HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 177 Pub. Rec./Prepaid Wireless E911 Fee
SPONSOR(S): Government Operations Subcommittee; Steube
TIED BILLS: CS/HB 175 **IDEN./SIM. BILLS:** CS/SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Whittier	Keating
2) Government Operations Subcommittee	12 Y, 0 N, As CS	Williamson	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Current law provides a public record exemption for proprietary confidential business information submitted by a prepaid wireless provider to the E911 Board (Board) or Technology Program within the Department of Management Services (DMS).

This bill, which is linked to the passage of House Bill 175, expands the public record exemption for proprietary confidential business information submitted by a prepaid wireless provider to include such information when it is submitted to the Department of Revenue. It authorizes the Department of Revenue to provide such information to DMS or the Board in certain circumstances.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may create a minimal fiscal impact on the Department of Revenue. *See* FISCAL COMMENTS section. It does not appear to have a fiscal impact on local government.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[1]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[2] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

E911 System for Wireless Users

The Emergency Communications Number E911 Act[3] establishes a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposes a monthly fee, capped at $0.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses wireless providers for costs incurred to provide 911 or E911 services.

Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but there is no mechanism in place for collection of the fee from the sale of prepaid wireless services.[4] State and local governments are not subject to the fee.[5] The E911 Board (Board), formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee.

House Bill 175 (2014)

House Bill 175 provides a mechanism for collection of the E911 fee on each retail purchase of prepaid

[1] Section 24(c), Art. I of the State Constitution.
[2] *See* s. 119.15, F.S.
[3] Formerly known as the Wireless Emergency Communications Act (chapter 99-367, L.O.F., codified as s. 365.172, F.S.).
[4] Prepaid wireless service is defined as "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." *See* s. 365.172(8)(a)2.b.(I), F.S.
[5] Section 365.172(8)(c), F.S.

wireless service from a seller. The bill defines "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.

House Bill 175 includes provisions designed to address the expense incurred by sellers to collect the E911 fee on prepaid wireless service. It requires sellers to begin collecting the fee on the first day of the month following 180 days after the act takes effect, at a rate of $0.46 per retail transaction. The bill specifies the manner in which sellers must file returns and remit the E911 fees collected. On or before the 20th day of each month, beginning the first month after the fee is imposed, each seller must file a return and remit to the Department of Revenue (DOR) the fees it collected in the prior month.[6]

The bill specifies the information that must be provided in each E911 fee return filed with DOR. This information includes the seller's name, tax identification numbers, business location and address; county of the business location; reporting period; number of prepaid wireless services sold during the reporting period and the amount of E911 fees collected on those services, including the amount of any adjustments made to the fees collected; amount of the retailer collection allowance deducted from the amount of fees collected; and amount to be remitted to DOR.

The bill requires every seller of prepaid wireless service in Florida to register with DOR for each place of business, as required by existing laws regarding registration as a sales and use tax dealer. A separate application is required for each place of business. It provides that a valid certificate of registration issued by DOR for sales and use tax purposes is sufficient for these purposes, and there is no fee for registration for remittance of E911 fees.

Public Record Exemptions

Section 365.174, F.S., provides a public record exemption for proprietary confidential business information submitted by a prepaid wireless provider to the Board or Technology Program within the Department of Management Services (DMS). Statistical abstracts of information collected by the Board or Technology Program 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.[7] "Proprietary confidential business information" is defined as 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, 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.[8]

Effect of Proposed Changes

This bill, which is linked to the passage of House Bill 175, expands the public record exemption for proprietary confidential business information submitted to the Board or Technology Program to include such information when it is submitted to DOR as an agent of the E911 Board. DOR may provide the confidential and exempt information to the Secretary of DMS or to the E911 Board for use in the conduct of official business by DMS or the Board.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

[6] If the 20th day of the month is a Saturday, Sunday, or legal holiday, the deadline is extended until the next business day.
[7] Section 365.174(1), F.S.
[8] Section 365.174(2), F.S.

Section 1. Amends s. 365.174, F.S., relating to proprietary confidential business information.

Section 2. Provides public necessity statements.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on DOR, because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, DOR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of DOR.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for proprietary confidential business information submitted to DOR by a prepaid wireless service provider. The exemption treats such information in the same manner as proprietary confidential business information that is submitted to the Board or Technology Program. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

It appears that no additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment removed from the bill the public record exemption for returns, reports, accounts, or declarations received by the Department of Revenue, which relate to the prepaid wireless E911 fee. It maintained the public record exemption for proprietary confidential business information submitted by a prepaid wireless service provider to the Department of Revenue.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.