

**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.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 1070

INTRODUCER: Senator Hays

SUBJECT: Emergency Communication Systems

DATE: March 28, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	<b>Pre-meeting</b>
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB1070 provides for the collection of a 911 fee for emergency communication systems from purchasers of prepaid wireless communications devices. The bill amends ss. 365.172 and 365.173, F.S., as follows:

- Provides for the collection of a prepaid wireless E911 fee by retailers at the point of sale, beginning November 1, 2013, and establishes a new category in the E911 Trust Fund for revenues derived from this fee.
- Sets the existing E911 fee at \$0.46 per month per service identifier, and sets the prepaid wireless E911 fee at \$0.46 per month for each retail transaction.
- Retains the existing E911 fee cap of \$0.50 and allows the Board, after January 1, 2015, to adjust the rate under this cap by a two-thirds vote of the total number of all Board members.
- Expands the list of authorized county expenditures for which E911 system funds may be used.
- Modifies the percentage of funds to be distributed to counties, such that counties will receive 97 percent of the moneys in the wireline category (up from 96 percent), 76 percent of the moneys in the wireless category (up from 67 percent), and 61 percent of the moneys in the new prepaid wireless category.
- Reduces the percentage of funds available for distribution to wireless providers from 30 percent to 20 percent.
- Provides that 35 percent of the moneys in the new prepaid wireless category will be retained by the Board to provide E911 grants to counties for the purpose of upgrading and replacing E911 systems, developing and maintaining statewide 911 routing and mapping systems, and developing and maintaining next-generation 911 services and equipment.
- Amends and creates definitions to conform to the substantive provisions of the bill.

- Removes obsolete provisions.

This bill substantially amends sections 365.172 and 365.173 of the Florida Statutes.

## II. Present Situation:

The Wireless Emergency Communications Act<sup>1</sup> established a statewide E911 system for wireless telephone users which designates a emergency communications number (911) for use by any person in the state to reach emergency response services. The system must accommodate various technologies for wireline and wireless or cellular systems. As technology has advanced, the system has been upgraded to take advantage of the advancements. For instance, providers of wireline telecommunications services were able to provide information as to the location of their customers. Wireless providers were later able to provide location information of a mobile phone by triangulating its location among cell towers.

To fund the E911 system, the act imposed a fee, capped at \$0.50, 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 365.172(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.<sup>2</sup> State and local governments are not subject to the fee.<sup>3</sup>

The E911 Board (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 Board is to make disbursements from the Emergency Communications Number E911 System Fund (E911 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 \$0.50 cap, once annually.

As of March 31, 2008, all 67 counties in Florida reported capability to receive a call back number and location provided for a cellular caller from the service provider.<sup>4</sup> The next progression in E911 systems is referred to as Next Generation 911 (NG 911). According to the E911 Board's 2012 Annual Report, NG-911 is the migration of E911 systems to Internet Protocol-capable equipment and networks, which will resolve deficiencies in the current systems while providing data, text, and video capabilities to support emergency communications. The Board and Florida's public safety agencies are currently planning, designing, and implementing

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<sup>1</sup> 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.

<sup>2</sup> 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.(1), F.S.

<sup>3</sup> Section 365.172(8)(c), F.S.

<sup>4</sup> Florida Department of Management Services, *Florida Enhanced 911*, [http://dms.myflorida.com/suncom/public\\_safety\\_bureau/florida\\_e911](http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911) (last visited March 5, 2013).

emergency services IP (Internet protocol) networks and system replacements, though the development of an NG-911 system will likely involve a multi-year transition.<sup>5</sup>

### **E911 Fees for Prepaid Wireless Service**

In 2006, the Board was required<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> The resulting report<sup>9</sup> concluded that it is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.

In 2010, the Legislature extended the suspension of E911 fee collections for prepaid wireless service through July 1, 2013, at which point the Board is required to collect the fee from the sale of prepaid wireless service if it determines that a fee should be collected from such sales.<sup>10</sup>

### **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.<sup>11</sup> One percent of the moneys in each category is retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund. Two percent of the moneys in each category are used to make monthly distributions to rural counties for facilities,

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<sup>5</sup> 2012 Annual Report of the E911 Board.

<sup>6</sup> See proviso language accompanying specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

<sup>7</sup> Florida Department of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

<sup>8</sup> Chapter 2007-78, Laws of Florida.

<sup>9</sup> Florida Department 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](http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study) (last visited March 5, 2013).

<sup>10</sup> Chapter 2010-50, Laws of Florida.

<sup>11</sup> Subsection 365.173(1), F.S.

network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems.

In the wireless category, 67 percent of the moneys 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.<sup>12</sup> The remaining 30 percent of the moneys in the wireless category are available for distribution to wireless providers as reimbursement for actual costs incurred to provide E911 service.

In the nonwireless category, 97 percent of the moneys 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.<sup>13</sup>

Section 365.172(10), F.S., specifies the types of expenses for which funds derived from the E911 fee may be expended. In general, all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services are eligible. For this purpose, the law defines E911 service to include the functions of database management, call taking, dispatching, location verification, and call transfer.

A county may carry forward up to 30 percent of the total funds it receives from the Board during a calendar year for expenditures for capital outlay, capital improvements, or equipment replacement provided that the expenditures are otherwise authorized uses of the funds derived from E911 fees.

### **Indemnification and Limitation of Liability**

In general, a service provider that provides 911 or E911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911 or E911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911 or E911 service.<sup>14</sup> Further, a provider is not liable for damages to any person resulting from or in connection with the provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.<sup>15</sup>

A provider is not obligated to take legal action to enforce collection of the E911 fee that it bills a consumer.<sup>16</sup>

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<sup>12</sup> Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

<sup>13</sup> Section 365.173(2)(b), F.S.

<sup>14</sup> Section 365.172(11), F.S. An exception exists when the provider acts with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services.

<sup>15</sup> *Id.*

<sup>16</sup> Section 365.172(8)(b), F.S.

### III. Effect of Proposed Changes:

#### Prepaid wireless E911 Fee

The bill creates subsection (9) of section 365.172, F.S., to impose a prepaid wireless E911 fee on each retail purchase of prepaid wireless service from a seller. The bill defines the term “prepaid wireless service” to mean:

a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on predetermined basis in exchange for the right to access wireless service.

The bill ties the rate of the new prepaid wireless E911 fee to the rate of the existing fee for other voice communications services. Initially, however, the bill resets the rate beginning January 1, 2014, at \$0.46. The fee may not exceed \$0.50 per month for each retail transaction. If the rate is adjusted by the Board (which may not occur before January 1, 2015, and requires a two-thirds vote of the total number of Board members), the Department of Revenue (DOR) must provide notice of the adjusted fee amount and the effective date to each seller no less than 90 days before the effective date.

The bill requires the fee to be collected by the seller of the prepaid wireless service on each retail transaction occurring in Florida. The amount of the fee must be separately stated or disclosed to the consumer. For purposes of collecting the fee, the bill provides that a retail transaction shall be treated as occurring in Florida if: (1) the retail transaction occurs in person at a seller’s business location that is in this state or (2) the retail transaction would be treated as occurring in Florida for purposes of collecting sales tax on prepaid calling arrangements.<sup>17</sup> The bill provides that a seller may elect not to apply the fee to a transaction in which a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or \$5 or less.

The bill includes provisions designed to address the expense incurred by sellers to implement the prepaid wireless E911 fee. Specifically, the bill provides that sellers will begin collecting the fee November 1, 2013, at a rate of \$0.46, and will retain all moneys collected through December 31, 2013, to offset setup costs. The bill allows sellers to retain five percent of the prepaid wireless E911 fees collected thereafter.

The bill provides that the prepaid wireless E911 fee is the liability of the consumer and not of the seller or the underlying service provider. The seller is, however, liable to remit all of the fees it collects from consumers. A seller must remit such fees to DOR in the manner specified in s. 212.11, F.S., which sets forth processes for state tax returns. A seller who does not collect the fee is not liable or required to remit a payment to DOR.

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<sup>17</sup> The bill cross-references s. 212.05(1)(e)1.a.(II), F.S., which provides:

If the sale . . . does not take place at the dealer’s place of business, it shall be deemed to take place at the customer’s shipping address or, if no item is shipped, at the customer’s address or the location associated with the customer’s mobile telephone number.

The bill requires DOR to aggregate and identify the prepaid wireless E911 fee by the county in which it was collected. The bill also requires DOR to establish registration and payment procedures that “substantially coincide” with the procedures that apply to the sales and use tax imposed by chapter 212, F.S. Further, the bill requires DOR to establish procedures for a seller to document that a particular sale of prepaid wireless service is not a retail transaction, which procedures must “substantially coincide” with the procedures for documenting a sale for resale transaction under s. 212.186, F.S.

The bill specifies that DOR, to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 fees, will retain up to one percent of the funds remitted to it. All remaining funds must be transferred to into the E911 Trust Fund on or before the 15th day of each month and within 30 days of receipt.

### **Distribution of E911 Funds**

The bill establishes a new category in the E911 Fund for revenues derived from the prepaid wireless E911 fee. The bill specifies that the moneys in this category will be distributed as follows:

- 61 percent will be distributed each month to counties based on the total number of sales in each county.
- 35 percent will be retained by the Board to provide E911 grants to all counties for the purpose of upgrading and replacing E911 systems, developing and maintaining statewide 911 routing and mapping systems, and developing and maintaining next-generation 911 services and equipment.
- Three percent will be used to make monthly distributions to rural counties for facilities, network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems.
- One percent will be retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund.<sup>18</sup>

The bill increases distributions from the wireless category to counties from 67 percent to 76 percent. The bill decreases the percentage of funds available from the wireless category for distribution to wireless providers from 30 percent to 20 percent.

The bill decreases distributions from the nonwireless category to counties from 97 percent to 96 percent.

The bill increases the percentage of funds available from both the wireless and nonwireless categories to be used to make monthly distributions to rural counties for facilities, network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems. Three percent of the funds in these categories will be available for these purposes, rather than the current two percent.

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<sup>18</sup>The Board currently retains one percent of all moneys in the E911 Fund for this purpose.

The bill clarifies that any county that receives funds from the E911 Fund may not reduce, withhold, or allocate such funds (plus any interest accrued on such funds) for purposes other than covering the costs specified in statute. Further, the bill provides that the county's annual financial audit must assure that all E911 fee revenues, interest, and E911 grant funding are used as specified in statute and as specified by the E911 Board's grant and special disbursement programs. The bill also requires counties to submit these financial audit reports to the Board.

The bill expands the list of authorized expenditures for which funds distributed from the E911 Fund may be used. The bill provides that Department of Health certification and recertification and training costs for 911 public safety communications, including dispatching, are functions of 911 services. In addition, it adds the following items to the list of authorized expenditures:

- Circuits,
- GIS system and software equipment and information displays,
- Salary and associated expenses for a county to employ technical system maintenance, database, and administration personnel, and
- Emergency medical, fire, and law enforcement prearrival instruction software, charts, and training costs.

### **Indemnification and Limitation of Liability**

The bill applies existing indemnification and limitation of liability protections to sellers and providers of prepaid wireless service. These protections, which are substantially similar to existing provisions related to the provision of 911 or E911 service by other voice communications services.

### **Miscellaneous Provisions**

The bill specifies, with respect to both the E911 fee and the prepaid wireless E911 fee, that the amount of the fee collected may not be included in the base for measuring any tax, fee, surcharge, or other charge imposed by the state, any political subdivision of the state, or any governmental agency.

The bill also provides, with respect to both the E911 fee and the prepaid wireless E911 fee, that a local government may not levy any additional fee for the provision of E911 service.

The bill provides that the Board, when determining the funding provided in a state 911 grant application, must take into account information concerning the amount of carry-forward funds retained by the county from prior years. Such grants shall be limited by any county carry-forward funds in excess of the allowable 30 percent carry over, calculated on a 2-year basis.

The bill removes obsolete provisions from ss. 365.172 and 365.173, F.S. The bill also amends and creates definitions to conform to the substantive provisions of the bill.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Not applicable; this bill does not appear to negatively affect counties or municipalities.

B. Public Records/Open Meetings Issues:

Not applicable; this bill does not appear to have any effect on public records or open meetings.

C. Trust Funds Restrictions:

Not applicable; this bill does not appear to restrict trust funds. A new category for revenues derived from the fee is established.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference consensus adopted a middle impact. Both general revenue and local/other categories of cash and recurring of \$0.0.

The estimated impact on the E911 Fund would be as follows:

E911 Fund/Fiscal year	Cash	Recurring
2013-14	\$(25.1)M	\$(13.8)M
2014-15	\$(14.1)M	\$(14.1)M
2015-16	\$(14.5)M	\$(14.5)M
2016-17	\$(14.9)M	\$(14.9)M
2017-18	\$(15.4)M	\$(15.4)M

This estimate is based upon an assumption that without the bill, after the postponement on implementing the prepaid wireless E911 fee expires, all prepaid fees would and could be successfully collected at the current 50 cent per month rate. As such, the negative impact is the difference between the revenue estimated for the 50 cent compared to the revenues estimated for the 46 cent fee, in addition to other factors considered including implementation dates and administrative fees.

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. According to the 2012 Annual Report of the E911 Board, the suspension of collections from prepaid wireless service has resulted in a continual loss of E911 fee revenues each year since 2007, including a decrease of \$13.6 million in 2012 (representing a 15.4% decrease in E911 fee revenues from wireless service and a 3.7% decrease in E911 fee revenues from nonwireless service).



**B. Private Sector Impact:**

The bill requires retail sellers of prepaid wireless service to collect the prepaid wireless E911 fee on prepaid wireless transactions (other than those involving service of 10 minutes or less or \$5 or less) and remit the proceeds to the Department of Revenue (DOR). For these sellers, this requirement imposes initial costs for system setup and ongoing costs for collections and remittance. To address these costs, the bill allows sellers to retain 100 percent of their E911 fee collections for the first two months of collections (between November 1, 2013, and December 31, 2013), and allows sellers to retain 5 percent of their E911 fee collections thereafter. Further, the bill includes additional provisions that appear to ease the regulatory burden on sellers by requiring the use of familiar processes. For example, the bill requires DOR to establish registration and payment procedures that “substantially coincide” with the procedures applicable to registration and payment of sales and use taxes, with which retailers are familiar. However, the DOR states that:

there is currently no available space on the DR-15 sales tax paper return to accommodate this new fee. Attempting to add a new item would require a change in the current process of using the existing return to both capture the information and serve as the payment escort document. This change would require the current vendor under contract to produce a different return document. In addition, programming enhancements would be needed to process the new document and payment information separately in the SUNTAX system, removing the current capability of the return to serve as the payment coupon.<sup>19</sup>

The bill also provides that the audit and appeals procedures applicable to sales and use taxes will apply to prepaid wireless E911 fees.

Consumers of prepaid wireless service with access to the E911 system will now pay an E911 fee on those services. The E911 fee currently paid by consumers of other voice communications services will be reduced by 8 percent. It should be noted, however, that after July, 1, 3013, there will be a prepaid wireless fee without the bill.

**C. Government Sector Impact:**

The DOR estimates that to implement the bill, it will need 5 FTEs and have the following fiscal impact:

	<b>(FY13-14)</b>	<b>(FY14-15)</b>	<b>(FY15-16)</b>
<b>Recurring</b>	\$710,454	\$1,286,897	\$1,286,867
<b>Non-recurring</b>	\$303,925	\$0	\$0
<b>Total</b>	\$1,014,379	\$1,286,867	\$1,286,867

The DOR will incur expenses to implement the provisions of the bill that require it to provide notice of prepaid wireless E911 fee rate adjustments to sellers, to collect the fee

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<sup>19</sup> Department of Revenue Fiscal Impact Analysis – 2013 Session, March 6, 2013, on SB 1070. Filed with the Senate Committee on Communications, Energy, and Public Utilities.

and aggregate collections by county, to establish registration and payment procedures, and to establish procedures for a seller to document that a particular sale of prepaid wireless service is not a retail transaction. The bill specifies that DOR, to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 fees, will retain up to one percent of the funds remitted to it.

**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.