

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 180

SPONSOR: Senate Committee on Comprehensive Planning, Local and Military Affairs

SUBJECT: Public Records Exemption

DATE: January 5, 1999

REVISED: 1/06/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This proposed committee bill exempts specific proprietary information submitted to the board by wireless communications providers from the public access provisions of the Public Records Law and s. 24(a), Article I, of the State Constitution.

This bill creates the following section of the Florida Statutes: s. 365.174.

II. Present Situation:

In October 1998, the Senate Committee on Comprehensive Planning, Local and Military Affairs completed a review of the Federal Communications Commission's (FCC) required improvements to the states' 911 emergency telephone systems. Committee staff made the following findings:

- The increase in wireless communication is significantly impacting 911 services;
- Wireline calls in many rural counties and wireless calls throughout the state do not have access to Emergency 911 (E911) services, which allows for automatic number and location identification services;
- The FCC may require 911 service providers and wireless communication companies to make policy changes and resulting technology upgrades to provide E911 services for all wireless phone calls made to 911 systems;
- There are potentially significant capital and operating costs to implement the FCC's requirements;
- Current revenues for financing 911 services are inadequate to fund the implementation of these new requirements;
- The wireless industry, representatives for the county 911 coordinators and county commissions, and state officials with oversight responsibilities for 911 systems have agreed upon a statutory solution; and
- 28 other states have imposed a 911 fee on wireless subscribers to fund the FCC required upgrades.

In response, committee staff recommended that the Legislature enact the Florida Wireless Emergency Communications Act, which:

- Establishes a 50 cent monthly fee on each wireless service subscriber in this state; fee proceeds will be used to fund the capital and operating costs incurred by wireless providers and county 911 systems in developing and maintaining an E911 system;
- Requires the Department of Management Services (DMS) to oversee the administration of the fee;
- Creates the Florida Wireless 911 Advisory Board to assist DMS in administering the fee and oversee the proposed Wireless Emergency Telephone System Trust Fund; and
- Requires the board to submit a report to the Governor and Legislature that outlines trust fund expenditures and recommends, if necessary, adjustments to the levy or distribution of the fee.

Florida Public Records Law

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. The word “agency” is defined in the Public Records Law to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

In November 1992, the public affirmed its approval of Florida’s tradition of “government in the sunshine” by enacting a constitutional amendment to guarantee the practice. The amendment had the effect of including in the Florida Constitution provisions similar to those of the Public Meetings Law and the Public Records Law and of applying those provisions to all three branches of government.

The State Constitution, in s. 24(c), Art. I, authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. The constitution requires any law that creates an exemption to state with specificity the public necessity that justifies the exemption; a law creating an exemption may be no broader than necessary to comport with the public necessity. A law that creates a public records or public meetings exemption is required by the constitution to relate only to exemptions and their enforcement.

The Open Government Sunset Review Act of 1995, ss. 119.15 and 286.0111, F.S., provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after creation of, or substantial modification to, the exemption. The repeal cycle begins in 2001.

The Open Government Sunset Review Act of 1995 provides criteria for the Legislature to consider prior to creating or reenacting an exemption. By law, an exemption may be created only if it meets at least one of the following criteria:

- 1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace. (See s. 119.15(4)(b), F.S.)

Section 119.07, F.S., provides for the inspection, examination, and duplication of public records. The same law also provides numerous exemptions for specified records and types of information.

III. Effect of Proposed Changes:

This proposed committee bill creates s. 365.174, F.S., to exempt from the public records law information that discloses the identity of persons who request emergency services or report an emergency through use of wireless emergency 911 services, the names and billing addresses of wireless service subscribers, and trade secrets of wireless emergency 911 service providers from the public access provisions of the Public Records Law and s. 24(a), Article I, of the State Constitution.

This exemption is repealed on October 1, 2004, unless reviewed and reenacted by the Legislature before that date.

The Legislature determines that this exemption promotes the unrestrained use of emergency 911 services, is necessary to foster competition in the wireless telecommunications services industry, and protects the competitive interests of the providers.

The bill would take effect on the effective date of SB 178, an act creating the Wireless Emergency Communications Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Public records exemptions would be created by the bill. A statement of the public necessity justifying the exemptions is provided. The bill relates only to exemptions. For these reasons, the bill complies with the constitutional provisions in s. 24(c), Art. I, Fla. Const.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This public records exemption protects the proprietary interests of the wireless telecommunication industry.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs:
Technical Amendment.