services, *Florida Enhanced 911*, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited Apr. 7, 2010).

³ Prepaid wireless service is defined as "the right to access telecommunications services that must be paid for in advance and is sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount." See s. 365.172(8)(a)2.b.(I), F.S.

⁴ See proviso language accompany specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

⁵ Florida Dep't of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

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.⁶ The resulting report⁷ 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 month⁸. 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.

Distribution of E911 Funds

Funds generated from the E911 fees levied on subscribers are accounted for in the Emergency Communications Number E911 System Fund and segregated into two separate categories: wireless and nonwireless.⁹ Sixty-seven percent of the moneys in the wireless category are distributed monthly to counties, based on the total number of service identifiers in each county. The county may use these funds to pay for expenditures related to establishing or providing E911 services and contracting for E911 services, as well as to pay for complying with the requirements for E911 service contained in specified Federal Communications Commission orders.¹⁰ Ninety-seven percent of the moneys in the nonwireless category are distributed monthly to counties based on the total number of service identifiers in each county. The county may use these funds exclusively to pay for expenditures related to establishing or providing E911 services and contracting for E911 services.¹¹

A county receiving these moneys must establish a fund to be used exclusively for the receipt and expenditure of the moneys. The county commission shall appropriate the moneys and interest in the fund and incorporate them into the county budget. A county may carry forward up to 20 percent of the moneys disbursed to the county during a calendar year for capital outlay, capital improvements, or equipment replacement, provided expenditures are made for the authorized purposes.¹²

⁶ Chapter 2007-78, Laws of Fla., codified as s. 365.172(8)(a), F.S.

⁷ Florida Dep't of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, 106 (Dec. 31, 2008), available at http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study (last visited Apr. 7, 2010).

⁸ Section 365.172, F.S.

⁹ Section 365.173(1), F.S.

¹⁰ Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

¹¹ Section 365.173(2)(b), F.S.

¹² Section 365.173(2)(c), F.S.

Effect of Proposed Changes

CS/CS/HB 163 provides that the E911 fee shall not, before July 1, 2013, be assessed on or collected from providers with respect to prepaid calling arrangements subject to s. 212.05(1)(e), F.S. The bill further provides that the Board shall collect the fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service. The bill strikes obsolete language requiring the Board to conduct a study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service, as the Board has already completed such a study.

The bill increases to 30 percent, from current law's 20 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvement, or equipment replacement which the county may carry forward into the next calendar year.

B. SECTION DIRECTORY:

Section 1. Amends s. 365.172, F.S., relating to the emergency communications number "E911."

Section 2. Amends s. 365.173, F.S., to change the percentage of E911 funds disbursed that a county may carry forward into the next calendar year.

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 Revenue Estimating Conference estimates that the bill will have no impact on General Revenue and a negative indeterminate impact on state trust funds in FY 2010-2011.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that the bill will have no impact on local government revenues. However, the impact on state trust funds will result in an indirect impact on funds received by counties.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Revenues from collection of the E911 fee are distributed by the Board to counties to cover authorized E911 system costs. Although the Board has not collected this fee from the sale of prepaid wireless service since 2007, users of prepaid wireless service are provided access to the E911 system. Prepaid wireless service has grown significantly as a segment of the telecommunications market since the first

quarter of 2007 and is expected to continue to grow.¹³ As more customers move away from voice communications services that are assessed the E911 fee, the E911 system will likely see funding reductions.

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:

The bill requires the E911 Board to collect the E911 fee from the sale of prepaid wireless service, beginning July 1, 2013, if the Board determines that a fee should be collected from the sale of such service. Because the bill provides no guidelines for the Board to determine whether a fee should be collected, it appears to include an invalid delegation of legislative authority.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 9, 2010, the Finance & Tax Council adopted an amendment that increases to 30 percent, from current law's 20 percent, the portion of funds disbursed to a county from the Emergency Communications Number E911 System Fund for capital outlay, capital improvement, or equipment replacement which the county may carry forward into the next calendar year.

The analysis has been updated to reflect the changes contained in the amendment.

On March 25, 2010, the Energy & Utilities Policy Committee adopted an amendment to the bill to remove the requirement that a prepaid wireless E911 fee be collected from consumers by retailers at the point of sale. The amendment:

- Establishes a moratorium on collecting E911 fees from the sale of prepaid wireless until no sooner than July 1, 2013.
- Provides that the Board shall collect the fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service.
- Strikes obsolete language requiring the Board to conduct a study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service.

¹³ *Report on the Status of Competition in the Telecommunications Industry (as of December 31, 2008)*, Florida Public Service Commission, pp. 37-39.