

STAND. COM. REP. NO.

879

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1014
H.D. 3

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1014, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO ENHANCED 911 SERVICES,"

begs leave to report as follows:

The purpose of this bill is to establish a single entity to administer enhanced 911 services for the state. Among other things, this bill:

- (1) Renames the existing Wireless Enhanced 911 Board as the Enhanced 911 Board (Board) and expands the membership of the Board from 11 to 14 members; and
- (2) Establishes a monthly surcharge of 46 cents per month for each communications service connection, including both wireless and wireline connections, for enhanced 911 service.

The Department of Accounting and General Services supported this bill. The County of Kauai Department of Finance and Hawaiian Telcom opposed this bill. The Department of Information Technology of the City and County of Honolulu, Honolulu Police Department, State Fire Council, Honolulu Fire Department, Tax Foundation of Hawaii, and AT&T submitted comments.

Your Committee recognizes that concerns were raised regarding the 46 cents monthly surcharge set forth in this bill as it

HB1014 HD3 HSCR FIN HMS 2009-2733

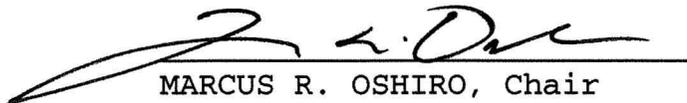


represents an increase of 19 cents from the 27 cents surcharge currently assessed for wireline customers. With the primary wireline carrier in Hawaii having filed for bankruptcy, the increased surcharge may pose yet another financial obstacle for the wireline carrier in its efforts to reorganize and return to profitability as a viable business.

Accordingly, your Committee has amended this measure by changing the monthly surcharge to an unspecified amount to encourage further discussion. Other technical, nonsubstantive amendments were made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1014, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1014, H.D. 3.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



A BILL FOR AN ACT

RELATING TO ENHANCED 911 SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 138, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]~~ **CHAPTER 138** ~~[+]~~

4 **ENHANCED 911 SERVICES** ~~[FOR MOBILE PHONES]~~

5 ~~[+]~~ **§138-1** ~~[+]~~ **Definitions.** As used in this chapter, unless
6 the context requires otherwise:

7 "911" means the digits, address, Internet protocol address,
8 or other information used to access or initiates a call to a
9 public safety answering point.

10 "911 system" means an emergency telephone system that:

11 (1) Enables the user of a voice communications service
12 connection such as telephone, computer, or wireless
13 service, or a data communications service connection
14 that transmits data exclusively, such as text
15 messaging, to reach a public safety answering point by
16 dialing 911; and

17 (2) Provides enhanced 911 service.



1 "Automatic location identification" means a wireless
2 enhanced 911 service capability that enables the automatic
3 display of information indicating the approximate geographic
4 location of the wireless telephone used to place a 911 call in
5 accordance with the Federal Communications Commission order.

6 "Automatic number identification" means [~~a wireless~~] an
7 enhanced 911 service capability that enables the automatic
8 display of the ten-digit [~~wireless~~] telephone number [~~used to~~
9 ~~place a 911 call in accordance with the Federal Communications~~
10 ~~Commission order.~~] or some other unique identifier from which a
11 911 call is placed.

12 "Board" means the [~~wireless~~] enhanced 911 board established
13 under this chapter.

14 [~~"Commercial mobile radio service" means commercial mobile~~
15 ~~radio service under sections 3(27) and 332(d) of the Federal~~
16 ~~Telecommunications Act of 1996, 47 U.S.C. 151 et seq., and the~~
17 ~~Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, August~~
18 ~~10, 1993, 107 Stat. 312.~~

19 "~~Commercial mobile radio service connection" means each~~
20 ~~active wireless telephone number assigned to a commercial mobile~~
21 ~~radio service customer, including end users of resellers whose~~
22 ~~place of primary use is within the State.~~



1 ~~"Federal Communications Commission order" means the~~
2 ~~original order issued in the Federal Communications Commission~~
3 ~~Docket No. 94-102 governing wireless enhanced 911 service and~~
4 ~~any other Federal Communication Commission orders related to the~~
5 ~~provision of wireless enhanced 911 service.]~~

6 "Call" means any communication, message, signal, or
7 transmission.

8 "Communication service" means a service capable of
9 accessing, connecting with, or interfacing with a 911 system, by
10 dialing, initializing, or otherwise activating the 911 system by
11 means of a local telephone device, cellular telephone device,
12 wireless communication device, interconnected voice over
13 Internet protocol (VoIP) device, or any other means.

14 "Communications service connection" means each telephone
15 number assigned to a residential or commercial subscriber by a
16 communications service provider, without regard to technology
17 deployed.

18 "Communications service provider" means an entity that
19 provides communications service to a subscriber.

20 "Database service provider" means a service supplier who
21 maintains and supplies or contracts to maintain and supply an



1 automatic information location database or master street address
2 guide.

3 "Enhanced 911 fund" or "fund" means the special fund
4 established by section 138-3.

5 "Enhanced 911 service costs" means all capital,
6 nonrecurring, and recurring costs directly related to the
7 implementation, operation, and administration of enhanced 911
8 services.

9 "Prepaid connections" means the sale of a
10 telecommunications service that provides the right to use mobile
11 wireless service, as well as other non-telecommunications
12 services including the download of digital products delivered
13 electronically, content and ancillary services, which is paid
14 for in advance and sold in predetermined units of dollars of
15 which the number of minutes declines with use of the services.

16 "Proprietary information" means customer lists and other
17 related information (including the number of customers),
18 technology descriptions, technical information, or trade
19 secrets, and the actual or developmental costs of [~~wireless~~]
20 enhanced 911 service that are developed, produced, or received
21 internally by a [~~wireless~~] communications service provider or by
22 a provider's employees, directors, officers, or agents.



1 "Public safety agency" means a functional division of the
2 State or county that provides or has authority to provide, or a
3 private entity contracted by a state or county agency that
4 provides, firefighting, law enforcement, ambulance, medical, or
5 other emergency services.

6 "Public safety answering point" means the public safety
7 agency that receives incoming 911 calls and dispatches
8 appropriate public safety agencies to respond to those calls.

9 "Reseller" means a person or entity that purchases
10 ~~[commercial mobile radio service]~~ communications services from a
11 ~~[wireless]~~ communications service provider for the purpose of
12 reselling ~~[commercial mobile radio service]~~ communications
13 services to end-users.

14 ~~["Wireless enhanced 911 commercial mobile radio service~~
15 ~~costs" means all capital, nonrecurring, and recurring costs~~
16 ~~directly related to the implementation and operation of phase I~~
17 ~~or phase II wireless enhanced 911 services pursuant to the~~
18 ~~Federal Communications Commission order.~~

19 ~~"Wireless enhanced 911 fund" or "fund" means the statewide~~
20 ~~special fund established to ensure adequate cost recovery for~~
21 ~~the deployment of phase I and phase II wireless enhanced 911~~
22 ~~service in Hawaii.~~



1 ~~"Wireless provider" means a person or entity that is~~
2 ~~authorized by the Federal Communications Commission to provide~~
3 ~~facilities-based commercial mobile radio service within the~~
4 ~~State.]~~

5 "Universal emergency number service" or "911 service" means
6 public communications service that provides service users with
7 the ability to reach a public safety answering point by
8 accessing a 911 system.

9 "VoIP provider" means an entity that provides
10 interconnected VoIP service.

11 ~~[†]§138-2[†]~~ ~~[Wireless enhanced]~~ **Enhanced 911 board.** (a)

12 There is created within the department of accounting and general
13 services, for administrative purposes, ~~[a wireless]~~ an enhanced
14 911 board consisting of ~~[eleven]~~ fourteen voting members;
15 provided that the membership shall consist of:

- 16 (1) The comptroller or the comptroller's designee;
- 17 (2) Three representatives from the wireless communications
18 service providers, who shall be appointed by the
19 governor as provided in section 26-34~~[, except as~~
20 ~~otherwise provided by law]~~;
- 21 (3) One representative each from the public safety
22 answering points for Oahu, Hawaii, Kauai, Maui, and



- 1 Molokai, who shall be appointed by the governor, as
2 provided in section 26-34, [~~except as otherwise~~
3 ~~provided by law,~~] from a list of five names submitted
4 by each respective public safety answering point;
- 5 (4) The consumer advocate or the consumer advocate's
6 designee; [~~and~~]
- 7 (5) One representative from a VoIP provider, who shall be
8 appointed by the governor as provided in section 26-
9 34;
- 10 (6) One representative from a competitive local exchange
11 carrier or other alternative communications service
12 provider, who shall be appointed by the governor as
13 provided in section 26-34;
- 14 (7) The director or designee of the Hawaii public
15 utilities commission; and
- 16 [~~(5)~~] (8) One representative of the current wireline
17 provider of enhanced 911.
- 18 (b) [~~Six members~~] A simple majority shall constitute a
19 quorum, whose affirmative vote shall be necessary for all
20 actions by the board.



1 (c) The chairperson of the board shall be elected by the
2 members of the board by simple majority and shall serve a term
3 of one year.

4 (d) The board shall meet upon the call of the chairperson,
5 but not less than quarterly.

6 (e) The members representing wireless, VoIP, and CLEC
7 service providers shall be appointed by the governor for terms
8 of two years [~~, except that terms of the two members initially~~
9 ~~appointed shall be for eighteen months]~~.

10 (f) Each member shall hold office until the member's
11 successor is appointed and qualified. Section 26-34 shall apply
12 only insofar as it relates to succession, vacancies, and
13 suspension of board members, and as provided in subsection (a).

14 (g) A member may vote by proxy submitted in writing to the
15 board.

16 [~~(g)~~] (h) The members shall serve without compensation.
17 Members shall be entitled to reimbursements from the [~~wireless~~]
18 enhanced 911 fund for reasonable traveling expenses incurred in
19 connection with the performance of board duties.

20 [~~(h)~~] (i) The board or its chairperson, with the approval
21 of the board, may retain independent, third-party accounting
22 firms, consultants, or other third party to:



- 1 (1) Create reports, make payments into the fund, process
2 checks, and make distributions from the fund, as
3 directed by the board and as allowed by this chapter;
4 and
- 5 (2) Perform administrative duties necessary to administer
6 the fund or oversee operations of the board, including
7 providing technical advisory support[-]; provided that
8 no third-party accounting firm, consultant, or other
9 third party hired to perform these administrative
10 duties may be retained if the accounting firm,
11 consultant, or other third party, either directly or
12 indirectly, has a conflict of interest or is
13 affiliated with the management of or owns a pecuniary
14 interest in any entity subject to the provisions of
15 this chapter.

16 [~~i~~] (j) The board shall develop reasonable procedures to
17 ensure that all [~~wireless providers~~] members receive adequate
18 notice of board meetings and information concerning board
19 decisions.

20 [~~§138-3~~] [~~Wireless-enhanced~~] Enhanced 911 fund. There
21 is established outside the state treasury a special fund, to be
22 known as the [~~wireless~~] enhanced 911 fund, to be administered by



1 the board. The fund shall consist of amounts collected under
2 section 138-4. [~~Moneys paid into the fund are not general fund~~
3 ~~revenues of the State.~~] The board shall place the funds in an
4 interest-bearing account at any federally insured financial
5 institution, separate and apart from the general fund of the
6 State. Moneys in the fund shall be expended [~~exclusively~~] by
7 the board for the purposes of ensuring adequate [~~cost recovery~~]
8 funding for the deployment and sustainment of [~~phase I and phase~~
9 ~~II wireless~~] enhanced 911 service and for expenses of
10 administering the fund.

11 [~~+~~]**S138-4**[~~+~~] **Surcharge.** (a) A monthly [~~wireless~~]
12 enhanced 911 surcharge, subject to this chapter, shall be
13 imposed upon each [~~commercial mobile radio~~] communications
14 service connection.

15 (b) [~~The effective date of the surcharge shall be July 1,~~
16 ~~2004.~~] The rate of the surcharge shall be set at [~~66~~] __ cents
17 per month for each [~~commercial mobile radio~~] communications
18 service connection. The surcharge shall have uniform
19 application and shall be imposed on each [~~commercial mobile~~
20 ~~radio~~] communications service connection operating within the
21 [~~State~~] state except:



1 (1) Connections billed to federal, state, and county
2 government entities; and

3 (2) Prepaid connections.

4 (c) All [~~wireless~~] communications service providers and
5 resellers shall bill to and collect from each of their customers
6 a monthly surcharge at the rate established for each [~~commercial~~
7 ~~mobile radio~~] communications service connection. The [~~wireless~~]
8 communications service provider or reseller may list the
9 surcharge as a separate line item on each bill. If a [~~wireless~~]
10 communications service provider or reseller receives a partial
11 payment for a monthly bill from a [~~commercial mobile radio~~]
12 communications service customer, the [~~wireless~~] communications
13 service provider or reseller shall apply the payment against the
14 amount the customer owes the [~~wireless~~] communications service
15 provider or reseller, before applying the partial payment
16 against the surcharge.

17 (d) A [~~wireless~~] communications service provider that:

18 (1) Is collecting the surcharge and remitting appropriate
19 portions of the surcharge to the fund pursuant to this
20 chapter; and



1 (2) Has been requested by a public safety answering point
2 to provide [~~phase I or phase II wireless~~] enhanced 911
3 service in a particular county or counties;
4 may recover [~~wireless~~] enhanced 911 [~~commercial mobile radio~~]
5 service costs as provided in this chapter.

6 (e) Each [~~wireless~~] communications service provider or
7 reseller may retain two per cent of the amount of surcharges
8 collected to offset administrative expenses associated with
9 billing and collecting the surcharge.

10 (f) A [~~wireless~~] communications service provider or
11 reseller shall remit to the [~~wireless~~] enhanced 911 fund, within
12 sixty days after the end of the calendar month in which the
13 surcharge is collected, an amount that represents the surcharges
14 collected less amounts retained for administrative expenses
15 incurred by the [~~wireless~~] communications service provider or
16 reseller, as provided in subsection (e).

17 (g) The surcharges collected by the [~~wireless~~]
18 communications service provider or reseller pursuant to this
19 section shall not be subject to any tax, fee, or assessment, nor
20 are they considered revenue of the provider or reseller.

21 (h) Each customer who is subject to this chapter shall be
22 liable to the State for the surcharge until it has been paid to



1 the [~~wireless~~] communications service provider. [~~Wireless~~]
2 Communications service providers shall have no liability to
3 remit surcharges that have not been paid by customers. A
4 [~~wireless~~] communications service provider or reseller shall
5 have no obligation to take any legal action to enforce the
6 collection of the surcharge for which any customer is billed.
7 However, the board may initiate a collection action against the
8 customer. If the board prevails in such a collection action,
9 reasonable attorney's fees and costs shall be awarded.

10 (i) At any time the members deem it necessary and
11 appropriate, the board may meet to make recommendations to the
12 legislature as to whether the surcharge and fund should be
13 discontinued, continued as is, or amended.

14 (j) When considering whether to discontinue, continue as
15 is, or amend the fund or surcharge, the board's recommendations
16 shall be based on the latest available information concerning
17 costs associated with providing [~~wireless~~] enhanced 911 service
18 [~~in accordance with the Federal Communications Commission~~
19 ~~order~~].

20 [~~+~~]**\$138-5**[~~+~~] [~~Recovery~~] **Disbursements** from the fund. (a)
21 [~~After January 1, 2005, every~~] Every public safety answering
22 point shall be eligible to seek [~~reimbursement~~] disbursements



1 from the fund solely to pay for the reasonable costs to lease,
2 purchase, or maintain all necessary equipment, including
3 computer hardware, software, and database provisioning, required
4 by the public safety answering point to provide technical
5 functionality for the [wireless] enhanced 911 service [pursuant
6 to the Federal Communications Commission order. All other
7 expenses necessary to operate the public safety answering point,
8 including but not limited to those expenses related to overhead,
9 staffing, and other day to day operational expenses, shall
10 continue to be paid through the general funding of the
11 respective counties].

12 (b) [~~After January 1, 2005, each wireless~~] Each
13 communications service provider may request reimbursement from
14 the fund of [wireless] enhanced 911 [~~commercial mobile radio~~]
15 service costs incurred; provided that the costs:

- 16 (1) Are recoverable under section 138-4(d); and
17 (2) Have not already been reimbursed to the [wireless]
18 communications service provider from the fund.

19 In no event shall a [wireless] communications service provider
20 be reimbursed for any amount above its actual [wireless]
21 enhanced 911 [~~commercial mobile radio~~] communications service
22 costs allowed to be recovered under section 138-4(d).



1 ~~[(c) After the expenses of the board are paid, the public~~
2 ~~safety answering points shall be allocated two thirds of the~~
3 ~~remaining balance of the fund. The remaining one third shall be~~
4 ~~available for wireless provider cost recovery. The board shall~~
5 ~~determine the reimbursement amounts for the public safety~~
6 ~~answering points, based on the limitations set forth in section~~
7 ~~138-5(a). The reimbursement level for each wireless provider~~
8 ~~shall be limited:~~

9 ~~(1) To the total contribution made by the wireless~~
10 ~~provider to the wireless provider cost recovery~~
11 ~~portion of the fund; and~~

12 ~~(2) As provided in section 138-5(b).]~~

13 ~~[f]~~**§138-6**~~[t]~~ **Report to the legislature.** The board shall
14 submit an annual report to the legislature, including:

- 15 (1) The total aggregate surcharge collected by the State
16 in the last fiscal year;
- 17 (2) The amount of disbursement from the fund;
- 18 (3) The recipient of each disbursement and a description
19 of the project for which the money was disbursed;
- 20 (4) The conditions, if any, placed by the board on
21 disbursements from the fund;



- 1 (5) The planned expenditures from the fund in the next
2 fiscal year;
- 3 (6) The amount of any unexpended funds carried forward for
4 the next fiscal year;
- 5 (7) A cost study to guide the legislature towards
6 necessary adjustments to the fund and the monthly
7 surcharge; and
- 8 (8) A progress report of jurisdictional readiness for
9 ~~[wireless E911]~~ enhanced 911 services, including
10 public safety answering points ~~[, wireless providers,]~~
11 and ~~[wireline]~~ communications service providers. ~~[The~~
12 ~~report shall include the status of requirements~~
13 ~~outlined in the Federal Communications Commission~~
14 ~~Order 94-102 and subsequent supporting orders related~~
15 ~~to phase I and phase II wireless 911 services.]~~

16 ~~[†]~~ **§138-7** ~~[†]~~ **Audits.** (a) During any period in which ~~[a~~
17 ~~wireless]~~ an enhanced 911 surcharge is imposed upon customers,
18 the board may request an audited report prepared by an
19 independent certified public accountant that demonstrates that
20 the request for cost recovery from public safety answering
21 points and ~~[wireless]~~ communications service providers recovers
22 only costs and expenses directly related to the provision of



1 ~~[phase I or phase II wireless]~~ enhanced 911 service as
2 authorized by this chapter. The cost of the audited reports
3 shall be considered expenses of the board. The board shall
4 prevent public disclosure of proprietary information contained
5 in the audited report, unless required by court order or
6 appropriate administrative agency decision.

7 (b) The board shall select an independent third party to
8 audit the fund every two years to determine whether the fund is
9 being managed in accordance with this chapter. The board may
10 use the audit to determine whether the amount of the surcharge
11 assessed on each ~~[commercial mobile radio]~~ communications
12 service connection is required to be adjusted. The costs of the
13 audit shall be an administrative cost of the board recoverable
14 from the fund.

15 ~~[+]~~**\$138-8**~~[+]~~ **Proprietary information.** (a) All
16 proprietary information submitted to the board by any third
17 party used by the board in connection with its duties or any
18 public safety answering point in deploying ~~[wireless]~~ enhanced
19 911 service shall be retained in confidence. Proprietary
20 information submitted pursuant to this chapter shall not be
21 released to any person, other than to the submitting ~~[wireless]~~
22 communications service provider or reseller, the board, or any



1 independent, third-party accounting firm retained by the board,
2 without the express permission of the submitting [~~wireless~~]
3 communications service provider or reseller. General
4 information collected by the board shall be released or
5 published only in aggregate amounts that do not identify or
6 allow identification of numbers of subscribers or revenues
7 attributable to an individual [~~wireless~~] communications service
8 provider.

9 (b) The board, any third parties it may retain, and any
10 public safety answering point shall take appropriate measures to
11 maintain the confidentiality of the proprietary information that
12 may be submitted by a [~~wireless~~] communications service
13 provider. The board shall hold all propriety information in
14 confidence and shall adopt reasonable procedures to prevent
15 disclosure or providing access to the proprietary information to
16 the public and competitors, including members of the board
17 representing other [~~wireless~~] communications service providers.
18 Members of the board shall not disclose the information to any
19 third parties, including their employers, without the written
20 consent of the [~~wireless~~] communications service provider whose
21 proprietary information is to be disclosed.



1 (c) A committee consisting of all board members, except
2 the [~~three wireless~~] communications service provider
3 representatives, shall have the power to act for the board on
4 the specific matters defined by the board, when at least two-
5 thirds of the members of the board determine that a board action
6 may be conducted by the committee to prevent disclosure of
7 proprietary information to the [~~wireless~~] communications service
8 provider representatives.

9 **[+]§138-9[+]** **Limitation of liability.** (a)

10 Notwithstanding any law to the contrary, in no event shall any
11 [~~wireless~~] communications service provider, reseller, or their
12 respective employees, directors, officers, assigns, affiliates,
13 or agents, except in cases of gross negligence or wanton and
14 wilful misconduct, be liable for any civil damages or criminal
15 liability resulting from death or injury to a person or from
16 damage to property incurred by any person in connection with any
17 act or omission in developing, designing, adopting,
18 establishing, installing, participating in, implementing,
19 maintaining, or providing access to [~~phase I or phase II~~
20 ~~wireless~~] enhanced 911 or any other [~~wireless~~] communications
21 service intended to help persons obtain emergency assistance.
22 In addition, no [~~wireless~~] communications service provider,



1 reseller, or their respective employees, directors, officers,
2 assigns, affiliates, or agents shall be liable for civil damages
3 or criminal liability in connection with the release of customer
4 information to any governmental entity, including any public
5 safety answering point, as required under this chapter.

6 (b) In no event shall any public safety answering point,
7 or its employees, assigns, or agents, or emergency response
8 personnel, except in cases of gross negligence or wanton and
9 wilful misconduct, be liable for any civil damages or criminal
10 liability resulting from death or injury to the person or from
11 damage to property incurred by any person in connection with any
12 act or omission in the development, installation, maintenance,
13 operation, or provision of [~~phase I or phase II wireless~~]
14 enhanced 911 service.

15 **[+]§138-10[+] Database or location information.** (a) Any
16 [~~commercial mobile radio~~] communications service location
17 information obtained by any public safety answering point or
18 public safety agency or its personnel for public safety purposes
19 is not a government record open to disclosure under chapter 92F.

20 (b) A person shall not disclose or use, for any purpose
21 other than the [~~wireless~~] enhanced 911 calling system,
22 information contained in the database of the [~~wireless~~]



1 communications service provider's network portion of the
2 [~~wireless~~] enhanced 911 calling system established pursuant to
3 this chapter, without the prior written consent of the
4 [~~wireless~~] communications service provider.

5 [+]§138-11[+] **Dispute resolution.** (a) Any [~~wireless~~]
6 communications service provider, reseller, or public safety
7 answering point aggrieved by a decision of the board shall have
8 the right to petition the board for reconsideration within ten
9 days following the rendering of the board's decision. As part
10 of its petition for reconsideration, the aggrieved party may
11 present any reasonable evidence or information for the board to
12 consider. The board shall render its decision on the
13 reconsideration petition as soon as reasonably possible, but no
14 later than thirty days after the reconsideration request is
15 made.

16 (b) An aggrieved party, following the completion of the
17 reconsideration petition process, upon agreement of the other
18 party, may have the dispute resolved through final and binding
19 arbitration by a single arbitrator in accordance with the
20 [~~wireless~~] Industry Arbitration Rules of the American
21 Arbitration Association. The costs of the arbitration,
22 including the fees and expenses of the arbitrator, shall be



1 borne by the non prevailing party of any arbitration proceeding.
2 The arbitrator's decision shall be final and binding and may be
3 confirmed and enforced in any court of competent jurisdiction.

4 (c) Nothing in this section shall preclude any [wireless]
5 communications service provider, reseller, or public safety
6 answering point from pursuing any existing right or remedy to
7 which it is entitled in any court having jurisdiction thereof.

8 [f]§138-12[+] **Service contracts.** A [wireless]
9 communications service provider shall not be required to provide
10 [wireless] enhanced 911 service until the [wireless]
11 communications service provider and the public safety answering
12 point providing [wireless] enhanced 911 service in the county or
13 counties in which the [wireless] communications service provider
14 is licensed to provide [~~commercial mobile radio~~] communications
15 service have entered into a written agreement setting forth the
16 basic terms of service to be provided."

17 SECTION 2. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 3. This Act shall take effect January 1, 2020.



Report Title:

Enhanced 911 Services; Surcharge; Fund; Board

Description:

Establishes a single entity to administer enhanced 911 services for the state. (HB1014 HD3)





**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES**

P.O. BOX 119
HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEES
ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION
ON
March 25, 2009
ON
H.B. 1014, H.D.3

RELATING TO ENHANCED 911 SERVICES

Chair Fukunaga, Chair Baker, and members of the Committees, thank you for the opportunity to testify on H.B. 1014, H.D.3.

The Department of Accounting and General Services (DAGS) strongly supports H.B. 1014, H.D.3.

This bill will establish a single entity to administer enhanced 911 services for the State of Hawai'i. This would put Hawai'i on par with most of the country. Right now, Hawai'i is one of only six states that does not have a single entity for the coordination of enhanced 911 services.

The State of Hawai'i established the Wireless Enhanced 911 Board (Board) to administer wireless enhanced 911 service in the State of Hawai'i, and the Board has succeeded in implementing the service statewide. Meanwhile, communications

technologies have advanced and now, technologies beyond wireless telephone service are capable of being connected to public service answering points (PSAPs).

The current Board does not include representation from other communications service providers. This bill, if passed, will add new Board members representing Third Generation (3G) communication service providers, and the director or designee of the Hawaii Public Utilities Commission.

DAGS recommends that this bill restore the language of H.B. 1014 that proposed to reduce the current surcharge from 66 cents to 46 cents. Reduction of the surcharge from 66 cents to 46 cents, as H.B. 1014 proposed, will lower the cost burden on wireless phone customers. More importantly, it would lay the groundwork to allow calls to 911 PSAPs for the delivery of emergency services to be made from all communications technologies. The public will benefit from a more comprehensive, efficient and coordinated implementation, administration and operations of 911 services, and the timely and accurate dispatch of emergency first responders. The county and local public safety organizations will also benefit from improved efficiency and optimum use of resources.

The Board is preparing to extend wireless enhanced 911 coverage into remote areas and public buildings that don't have coverage by building cell towers or placing antennas in these locations. These areas might include the Ka'ena Point and the basement of the State Capitol. This project will lessen the risk of the public being in distress and not being able to call 911.

Additionally, the PSAPs are reviewing studies that explore the migration from current E911 service to "Next Generation 911" service. Next Generation 911 systems are built on Internet Protocol (IP) to support 3rd Generation (3G) broadband and wireless telephony, including Voice-over-Internet-Protocol (VoIP), text messaging, streaming

video, and Video Relay Services for the deaf and hard-of-hearing. This bill would establish the basis for accommodating all of these improvements in enhanced 911 service.

In summary, this bill will help the State fulfill its most basic responsibility of protecting the health and safety of its citizens. DAGS strongly recommends that it be passed.

Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZOLU
KARL A. GOOSEY
DEPUTY CHIEFS

OUR REFERENCE MC-LS

March 25, 2009

The Honorable Carol Fukunaga, Chair
and Members
Committee on Economic Development
and Technology
The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce and Consumer
Protection
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Fukunaga and Baker and Members:

Subject: House Bill No. 1014, H.D. 3, Relating to Enhanced 9-1-1 Services

I am Marie McCauley, Major of the Communications Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent of House Bill No. 1014, H.D. 3, to create an inclusive 9-1-1 board to oversee the use of the surcharge that helps to provide emergency communication services to all Public Safety Answering Points (PSAPs). We also support the reduction of the surcharge from \$0.66 to \$0.46 to assist the overburdened taxpayer. We appreciate the change that will allow for direct disbursements for equipment, software, and hardware costs to the county PSAPS instead of reimbursements.

However, we strongly oppose the attempt to move the wireless fund into the general fund. Any funds that are collected from fees imposed on consumers' bills for the purpose of funding enhanced 9-1-1 services should be expended for that reason.

The federal Ensuring Needed Help Arrives Near Callers Employing 9-1-1 Act of 2004 addressed the problem of dedicated state 9-1-1 funds being diverted by individual states for other purposes. States that divert 9-1-1 funds, which are collected from consumers on their monthly telephone bills for the purpose of supporting 9-1-1 service, will not be eligible for federal grant programs. The Economic Stimulus package has great opportunities for telecommunication grant applications, but our state may not be eligible for this money if the fund has been diverted in any way.

The HPD is the largest PSAP in Hawaii. Over a million calls a year are routed to our PSAP, with almost 80 percent of the calls requesting police service. Enhanced wireless service has been available in Honolulu since January 2007. Prior to going "live," our department did not have an accurate idea of the changes that would be required or the amount of money that would be needed to pay for this advanced technology.

Serving and Protecting With Aloha

The Honorable Carol Fukunaga, Chair
and Members
The Honorable Rosalyn H. Baker, Chair
and Members
Page 2
March 25, 2009

Since the wireless enhanced 9-1-1 services have been implemented for a period of time, we see our needs more clearly. We are able to make plans to acquire new computer programs that will help us transition to emerging technologies that will improve the way we do business. We also have a better idea of the amount of money that will be necessary to accomplish this task.

In addition, the HPD believes that in section 1, page 6, of this bill, the Enhanced 9-1-1 board should specifically identify one of the members of the board as a representative from the HPD. We believe that the HPD has a unique position due to the volume of calls and the percentage of people that are serviced through our PSAP. Having our department's PSAP manager on the board would help to develop a sound approach to wireless operations and a positive step toward planning for next generation 9-1-1.

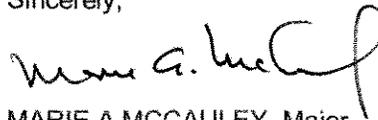
This version of the bill requires that a monthly surcharge be imposed on each communications service connection (landline, wireless, and voice over internet protocol [VoIP], etc.). We recommend that the prepaid telephone users also be required to pay a surcharge as they make up a substantial number of wireless users (an estimated 20 percent and growing). These are consumers who use the PSAPs and should be required to contribute to the cost of the services.

The technology on the horizon gives the PSAP the ability to receive video and text messaging from callers. Communication centers will have to adapt to this rapidly approaching technology. As the technology progresses, the "next generation" of wireless devices are already on the horizon. VoIP, text messaging, and video imaging are features only waiting in the wings to be deployed. These changes will easily cost over \$10 million in the next three years.

The wireless fund should remain intact in order to maintain and sustain emergency services for all users. Technology is expensive, and the fund will be well utilized in the future as all PSAPs come to terms with their individual needs.

Thank you for giving us the opportunity to express our support as well as our concerns about this bill.

Sincerely,



MARIE A MCCAULEY, Major
Communications Division

APPROVED:



BOISSE P. CORREA
Chief of Police

HB 1014 HD3
RELATING TO ENHANCED 911 SERVICES
KEN HIRAKI
VICE PRESIDENT – GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM
March 24, 2009

Chairs Fukunaga and Baker and Members of the Senate Committees of Economic Development and Technology and Commerce and Consumer Protection:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on HB 1014 HD3, “A BILL FOR AN ACT RELATING TO ENHANCED 911 SERVICES.” Due to the importance of enhanced 911, or E911, services in the State of Hawaii and as the current wireline provider of E911 services, Hawaiian Telcom opposes this bill.

HB 1014 HD2 seeks to alter the current E911 surcharge structure. It would combine the wireless and wireline E911 surcharges, currently separated, expand and modify the responsibilities of the current wireless E911 board into a generic E911 board for both wireline and wireless carriers, add on additional members representing the PUC, CLEC, and VoIP providers, and add conflict of interest language to the board administrator. It also leaves blank the amount of surcharge to be assessed to the wireless and wireline providers. Currently the wireless customer is assessed 66 cents; the wireline customer is assessed 27 cents.

Hawaiian Telcom is concerned that HB1014 HD3’s proposed changes to the surcharge and reimbursement rules may cause Hawaiian Telcom significant financial harm. HB1014 HD3 could mandate an undesired increase from the current 27 cents surcharge specific to Hawaiian Telcom’s current wireline customers. In this highly competitive market, this mandate will add another financial obstacle to our company and further uneven the level playing field we seek as the only full-regulated company competing against wireless and VoIP providers that have very little or no state regulation. We are also concerned that HB 1014 HD3, while mentioning the inclusion of

Voice over Internet Protocol (VoIP) providers, lacks mechanics on how these customers can even be identified to assess a surcharge. Since Hawaiian Telcom is supporting the wireline community with the 27 cent surcharge, it appears a portion of this surcharge may be used to subsidize E911 implementation costs for VoIP users. This inequity allows VoIP providers to keep their costs lower by avoiding paying their fair share of costs to provide public safety services, places this burden on their competitors, and yet allows them to receive the benefits at a cost to Hawaiian Telcom's customers. Ironically, these same providers, as newly-added members to the board, will be allowed to make decisions on the use of a fund that is fully-funded by its competitors' customers.

Hawaiian Telcom has an extensive dedicated E911 network that includes equipment and computers at every Public Service Answering Point, dedicated E911 switching equipment used by both wireline and wireless customers, and a statewide E911 network infrastructure. Hawaiian Telcom developed a surcharge approved by the Hawaii Public Utilities Commission based on cost studies that capture the costs associated with the wireline Enhanced 911 service. Currently, Hawaiian Telcom keeps and administers the surcharge that it collects from its customers. HB1014 HD3 would require Hawaiian Telcom to transfer all wireline E911 surcharges over to the Enhanced 911 Board for control and management. The E911 reimbursement rules in HB1014 HD3, however, do not clearly or adequately allow Hawaiian Telcom reimbursement for all the costs necessary to provide statewide Enhanced 911 service. Failure to provide Hawaiian Telcom a complete reimbursement mechanism while still requiring the transfer of the wireline surcharge when coupled with a potential non-competitive increase in the wireline surcharge, risks causing unnecessary financial harm to our company.

Based on the aforementioned, Hawaiian Telcom respectfully opposes this measure.

Thank you for the opportunity to testify.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Enhanced 911 surcharge

BILL NUMBER: HB 1014, HD-3

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 138-3 to rename the wireless enhanced fund the enhanced 911 fund. Broadens the title of the board which oversees the fund from the "Wireless Enhanced 911 Board" to the "Enhanced 911 Board."

Amends HRS section 138-4 to reduce the surcharge from 66 cents to ___ cents and provides that the surcharge shall be imposed on all communication service connections. Repeals the provision that the surcharge funds are not general funds of the state.

EFFECTIVE DATE: January 1, 2020

STAFF COMMENTS: This was an administration measure (AGS-04) originally submitted by the department of accounting and general services.

The legislature by Act 159, SLH 1994, established a wireless enhanced 911 surcharge of 66 cents per month and a wireless enhanced 911 fund to allow deployment of phase 1 and phase 2 of the wireless enhanced 911 service and to cover the expenses of administering the fund. The wireless enhanced 911 program allows wireless phones to be located by public safety personnel in the event of an emergency. The fee is collected to reimburse facilities that provide Public Safety Answering Points (PSAP) which are set up to determine the location of a wireless 911 call for emergency services.

In February of 2007 the Honolulu police department completed its renovation of its communications division as a PSAP. As of August 2007 Oahu, Kauai, Maui and Hawaii were 100% operational with Molokai two-thirds operational.

At December 31, 2008 the wireless enhanced 911 fund had grossed nearly \$30 million and the wireless enhanced program was in operation. With the completion of the enhanced 911 system, it is questionable whether the wireless enhanced 911 surcharge is still necessary. While the measure also extends the enhanced 911 surcharge to landline, VOIP, and any other communication services that connect with the 911 call center, it is questionable why it is necessary. As with "dropped calls" wherein a call is made to a 911 dispatch and subsequently hung up by the caller, a 911 operator will attempt to call that number back to ascertain the nature of the emergency, if any. If the operator is unable to contact the caller, a police unit is dispatched to the location of the dropped call. Since the location of the dropped call can be determined by the 911 dispatch, it is questionable why the surcharge is expanded to include systems other than wireless services.

What this measure does underscore is the point that has been made over and over again, where fees or

taxes are earmarked for a particular program or service and bear no relationship for the demand of that service, there will always be a mismatch of revenues and expenditures. Either the fee will generate insufficient resources or, as it is in this case, produce more resources than necessary for the program. It is, therefore, more appropriate to actually appropriate the necessary funds out of general funds once costs are actually determined.

The measure supposedly broadens the application of the enhanced 911 service to include landline phones and voice over internet connections and it also deletes the provision that the receipts of the surcharge are not receipts of the general fund. It appears that this measure is being set up to be a new source of funds for the state general fund to help balance the biennial budget.

This is unfortunate as there appears to be little reason to expand the enhanced 911 services beyond the original scope for the fee. Given the fact that the current fee generated more than what was needed to accomplish the proposed scope of service, there is little reason to either continue the fee or increase it as previous measures had proposed. At the very least, lawmakers should consider repealing the fee and only reestablish it when a sound plan outlining the needs and costs is presented for consideration. To continue to impose the fee with no apparent plan for its use is just another way for government to raise revenues in these tough economic times.

Digested 3/24/09