

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES**  
**Senator Flores, Chair**  
**Senator Garcia, Vice Chair**

**MEETING DATE:** Tuesday, January 14, 2014  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Flores, Chair; Senator Garcia, Vice Chair; Senators Abruzzo, Bean, Evers, Gibson, Hukill, Simpson, and Smith

| TAB | BILL NO. and INTRODUCER   | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION           |
|-----|---|---|----------------------------|
| 1   | <b>CS/SB 218</b><br>Transportation / Grimsley<br>(Similar H 259, Identical H 345) | Transportation; Providing an exception for payment of certain utility work necessitated by a project on the State Highway System for municipally owned utilities or county-owned utilities located in rural areas of critical economic concern and authorizing the Department of Transportation to pay for such costs under certain circumstances; exempting from permitting certain signs placed by tourist-oriented businesses, certain farm signs placed during harvest seasons, certain acknowledgement signs on publicly funded school premises, and certain displays on specific sports facilities, etc.<br><br>TR 11/07/2013 Fav/CS<br>CU 01/14/2014 Favorable<br>CM<br>AP       | Favorable<br>Yeas 8 Nays 0 |
| 2   | <b>SB 294</b><br>Hays<br>(Identical H 175, Compare H 177,<br>Link S 292)          | Emergency Communication System; Revising provisions relating to oversight of certain fees by the Technology Program within the Department of Management Services; revising provisions for administration, distribution, and use of the E911 fee; providing that fees collected may not be included in the base for measuring any tax, fee, surcharge, or other charge; providing that the Department of Revenue is the agent for the E911 Board for purposes of collecting the prepaid wireless E911 fee; revising provisions for accounting, distribution, use, and auditing of the Emergency Communications Number E911 System Fund, etc.<br><br>CU 01/14/2014 Favorable<br>AFT<br>AP | Favorable<br>Yeas 9 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Communications, Energy, and Public Utilities

Tuesday, January 14, 2014, 10:00 a.m.—12:00 noon

| TAB | BILL NO. and INTRODUCER  | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION           |
|-----|--|--|----------------------------|
| 3   | <b>SB 292</b><br>Hays<br>(Identical H 177, Compare H 175,<br>Link S 294) | Public Records/Prepaid Wireless E911 Fee; Providing an exemption from public records requirements for specified information received by the Department of Revenue relating to the prepaid wireless E911 fee; authorizing the department to share such information with the Secretary of Management Services and the E911 Board; including the Department of Revenue as an additional recipient of specified confidential information relating to wireless service; providing for future legislative review and repeal; providing statements of public necessity, etc.<br><br>CU 01/14/2014 Favorable<br>GO<br>RC   | Favorable<br>Yeas 9 Nays 0 |
| 4   | <b>SB 288</b><br>Richter<br>(Identical H 213)                            | Underground Facility Damage Prevention and Safety; Requiring all member operators including those with state-owned underground facilities located within the right-of-way of a state highway to be notified through the free-access notification system of a proposed excavation or demolition; creating an additional noncriminal infraction for the failure of an excavator to notify the member operator in certain circumstances; requiring an excavator to provide notice through the free-access notification system before beginning certain excavations, demolitions, or maintenance activities, etc.<br><br>CU 01/14/2014 Temporarily Postponed<br>EP | Temporarily Postponed      |
| 5   | <b>SB 272</b><br>Simpson<br>(Compare H 229, H 357)                       | Water and Wastewater Utilities; Limiting the rates that may be charged by a public water and wastewater utility; requiring the Public Service Commission to adjust public water or wastewater utilities rates under certain circumstances; requiring the commission to consider the value and quality of water or wastewater service provided by a utility when fixing rates; providing criteria that the commission must consider in making its determination, etc.<br><br>CU 01/14/2014 Fav/CS<br>CA   | Fav/CS<br>Yeas 8 Nays 0    |

Other related meeting documents

**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: CS/SB 218

INTRODUCER: Transportation Committee and Senator Grimsley

SUBJECT: Transportation

DATE: January 7, 2014      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Price   | Eichin         | TR        | <b>Fav/CS</b>    |
| 2. | Wiehle  | Caldwell       | CU        | <b>Favorable</b> |
| 3. |         |                | CM        |                  |
| 4. |         |                | AP        |                  |

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Technical Changes

**I. Summary:**

CS/SB 218 revises provisions relating to certain transportation-related utility relocation expenses, outdoor advertising permit exemptions, and the tourist-oriented directional sign program. The bill:

- provides an additional exception for a utility to bear the cost to relocate certain municipally- or county-owned utilities located in road and rail corridors under specified conditions;
- eliminates unnecessary rulemaking authority relating to lighting restrictions for certain outdoor advertising signs;
- exempts from permitting certain signs placed by tourist-oriented businesses, farm signs placed during harvest seasons, acknowledgement signs on publicly funded school premises, and displays on specific sports facilities;
- provides that certain exemptions from sign permitting may not be implemented if such exemptions will adversely impact the allocation of federal funds to the Florida Department of Transportation (FDOT);
- directs the FDOT to notify a sign owner that a sign must be removed if federal funds are adversely impacted;
- authorizes the FDOT to remove a sign and assess costs to the sign owner under certain circumstances; and
- clarifies provisions relating to the tourist-oriented directional sign program.

## II. Present Situation:

### Utility Relocation Expenses

Section 337.401, F.S., addresses the use of road and rail corridor right-of-way by utilities.<sup>1</sup> The section authorizes the FDOT and local governmental entities<sup>2</sup> to prescribe and enforce reasonable rules or regulations relating to the placing and maintaining of any utilities lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., requires a utility owner to remove or relocate a utility that is found by the authority to unreasonably interfere with the convenient, safe, and continuous use, maintenance, improvement, extension, or expansion of the road or rail corridor. The utility owner must initiate the work necessary for such a removal or relocation upon 30 days written notice, and must complete it within the reasonable time stated in the notice or another time agreed to by the authority and the utility owner. The utility owner must bear the cost of the removal or relocation except under the following exceptions.

- When the project is on the federal-aid interstate system and federal funding is identified as paying for at least 90 percent of the cost, the FDOT pays for the removal or relocation with federal funds.
- When utility work is performed as part of a transportation facility construction contract, the FDOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the utility work in the construction contract.
- When utility work is performed in advance of a construction contract, the FDOT may participate in the cost of clearing and grubbing (removing stumps and roots) necessary for the relocation.

If the utility being removed or relocated was initially installed to exclusively serve an authority (the FDOT or local governmental entities) or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.

- If, in an agreement between a utility and an authority entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, the FDOT bears the cost of the necessary utility work.

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<sup>1</sup> “Utility” means any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structure. See s. 337.401(1)(a), F.S.

<sup>2</sup> Referred to in ss. 337.401-337.404, F.S., as the “authority.”

- An authority may bear the costs of utility work when the utility is not able to establish a compensable property right in the property where the utility is located if:
  - the utility was physically located on the particular property before the authority acquired rights in the property;
  - the utility demonstrates that it has a compensable property right in all adjacent properties along the alignment of the utility; and
  - the information available to the authority does not establish the relative priorities of the authority's and the utility's interest in the property.

The FDOT advises that under its procedure 710-030-005, *Utility Work for Local Government Utilities*,<sup>3</sup> when a governmental entity cannot afford utility work necessitated by an FDOT project as determined by the FDOT's comptroller, the FDOT will pay for the work. In such cases, the governmental entity signs a promissory note to reimburse the FDOT, thereby allowing the FDOT project to proceed, potentially avoiding contractor delay claims. If the governmental entity does not reimburse the FDOT within ten years, the FDOT advises steps can be taken to write off the loss, as opposed to continuing collection efforts.

The FDOT advises it currently "has approximately \$12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."<sup>4</sup>

### **Control of Outdoor Advertising**

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System roads. The HBA allows the location of billboards in commercial or industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting, and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the national Highway System.
- States have the discretion to remove legal nonconforming signs<sup>5</sup> along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.
- States and localities may enact stricter laws than stipulated in the HBA.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for

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<sup>3</sup> <http://www2.dot.state.fl.us/proceduraldocuments/procedures/proceduresbynumber.asp?index=7> (Last visited 10/23/13.)

<sup>4</sup> FDOT bill analysis, on file with the Senate Transportation Committee.

<sup>5</sup> A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. (s. 479.01(17), F.S.)

noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.<sup>6</sup>

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)<sup>7</sup> incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements to obtain sign permits when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations and the 1972 agreement.

#### *On-Premise Signs/Lighting Restrictions/Rulemaking Authority*

Section 479.16(1), F.S., currently allows, without the need for a permit, signs erected on the premises of an establishment that consist primarily of the name of the establishment or identify the principal or accessory merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises of the establishment, provided the signs comply with the lighting restrictions "under department rule adopted pursuant to s. 479.11(5), F.S."

Section 479.11(5), F.S., prohibits on-premise signs that display "intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system or which is illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate their vehicles."

The FDOT currently has no adopted rule that addresses lighting restrictions for on-premise signs and relies on the quoted statute. The rulemaking authority is therefore unnecessary.

#### *Other Permit Exemptions*

Section 479.16, F.S., currently identifies a number of other signs for which permits are not required, including:

- Signs on property stating only the name of the owner, lessee, or occupant of the premises and not exceeding 8 square feet in area;
- Signs that are not in excess of 8 square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or units or agencies of government;
- Signs placed on benches, transit shelters, and waste receptacles; and
- Signs not in excess of 16 square feet placed at a road junction with the State Highway System denoting only the distance or direction of a residence or farm operation, or, in a rural

<sup>6</sup> 23 U.S.C. § 131(b)

<sup>7</sup> Copy on file in the Senate Transportation Committee.

area where a hardship is created because a small business is not visible from the road junction, one sign not in excess of 16 square feet, denoting only the name of, and the distance and direction to, the business.

The final exemption does not apply to charter counties and may not be implemented if the federal government notifies the FDOT that implementation will adversely affect the allocation of federal funds to the FDOT.

#### *Tourist-Oriented Directional Sign Program*

Section 479.262, F.S., establishes a tourist-oriented directional (TOD) sign program for intersections on rural and conventional state, county, or municipal roads. The program is intended to provide directions to rural tourist-oriented businesses, services, and activities in rural counties identified by criteria and population in s. 288.0656, F.S., when approved and permitted by county or local government entities. Section 288.0656, F.S., defines a “rural area of critical economic concern” as a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact. “Rural community” is defined to mean a county with a population of 75,000 or fewer, and a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer.

A county or local government that issues permits for a TOD sign program<sup>8</sup> is responsible for sign construction, maintenance, and program operation for roads on the State Highway System and may establish permit fees sufficient to offset associated costs.<sup>9</sup> TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices<sup>10</sup> (MUTCD) and rules established by the FDOT.

TOD signs may be installed on the State Highway System only after being permitted by the FDOT, and placement of TOD signs is limited to rural conventional roads, as required in the MUTCD. TOD signs may *not* be placed within the right-of-way of limited access facilities; within the right-of-way of a limited access facility interchange, regardless of jurisdiction or local road classification; on conventional roads in urban areas; or at interchanges on freeways or expressways.<sup>11</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 337.403, F.S., to add another exception to the general rule that a utility owner must bear the cost of removing or relocating a utility. This exception applies if a municipally- or county-owned utility is located in a rural area of critical economic concern as defined in s. 288.0656(2), F.S., and if the FDOT determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by an FDOT

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<sup>8</sup> Prior to requesting a permit to install a TOD sign on the State Highway System, a local government must first have established by ordinance the criteria provided in part VI of chapter 14-51, Florida Administrative Code.

<sup>9</sup> s. 479.262(2), F.S.

<sup>10</sup> Adopted by the FDOT pursuant to s. 316.0745, F.S.

<sup>11</sup> See rule 14-51.063, Florida Administrative Code, and s. 2K.01 of Chapter 2K of the MUTCD (2009).

project on the State Highway System. Under these circumstances, the FDOT may pay the cost of the work performed by the FDOT or its contractors.

**Section 2** amends s. 479.16, F.S., relating to signs for which permits are not required, to:

- eliminate unnecessary rulemaking authority;
- delete the exemption for charter counties from the small business hardship sign authorization;
- authorize local tourist-oriented business signs, without a permit, within rural areas of critical economic concern, provided such signs are:
  - not more than eight square feet in size and not more than four feet tall;
  - located only in rural areas on a facility that does not meet the definition of a limited access facility;
  - located within two miles of the business location and at least 500 feet apart;
  - located only in two directions leading to the business;
  - not located within the right-of-way; and
  - provided the business is at least four miles from any other business using the exemption and the business does not participate in any other directional sign program;
- authorize temporary harvest-season signs, without a permit, provided such signs measure up to 32 square feet, denote only the distance or direction of a farm operation, and are erected at a road junction with the State Highway System, but only during the harvest season, not to exceed four months;
- authorize “acknowledgement signs,”<sup>12</sup> without a permit, provided such signs:
  - are erected upon publicly funded school premises;
  - relate to a specific public school club, team, or event;
  - are placed at least 1,000 feet from any other acknowledgement sign on the same side of the roadway; and
  - limit sponsor information to no more than 100 square feet of the sign;
- authorize displays erected upon a sports facility,<sup>13</sup> without a permit, the content of which is directly related to the facility’s activities or where products or services offered on the sports facility property are present, provided such displays are mounted flush to the surface of the sports facility and rely on the building facade for structural support;
- prohibit implementation or continuation of the provisions allowing small business “hardship” signs, local tourist-oriented business signs, farm harvest signs, public school premise acknowledgement signs, and sports facility displays without a permit if the federal government notifies the FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT; and
- in such an event, require the FDOT to provide notice to a sign owner that the sign must be removed within 30 days, with FDOT required to remove the sign if the owner does not with FDOT’s costs to be assessed against and collected from the owner.

**Section 3** amends s. 479.262, F.S., relating to the TOD sign program, to remove the restriction for participation in the program to such roads in rural counties identified by criteria and

<sup>12</sup> The bill defines the term “acknowledgement sign” to mean a sign that is intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or other entity.

<sup>13</sup> Defined to mean an athletic complex, athletic arena, or athletic stadium, including physically connected parking facilities, which is open to the public and has a permanent installed seating capacity of 15,000 people or more.

population in s. 288.0656, F.S., and to expressly state, consistent with rule 14-51.063, Florida Administrative Code, and the MUTCD, that a TOD sign may not be used on roads in urban areas or at interchanges on freeways or expressways.

**Section 4** provides the bill takes effect on July 1, 2014.

**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:

In the event the FDOT bears the cost of utility work for municipally- or county-owned utility removal or relocation and such action avoids delay of a project on the State Highway System, a positive but indeterminate fiscal impact to businesses and private individuals may be realized.

The authorization to use signs without a permit to advertise local tourist-oriented businesses; farm products; public school club, team, or event sponsors; and products and services directly related to a sports facility's activities or offered on the sports facility's property provides greater opportunity to attract people to such businesses or events.

Revision of the TOD sign program to eliminate restriction of the program to signs at intersections in rural areas of critical economic concern provides greater opportunity for business participation in the program. Participants will be subject to permit fees established by local governments.

C. Government Sector Impact:

FDOT states that section 1 of the bill "formalizes current FDOT procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by an FDOT project." Additionally, the section is

permissive; it provides that FDOT *may* pay the utility's costs. As such, it does not appear that this section will require FDOT to incur any additional expenses.

The bill avoids a potential annual penalty of 10% of federal highway funds by authorizing FDOT to remove signs erected under the additional sign permit exemptions in the event that the Federal Government notifies the FDOT of an adverse impact on the allocation of federal funds.

FDOT states that local governments may experience a positive but indeterminate fiscal impact from issuing potentially higher numbers of sign permits.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 337.403, 479.16, and 479.262.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Transportation on November 7, 2013:**

The CS reflects a technical revision to the language relating to signs placed by local tourist-oriented businesses to rely on an existing definition of “limited access facility,” thereby avoiding the need for the FDOT to incur expenses associated with adopting by rule a definition of “non-limited access facility.”

**B. Amendments:**

None.

By the Committee on Transportation; and Senator Grimsley

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1                   A bill to be entitled  
2       An act relating to transportation; amending s.  
3       337.403, F.S.; providing an exception for payment of  
4       certain utility work necessitated by a project on the  
5       State Highway System for municipally owned utilities  
6       or county-owned utilities located in rural areas of  
7       critical economic concern and authorizing the  
8       Department of Transportation to pay for such costs  
9       under certain circumstances; amending s. 479.16, F.S.;  
10      exempting certain signs from the provisions of ch.  
11      479, F.S.; exempting from permitting certain signs  
12      placed by tourist-oriented businesses, certain farm  
13      signs placed during harvest seasons, certain  
14      acknowledgement signs on publicly funded school  
15      premises, and certain displays on specific sports  
16      facilities; providing that certain provisions relating  
17      to the regulation of signs may not be implemented or  
18      continued if such actions will adversely impact the  
19      allocation of federal funds to the Department of  
20      Transportation; directing the department to notify a  
21      sign owner that the sign must be removed if federal  
22      funds are adversely impacted; authorizing the  
23      department to remove the sign and assess costs to the  
24      sign owner under certain circumstances; amending s.  
25      479.262, F.S.; clarifying provisions relating to the  
26      tourist-oriented directional sign program; limiting  
27      the placement of such signs to intersections on  
28      certain rural roads; prohibiting such signs in urban  
29      areas or at interchanges on freeways or expressways;

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30 providing an effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Subsection (1) of section 337.403, Florida  
35 Statutes, is amended to read:

36 337.403 Interference caused by relocation of utility;  
37 expenses.—

38 (1) If a utility that is placed upon, under, over, or along  
39 any public road or publicly owned rail corridor is found by the  
40 authority to be unreasonably interfering in any way with the  
41 convenient, safe, or continuous use, or the maintenance,  
42 improvement, extension, or expansion, of such public road or  
43 publicly owned rail corridor, the utility owner shall, upon 30  
44 days' written notice to the utility or its agent by the  
45 authority, initiate the work necessary to alleviate the  
46 interference at its own expense except as provided in paragraphs  
47 (a)-(h) ~~(a)-(g)~~. The work must be completed within such  
48 reasonable time as stated in the notice or such time as agreed  
49 to by the authority and the utility owner.

50 (a) If the relocation of utility facilities, as referred to  
51 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
52 84-627 ~~627 of the 84th Congress~~, is necessitated by the  
53 construction of a project on the federal-aid interstate system,  
54 including extensions thereof within urban areas, and the cost of  
55 the project is eligible and approved for reimbursement by the  
56 Federal Government to the extent of 90 percent or more under the  
57 Federal Aid Highway Act, or any amendment thereof, then in that  
58 event the utility owning or operating such facilities shall

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59 perform any necessary work upon notice from the department, and  
60 the state shall pay the entire expense properly attributable to  
61 such work after deducting therefrom any increase in the value of  
62 a new facility and any salvage value derived from an old  
63 facility.

64 (b) When a joint agreement between the department and the  
65 utility is executed for utility work to be accomplished as part  
66 of a contract for construction of a transportation facility, the  
67 department may participate in those utility work costs that  
68 exceed the department's official estimate of the cost of the  
69 work by more than 10 percent. The amount of such participation  
70 is shall be limited to the difference between the official  
71 estimate of all the work in the joint agreement plus 10 percent  
72 and the amount awarded for this work in the construction  
73 contract for such work. The department may not participate in  
74 any utility work costs that occur as a result of changes or  
75 additions during the course of the contract.

76 (c) When an agreement between the department and utility is  
77 executed for utility work to be accomplished in advance of a  
78 contract for construction of a transportation facility, the  
79 department may participate in the cost of clearing and grubbing  
80 necessary to perform such work.

81 (d) If the utility facility was initially installed to  
82 exclusively serve the authority or its tenants, or both, the  
83 authority shall bear the costs of the utility work. However, the  
84 authority is not responsible for the cost of utility work  
85 related to any subsequent additions to that facility for the  
86 purpose of serving others.

87 (e) If, under an agreement between a utility and the

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88 authority entered into after July 1, 2009, the utility conveys,  
89 subordinates, or relinquishes a compensable property right to  
90 the authority for the purpose of accommodating the acquisition  
91 or use of the right-of-way by the authority, without the  
92 agreement expressly addressing future responsibility for the  
93 cost of necessary utility work, the authority shall bear the  
94 cost of removal or relocation. This paragraph does not impair or  
95 restrict, and may not be used to interpret, the terms of any  
96 such agreement entered into before July 1, 2009.

97 (f) If the utility is an electric facility being relocated  
98 underground in order to enhance vehicular, bicycle, and  
99 pedestrian safety and in which ownership of the electric  
100 facility to be placed underground has been transferred from a  
101 private to a public utility within the past 5 years, the  
102 department shall incur all costs of the necessary utility work.

103 (g) An authority may bear the costs of utility work  
104 required to eliminate an unreasonable interference when the  
105 utility is not able to establish that it has a compensable  
106 property right in the particular property where the utility is  
107 located if:

108 1. The utility was physically located on the particular  
109 property before the authority acquired rights in the property;

110 2. The utility demonstrates that it has a compensable  
111 property right in all adjacent properties along the alignment of  
112 the utility; and

113 3. The information available to the authority does not  
114 establish the relative priorities of the authority's and the  
115 utility's interests in the particular property.

116 (h) If a municipally owned utility or county-owned utility

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117 is located in a rural area of critical economic concern, as  
118 defined in s. 288.0656(2), and the department determines that  
119 the utility is unable, and will not be able within the next 10  
120 years, to pay for the cost of utility work necessitated by a  
121 department project on the State Highway System, the department  
122 may pay, in whole or in part, the cost of such utility work  
123 performed by the department or its contractor.

124 Section 2. Section 479.16, Florida Statutes, is amended to  
125 read:

126 479.16 Signs for which permits are not required.—Signs  
127 placed on benches, transit shelters, modular news racks, street  
128 light poles, public pay telephones, and waste receptacles within  
129 the right-of-way, as provided under s. 337.408, are exempt from  
130 this chapter. The following signs are exempt from the  
131 requirement that a permit ~~for a sign~~ be obtained under the  
132 ~~provisions of~~ this chapter but must ~~are required to~~ comply with  
133 ~~the provisions of~~ s. 479.11(4)-(8):

134 (1) Signs erected on the premises of an establishment,  
135 which ~~signs~~ consist primarily of the name of the establishment  
136 or ~~which~~ identify the principal or accessory merchandise,  
137 services, activities, or entertainment sold, produced,  
138 manufactured, or furnished on the premises of the establishment  
139 and which comply with the lighting restrictions imposed under  
140 ~~department rule adopted pursuant to~~ s. 479.11(5), or signs owned  
141 by a municipality or a county located on the premises of such  
142 municipality or ~~such~~ county which display information regarding  
143 government services, activities, events, or entertainment. For  
144 purposes of this section, the following types of messages shall  
145 not be considered information regarding government services,

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146 activities, events, or entertainment:

147 (a) Messages that ~~which~~ specifically reference any  
148 commercial enterprise.

149 (b) Messages that ~~which~~ reference a commercial sponsor of  
150 any event.

151 (c) Personal messages.

152 (d) Political campaign messages.

153

154 If a sign located on the premises of an establishment consists  
155 principally of brand name or trade name advertising and the  
156 merchandise or service is only incidental to the principal  
157 activity, or if the owner of the establishment receives rental  
158 income from the sign, ~~then~~ the sign is not exempt under this  
159 subsection.

160 (2) Signs erected, used, or maintained on a farm by the  
161 owner or lessee of such farm and relating solely to farm  
162 produce, merchandise, service, or entertainment sold, produced,  
163 manufactured, or furnished on such farm.

164 (3) Signs posted or displayed on real property by the owner  
165 or by the authority of the owner, stating that the real property  
166 is for sale or rent. However, if the sign contains any message  
167 not pertaining to the sale or rental of the ~~that~~ real property,  
168 ~~then~~ it is not exempt under this section.

169 (4) Official notices or advertisements posted or displayed  
170 on private property by or under the direction of any public or  
171 court officer in the performance of her or his official or  
172 directed duties, or by trustees under deeds of trust or deeds of  
173 assignment or other similar instruments.

174 (5) Danger or precautionary signs relating to the premises

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175 on which they are located; forest fire warning signs erected  
176 under the authority of the Florida Forest Service of the  
177 Department of Agriculture and Consumer Services; and signs,  
178 notices, or symbols erected by the United States Government  
179 under the direction of the United States Forestry Service.

180 (6) Notices of any railroad, bridge, ferry, or other  
181 transportation or transmission company necessary for the  
182 direction or safety of the public.

183 (7) Signs, notices, or symbols for the information of  
184 aviators as to location, directions, and landings and conditions  
185 affecting safety in aviation erected or authorized by the  
186 department.

187 (8) Signs or notices measuring up to 8 square feet in area  
188 which are erected or maintained upon property and state ~~stating~~  
189 only the name of the owner, lessee, or occupant of the premises  
190 ~~and not exceeding 8 square feet in area.~~

191 (9) Historical markers erected by ~~duly constituted and~~  
192 authorized public authorities.

193 (10) Official traffic control signs and markers erected,  
194 caused to be erected, or approved by the department.

195 (11) Signs erected upon property warning the public against  
196 hunting and fishing or trespassing ~~thereon.~~

197 (12) Signs ~~not in excess~~ of up to 8 square feet which that  
198 are owned by and relate to the facilities and activities of  
199 churches, civic organizations, fraternal organizations,  
200 charitable organizations, or units or agencies of government.

201 ~~(13) Except that signs placed on benches, transit shelters,~~  
202 ~~and waste receptacles as provided for in s. 337.408 are exempt~~  
203 ~~from all provisions of this chapter.~~

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204 ~~(13)(14)~~ Signs relating exclusively to political campaigns.

205 ~~(14)(15)~~ Signs measuring up to ~~not in excess of~~ 16 square  
206 feet placed at a road junction with the State Highway System  
207 denoting only the distance or direction of a residence or farm  
208 operation, or, outside an incorporated ~~in a rural~~ area where a  
209 hardship is created because a small business is not visible from  
210 the road junction with the State Highway System, one sign  
211 measuring up to ~~not in excess of~~ 16 square feet, denoting only  
212 the name of the business and the distance and direction to the  
213 business. ~~The small-business-sign provision of this subsection~~  
214 ~~does not apply to charter counties and may not be implemented if~~  
215 ~~the Federal Government notifies the department that~~  
216 ~~implementation will adversely affect the allocation of federal~~  
217 ~~funds to the department.~~

218 (15) Signs placed by a local tourist-oriented business  
219 located within a rural area of critical economic concern as  
220 defined under s. 288.0656(2) which are:

221 (a) Not more than 8 square feet in size or more than 4 feet  
222 in height;

223 (b) Located only in rural areas on a facility that does not  
224 meet the definition of a limited access facility as defined by  
225 department rule;

226 (c) Located within 2 miles of the business location and at  
227 least 500 feet apart;

228 (d) Located only in two directions leading to the business;  
229 and

230 (e) Not located within the road right-of-way.

231  
232 A business placing such signs must be at least 4 miles from any

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233 other business using this exemption and may not participate in  
234 any other directional signage program by the department.

235 (16) Signs measuring up to 32 square feet denoting only the  
236 distance or direction of a farm operation which are erected at a  
237 road junction with the State Highway System, but only during the  
238 harvest season of the farm operation for a period not to exceed  
239 4 months.

240 (17) Acknowledgement signs erected upon publicly funded  
241 school premises which relate to a specific public school club,  
242 team, or event which are placed at least 1,000 feet from any  
243 other acknowledgement sign on the same side of the roadway. The  
244 sponsor information on an acknowledgement sign may constitute no  
245 more than 100 square feet of the sign. For purposes of this  
246 subsection, the term "acknowledgement sign" means a sign that is  
247 intended to inform the traveling public that a public school  
248 club, team, or event has been sponsored by a person, firm, or  
249 other entity.

250 (18) Displays erected upon a sports facility the content of  
251 which is directly related to the facility's activities or where  
252 products or services offered on the sports facility property are  
253 present. Displays must be mounted flush to the surface of the  
254 sports facility and must rely upon the building facade for  
255 structural support. For purposes of this subsection, the term  
256 "sports facility" means an athletic complex, athletic arena, or  
257 athletic stadium, including physically connected parking  
258 facilities, which is open to the public and has a permanent  
259 installed seating capacity of 15,000 people or more.

260  
261 The exemptions in subsections (14)-(18) may not be implemented

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262 or continued if the Federal Government notifies the department  
263 that implementation or continuation will adversely impact the  
264 allocation of federal funds to the department. If the exemptions  
265 in subsections (14)-(18) are not implemented or continued due to  
266 notification from the Federal Government that the allocation of  
267 federal funds to the department will be adversely impacted, the  
268 department shall provide notice to the sign owner that the sign  
269 must be removed within 30 days. If the sign is not removed  
270 within 30 days after receipt of the notice by the sign owner,  
271 the department may remove the sign, and the costs incurred in  
272 connection with the sign removal shall be assessed against and  
273 collected from the sign owner.

274 Section 3. Section 479.262, Florida Statutes, is amended to  
275 read:

276 479.262 Tourist-oriented directional sign program.—

277 (1) A tourist-oriented directional sign program to provide  
278 directions to rural tourist-oriented businesses, services, and  
279 activities may be established for intersections on rural and  
280 conventional state, county, or municipal roads only ~~in rural~~  
281 ~~counties identified by criteria and population in s. 288.0656~~  
282 when approved and permitted by county or local government  
283 entities within their respective jurisdictional areas ~~at~~  
284 ~~intersections on rural and conventional state, county, or~~  
285 ~~municipal roads~~. A county or local government that ~~which~~ issues  
286 permits for a tourist-oriented directional sign program is ~~shall~~  
287 ~~be~~ responsible for sign construction, maintenance, and program  
288 operation in compliance with subsection (3) for roads on the  
289 state highway system and may establish permit fees sufficient to  
290 offset associated costs. A tourist-oriented directional sign may

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291 not be used on roads in urban areas or at interchanges on  
292 freeways or expressways.

293 (2) This section does not create a proprietary or  
294 compensable interest in any tourist-oriented directional sign  
295 site or location for any permittee on any rural and conventional  
296 state, county, or municipal road ~~roads~~. The department or the  
297 permitting entity may terminate permits or change locations of  
298 tourist-oriented directional sign sites as determined necessary  
299 for construction or improvement of transportation facilities or  
300 for improved traffic control or safety.

301 (3) Tourist-oriented directional signs installed on the  
302 state highway system must ~~shall~~ comply with the requirements of  
303 the federal Manual on Uniform Traffic Control Devices and rules  
304 established by the department. The department may adopt rules to  
305 establish requirements for participant qualification,  
306 construction standards, location of sign sites, and other  
307 criteria necessary to implement this program.

308 Section 4. This act shall take effect July 1, 2014.

**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>Favorable</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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By Senator Hays

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1                   A bill to be entitled  
2       An act relating to emergency communication system;  
3       amending s. 365.172, F.S., relating to the Emergency  
4       Communications Number E911 System; revising  
5       definitions; revising provisions relating to oversight  
6       of certain fees by the Technology Program within the  
7       Department of Management Services; revising E911 board  
8       appointment provisions; revising duties of the board;  
9       revising provisions for administration, distribution,  
10      and use of the E911 fee; revising provisions for state  
11      E911 Grant Program funding; revising E911 fee  
12      provisions; revising fee collection procedures;  
13      providing that the state and local governments are not  
14      consumers for certain purposes; specifying the amount  
15      of the fee; revising provisions for use of the fees  
16      collected; authorizing the board to adjust the rate of  
17      the fee; providing that fees collected may not be  
18      included in the base for measuring any tax, fee,  
19      surcharge, or other charge; providing for a prepaid  
20      wireless E911 fee; limiting the amount of the fee;  
21      providing procedures for adjustment and imposition of  
22      the fee; requiring the Department of Revenue to  
23      provide notice to sellers; providing requirements for  
24      collection of the fee by the seller; providing  
25      criteria for the location of the transaction;  
26      providing requirements and procedures for filing  
27      returns and remitting fees to the Department of  
28      Revenue; providing that the Department of Revenue is  
29      the agent for the E911 Board for purposes of

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30 collecting the prepaid wireless E911 fee; requiring  
31 sellers of prepaid wireless services to register with  
32 the department; providing for distribution of funds  
33 remitted; limiting liability of provider or seller of  
34 prepaid wireless service; prohibiting a local  
35 government from imposing a fee on sellers of prepaid  
36 wireless services; providing that the state and local  
37 governments are not consumers for certain purposes;  
38 providing definitions for specified purposes; revising  
39 provisions for authorized expenditures of the E911  
40 fee; providing that certain costs of the Department of  
41 Health are functions of 911 services; amending s.  
42 365.173, F.S.; revising provisions for accounting,  
43 distribution, use, and auditing of the Emergency  
44 Communications Number E911 System Fund; providing for  
45 a prepaid wireless category in such fund; amending s.  
46 401.465, F.S.; conforming a cross-reference; providing  
47 a directive to the Division of Law Revision and  
48 Information; providing an appropriation; providing  
49 effective dates.

50

51 Be It Enacted by the Legislature of the State of Florida:

52

53 Section 1. Subsections (3) through (9) of section 365.172,  
54 Florida Statutes, are amended, present subsections (9) through  
55 (14) of that section are renumbered as subsections (10) through  
56 (15), respectively, and a new subsection (9) is added to that  
57 section, to read:

58 365.172 Emergency communications number ~~"E911."~~

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59 (3) DEFINITIONS.—Only as used in this section and ss.  
60 365.171, 365.173, and 365.174, the term:

61 ~~(a) "Answering point" means the public safety agency that~~  
62 ~~receives incoming 911 calls and dispatches appropriate public~~  
63 ~~safety agencies to respond to the calls.~~

64 (a)~~(b)~~ "Authorized expenditures" means expenditures of the  
65 fee, as specified in subsection (10) ~~(9)~~.

66 (b)~~(e)~~ "Automatic location identification" means the  
67 capability of the E911 service which enables the automatic  
68 display of information that defines the approximate geographic  
69 location of the wireless telephone, or the location of the  
70 address of the wireline telephone, used to place a 911 call.

71 (c)~~(d)~~ "Automatic number identification" means the  
72 capability of the E911 service which enables the automatic  
73 display of the service number used to place a 911 call.

74 (d)~~(e)~~ "Board" or "E911 Board" means the board of directors  
75 of the E911 Board established in subsection (5).

76 (e)~~(f)~~ "Building permit review" means a review for  
77 compliance with building construction standards adopted by the  
78 local government under chapter 553 and does not include a review  
79 for compliance with land development regulations.

80 (f)~~(g)~~ "Collocation" means the situation when a second or  
81 subsequent wireless provider uses an existing structure to  
82 locate a second or subsequent antennae. The term includes the  
83 ground, platform, or roof installation of equipment enclosures,  
84 cabinets, or buildings, and cables, brackets, and other  
85 equipment associated with the location and operation of the  
86 antennae.

87 (g)~~(h)~~ "Designed service" means the configuration and

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88 manner of deployment of service the wireless provider has  
89 designed for an area as part of its network.

90 (h)~~(i)~~ "Enhanced 911" or "E911" means ~~is the designation~~  
91 ~~for~~ an enhanced 911 system or enhanced 911 service that is an  
92 emergency telephone system or service that provides a subscriber  
93 with 911 service and, in addition, directs 911 calls to  
94 appropriate public safety answering points by selective routing  
95 based on the geographical location from which the call  
96 originated, or as otherwise provided in the state plan under s.  
97 365.171, and that provides for automatic number identification  
98 and automatic location-identification features. E911 service  
99 provided by a wireless provider means E911 as defined in the  
100 order.

101 (i)~~(j)~~ "Existing structure" means a structure that exists  
102 at the time an application for permission to place antennae on a  
103 structure is filed with a local government. The term includes  
104 any structure that can structurally support the attachment of  
105 antennae in compliance with applicable codes.

106 (j)~~(k)~~ "Fee" means the E911 fee authorized and imposed  
107 under subsections ~~subsection~~ (8) and (9).

108 (k)~~(l)~~ "Fund" means the Emergency Communications Number  
109 E911 System Fund established in s. 365.173 and maintained under  
110 this section for the purpose of recovering the costs associated  
111 with providing 911 service or E911 service, including the costs  
112 of implementing the order. The fund shall be segregated into  
113 wireless, prepaid wireless, and nonwireless categories.

114 (l)~~(m)~~ "Historic building, structure, site, object, or  
115 district" means any building, structure, site, object, or  
116 district that has been officially designated as a historic

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117 building, historic structure, historic site, historic object, or  
118 historic district through a federal, state, or local designation  
119 program.

120 (m)~~(n)~~ "Land development regulations" means any ordinance  
121 enacted by a local government for the regulation of any aspect  
122 of development, including an ordinance governing zoning,  
123 subdivisions, landscaping, tree protection, or signs, the local  
124 government's comprehensive plan, or any other ordinance  
125 concerning any aspect of the development of land. The term does  
126 not include any building construction standard adopted under and  
127 in compliance with chapter 553.

128 (n)~~(o)~~ "Local exchange carrier" means a "competitive local  
129 exchange telecommunications company" or a "local exchange  
130 telecommunications company" as defined in s. 364.02.

131 (o)~~(p)~~ "Local government" means any municipality, county,  
132 or political subdivision or agency of a municipality, county, or  
133 political subdivision.

134 (p)~~(q)~~ "Medium county" means any county that has a  
135 population of 75,000 or more but less than 750,000.

136 (q)~~(r)~~ "Mobile telephone number" or "MTN" means the  
137 telephone number assigned to a wireless telephone at the time of  
138 initial activation.

139 (r)~~(s)~~ "Nonwireless category" means the revenues to the  
140 fund received from voice communications services providers other  
141 than wireless providers.

142 (s)~~(t)~~ "Office" means the Technology Program within the  
143 Department of Management Services, as designated by the  
144 secretary of the department.

145 (t)~~(u)~~ "Order" means:

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146 1. The following orders and rules of the Federal  
147 Communications Commission issued in FCC Docket No. 94-102:

148 a. Order adopted on June 12, 1996, with an effective date  
149 of October 1, 1996, the amendments to s. 20.03 and the creation  
150 of s. 20.18 of Title 47 of the Code of Federal Regulations  
151 adopted by the Federal Communications Commission pursuant to  
152 such order.

153 b. Memorandum and Order No. FCC 97-402 adopted on December  
154 23, 1997.

155 c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

156 d. Order No. FCC 98-345 adopted December 31, 1998.

157 2. Orders and rules subsequently adopted by the Federal  
158 Communications Commission relating to the provision of 911  
159 services, including Order Number FCC-05-116, adopted May 19,  
160 2005.

161 (u) "Prepaid wireless category" means all revenues in the  
162 fund received through the Department of Revenue from the fee  
163 authorized and imposed under subsection (9).

164 (v) "Prepaid wireless service" means a right to access  
165 wireless service that allows a caller to contact and interact  
166 with 911 to access the 911 system, which service must be paid  
167 for in advance and is sold in predetermined units or dollars,  
168 which units or dollars expire on a predetermined schedule or are  
169 decremented on a predetermined basis in exchange for the right  
170 to access wireless service.

171 ~~(v) "Prepaid calling arrangements" has the same meaning as~~  
172 ~~defined in s. 212.05(1)(e).~~

173 (w) "Public agency" means the state and any municipality,  
174 county, municipal corporation, or other governmental entity,

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175 public district, or public authority located in whole or in part  
176 within this state which provides, or has authority to provide,  
177 firefighting, law enforcement, ambulance, medical, or other  
178 emergency services.

179 (x) "Public safety agency" means a functional division of a  
180 public agency which provides firefighting, law enforcement,  
181 medical, or other emergency services.

182 (y) "Public safety answering point," "PSAP," or "answering  
183 point" means the public safety agency that receives incoming 911  
184 requests for assistance and dispatches appropriate public safety  
185 agencies to respond to the requests in accordance with the state  
186 E911 plan.

187 (z)~~(y)~~ "Rural county" means any county that has a  
188 population of fewer than 75,000.

189 (aa)~~(z)~~ "Service identifier" means the service number,  
190 access line, or other unique ~~subscriber~~ identifier assigned to a  
191 subscriber and established by the Federal Communications  
192 Commission for purposes of routing calls whereby the subscriber  
193 has access to the E911 system.

194 (bb)~~(aa)~~ "Tower" means any structure designed primarily to  
195 support a wireless provider's antennae.

196 (cc)~~(bb)~~ "Voice communications services" means two-way  
197 voice service, through the use of any technology, which actually  
198 provides access to E911 services, and includes communications  
199 services, as defined in s. 202.11, which actually provide access  
200 to E911 services and which are required to be included in the  
201 provision of E911 services pursuant to orders and rules adopted  
202 by the Federal Communications Commission. The term includes  
203 voice-over-Internet-protocol service. For the purposes of this

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204 section, the term "voice-over-Internet-protocol service" or  
205 "VoIP service" means interconnected VoIP services having the  
206 following characteristics:

- 207 1. The service enables real-time, two-way voice  
208 communications;
- 209 2. The service requires a broadband connection from the  
210 user's locations;
- 211 3. The service requires IP-compatible customer premises  
212 equipment; and
- 213 4. The service offering allows users generally to receive  
214 calls that originate on the public switched telephone network  
215 and to terminate calls on the public switched telephone network.

216 ~~(dd)~~ "Voice communications services provider" or  
217 "provider" means any person or entity providing voice  
218 communications services, except that the term does not include  
219 any person or entity that resells voice communications services  
220 and was assessed the fee authorized and imposed under subsection  
221 (8) by its resale supplier.

222 ~~(ee)~~ "Wireless 911 system" or "wireless 911 service"  
223 means an emergency telephone system or service that provides a  
224 subscriber with the ability to reach an answering point by  
225 accessing the digits "911."

226 ~~(ff)~~ "Wireless category" means the revenues to the fund  
227 received from a wireless provider from the fee authorized and  
228 imposed under subsection (8).

229 ~~(gg)~~ "Wireless communications facility" means any  
230 equipment or facility used to provide service and may include,  
231 but is not limited to, antennae, towers, equipment enclosures,  
232 cabling, antenna brackets, and other such equipment. Placing a

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233 wireless communications facility on an existing structure does  
 234 not cause the existing structure to become a wireless  
 235 communications facility.

236 (hh)~~(gg)~~ "Wireless provider" means a person who provides  
 237 wireless service and:

- 238 1. Is subject to the requirements of the order; or
- 239 2. Elects to provide wireless 911 service or E911 service  
 240 in this state.

241 (ii)~~(hh)~~ "Wireless service" means "commercial mobile radio  
 242 service" as provided under ss. 3(27) and 332(d) of the Federal  
 243 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and  
 244 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-  
 245 66, August 10, 1993, 107 Stat. 312. The term includes service  
 246 provided by any wireless real-time two-way wire communication  
 247 device, including radio-telephone communications used in  
 248 cellular telephone service; personal communications service; or  
 249 the functional or competitive equivalent of a radio-telephone  
 250 communications line used in cellular telephone service, a  
 251 personal communications service, or a network radio access line.  
 252 The term does not include wireless providers that offer mainly  
 253 dispatch service in a more localized, noncellular configuration;  
 254 providers offering only data, one-way, or stored-voice services  
 255 on an interconnected basis; providers of air-to-ground services;  
 256 or public coast stations.

257 (4) POWERS AND DUTIES OF THE OFFICE.—The office shall  
 258 oversee the administration of the fee authorized and imposed ~~on~~  
 259 ~~subscribers of voice communications services~~ under subsections  
 260 ~~subsection~~ (8) and (9).

261 (5) THE E911 BOARD.—

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262 (a) The E911 Board is established to administer, with  
263 oversight by the office, the fee imposed under subsections  
264 ~~subsection~~ (8) and (9), including receiving revenues derived  
265 from the fee; distributing portions of the revenues to wireless  
266 providers, counties, and the office; accounting for receipts,  
267 distributions, and income derived by the funds maintained in the  
268 fund; and providing annual reports to the Governor and the  
269 Legislature for submission by the office on amounts collected  
270 and expended, the purposes for which expenditures have been  
271 made, and the status of E911 service in this state. In order to  
272 advise and assist the office in implementing the purposes of  
273 this section, the board, which has the power of a body  
274 corporate, has the powers enumerated in subsection (6).

275 (b) The board shall consist of 11 members, one of whom must  
276 be the system director designated under s. 365.171(5), or his or  
277 her designee, who shall serve as the chair of the board. The  
278 remaining 10 members of the board shall be appointed by the  
279 Governor and must be composed of 5 county 911 coordinators,  
280 consisting of a representative from a rural county, a  
281 representative from a medium county, a representative from a  
282 large county, and 2 at-large representatives recommended by the  
283 Florida Association of Counties in consultation with the county  
284 911 coordinators; 3 local exchange carrier member  
285 representatives, one of whom must be a representative of the  
286 local exchange carrier having the greatest number of access  
287 lines in the state and one of whom must be a representative of a  
288 certificated competitive local exchange telecommunications  
289 company; and 2 member representatives from the wireless  
290 telecommunications industry, with consideration given to

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291 wireless providers that are not affiliated with local exchange  
292 carriers. Not more than one member may be appointed to represent  
293 any single provider on the board.

294 (c) The system director, designated under s. 365.171(5), or  
295 his or her designee, must be a permanent member of the board.  
296 Each of the remaining 10 ~~eight~~ members of the board shall be  
297 appointed to a 4-year term and may not be appointed to more than  
298 two successive terms. However, for the purpose of staggering  
299 terms, two of the original board members shall be appointed to  
300 terms of 4 years, two shall be appointed to terms of 3 years,  
301 and four shall be appointed to terms of 2 years, as designated  
302 by the Governor. A vacancy on the board shall be filled in the  
303 same manner as the original appointment.

304 ~~(d) The first vacancy in a wireless provider representative~~  
305 ~~position occurring after July 1, 2007, must be filled by~~  
306 ~~appointment of a local exchange company representative. Until~~  
307 ~~the appointment is made, there shall be only one local exchange~~  
308 ~~company representative serving on the board, notwithstanding any~~  
309 ~~other provision to the contrary.~~

310 (6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

311 (a) The board shall:

- 312 1. Administer the E911 fee.
- 313 2. Implement, maintain, and oversee the fund.
- 314 3. Review and oversee the disbursement of the revenues  
315 deposited into the fund as provided in s. 365.173.

316 a. The board may establish a schedule for implementing  
317 wireless E911 service by service area, and prioritize  
318 disbursements of revenues from the fund to providers and rural  
319 counties as provided in s. 365.173(2)(e) ~~s. 365.173(2)(d)~~ and

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320 (g) pursuant to the schedule, in order to implement E911  
321 services in the most efficient and cost-effective manner.

322 b. Revenues in the fund which have not been disbursed  
323 because sworn invoices as required by s. 365.173(2)(e) ~~s.~~  
324 ~~365.173(2)(d)~~ have not been submitted to the board may be used  
325 by the board as needed to provide grants to counties for the  
326 purpose of upgrading E911 systems. The counties must use the  
327 funds only for capital expenditures or remotely provided hosted  
328 911 answering point call-taking equipment and network services  
329 directly attributable to establishing and provisioning E911  
330 services, which may include next-generation deployment. Prior to  
331 the distribution of grants, the board shall provide 90 days'  
332 written notice to all counties and publish electronically an  
333 approved application process. County grant applications shall be  
334 prioritized based on the availability of funds, current system  
335 life expectancy, system replacement needs, and Phase II  
336 compliance per the Federal Communications Commission. No grants  
337 will be available to any county for next-generation deployment  
338 until all counties are Phase II complete. The board shall take  
339 all actions within its authority to ensure that county  
340 recipients of such grants use these funds only for the purpose  
341 under which they have been provided and may take any actions  
342 within its authority to secure county repayment of grant  
343 revenues upon determination that the funds were not used for the  
344 purpose under which they were provided.

345 c. When determining the funding provided in a state 911  
346 grant application request, the board shall take into account  
347 information on the amount of carryforward funds retained by the  
348 counties. The information will be based on the amount of county

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349 carryforward funds reported in the financial audit required in  
350 s. 365.173(2)(d). E911 State Grant Program funding requests will  
351 be limited by any county carryforward funds in excess of the  
352 allowable 30 percent amount of fee revenue calculated on a 2-  
353 year basis.

354 ~~d.e.~~ The board shall reimburse all costs of a wireless  
355 provider in accordance with s. 365.173(2)(e) ~~s. 365.173(2)(d)~~  
356 before taking any action to transfer additional funds.

357 ~~d. By September 1, 2007, the board shall authorize the~~  
358 ~~transfer of up to \$15 million to the counties from existing~~  
359 ~~money within the fund established under s. 365.173(1). The money~~  
360 ~~shall be disbursed equitably to all of the counties using a~~  
361 ~~timeframe and distribution methodology established by the board~~  
362 ~~before September 1, 2007, in order to prevent a loss to the~~  
363 ~~counties in the ordinary and expected time value of money caused~~  
364 ~~by any timing delay in remittance to the counties of wireline~~  
365 ~~fees caused by the one-time transfer of collecting wireline fees~~  
366 ~~by the counties to the board. All disbursements for this purpose~~  
367 ~~must be returned to the fund from future remittances by the~~  
368 ~~nonwireless category.~~

369 e. After taking the action required in sub-subparagraphs  
370 a.-d., the board may review and, with all members participating  
371 in the vote, adjust the percentage allocations or adjust the  
372 amount of the fee as provided, ~~or both~~, under paragraph (8)(g)  
373 ~~(8)(h)~~, and, if the board determines that the revenues in the  
374 wireless category exceed the amount needed to reimburse wireless  
375 providers for the cost to implement E911 services, the board may  
376 transfer revenue to the counties from the existing funds within  
377 the wireless category. The board shall disburse the funds

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378 equitably to all counties using a timeframe and distribution  
379 methodology established by the board.

380 4. Review documentation submitted by wireless providers  
381 which reflects current and projected funds derived from the fee,  
382 and the expenses incurred and expected to be incurred in order  
383 to comply with the E911 service requirements contained in the  
384 order for the purposes of:

385 a. Ensuring that wireless providers receive fair and  
386 equitable distributions of funds from the fund.

387 b. Ensuring that wireless providers are not provided  
388 disbursements from the fund which exceed the costs of providing  
389 E911 service, including the costs of complying with the order.

390 c. Ascertaining the projected costs of compliance with the  
391 requirements of the order and projected collections of the fee.

392 d. Implementing changes to the allocation percentages or  
393 adjusting the fee under paragraph (8) (h) ~~(8) (i)~~.

394 5. Meet monthly in the most efficient and cost-effective  
395 manner, including telephonically when practical, for the  
396 business to be conducted, to review and approve or reject, in  
397 whole or in part, applications submitted by wireless providers  
398 for recovery of moneys deposited into the wireless category, and  
399 to authorize the transfer of, and distribute, the fee allocation  
400 to the counties.

401 6. Hire and retain employees, which may include an  
402 independent executive director who shall possess experience in  
403 the area of telecommunications and emergency 911 issues, for the  
404 purposes of performing the technical and administrative  
405 functions for the board.

406 7. Make and enter into contracts, pursuant to chapter 287,

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407 and execute other instruments necessary or convenient for the  
408 exercise of the powers and functions of the board.

409 8. Sue and be sued, and appear and defend in all actions  
410 and proceedings, in its corporate name to the same extent as a  
411 natural person.

412 9. Adopt, use, and alter a common corporate seal.

413 10. Elect or appoint the officers and agents that are  
414 required by the affairs of the board.

415 11. The board may adopt rules under ss. 120.536(1) and  
416 120.54 to implement this section and ss. 365.173 and 365.174.

417 12. Provide coordination, support, and technical assistance  
418 to counties to promote the deployment of advanced 911 and E911  
419 systems in the state.

420 13. Provide coordination and support for educational  
421 opportunities related to E911 issues for the E911 community in  
422 this state.

423 14. Act as an advocate for issues related to E911 system  
424 functions, features, and operations to improve the delivery of  
425 E911 services to the residents of and visitors to this state.

426 15. Coordinate input from this state at national forums and  
427 associations, to ensure that policies related to E911 systems  
428 and services are consistent with the policies of the E911  
429 community in this state.

430 16. Work cooperatively with the system director established  
431 in s. 365.171(5) to enhance the state of E911 services in this  
432 state and to provide unified leadership for all E911 issues  
433 through planning and coordination.

434 17. Do all acts and things necessary or convenient to carry  
435 out the powers granted in this section in a manner that is

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436 competitively and technologically neutral as to all voice  
437 communications services providers, including, but not limited  
438 to, consideration of emerging technology and related cost  
439 savings, while taking into account embedded costs in current  
440 systems.

441 18. Have the authority to secure the services of an  
442 independent, private attorney via invitation to bid, request for  
443 proposals, invitation to negotiate, or professional contracts  
444 for legal services already established at the Division of  
445 Purchasing of the Department of Management Services.

446 (b) Board members shall serve without compensation;  
447 however, members are entitled to per diem and travel expenses as  
448 provided in s. 112.061.

449 (c) By February 28 of each year, the board shall prepare a  
450 report for submission by the office to the Governor, the  
451 President of the Senate, and the Speaker of the House of  
452 Representatives which addresses for the immediately preceding  
453 state fiscal year and county fiscal ~~calendar~~ year:

454 1. The annual receipts, including the total amount of fee  
455 revenues collected by each provider, the total disbursements of  
456 money in the fund, including the amount of fund-reimbursed  
457 expenses incurred by each wireless provider to comply with the  
458 order, and the amount of moneys on deposit in the fund.

459 2. Whether the amount of the fee and the allocation  
460 percentages set forth in s. 365.173 have been or should be  
461 adjusted to comply with the requirements of the order or other  
462 provisions of this chapter, and the reasons for making or not  
463 making a recommended adjustment to the fee.

464 3. Any other issues related to providing E911 services.

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465 4. The status of E911 services in this state.

466 (7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.-

467 (a) The board shall issue a request for proposals as  
468 provided in chapter 287 for the purpose of retaining an  
469 independent accounting firm. The independent accounting firm  
470 shall perform all material administrative and accounting tasks  
471 and functions required for administering the fee. The request  
472 for proposals must include, but need not be limited to:

473 1. A description of the scope and general requirements of  
474 the services requested.

475 2. A description of the specific accounting and reporting  
476 services required for administering the fund, including  
477 processing checks and distributing funds as directed by the  
478 board under s. 365.173.

479 3. A description of information to be provided by the  
480 proposer, including the proposer's background and qualifications  
481 and the proposed cost of the services to be provided.

482 (b) The board shall establish a committee to review  
483 requests for proposals which must include the statewide E911  
484 system director designated under s. 365.171(5), or his or her  
485 designee, and two members of the board, one of whom is a county  
486 911 coordinator and one of whom represents a voice  
487 communications services provider. The review committee shall  
488 review the proposals received by the board and recommend an  
489 independent accounting firm to the board for final selection. By  
490 agreeing to serve on the review committee, each member of the  
491 review committee shall verify that he or she does not have any  
492 interest or employment, directly or indirectly, with potential  
493 proposers which conflicts in any manner or degree with his or

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494 her performance on the committee.

495 (c) ~~After July 1, 2004,~~ The board may secure the services  
496 of an independent accounting firm via invitation to bid, request  
497 for proposals, invitation to negotiate, or professional  
498 contracts already established at the Division of Purchasing,  
499 Department of Management Services, for certified public  
500 accounting firms, or the board may hire and retain professional  
501 accounting staff to accomplish these functions.

502 (8) E911 FEE.—

503 (a) Each voice communications services provider shall  
504 collect the fee described in this subsection, except that the  
505 fee for prepaid wireless service shall be collected in the  
506 manner set forth in subsection (9). Each provider, as part of  
507 its monthly billing process, shall bill the fee as follows. The  
508 fee shall not be assessed on any pay telephone in the state.

509 1. Each voice communications service provider other than a  
510 wireless provider shall bill the fee to a subscriber based on  
511 the number of access lines having access to the E911 system, on  
512 a service-identifier basis, up to a maximum of 25 access lines  
513 per account bill rendered.

514 2. Each voice communications service provider other than a  
515 wireless provider shall bill the fee to a subscriber on a basis  
516 of five service-identified access lines for each digital  
517 transmission link, including primary rate interface service or  
518 equivalent Digital-Signal-1-level service, which can be  
519 channelized and split into 23 or 24 voice-grade or data-grade  
520 channels for communications, up to a maximum of 25 access lines  
521 per account bill rendered.

522 3. Except in the case of prepaid wireless service, each

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523 wireless provider shall bill the fee to a subscriber on a per-  
 524 service-identifier basis for service identifiers whose primary  
 525 place of use is within this state. ~~Before July 1, 2013,~~ The fee  
 526 shall not be assessed on or collected from a provider with  
 527 respect to an end user's service if that end user's service is a  
 528 prepaid wireless service before the fee under subsection (9)  
 529 takes effect ~~calling arrangement that is subject to s.~~  
 530 ~~212.05(1)(e).~~

531 a. ~~An E911 fee shall not be collected from the sale of~~  
 532 ~~prepaid wireless service before July 1, 2013.~~

533 b. ~~For purposes of this section, the term:~~

534 (I) ~~"Prepaid wireless service" means the right to access~~  
 535 ~~telecommunications services, which must be paid for in advance~~  
 536 ~~and sold in predetermined units or dollars enabling the~~  
 537 ~~originator to make calls such that the number of units or~~  
 538 ~~dollars declines with use in a known amount.~~

539 (II) ~~"Prepaid wireless service providers" includes those~~  
 540 ~~persons who sell prepaid wireless service regardless of its~~  
 541 ~~form, as a retailer or reseller.~~

542 4. Except in the case of prepaid wireless service, each ~~The~~  
 543 ~~voice communications services~~ provider ~~providers~~ not addressed  
 544 under subparagraphs 1., 2., and 3. shall bill the fee on a per-  
 545 service-identifier basis for service identifiers whose primary  
 546 place of use is within the state up to a maximum of 25 service  
 547 identifiers for each account bill rendered.

548  
 549 The provider may list the fee as a separate entry on each bill,  
 550 in which case the fee must be identified as a fee for E911  
 551 services. A provider shall remit the fee to the board only if

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552 the fee is paid by the subscriber. If a provider receives a  
553 partial payment for a monthly bill from a subscriber, the amount  
554 received shall first be applied to the payment due the provider  
555 for providing voice communications service.

556 (b) A provider is not obligated to take any legal action to  
557 enforce collection of the fees for which any subscriber is  
558 billed. A county subscribing to 911 service remains liable to  
559 the provider delivering the 911 service or equipment for any 911  
560 service, equipment, operation, or maintenance charge owed by the  
561 county to the provider.

562 (c) For purposes of this subsection ~~section~~, the state and  
563 local governments are not subscribers.

564 (d) Each provider may retain 1 percent of the amount of the  
565 fees collected as reimbursement for the administrative costs  
566 incurred by the provider to bill, collect, and remit the fee.  
567 The remainder shall be delivered to the board and deposited by  
568 the board into the fund. The board shall distribute the  
569 remainder pursuant to s. 365.173.

570 (e) ~~Effective September 1, 2007,~~ Voice communications  
571 services providers billing the fee to subscribers shall deliver  
572 revenues from the fee to the board within 60 days after the end  
573 of the month in which the fee was billed, together with a  
574 monthly report of the number of service identifiers in each  
575 county. Each wireless provider and other applicable provider  
576 identified in subparagraph (a)4. shall report the number of  
577 service identifiers for subscribers whose place of primary use  
578 is in each county. All provider subscriber information provided  
579 to the board is subject to s. 365.174. If a provider chooses to  
580 remit any fee amounts to the board before they are paid by the

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581 subscribers, a provider may apply to the board for a refund of,  
582 or may take a credit for, any such fees remitted to the board  
583 which are not collected by the provider within 6 months  
584 following the month in which the fees are charged off for  
585 federal income tax purposes as bad debt.

586 (f) The rate of the fee ~~shall be set by the board after~~  
587 ~~considering the factors set forth in paragraphs (h) and (i), but~~  
588 may not exceed 50 cents per month for ~~per~~ each service  
589 identifier. Effective on the first day of the month following  
590 180 days after this act takes effect, the fee shall be 46 cents  
591 per month for each service identifier. The fee shall apply  
592 uniformly and be imposed throughout the state, except for those  
593 counties that, before July 1, 2007, had adopted an ordinance or  
594 resolution establishing a fee less than 50 cents per month per  
595 access line. In those counties the fee established by ordinance  
596 may be changed only to the uniform statewide rate no sooner than  
597 30 days after notification is made by the county's board of  
598 county commissioners to the board.

599 ~~(g) It is the intent of the Legislature that all revenue~~  
600 ~~from the fee be used as specified in s. 365.173(2)(a)-(i).~~

601 ~~(g)(h) No later than November 1, 2007,~~ The board may adjust  
602 the allocation percentages for distribution of the fund as  
603 provided in s. 365.173. No sooner than 1 year after the fee is  
604 imposed under paragraph (9)(a), the board may adjust the rate of  
605 the fee under paragraph (f) based on the criteria in this  
606 paragraph and paragraph (h). Any adjustment in the rate must be  
607 approved by a two-thirds vote of the total number of E911 board  
608 members. When setting the percentages or ~~and~~ contemplating any  
609 adjustments to the fee, the board shall consider the following:

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610 1. The revenues currently allocated for wireless service  
611 provider costs for implementing E911 service and projected costs  
612 for implementing E911 service, including recurring costs for  
613 Phase I and Phase II and the effect of new technologies;

614 2. The appropriate level of funding needed to fund the  
615 rural grant program provided for in s. 365.173(2)(g); and

616 3. The need to fund statewide, regional, and county grants  
617 in accordance with sub-subparagraph (6)(a)3.b. and s.  
618 365.173(2)(h).

619 (h)-(i) The board may adjust the allocation percentages or  
620 adjust the amount of the fee as provided in paragraph (g), ~~or~~  
621 ~~both~~, if necessary to ensure full cost recovery or prevent  
622 overrecovery of costs incurred in the provision of E911 service,  
623 including costs incurred or projected to be incurred to comply  
624 with the order. Any new allocation percentages or reduced or  
625 increased fee may not be adjusted for 1 year. In no event shall  
626 the fee may not exceed 50 cents per month for ~~per~~ each service  
627 identifier. The ~~board-established~~ fee, and any board adjustment  
628 of the fee, shall be uniform throughout the state, except for  
629 the counties identified in paragraph (f). No less than 90 days  
630 before the effective date of any adjustment to the fee, the  
631 board shall provide written notice of the adjusted fee amount  
632 and effective date to each voice communications services  
633 provider from which the board is then receiving the fee.

634 (i) It is the intent of the Legislature that all revenue  
635 from the fee be used as specified in s. 365.173(2)(a)-(i).

636 (j) State and local taxes do not apply to the fee. The  
637 amount of the E911 fee collected by a provider may not be  
638 included in the base for measuring any tax, fee, surcharge, or

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639 other charge imposed by this state, any political subdivision of  
640 this state, or any governmental agency.

641 (k) A local government may not levy the fee or any  
642 additional fee on providers or subscribers for the provision of  
643 E911 service.

644 (l) For purposes of this section, the definitions contained  
645 in s. 202.11 and the provisions of s. 202.155 apply in the same  
646 manner and to the same extent as the definitions and provisions  
647 apply to the taxes levied under chapter 202 on mobile  
648 communications services.

649 (9) PREPAID WIRELESS E911 FEE.—

650 (a) Effective on the first day of the month following 120  
651 days after this act takes effect, a prepaid wireless E911 fee is  
652 imposed per retail transaction at the rate of 46 cents. In order  
653 to allow sellers of all sizes and technological capabilities  
654 adequate time to comply with this subsection, a seller of  
655 prepaid wireless service operating in this state before the  
656 prepaid wireless E911 fee is imposed shall retain 100 percent of  
657 the fee collected under this paragraph for the first 2 months to  
658 offset the cost of setup.

659 (b) Effective on the first day of the month following 180  
660 days after this act takes effect, the prepaid wireless E911 fee  
661 is imposed per retail transaction at the rate established in  
662 paragraphs (8) (f)-(h) and shall be remitted in accordance with  
663 paragraph (g). In no event shall the fee exceed 50 cents for  
664 each retail transaction. At least 90 days before the effective  
665 date of any adjustment to the fee under paragraph (8) (g), the  
666 Department of Revenue shall provide written notice of the  
667 adjusted fee amount and its effective date to each seller from

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668 which the department is then receiving the fee. At least 120  
669 days before the effective date of any adjustment to the fee  
670 imposed under this subsection, the board shall provide notice to  
671 the Department of Revenue of the adjusted fee amount and  
672 effective date of the adjustment.

673 (c) The prepaid wireless E911 fee shall be collected by the  
674 seller from the consumer with respect to each retail transaction  
675 occurring in this state. The amount of the prepaid wireless E911  
676 fee shall be separately stated on an invoice, receipt, or other  
677 similar document that is provided to the consumer by the seller  
678 or otherwise disclosed to the consumer.

679 (d) For purposes of paragraph (c), a retail transaction  
680 that takes place in person by a consumer at a business location  
681 of the seller shall be treated as occurring in this state if  
682 that business location is in this state. Such transaction is  
683 deemed to have occurred in the county of the business location.  
684 When a retail transaction does not take place at the seller's  
685 business location, the transaction shall be treated as taking  
686 place at the consumer's shipping address or, if no item is  
687 shipped, at the consumer's address or the location associated  
688 with the consumer's mobile telephone number. Such transaction is  
689 deemed to have occurred in the county of the consumer's shipping  
690 address when items are shipped to the consumer or, when no items  
691 are shipped, the county of the consumer's address or the  
692 location associated with the consumer's mobile telephone number.  
693 A transaction for which the specific Florida county cannot be  
694 determined shall be treated as nonspecific.

695 (e) If a prepaid wireless device is sold for a single,  
696 nonitemized price with a prepaid wireless service of 10 minutes

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697 or less or \$5 or less, the seller may elect not to apply the  
698 wireless E911 fee to the transaction.

699 (f) The amount of the prepaid wireless E911 fee that is  
700 collected by a seller from a consumer and that is separately  
701 stated on an invoice, receipt, or similar document provided to  
702 the consumer by the seller, may not be included in the base for  
703 measuring any tax, fee, surcharge, or other charge that is  
704 imposed by this state, any political subdivision of this state,  
705 or any intergovernmental agency.

706 (g) Beginning the month after the fee is imposed under  
707 paragraph (b), each seller shall file a return and remit the  
708 prepaid wireless E911 fees collected in the previous month to  
709 the Department of Revenue on or before the 20th day of the  
710 month. If the 20th day falls on a Saturday, Sunday, or legal  
711 holiday, payments accompanied by returns are due on the next  
712 succeeding day that is not a Saturday, Sunday, or legal holiday  
713 observed by federal or state agencies as defined in chapter 683  
714 and s. 7503 of the Internal Revenue Code of 1986, as amended. A  
715 seller may remit the prepaid wireless E911 fee by electronic  
716 funds transfer and file a fee return with the Department of  
717 Revenue that is initiated through an electronic data  
718 interchange.

719 1. When a seller is authorized by the Department of Revenue  
720 pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax  
721 return on a quarterly, semiannual, or annual reporting basis,  
722 the seller may file a return and remit the prepaid wireless E911  
723 fees on or before the 20th day of the month following the  
724 authorized reporting period for sales and use tax.

725 2. A seller collecting less than \$50 per month of prepaid

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726 wireless E911 fees may file a quarterly return for the calendar  
727 quarters ending in March, June, September, and December. The  
728 seller must file a return and remit the prepaid wireless E911  
729 fees collected during each calendar quarter on or before the  
730 20th day of the month following that calendar quarter.

731 3. A seller must provide the following information on each  
732 prepaid wireless E911 fee return filed with the Department of  
733 Revenue:

734 a. The seller's name, federal identification number,  
735 taxpayer identification number issued by the Department of  
736 Revenue, business location address and mailing address, and  
737 county of the business location in accordance with paragraph  
738 (d);

739 b. The reporting period;

740 c. The number of prepaid wireless services sold during the  
741 reporting period;

742 d. The amount of prepaid wireless E911 fees collected and  
743 the amount of any adjustments to the fees collected;

744 e. The amount of any retailer collection allowance deducted  
745 from the amount of prepaid wireless E911 fees collected; and

746 f. The amount to be remitted to the Department of Revenue.

747 4. A seller who operates two or more business locations for  
748 which returns are required to be filed with the Department of  
749 Revenue may file a consolidated return reporting and remitting  
750 the prepaid wireless E911 fee for all business locations. Such  
751 sellors must report the prepaid wireless E911 fees collected in  
752 each county, in accordance with paragraph (d), on a reporting  
753 schedule filed with the fee return.

754 5. A return is not required for a reporting period when no

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755 prepaid wireless E911 fee is to be remitted for that period.

756 6. The Department of Revenue serves as an agent of the E911  
757 Board for collection of the prepaid wireless E911 fee, and the  
758 board retains the authority to administer the fee as provided in  
759 this section and s. 365.173.

760 (h) A seller of prepaid wireless services in this state  
761 must register with the Department of Revenue for each place of  
762 business as required by s. 212.18(3) and the Department of  
763 Revenue's administrative rule regarding registration as a sales  
764 and use tax dealer. A separate application is required for each  
765 place of business. A valid certificate of registration issued by  
766 the Department of Revenue to a seller for sales and use tax  
767 purposes is sufficient for purposes of the registration  
768 requirement of this subsection. There is no fee for registration  
769 for remittance of the prepaid wireless service E911 fee.

770 (i) The Department of Revenue shall deposit the funds  
771 remitted under this subsection into the Audit and Warrant  
772 Clearing Trust Fund established in s. 215.199 and retain up to  
773 3.2 percent of the funds remitted under this subsection to  
774 reimburse its direct costs of administering the collection and  
775 remittance of prepaid wireless fees. Thereafter, the Department  
776 of Revenue shall transfer all remaining funds remitted under  
777 this subsection to the Emergency Communications Number E911  
778 System Fund monthly for use as provided in s. 365.173.

779 (j) A seller may retain 5 percent of the prepaid wireless  
780 E911 fees that are collected under paragraph (b) by the seller  
781 from consumers as a retailer collection allowance.

782 (k) A provider or seller of prepaid wireless service is not  
783 liable for damages to any person resulting from or incurred in

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784 connection with providing or failing to provide 911 or E911  
785 service or for identifying or failing to identify the telephone  
786 number, address, location, or name associated with any person or  
787 device that is accessing or attempting to access 911 or E911  
788 service.

789 (l) A provider or seller of prepaid wireless service is not  
790 liable for damages to any person resulting from or incurred in  
791 connection with providing any lawful assistance to any  
792 investigative or law enforcement officer of the United States,  
793 any state, or any political subdivision of any state in  
794 connection with any lawful investigation or other law  
795 enforcement activity by such law enforcement officer.

796 (m) The limitations of liability under this subsection for  
797 providers and sellers are in addition to any other limitation of  
798 liability provided for under this section.

799 (n) A local government may not levy the fee or any  
800 additional fee on providers or sellers of prepaid wireless  
801 service for the provision of E911 service.

802 (o) For purposes of this section, the state and local  
803 governments are not consumers.

804 (p) For purposes of this subsection, the term:

805 1. "Consumer" means a person who purchases prepaid wireless  
806 service in a retail sale.

807 2. "Prepaid wireless E911 fee" means the fee that is  
808 required to be collected by a seller from a consumer as provided  
809 in this subsection.

810 3. "Provider" means a person that provides prepaid wireless  
811 service pursuant to a license issued by the Federal  
812 Communications Commission.

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813       4. "Retail transaction" means the purchase by a consumer  
814 from a seller of prepaid wireless service that may be applied to  
815 a single service identifier for use by the consumer. If a  
816 consumer makes a purchase of multiple prepaid wireless services  
817 in a single transaction, each individual prepaid wireless  
818 service shall be considered a separate retail transaction for  
819 purposes of calculating the prepaid wireless E911 fee.

820       5. "Seller" means a person who makes retail sales of  
821 prepaid wireless services to a consumer.

822       (10)(9) AUTHORIZED EXPENDITURES OF E911 FEE.—

823       (a) For purposes of this section, E911 service includes the  
824 functions of database management, call taking, ~~dispatching,~~  
825 location verification, and call transfer. Department of Health  
826 certification and recertification and training costs for 911  
827 public safety telecommunications, including dispatching, are  
828 functions of 911 services.

829       (b) All costs directly attributable to the establishment or  
830 provision of E911 service and contracting for E911 services are  
831 eligible for expenditure of moneys derived from imposition of  
832 the fee authorized by this section. These costs include the  
833 acquisition, implementation, and maintenance of Public Safety  
834 Answering Point (PSAP) equipment and E911 service features, as  
835 defined in the providers' published schedules ~~Public Service~~  
836 ~~Commission's lawfully approved 911 and E911 and related tariffs~~  
837 or the acquisition, installation, and maintenance of other E911  
838 equipment, including: circuits; call answering equipment;; call  
839 transfer equipment;; ANI or ALI controllers;; ~~ALI controllers,~~  
840 ANI or ALI displays;; ~~ALI displays,~~ station instruments;; E911  
841 telecommunications systems;; visual call information and storage

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842 devices;; recording equipment;; telephone devices and other  
843 equipment for the hearing impaired used in the E911 system;;  
844 PSAP backup power systems;; consoles;; automatic call  
845 distributors, and interfaces, including hardware and software,  
846 for computer-aided dispatch (CAD) systems;; integrated CAD  
847 systems for that portion of the systems used for E911 call  
848 taking; GIS system and software equipment and information  
849 displays; network clocks;; salary and associated expenses for  
850 E911 call takers for that portion of their time spent taking and  
851 transferring E911 calls, salary, and associated expenses for a  
852 county to employ a full-time equivalent E911 coordinator  
853 position and a full-time equivalent mapping or geographical data  
854 position, and technical system maintenance, database, and  
855 administration personnel ~~and a staff assistant position per~~  
856 ~~county~~ for the portion of their time spent administrating the  
857 E911 system; emergency medical, fire, and law enforcement  
858 prearrival instruction software; charts and training costs;  
859 training costs for PSAP call takers, supervisors, and managers  
860 in the proper methods and techniques used in taking and  
861 transferring E911 calls;; costs to train and educate PSAP  
862 employees regarding E911 service or E911 equipment, including  
863 fees collected by the Department of Health for the certification  
864 and recertification of 911 public safety telecommunicators as  
865 required under s. 401.465;; and expenses required to develop and  
866 maintain all information, including ALI and ANI databases and  
867 other information source repositories, necessary to properly  
868 inform call takers as to location address, type of emergency,  
869 and other information directly relevant to the E911 call-taking  
870 and transferring function. Moneys derived from the fee may also

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871 be used for next-generation E911 network services, next-  
 872 generation E911 database services, next-generation E911  
 873 equipment, and wireless E911 routing systems.

874 (c) The moneys may not be used to pay for any item not  
 875 listed in this subsection, including, but not limited to, any  
 876 capital or operational costs for emergency responses which occur  
 877 after the call transfer to the responding public safety entity  
 878 and the costs for constructing, leasing, maintaining, or  
 879 renovating buildings, except for those building modifications  
 880 necessary to maintain the security and environmental integrity  
 881 of the PSAP and E911 equipment rooms.

882 Section 2. Effective on the date that the prepaid wireless  
 883 E911 fee is imposed and remitted to the state under section  
 884 365.172(9)(b), Florida Statutes, as amended by this act, section  
 885 365.173, Florida Statutes, is amended to read:

886 365.173 Emergency Communications Number E911 System Fund.—

887 (1) REVENUES.—

888 (a) All Revenues derived from the fee levied on subscribers  
 889 under s. 365.172(8) must be paid by the board into the State  
 890 Treasury on or before the 15th day of each month. Such moneys  
 891 must be accounted for in a special fund to be designated as the  
 892 Emergency Communications Number E911 System Fund, a fund created  
 893 in the Technology Program, or other office as designated by the  
 894 Secretary of Management Services.7

895 (b) Revenues derived from the fee levied on prepaid  
 896 wireless service under s. 365.172(9), less the costs of  
 897 administering collection of the fee, must be transferred by the  
 898 Department of Revenue to the Emergency Communications Number  
 899 E911 System Fund on or before the 25th day of each month

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900 following the month of receipt. ~~and,~~

901 (c) For accounting purposes, the Emergency Communications  
 902 Number E911 System Fund must be segregated into three ~~two~~  
 903 separate categories:

904 1. ~~(a)~~ The wireless category; ~~and~~

905 2. ~~(b)~~ The nonwireless category; and

906 3. The prepaid wireless category.

907 (d) All moneys must be invested by the Chief Financial  
 908 Officer pursuant to s. 17.61. All moneys in such fund are to be  
 909 expended by the office for the purposes provided in this section  
 910 and s. 365.172. These funds are not subject to s. 215.20.

911 (2) DISTRIBUTION AND USE OF FUNDS.—As determined by the  
 912 board pursuant to s. 365.172(8)(g) ~~s. 365.172(8)(h)~~, and subject  
 913 to any modifications approved by the board pursuant to s.  
 914 365.172(6)(a)3. or (8)(h) ~~(8)(i)~~, the moneys in the fund shall  
 915 be distributed and used only as follows:

916 (a) Seventy-six ~~Sixty-seven~~ percent of the moneys in the  
 917 wireless category shall be distributed each month to counties,  
 918 based on the total number of service identifiers in each county,  
 919 and shall be used exclusively for payment of:

920 1. Authorized expenditures, as specified in s. 365.172(10)  
 921 ~~s. 365.172(9)~~.

922 2. Costs to comply with the requirements for E911 service  
 923 contained in the order and any future rules related to the  
 924 order.

925 (b) Ninety-six ~~Ninety-seven~~ percent of the moneys in the  
 926 nonwireless category shall be distributed each month to counties  
 927 based on the total number of service identifiers in each county  
 928 and shall be used exclusively for payment of authorized

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929 expenditures, as specified in s. 365.172(10) ~~s. 365.172(9)~~.

930 (c) Sixty-one percent of the moneys in the prepaid wireless  
931 category shall be distributed each month to counties based on  
932 the total amount of fees reported and paid in each county and  
933 shall be used exclusively for payment of authorized  
934 expenditures, as specified in s. 365.172(10). The moneys from  
935 prepaid wireless fees identified as nonspecific in accordance  
936 with s. 365.172(9) shall be distributed as determined by the  
937 E911 Board.

938 (d)(e) Any county that receives funds under paragraphs (a),  
939 ~~and~~ (b), and (c) shall establish a fund to be used exclusively  
940 for the receipt and expenditure of the revenues collected under  
941 paragraphs (a), ~~and~~ (b), and (c). All fees placed in the fund  
942 and any interest accrued shall be used solely for costs  
943 described in subparagraphs (a)1. and 2. and may not be reduced,  
944 withheld, or allocated for other purposes. The money collected  
945 and interest earned in this fund shall be appropriated for these  
946 purposes by the county commissioners and incorporated into the  
947 annual county budget. The fund shall be included within the  
948 financial audit performed in accordance with s. 218.39. The  
949 financial audit shall assure that all E911 fee revenues,  
950 interest, and E911 grant funding are used for payment of  
951 authorized expenditures, as specified in s. 365.172(10) and as  
952 specified in the E911 Board grant and special disbursement  
953 programs. The county is responsible for all expenditures of  
954 revenues distributed from the county E911 fund and shall submit  
955 the financial audit reports to the board for review. A county  
956 may carry forward up to 30 percent of the total funds disbursed  
957 to the county by the board during a county fiscal ~~calendar~~ year

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958 for expenditures for capital outlay, capital improvements, ~~or~~  
959 equipment replacement, or implementation of a hosted system if  
960 such expenditures are made for the purposes specified in  
961 subparagraphs (a)1. and 2.; however, the 30-percent limitation  
962 does not apply to funds disbursed to a county under s.  
963 365.172(6)(a)3., and a county may carry forward any percentage  
964 of the funds, except that any grant provided shall continue to  
965 be subject to any condition imposed by the board. In order to  
966 prevent an excess recovery of costs incurred in providing E911  
967 service, a county that receives funds greater than the  
968 permissible E911 costs described in s. 365.172(10) ~~s.~~  
969 ~~365.172(9)~~, including the 30-percent carryforward allowance,  
970 must return the excess funds to the E911 board to be allocated  
971 under s. 365.172(6)(a).

972 (e) ~~(d)~~ Twenty ~~Thirty~~ percent of the moneys in the wireless  
973 category shall be distributed to wireless providers in response  
974 to sworn invoices submitted to the board by wireless providers  
975 to reimburse such wireless providers for the actual costs  
976 incurred to provide 911 or E911 service, including the costs of  
977 complying with the order. Such costs include costs and expenses  
978 incurred by wireless providers to design, purchase, lease,  
979 program, install, test, upgrade, operate, and maintain all  
980 necessary data, hardware, and software required to provide E911  
981 service. Each wireless provider shall submit to the board, by  
982 August 1 of each year, a detailed estimate of the capital and  
983 operating expenses for which it anticipates that it will seek  
984 reimbursement under this paragraph during the ensuing state  
985 fiscal year. In order to be eligible for recovery during any  
986 ensuing state fiscal year, a wireless provider must submit all

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987 sworn invoices for allowable purchases made within the previous  
988 calendar year no later than March 31 of the fiscal year. By  
989 September 15 of each year, the board shall submit to the  
990 Legislature its legislative budget request for funds to be  
991 allocated to wireless providers under this paragraph during the  
992 ensuing state fiscal year. The budget request shall be based on  
993 the information submitted by the wireless providers and  
994 estimated surcharge revenues. Distributions of moneys in the  
995 fund by the board to wireless providers must be fair and  
996 nondiscriminatory. If the total amount of moneys requested by  
997 wireless providers pursuant to invoices submitted to the board  
998 and approved for payment exceeds the amount in the fund in any  
999 month, wireless providers that have invoices approved for  
1000 payment shall receive a pro rata share of moneys in the fund and  
1001 the balance of the payments shall be carried over to the  
1002 following month or months until all of the approved payments are  
1003 made. The board may adopt rules necessary to address the manner  
1004 in which pro rata distributions are made when the total amount  
1005 of funds requested by wireless providers pursuant to invoices  
1006 submitted to the board exceeds the total amount of moneys on  
1007 deposit in the fund.

1008 ~~(c) Notwithstanding paragraphs (a) and (d), the amount of~~  
1009 ~~money that remained in the wireless 911 system fund on December~~  
1010 ~~31, 2006, must be disbursed to wireless providers for the~~  
1011 ~~recovery of allowable costs incurred in previous years ending~~  
1012 ~~December 31, 2006, and in accordance with paragraph (d). In~~  
1013 ~~order to be eligible for recovered costs incurred under~~  
1014 ~~paragraph (d), a wireless provider must submit sworn invoices to~~  
1015 ~~the board by December 31, 2007. The board must disburse the~~

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1016 ~~designated funds in the wireless 911 system fund on or after~~  
1017 ~~January 1, 2008.~~

1018 (f) One percent of the moneys in each category of the fund  
1019 shall be retained by the board to be applied to costs and  
1020 expenses incurred for the purposes of managing, administering,  
1021 and overseeing the receipts and disbursements from the fund and  
1022 other activities as defined in s. 365.172(6). Any funds retained  
1023 for such purposes in a calendar year which are not applied to  
1024 such costs and expenses by March 31 of the following year shall  
1025 be redistributed as determined by the board.

1026 (g) Three ~~Two~~ percent of the moneys in each category of the  
1027 fund shall be used to make monthly distributions to rural  
1028 counties for the purpose of providing facilities and network and  
1029 service enhancements and assistance for the 911 or E911 systems  
1030 operated by rural counties and for the provision of grants by  
1031 the office to rural counties for upgrading and replacing E911  
1032 systems.

1033 (h) Thirty-five percent of the moneys in the prepaid  
1034 wireless category shall be retained by the board to provide  
1035 state E911 grants to be awarded in accordance with the following  
1036 order of priority:

1037 1. For all large, medium, and rural counties to upgrade or  
1038 replace E911 systems.

1039 2. For all large, medium, and rural counties to develop and  
1040 maintain statewide 911 routing, geographic, and management  
1041 information systems.

1042 3. For all large, medium, and rural counties to develop and  
1043 maintain next-generation 911 services and equipment. By  
1044 ~~September 1, 2007, up to \$15 million of the existing 911 system~~

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1045 ~~fund shall be available for distribution by the board to the~~  
1046 ~~counties in order to prevent a loss in the ordinary and expected~~  
1047 ~~time value of money caused by any timing delay in remittance to~~  
1048 ~~the counties of wireline fees caused by the one-time transfer of~~  
1049 ~~collecting wireline fees by the counties to the board. All~~  
1050 ~~disbursements for this purpose must be returned to the fund from~~  
1051 ~~the future remittance by the nonwireless category.~~

1052 (i) If the wireless category has funds remaining in it on  
1053 December 31 after disbursements have been made during the  
1054 calendar year immediately prior to December 31, the board may  
1055 disburse the excess funds in the wireless category in accordance  
1056 with s. 365.172(6)(a)3.b.

1057 (3) The Legislature recognizes that the fee authorized  
1058 under s. 365.172 may not necessarily provide the total funding  
1059 required for establishing or providing the E911 service. It is  
1060 the intent of the Legislature that all revenue from the fee be  
1061 used as specified in ~~this~~ subsection (2).

1062 Section 3. Paragraph (a) of subsection (2) of section  
1063 401.465, Florida Statutes, is amended to read:

1064 401.465 911 public safety telecommunicator certification.-

1065 (2) PERSONNEL; STANDARDS AND CERTIFICATION.-

1066 (a) Effective October 1, 2012, any person employed as a 911  
1067 public safety telecommunicator at a public safety answering  
1068 point, as defined in s. 365.172(3) ~~s. 365.172(3)(a)~~, must be  
1069 certified by the department.

1070 Section 4. The Division of Law Revision and Information is  
1071 directed to replace the phrase "on the first day of the month  
1072 following 120 days after this act takes effect" or the phrase  
1073 "on the first day of the month following 180 days after this act

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1074 takes effect" wherever it occurs in this act with the respective  
1075 date.

1076 Section 5. For the 2014-2015 fiscal year, the nonrecurring  
1077 sum of \$500,000 is appropriated from the General Revenue Fund to  
1078 the Department of Revenue for the purposes of administering this  
1079 act.

1080 Section 6. Except as otherwise expressly provided in this  
1081 act, this act shall take effect upon becoming a law.

**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 292

INTRODUCER: Senator Hays

SUBJECT: Public Records/Prepaid Wireless E911 Fee

DATE: January 7, 2014

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

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------|----------------|-----------|------------------|
| 1. | Caldwell | Caldwell       | CU        | <b>Favorable</b> |
| 2. |          |                | GO        |                  |
| 3. |          |                | RC        |                  |

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**I. Summary:**

SB 292 expands existing public records exemptions for information contained in tax returns, reports, and other documents that retail sellers of wireless communications services and devices provide to the Department of Revenue when remitting prepaid wireless E911 fees collected from customers. The department may provide information relative to the E911 fee with the Department of Management Services for official use. Proprietary confidential business information to the E911 Board of Directors or to the Technology Program within the Department of Management Services or to the Department of Revenue as agent of the E911 Board is also confidential and exempt from public records.

The exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

**II. Present Situation:**

**Florida's Public Records Law**

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

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<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

### **Taxpayer Records Provided to the Department of Revenue**

Section 213.053 (1), F. S., provides the statutory provisions to which confidentiality and information sharing provisions of the Department of Revenue apply. Section 213.053(2), F.S., provides that “All information contained in returns, reports, accounts, or declarations received by the department, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from s. 119.07(1), F.S. These subsections are a pre-1993 exemption. Subsection (8) authorizes the department to provide certain information to specific entities. The department is currently not authorized to share information with the Secretary of Management Services or to the E911 Board.

### **Proprietary Confidential Business Information submitted to the E911 Board or the Technology Program**

Section 365.174, F.S. provides that the proprietary confidential business information submitted by a provider to the E911 Board or to the Technology Program within the Department of Management Services is confidential. the disclosure of information must be pursuant to a written agreement between the executive director and the agency. The agency is bound by the same requirements of confidentiality as the Department of Revenue. If confidentiality is breached, the persons commits a misdemeanor of the first degree that is punishable pursuant to s. 775.082 or s. 775.083, F.S.

### **III. Effect of Proposed Changes:**

Until July 1, 2013, the E911 fee was not assessed on or collected if an end user’s service is a prepaid calling arrangement which included prepaid calling cards and prepaid wireless services that were sold by retailers.<sup>13</sup> At issue was the complexity of collecting and remitting the E911 fee by retailers who were not communications service providers. Pursuant to s. 365.127(8), F.S., communications service providers collect the E911 fee from customers who remit monthly payments and remit those fees directly to the E911 Board. Pursuant to s. 365.174(1), F.S., proprietary confidential business information is exempt from public record. SB 294 creates a mechanism for collection of the E911 fee in which the fee is collected by retailers and remitted to the Department of Revenue. This bill makes the same information that is submitted to the department also confidential and exempt from public record disclosure and allows the department, the E911 Board, and the Technology Program within the Department of Management Services to share those records.

**Section 1** amends s. 213.053(1), F.S. to add the prepaid wireless E911 fee imposed under a new s. 365.172(9) in SB 294 to the confidentiality and information sharing provisions.<sup>14</sup>

<sup>13</sup> s. 365.172(8)(a)3.

<sup>14</sup> This new subsection (9) provides for the process for remitting the E911 fee to and filing returns, reports, and other documents with the Department of Revenue. The subsection requires the seller to provide its name, federal identification number, taxpayer identification number issued by the department, its business location address and mailing address, and county of the business location, The seller must also provide the reporting period, number of services sold during the reporting period, the amount of prepaid wireless E911 fees collected and the amount of any adjustment 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. The paragraph also provides for consolidation of certain returns and when a return

The addition of s. 365.172, F.S., relating to the prepaid wireless E911 fee to s. 213.053(1), F.S., makes that section subject to s. 213.053(2), F.S., which provides that “All information contained in returns, reports, accounts, or declarations received by the department, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from s. 119.07(1), F.S.”

The bill provides that the exemption stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature through the Open Government Sunset Review Act.

The bill amends s. 213.053(8), F.S., to authorize the Department of Revenue to provide information relative to the prepaid wireless E911 fee to the Secretary of Management Services, or his or her authorized agent, or to the E911 Board for use in the conduct of the Department of Management Services’ official business.

**Section 2** provides that all proprietary confidential business information submitted by a provider to the E911 Board, to the Technology Program within the Department of Management Services, or to the Department of Revenue as an agent of the E911 Board is confidential and exempt from public disclosure. The bill provides that the exemption stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature through the Open Government Sunset Review Act.

**Section 3** provides the legislative finding of public necessity that the disclosure of any confidential proprietary business information contained in returns, reports, accounts, or declarations received by the Department of Revenue or submitted to the E911 Board, the Technology Program within the Department of Management Services, or the Department of Revenue as an agent of the Board would adversely affect the business interests of prepaid wireless service providers or sellers who provide the information by harming them in the market place and impair competition in the communications industry. The Legislature further finds that the disclosure of data that reveals the business interests of prepaid wireless service providers or sellers creates a competitive disadvantage and an unfair advantage for their competitors who can use the information to impair full and fair competition and impede competition in the wireless marketplace to the disadvantage of consumers of wireless service. Finally, the Legislature finds that the public and private harm resulting in the disclosure of the information significantly outweighs any public benefit derived from the disclosure and ability of the public to scrutinize or monitor agency action is not diminished by nondisclosure of the information.

**Section 4** provides an effective date.

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

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

None.

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is not required. The department serves as an agent of the E911 Board for collection of the prepaid wireless E911 fee and the board retains authority to administer the fee.

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

The Florida Constitution provides that only the Legislature may create an exemption to the right of access to public records.<sup>15</sup> Such an exemption must be created by general law, be passed by a two-thirds vote of each house of the Legislature, provide a statement of public necessity, and be as narrowly drafted as possible to accomplish the stated public necessity.<sup>16</sup> However, because the constitutional provision took effect on July 1, 1993, any public records exemptions already in law on that date are grandfathered into the statutes.<sup>17</sup> Such an exemption becomes subject to constitutional requirements only if it is expanded in scope, thereby effectively creating a new exemption for an additional category of public records and requiring the exemption to meet all of the constitutional requirements of being narrowly tailored to meet the public necessity, including a statement of public necessity, and being repealed after 5 years unless reenacted.

In part, this bill expands a public records exemption that was created before 1993<sup>18</sup> Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Prepaid wireless providers and sellers may be more willing to provide proprietary confidential business information to the Department of Revenue, the E911 Board, or the Technology Program within the Department of Management Services with the exemption in place.

**C. Government Sector Impact:**

The ability of the Department of Revenue, the E911 Board, or the Technology Program within the Department of Management Services to share confidential information may improve effectiveness and efficiency in the administration of the prepaid wireless E911 fees.

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<sup>15</sup> Art. I, s. 24(c) of the State Constitution.

<sup>16</sup> *Id.*

<sup>17</sup> See Art. I, s. 24(d) of the State Constitution.

<sup>18</sup> Section 213.053, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 213.053 and 365.174.

**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.

By Senator Hays

11-00039-14

2014292\_\_

1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       213.053, F.S.; providing an exemption from public  
4       records requirements for specified information  
5       received by the Department of Revenue relating to the  
6       prepaid wireless E911 fee; authorizing the department  
7       to share such information with the Secretary of  
8       Management Services and the E911 Board; amending s.  
9       365.174, F.S.; including the Department of Revenue as  
10      an additional recipient of specified confidential  
11      information relating to wireless service; providing  
12      for future legislative review and repeal; providing  
13      statements of public necessity; providing a contingent  
14      effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18       Section 1. Paragraphs (n) through (v) of subsection (1) of  
19      section 213.053, Florida Statutes, are redesignated as  
20      paragraphs (o) through (w), respectively, a new paragraph (n) is  
21      added to that subsection, and paragraph (cc) is added to  
22      subsection (8) of that section, to read:

23       213.053 Confidentiality and information sharing.—

24       (1) This section applies to:

25       (n) Section 365.172(9), prepaid wireless E911 fee. This  
26      paragraph is subject to the Open Government Sunset Review Act in  
27      accordance with s. 119.15 and is repealed on October 2, 2019,  
28      unless reviewed and saved from repeal through reenactment by the  
29      Legislature;

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30 (8) Notwithstanding any other provision of this section,  
31 the department may provide:

32 (cc) Information relative to s. 365.172(9) to the Secretary  
33 of Management Services or his or her authorized agent or to the  
34 E911 Board established in s. 365.172(5) for use in the conduct  
35 of the department's official business.

36  
37 Disclosure of information under this subsection shall be  
38 pursuant to a written agreement between the executive director  
39 and the agency. Such agencies, governmental or nongovernmental,  
40 shall be bound by the same requirements of confidentiality as  
41 the Department of Revenue. Breach of confidentiality is a  
42 misdemeanor of the first degree, punishable as provided by s.  
43 775.082 or s. 775.083.

44 Section 2. Subsection (1) of section 365.174, Florida  
45 Statutes, is amended to read:

46 365.174 Proprietary confidential business information.—

47 (1) (a) All proprietary confidential business information  
48 ~~submitted by a provider to the board or the office,~~ including  
49 the name and billing or service addresses of service  
50 subscribers, and trade secrets as defined by s. 812.081, which  
51 is submitted to:

52 1. The board or the office; or

53 2. The Department of Revenue as an agent of the board,

54  
55 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
56 I of the State Constitution. Statistical abstracts of  
57 information collected by the board or the office may be released  
58 or published, but only in a manner that does not identify or

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59 allow identification of subscribers or their service numbers or  
60 of revenues attributable to any provider.

61 (b) Subparagraph (a)2. is subject to the Open Government  
62 Sunset Review Act in accordance with s. 119.15 and shall stand  
63 repealed on October 2, 2019, unless reviewed and saved from  
64 repeal through reenactment by the Legislature.

65 Section 3. (1) The Legislature finds that it is a public  
66 necessity that any confidential proprietary business information  
67 contained in returns, reports, accounts, or declarations  
68 received by the Department of Revenue pursuant to s. 365.172,  
69 Florida Statutes, be exempt from public records requirements.  
70 The disclosure of such information would adversely affect the  
71 business interests of prepaid wireless service providers or  
72 sellers providing the information by harming them in the  
73 marketplace and would impair competition in the communications  
74 industry. Disclosure of data that reveals the business interests  
75 of prepaid wireless service providers or sellers creates a  
76 competitive disadvantage and an unfair advantage for their  
77 competitors. Competitors can use such information to impair full  
78 and fair competition and impede competition in the wireless  
79 marketplace to the disadvantage of consumers of wireless  
80 services. Thus, the public and private harm in disclosing this  
81 information significantly outweighs any public benefit derived  
82 from disclosure and the ability of the public to scrutinize or  
83 monitor agency action is not diminished by nondisclosure of this  
84 information.

85 (2) The Legislature finds that it is a public necessity  
86 that any confidential proprietary business information contained  
87 in returns, reports, accounts, or declarations submitted to the

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88 E911 Board, the Technology Program within the Department of  
89 Management Services, or the Department of Revenue as an agent of  
90 the board pursuant to s. 365.174, Florida Statutes, be exempt  
91 from public records requirements. The disclosure of such  
92 information would adversely affect the business interests of  
93 prepaid wireless service providers or sellers providing the  
94 information by harming them in the marketplace and would impair  
95 competition in the communications industry. Disclosure of data  
96 that reveals the business interests of prepaid wireless service  
97 providers or sellers creates a competitive disadvantage and an  
98 unfair advantage for their competitors. Competitors can use such  
99 information to impair full and fair competition and impede  
100 competition in the wireless marketplace to the disadvantage of  
101 consumers of wireless services. Thus, the public and private  
102 harm in disclosing this information significantly outweighs any  
103 public benefit derived from disclosure and the ability of the  
104 public to scrutinize or monitor agency action is not diminished  
105 by nondisclosure of this information.

106 Section 4. This act shall take effect on the same date that  
107 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
108 is adopted in the same legislative session or an extension  
109 thereof and becomes law.

**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 288

INTRODUCER: Senator Richter

SUBJECT: Underground Facility Damage Prevention and Safety

DATE: January 9, 2014

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Wiehle  | Caldwell       | CU        | <b>Pre-meeting</b> |
| 2. |         |                | EP        |                    |

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**I. Summary:**

SB 288 deletes existing exemptions from The Underground Facility Damage Prevention and Safety Act, which should help avoid the potential for federal fines for enforcement issues. It also expands existing provisions on high-priority subsurface installations to better protect high-priority underground facilities from damage and to resolve cases involving damage to such facilities quicker.

**II. Present Situation:**

**The Underground Facility Damage Prevention and Safety Act**

The Underground Facility Damage Prevention and Safety Act, codified in ch. 556, F.S., creates a system by which persons intending to engage in excavation or demolition activities can provide notice of this intent to operators of underground facilities, allowing these operators the opportunity to identify and locate their underground facilities, thereby preventing damage and injury.<sup>1</sup> The notification system is operated by a statutorily created not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (One-Call).<sup>2</sup> All operators of underground facilities within the state are required to be members of One-Call and to use its system.<sup>3</sup>

An excavator<sup>4</sup> is required to provide specified site-identification and excavation-related information to One-Call's notification system not less than two full business days before beginning any excavation or demolition.<sup>5</sup> The system "promptly" notifies all member operators that have facilities in the defined area of the proposed excavation or demolition, other than

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<sup>1</sup> Section 556.101(2), F.S.

<sup>2</sup> Section 556.103, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> The term "excavator" is defined to mean any person performing excavation or demolition operations. Section 556.102(7), F.S.

<sup>5</sup> Section 556.105(1), F.S. This information remains valid for a 30-day period.

member operators with state-owned underground facilities located within the right-of-way of a state highway, which need not be notified of excavation or demolition activities and are under no obligation to mark or locate the facilities.<sup>6</sup> If a member operator determines that a proposed excavation or demolition is in proximity to or in conflict with an underground facility of the member operator, the member operator must, within 2 full business days after the time the notification is received, identify the horizontal route by marking to within 24 inches from the outer edge of either side of the underground facility by the use of stakes, paint, flags, or other suitable means.<sup>7</sup> If the member operator is unable to respond within such time, the member operator must communicate with the person making the request and negotiate a new schedule and time that is agreeable to, and that should not unreasonably delay, the excavator.<sup>8</sup> The excavator is required to avoid excavation in the area described in the notice until the earlier of: each member operator underground facility having been marked and located; the excavator has been notified that no member operator has underground facilities in the area described in the notice; or the expiration of the two-day marking period.<sup>9</sup> If a member operator has not located and marked its underground facilities within this two-day period, the excavator may proceed with the excavation, if the excavator does so with reasonable care and if detection equipment or other acceptable means to locate underground facilities are used.<sup>10</sup> Before or during excavation, if the marking of the horizontal route of any facility is removed or is no longer visible, the excavator must cease excavation activities in the vicinity of the facility and notify the system to have the route remarked or adequately documented by a member operator or in a manner approved by the member operator.<sup>11</sup> If any contact with or damage to any underground facility occurs, the excavator causing the contact or damage must immediately notify the member operator.<sup>12</sup> Upon receiving notice, the member operator must send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage, and until the damage has been repaired, the excavator must cease excavation activities that may cause further damage to the underground facility.<sup>13</sup>

The notification requirements of this process do not apply to the following types of excavations:

- any excavation or demolition performed by the owner of a single-family residential property or for such owner by a member operator or an agent of a member operator when the excavation is made entirely on that land, and only up to a depth of 10 inches, provided due care is used and there is no encroachment on any member operator's right-of-way, easement, or permitted use;
- any excavation or demolition associated with normal agricultural or railroad activities, provided such activities are not performed on any operator's marked right-of-way, easement, or permitted use;
- any excavation or demolition that occurs as the result of normal industrial activities, provided such activities are confined to the immediate secured property of the facility and the activities are not performed on any operator's marked right-of-way, easement, or permitted use;

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<sup>6</sup> Section 556.105(5), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Section 556.105(11), F.S.

<sup>12</sup> Section 556.105(12), F.S.

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

- any excavation of 18 inches or less for:
  - surveying public or private property by surveyors or mappers and services performed by a pest control licensee, excluding marked rights-of-way, marked easements, or permitted uses where marked, if mechanized equipment is not used in the process of such surveying or pest control services and the surveying or pest control services are performed in accordance with the practice rules established under s. 472.027 or s. 482.051, respectively;
  - maintenance activities performed by a state agency and its employees when such activities are within the right-of-way of a public road; however, if a member operator has permanently marked facilities on such right-of-way, mechanized equipment may not be used without first providing notification; or
  - locating, repairing, connecting, adjusting, or routine maintenance of a private or public underground utility facility by an excavator, if the excavator is performing such work for the current owner or future owner of the underground facility and if mechanized equipment is not used; or
- any excavation with hand tools by a member operator or an agent of a member operator that is limited to excavations to a depth of 30 inches if the right-of-way has permanently marked facilities of a company other than the member operator or its agents performing the excavation and if the excavation is for:
  - locating, repairing, connecting, or protecting, or routine maintenance of, the member operator’s underground facilities; or
  - the extension of a member operator’s underground facilities onto the property of a person to be served by such facilities.<sup>14</sup>

There are separate provisions for a “high-priority subsurface installation.”<sup>15</sup> The term is defined to mean either an underground gas transmission or gas distribution pipeline or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate or would have been identified as a high-priority subsurface installation except for the excavator’s failure to give proper notice of intent to excavate.<sup>16</sup> When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, in addition to timely identifying the horizontal route of its facility the operator must notify the excavator that the facility is a high-priority subsurface installation.<sup>17</sup> If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator must notify the operator of the planned excavation start date and time before beginning excavation.<sup>18</sup> If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period, to excavate without notifying the member operator of the excavation start date and time.<sup>19</sup>

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<sup>14</sup> Section 556.108, F.S.

<sup>15</sup> Section 556.116, F.S.

<sup>16</sup> Section 556.116(1)(b), F.S.

<sup>17</sup> Section 556.116(2), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Most violations of Chapter 556, F.S., are noncriminal infractions.<sup>20</sup> However, any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 calendar days after notice of an intended excavation is provided to the system.<sup>21</sup> As these violations are either noncriminal infractions or misdemeanors, they are enforceable by local law enforcement.

Violations involving a high-priority subsurface installation are treated differently. An alleged commission of a violation of chapter 556 other than removal of flags or other marking of the horizontal route of an underground facility which results in an incident must be reported to the system by a member operator or an excavator within 24 hours after learning of the alleged occurrence of an incident.<sup>22</sup> Upon receipt of an allegation that an incident has occurred, the system is to transmit an incident report to the Division of Administrative Hearings (division) and contract with the division so that the division may conduct a hearing to determine whether an incident has occurred, and, if so, whether a violation was a proximate cause of the incident.<sup>23</sup> The division has jurisdiction in a proceeding under this section to determine the facts and law concerning an alleged incident.<sup>24</sup> The division may impose a fine against a violator in an amount not to exceed \$50,000 if the violation was a proximate cause of the incident; however, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of \$10,000.<sup>25</sup> A fine against an excavator or a member operator imposed under this subsection is to be paid to the system, which is to use the collected fines to satisfy the costs incurred by the system for any proceedings.<sup>26</sup> To the extent there are any funds remaining, the system may use the funds exclusively for damage-prevention education.<sup>27</sup> This section does not change the basis for civil liability.<sup>28</sup> The findings and results of a hearing under this section may not be used as evidence of liability in any civil action.<sup>29</sup>

### **Federal Law**

Representatives of One-Call provided committee staff with a copy of correspondence between a representative of the Pipeline and Hazardous Materials Safety Administration within the U.S. Department of Transportation (PHMSA) and Governor Rick Scott and the Florida Department of Transportation. According to this correspondence, the Federal Pipeline, Safety, Regulatory Certainty, and Job Creation Act of 2011 mandates that for a state to qualify for State Damage Prevention and One Call grants, the state's laws may not exempt state agencies, municipalities, or their contractors from the One Call system. Further, the PHMSA's analysis of chapter 556, F.S., indicates that it is in violation of this mandate and renders Florida ineligible to receive these

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<sup>20</sup> Section 556.107(1), F.S.

<sup>21</sup> Section 556.107(3), F.S.

<sup>22</sup> Section 556.116(3), F.S.

<sup>23</sup> *Id.*

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

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

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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

<sup>29</sup> *Id.*

grants beginning on January 3, 2014. The correspondence identified subparagraph 556.108(4)(b), F.S., as the problematic exemption. This subparagraph exempts maintenance activities performed by a state agency within the right-of-way of a public road from the notification requirements of Chapter 556, F.S.

Additionally, the PHMSA is in the process of developing rules and will be examining each state for enforcement issues. It considers exemptions from One-Call statutes to be an enforcement issue. It can levy a fine for each enforcement issue it finds, beginning at \$2.5 million for each issue.

### III. Effect of Proposed Changes:

#### PHMSA Issues

The bill addresses the issue raised by the PHMSA of an exemption for governmental entities from One-Call provisions, which should make Florida eligible to obtain State Damage Prevention and One Call grant money from the federal government. These changes also may help avoid fines for enforcement issues. **Section 5** of the bill deletes current subparagraph 556.108(4)(b), F.S., which exempts maintenance activities performed by a state agency within the right-of-way of a public road from the notification requirements of Chapter 556, F.S. This is the provision identified by PHMSA as being problematic under federal law. This section also deletes an exemption for excavation that occurs as the result of normal industrial activities. **Section 2** of the bill deletes language from current subsection 556.105(5), F.S., that exempts member operators with state-owned underground facilities located within the right-of-way of a state highway from the requirement that the system promptly notify all member operators within a defined proposed excavation area of that proposed excavation.

#### High-priority Subsurface Installations

The bill also makes significant changes to the provisions on high-priority subsurface installations. **Section 7** amends the definition of that term to include any underground pipeline or facility that is deemed to be critical by the operator. The section further provides that a member operator may deem any underground pipeline or facility owned or operated by such member operator to be a high-priority subsurface installation and may identify it as such to an excavator. This will have the effect of shifting more cases involving alleged violations which cause damage to underground facilities to the Division of Administrative Hearings, not local law enforcement.

The section adds provisions relating to settlement, creating the authority for the person alleged to have caused the occurrence of an incident to offer to settle the matter by payment of a fine at any time after the system has transmitted an incident report to the division. The division may approve a settlement in lieu of conducting a full hearing concerning an alleged incident if the settlement is within the parameters established in this existing statute. Any fine resulting from a settlement approved under is to be used to satisfy costs incurred by the system for any proceedings, with any remaining funds used exclusively for damage-prevention education.

Section 7 also:

- provides that a decision by a member operator not to identify a pipeline or facility as a high-priority subsurface installation does not constitute a basis for recovery against the member operator;
- requires that an excavator who has received notice of the existence of a high-priority subsurface installation must provide the operator current and accurate contact information before beginning excavation;
- clarifies language existing language relating to an alleged commission of an infraction to make it better describe the actual situation at that point in the process; and
- provides that it does not change the basis for civil liability that may result from damage to a high-priority subsurface installation and that the findings and results of a hearing under this section may not be used as evidence of liability in any civil action.

**Section 4** amends section 556.017, F.S., on violations, to add a provision making it a noncriminal infraction for an excavator to violate subparagraph 556.116(2)(b), F.S., by failing to notify a member operator of the start date and time for a planned excavation that is within the vicinity of a high-priority subsurface installation when the excavator has been timely notified by the member operator, either directly or through the system, of the existence of a high-priority subsurface installation.

#### **Additional Changes**

**Section 1** amends subsection 556.102(11), F.S., to amend the definition of the term “premark” to add to the acceptable methods of marking the general scope of an excavation electronic markings or any other industry-accepted methods.

**Section 3** amends section 556.106, F.S., to make conforming changes.

**Section 5**, in addition to the changes discussed above, amends section 556.108, F.S., to delete the exclusion from the notice requirements for an intended excavator the exclusion for any excavation occurring as the result of normal industrial activities.

**Section 6** amends subsection 556.114, F.S., to provide that premarking done by an excavator is to be done as provided in the revised definition of the term “premark” as discussed above in relation to section 1 of the bill.

**Section 8** amends section 337.401, F.S., to make conforming cross-reference changes and technical changes.

#### **Effective Date**

**Section 9** provides that the bill takes effect July 1, 2014.

#### **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 provisions relating to high-priority subsurface installations will shift more cases involving alleged violations which cause damage to underground facilities to the Division of Administrative Hearings instead of local law enforcement and the courts. This should resolve these cases quicker and result in savings to the parties.

**C. Government Sector Impact:**

According to a One-Call representative, the federal grant money is approximately \$100,000 per year. One-Call has applied for only one grant and did not receive any grant money. As such, the potential ineligibility for grant money is insignificant. However, existing exemptions from the Underground Facility Damage Prevention and Safety Act create the potential for federal fines starting at \$2.5 million per violation for what the PHMSA deems to be an enforcement issue. The bill will help avoid the potential for these fines.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 556.102, 556.105, 556.106, 556.107, 556.108, 556.114, 556.116, and 337.401.

**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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By Senator Richter

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1                   A bill to be entitled  
2       An act relating to underground facility damage  
3       prevention and safety; amending s. 556.102, F.S.;  
4       revising the definition of the term "premark" as it  
5       relates to the Underground Facility Damage Prevention  
6       and Safety Act; amending s. 556.105, F.S.; requiring  
7       all member operators including those with state-owned  
8       underground facilities located within the right-of-way  
9       of a state highway to be notified through the free-  
10      access notification system of a proposed excavation or  
11      demolition; amending s. 556.106, F.S.; conforming a  
12      cross-reference; amending s. 556.107, F.S.; creating  
13      an additional noncriminal infraction for the failure  
14      of an excavator to notify the member operator in  
15      certain circumstances; amending s. 556.108, F.S.;  
16      eliminating an exemption; requiring an excavator to  
17      provide notice through the free-access notification  
18      system before beginning certain excavations,  
19      demolitions, or maintenance activities; amending s.  
20      556.114, F.S.; clarifying provisions relating to  
21      member operators and excavators; amending s. 556.116,  
22      F.S.; revising the definition of the term "high-  
23      priority subsurface installation" to include all  
24      underground pipelines or facilities; authorizing a  
25      member operator to deem a pipeline or facility a high-  
26      priority subsurface installation; providing that a  
27      decision not to deem a pipeline or facility a high-  
28      priority subsurface installation does not constitute a  
29      basis for recovery; requiring an excavator to provide

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30 the operator with current and accurate contact  
31 information when notifying the operator of a planned  
32 excavation; requiring that an alleged commission of an  
33 infraction reasonably believed to be the proximate  
34 cause of an incident to be reported to the free-access  
35 notification system within a certain timeframe;  
36 authorizing the Division of Administrative Hearings to  
37 approve a settlement within certain parameters in lieu  
38 of conducting a full hearing; providing that the venue  
39 for the hearing is the county in which the incident  
40 occurred rather than the county in which the  
41 underground facility is located; amending s. 337.401,  
42 F.S.; making technical changes and conforming cross-  
43 references; providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Subsection (11) of section 556.102, Florida  
48 Statutes, is amended to read:

49 556.102 Definitions.—As used in this act:

50 (11) "Premark" means to delineate the general scope of the  
51 excavation on the surface of the ground using white paint, white  
52 stakes, or other similar white markings, electronic markings, or  
53 other industry-accepted methods.

54 Section 2. Subsection (5) of section 556.105, Florida  
55 Statutes, is amended to read:

56 556.105 Procedures.—

57 (5) All member operators within the defined area of a  
58 proposed excavation or demolition shall be promptly notified

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59 through the system pursuant to this section, ~~except that member~~  
60 ~~operators with state-owned underground facilities located within~~  
61 ~~the right-of-way of a state highway need not be notified of~~  
62 ~~excavation or demolition activities and are under no obligation~~  
63 ~~to mark or locate the facilities.~~

64 (a) If a member operator determines that a proposed  
65 excavation or demolition is ~~in proximity to or~~ in conflict with  
66 an underground facility of the member operator, except a  
67 facility beneath the waters of the state, which is governed by  
68 paragraph (b), the member operator shall identify the horizontal  
69 route by marking to within 24 inches from the outer edge of  
70 either side of the underground facility by the use of stakes,  
71 paint, flags, or other suitable means within 2 full business  
72 days after the time the notification is received under  
73 subsection (1). If the member operator is unable to identify the  
74 horizontal route ~~respond~~ within such time, the member operator  
75 shall communicate with the person making the request and  
76 negotiate in good faith a new schedule and time to mark the  
77 underground facility which ~~that~~ is mutually agreeable to, and  
78 which should not unreasonably delay, the excavator.

79 (b) If a member operator determines that a proposed  
80 excavation is ~~in proximity to or~~ in conflict with an underground  
81 facility of the member operator beneath the waters of the state,  
82 the member operator shall identify the estimated horizontal  
83 route of the underground facility, within 10 business days,  
84 using marking buoys or other suitable devices, unless directed  
85 otherwise by an agency having jurisdiction over the waters of  
86 the state under which the member operator's underground facility  
87 is located.

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88 (c) ~~If~~ When excavation is to take place within a tolerance  
89 zone, an excavator shall use increased caution to protect  
90 underground facilities. The protection requires hand digging,  
91 pot holing, soft digging, vacuum excavation methods, or other  
92 similar procedures to identify underground facilities. Any use  
93 of mechanized equipment within the tolerance zone must be  
94 supervised by the excavator.

95 Section 3. Subsection (7) of section 556.106, Florida  
96 Statutes, is amended to read:

97 556.106 Liability of the member operator, excavator, and  
98 system.—

99 (7) An excavator or a member operator who performs an any  
100 excavation with hand tools under s. 556.108(3)(b) or (4) s.  
101 ~~556.108(4)(c) or (5)~~ is liable for any damage to any operator's  
102 underground facilities damaged during such excavation.

103 Section 4. Paragraph (a) of subsection (1) of section  
104 556.107, Florida Statutes, is amended to read:

105 556.107 Violations.—

106 (1) NONCRIMINAL INFRACTIONS.—

107 (a) Violations of the following provisions are noncriminal  
108 infractions:

109 1. Section 556.105(1), relating to providing required  
110 information.

111 2. Section 556.105(6), relating to the avoidance of  
112 excavation.

113 3. Section 556.105(11), relating to the need to stop  
114 excavation or demolition because marks are no longer visible,  
115 or, in the case of underwater facilities, are inadequately  
116 documented.

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117 4. Section 556.105(12), relating to the need to cease  
118 excavation or demolition activities because of contact or damage  
119 to an underground facility.

120 5. Section 556.105(5)(a) and (b), relating to  
121 identification of underground facilities, if a member operator  
122 does not mark an underground facility, but not if a member  
123 operator marks an underground facility incorrectly.

124 6. Section 556.109(2), relating to falsely notifying the  
125 system of an emergency situation or condition.

126 7. Section 556.114(1)-(4) ~~Section 556.114(1), (2), (3), and~~  
127 ~~(4)~~, relating to a failure to follow low-impact marking  
128 practices, as defined therein.

129 8. Section 556.116(2)(b), relating to the failure of an  
130 excavator to notify a member operator of the start date and time  
131 for a planned excavation that is within the vicinity of a high-  
132 priority subsurface installation, when the excavator has been  
133 timely notified by the member operator, either directly or  
134 through the system, of the existence of a high-priority  
135 subsurface installation.

136 Section 5. Section 556.108, Florida Statutes, is amended to  
137 read:

138 556.108 Exemptions.—The notification requirements provided  
139 in s. 556.105(1) do not apply to:

140 (1) Any excavation or demolition performed by the owner of  
141 a single-family residential property, not including property  
142 that is subdivided or is to be subdivided into more than one  
143 single-family residential property; or for such owner by a  
144 member operator or an agent of a member operator when such  
145 excavation or demolition is made entirely on such land, and only

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146 up to a depth of 10 inches; provided due care is used and there  
147 is no encroachment on any member operator's right-of-way,  
148 easement, or permitted use.

149 (2) Any excavation or demolition associated with normal  
150 agricultural or railroad activities, provided such activities  
151 are not performed on any operator's marked right-of-way,  
152 easement, or permitted use.

153 ~~(3) Any excavation or demolition that occurs as the result~~  
154 ~~of normal industrial activities, provided such activities are~~  
155 ~~confined to the immediate secured property of the facility and~~  
156 ~~the activities are not performed on any operator's marked right-~~  
157 ~~of-way, easement, or permitted use. For the purposes of this~~  
158 ~~act, the industrial activities are limited to the following list~~  
159 ~~of Standard Industrial Classifications: Industry Group Numbers~~  
160 ~~141, 206, 242, 243, and 491, and Major Group Numbers 13, 26, 28,~~  
161 ~~and 29, as published by the United States Office of Management~~  
162 ~~and Budget in 1987.~~

163 (3)~~(4)~~ Any excavation of 18 inches or less for:

164 (a) Surveying public or private property by surveyors or  
165 mappers as defined in chapter 472 and services performed by a  
166 pest control licensee under chapter 482, excluding marked  
167 rights-of-way, marked easements, or permitted uses where marked,  
168 if mechanized equipment is not used in the process of such  
169 surveying or pest control services and the surveying or pest  
170 control services are performed in accordance with the practice  
171 rules established under s. 472.027 or s. 482.051, respectively;  
172 or

173 ~~(b) Maintenance activities performed by a state agency and~~  
174 ~~its employees when such activities are within the right-of-way~~

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175 ~~of a public road; however, if a member operator has permanently~~  
 176 ~~marked facilities on such right-of-way, mechanized equipment may~~  
 177 ~~not be used without first providing notification; or~~

178 (b)~~(e)~~ Locating, repairing, connecting, adjusting, or  
 179 routine maintenance of a private or public underground utility  
 180 facility by an excavator, if the excavator is performing such  
 181 work for the current owner or future owner of the underground  
 182 facility and if mechanized equipment is not used.

183 (4)~~(5)~~(a) Any excavation with hand tools by a member  
 184 operator or an agent of a member operator for:

185 1. Locating, repairing, connecting, or protecting, or  
 186 routine maintenance of, the member operator's underground  
 187 facilities; or

188 2. The extension of a member operator's underground  
 189 facilities onto the property of a person to be served by such  
 190 facilities.

191 (b) The exemption provided in this subsection is limited to  
 192 excavations to a depth of 30 inches if the right-of-way has  
 193 permanently marked facilities of a company other than the member  
 194 operator or its agents performing the excavation.

195 Section 6. Subsection (4) of section 556.114, Florida  
 196 Statutes, is amended to read:

197 556.114 Low-impact marking practices.—

198 (4) A member operator shall identify the horizontal route  
 199 of its underground facilities as set forth in s. 556.105(5) (a)  
 200 and (b), ~~and excavators shall premark an excavation site as set~~  
 201 ~~forth in subsection (3)~~ using flags or stakes or temporary,  
 202 nonpermanent paint or other industry-accepted low-impact marking  
 203 practices.

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204 Section 7. Subsections (1) through (4) of section 556.116,  
205 Florida Statutes, are amended, and subsection (6) is added to  
206 that section, to read:

207 556.116 High-priority subsurface installations; special  
208 procedures.—

209 (1) As used in this section, the term:

210 (a) "Division" means the Division of Administrative  
211 Hearings.

212 (b) "High-priority subsurface installation" means an  
213 underground ~~gas transmission or gas distribution~~ pipeline or  
214 facility that, ~~an underground pipeline used to transport~~  
215 ~~gasoline, jet fuel, or any other refined petroleum product or~~  
216 ~~hazardous or highly volatile liquid, such as anhydrous ammonia~~  
217 ~~or carbon dioxide, if the pipeline is deemed to be critical by~~  
218 the operator of the pipeline or facility and:

219 1. Is identified as a high-priority subsurface installation  
220 to an excavator who has provided a notice of intent to excavate  
221 pursuant to s. 556.105(1); ~~7~~ or

222 2. Would have been identified as a high-priority subsurface  
223 installation except for the excavator's failure to give proper  
224 notice of intent to excavate.

225 (c) "Incident" means an event that involves damage to a  
226 high-priority subsurface installation that has been identified  
227 as such by the operator according to the notification procedures  
228 set forth in subsection (2) and that:

229 1. Results in death or serious bodily injury requiring  
230 inpatient hospitalization.

231 2. Results in property damage, including service-  
232 restoration costs, in an amount in excess of \$50,000 or

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233 interruption of service to 2,500 or more customers or users.

234 (2) A member operator may deem any underground pipeline or  
235 facility owned or operated by such member operator to be a high-  
236 priority subsurface installation and may identify it as such to  
237 an excavator. A decision by a member operator not to identify a  
238 pipeline or facility as a high-priority subsurface installation  
239 does not constitute a basis for recovery against the member  
240 operator.

241 (a) If ~~When~~ an excavator proposes to excavate or demolish  
242 within 15 feet of the horizontal route of an underground  
243 pipeline or facility that has been identified as a high-priority  
244 subsurface installation by the operator of the facility, the  
245 operator shall, in addition to identifying the horizontal route  
246 of its facility as set forth in s. 556.105(5) (a) and (b), and  
247 within the time period set forth in s. 556.105(9) (a) for a  
248 positive response, notify the excavator that the facility is a  
249 high-priority subsurface installation.

250 (b) If the member operator provides such timely notice of  
251 the existence of a high-priority subsurface installation, an  
252 excavator must ~~shall~~ notify the member operator of the planned  
253 excavation start date and time and provide the operator current  
254 and accurate contact information before beginning excavation. If  
255 the member operator does not provide timely notice, the  
256 excavator may proceed, after waiting the prescribed time period  
257 set forth in s. 556.105(6) (a) ~~s. 556.105(9) (a)~~, to excavate  
258 without notifying the member operator of the excavation start  
259 date and time.

260 (c) The exemptions stated in s. 556.108 apply to the  
261 notification requirements in this subsection.

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262 (3)~~(a)~~ An alleged commission of an infraction listed in s.  
263 556.107(1) which is reasonably believed by an operator or an  
264 excavator to be a proximate cause of ~~results in~~ an incident must  
265 be reported to the system by a member operator or an excavator  
266 within 24 hours after learning of the alleged occurrence of an  
267 incident.

268 (a)~~(b)~~ Upon receipt of an allegation that an incident has  
269 occurred, the system shall transmit an incident report to the  
270 division and contract with the division to ~~so that the division~~  
271 ~~may~~ conduct a hearing to determine whether an incident has  
272 occurred, and, if so, whether a violation of s. 556.107(1) (a)  
273 was a proximate cause of the incident. The contract for services  
274 to be performed by the division must include provisions for the  
275 system to reimburse the division for any costs incurred by the  
276 division for court reporters, transcript preparation, travel,  
277 facility rental, and other customary hearing costs, in the  
278 manner set forth in s. 120.65(9).

279 (b)~~(e)~~ The division has jurisdiction in a proceeding under  
280 this section to determine the facts and law concerning an  
281 alleged incident. The division may impose a fine against a  
282 violator in an amount not to exceed \$50,000 if the person  
283 violated a provision of s. 556.107(1) (a) and that violation was  
284 a proximate cause of the incident. However, if a state agency or  
285 political subdivision caused the incident, the state agency or  
286 political subdivision may not be fined more than ~~in an amount in~~  
287 ~~excess of~~ \$10,000.

288 (c)~~(d)~~ A fine imposed by the division is in addition to any  
289 amount payable as a result of a citation relating to the  
290 incident under s. 556.107(1) (a).

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291 (d)~~(e)~~ A fine against an excavator or a member operator  
292 imposed under this subsection shall be paid to the system, which  
293 shall use the collected fines to satisfy the costs incurred by  
294 the system for any proceedings under this section. ~~To the extent~~  
295 ~~there are any funds remaining,~~ The system may use any remaining  
296 ~~the~~ funds exclusively for damage-prevention education.

297 (e) At any time after the system has transmitted an  
298 incident report to the division, the person alleged to have  
299 caused the occurrence of an incident may offer to settle the  
300 matter by payment of a fine.

301 (f) The division may approve a settlement in lieu of  
302 conducting a full hearing concerning an alleged incident, if the  
303 settlement is within the parameters established under paragraph  
304 (b).

305 (g) Any fine resulting from a settlement approved under  
306 paragraph (f) shall be used as directed in paragraph (d).

307 ~~(f) This section does not change the basis for civil~~  
308 ~~liability. The findings and results of a hearing under this~~  
309 ~~section may not be used as evidence of liability in any civil~~  
310 ~~action.~~

311 ~~(4)(a)~~ The division shall issue and serve on all original  
312 parties an initial order that assigns the case to a specific  
313 administrative law judge and requests information regarding  
314 scheduling the final hearing within 5 business days after the  
315 division receives a petition or request for hearing. The  
316 original parties in the proceeding include all excavators and  
317 member operators identified by the system as being involved in  
318 the alleged incident. The final hearing must be conducted within  
319 60 days after the date the petition or the request for a hearing

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320 is filed with the division.

321 (a)~~(b)~~ Unless the parties otherwise agree, venue for the  
322 hearing shall be in the county in which the incident occurred  
323 ~~the underground facility is located.~~

324 (b)~~(c)~~ An intervenor in the proceeding must file a petition  
325 to intervene within ~~no later than~~ 15 days before the final  
326 hearing. A person who has a substantial interest in the  
327 proceeding may intervene.

328 (6) This section does not change the basis for civil  
329 liability that may result from damage to a high-priority  
330 subsurface installation. The findings and results of a hearing  
331 under this section may not be used as evidence of liability in  
332 any civil action.

333 Section 8. Paragraph (c) of subsection (3) of section  
334 337.401, Florida Statutes, is amended to read:

335 337.401 Use of right-of-way for utilities subject to  
336 regulation; permit; fees.-

337 (3)

338 (c)1. It is the intention of the state to treat all  
339 providers of communications services that use or occupy  
340 municipal or charter county roads or rights-of-way for the  
341 provision of communications services in a nondiscriminatory and  
342 competitively neutral manner with respect to the payment of  
343 permit fees. Certain providers of communications services have  
344 been granted by general law the authority to offset permit fees  
345 against franchise or other fees while other providers of  
346 communications services have not been granted this authority. In  
347 order to treat all providers of communications services in a  
348 nondiscriminatory and competitively neutral manner with respect

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349 to the payment of permit fees, each municipality and charter  
350 county shall make an election under ~~either~~ sub-subparagraph a.  
351 or sub-subparagraph b. and must inform the Department of Revenue  
352 of the election by certified mail by July 16, 2001. Such  
353 election shall take effect October 1, 2001.

354 a.(I) The municipality or charter county may require and  
355 collect permit fees from any providers of communications  
356 services that use or occupy municipal or county roads or rights-  
357 of-way. All such fees ~~permitted under this sub-subparagraph~~ must  
358 be reasonable and commensurate with the direct and actual cost  
359 of the regulatory activity, including issuing and processing  
360 permits, plan reviews, physical inspection, and direct  
361 administrative costs; must be demonstrable; and must be  
362 equitable among users of the roads or rights-of-way. The ~~A~~ fee  
363 ~~permitted under this sub-subparagraph~~ may not: be offset against  
364 the tax imposed under chapter 202; include the costs of roads or  
365 rights-of-way acquisition or roads or rights-of-way rental;  
366 include any general administrative, management, or maintenance  
367 costs of the roads or rights-of-way; or be based on a percentage  
368 of the value or costs associated with the work to be performed  
369 on the roads or rights-of-way. In an action to recover amounts  
370 due for a fee not permitted under this sub-subparagraph, the  
371 prevailing party may recover court costs and attorney ~~attorney's~~  
372 fees at trial and on appeal. In addition to the limitations set  
373 forth in this section, a fee levied by a municipality or charter  
374 county under this sub-subparagraph may not exceed \$100. However,  
375 permit fees may not be imposed with respect to permits that may  
376 be required for service drop lines not required to be noticed  
377 under s. 556.108(4)(a)2. ~~s. 556.108(5)(a)2.~~ or for any activity

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378 that does not require the physical disturbance of the roads or  
379 rights-of-way or does not impair access to or full use of the  
380 roads or rights-of-way.

381 (II) To ensure competitive neutrality among providers of  
382 communications services, for any municipality or charter county  
383 that elects to exercise its authority to require and collect  
384 permit fees under this sub-subparagraph, the rate of the local  
385 communications services tax imposed by such jurisdiction, as  
386 computed under s. 202.20, shall automatically be reduced by a  
387 rate of 0.12 percent.

388 b. Alternatively, the municipality or charter county may  
389 elect not to require and collect permit fees from any provider  
390 of communications services that uses or occupies municipal or  
391 charter county roads or rights-of-way for the provision of  
392 communications services; however, each municipality or charter  
393 county that elects to operate under this sub-subparagraph  
394 retains all authority to establish rules and regulations for  
395 providers of communications services to use or occupy roads or  
396 rights-of-way as provided in this section. If a municipality or  
397 charter county elects to operate under this sub-subparagraph,  
398 the total rate for the local communications services tax as  
399 computed under s. 202.20 for that municipality or charter county  
400 may be increased by ordinance or resolution by an amount not to  
401 exceed a rate of 0.12 percent. If a municipality or charter  
402 county elects to increase its rate effective October 1, 2001,  
403 the municipality or charter county shall inform the department  
404 of such increased rate by certified mail postmarked on or before  
405 July 16, 2001.

406 c. A municipality or charter county that does not make an

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407 election as provided for in this subparagraph shall be presumed  
408 to have elected to operate under the provisions of sub-  
409 subparagraph b.

410 2. Each noncharter county shall make an election under  
411 either sub-subparagraph a. or sub-subparagraph b. and shall  
412 inform the Department of Revenue of the election by certified  
413 mail by July 16, 2001. Such election shall take effect October  
414 1, 2001.

415 a. The noncharter county may elect to require and collect  
416 permit fees from any providers of communications services that  
417 use or occupy noncharter county roads or rights-of-way. All fees  
418 permitted under this sub-subparagraph must be reasonable and  
419 commensurate with the direct and actual cost of the regulatory  
420 activity, including issuing and processing permits, plan  
421 reviews, physical inspection, and direct administrative costs;  
422 must be demonstrable; and must be equitable among users of the  
423 roads or rights-of-way. A fee permitted under this sub-  
424 subparagraph may not: be offset against the tax imposed under  
425 chapter 202; include the costs of roads or rights-of-way  
426 acquisition or roads or rights-of-way rental; include any  
427 general administrative, management, or maintenance costs of the  
428 roads or rights-of-way; or be based on a percentage of the value  
429 or costs associated with the work to be performed on the roads  
430 or rights-of-way. In an action to recover amounts due for a fee  
431 not permitted under this sub-subparagraph, the prevailing party  
432 may recover court costs and attorney ~~attorney's~~ fees at trial  
433 and on appeal. In addition to the limitations set forth in this  
434 section, a fee levied by a noncharter county under this sub-  
435 subparagraph may not exceed \$100. However, permit fees may not

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436 be imposed with respect to permits that may be required for  
437 service drop lines not required to be noticed under s.  
438 556.108(4)(a)2. ~~s. 556.108(5)(a)2.~~ or for any activity that does  
439 not require the physical disturbance of the roads or rights-of-  
440 way or does not impair access to or full use of the roads or  
441 rights-of-way.

442 b. Alternatively, the noncharter county may elect not to  
443 require and collect permit fees from any provider of  
444 communications services that uses or occupies noncharter county  
445 roads or rights-of-way for the provision of communications  
446 services; however, each noncharter county that elects to operate  
447 under this sub-subparagraph shall retain all authority to  
448 establish rules and regulations for providers of communications  
449 services to use or occupy roads or rights-of-way as provided in  
450 this section. If a noncharter county elects to operate under  
451 this sub-subparagraph, the total rate for the local  
452 communications services tax as computed under s. 202.20 for that  
453 noncharter county may be increased by ordinance or resolution by  
454 an amount not to exceed a rate of 0.24 percent, to replace the  
455 revenue the noncharter county would otherwise have received from  
456 permit fees for providers of communications services. If a  
457 noncharter county elects to increase its rate effective October  
458 1, 2001, the noncharter county shall inform the department of  
459 such increased rate by certified mail postmarked on or before  
460 July 16, 2001.

461 c. A noncharter county that does not make an election as  
462 provided for in this subparagraph shall be presumed to have  
463 elected to operate under the provisions of sub-subparagraph b.

464 3. Except as provided in this paragraph, municipalities and

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465 counties retain all existing authority to require and collect  
466 permit fees from users or occupants of municipal or county roads  
467 or rights-of-way and to set appropriate permit fee amounts.

468 Section 9. This act shall take effect July 1, 2014.

**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: CS/SB 272

INTRODUCER: Communications, Energy, and Public Utilities and Senator Simpson

SUBJECT: Water and Wastewater Utilities

DATE: November 25, 2013      REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------|----------------|-----------|---------------|
| 1. | Caldwell | Caldwell       | CU        | <b>Fav/CS</b> |
| 2. |          |                | CA        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 272 creates a process whereby customers may petition the commission to require compliance with secondary water quality standards and, if the utility fails to comply with the commission orders, the utility's certificate of authority may be revoked. The bill provides criteria the petition must meet to be considered by the commission. The bill provides criteria the commission must consider in its review of the petition and the action it may take to dispose of the petition.

The bill adds secondary water standards to the criteria the Florida Public Service Commission (FPSC, PSC, or commission) must consider when setting rates for water or wastewater service. The bill provides guidelines for the secondary water standards. The bill authorizes the commission to deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water or wastewater service is less than satisfactory. The bill requires a utility to provide an estimate of the costs and benefits of plausible solutions for each concern that the commission finds, meet with the customers to discuss the costs and solutions, and to periodically report on the progress of implementation. The commission may require the utility to resolve certain problems and require benchmarks and periodic progress reporting. The bill authorizes the commission to adopt rules to assess and enforce compliance with the secondary water standards and proscribe penalties for a utility's failure to adequately address each concern.

## II. Present Situation:

### Regulatory Compact

Utilities subject to economic regulation have what is called a “regulatory compact” with their customers and the regulators, which is a method of balancing rights and obligations of a utility and its ratepayers. The regulatory compact has been described as follows:

The utility business represents a compact of sorts; a monopoly on service in a particular geographic area (coupled with state-conferred rights of eminent domain or condemnation) is granted the utility in exchange for a regime of intensive regulation, including price regulation, quite alien to free market. . . . Each party to the compact gets something in the bargain. As a general rule, utility investors are provided a level of stability in earnings and value less likely to be attained in the unregulated or moderately regulated sector; in turn, ratepayers are afforded universal, non-discriminatory service and protection from monopoly profits through political control over an economic enterprise.<sup>1</sup>

### Public Service Commission jurisdiction over water and wastewater utilities

Chapter 367, F.S., is the Water and Wastewater System Regulatory Law. Section 367.011, F.S., grants the commission exclusive jurisdiction over each utility with respect to its authority, service, and rates. It also declares the regulation of utilities to be in the public interest, and the chapter to be an exercise of the police power of the state for the protection of the public health, safety, and welfare.

Despite this broad grant of authority, the PSC does not have authority over all water and wastewater utilities. Section 367.022(2), F.S., exempts from PSC regulation or application of this chapter water or wastewater systems owned, operated, managed, or controlled by governmental authorities, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts. Section 367.021(7), F.S., defines the term “governmental authority” to mean a political subdivision, a regional water supply authority, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.

Section 367.171, F.S., provides that, after 10 continuous years under the jurisdiction of the commission, a county can opt-out of commission jurisdiction by resolution or ordinance. In such a case, the county regulates the rates of all utilities in that county. However, the commission has exclusive jurisdiction over all utility systems whose service transverse county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverse county boundaries. According to the PSC webpage, the commission has jurisdiction

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<sup>1</sup> Tomain and Cudahy, *Energy Law*, 121-122, quoting from *Jersey Cent. Power and Light Co. v. F.E.R.C.* (D.C. Cir. 1987).

over 143 investor-owned utilities in 37 counties that serve 120,567 water and 74,317 wastewater customers<sup>2</sup> and counties have jurisdiction in 30 counties, as listed in the following table.<sup>3</sup>

| Jurisdictional Counties (37) | Non-Jurisdictional Counties (30) |
|------------------------------|----------------------------------|
| Alachua                      | Baker                            |
| Bradford                     | Bay                              |
| Brevard                      | Calhoun                          |
| Broward                      | Citrus                           |
| Charlotte                    | Collier                          |
| Clay                         | Columbia                         |
| Duval                        | Dade                             |
| Escambia                     | Desoto                           |
| Franklin                     | Dixie                            |
| Gadsden                      | Flagler                          |
| Gulf                         | Gilchrist                        |
| Hardee                       | Glades                           |
| Highlands                    | Hamilton                         |
| Jackson                      | Hendry                           |
| Lake                         | Hernando                         |
| Lee                          | Hillsborough                     |
| Levy                         | Holmes                           |
| Manatee                      | Indian River                     |
| Marion                       | Jefferson                        |
| Martin                       | Lafayette                        |
| Monroe                       | Leon                             |
| Nassau                       | Liberty                          |
| Okaloosa                     | Madison                          |
| Okeechobee                   | Santa Rosa                       |
| Orange                       | Santa Rosa                       |
| Osceola                      | Suwanee                          |
| Palm Beach                   | Taylor                           |
| Pasco                        | Union                            |
| Pinellas                     | Wakulla                          |
| Polk                         | Walton                           |
| Putnam                       |                                  |
| Seminole                     |                                  |
| St. Johns                    |                                  |
| St. Lucie                    |                                  |
| Sumter                       |                                  |
| Volusia                      |                                  |
| Washington                   |                                  |

<sup>2</sup> <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2013.pdf>

<sup>3</sup> <http://www.psc.state.fl.us/utilities/waterwastewater/wawtextchart.pdf>

## **Public Service Commission rate-making and water quality**

Pursuant to s. 367.081, F.S., the PSC is to establish rates which are just, reasonable, compensatory, and not unfairly discriminatory. In doing so, the commission must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

According to the PSC staff:

The FPSC establishes rates for investor-owned water and wastewater utilities on an individualized, prospective basis. In the rate-setting process, a utility submits investments it believes are appropriate for inclusion into its rate base, and expenses that it considers appropriate for recovery in rates. The role of the FPSC is to determine the extent to which such investments and expenses submitted are reasonable and prudent. Once the PSC determines which items are allowable for the purpose of recovery, rates are established that allow the utility an opportunity to earn a fair rate of return on its investment and to recover all prudently incurred expenses associated with the provision of utility service. The FPSC does not set rates for government-owned utilities.

The FPSC establishes rates for investor-owned water and wastewater utilities pursuant to Chapter 367, Florida Statutes, in those counties that have elected to place utilities under FPSC jurisdiction. The objective of regulation under the statute is to provide safe potable water and wastewater services at fair and reasonable rates. The FPSC sets rates through an evidentiary administrative proceeding, or through a process known as a Staff Assisted Rate Case (SARC). The Commission holds customer service hearings in the investor-owned utility's service area to accept customer testimony as part of the record of the proceeding. The FPSC reviews the utility's costs to determine if they are prudently incurred. The FPSC also reviews the utility's earnings to determine a fair rate of return on investment.

When setting rates, the FPSC takes into account customer concerns and issues with water and wastewater utilities, including the value and the quality of the service. The Commission has the flexibility to adjust rates based on the evidence on record in a rate case. Current law, however, does not give the FPSC specific authority to consider secondary drinking water standards or wastewater standards.<sup>4</sup>

As noted, although the statute requires the commission to consider quality of service in setting rates, the focus is on the quality of the service provided; that is, the focus is primarily on how well the utility provides water, not the quality of the water itself. The quality of the water and

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<sup>4</sup> Agency Analysis by the Florida Public Service Commission (FPSC), Nov. 13, 2013.

compliance with secondary water quality standards are recurrent issues at both the PSC and the Legislature. In 2012, the Legislature created the Study Committee on Investor-Owned Water & Wastewater Utility Systems (Study Committee) and directed it to study a list of issues, including water quality.<sup>5</sup> The Study Committee recommended amending Section 367.081, F.S., to establish a mechanism within a rate case proceeding to require the PSC to consider the extent to which a utility meets secondary water and wastewater standards.<sup>6</sup>

### **Penalties**

Section 367.161, F.S., provides penalties. If a utility knowingly refuses to comply with or willfully violates any provision of chapter 367, F.S., or any commission rule or order, the utility is subject to a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. Each day that the refusal or violation continues constitutes a separate offense. Each penalty is a lien upon the real and personal property of the utility, enforceable by the commission as a statutory lien under chapter 85, F.S. The proceeds from the enforcement of a lien are deposited into the General Revenue Fund.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 367.072, F.S., to allow customers to petition the commission for relief when service and water quality standards are not met by a utility. The bill authorizes the commission to suspend or revoke a utility's certificate of authority if it finds that the water and wastewater service is not of good quality or does not meet the standards set forth in the section. The bill allows customers within a system of a water or wastewater utility to file a petition that must state with specificity the problem the customers have with the water or wastewater service. The bill requires at least 65 percent of the customers to sign the petition. Customers who sign the petition must be customers currently receiving service from the utility. If customers are served by a master meter, 65 percent of those customers must support the petition.

The commission must review the petition to determine if it complies with the requirements set forth in the section and to provide the utility with a copy. The utility must respond to each problem identified in the petition and explain if it meets federal, state, and local primary standards or secondary standards established in s. 367.0812, F.S. The utility must also give an explanation of its relationship with the customers, including each complaint received, length of time each customer has been complaining, the resolution of each complaint, and the time taken to address each complaint. The commission must evaluate the petition by considering the issues identified, the utility's response, the rates of the utility in comparison with other utilities of similar size and operational characteristics, and any other factors the commission deems relevant. Based upon its evaluation, the commission may dismiss the petition, suspend the utility's certificate and require the utility to correct the problems, or revoke the utility's certificate, whereby a receiver will be appointed. The commission must adopt rules relating to the requirements for the petition and may adopt other rules to implement the section.

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<sup>5</sup> The Study Committee was created by Section 2, Chapter 2012-187, Laws of Florida (CS/HB 1389)

<sup>6</sup> The text of the recommended statutory change is contained in Attachment IV.9-D, which is on page 115 of the Study Committee report, available at <http://www.psc.state.fl.us/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf>.

**Section 2** creates s. 367.0812, F.S., to provide that when the PSC is setting rates for a water or wastewater utility, it must consider the extent to which the utility provides water service that meets secondary water quality standards for taste, odor, color, or corrosiveness, as established by the Department of Environmental Protection (DEP), the respective water management district, or a local governmental entity. In determining whether a utility has met these standards, the PSC must consider:

- Testimony and evidence provided by customers and the utility;
- The results of past tests required by DEP or a county health department which measure the utility's compliance with the applicable secondary water quality standards;
- Complaints filed by customers with the relevant regulatory authority regarding the applicable secondary water quality standards during the past 5 years; and
- If the commission deems necessary, the results of any updated test.

The bill also requires that, in setting rates, the PSC must consider the extent to which the utility provides wastewater service to its customers without generating odor, noise, aerosol drift, or light that adversely affects customers. In determining whether the utility met these standards, the PSC must consider:

- Testimony and evidence provided by customers and the utility; and
- Complaints regarding the alleged odor, noise, aerosol drift, or light filed with the appropriate regulatory agency during the past 5 years.

If the commission determines that a utility has failed to meet either standard, the utility must:

- Estimate the costs and benefits of plausible solutions to each concern identified by the PSC;
- Meet with its customers to discuss these estimated costs and benefits of plausible solutions to each concern identified by the commission; and
- Report the conclusions of such meetings to the commission.

The utility is required to meet with its customers within a time prescribed by the commission to discuss estimated costs and benefits to implement plausible solutions and report to the commission if the customers and the utility agree on a solution for each quality of service issues identified or if the customers and the utility prefer a different solutions to at least one of the quality of service issues identified. The commission may require the utility to implement solutions that are in the best interest of the customers for each issue and establish benchmarks and interim reporting on the progress of implementation.

The commission is required to adopt rules to assess and enforce a utility's compliance with this section. The rules must prescribe penalties for a utility's failure to adequately address or resolve each concern, which should include fines as provided in s. 367.161, F.S., and a reduction of return on equity of up to 100 basis points (one percent).

The bill is based on the modified proposed legislation from the Study Committee on Investor-Owned Water & Wastewater Utility Systems Report discussed above.<sup>7</sup>

The bill takes effect July 1, 2014.

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<sup>7</sup> Report of the Study Committee on Investor-Owned Water & Wastewater Utility Systems, February 15, 2013 pp. 105-116.

**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:

Private water and wastewater utilities that do not satisfactorily address customer complaints regarding secondary water standards might lose their certificate of authority to provide service. Customers may realize an increase in the cost of water and wastewater services if certain services are improved, however, the customer will be fully informed of the costs and benefits and may participate in the decision to incur those costs before increases are incurred.

## C. Government Sector Impact:

The government sector does not appear to be impacted by this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The PSC staff notes that given the subjective nature of secondary water quality standards such as color and odor, rule promulgation may pose threshold issues. However, because the DEP or other governmental entities set the standards, the commission would only have to know whether the standards are met.

**VIII. Statutes Affected:**

This bill creates sections 367.072 and 367.0812 of the Florida Statutes.

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

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

**CS by Communications, Energy, and Public Utilities on January 14, 2014:**

The CS removes the provisions that:

- Limit the rates that may be charged by a private water and wastewater utility; and
- Require adjustment of rates to that of government-owned water and wastewater utilities and that requires that any amount collected the previous 12 months that is greater than the adjusted rate must be refunded.

The CS creates a process whereby customers may petition the commission to require compliance with secondary water quality standards and, if the utility fails to comply with the commission orders, the utility's certificate of authority may be revoked. The bill provides criteria the petition must meet to be considered by the commission. The bill provides criteria the commission must consider in its review of the petition and the action it may take to dispose of the petition.

The bill authorizes the commission to deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water or wastewater service is less than satisfactory.

The bill revises the ratemaking process the commission must follow when considering secondary water quality and wastewater service standards to include that the utility inform the commission of the issues and solutions on which the utility and the customers agree and disagree. The commission may require the utility to implement solutions that are in the best interest of the customer and establish benchmarks and require periodic reporting.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: FAV  | . |       |
| 01/15/2014 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Communications, Energy, and Public Utilities (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 367.072, Florida Statutes, is created to read:

367.072 Petition to revoke certificate of authorization.-  
The Legislature finds that it is in the public interest that  
water and wastewater service be of good quality and consistent  
with the standards set forth in this chapter. The Legislature



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11 finds that the customers of a utility are in a position to  
12 initially assess the quality of the water or wastewater service  
13 provided. Therefore, a utility's certificate of authorization  
14 may be suspended or revoked if its customers file a petition  
15 with the commission in accordance with this section.

16 (1) For the purpose of determining whether a utility is  
17 providing quality water or wastewater service, a petition must:

18 (a) State with specificity each issue customers have with  
19 the water or wastewater service; and

20 (b) Be signed by at least 65 percent of a system's  
21 customers. The term "customer" means an individual whose  
22 property is serviced by a single meter or a person whose name  
23 appears on the bill for a master meter. A person whose name  
24 appears on the bill for a master meter may sign a petition if at  
25 least 65 percent of the customers, tenants, or unit owners  
26 served by the master meter support the petition, in which case  
27 documentation of such support must be included with the  
28 petition.

29 (2) Upon receipt, the commission shall review the petition  
30 and determine if it is in compliance with this section and  
31 whether the issues identified within the petition support a  
32 finding that the water or wastewater utility is failing to  
33 provide quality water or wastewater service. If the commission  
34 finds that there is a reasonable likelihood that the utility is  
35 not providing quality water or wastewater service, then it shall  
36 submit a copy of the petition to the respective utility. The  
37 utility shall submit a response to the commission addressing the  
38 issues identified within the petition and explaining whether it  
39 is providing quality water or wastewater service using the



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40 following criteria:

41 (a) Federal, state, and local primary standards or quality  
42 standards pursuant to s. 367.0812; and

43 (b) The relationship between the utility and its customers,  
44 including each complaint received regarding service quality, the  
45 length of time each customer has been complaining about service,  
46 the resolution of each complaint, and the time it has taken to  
47 address such complaints.

48 (3) The commission shall evaluate the issues identified  
49 within the petition; the utility's response as to whether it is  
50 providing quality water or wastewater service; the rates of the  
51 utility in comparison with other utilities of similar size and  
52 operational characteristics; and any other factor the commission  
53 deems relevant.

54 (4) Notwithstanding s. 367.045 and based upon its  
55 evaluation, the commission shall:

56 (a) Dismiss the petition if the decision is supported by  
57 competent substantial evidence, in which case the decision is  
58 subject to ss. 120.569 and 120.57;

59 (b) Suspend the utility's certificate and require the  
60 utility to take the necessary steps to correct the water or  
61 wastewater service issues identified. The commission shall set  
62 benchmarks within a timeframe, not to exceed 3 years, and may  
63 require the utility to provide interim reports describing its  
64 progress in meeting such benchmarks; or

65 (c) Revoke the utility's certificate, in which case a  
66 receiver must be appointed pursuant to s. 367.165 until a sale  
67 of the utility system has been approved pursuant to s. 367.071.

68 (5) The commission shall adopt by rule the format of and



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69 requirements for a petition and may adopt other rules to  
70 administer this section.

71 Section 2. Section 367.0812, Florida Statutes, is created  
72 to read:

73 367.0812 Rate fixing; quality of water or wastewater  
74 service as criterion.-

75 (1) In fixing rates that are just, reasonable,  
76 compensatory, and not unfairly discriminatory, the commission  
77 shall consider the extent to which the utility provides water  
78 service that meets secondary water quality standards for taste,  
79 odor, color, or corrosiveness, as established by the Department  
80 of Environmental Protection, the respective water management  
81 district, or the local governmental entity. The commission may  
82 deny all or part of a rate increase for a utility's system or  
83 part of a system if it determines that the quality of water  
84 service is less than satisfactory. In determining whether a  
85 utility has satisfied its obligation to provide water service to  
86 its customers which meets the standards for taste, odor, color,  
87 or corrosiveness, the commission shall consider:

88 (a) Testimony and evidence provided by customers and the  
89 utility;

90 (b) The results of past tests required by the Department of  
91 Environmental Protection or a county health department which  
92 measure the utility's compliance with the applicable secondary  
93 water quality standards;

94 (c) Complaints regarding the applicable secondary water  
95 quality standards filed by customers with the commission, the  
96 Department of Environmental Protection, the respective water  
97 management district, or the respective local governmental entity



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98 during the past 5 years; and

99 (d) If the commission deems necessary, the results of any  
100 updated test.

101 (2) In fixing just, reasonable, compensatory, and not  
102 unfairly discriminatory rates, the commission shall consider the  
103 extent to which the utility provides wastewater service to its  
104 customers without generating odor, noise, aerosol drift, or  
105 lighting that adversely affects customers. The commission may  
106 deny all or part of a rate increase for a utility's system or  
107 part of a system if it determines that the quality of wastewater  
108 service is less than satisfactory. In determining the extent to  
109 which the utility provides wastewater service to its customers  
110 without generating odor, noise, aerosol drift, or lighting that  
111 adversely affects customers, the commission shall consider:

112 (a) Testimony and evidence provided by customers and the  
113 utility;

114 (b) Complaints regarding the alleged odor, noise, aerosol  
115 drift, or lighting filed with the Department of Environmental  
116 Protection, a county health department, or the respective local  
117 governmental entity during the past 5 years; and

118 (c) Complaints regarding the alleged odor, noise, aerosol  
119 drift, or lighting filed with the commission during the past 5  
120 years.

121 (3) (a) If the commission determines that a utility:

122 1. Has failed to provide water service that meets the  
123 secondary water quality standards of the department, the  
124 respective water management district, or the local governmental  
125 entity, regarding taste, odor, color, or corrosiveness; or

126 2. Has generated odor, noise, aerosol drift, or lighting in



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127 providing wastewater service that adversely affects customers,  
128  
129 the utility shall create an estimate of the costs and benefits  
130 of a plausible solution to each issue identified by the  
131 commission.

132 (b) The utility shall meet with its customers within a time  
133 prescribed by the commission to discuss the estimated costs and  
134 benefits of and time necessary for implementation of a plausible  
135 solution for each quality of service issue identified and the  
136 utility shall report the results of such meetings to the  
137 commission.

138 (c) The utility shall inform the commission if:

139 1. The customers and the utility agree on a solution for  
140 each quality of service issue identified; or

141 2. The customers and utility prefer a different solution to  
142 at least one of the quality of service issues identified.

143 (d) The commission may require the utility to implement a  
144 solution that is in the best interest of the customers for each  
145 quality of service issue. The commission may establish the  
146 necessary benchmarks a utility must meet for each solution and  
147 require the utility to report periodically until each solution  
148 is completed.

149 (4) The commission shall adopt rules to assess and enforce  
150 compliance with this section. The rules must prescribe penalties  
151 for a utility's failure to adequately resolve each quality of  
152 service issue as required by the commission, which may include  
153 finances as provided in s. 367.161, a reduction of return on equity  
154 of up to 100 basis points, or cancellation of the certificate of  
155 authority under s. 367.072.



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156 Section 3. This act shall take effect July 1, 2014.

157

158 ===== T I T L E A M E N D M E N T =====

159 And the title is amended as follows:

160 Delete everything before the enacting clause

161 and insert:

162 A bill to be entitled

163 An act relating to water and wastewater utilities;  
164 creating s. 367.072, F.S.; providing legislative  
165 intent; authorizing the Florida Public Service  
166 Commission to suspend or revoke a certificate of  
167 authorization upon receipt of a petition; providing  
168 criteria for such petition; authorizing the commission  
169 to adopt rules; creating s. 367.0812, F.S.; requiring  
170 the commission to consider the quality of water or  
171 wastewater service when fixing rates; providing  
172 criteria that the commission must consider in making  
173 its determination; requiring the utility to meet with  
174 its customers to discuss the costs and benefits of  
175 plausible solutions if the commission finds that the  
176 utility has failed to meet certain water or wastewater  
177 quality standards; requiring the commission to adopt  
178 rules; providing an effective date.

By Senator Simpson

18-00333B-14

2014272\_\_

1                   A bill to be entitled  
2           An act relating to water and wastewater utilities;  
3           amending s. 367.081, F.S.; limiting the rates that may  
4           be charged by a public water and wastewater utility;  
5           requiring the Public Service Commission to adjust  
6           public water or wastewater utilities rates under  
7           certain circumstances; requiring rates to be adjusted  
8           retroactively; requiring a public water or wastewater  
9           utility to refund rates upon an adjustment; creating  
10          s. 367.0812, F.S.; requiring the commission to  
11          consider the value and quality of water or wastewater  
12          service provided by a utility when fixing rates;  
13          providing criteria that the commission must consider  
14          in making its determination; requiring the utility to  
15          meet with its customers to discuss the costs and  
16          benefits of plausible solutions if the commission  
17          finds that the utility failed to meet certain water  
18          and wastewater quality standards; requiring the  
19          commission to adopt rules; providing an effective  
20          date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24           Section 1. Subsection (2) of section 367.081, Florida  
25 Statutes, is amended to read:

26           367.081 Rates; procedure for fixing and changing.—

27           (2) (a) ~~1-~~ The commission shall, ~~either~~ upon request or upon  
28 its own motion, fix rates that ~~which~~ are just, reasonable,  
29 compensatory, and not unfairly discriminatory.

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30       1. In ~~each every~~ such proceeding, the commission shall  
31 consider the value and quality of the service and the cost of  
32 providing the service, which must ~~shall~~ include, but is not ~~be~~  
33 limited to, debt interest; the requirements of the utility for  
34 working capital; maintenance, depreciation, tax, and operating  
35 expenses incurred in the operation of all property used and  
36 useful in the public service; and a fair return on the  
37 investment of the utility in property used and useful in the  
38 public service. However, the commission may ~~shall~~ not allow the  
39 inclusion of contributions-in-aid-of-construction in the rate  
40 base of any utility during a rate proceeding or, ~~nor shall the~~  
41 ~~commission~~ impute prospective future contributions-in-aid-of-  
42 construction against the utility's investment in property used  
43 and useful in the public service, ~~and~~ Accumulated depreciation  
44 on such contributions-in-aid-of-construction may ~~shall~~ not be  
45 used to reduce the rate base, and ~~nor shall~~ depreciation on such  
46 contributed assets may not be considered a cost of providing  
47 utility service.

48       2. Notwithstanding subparagraph 1., the rates of a public  
49 water or wastewater utility may not exceed the rates charged by  
50 a government-owned water or wastewater utility if a government-  
51 owned utility is located in the same county as the public  
52 utility. If more than one government-owned water or wastewater  
53 utility is located in the same county, the maximum rate shall be  
54 the average of the government-owned utilities' rates.

55       a. The commission shall adjust the rates of a public water  
56 or wastewater utility that exceeds the rates charged by a  
57 government-owned water or wastewater utility located in the same  
58 county.

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59        b. The rates shall be adjusted retroactively to the date of  
60 the most recent rate adjustment of the government-owned water or  
61 wastewater utility. The public water or wastewater utility must  
62 refund the amounts due within 12 months after such adjustment.

63        ~~3.2.~~ For purposes of such proceedings, the commission shall  
64 consider utility property, including land acquired or facilities  
65 constructed or to be constructed within a reasonable time in the  
66 future, not to exceed 24 months after the end of the historic  
67 base year used to set final rates unless a longer period is  
68 approved by the commission, to be used and useful in the public  
69 service, if:

70            a. Such property is needed to serve current customers;

71            b. Such property is needed to serve customers 5 years after  
72 the end of the test year used in the commission's final order on  
73 a rate request as provided in subsection (6) at a growth rate  
74 for equivalent residential connections not to exceed 5 percent  
75 per year; or

76            c. Such property is needed to serve customers more than 5  
77 full years after the end of the test year used in the  
78 commission's final order on a rate request as provided in  
79 subsection (6) only to the extent that the utility presents  
80 clear and convincing evidence to justify such consideration.

81  
82 Notwithstanding the provisions of this paragraph, the commission  
83 shall approve rates for service which allow a utility to recover  
84 from customers the full amount of environmental compliance  
85 costs. Such rates may not include charges for allowances for  
86 funds prudently invested or similar charges. For purposes of  
87 this requirement, the term "environmental compliance costs"

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88 includes all reasonable expenses and fair return on any prudent  
89 investment incurred by a utility in complying with the  
90 requirements or conditions contained in any permitting,  
91 enforcement, or similar decision ~~decisions~~ of the United States  
92 Environmental Protection Agency, the Department of Environmental  
93 Protection, a water management district, or any other  
94 governmental entity with similar regulatory jurisdiction.

95 (b) In establishing initial rates for a utility, the  
96 commission may project the financial and operational data as  
97 specified set-out in paragraph (a) to a point in time when the  
98 utility is expected to be operating at a reasonable level of  
99 capacity.

100 Section 2. Section 367.0812, Florida Statutes, is created  
101 to read:

102 367.0812 Rate fixing; value and quality of water and  
103 wastewater service as criterion.-

104 (1) In fixing rates that are just, reasonable,  
105 compensatory, and not unfairly discriminatory, the commission  
106 shall consider the extent to which the utility provides water  
107 service that meets secondary water quality standards for taste,  
108 odor, color, or corrosiveness, as established by the Department  
109 of Environmental Protection, the respective water management  
110 district, or the local governmental entity. In determining  
111 whether a utility has satisfied its obligation to provide water  
112 service to its customers which meets the standards for taste,  
113 odor, color, or corrosiveness, the commission shall consider:

114 (a) Testimony and evidence provided by customers and the  
115 utility;

116 (b) The results of past tests required by the Department of

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117 Environmental Protection or a county health department which  
118 measure the utility's compliance with the applicable secondary  
119 water quality standards;

120 (c) Complaints regarding the applicable secondary water  
121 quality standards filed by customers with the commission, the  
122 Department of Environmental Protection, the respective water  
123 management district, or the respective local governmental entity  
124 during the past 5 years; and

125 (d) If the commission deems necessary, the results of any  
126 updated test.

127 (2) In fixing just, reasonable, compensatory, and not  
128 unfairly discriminatory rates, the commission shall consider the  
129 extent to which the utility provides wastewater service to its  
130 customers without generating odor, noise, aerosol drift, or  
131 light that adversely affects customers. In determining the  
132 extent to which the utility provides wastewater service to its  
133 customers without generating odor, noise, aerosol drift, or  
134 light that adversely affects customers, the commission shall  
135 consider:

136 (a) Testimony and evidence provided by customers and the  
137 utility;

138 (b) Complaints regarding the alleged odor, noise, aerosol  
139 drift, or light filed with the Department of Environmental  
140 Protection, a county health department, or the respective local  
141 governmental entity during the past 5 years; and

142 (c) Complaints regarding the alleged odor, noise, aerosol  
143 drift, or light filed with the commission during the past 5  
144 years.

145 (3) (a) If the commission determines that a utility:

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146 1. Has failed to provide water service that meets the  
147 secondary water quality standards of the department, the  
148 respective water management district, or the local governmental  
149 entity, regarding taste, odor, color, or corrosiveness; or

150 2. Has generated odor, noise, aerosol drift, or light in  
151 providing wastewater service that adversely affects customers,  
152  
153 the utility shall create an estimate of the costs and benefits  
154 of plausible solutions to each concern identified by the  
155 commission.

156 (b) The utility shall meet with its customers to discuss  
157 the estimated costs and benefits of plausible solutions to each  
158 concern identified by the commission and report the conclusions  
159 of such meetings to the commission.

160 (4) The commission shall adopt rules to assess and enforce  
161 the utility's compliance with this section. The rules must  
162 prescribe penalties for a utility's failure to adequately  
163 address or resolve each concern, which should include fines as  
164 provided in s. 367.161 and a reduction of return on equity of up  
165 to 100 basis points.

166 Section 3. This act shall take effect July 1, 2014.

SUMMARY OF AMENDMENTS  
TO  
SB 272

|  |   |
|--|---|
| <p><b>Amendment # 1</b><br/>By Senator Simpson<br/>Barcode 752326<br/>Strike-all</p> | <p>Section 1 creates a new section 367.072 that provides an option of last resort for customers by allowing them to petition the commission for relief when service and water quality standards are not met by a utility. Specifically, the first section:</p> <ul style="list-style-type: none"><li>• Authorizes 65 percent of the customers within a system of a water or wastewater utility to petition the Public Service Commission (commission) to suspend or revoke that utility's certificate of authority if the commission finds that water or wastewater service is not of good quality or does not meet the standards set forth in the section. The petition must specify each problem the customers have with the service.</li><li>• Requires that the customers who sign the petition must be customers currently receiving service from the utility. If customers are served by a master meter, 65 percent of those customers must support the petition.</li><li>• Requires the commission to review the petition to determine if it complies with the requirements and to provide the utility with a copy. The utility must respond to each problem identified in the petition and explain if it meets federal, state, and local primary standards or secondary standards established in the bill. The utility must also give an explanation of its relationship with the customers, including each complaint received, length of time each customer has in complaining, the resolution of each complaint and the time taken to address each complaint.</li><li>• The commission must follow certain criteria to evaluate the petition and the response. Based upon its evaluation, the commission may dismiss the petition, suspend the utility's certificate and require the utility to correct the problems, or revoke the utility's certificate, whereby a receiver will be appointed.</li><li>• Requires the commission to adopt rules to implement the section.</li></ul> <p>Section 2 creates a new section 367.0812 that establishes secondary water quality standards that the commission can consider when fixing rates. Specifically, the new section:</p> <ul style="list-style-type: none"><li>• Authorizes the commission to consider certain secondary water quality standards for taste, odor, color or corrosiveness when it fixes just, reasonable, compensatory, and not unfairly discriminatory rates for water and wastewater service.</li><li>• Requires the commission to consider certain criteria when</li></ul> |
|--|---|

|  |   |
|--|---|
|  | <p>determining whether a utility has satisfied its obligation to meet secondary water quality standards when providing water service.</p> <ul style="list-style-type: none"><li>• Requires the commission to consider the extent to which the utility provides wastewater service to its customers without generating certain unpleasant by-products that adversely affects customers.</li><li>• Requires a utility to create an estimate of the time, costs, and benefits of plausible solutions for each failure to meet adequate service or water quality standards; to timely meet with its customers to discuss estimated costs and benefits to implement plausible solutions; and report to the commission.</li><li>• Authorizes the commission to require the utility to implement the solutions and establish benchmarks and interim reporting on the progress of implementation.</li><li>• Authorizes the commission to adopt rules.</li></ul> |
|--|---|



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Gaming, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules  
Transportation

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

January 10, 2014

The Honorable Anitere Flores, Chair  
Committee on Communications, Energy, and Public Utilities  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Flores:

Thank you for placing SB 288, Underground Facilities on the Communications, Energy and Public Utilities agenda. This bill is still a work in progress therefore I would like to temporarily pass this bill next week.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Diana Caldwell, Staff Director  
Kim Bonn

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Senate Communications, Energy and Public Utilities Committee

**Case:**

**Type:**  
**Judge:**

**Started:** 1/14/2014 10:04:51 AM

**Ends:** 1/14/2014 10:56:56 AM      **Length:** 00:52:06

10:04:57 AM Call to order  
10:05:08 AM TAB 4-SB 288 Announced TP'd  
10:05:43 AM TAB 1-CS-SB 218 by Senator Grimsely (Marty to explain)  
10:07:01 AM Waives Closed  
10:07:10 AM Roll Call Vote  
10:07:18 AM Chair Reports Bill Favorable  
10:07:26 AM TAB 5- SB 272 – by Senator Simpson TP for now  
10:08:09 AM Senator Hays arrives, take up SB 294  
10:08:25 AM Senator Hays Explains Bill  
10:10:09 AM Question by Senator Gibson  
10:10:38 AM Senator Hays Responds  
10:11:00 AM Doug Mannheimer waives in support  
10:11:31 AM Electra Bustle – Sheriffs Assoc waives in support  
10:11:58 AM Frank Meiners waives in support  
10:12:04 AM Amber Hughes Fl. League of Cities waives in support  
10:12:12 AM Diana Ferguson waives in support  
10:12:23 AM Richard Pinsky - Leon County 9-1-1 waives in support  
10:13:03 AM Sally Jackson - Polk County, E9-1-1 Coordinator Group speaks in support  
10:13:47 AM Jim Smith waives in support  
10:13:54 AM Stephen O'Connor waives in support  
10:13:59 AM Paula Mateo - ATT waives in support  
10:14:05 AM Becky Edmonston - Verizon waives in support  
10:14:19 AM Senator Hays closes  
10:14:27 AM Roll Call Vote  
10:14:41 AM Bill reported Favorably  
10:14:55 AM TAB 3- SB 292  
10:15:06 AM SB 292 Explained by Senator Hays  
10:15:16 AM Jim Smith waives in support  
10:15:22 AM Becky Edmonston Waives in Support  
10:15:25 AM Doug Mannheimer waives in support  
10:15:32 AM Senator Hays closes  
10:15:39 AM Roll Call Vote  
10:16:04 AM SB 292 Reported Favorably  
10:16:15 AM TAB 5- SB 272  
10:16:22 AM Barcode- 752326 – Delete All amendment  
10:16:41 AM Senator Simpson Explains – amendment adopted  
10:18:49 AM Senator Simpson recognizes residents of SummerTree  
10:19:21 AM David Schaffer speaks on behalf of Summertree Alliance  
10:19:58 AM Richard Neilson speaks representing Summer tree Community  
10:21:17 AM Robert Ryan - Summertree- SB 272  
10:21:54 AM Joseph Mitchell- Summertree Subdivision- SB 272  
10:24:13 AM Ann Marie Ryan- Summertree Water Alliance- SB 272  
10:26:27 AM Dawn L. Bergson - Summertree Development-Waives in support of SB 272  
10:26:56 AM Peter Lucatuorto - Summertree Water Alliance- SB 272  
10:28:49 AM Charles Hoen- Summertree Water Alliance waives in support- SB 272  
10:28:57 AM David Childs- Florida Chamber of Commerce Waives in support of SB 272  
10:29:07 AM Michael Smallridge - Owner , Florida Utility Services speaks on SB 272  
10:34:25 AM Senator Garcia regarding Michael's comments  
10:35:02 AM Michael Smallridge responds  
10:36:25 AM Senator Garcia responds  
10:38:12 AM Gary Williams- Florida Rural Water Association- SB 272  
10:43:22 AM Senator Flores

**10:43:31 AM** Senator Gibson on SB 272  
**10:44:35 AM** Senator Evers questions Senator Simpson on quality issue  
**10:44:48 AM** Senator Simpson responds  
**10:48:07 AM** Senator Evers responds  
**10:48:20 AM** Senator Simpson responds  
**10:48:32 AM** Speaking on water quality- Ann Marie Ryan responds  
**10:51:38 AM** Senators Evers responds  
**10:51:49 AM** Response from speaker  
**10:52:35 AM** Senator Evers responds  
**10:53:12 AM** Speaker Responds  
**10:53:48 AM** Senator Evers Responds  
**10:55:20 AM** Senator Flores  
**10:55:27 AM** Senator Simpson closes  
**10:56:17 AM** Roll Call Vote  
**10:56:47 AM** Bill reported Favorably  
**10:56:51 AM** Adjourned

THE FLORIDA SENATE

APPEARANCE RECORD

2

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic E 911 Bill Number 294 (if applicable)

Name Doug Mannheimheimer Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Attorney

Address 215 S. Monroe St Suite 40 Phone 681 6810

Tallahassee City State Zip

E-mail dmanheimer

Speaking:  For  Against  Information

Representing Sprint

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date \_\_\_\_\_

Topic \_\_\_\_\_ Bill Number 294 (if applicable)

Name Electra Bustle Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Street \_\_\_\_\_ E-mail \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Emeritus Assoc

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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APPEARANCE RECORD

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1/14/14  
Meeting Date

Topic \_\_\_\_\_  
Name Frank Meiners  
Job Title \_\_\_\_\_  
Bill Number 294 (if applicable)  
Amendment Barcode \_\_\_\_\_ (if applicable)

Address PO Box 1633  
Tell FL 32309  
Street City State Zip  
Phone 850 591-0177  
E-mail Frank@chymail.com

Speaking:  For  Against  Information  
Representing Assoc. Ind. of FL

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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1/14/14  
Meeting Date

Topic E-911 Bill Number 2944 (if applicable)  
Name Amber Hughes Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title Leg. Advocate  
Address \_\_\_\_\_ Phone 813-777-4783  
Street Todd City \_\_\_\_\_ E-mail \_\_\_\_\_  
State FL Zip \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL League of Cities

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

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1/14/14  
Meeting Date

Topic E-911 Bill Number 294 (if applicable)  
Name DAVIN SPAYS Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title SR. LEG. ADVOCATE  
Address 100 S. MONROE ST Phone 850.320.2635  
TALL City FL E-mail \_\_\_\_\_  
State FL Zip 32301

Speaking:  For  Against  Information

Representing FL. ASSOC. OF COUNTIES

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

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1/14/14

Meeting Date

Topic

Bill Number SB 294

(if applicable)

Name Diana Ferguson

Amendment Barcode

(if applicable)

Job Title Attorney

Phone 850-681-6788

Address 119 S Monroe St Ste 202

Street

Tall

City

FL

State

32301

Zip

E-mail dferguson@cuttudge-leseriq.com

Speaking:

For

Against

Information

Representing T-Mobile

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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1-14-14

Meeting Date

Topic 2911

Bill Number

294

Name Richard Pinsky

Amendment Barcode

Job Title

Address 106 E college suite 1200

Phone

Tallahassee

E-mail

City State Zip

Speaking:  For  Against  Information

Representing 9-1-1 Emergency Dispatchers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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01/14/2014  
Meeting Date

Topic 911 Prepaid Bill Number 294 (if applicable)  
Name SILAS DANIEL Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title 911 COORDINATOR  
Address 1019 N MAIN ST Phone 352-569-1600  
BUSHNEE City FL State FL Zip \_\_\_\_\_  
E-mail sdaniel@sumterse.org

Speaking:  For  Against  Information  
Representing Sumter County 911

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

2

APPEARANCE RECORD

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Jan 14 2014  
Meeting Date

Topic 9-1-1 Prepaid Bill Number 294 (if applicable)  
Name Sally Jackson Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title 9-1-1 Systems Manager  
Address 1295 Bruce Blvd Phone 813-255-7529

Parotow City State Zip FL  
E-mail Sally.jackson@polkfl.com

Speaking:  For  Against  Information

Representing Polk County 9-1-1 Coordinators Group, FL NENA

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 14 2014  
Meeting Date

Topic 9-1-1 Prepaid Bill Number 294  
(if applicable)

Name Edith Taylor Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title 9-1-1 Coordinator Leon County

Address 9114 EASTERWOOD DR Phone 850-606-3700

TALAHASSEE FL 32311 E-mail edith@leoncountyfl.gov  
City State Zip

Speaking:  For  Against  Information

Representing Leon Co 9-1-1

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

2

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic \_\_\_\_\_ Bill Number SB 292 + 294 (if applicable)

Name Jim Smith Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Director

Address 315 S CALHOUN ST S500 Phone 2125901

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ E-mail \_\_\_\_\_

Speaking:  For  Against  Information WAIVE & SUPPORT

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

TBS 2,3

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/14  
Meeting Date

Topic E911 Bill Number S292 S294  
(if applicable)

Name STEPHEN F. O'CONNOR Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title DIRECTOR, GOVT & INDUSTRY RELATIONS

Address 4768 ALAMANDA DR Phone 321 432 8159  
MELBOURNE FL 32940  
City State Zip

E-mail SACUNOR@SYMEGEMTECH.COM

Speaking:  For  Against  Information

Representing SYMEGEM TECHNOLOGIES

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/14  
Meeting Date

SB 292  
SB 294

Topic \_\_\_\_\_  
Bill Number \_\_\_\_\_ (if applicable)  
Name Paula Mateo  
Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Area Manager  
Phone 591-6002

Address 150 S. MONROE STREET  
City Tallahassee FL 32301  
State Zip

E-mail paula.mateo  
Speaking:  For  Against  Information  
Representing ATT;

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-14

Meeting Date

Topic EA11 Bill Number SB 294 ~~SB 292~~ SB 292 (if applicable)

Name Becki Edmonston Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Mgr - Gov. Affairs

Address 106 E College Ave. St. 710

City Tallahassee, FL State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking:  For  Against  Information

Representing Verizon

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3

Meeting Date \_\_\_\_\_

Topic Σ 911 Bill Number 292 (if applicable)

Name Doug Mannheimmer Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Attorney

Address 215 S. Monroe St. Suite 400 Phone 681-6810

City Tallahassee State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail dmanheimer@braadandcassel.com

Speaking:  For  Against  Information

Representing Sprint

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

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1/14/14

Meeting Date

Topic Eq11

Bill Number 292

(if applicable)

Name Electra Bustle

Amendment Barcode

(if applicable)

Job Title

Address 123 S. Adams St.

Phone 850 671 4401

Street

32301

City

State

Zip

Speaking:  For

Against

Information

Representing Florida Sheriffs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/14 Meeting Date

Topic Water Utilities Bill

Bill Number SB 272

(if applicable)

Name Gary Williams

Amendment Barcode

(if applicable)

Job Title Executive Director - Florida Rural Water Assn

Address 2970 Wellington Cir

Street

Phone 668-2746

City

State

Zip

E-mail Gary.Williams@flra.net

Speaking:  For  Against  Information

Representing Water + Wastewater Utilities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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1-14-14  
Meeting Date

Topic Utility Bill Bill Number SB 272  
(if applicable)

Name Michael Smalldridge Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Owner - Florida Utility Services

Address 1902 Barton Park Rd Suite 201 Phone 863-904-5574

Auburndale FL 33823 E-mail utilityconsultant@yahoo.com  
City State Zip

Speaking:  For  Against  Information

Representing myself

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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Jan 14, 2014

Meeting Date

Vote in support

Topic Water & Wastewater Utilities (as amended) Bill Number 272

(if applicable)

Name David Childs

Amendment Barcode

(if applicable)

Job Title Counsel

Phone 850 222-7500

Address 119 S. Monroe St Suite 300

Street

Willalhessee

City

FL

State

32301

Zip

Speaking:  For  Against  Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/14  
Meeting Date

Topic SUMMERTRE WATER WASTEWATER Bill Number 272  
Name CHARLES HOEHN Amendment Barcode 752326  
(if applicable) (if applicable)

Job Title \_\_\_\_\_

Address 12130 TOURNAMENT VIEW AVE Phone 727 856-9555  
Street  
City NEW PORT RICHEY FL 34654 State Zip  
E-mail CHOEHN33@GMAIL.COM

Speaking:  For  Against  Information

Representing SUMMERTREE WATER ALLIANCE

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/14  
Meeting Date

Topic Summer Tree Water & Waste Water Bill Number 272  
Name Peter Lucaturo Amendment Barcode 752 326  
(if applicable) (if applicable)

Job Title home owner  
Address 11531 Pear Tree Dr. Phone (727) 378-3451

New Port Richey FL 34654 E-mail plucatuorto  
City State Zip @earthlink.net

Speaking:  For  Against  Information  
Representing Summertree Water Alliance

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/24/14  
Meeting Date

Topic SUMMERBEE WATER WASTE WATER Bill Number 272  
(if applicable)

Name DAWN K. BERGSON Amendment Barcode 752 326  
(if applicable)

Job Title RESIDENT of SUMMERTREE

Address 12106 TOURNAMENT VIEW AVE. Phone 561-632-2856  
Street City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing SUMMERTREE DEVELOPMENT

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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1/14/2014  
Meeting Date

Topic Summerville Water / Wastewater Bill Number 272  
Name Ann Marie Run Amendment Barcode 752 326  
(if applicable) (if applicable)

Job Title Retired Teacher / Adjunct Professor  
Address 11436 Windstar Ct Phone 727.856.2203  
Street City State Zip

New Port Richey E-mail amr328@hotmail.com  
City State Zip

Speaking:  For  Against  Information

Representing Summerville Water Alliance

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2014  
Meeting Date

Topic Summer extra water & wastewater Bill Number 272  
Name JOSEPH MITCHELL Amendment Barcode 752328  
Job Title Resident of Summer Truss (if applicable) (if applicable)

Address 11737 Baynton Ln. Phone 727-247-4745  
New Port Richey FL 34654 E-mail OAKby 57@hotmail.com  
City State Zip

Speaking:  For  Against  Information

Representing Summer Truss Subd.

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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1/14/14  
Meeting Date

Topic SUMNER TRUCK WATER Bill Number S 272  
Name RYAN, ROBERT J Amendment Barcode 752326  
(if applicable) (if applicable)

Job Title VOTER  
Address 11436 WINDSTAR CT Phone 777-856-2203

City WPR State FL E-mail RRYAN44@TRUCK.com  
Zip \_\_\_\_\_

Speaking:  For  Against  Information

Representing SUMNER TRUCK

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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1/14/14  
Meeting Date

Topic SB 272 / Water Quality / Cost Bill Number 272  
Name BREARD Neilson Amendment Barcode 752326 (if applicable)  
Job Title President Arborewood At Summer tree (if applicable)

Address 11605 English Elm Phone 727-378-5474  
City New Port Richey FL 34654 E-mail RICHARD RNelson@gmail.com  
State Zip

Speaking:  For  Against  Information

Representing Summer tree Community

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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01/14/14  
Meeting Date

Topic SUMMERTREE WATER S WASTEWATER Bill Number 272  
Name DAVID SCHAFFER Amendment Barcode 752326  
(if applicable) (if applicable)

Job Title WATER-HOMEOWNER  
Address 11918 BAYONET LANE Phone 727-858-6816

NEW PORT RICHEY FLA. 34654 E-mail SCHAFFERDAVE@AOL.COM  
City State Zip

Speaking:  For  Against  Information  
Representing SUMMERTREE WATER ALLIANCE

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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