

**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 Communications, Energy, and Public Utilities

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BILL: SB 294

INTRODUCER: Senator Hays

SUBJECT: Emergency Communication System

DATE: December 19, 2013      REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 294 deletes a now-obsolete moratorium on collection of the E911 fee from the sale of prepaid wireless service prior to July 1, 2013, and creates a process for collection and distribution of the fee on those sales. In a phased implementation, the E911 fee is set at 46 cents for all three categories of voice communications services, prepaid wireless service, wireless service, and nonwireless service. The collection process requires the retailer to collect the E911 fee on prepaid wireless services from the customers purchasing these services. Existing sellers of prepaid wireless service can retain the entire amount of the collected fee for the first two months to allow them to comply with the bill's requirements. After two months, a seller may retain 5 percent of collected fees as a retailer collection allowance. Sellers must remit the remaining funds to Department of Revenue (DOR), which is authorized to 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 E911 Board's Emergency Communications Number E911 System Fund (Fund) for distribution. The bill also requires that the Fund be segregated into three categories, the wireless category, the nonwireless category, and the prepaid wireless category. It revises how the funds in the first two categories are to be distributed and creates distribution requirements for the third, prepaid, category.

The bill appropriates the nonrecurring sum of \$500,000 from the General Revenue Fund to the Department of Revenue for the 2014-2015 fiscal year for the purposes of administering this act.

**II. Present Situation:**

**Emergency Communications E911 System Operations**

In creating the emergency communications E911 system, the Legislature expressed the intent to:

- establish and implement a comprehensive statewide emergency telecommunications number system that will provide users of voice communications services<sup>1</sup> within the state rapid direct access to public safety agencies<sup>2</sup> by accessing the telephone number “911”;
- provide funds to counties to pay certain costs associated with their 911 or E911 systems, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services;
- levy a reasonable fee on users of voice communications services to accomplish these purposes;
- provide for an E911 board to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all voice communications services providers;<sup>3</sup> and
- ensure that the fee established is used exclusively for recovery by wireless providers<sup>4</sup> and by counties for costs associated with developing and maintaining E911 systems and networks in a manner that is competitively and technologically neutral as to all voice communications services providers.<sup>5</sup>

It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing E911 service.<sup>6</sup>

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<sup>1</sup> “Voice communications services” means two-way voice service, through the use of any technology, which actually provides access to E911 services, and includes communications services, as defined in s. 202.11, which actually provide access to E911 services and which are required to be included in the provision of E911 services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. For the purposes of this section, the term “voice-over-Internet-protocol service” or “VoIP service” means interconnected VoIP services having the following characteristics:

- The service enables real-time, two-way voice communications;
- The service requires a broadband connection from the user’s locations;
- The service requires IP-compatible customer premises equipment; and
- The service offering allows users generally to receive calls that originate on the public switched telephone network and to terminate calls on the public switched telephone network.

Section 365.172(3)(bb), F.S.

<sup>2</sup> “Public safety agency” means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services. Section 365.172(3)(x), F.S.

<sup>3</sup> “Voice communications services provider” or “provider” means any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the fee by its resale supplier. Section 365.172(3)(cc), F.S.

<sup>4</sup> “Wireless provider” means a person who provides wireless service and: Is subject to the requirements of the order; or Elects to provide wireless 911 service or E911 service in this state. Section 365.172(3)(gg), F.S. “Order” means:

- The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:
  - Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.
  - Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.
  - Order No. FCC DA 98-2323 adopted on November 13, 1998.
  - Order No. FCC 98-345 adopted December 31, 1998.
- Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

<sup>5</sup> Section 365.172(2), F.S.

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

The E911 program is administered by the E911 Board (board), with oversight by the Technology Program within the Department of Management Services (office).<sup>7</sup> The administrative duties of the board are:

- receiving revenues derived from the fee;
- distributing portions of the revenues to wireless providers, counties, and the office;
- accounting for receipts, distributions, and income derived by the funds maintained in the fund; and
- providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state.<sup>8</sup>

The board sets the rate of the fee, which cannot exceed 50 cents per month per each service identifier,<sup>9</sup> and which must apply uniformly<sup>10</sup> and be imposed throughout the state.<sup>11</sup> The board may adjust the amount of the fee, the allocation percentages, or both, if necessary to ensure full cost recovery or prevent overrecovery of costs incurred in the provision of E911 service.<sup>12</sup> Any new fee amount or new allocation percentages cannot be adjusted for 1 year.<sup>13</sup> No less than 90 days before the effective date of any adjustment to the fee, the board must provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee. In setting the fee, adjusting the fee, or adjusting allocation percentages, the board must consider the following factors:

- the revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;
- the appropriate level of funding needed to fund the rural grant program; and
- the need to fund statewide, regional, and county grants.<sup>14</sup>

The fee is collected by each voice communications services provider as part of its monthly billing process as follows.<sup>15</sup> Each voice communications service provider other than a wireless provider bills the fee to a subscriber based on the number of access lines having access to the E911 system, on a service-identifier basis,<sup>16</sup> up to a maximum of 25 access lines per account bill rendered. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. Before July 1, 2013, the fee cannot be assessed on or collected from a

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<sup>7</sup> Section 365.172(4), (5)(a), F.S.

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

<sup>9</sup> “Service identifier” means the service number, access line, or other unique subscriber identifier assigned to a subscriber and established by the Federal Communications Commission for purposes of routing calls whereby the subscriber has access to the E911 system. Section 365.172(2), F.S.

<sup>10</sup> This requirement of uniformity does not apply to counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county’s board of county commissioners to the board. Section 365.172(8)(f), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 365.172(8)(i), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 365.172(8)(h), F.S.

<sup>15</sup> The fee is not assessed on any pay telephone in the state. Section 365.172, (8)(a), F.S.

<sup>16</sup> See footnote 9.

provider with respect to an end user's service if that end user's service is a prepaid calling arrangement that is subject to sales and use tax on prepaid calling arrangements pursuant to s. 212.05(1)(e), F.S. Additionally, an E911 fee cannot be collected from the sale of prepaid wireless service before July 1, 2013. For purposes of this section, the term:

- “prepaid wireless service” means the right to access telecommunications services, which must be paid for in advance and 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; and
- “prepaid wireless service providers” includes those persons who sell prepaid wireless service regardless of its form, as a retailer or reseller.

Any voice communications services providers not addressed under the above provisions must bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for E911 services. A provider is required to remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received is first applied to the payment due the provider for providing voice communications service.<sup>17</sup> A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed.<sup>18</sup>

Providers must deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county.<sup>19</sup> Each wireless provider and other applicable provider must report the number of service identifiers for subscribers whose place of primary use is in each county.<sup>20</sup> All provider subscriber information provided to the board is confidential and exempt from public records law, as discussed below.<sup>21</sup> If a provider chooses to remit any fee amounts to the board before they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.<sup>22</sup>

Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee.<sup>23</sup> The remainder must be delivered to the board and deposited by the board into the fund.<sup>24</sup> The board shall distribute the remainder as set out below.<sup>25</sup>

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<sup>17</sup> Section 365.172, (8)(a), F.S.

<sup>18</sup> Section 365.172, (8)(b), F.S.

<sup>19</sup> Section 365.172, (8)(e), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Section 365.172, (8)(d), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

The board must pay all E911 fee revenues which it receives into the State Treasury on or before the 15th day of each month.<sup>26</sup> Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund,<sup>27</sup> a fund created in the Technology Program, or other office as designated by the Secretary of Management Services, and, for accounting purposes, must be segregated into two separate categories: the wireless category and the nonwireless category.<sup>28</sup>

All moneys in the fund are to be distributed by the office and used only as follows. Sixty-seven percent of the moneys deposited in the wireless category is distributed each month to counties, based on the total number of service identifiers in each county, and must be used exclusively for payment of authorized expenditures, as discussed below, and costs to comply with the requirements for E911 service. Ninety-seven percent of the moneys deposited in the nonwireless category is distributed each month to counties based on the total number of service identifiers in each county and is used exclusively for payment of authorized expenditures.<sup>29</sup>

Any county that receives these funds must establish a fund to be used exclusively for the receipt and expenditure of these fee revenues.<sup>30</sup> All fee revenues placed in the fund and any interest accrued can be used only for the costs specified above.<sup>31</sup> The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget.<sup>32</sup> A county may carry forward up to 30 percent of the total funds disbursed to the county by the board during a calendar year for expenditures for capital outlay, capital improvements, or equipment replacement, if such expenditures are made for the specified purposes; however, the 30-percent limitation does not apply to funds disbursed to a county under a schedule established by the board for implementation of E911 services, and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board.<sup>33</sup> In order to prevent an excess recovery of costs incurred in providing E911 service, a county that receives funds greater than the permissible E911 costs, including the 30-percent carryforward allowance, must return the excess funds to the E911 board to be re-allocated.<sup>34</sup>

Thirty percent of the moneys in the wireless category are distributed to wireless providers in response to sworn invoices submitted to the board by wireless providers to reimburse such wireless providers for the actual costs incurred to provide 911 or E911 service.<sup>35</sup> Such costs include costs and expenses incurred by wireless providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service.<sup>36</sup> Each wireless provider must submit to the board, by August 1 of each

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<sup>26</sup> Section 365.173(1), F.S.

<sup>27</sup> All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61, F.S. These funds are not subject to General Revenue Fund the service charges imposed in s. 215.20, F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 365.173(2) (a) and (b), F.S.

<sup>30</sup> Section 365.173(2) (c), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Section 365.173(2) (d), F.S.

<sup>36</sup> *Id.*

year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement during the ensuing state fiscal year.<sup>37</sup> In order to be eligible for recovery during any ensuing state fiscal year, a wireless provider must submit all sworn invoices for allowable purchases made within the previous calendar year no later than March 31 of the fiscal year.<sup>38</sup> Distributions of moneys in the fund by the board to wireless providers must be fair and nondiscriminatory.<sup>39</sup> If the total amount of moneys requested by wireless providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, wireless providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made.<sup>40</sup>

One percent of the moneys in the fund is retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities.<sup>41</sup> Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year must be redistributed as determined by the board.<sup>42</sup>

Two percent of the moneys in the fund is used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the 911 or E911 systems operated by rural counties and for the provision of grants by the office to rural counties for upgrading and replacing E911 systems.<sup>43</sup>

Counties and providers can expend fund revenue received from the board for all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services.<sup>44</sup> For these purposes, E911 service includes the functions of database management, call taking, dispatching, location verification, and call transfer.<sup>45</sup> The moneys may not be used to pay for any item not listed in this subsection, including, but not limited to, any capital or operational costs for emergency responses which occur after the call transfer to the responding public safety entity and the costs for constructing, leasing, maintaining, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the Public Safety Answering Point and E911 equipment rooms.<sup>46</sup>

### **E911 Board**

The board consists of 11 members, one of whom must be the system director (the secretary of the Department of Management Services), or his or her designee, who serves as the chair of the

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Section 365.173(2) (f), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Section 365.173(2) (g), F.S.

<sup>44</sup> Section 365.172(9)(b), F.S.

<sup>45</sup> Section 365.172(9)(a), F.S.

<sup>46</sup> Section 365.172(9)(c), F.S.

board.<sup>47</sup> The remaining 10 members of the board are appointed by the Governor and must be composed of:

- 5 county 911 coordinators, consisting of a representative from a rural county, a representative from a medium county, a representative from a large county, and 2 at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators;
- 3 local exchange carrier member representatives, one of whom must be a representative of the local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and
- 2 member representatives from the wireless telecommunications industry, with consideration given to wireless providers that are not affiliated with local exchange carriers.<sup>48</sup>

Not more than one member may be appointed to represent any single provider on the board.<sup>49</sup>

The system director must be a permanent member of the board. Each of the remaining eight members of the board is appointed to a 4-year term and may not be appointed to more than two successive terms.<sup>50</sup>

The board has the following authority.<sup>51</sup>

- Administer the E911 fee.
- Implement, maintain, and oversee the fund.
- Review and oversee the disbursement of the revenues deposited into the fund.
  - The board may establish a schedule for implementing wireless E911 service by service area, and prioritize disbursements of revenues from the fund to providers and rural counties pursuant to the schedule, in order to implement E911 services in the most efficient and cost-effective manner.
  - Revenues in the fund which have not been disbursed because sworn invoices have not been submitted to the board may be used by the board as needed to provide grants to counties for the purpose of upgrading E911 systems.
  - The board must reimburse all authorized costs of a wireless provider before taking any action to transfer additional funds.
- After taking these actions, the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee, or both, and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds equitably to all counties using a timeframe and distribution methodology established by the board.
- Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements for the purposes of:

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<sup>47</sup> Section 365.172(5)(b), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Section 365.172(5)(c), F.S.

<sup>51</sup> Section 365.172(6)(a), F.S.

- Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.
- Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.
- Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.
- Implementing changes to the allocation percentages or adjusting the fee.
- Meet monthly in the most efficient and cost-effective manner, including telephonically when practical, for the business to be conducted, to review and approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties.
- Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.
- Make and enter into contracts and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.
- Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.
- Adopt, use, and alter a common corporate seal.
- Elect or appoint the officers and agents that are required by the affairs of the board.
- The board may adopt rules to implement these sections.
- Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in the state.
- Provide coordination and support for educational opportunities related to E911 issues for the E911 community in this state.
- Act as an advocate for issues related to E911 system functions, features, and operations to improve the delivery of E911 services to the residents of and visitors to this state.
- Coordinate input from this state at national forums and associations, to ensure that policies related to E911 systems and services are consistent with the policies of the E911 community in this state.
- Work cooperatively with the system director to enhance the state of E911 services in this state and to provide unified leadership for all E911 issues through planning and coordination.
- Do all acts and things necessary or convenient to carry out the powers granted in this section in a manner that is competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.
- Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

Board members serve without compensation, but are entitled to per diem and travel expenses.<sup>52</sup>

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<sup>52</sup> Section 365.172(6)(b), F.S.

By February 28 of each year, the board must prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding calendar year:

- the annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order, and the amount of moneys on deposit in the fund;
- whether the amount of the fee and the allocation percentages have been or should be adjusted and the reasons for making or not making a recommended adjustment to the fee;
- any other issues related to providing E911 services; and
- the status of E911 services in this state.<sup>53</sup>

The board must retain an independent accounting firm, through a request for proposals, to perform all material administrative and accounting tasks and functions required for administering the fee.<sup>54</sup>

### **Public records law exemptions**

All proprietary confidential business information submitted by a provider to the board or the office, including the name and billing or service addresses of service subscribers, and trade secrets, is confidential and exempt from public records law requirements.<sup>55</sup> For these purposes, the term “proprietary confidential business information” means customer lists, customer numbers, individual or aggregate customer data by location, usage and capacity data, network facilities used to serve subscribers, technology descriptions, technical information, or trade secrets, including trade secrets, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider’s employees, directors, officers, or agents.<sup>56</sup> Statistical abstracts of information collected by the board or the office may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.<sup>57</sup>

Additionally, any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency 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 emergency communications E911 system is confidential and exempt from the provisions of public records law requirements, except that such record or information may be disclosed to a public safety agency.<sup>58</sup> The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person

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<sup>53</sup> Section 365.172(6)(c), F.S.

<sup>54</sup> Section 365.172(7), F.S.

<sup>55</sup> Section 365.174, F.S.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Section 365.171(12), F.S.

requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.<sup>59</sup>

In 2003, section 365.172, F.S., was first amended to include prepaid wireless telephone service.<sup>60</sup> In 2007, the Legislature suspended collection of the E911 fee on prepaid wireless service and required the board to conduct a study to determine whether it is feasible to collect E911 fees from the sale of prepaid wireless service. If the board determined that a fee should not be collected from the sale of prepaid wireless service, it was to report its findings and recommendation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2008. If the board determined that a fee should be collected from the sale of prepaid wireless service, it was to collect the fee beginning July 1, 2009.<sup>61</sup> In its report, the board concluded that it is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.<sup>62</sup> In 2010, the Legislature created a moratorium stating “No E911 fee shall be collected from the sale of prepaid wireless service prior to July 1, 2013.”<sup>63</sup>

### III. Effect of Proposed Changes:

As the moratorium against collecting the E911 fee from the sale of prepaid wireless service expired on July 1, 2013, the fee is now to be applied to those sales. However, there is no mechanism for collection of the fee as applied to sales of prepaid wireless services. **Section 1** of the bill amends s. 365.172, F.S., to delete the now-obsolete moratorium and to create a new subsection (9) to provide a mechanism for collection of the E911 fee on prepaid wireless services,<sup>64</sup> including funding sources for those entities collecting and processing the fee.

The collection mechanism is implemented in stages, with the timing for implementation measured from the effective date of the bill. The bill becomes effective upon becoming a law, which means that the specific effective date, and the specific dates for implementing stages of the collection process, cannot be known currently. This absence of specific dates will be cured by the directive in section 4 of the bill that the Division of Law Revision and Information is to replace the language currently in the bill for measuring implementation times with actual dates once these dates become known; however, for now, the language is cumbersome and difficult. The language and its effect is discussed below.

The bill provides the following on timing of implementation of the new collection mechanism.

<sup>59</sup> *Id.*

<sup>60</sup> Section 1, chapter 2003-182, Laws of Florida.

<sup>61</sup> Section 2, chapter 2007-78, Laws of Florida.

<sup>62</sup> Florida Department of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, p. 106 (December 15, 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 January 2014).

<sup>63</sup> Section 1, chapter 2010-50, Laws of Florida.

<sup>64</sup> 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 a predetermined basis in exchange for the right to access wireless service.

1. Subparagraph (8)(a)3. states “The fee shall not be assessed on or collected from a provider with respect to an end user’s service if that end user’s service is a prepaid wireless service before the fee under subsection (9) takes effect.”
2. Paragraph (9)(a) states “Effective on the first day of the month following 120 days after this act takes effect, a prepaid wireless E911 fee is imposed per retail transaction at the rate of 46 cents.”
3. Paragraph (9)(b) states “Effective on the first day of the month following 180 days after this act takes effect, the prepaid wireless E911 fee is imposed per retail transaction<sup>65</sup> at the rate established in paragraphs (8)(f)-(h) and shall be remitted in accordance with paragraph (g).”
4. Paragraph (8)(f) states “Effective on the first day of the month following 180 days after this act takes effect, the fee shall be 46 cents per month for each service identifier.”
5. Paragraph (9)(g) states “Beginning the month after the fee is imposed under paragraph (b), each seller shall file a return and remit the prepaid wireless E911 fees collected in the previous month to the Department of Revenue ...”
6. Paragraph (8)(g) states “No sooner than 1 year after the fee is imposed under paragraph (9)(a), the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h). Any adjustment in the rate must be approved by a two-thirds vote of the total number of E911 board members.”

The effect of these provisions is as follows.

1. The bill passes, becomes law, and generally becomes effective, with the exceptions of the differing expressly-stated effective dates.
2. During the first 120 days after the bill becomes law, the E911 fee is not to be assessed on or collected from a provider of prepaid wireless services (#1 above).
3. An E911 fee of 46 cents per retail transaction is applied to sales of prepaid wireless services beginning on the first day of the month following expiration of the 120-day period (#2 above). Meanwhile, the E911 fee for post-paid wireless and nonwireless is still the current 50 cents as established by the E911 board.
4. Two months later, application of the E911 fee is standardized with a fee amount of 46 cents for all three categories (#3 and 4 above).
5. The following month, each seller of prepaid wireless services must file a return and remit the fee collected to the Department of Revenue (DOR) (#5 above).
6. One year after the E911 fee is first applied to prepaid wireless under the bill, pursuant to paragraph (9)(a), the board may adjust the rate of the E911 fee, to be applied to all three categories of communications services (#6 above).

During the two-month period between initial application of the E911 fee to prepaid wireless services and the imposition of the reporting and remittance requirements, a seller<sup>66</sup> of prepaid wireless service may retain 100 percent of the collected E911 fee to offset the cost of setup. After this two-month period, a seller may retain 5 percent of the prepaid wireless E911 fees that are collected as a retailer collection allowance.

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<sup>65</sup> The bill defines the term “retail transaction” to mean the purchase by a consumer from a seller of prepaid wireless service that may be applied to a single service identifier for use by the consumer. If a consumer makes a purchase of multiple prepaid wireless services in a single transaction, each individual prepaid wireless service shall be considered a separate retail transaction for purposes of calculating the prepaid wireless E911 fee.

<sup>66</sup> The bill defines the term “seller” to mean a person who makes retail sales of prepaid wireless services to a consumer.

The fee must be collected by the seller from the consumer<sup>67</sup> with respect to each retail transaction occurring in this state. The amount of the prepaid fee must be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or be otherwise disclosed to the consumer. If 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 seller may elect not to apply the wireless E911 fee to the transaction.

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. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday. A seller may remit the prepaid wireless E911 fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

When a seller is authorized by DOR to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless E911 fees on or before the 20th day of the month following the authorized reporting period for sales and use tax. A seller collecting less than \$50 per month of prepaid wireless E911 fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless E911 fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

A return is not required for a reporting period when no prepaid wireless E911 fee is to be remitted for that period.

A seller who operates two or more business locations for which returns are required to be filed may file a consolidated return reporting and remitting the prepaid wireless E911 fee for all business locations. Such sellers must report the prepaid wireless E911 fees collected in each county on a reporting schedule filed with the fee return.

A seller of prepaid wireless services in this state must register with DOR each place of business that is required to be registered as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by DOR to a seller for sales and use tax purposes is sufficient for purposes of the registration requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless service E911 fee.

A seller must provide the following information on each prepaid wireless E911 fee return filed with DOR:

- the seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (d);
- the reporting period;
- the number of prepaid wireless services sold during the reporting period;

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<sup>67</sup> The bill defines the term "consumer" to mean a person who purchases prepaid wireless service in a retail sale.

- the amount of prepaid wireless E911 fees collected and the amount of any adjustments to the fees collected;
- the amount of any retailer collection allowance deducted from the amount of prepaid wireless E911 fees collected; and
- the amount to be remitted to the Department of Revenue.

To determine the county where a retail transaction occurred, for purposes of making distributions of the fees, paragraph (d) provides that:

- 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 address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number; and
- if the specific Florida county location cannot be determined, the transaction is to be treated as nonspecific.

DOR serves as an agent of the E911 Board for collection of the prepaid wireless E911 fee, and the board retains the authority to administer the fee. DOR must 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 monthly for use as provided in s. 365.173, F.S..

If the board adjusts the E911 fee, under paragraph (9)(b) and paragraphs (8)(f)-(h), it must notify DOR of the adjusted fee amount and effective date of the adjustment at least 120 days before the effective date of the adjustment. DOR must provide written notice of the adjusted fee amount and its effective date to each seller from which DOR is then receiving the fee at least 90 days before the effective date of the adjustment.

The amount of the prepaid fee that is collected by a seller may not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency. The bill similarly amends paragraph (8)(j) to provide that the amount of the E911 fee collected by a provider may not be used 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.

Section 1 also provides that when a county has filed a state 911 grant application request and the board is determining the funding to be provided, the board must take into account audit information on the amount of carryforward funds retained by the county. E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.<sup>68</sup>

Section 1 also deletes additional obsolete language and makes conforming changes to s. 365.172, F.S.

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<sup>68</sup> New subparagraph 365.172(6)(a)3.c., F.S.

**Section 2** amends s. 365.173, F.S., which provides for the Emergency Communications Number 911 System Fund (Fund). It requires DOR to transfer the revenues from the fee levied on prepaid wireless service, less the costs of administering collection of the fee (up to 3.2 percent of the funds remitted), to the Fund on or before the 25th day of each month following the month of receipt.

The Fund must be segregated into three categories, the wireless category, the nonwireless category, and the prepaid wireless category. The bill revises how the funds in the first two categories are to be distributed and creates distribution requirements for the third category. The changes are indicated in the table below.

	Wireless	Nonwireless	Prepaid
Distributed to counties	Increases by 9%, from the current 67% to 76%	Decreases by 1%, from the current 97% to 96%	61%
Distributed to wireless providers	Decreases by 10%, from the current 30% to 20%		
Retained by board	Current 1% maintained	Current 1% maintained	1%
Distributed to rural counties	Increases by 1%, from the current 2% to 3%	Increases by 1%, from the current 2% to 3%	3%
Retained by board to provide grants			35%

As to the thirty-five percent retained by the board for state to provide state E911 grants, these grants are to be awarded in accordance with the following order of priority:

- for all large, medium, and rural counties to upgrade or replace E911 systems;
- for all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems; and
- for all large, medium, and rural counties to develop and maintain next-generation 911 services and equipment.

**Section 3** amends s. 401.465, F.S., on 911 public safety telecommunicator certification to conform a cross reference.

**Section 4** directs the Division of Law Revision and Information to replace the phrase “on the first day of the month following 120 days after this act takes effect” or the phrase “on the first day of the month following 180 days after this act takes effect” wherever it occurs in this act with the respective date.

**Section 5** appropriates the nonrecurring sum of \$500,000 from the General Revenue Fund to the Department of Revenue for the 2014-2015 fiscal year for the purposes of administering this act.

**Section 6** provides that except as otherwise expressly provided, the bill takes effect upon becoming a law. The differing express effective dates are as follows.

- Effective on the first day of the month following 120 days after this act takes effect, a prepaid wireless fee of 46 cents is imposed.
- Effective on the first day of the month following 180 days after this act takes effect, the prepaid wireless fee is imposed at the E911 rate established in paragraphs (8)(f)-(h) and must be remitted to DOR.
- Effective on the first day of the month following 180 days after this act takes effect, the general E911 fee (established in paragraph (8)(f)) is set at 46 cents per month for each service identifier.
- Effective on the date that the prepaid wireless E911 fee is imposed and remitted to the state under section 365.172(9)(b), Florida Statutes, as amended by this act (the 180 days language above), the amendments to section 365.173, Florida Statutes, the section on the Emergency Communications Number E911 System Fund, take effect.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires retail sellers of prepaid wireless service to collect the E911 fee on such transactions (other than those involving service of 10 minutes or less or \$5 or less) 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.

Consumers of prepaid wireless service with access to the E911 system will pay an E911 fee on purchases of those services which initially will be \$0.46 per retail transaction. The E911 fee currently paid by consumers of other voice communications services will be reduced from \$0.50 to \$0.46 per month.

**C. Government Sector Impact:**

The Department of Revenue (DOR) has estimated its costs to implement the bill as shown below:

<b>Dept. of Revenue</b>	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>FY 15-16</b>	<b>FY 16-17</b>
<b>Recurring</b>				
Contracted Services	\$0	\$192,302	\$461,525	\$461,525
<b>Non-Recurring</b>				
Expense	\$0	\$115,686	\$0	\$0
Contracted Services	\$0	\$132,725	\$0	\$0
<b>Total non-recurring</b>	\$0	\$248,411	\$0	\$0
<b>TOTAL</b>	<b>\$0</b>	<b>\$440,713</b>	<b>\$461,525</b>	<b>\$461,525</b>

The bill appropriates the nonrecurring sum of \$500,000 to DOR for the 2014-2015 fiscal year to cover its costs of administering this act. The bill authorizes DOR to retain 3.2 percent of the funds remitted to it under the bill as collection allowance per year to cover the annual costs of implementing the bill provisions.

Sales of prepaid wireless services have been subject to the E911 fee since the statutory moratorium expired on July 1, 2013, however, there is no mechanism for collection of the fee. The bill’s collection mechanism should result in an increase in the amount of collected E911 fees which are attributable to these sales, but the amount of the increase is uncertain. Also, the bill reduces the current E911 fee on wireless and nonwireless services of \$0.50 per month per service identifier to \$0.46, which will result in an uncertain decrease in E911 fee collections. Given these uncertainties, the total effect on E911 revenues is also uncertain.

Counties will receive nine percent more of the wireless category funding while wireless providers will receive ten percent less. Counties will receive one percent less from the nonwireless category funding. Rural counties will receive one percent more from both categories. Counties and rural counties will receive new funding from the prepaid wireless category, and grant money will be available to counties from the prepaid category.

**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 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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