

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1307 w/CS Emergency Communications

SPONSOR(S): Mayfield

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Telecommunications (Sub)	6 Y, 0 N	Holt	Liepshutz
2) Business Regulation	27 Y, 0 N w/CS	Holt	Liepshutz
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

The bill provides for facilitation of E911 service implementation. To further facilitate agreements among providers for colocation, and upon meeting certain criteria, the bill exempts certain colocated facilities from specified land development regulations. However, construction of an antennae or related equipment is subject to local building regulation and any existing permits or agreements. Nothing in the bill negates the responsibilities of the permit holder or property owner relating to any applicable conditions of a permit, agreement, law, or land development regulation, including any aesthetic requirements. Local governments are prohibited from requiring wireless companies to provide evidence of compliance with federal regulations. An option is given to local governments to request evidence of proper federal licensure and compliance with federal radio frequency emissions regulations.

Timeframes are outline in the bill for local governments to act on applications to permit colocation or new facilities. Forty-five days are given to act on properly completed applications for colocation, and 90 days are given to act on properly completed applications for siting new facilities. Within 15 to 30 days, an applicant shall be notified of the proper completeness of its application for permit, or of the existence of deficiencies in the application that have hindered its completeness. The bill includes an automatic approval if local government fails to adhere to the timeframes outlined; however, exceptions are given under certain circumstances. Also, the bill deems as a permitted use or activity any additional wireless communications facilities used within an existing equipment compound as long as it complies with local building and land regulations, as well as, federal Phase II E911 requirements.

By September 1, 2003, any unreasonable delays experienced, within a county or municipality, by a provider in complying with federal Phase II E911 requirements are to be reported to the Wireless 911 Board (Board) and the applicable county or municipality. In such situations, the bill creates within the Board's authority the ability to establish a subcommittee responsible for establishing a balance between the providers' responsibilities and a county or municipality zoning and land uses responsibilities. An annual report shall be submitted to the Governor and the Legislature by February 28, 2004 that will include recommendations developed by the subcommittee to address compliance with federal Phase II E911 requirements.

In addition to those described above, other revisions are made to the current responsibilities of the Board along with the establishment of new authority. Current funding will be used to pay the cost associated with the new authority.

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

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DATE: April 13, 2003

The Department of Management Services and the Department of Transportation are authorized to negotiate, on behalf of the State, leases for wireless communications facilities in State rights-of-way, on State-owned property. These two Departments are granted rulemaking authority to carry out these leasing provisions.

The bill adds new definitions to section 365.172(3), Florida Statutes, to facilitate a newly created methodology for collecting a monthly 911 surcharge from prepaid wireless customers.

Further the bill requires that all private branch exchanges (PBX) constructed after January 1, 2004, must be capable of providing automatic location identification.

The fiscal impact of the bill is detailed in the Fiscal Analysis & Economic Impact Statement. The total new collections from prepaid wireless subscribers for deposit into the Wireless Emergency Telephone System are anticipated to be approximately \$12 million for the FY 2003-04.

The act takes effect July 1, 2003.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill imposes a new 50 cent surcharge on prepaid wireless telephone subscribers. A similar fee is currently applicable to non-prepaid wireless subscribers.

B. EFFECT OF PROPOSED CHANGES:

Federal law requires the Federal Communications Commission (FCC) to encourage and support efforts by the states to deploy emergency communications infrastructure and programs. 47 U.S.C. s. 615. The FCC’s 911 rules require, in part, that when a county requests enhanced 911 service (E911), the wireless provider must provide enhanced service within six months of the request to 50 percent of its coverage area. 47 C.F.R. s. 18.

Pursuant to section 365.172(8), Florida Statutes, a fee of 50 cents per month on each telephone service number is used to fund the wireless 911 emergency telephone system. Each provider as a part of its monthly billing process collects the fee. The collected fees, minus one percent retained as reimbursement for administrative costs, are delivered to the Wireless 911 Board (Board). section 365.172(9), Florida Statutes.

Section 365.172(5), Florida Statutes, provides in part that the Board is established to administer the fee with oversight by the State Technology Office. section 365.172(5), Florida Statutes. Collected fees are deposited into the Wireless Emergency Telephone System Fund (Fund). Forty-four percent of the fees are distributed each month to counties for payment of their 911 service costs, fifty-four percent is distributed to 911 providers, and two percent is distributed to rural counties to provide facilities, network and service enhancements, and assistance for their 911 or E911 systems. section 365.173, Florida Statutes. The Board receives its funding by retaining up to two percent of the funds allocated to 911 service providers. section 365.173, Florida Statutes. These funds are to be used for costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the Fund. section 365.173, Florida Statutes.

The bill amends section 365.172(3), Florida Statutes, Definitions. The definitions are also re-alphabetized accordingly. The following new terms and definitions are added and used in the section to facilitate collecting the wireless E911 fee from prepaid customers:

“Active prepaid wireless telephone” means a prepaid wireless telephone that has been used by the customer during the month to complete a telephone call for which the customer’s card or balance was decremented.

“Mobile telephone number” or “MTN” means the telephone number assigned to a wireless telephone at the time of initial activation.

“Prepaid wireless telephone service” means wireless telephone service that is activated in advance by payment for a finite dollar amount of service or for a finite

set of minutes that terminate either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless additional payments are made.

“Sufficient positive balance” means a dollar amount greater than or equal to the monthly wireless surcharge amount.

AUTHORITY OF THE BOARD; ANNUAL REPORT.--

The bill revises and grants new authority to the Board as follows:

- Ability to hire and retain employees for the purposes of performing its technical and administrative functions.
- Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in State.
- Provide coordination and support for educational opportunities related to 911 issues for the 911 community.
- Act as an advocate for issues related to 911 system functions, features and operation to improve the delivery of 911 services.
- Coordinate input from Florida at national forums and associations to ensure consistency of State policies with related 911 systems.
- Work cooperatively with the system director established in section 365.171(5), Florida Statutes, plan, and coordinate in a unified leadership role to enhance the State of 911 services.

REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNT FIRM.--

The procedures for securing accounting services are revised in the bill to provide that after July 1, 2004, the Board independent accounting services may be accomplished by the following methods:

- invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, or Department of Management Services. In addition to these methods, the Board may hire and retain professional accounting staff to accomplish these functions.

MANAGEMENT OF THE FUND.--

The bill further amends section 365.173(9), Florida Statutes, to provide for collection of the monthly wireless surcharge from prepaid wireless customers in correlation with the definitional changes. For prepaid wireless telephone service, the 50 cent monthly wireless 911 surcharge is collected only from each wireless service customer that has a sufficient positive balance as of the last day of each month. As direct billing may not be possible, the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid subscriber's account.

FACILITATING E911 SERVICE

The bill creates section 365.172(11), Florida Statutes, to provide for facilitation of implementation of 911 service. The subsection provides that, notwithstanding any other law or local ordinance to the contrary, the following provisions will apply to colocation and siting of wireless facilities:

- Any antennae, and related equipment to service the antennae, being colocated on an existing above-ground structure is not subject to land development regulation pursuant to section 163.3202, provided the height of the existing facility is not increased. Construction of a facility is subject to local building regulations, existing permits or agreement related to such property, buildings, or structures. Nothing relieves the permit holder or owner of the existing structure from compliance with applicable permit conditions, law, agreement, and land development regulations including aesthetic requirements.

- Local governments are prohibited from requiring wireless companies to provide evidence of compliance with federal regulations. They are permitted, upon request, to require evidence of proper federal licensure, and certification of compliance with federal radio frequency emissions regulations.
- Local government is required to act on an application for a permit for collocation of a wireless facility within 45 business days from the date the properly completed application is submitted in accordance with applicable government application procedures, provided that permit complies with applicable local zoning, land and building regulations, including aesthetic requirements.
- Local government is required to act on a permit application for siting a new wireless tower or antenna on property, buildings, or structures within 90 business days from the date the properly completed application is submitted in accordance with applicable government application procedures. The permit must comply with applicable federal, local, land, and building regulations, including aesthetic requirements.
- Local government is required to notify an applicant as to whether its application is properly completed and submitted, or whether it contains deficiencies that have hindered its proper completion. Such notice is required within 15 business days for collocation permits and within 30 business days for siting a new facility.
- If the application is not timely approved or denied, the permit is deemed approved. To the extent an application for permit can not be acted upon, due to local government procedures which require action by its governing body, and such action has not occurred within the specified timeframes, the time stipulations shall be extended. Under such circumstances, the local government must act on the application at its next regularly scheduled meeting, or the application for permit shall be deemed automatically approved.
- Any waiver of the time requirements must be voluntarily agreed to by all affected parties to be effective.
- Any additional facilities needed at a secured equipment compound at an existing site to comply with federal Phase II E911 requirements shall be deemed a permitted use or activity. However, local land development and building regulations apply, including any aesthetic requirements.
- The Department of Management Services (DMS) is required to negotiate leases for wireless facilities that provide access to state-owned property not acquired for transportation purposes. The Department of Transportation (DOT) is required to negotiate leases for wireless facilities that provide access to property acquired for state rights-of way. For leases dealing with transportation purposes, they are to be in accordance with section 337.251, Florida Statutes. With regards to other state-owned property, leases are to be granted on a first-come, first-serve, space available basis. Lease fees are required to be reasonable and to reflect the market rate for use of state-owned property. DMS and DOT are authorized by the bill to adopt rules for the terms and conditions for such leases and permits.

By September 1, 2003, any unreasonable delays experienced, within a county or municipality, by a provider in complying with federal Phase II E911 requirements are to be reported to the Board and the applicable county or municipality. The bill creates within the Board's authority the ability to establish a subcommittee in such situations that institutes a balance between the providers' responsibilities and a county or municipality zoning and land use responsibilities.

If a subcommittee is established it shall be comprised of representatives from the Florida Telecommunications Industry Association, the Florida Association of Counties, and the Florida League of Cities. The subcommittee shall be charged with developing recommendations for the Board and any specifically identified municipality or county to consider actions to be taken for complying with federal Phase II E911 requirements. An annual report to the Governor and the Legislature is required by the bill and is due on February 28, 2004, which will include recommendations for compliance.

WIRELESS EMERGENCY TELEPHONE SYSTEM FUND.—

The bill amends section 365.173(2), Florida Statutes, to authorize the Board to use its funding for activities as defined in section 365.172(6), Florida Statutes, which would allow use of funds to cover costs and expenses in the exercise of its new authority.

The bill also creates section 365.175, Florida Statutes. This new sections relates to Emergency Telephone Number 911 Private Branch Exchange-Private Switched Automatic Location Identification. The new section provides definitions to be used in this section as follows:

“Automatic location identification” or “ALI” means the automatic display at the Public Safety Answer Point (PSAP) of the caller’s telephone number, the address or location of the telephone, and supplementary emergency services information.

“Automatic location identification retrieval” or “ALI retrieval” means the process of querying the 9-1-1 database for ALI records.

“Automatic number identification” or “ANI” means the telephone number associated with the access line from which a call originates.

“Private branch exchange” or “PBX” means a private telephone system that is connected to the Public Switched Telephone Network (PSTN).

“Private switch ALI” or “PSA” means a service option which provides enhanced 9-1-1 features for telephone stations behind private switches, e.g., PBX’s.

Each PBX system installed after January 1, 2004 must be capable of providing automatic location identification to the station level.

This act shall take effect July 1, 2003

C. SECTION DIRECTORY:

Section 1. Provides related definitions for the collection of the monthly wireless surcharge from prepaid wireless telephone service customers. Creates new authority for the Wireless 911 Board. Revises the Board’s procedures for securing accounting services. Creates a methodology for collecting a monthly wireless 911 surcharge from prepaid wireless customers. Creates a new subsection for the facilitation of implementation of E911 service.

Section 2. Authorizes the Board to use its current funding for costs and expenses in the exercise of its new authority.

Section 3. Creates a new subsection to require that all PBXs constructed after January 1, 2004, be capable of providing automatic location identification.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The prepaid customers are estimated to represent approximately 25% of the total wireless telephone customer base. According to figures provided by the Wireless 911 Board, revenue projections from the collection of a fifty cent per month fee from these customers is estimated at \$12 million during the FY 03/04. A total of \$129,000 of that amount will be reserved for the State Wireless 911 Board operations. The remaining 11,870,400 will be deposited into the Wireless Emergency Telephone System Trust Fund (W-911-TF). Distribution of the remaining funds will go to counties and wireless telecommunications providers.

No figures are available for revenues generated from lease income.

2. Expenditures:

The expenditures required of DMS and DOT for negotiating leases as provided in the bill are estimated at \$119,000 for each agency. (\$238,000 total)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

It is estimated that \$5,520,000 of the total \$12 million that is deposited into the W-911-TF will be distributed to counties to pay the costs of installing and operating wireless 911 systems.

2. Expenditures:

Local governments will incur the costs of installing and operating wireless 911 systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An estimated total of \$6,350,400 is distributed to wireless providers for costs incurred for 911 and E911 services.

D. FISCAL COMMENTS:

The costs for DMS and DOT are estimated to total approximately \$238,000. However, estimates of the amount of associated revenues that will be realized from leases are not currently available.

It is estimated that 15.6 million during the FY 04/05 and \$20.3 million during the FY 05/06 will be collected and deposited in the W-911-TF for distribution to counties and providers, and for specified expenses of the Board.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The rule-making authority granted to the DOT and DMS to implement provisions requiring the negotiation of leases for siting wireless communications facilities appears to be sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Wireless companies will be able to site facilities quicker, easier, and, in some cases, in places that are not currently available. This will improve service in those areas where new facilities are sited, including E911 location services.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 1307 with CS makes the following major changes to bill:

The CS provides for facilitation of E911 service implementation through colocation and siting wireless facilities. It creates a correlation between E911 wireless facilities and local zoning, permitting, and building requirements.

The bill places responsibilities on both local government and wireless E911 providers for achieving federal Phase II E911 requirements. The bill establishes timeframes for processing applications for permitting to accomplish E011 service implementation. It further includes an automatic procedure for applications for permits that are timely filed and adhere to application criteria.

The CS further creates within the Board's authority the ability to establish a subcommittee responsible for situations where unreasonable delays are being experienced by a provider who is complying with federal Phase II E911 requirements within a county or municipality. The subcommittee's primary responsibility is to establish a balance between the providers' responsibilities and a county or municipality's zoning and land uses responsibilities.

The CS makes revisions to the current responsibilities of the Board along with the establishment of new authority. Current funding will be used to pay the cost associated with the new authority.

Lastly, the Department of Management Services and the Department of Transportation are authorized to negotiate, on behalf of the State, leases for wireless communications facilities in State rights-of-way, on State-owned property. These two Departments are granted rulemaking authority to carry out these leasing provisions.