

House Bill No. 621

An act relating to wireless emergency 911 telephone service; creating s. 365.172, F.S.; providing a short title; providing legislative findings, purposes, and intent; providing definitions; providing duties of the Department of Management Services; creating the Wireless 911 Board; providing duties and membership of the board; providing powers of the board; requiring the board to report to the Governor and the Legislature each year; requiring completion of a study for submission to the Governor and the Legislature; requiring the board to retain an independent accounting firm for certain purposes; providing a process for firm selection; imposing a monthly fee for certain 911 telephone service; providing a rate; providing for adjusting the rate; exempting the fee from state and local taxes; prohibiting local governments from imposing additional fees related to such service; providing procedures for collecting the fee and remitting the fee to the board; providing criteria for provision of certain services; prohibiting certain activities relating to wireless 911 telephone service; providing penalties; providing that the act does not preempt other laws that regulate providers of telecommunications service; providing for severability; providing an appropriation; providing an effective date.

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

Section 1. Section 365.172, Florida Statutes, is created to read:

365.172 Wireless emergency telephone number “E911.”

(1) SHORT TITLE.—This section may be cited as the “Wireless Emergency Communications Act.”

(2) FINDINGS, PURPOSE, AND LEGISLATIVE INTENT.—The Legislature finds and declares that:

(a) The mobile nature of wireless communications service creates complexities for providing 911 emergency services.

(b) Wireless telephone service providers are required by the Federal Communications Commission to provide wireless enhanced 911 (E911) service in the form of automatic location identification and automatic number identification pursuant to the terms and conditions set forth in an order issued by the Federal Communications Commission.

(c) Wireless telephone service providers and counties that operate 911 and E911 systems require adequate funding to recover the costs of designing, purchasing, installing, testing, and operating enhanced facilities, systems, and services necessary to comply with the requirements for E911 services mandated by the Federal Communications Commission and to maximize the availability of E911 services throughout this state.

(d) The revenues generated by the E911 fee imposed under this section are required to fund the efforts of the counties, the Wireless 911 Board under the Department of Management Services, and commercial mobile radio service providers to improve the public health, safety, and welfare and serve a public purpose by providing emergency telephone assistance through wireless communications.

(e) It is necessary and beneficial to levy a fee on wireless services and to create the Wireless 911 Board to administer fee proceeds as provided in this section.

(f) It is the intent of the Legislature to:

1. Establish and implement a comprehensive statewide emergency telephone number system that will provide wireless telephone users with rapid direct access to public safety agencies by dialing the telephone number "911."

2. Provide funds to local governments to pay the cost of installing and operating wireless 911 systems and to reimburse wireless telephone service providers for costs incurred to provide 911 or enhanced 911 services.

3. Levy a reasonable fee on subscribers of wireless telephone service to accomplish these purposes.

(3) DEFINITIONS.—As used in this section and ss. 365.173 and 365.174, the term:

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

(b) "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone used to place a 911 call.

(c) "Automatic number identification" means the capability of the E911 service which enables the automatic display of the 10-digit service number used to place a 911 call.

(d) "Board" means the board of directors of the Wireless 911 Board.

(e) "Department" means the Department of Management Services.

(f) "E911" is the designation for a wireless enhanced 911 system or wireless enhanced 911 service that is an emergency telephone system or service that provides a subscriber with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features in accordance with the requirements of the order.

(g) “Fee” means the E911 fee imposed under subsection (8).

(h) “Fund” means the Wireless Emergency Telephone System Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing 911 service or E911 service, including the costs of implementing the order.

(i) “Local exchange carrier” means an “alternative local exchange telecommunications company” or a “local exchange telecommunications company” as defined in s. 364.02.

(j) “Local government” means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(k) “Order” means:

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

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

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

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

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

2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of wireless 911 services.

(l) “Provider” means a person or entity who provides service and either:

1. Is subject to the requirements of the order; or

2. Elects to provide wireless 911 service or E911 service in this state.

(m) “Public agency” means the state and any municipality, county, municipal corporation, or other governmental entity, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(n) “Public safety agency” means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(o) “Rural county” means any county that has a population of fewer than 75,000.

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

(q) "Service number" means the unique 10-digit wireless telephone number assigned to a service subscriber.

(r) "Wireless 911 system" or "wireless 911 service" means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by dialing the digits "911." A wireless 911 system is complementary to a wired 911 system as provided for in s. 365.171.

(4) POWERS AND DUTIES OF THE DEPARTMENT.—The department shall oversee the administration of the fee imposed on subscribers of state-wide E911 service under subsection (8).

(5) THE WIRELESS 911 BOARD.—

(a) The Wireless 911 Board is established to administer, with oversight by the department, the fee imposed under subsection (8), including receiving revenues derived from the fee; distributing portions of such revenues to providers, counties, and the department; 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 department on amounts collected and expended, the purposes for which expenditures have been made, and the status of wireless E911 service in this state. In order to advise and assist the department in carrying out the purposes of this section, the board, which shall have the power of a body corporate, shall have the powers enumerated in subsection (6).

(b) The board shall consist of seven members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining six members of the board shall be appointed by the Governor and must be composed of three county 911 coordinators recommended by the Florida Association of Counties and three members from the wireless telecommunications industry. Not more than one member may be appointed to represent any single provider on the board.

(c) The system director, or his or her designee, must be a permanent member of the board. Each of the remaining six members of the board shall be appointed to a 4-year term and may not be appointed to more than two

successive terms. However, for the purpose of staggering terms, two of the original board members shall be appointed to terms of 4 years, two shall be appointed to terms of 3 years, and two shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment.

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

(a) The board shall:

1. Administer the E911 fee.

2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173. 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 as provided in s. 365.173(2)(b) and (c) pursuant to the schedule, in order to implement E911 services in the most efficient and cost-effective manner.

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

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

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

c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the E911 fee.

d. Implementing changes to the allocation percentages or reducing the E911 fee under paragraph (8)(c).

5. Review and approve or reject, in whole or in part, applications submitted by providers for recovery of moneys deposited into the fund.

6. Hire and retain employees for the purposes of performing administrative functions for the board.

7. Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.

8. Take all necessary and reasonable steps by July 1, 2000, to secure appropriate information and reports from providers and otherwise perform all of the functions that would be performed by an independent accounting firm prior to completing the request-for-proposals process under subsection (7).

9. 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.

10. Adopt, use, and alter a common corporate seal.

11. Elect or appoint the officers and agents that are required by the affairs of the board.

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

13. Do all acts and things necessary or convenient to carry out the powers granted in this section, including but not limited to, consideration of emerging technology and related cost savings.

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

(c) By February 28 of each year, the board shall prepare a report for submission by the department to the Governor, the President of the Senate, and the Speaker of the House of Representatives which reflects, for the immediately preceding calendar year, the quarterly and annual receipts and disbursements of moneys in the fund, the purposes for which disbursements of moneys from the fund have been made, and the availability and status of implementation of E911 service in this state.

(d) By February 28, 2001, the board shall undertake and complete a study for submission by the department to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses:

1. The total amount of E911 fee revenues collected by each provider, the total amount of expenses incurred by each provider to comply with the order, and the amount of moneys on deposit in the fund, all as of December 1, 2000.

2. Whether the amount of the E911 fee and the allocation percentages set forth in s. 365.173 should be adjusted to comply with the requirements of the order, and, if so, a recommended adjustment to the E911 fee.

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

(7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.—

(a) The board shall issue a request for proposals as provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the E911 fee. The request for proposals must include, but need not be limited to:

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

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

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

(b) The board shall establish a committee to review requests for proposals which must include the statewide 911 system director, or his or her designee, and two members of the board, one of whom is a county 911 coordinator and one of whom represents the wireless telecommunications industry. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that he or she does not have any interest or employment, directly or indirectly, with potential proposers which conflicts in any manner or degree with his or her performance on the committee.

(8) WIRELESS E911 FEE.—

(a) Each provider shall collect a monthly fee imposed on each service subscriber who has a service number that has a billing address within this state. The rate of the fee shall be 50 cents per month per each service number, beginning August 1, 1999. The fee shall apply uniformly and be imposed throughout the state.

(b) The fee is established to ensure full recovery for providers and for counties, over a reasonable period, of the costs associated with developing and maintaining an E911 system on a technologically and competitively neutral basis.

(c) After July 1, 2001, the board may adjust the allocation percentages provided in s. 365.173 or reduce the amount of the fee, or both, if necessary to ensure full cost recovery or prevent overrecovery of costs incurred in the provision of E911 service, including costs incurred or projected to be incurred to comply with the order. Any new allocation percentages or reduced fee may not be adjusted for 2 years. The fee may not exceed 50 cents per month per each service number.

(d) State and local taxes do not apply to the fee.

(e) A local government may not levy any additional fee on wireless providers or subscribers for the provision of E911 service.

(9) MANAGEMENT OF FUNDS.—

(a) Each provider, as a part of its monthly billing process, shall collect the fee imposed under subsection (8). 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 shall remit the fee 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 shall first be applied to the payment due the provider for the provision of telecommunications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. The provider shall provide to the board each quarter a list of the names, addresses, and service numbers of all subscribers who have indicated to the provider their refusal to pay the fee.

(c) 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. The remainder shall be delivered to the board and deposited in the fund. The board shall distribute the remainder pursuant to s. 365.173.

(d) Each provider shall 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 billing addresses of wireless subscribers in each county. A provider may apply to the board for a refund of, or may take a credit for, any 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. The board may waive the requirement that the fees and number of billing addresses be submitted to the board each month and authorize a provider to submit the fees and number of billing addresses quarterly if the provider demonstrates that such waiver is necessary and justified.

(e) As used in this subsection, the term "provider" includes any person or entity that resells wireless service and was not assessed the fee by its resale supplier.

(10) PROVISION OF SERVICES.—In accordance with the order, a provider is not required to provide E911 service until:

(a) The provider receives a request in writing for such service from the county 911 coordinator and the affected answering point is capable of receiving and using the data elements associated with the service.

(b) Funds are available under s. 365.173(2)(b).

(c) The local exchange carrier is able to support the E911 system.

(d) The service area has been scheduled for implementation of E911 service by the board pursuant to subparagraph (6)(a)3. If a county's 911 coordinator requests E911 service from a provider, the coordinator shall also request E911 service from all other providers in the area in a nondiscriminatory and fair manner.

(11) MISUSE OF WIRELESS 911 SYSTEM; PENALTY.—E911 service must be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use such service in an effort to avoid any charge for service, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits

a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds \$100, the person committing the offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) STATE LAW NOT PREEMPTED.—This section and ss. 365.173 and 365.174 do not alter any state law that otherwise regulates providers of telecommunications service.

Section 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 3. There is hereby appropriated to the Department of Management Services \$18,711,000 from the Wireless Emergency Telephone System Trust Fund for the 1999-2000 fiscal year, to include, \$8,607,060 for distribution to counties, \$9,729,720 for distribution to 911 service providers, and \$374,220 for Department of Management Services administrative costs.

Section 4. This act shall take effect July 1, 1999.

Approved by the Governor June 17, 1999.

Filed in Office Secretary of State June 17, 1999.