

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 1310

INTRODUCER: Senator Oelrich

SUBJECT: E911 Call Recordings

DATE: April 3, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

Current law provides a public-records exemption for the name, address, telephone number, or personal information about, or information that may identify, any person requesting emergency services or reporting an emergency.<sup>1</sup> The exemption applies to such information in any record or recording, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency. The confidential and exempt information may be shared only with another public safety agency.

This bill amends that public-records exemption to provide that if an oral recording of a 911 emergency transmission is requested, the recording shall be digitally modified in order to protect the personal identity of any person requesting emergency services or reporting an emergency.

This bill substantially amends s. 365.171, F.S.

**II. Present Situation:**

**Public-Records Law**

Article I, s. 24(a) of the State Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of

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<sup>1</sup> Section 365.171(12), F.S.

Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

### **E911 System**

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations.<sup>4</sup> In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.<sup>5</sup>

Florida currently has 235 public safety answering points, also known as call centers, which receive emergency 911 calls. Staff in these call centers include call-takers, dispatchers, and dual call-taker/dispatchers. Call-takers answer calls and record necessary information such as the caller's name and the nature of the emergency, and relay this information to dispatchers who assess the information, determine the type of emergency response needed, and direct appropriate emergency services to respond to the call. In some call centers, call-taking and dispatch functions are performed by the same individual (dual call-taker/dispatcher).<sup>6</sup>

State, county, and local government entities administer Florida's E911 system.

The Department of Management Services coordinates the statewide system but has no authority to monitor emergency services. The department provides technical assistance to counties on

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<sup>2</sup> Article I, s. 24(c) of the State Constitution.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 365.171, F.S., also known as the Florida Emergency Communications Number E911 State Plan Act, required the Technology program within the Department of management Services to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan.

<sup>5</sup> Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 1 and 2.

<sup>6</sup> *Id.* at 2.

technology standards and operational capabilities, helps design and implement new communications and data systems, and assists with staff training. The department also develops and updates a statewide emergency communications E911 system plan, which provides guidance to counties but permits them to design and maintain their own 911 systems and plans.<sup>7</sup> The department's statewide 911 coordinator reviews county plans and inspects call centers for compliance with the state plan.

### **E911 Board**

The E911 Board was established by the Legislature in 2007 to administer the Emergency Communications Number E911 System Fund (E911 Trust Fund),<sup>8</sup> which is the main funding source for 911 communications in the state.<sup>9</sup> The board consists of nine members, including the Department of Management Services' E911 system director, who is designated by the Secretary of the Department of Management Services and serves as chair.<sup>10</sup> With oversight by the department, the board administers the fund and disburses revenues to the department, wireless providers, and counties for specific authorized expenses.

### **Boards of County Commissioners**

Boards of County Commissioners are the responsible fiscal agent and ultimate authority for 911 services in each county. Each board designates a county 911 coordinator who serves as a point of contact for local call centers, reports on system status, and submits the county 911 plan to the department. These plans describe county 911 system infrastructure and staffing for each call center. Call centers are operated typically by city police departments and county sheriffs' offices. Call centers may establish their own training protocols and quality assurance measures.<sup>11</sup>

### **Public-Records Exemption for the E911 System**

Current law provides that

[a]ny record, recording, or information, or portions thereof, obtained by a public agency<sup>12</sup> or a public safety agency<sup>13</sup> for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an

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<sup>7</sup> Section 365.171(4), F.S.

<sup>8</sup> Section 365.172(5)(a), F.S.

<sup>9</sup> The E911 Trust Fund is derived from a monthly fee (not to exceed 50 cents) on each wireless and non-wireless voice communication subscriber with a Florida billing address. The E911 Board makes disbursements from the E911 Trust Fund for wireless service provider E911 deployment and services, county E911 funding for equipment and services, rural county grants, E911 state grants, and E911 Board administration and operations.

<sup>10</sup> Pursuant to s. 365.172(5)(b), F.S., the Governor appoints the remaining eight members: four county coordinators from a large, medium, and rural county and an at-large representative recommended by the Florida Association of Counties, two local exchange carrier members, and two members from the wireless telecommunications industry.

<sup>11</sup> Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 2.

<sup>12</sup> Section 365.171(3)(c), F.S., defines "public agency" to mean 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 this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

<sup>13</sup> Section 365.171(3)(d), F.S., defines "public safety agency" to mean a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

emergency communications E911 system is confidential and exempt<sup>14</sup> from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. . .<sup>15</sup>

In short, the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency is confidential and exempt from public records requirements. Such information may be released only to a public safety agency.<sup>16</sup>

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. E911 recordings provide the listener with an eyewitness account of the emergency at hand. The emergency often times is a very personal and traumatizing event. As such, states have begun prohibiting the release of E911 recordings.

### **Protections in Other States**

In Maine, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is deemed private data on individuals with respect to the individual making the call. However, a written transcript of the audio recording is considered public except for certain circumstances. A transcript is prepared upon request and the person requesting the transcript is required to pay the actual cost of transcribing the call, in addition to any other applicable costs.<sup>17</sup>

Mississippi provides that all emergency telephone calls and telephone call transmissions and all recordings of such calls are confidential. The recordings may be used only for the purposes as may be needed for law enforcement, fire, medical rescue, or other emergency services.<sup>18</sup>

In Pennsylvania, “[r]ecords or parts of records . . . pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings” are not a public record. However, an agency or a court may release 911 recordings if it determines the public interest in disclosure outweighs the interest in nondisclosure.<sup>19</sup> South Dakota has similar protections and release standards as those in Pennsylvania.<sup>20</sup>

Rhode Island provides that all 911 telephone calls and telephone call transmissions and all tapes containing records of 911 telephone calls are confidential.<sup>21</sup>

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<sup>14</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>15</sup> Section 365.171(12), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Minn. Stat. s. 13.82.

<sup>18</sup> Miss. Code s. 19-5-319.

<sup>19</sup> 65 P.S. s. 67.708.

<sup>20</sup> S.D. Cod. Laws s. 1-27-1.5.

<sup>21</sup> R.I. Gen. Laws s. 39-21.1-17.

**III. Effect of Proposed Changes:**

The bill amends the public-records exemption in s. 365.171(12), F.S., to provide that if an oral recording of a 911 emergency transmission is requested, the recording shall be digitally modified in order to protect the personal identity of any person requesting emergency services or reporting an emergency.

The bill specifies an effective date of July 1, 2011.

**Other potential implications:**

The new requirement that a call recording be digitally modified prior to release may constitute an expansion of the existing public-records exemption. As such, the Legislature may wish to consider amending the bill to include a public necessity statement and to provide for future review and repeal pursuant to the Open Government Sunset Review Act.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

The new requirement that a call recording be digitally modified prior to release may constitute an expansion of the existing public-records exemption that would require a public necessity statement and a two-thirds vote of each house of the Legislature for passage.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Governmental custodians of E911 calls recordings would incur an insignificant cost if required to digitally modify requested recordings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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