

**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 Committee on Appropriations

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BILL: CS/SB 294

INTRODUCER: Appropriations Committee and Senator Hays

SUBJECT: Emergency Communication System

DATE: April 24, 2014

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Wiehle  | Caldwell       | CU        | <b>Favorable</b> |
| 2. | Cote    | Diez-Arguelles | AFT       | <b>Favorable</b> |
| 3. | Cote    | Kynoch         | AP        | <b>Fav/CS</b>    |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 294 lowers the E911 fee from 50 cents to 40 cents for all three categories of voice communication services: prepaid wireless service, wireless service, and nonwireless service. The bill creates a process for collection and distribution of the E911 fee on prepaid wireless services by sellers at point of sale. A seller of prepaid wireless operating in the state before the fee is imposed can retain 100 percent of the prepaid E911 fees collected for the first two months to offset the costs of setup. After this two-month period, a seller may retain five percent of the prepaid wireless E911 fees that are collected as a retailer collection allowance. The remainder of fees collected must be remitted to the Department of Revenue in the month following collection of the fee.

The bill expands the list of authorized county expenditures for which E911 funds may be used and modifies the distribution of funds to counties and wireless providers.

The bill appropriates the nonrecurring sum of \$250,000 from the General Revenue Fund to the Department of Revenue and \$190,713 from the Operating Trust Fund to the Department of Revenue for the 2014-2015 fiscal year.

On February 17, 2014, the Revenue Estimating Conference determined that the provisions in this bill will decrease revenues distributed to the Emergency Communications Number E911 System Fund by \$1.0 million in Fiscal Year 2014-15, with a \$3.2 million positive, recurring impact to the fund.

## II. Present Situation:

The Wireless Emergency Communications Act<sup>1</sup> 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 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. State and local governments are not subject to the fee.<sup>2</sup>

The E911 Board (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.

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

In 2006, the Board was required<sup>3</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>4</sup>

In its report, the Board also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees were 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, could be transferred 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 of the collection of E911 fees on the sale of prepaid wireless service.<sup>5</sup> The resulting report<sup>6</sup> concluded that it was feasible to collect E911

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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> Section 365.172(8)(c), F.S.

<sup>3</sup> See proviso language accompanying specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

<sup>4</sup> Florida Department of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

<sup>5</sup> Chapter 2007-78, Laws of Florida.

<sup>6</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

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 was required to start collecting the fee from those sales.<sup>7</sup> However, currently there is no mechanism for collection of the E911 fee on wireless prepaid services.

### **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>8</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, 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>9</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>10</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.

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[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>7</sup> Chapter 2010-50, Laws of Florida.

<sup>8</sup> Subsection 365.173(1), F.S.

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

<sup>10</sup> Section 365.173(2)(b), F.S.

### III. Effect of Proposed Changes:

The bill amends ss. 365.172 and 365.173, F.S., as follows:

- Provides a mechanism for collection of the E911 fee on prepaid wireless service by sellers at the point of sale, beginning January 1, 2015, and establishes a new category in the E911 Trust Fund for revenues derived from this fee.
- Lowers the E911 fee from \$0.50 to \$0.40 per month per service identifier for wireless and nonwireless voice communications services or \$0.40 on each retail transaction for prepaid wireless services. The lower fee amount for wireless and nonwireless services is effective January 1, 2015.
- Retains the existing E911 fee cap of \$0.50 and allows the Board, no sooner than June 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 funds may be used.
- Modifies the percentage of funds to be distributed to counties, such that counties will receive 76 percent of the moneys in the wireless category (up from 67 percent), 96 percent of the moneys in the nonwireless category (down from 97 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.
- Amends and creates definitions to conform to the substantive provisions of the bill.
- Removes obsolete provisions.

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

The bill creates subsection (9) of section 365.172, F.S., to provide a mechanism for the collection of the E911 fee on each retail purchase of prepaid wireless service from a seller. The prepaid wireless E911 fee is effective January 1, 2015. The fee is \$0.40 per retail transaction. A seller of prepaid wireless service operating in this state before the fee is imposed can retain 100 percent of the prepaid E911 fees collected for the first two months to offset costs of setup. After this two-month period, a seller may retain five percent of the prepaid wireless E911 fees that are collected as a retailer collection allowance. The remainder of fees collected must be remitted to the Department of Revenue in the month following collection of the fee.

The E911 fee on prepaid wireless must be collected by the seller of the prepaid wireless service on each retail transaction occurring in Florida. The amount of the prepaid fee must be separately stated or disclosed to the consumer. If a prepaid wireless device is sold for a single, non-itemized price with a prepaid wireless service of 10 minutes or less or \$5 or less, the seller may elect not to apply the wireless E911 fee to the transaction.

In order to determine the county where a retail transaction occurs, the bill provides the following three options:

- When the transaction is done by a consumer in person at a seller's business location in this state, the transaction is deemed to have occurred in the county of the business location.

- If the transaction does not take place at the seller's business location, the transaction is treated as taking place in the county of the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number.
- If the specific Florida county location cannot be determined, the transaction is to be treated as nonspecific.

Each seller is required to file a return and remit the prepaid wireless E911 fees collected in the previous month to DOR on or before the 20th day of the month.<sup>11</sup> The bill allows a seller to remit the fees through an electronic transfer and to file its return through an electronic data interchange. If DOR has authorized the seller to file its sales and use tax return on a quarterly, semiannual, or annual basis, the seller may remit the E911 fees and file its return on or before the 20th day of the month following that reporting period. A seller that collects less than \$50 per month of the E911 fees is permitted to file quarterly returns on or before the 20th day of the month following each quarterly period. If the seller is required to file a return for two or more business locations, the bill allows the seller to file a consolidated return, provided that the seller reports the E911 fees it has collected by county. No return is required if there are no fees to remit.

The bill requires every seller of prepaid wireless service in Florida to register with DOR for each place of business, as required by existing laws regarding registration as a sales and use tax dealer. A separate application is required for each place of business. The Department of Revenue must administer, collect and enforce the E911 fee on prepaid wireless in the same manner as it administers, collects and enforces sales and use tax.

The bill requires DOR to deposit the funds remitted into the Audit and Warrant Clearing Trust Fund and may retain up to 3.2 percent of the funds remitted to reimburse its direct costs of administering the collection and remittance of prepaid wireless fees. DOR must transfer all remaining funds remitted to the Emergency Communications Number E911 System Fund on a monthly basis.

The bill also provides appropriations to DOR for the purposes of administering the collection and remittance of the E911 fees from prepaid wireless service.

### **Distribution of E911 Fees**

The bill establishes a new category in the E911 Fund for revenues derived from application of the E911 fee to prepaid wireless service. Of the moneys transferred into the E911 Fund and placed into this new category, the bill specifies the following distribution:

- 61 percent will be distributed each month to counties based on the total amount of fees reported and paid in each county;
- 35 percent will be retained by the Board to provide E911 grants to counties;
- Three percent will be used to make monthly distributions to rural counties; and

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<sup>11</sup> If the 20th day of the month is a Saturday, Sunday, or legal holiday, the deadline is extended until the next business day.

- One percent will be retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund.<sup>12</sup>

The bill increases distributions from the wireless category 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, from two percent to three percent, the percentage of funds available from both the wireless and nonwireless categories to be used to make monthly distributions to rural counties.

The bill clarifies that any county that receives funds from the E911 Fund may not reduce, withhold, or allocate 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 circuits; GIS systems and software equipment and information displays; salary and expenses for a county to employ technical system maintenance personnel; and emergency medical, fire, and law enforcement prearrival instruction software to the list of authorized expenditures.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>12</sup> The Board currently retains one percent of all moneys in the E911 Fund for this purpose.

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

On February 17, 2014, the Revenue Estimating Conference determined that CS/SB 294 will decrease revenues distributed to the Emergency Communications Number E911 System Fund by \$1.0 million in Fiscal Year 2014-15, with a \$3.2 million positive, recurring impact to the fund.

**B. Private Sector Impact:**

The bill requires retail sellers of prepaid wireless service to collect the E911 fee and remit the proceeds to DOR. This requirement creates 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 and allows sellers to retain five percent of their E911 fee collections thereafter.

**C. Government Sector Impact:**

CS/SB 294 appropriates the nonrecurring sum of \$250,000 from the General Revenue Fund and a recurring sum of \$190,713 from the Operating Trust Fund to cover the cost of administering this act for Fiscal Year 2014-2015. The bill also authorizes DOR to retain 3.2 percent of the funds remitted under the bill to cover the annual costs of implementing the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 365.172, 365.173, and 401.465

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Appropriations on April 22, 2014:**

The CS:

- Clarifies that the E911 fee on prepaid wireless service cannot be assessed before January 1, 2015.
- Lowers the E911 fee from 50 cents to 40 cents per month for wireless and nonwireless communication services and establishes the E911 fee of 40 cents per

retail transaction for prepaid wireless services. The 40 cent fee is effective January 1, 2015.

- Provides that no sooner than June 1, 2015, the E911 board may adjust the rate of the fee by a two-thirds vote of the board members, not to exceed 50 cents.
- Provides that the Department of Revenue must administer, collect and enforce the E911 fee on prepaid wireless in the same manner as it administers, collects and enforces sales and use tax.
- Provides a nonrecurring appropriation of \$250,000 from the General Revenue Fund, and a recurring appropriation of \$190,713 from the Operating Trust Fund to the Department of Revenue for Fiscal Year 2014-2015.
- Provides that the bill is effective July 1, 2014.

**B. Amendments:**

None.