

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 807 Emergency Communication System

SPONSOR(S): Steube and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Keating	Collins
2) Finance & Tax Subcommittee	18 Y, 0 N, As CS	Flieger	Langston
3) Regulatory Affairs Committee			

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 monthly 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. However, beginning July 1, 2013, state law requires collection of the fee from the sale of prepaid wireless service if it determines that a fee should be collected from such sales. 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 loss of \$13.6 million in 2012.

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 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 \$0.50 cap, once annually.

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.

The Revenue Estimating Conference estimates the bill's impact on state government trust fund revenues, compared to current law, at -\$25.1 million in FY 2013-14 (-\$13.8 million recurring). Department of Revenue costs to administer the bill are expected to be approximately \$1.3 million annually, but they are expected to be offset by retention of a portion of the fees paid on wireless prepaid services.

The effective date of the bill is July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0807c.FTSC

DATE: 3/25/2013

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 \$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.² State and local governments are not subject to the fee.³

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 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.⁴ 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 emergency services IP (Internet protocol) networks and system replacements, though the development of an NG-911 system will likely involve a multi-year transition.⁵

E911 Fees for Prepaid Wireless Service

In 2006, the Board was required⁶ 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.⁷

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

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 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.

³ Section 365.172(8)(c), F.S.

⁴ Florida Department of Management Services, *Florida Enhanced 911*, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited March 5, 2013).

⁵ *2012 Annual Report of the E911 Board*.

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

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

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.⁸ The resulting report⁹ 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.¹⁰

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.¹¹ 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, 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.¹² The remaining 20 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.¹³

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

⁸ Chapter 2007-78, Laws of Florida.

⁹ 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 (last visited March 5, 2013).

¹⁰ Chapter 2010-50, Laws of Florida.

¹¹ Section 365.173(1), F.S.

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

¹³ Section 365.173(2)(b), F.S.

telephone number, or address, or name associated with any person accessing 911 or E911 service.¹⁴ 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.¹⁵

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

Effect of Proposed Changes

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 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.

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 prepaid wireless service:

“Prepaid wireless service” means 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 prepaid wireless E911 fee to the rate approved by the Board for other voice communications services. Initially, however, the bill sets the rate beginning January 1, 2014, at \$0.46. The bill provides that 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), 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.

¹⁴ 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.

¹⁵ Id.

¹⁶ Section 365.172(8)(b), F.S.

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.¹⁷ 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.

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 three 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.

Existing E911 Fee

The bill provides that the E911 fee, beginning January 1, 2014, shall be set at \$0.46 per month per each service identifier for voice communications services other than prepaid wireless service. The bill authorizes the Board to adjust this fee after January 1, 2015, but requires a two-thirds vote of the total number of Board members.

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

¹⁷ 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.

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.¹⁸

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.

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
- Emergency medical, fire, and law enforcement prearrival instruction software, charts, and training costs

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

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, provide as follows:

- A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing or failing to provide 911 or E911 service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 or E911 service.
- A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

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.

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., relating to the emergency communications number E911 system fund.

Section 3. Provides an effective date July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates the bill's impact on state government trust fund revenues (which are shared with local governments), compared to revenues that would be collected under current law upon expiration of the moratorium on collecting the E911 fee on prepaid wireless, at -\$25.1 million in FY 2013-14 (-\$13.8 million recurring).

2. Expenditures:

The Department of Revenue estimates that, to administer the changes made by the bill, there will be a non-recurring cost of \$303,925, and partial-year, recurring expenses of \$710,454 in FY 2013-14. The department estimates annual recurring costs thereafter at \$1,286,867. The department's 3 percent collection allowance allowed by the bill is estimated by staff to generate approximately \$0.5 million in FY 2013-14, and \$1.3 million annually thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

As of the date of this analysis, the Revenue Estimating Conference had not released an estimate of the bill's impact on local government revenues. Staff estimates there will not be one.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires retail sellers of prepaid wireless service to collect the prepaid wireless E911 fee on such 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 five percent of their E911 fee collections thereafter. Further, the bill includes additional provisions that appear to ease the 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. 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 eight percent.

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. 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).

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 bill provides that the prepaid wireless E911 fee shall be imposed *per retail transaction*. The bill also states that this fee may not exceed a specified rate *per month for each retail transaction*. Thus, it is not clear whether the fee must be collected on each retail transaction or on only one retail transaction per month for a given consumer.

The bill provides that state and local governments are not “subscribers” for purposes of the prepaid wireless E911 fee. The term “subscriber” is not defined in s. 365.172, F.S.

The bill provides that “all revenues” derived from the prepaid wireless E911 fee must be paid by the Department of Revenue (DOR) into the E911 Fund on or before the 15th of each month. The bill separately requires DOR to retain one percent of the funds derived from the fees it collects and transfer the remaining funds to the Board within 30 days. The bill could be clarified to reconcile these two provisions.

The bill provides that the funds transferred by DOR to the Board are to be used as provided in s. 365.172(5), F.S. The referenced subsection does not describe how the funds may be used.

The bill does not provide penalties for a seller’s failure to remit fees at the times and in the manner prescribed by the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Finance and Tax subcommittee adopted an amendment increasing the funds that DOR retains for administrative expenses from 1 percent to 3 percent.