

House Bill No. 1307

An act relating to emergency communications; amending s. 365.172, F.S.; defining the terms “active prepaid wireless telephone,” “mobile telephone number,” “prepaid wireless telephone service,” and “sufficient positive balance” for purposes of wireless emergency communications; revising authority of the board; prescribing additional duties of the board of directors of the Wireless 911 Board with respect to 911 and E911 systems; revising procedures for securing accounting services; prescribing a method of collecting the wireless E911 fee in instances in which the wireless telephone service to which the surcharge applies is prepaid; exempting certain colocated facilities from specified land development regulations under described circumstances; providing for certification to local governments of compliance with certain federal regulations; providing for local government approval of applications for permits for new or colocated wireless communications facilities; providing procedures and timeframes; providing for waiver of timeframes; specifying permitted use and activity for certain additional facilities; providing for the Department of Management Services and the Department of Transportation to negotiate leases of state-owned property for certain wireless telecommunications facilities; authorizing said departments to adopt rules; providing for report to the board and the county of certain delays in locating facilities; providing for a subcommittee to make recommendations to the board and certain identified local governments regarding compliance with federal Phase II E911 service requirements; providing for report of such recommendations to the Governor and the Legislature; amending s. 365.173, F.S.; authorizing disbursements from the Wireless Emergency Telephone System Fund for activities of the board of directors of the Wireless 911 Board; creating s. 365.175, F.S.; providing definitions; requiring new private branch exchange telephone systems to have automatic location identification capabilities; providing an effective date.

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

Section 1. Subsection (3), paragraph (a) of subsection (6), and subsections (7) and (9) of section 365.172, Florida Statutes, are amended, present subsections (11) and (12) of that section are renumbered as subsections (12) and (13), respectively, and a new subsection (11) is added to that section, to read:

365.172 Wireless emergency telephone number “E911.”—

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

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

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

(c)(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.

(d)(e) “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.

(e)(d) “Board” means the board of directors of the Wireless 911 Board.

(f)(e) “Office” means the State Technology Office.

(g)(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.

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

(i)(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.

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

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

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

(m)(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 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.

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.

(n)~~(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.

(o) “Prepaid wireless telephone service” means wireless telephone service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless additional payments are made.

(p)~~(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.

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

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

(s)~~(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.

(t)~~(q)~~ “Service number” means the unique 10-digit wireless telephone number assigned to a service subscriber.

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

(v)(~~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.

(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 the technical and 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. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

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

14. Provide coordination and support for educational opportunities related to 911 issues for the 911 community in this state.

15. Act as an advocate for issues related to 911 system functions, features, and operations to improve the delivery of 911 services to the residents of and visitors to this state.

16. Coordinate input from this state at national forums and associations, to ensure that policies related to 911 systems and services are consistent with the policies of the 911 community in this state.

17. Work cooperatively with the system director established in s. 365.171(5) to enhance the state of 911 services in this state and to provide unified leadership for all 911 issues through planning and coordination.

~~18.13.~~ 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.

(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.

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

(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) In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by subsection (8) shall be remitted based upon each prepaid wireless telephone associated with this state, for each wireless service customer that has a sufficient positive balance as of the last day of each month. The surcharge shall be remitted in any manner consistent with the wireless provider's existing operating or technological abilities, such as customer address, location associated with the MTN, or reasonable allocation method based upon other comparable relevant data. The surcharge amount or an equivalent number of minutes may be reduced from the prepaid subscriber's account since a direct billing may not be possible. However, collection of the wireless 911 surcharge in the manner of a reduction of value or minutes from the prepaid subscriber's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale.

~~(c)~~(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.

~~(d)~~(e) 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.

(e)(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 wireless customers whose place of primary use is 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 customers whose place of primary use is in each county be submitted to the board each month and authorize a provider to submit the fees and number of customers quarterly if the provider demonstrates that such waiver is necessary and justified.

(f)(e) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as such definitions and provisions apply to the taxes levied pursuant to chapter 202 on mobile communications services.

(g)(f) 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.

(11) FACILITATING E911 SERVICE IMPLEMENTATION.—Notwithstanding any other law or local ordinance to the contrary:

(a) Colocation among wireless telephone service providers is encouraged by the state. To further facilitate agreements among providers for colocation of their facilities, any antennae and related equipment to service the antennae that is being collocated on an existing above-ground structure is not subject to land development regulation pursuant to s. 163.3202, provided the height of the existing structure is not increased. However, construction of the antennae and related equipment is subject to local building regulations and any existing permits or agreements for such property, buildings, or structures. Nothing herein shall relieve the permitholder for or owner of the existing structure of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any aesthetic requirements, or law.

(b) Local governments shall not require providers to provide evidence of a wireless communications facility’s compliance with federal regulations. However, local governments shall receive evidence of proper Federal Communications Commission licensure from a provider and may request the Federal Communications Commission to provide information as to a provider’s compliance with federal regulations, as authorized by federal law.

(c)1. A local government shall grant or deny a properly completed application for a permit, including permits under paragraph (a), for the colocation of a wireless communications facility on property, buildings, or structures within the local government’s jurisdiction within 45 business days after the date the properly completed application is initially submitted in accordance

with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations shall apply.

2. A local government shall grant or deny a properly completed application for a permit for the siting of a new wireless tower or antenna on property, buildings, or structures within the local government's jurisdiction within 90 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements. Local building regulations shall apply.

3.a. The local government shall notify the permit applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted. However, such determination shall not be deemed as an approval of the application. Such notification shall indicate with specificity any deficiencies which, if cured, shall make the application properly completed.

b. If the local government fails to grant or deny a properly completed application for a permit which has been properly submitted within the timeframes set forth in this paragraph, the permit shall be deemed automatically approved and the provider may proceed with placement of such facilities without interference or penalty. The timeframes specified in subparagraphs 1. and 2. shall be extended only to the extent that the permit has not been granted or denied because the local government's procedures generally applicable to all permits, require action by the governing body and such action has not taken place within the timeframes specified in subparagraphs 1. and 2. Under such circumstances, the local government must act to either grant or deny the permit at its next regularly scheduled meeting or, otherwise, the permit shall be deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth herein must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by an entity seeking a permit, except that, with respect to a specific permit, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

(d) Any additional wireless communications facilities, such as communication cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services, required within the existing secured equipment compound within the existing site shall be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, shall apply.

(e) Any other provision of law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(f) Any wireless telephone service provider may report to the board no later than September 1, 2003, the specific locations or general areas within a county or municipality where the provider has experienced unreasonable delay to locate wireless telecommunications facilities necessary to provide the needed coverage for compliance with federal Phase II E911 requirements using its own network. The provider shall also provide this information to the specifically identified county or municipality no later than September 1, 2003. Unless the board receives no report that unreasonable delays have occurred, the board shall, no later than September 30, 2003, establish a subcommittee responsible for developing a balanced approach between the ability of providers to locate wireless facilities necessary to comply with federal Phase II E911 requirements using the carrier's own network and the desire of counties and municipalities to zone and regulate land uses to achieve public welfare goals. If a subcommittee is established, it shall include representatives from the Florida Telecommunications Industry Association, the Florida Association of Counties, and the Florida League of Cities. The subcommittee shall be charged with developing recommendations for the board and any specifically identified municipality or county to consider regarding actions to be taken for compliance for federal Phase II E911 requirements. In the annual report due to the Governor and the Legislature by February 28, 2004, the board shall include any recommendations developed by the subcommittee to address compliance with federal Phase II E911 requirements.

Section 2. Paragraph (b) of subsection (2) of section 365.173, Florida Statutes, is amended to read:

365.173 Wireless Emergency Telephone System Fund.—

(2) Subject to any modifications approved by the board pursuant to s. 365.172(8)(c), the moneys in the fund shall be distributed and used only as follows:

(b) Fifty-four percent of the moneys shall be distributed in response to sworn invoices submitted to the board by providers to reimburse such providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying with the order. Such costs include costs and expenses

incurred by providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service. Up to 2 percent of the funds allocated to providers shall be 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 as defined in s. 365.172(6). 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 shall be distributed to providers pursuant to this paragraph. Beginning in state fiscal year 2000-2001, each provider shall submit to the board, by August 1 of each year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement under this paragraph during the ensuing state fiscal year. By September 15 of each year, the board shall submit to the Legislature its legislative budget request for funds to be allocated to providers under this paragraph during the ensuing state fiscal year. The budget request shall be based on the information submitted by the providers and estimated surcharge revenues. Distributions of moneys in the fund by the board to providers must be fair and nondiscriminatory. If the total amount of moneys requested by providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, 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. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.

The Legislature recognizes that the wireless E911 fee authorized under s. 365.172 will not necessarily provide the total funding required for establishing or providing the 911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.171(13)(a)6.

Section 3. Section 365.175, Florida Statutes, is created to read:

365.175 Emergency Telephone Number 911 Private Branch Exchange-Private Switch Automatic Location Identification.—

(1) DEFINITIONS.—As used in this section, the term:

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

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

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

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

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

(2) REQUIRED ALI CAPABILITY.—Each PBX system installed after January 1, 2004, must be capable of providing automatic location identification to the station level.

Section 4. This act shall take effect July 1, 2003.

Approved by the Governor June 23, 2003.

Filed in Office Secretary of State June 23, 2003.