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 initiate a call to a
9	public safety answering point.
10	"911 system" means an emergency telephone system that does
11	the following:
12	(1) Enables the user of a voice or data communications
13	service connection to reach a public safety answering
14	point by dialing 911;
15	(2) The voice communications service may be telephone
16	service, computer service, wireless service, or other
17	service which facilitates the placing of calls by

1	persons in need of emergency services to a public
2	safety answering point;
3	(3) The data communications service may be text message or
4	some other service that transmits data exclusively;
5	and
6	(4) Provides enhanced 911 service.
7	"Automatic location identification" means a wireless
8	enhanced 911 service capability that enables the automatic
9	display of information indicating the approximate geographic
10	location of the wireless telephone used to place a 911 call in
11	accordance with the Federal Communications Commission order.
12	"Automatic number identification" means [a wireless] an
13	enhanced 911 service capability that enables the automatic
14	display of the ten-digit [wireless] telephone number [used to
15	place a 911 call in accordance with the Federal Communications
16	Commission order.] or some other unique identifier from which a
17	911 call is placed.
18	"Board" means the [wireless] enhanced 911 board established
19	under this chapter.
20	["Commercial mobile radio service" means commercial mobile
21	radio service under sections 3(27) and 332(d) of the Federal
22	Telecommunications Act of 1996, 47 U.S.C. 151 et seg., and the

<u>H</u>.B. NO. 1014

10, 1993, 107 Stat. 312. 2 "Commercial mobile radio service connection" means each 3 active wireless telephone number assigned to a commercial mobile 4 radio service customer, including end users of resellers whose 5 place of primary use is within the State. 6 "Federal Communications Commission order" means the 7 original order issued in the Federal Communications Commission 8 Docket No. 94-102 governing wireless enhanced 911 service and 9 any other Federal Communication Commission orders related to the 10 provision of wireless enhanced 911 service.] 11 "Call" means any communication, message, signal, or 12 transmission. 13 14 "Communication service" means a service capable of accessing, connecting with, or interfacing with a 911 system, by 15 dialing, initializing, or otherwise activating the 911 system by 16 means of a local telephone device, cellular telephone device, 17 18 wireless communication device, interconnected voice over Internet protocol (VoIP) device, or any other means. 19 "Communications service connection" means each telephone 20 number assigned to a residential or commercial subscriber by a 21

Omnibus Budget Reconciliation Act of 1993, P.L. 103 66, August

<u>#</u>.B. NO. <u>1014</u>

- 1 <u>communications service provider, without regard to technology</u>
- deployed.
- 3 "Communications service provider" means an entity that
- 4 provides communications service to a subscriber.
- 5 "Database service provider" means a service supplier who
- 6 maintains and supplies or contracts to maintain and supply an
- 7 automatic information location database or master street address
- guide.
- 9 "Enhanced 911 fund" or "fund" means the special fund
- 10 established by section 138-3.
- "Enhanced 911 service costs" means all capital,
- 12 nonrecurring, and recurring costs directly related to the
- implementation, operation, and administration of enhanced 911
- 14 services.
- "Prepaid connections" means the sale of a
- 16 telecommunications service that provides the right to utilize
- 17 mobile wireless service, as well as other non-telecommunications
- 18 services including the download of digital products delivered
- 19 electronically, content and ancillary services, which is paid
- 20 for in advance and sold in predetermined units of dollars of
- 21 which the number of minutes declines with use of the services.

"Proprietary information" means customer lists and other 1 related information (including the number of customers), 2 3 technology descriptions, technical information, or trade secrets, and the actual or developmental costs of [wireless] 4 enhanced 911 service that are developed, produced, or received 5 internally by a [wireless] communications service provider or by 6 7 a provider's employees, directors, officers, or agents. "Public safety agency" means a functional division of the 8 9 State or county that provides or has authority to provide, or a private entity contracted by a state or county agency that 10 provides, firefighting, law enforcement, ambulance, medical, or 11 12 other emergency services. 13 "Public safety answering point" means the public safety agency that receives incoming 911 calls and dispatches 14 15 appropriate public safety agencies to respond to those calls. 16 "Reseller" means a person or entity that purchases [commercial mobile radio service] communications services from a 17 [wireless] communications service provider for the purpose of 18 19 reselling [commercial mobile radio service] communications services to end-users. 20 ["Wireless enhanced 911 commercial mobile radio service 21 22 costs" means all capital, nonrecurring, and recurring costs

<u>#</u>.B. NO. <u>1014</u>

- 1 directly related to the implementation and operation of phase I
- 2 or phase II wireless enhanced 911 services pursuant to the
- 3 Federal Communications Commission order.
- 4 "Wireless enhanced 911 fund" or "fund" means the statewide
- 5 special fund established to ensure adequate cost recovery for
- 6 the deployment of phase I and phase II wireless enhanced 911
- 7 service in Hawaii.
- 8 "Wireless provider" means a person or entity that is
- 9 authorized by the Federal Communications Commission to provide
- 10 facilities based commercial mobile radio service within the
- 11 State.
- "Universal emergency number service" or "911 service" means
- 13 public communications service that provides service users with
- 14 the ability to reach a public safety answering point by
- accessing a 911 system.
- "VoIP provider" means an entity that provides
- interconnected VoIP service.
- [+] §138-2[+] [Wireless enhanced] Enhanced 911 board. (a)
- 19 There is created within the department of accounting and general
- 20 services, for administrative purposes, [a wireless] an enhanced
- 21 911 board consisting of [eleven] fourteen voting members;
- 22 provided that the membership shall consist of:

<u>#</u>.B. NO. <u>1014</u>

1	(1)	The comptroller or the comptroller's designee;
2	(2)	Three representatives from the wireless communications
3		service providers, who shall be appointed by the
4		governor as provided in section 26-34, except as
5		otherwise provided by law;
6	(3)	One representative each from the public safety
7		answering points for Oahu, Hawaii, Kauai, Maui, and
8		Molokai, who shall be appointed by the governor, as
9		provided in section 26-34, except as otherwise
10		provided by law, from a list of five names submitted
11		by each respective public safety answering point;
12	(4)	The consumer advocate or the consumer advocate's
13		designee; [and]
14	(5)	One representative from a VoIP providers, who shall be
15		appointed by the governor as provided in section 26-
16		34, except as otherwise provided by law;
17	(6)	One representative from a common local exchange
18		carrier (CLEC) or other alternative communications
19		service provider, who shall be appointed by the
20		governor as provided in section 26-34, except as
21		otherwise provided by law;

board.

#.B. NO. 1014

1 (7) The director or designee of the Hawaii public utilities commission; and 2 $[\frac{(5)}{(5)}]$ (8) One representative of the current wireline 3 provider of enhanced 911. 4 [Six members] A simple majority shall constitute a 5 quorum, whose affirmative vote shall be necessary for all 6 7 actions by the board. (c) The chairperson of the board shall be elected by the 8 9 members of the board by simple majority and shall serve a term 10 of one year. 11 (d) The board shall meet upon the call of the chairperson, 12 but not less than quarterly. 13 The members representing wireless, VoIP, and CLEC service providers shall be appointed by the governor for terms 14 15 of two years [, except that terms of the two members initially 16 appointed shall be for eighteen months]. Each member shall hold office until the member's 17 successor is appointed and qualified. Section 26-34 shall apply 18 19 only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a). 20 (g) A member may vote by proxy submitted in writing to the 21

- 1 [g] (h) The members shall serve without compensation. Members shall be entitled to reimbursements from the [wireless] 2 enhanced 911 fund for reasonable traveling expenses incurred in 3 4 connection with the performance of board duties. 5 [h] (i) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, 6 7 consultants, or other third party to: 8 Create reports, make payments into the fund, process 9 checks, and make distributions from the fund, as 10 directed by the board and as allowed by this chapter; 11 and Perform administrative duties necessary to administer 12 (2) the fund or oversee operations of the board, including 13 providing technical advisory support. 14 $[\dot{\pm}]$ (j) The board shall develop reasonable procedures to 15 ensure that all [wireless providers] members receive adequate 16 notice of board meetings and information concerning board 17 decisions.
- [+]§138-3[+] [Wireless enhanced] Enhanced 911 fund. 19 is established outside the state treasury a special fund, to be 20 known as the [wireless] enhanced 911 fund, to be administered by 21 the board. The fund shall consist of amounts collected under 22

- 1 section 138-4. [Moneys paid into the fund are not general fund
- 2 revenues of the State.] The board shall place the funds in an
- 3 interest-bearing account at any federally insured financial
- 4 institution, separate and apart from the general fund of the
- 5 State. Moneys in the fund shall be expended [exclusively] by
- 6 the board for the purposes of ensuring adequate [cost recovery]
- 7 funding for the deployment and sustainment of [phase I and phase
- 8 II wireless] enhanced 911 service and for expenses of
- 9 administering the fund.
- 10 [+] §138-4[+] Surcharge. (a) A monthly [wireless]
- 11 enhanced 911 surcharge, subject to this chapter, shall be
- 12 imposed upon each commercial mobile radio and wireline access
- 13 communications service connection.
- 14 (b) The effective date of the surcharge shall be July 1,
- 15 2004. The rate of the surcharge shall be set at [66] 46 cents
- 16 per month for each commercial mobile radio communications
- 17 service connection. The surcharge shall have uniform
- 18 application and shall be imposed on each [commercial mobile
- 19 radio communications service connection operating within the
- 20 State except:
- 21 (1) Connections billed to federal, state, and county
- government entities; and

<u>H</u>.B. NO. <u>1014</u>

1	(2) Prepard Connections.
2	(c) All [wireless] communications service providers and
3	resellers shall bill to and collect from each of their customers
4	a monthly surcharge at the rate established for each [commercial
5	mobile radio] communications service connection. The [wireless]
6	communications service provider or reseller may list the
7	surcharge as a separate line item on each bill. If a [wireless]
8	communications service provider or reseller receives a partial
9	payment for a monthly bill from a [commercial mobile radio]
10	<u>communications</u> service customer, the [wireless] <u>communications</u>
11	service provider or reseller shall apply the payment against the
12	amount the customer owes the [wireless] communications service
13	provider or reseller, before applying the partial payment
14	against the surcharge.
15	(d) A [wireless] communications service provider that:
16	(1) Is collecting the surcharge and remitting appropriate
17	portions of the surcharge to the fund pursuant to this
18	chapter; and
19	(2) Has been requested by a public safety answering point
20	to provide [phase I or phase II wireless] enhanced 911
21	service in a particular county or counties;

- 1 may recover [wireless] enhanced 911 commercial mobile radio
- 2 service costs as provided in this chapter.
- 3 (e) Each [wireless] communications service provider or
- 4 reseller may retain two per cent of the amount of surcharges
- 5 collected to offset administrative expenses associated with
- 6 billing and collecting the surcharge.
- 7 (f) A [wireless] communications service provider or
- 8 reseller shall remit to the [wireless] enhanced 911 fund, within
- 9 sixty days after the end of the calendar month in which the
- 10 surcharge is collected, an amount that represents the surcharges
- 11 collected less amounts retained for administrative expenses
- 12 incurred by the [wireless] communications service provider or
- 13 reseller, as provided in subsection (e).
- (g) The surcharges collected by the [wireless]
- 15 communications service provider or reseller pursuant to this
- 16 section shall not be subject to any tax, fee, or assessment, nor
- 17 are they considered revenue of the provider or reseller.
- 18 (h) Each customer who is subject to this chapter shall be
- 19 liable to the State for the surcharge until it has been paid to
- 20 the [wireless] communications service provider. [Wireless]
- 21 Communications service providers shall have no liability to
- 22 remit surcharges that have not been paid by customers. A

- 1 [wireless] communications service provider or reseller shall
- 2 have no obligation to take any legal action to enforce the
- 3 collection of the surcharge for which any customer is billed.
- 4 However, the board may initiate a collection action against the
- 5 customer. If the board prevails in such a collection action,
- 6 reasonable attorney's fees and costs shall be awarded.
- 7 (i) At any time the members deem it necessary and
- 8 appropriate, the board may meet to make recommendations to the
- 9 legislature as to whether the surcharge and fund should be
- 10 discontinued, continued as is, or amended.
- 11 (j) When considering whether to discontinue, continue as
- 12 is, or amend the fund or surcharge, the board's recommendations
- 13 shall be based on the latest available information concerning
- 14 costs associated with providing [wireless] enhanced 911 service
- 15 [in accordance with the Federal Communications Commission
- 16 order].
- 17 [+] \$138-5[+] [Recovery] Disbursements from the fund. (a)
- 18 After January 1, 2005, every public safety answering point shall
- 19 be eligible to seek [reimbursement] disbursements from the fund
- 20 solely to pay for the reasonable costs to lease, purchase, or
- 21 maintain all necessary equipment, including computer hardware,
- 22 software, and database provisioning, required by the public

H.B. NO. 1014

safety answering point to provide technical functionality for 1 the [wireless] enhanced 911 service [pursuant to the Federal 2 Communications Commission order. All other expenses necessary 3 to operate the public safety answering point, including but not 4 5 limited to those expenses related to overhead, staffing, and 6 other day to day operational expenses, shall continue to be paid 7 through the general funding of the respective counties]. (b) After January 1, 2005, each [wireless] communications 8 service provider may request reimbursement from the fund of 9 [wireless] enhanced 911 [commercial mobile radio] service costs 10 incurred; provided that the costs: 11 (1) Are recoverable under section 138-4(d); and 12 Have not already been reimbursed to the [wireless] 13 (2)14 communications service provider from the fund. 15 In no event shall a [wireless] communications service provider be reimbursed for any amount above its actual [wireless] 16 17 enhanced 911 [commercial mobile radio] communications service 18 costs allowed to be recovered under section 138-4(d). 19 [(c) After the expenses of the board are paid, the public 20 safety answering points shall be allocated two thirds of the 21 remaining balance of the fund. The remaining one third shall be

available for wireless provider cost recovery. The board shall

<u>H</u>.B. NO. <u>1014</u>

determine the reimbursement amounts for the public safety 1 answering points, based on the limitations set forth in section 2 3 138-5(a). The reimbursement level for each wireless provider shall be limited: 4 (1) To the total contribution made by the wireless 5 provider to the wireless provider cost recovery 6 7 portion of the fund; and (2) As provided in section 138-5(b). 8 9 [+] \$138-6[+] Report to the legislature. The board shall submit an annual report to the legislature, including: 10 (1)The total aggregate surcharge collected by the State 11 12 in the last fiscal year; (2) The amount of disbursement from the fund; 13 14 (3) The recipient of each disbursement and a description 15 of the project for which the money was disbursed; (4)The conditions, if any, placed by the board on 16 disbursements from the fund; 17 18 (5) The planned expenditures from the fund in the next 19 fiscal year; The amount of any unexpended funds carried forward for 20 (6) 21 the next fiscal year;

1	(/) A cost study to guide the legislature towards
2	necessary adjustments to the fund and the monthly
3	surcharge; and
4	(8) A progress report of jurisdictional readiness for
5	[wireless E911] enhanced 911 services, including
6	public safety answering points[, wireless providers,]
7	and [wireline] communications service providers. [The
8	report shall include the status of requirements
9	outlined in the Federal Communications Commission
10	Order 94-102 and subsequent supporting orders related
11	to phase I and phase II wireless 911 services.]
12	[+]§138-7[+] Audits. (a) During any period in which [a
13	wireless] an enhanced 911 surcharge is imposed upon customers,
14	the board may request an audited report prepared by an
15	independent certified public accountant that demonstrates that
16	the request for cost recovery from public safety answering
17	points and [wireless] communications service providers recovers
18	only costs and expenses directly related to the provision of
19	[phase I or phase II wireless] enhanced 911 service as
20	authorized by this chapter. The cost of the audited reports
21	shall be considered expenses of the board. The board shall
22	prevent public disclosure of proprietary information contained

- 1 in the audited report, unless required by court order or
- 2 appropriate administrative agency decision.
- 3 (b) The board shall select an independent third party to
- 4 audit the fund every two years to determine whether the fund is
- 5 being managed in accordance with this chapter. The board may
- 6 use the audit to determine whether the amount of the surcharge
- 7 assessed on each [commercial mobile radio] communications
- 8 service connection is required to be adjusted. The costs of the
- 9 audit shall be an administrative cost of the board recoverable
- 10 from the fund.
- 11 [+] §138-8[+] Proprietary information. (a) All
- 12 proprietary information submitted to the board by any third
- 13 party used by the board in connection with its duties or any
- 14 public safety answering point in deploying [wireless] enhanced
- 15 911 service shall be retained in confidence. Proprietary
- 16 information submitted pursuant to this chapter shall not be
- 17 released to any person, other than to the submitting [wireless]
- 18 communications service provider or reseller, the board, or any
- 19 independent, third-party accounting firm retained by the board,
- 20 without the express permission of the submitting [wireless]
- 21 communications service provider or reseller. General
- 22 information collected by the board shall be released or

- 1 published only in aggregate amounts that do not identify or
- 2 allow identification of numbers of subscribers or revenues
- 3 attributable to an individual [wireless] communications service
- 4 provider.
- 5 (b) The board, any third parties it may retain, and any
- 6 public safety answering point shall take appropriate measures to
- 7 maintain the confidentiality of the proprietary information that
- 8 may be submitted by a [wireless] communications service
- 9 provider. The board shall hold all propriety information in
- 10 confidence and shall adopt reasonable procedures to prevent
- 11 disclosure or providing access to the proprietary information to
- 12 the public and competitors, including members of the board
- 13 representing other [wireless] communications service providers.
- 14 Members of the board shall not disclose the information to any
- 15 third parties, including their employers, without the written
- 16 consent of the [wireless] communications service provider whose
- 17 proprietary information is to be disclosed.
- 18 (c) A committee consisting of all board members, except
- 19 the [three wireless] communications service provider
- 20 representatives, shall have the power to act for the board on
- 21 the specific matters defined by the board, when at least two-
- 22 thirds of the members of the board determine that a board action

- 1 may be conducted by the committee to prevent disclosure of
- 2 proprietary information to the [wireless] communications service
- 3 provider representatives.
- 4 [\frac{1}{2}\\$138-9[\frac{1}{2}] Limitation of liability. (a)
- 5 Notwithstanding any law to the contrary, in no event shall any
- 6 [wireless] communications service provider, reseller, or their
- 7 respective employees, directors, officers, assigns, affiliates,
- 8 or agents, 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 a person or from
- 11 damage to property incurred by any person in connection with any
- 12 act or omission in developing, designing, adopting,
- 13 establishing, installing, participating in, implementing,
- 14 maintaining, or providing access to [phase I or phase II
- 15 wireless] enhanced 911 or any other [wireless] communications
- 16 service intended to help persons obtain emergency assistance.
- 17 In addition, no [wireless] communications service provider,
- 18 reseller, or their respective employees, directors, officers,
- 19 assigns, affiliates, or agents shall be liable for civil damages
- 20 or criminal liability in connection with the release of customer
- 21 information to any governmental entity, including any public
- 22 safety answering point, as required under this chapter.

21

H.B. NO. 1014

In no event shall any public safety answering point, 1 or its employees, assigns, or agents, or emergency response 2 personnel, except in cases of gross negligence or wanton and 3 wilful misconduct, be liable for any civil damages or criminal 4 liability resulting from death or injury to the person or from 5 damage to property incurred by any person in connection with any 6 act or omission in the development, installation, maintenance, 7 operation, or provision of [phase I or phase II wireless] 8 enhanced 911 service. 9 [+] \$138-10[+] Database or location information. 10 [commercial mobile radio] communications service location 11 12 information obtained by any public safety answering point or public safety agency or its personnel for public safety purposes 13 is not a government record open to disclosure under chapter 92F. 14 15 (b) A person shall not disclose or use, for any purpose 16 other than the [wireless] enhanced 911 calling system, information contained in the database of the [wireless] 17 communications service provider's network portion of the 18 [wireless] enhanced 911 calling system established pursuant to 19

this chapter, without the prior written consent of the

[wireless] communications service provider.

	[[]3130 II[]] DISPACE TESOTACION: (a) Any [WITCHESS]
2	communications service provider, reseller, or public safety
3	answering point aggrieved by a decision of the board shall have
4	the right to petition the board for reconsideration within ten
5	days following the rendering of the board's decision. As part
6	of its petition for reconsideration, the aggrieved party may
7	present any reasonable evidence or information for the board to
8	consider. The board shall render its decision on the
9	reconsideration petition as soon as reasonably possible, but no
10	later than thirty days after the reconsideration request is
11	made.
12	(b) An aggrieved party, following the completion of the
13	reconsideration petition process, upon agreement of the other
14	party, may have the dispute resolved through final and binding
15	arbitration by a single arbitrator in accordance with the
16	[Wireless] Industry Arbitration Rules of the American
17	Arbitration Association. The costs of the arbitration,
18	including the fees and expenses of the arbitrator, shall be
19	borne by the non prevailing party of any arbitration proceeding
20	The arbitrator's decision shall be final and binding and may be
21	confirmed and enforced in any court of competent jurisdiction.

₩.B. NO. 1014

1	(c) Nothing in this section shall preclude any [wireless]
2	communications service provider, reseller, or public safety
3	answering point from pursuing any existing right or remedy to
4	which it is entitled in any court having jurisdiction thereof.
5	[+] §138-12[+] Service contracts. A [wireless]
6	communications service provider shall not be required to provide
7	[wireless] enhanced 911 service until the [wireless]
8	communications service provider and the public safety answering
9	point providing [wireless] enhanced 911 service in the county or
10	counties in which the [wireless] communications service provider
11	is licensed to provide [commercial mobile radio] communications
12	service have entered into a written agreement setting forth the
13	basic terms of service to be provided."
14	SECTION 2. Statutory material to be repealed is bracketed
15	and stricken. New statutory material is underscored.
16	SECTION 3. This Act shall take effect upon its approval.
17	(0 - 1/ / A
18	INTRODUCED BY: Chill Say
19	BY REQUEST
	IAN 2 6 2009

Report Title:

Enhanced 911 Services; Enhanced 911 Board

Description:

Lowers costs for cell phone subscribers by reducing the Wireless Enhanced 911 surcharge from 66 to 46 cents. Expands the membership and responsibilities of the Wireless Enhanced 911 Board.



JUSTIFICATION SHEET

DEPARTMENT:

Accounting and General Services

TITLE:

A BILL FOR AN ACT RELATING TO ENHANCED 911

SERVICES.

PURPOSE:

The purpose of this bill is to establish a single entity to administer enhanced 911 services for the State of Hawaii and to reduce the current surcharge from 66 cents

to 46 cents.

MEANS:

Amend chapter 138, Hawaii Revised Statutes.

JUSTIFICATION:

The State of Hawaii is only one of six states that does not have a single entity for the coordination of enhanced 911 services. The State of Hawaii established and appointed the Wireless Enhanced 911 Board to administer wireless enhanced 911 service in the State of Hawaii. technologies providing enhanced services have matured and converged to a point where systems today required to provide such service are blended. The current wireless enhanced 911 board does not include representation of other communications service providers. This legislation is amended and proposed to establish a single state entity to administer enhanced 911 services for the State of Hawaii, expand representation on the oversight board, and expand responsibility of the board to include all 911 services coordination.

Impact on the public: Reduction of surcharge from 66 cents to 46 cents will lower the cost burden on cell phone customers. Improved 911 emergency telephone reporting services that will allow for the delivery of a request for emergency services via 911 from all communications technologies. In addition, the public will benefit from a more comprehensive, efficient and coordinated implementation,



administration and operations of 911 services for the State of Hawaii.

Impact on the department and other agencies: Improved coordination of the implementation, administration, and operation of Enhanced 911 Services for county and local public safety entities and the State of Hawaii.

GENERAL FUND:

None.

OTHER FUNDS:

Wireless Enhanced 911 Fund.

PPBS PROGRAM

DESIGNATION:

AGS-891

OTHER AFFECTED

AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.