
A BILL FOR AN ACT

RELATING TO WIRELESS ENHANCED 911.

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

1 PART I. CHAPTER 138, HAWAII REVISED STATUTES
2 SECTION 1. In 2004, the legislature enacted chapter 138,
3 Hawaii Revised Statutes, entitled "enhanced 911 services for
4 mobile phones". Section 138-4, Hawaii Revised Statutes,
5 requires each mobile phone account holder to pay a \$0.66 per
6 month surcharge to be deposited into the wireless enhanced 911
7 fund established by section 138-3. Moneys in the fund are to be
8 "expended exclusively by the board for the purposes of ensuring
9 adequate cost recovery for the deployment of phase I and phase
10 II wireless enhanced 911 service and for expenses of
11 administering the fund". Under phase I, the Federal
12 Communications Commission requires a wireless service provider,
13 if requested by a public safety answering point such as a county
14 police department, to transmit to the public safety answering
15 point the telephone number of a wireless 911 caller and the
16 location of the cell site or base station transmitting the call.
17 Under Phase II, the Federal Communications Commission requires
18 wireless carriers to transmit information that is more precise,



1 specifically, information regarding the latitude and longitude
2 of the caller that must meet accuracy standards.

3 Section 138-5(a), Hawaii Revised Statutes, authorizes
4 public safety answering points to "seek reimbursement from the
5 fund solely to pay for the reasonable costs to lease, purchase,
6 or maintain all necessary equipment, including computer
7 hardware, software, and database provisioning, required by the
8 public safety answering point to provide technical functionality
9 for the wireless enhanced 911 service pursuant to the Federal
10 Communications Commission order". However, the legislature
11 limited costs for which the public safety answering points could
12 seek reimbursements by providing that "[a]ll other expenses
13 necessary to operate the public safety answering point,
14 including but not limited to those expenses related to overhead,
15 staffing, and other day-to-day operational expenses; shall
16 continue to be paid through the general funding of the
17 respective counties". Pursuant to section 138-5(c), Hawaii
18 Revised Statutes, the public safety answering points are
19 allocated two-thirds of the balance of the fund remaining after
20 deduction of administrative costs and the wireless service
21 providers are allocated one-third of the balance.



1 The wireless enhanced 911 fund is overseen by the wireless
2 enhanced 911 board which is comprised of eleven members: the
3 comptroller, three representatives from wireless providers, one
4 member from each of the public safety answering points on Oahu,
5 Hawaii, Kauai, Maui, and Molokai, the consumer advocate, and a
6 representative from the wireline provider of 911 services,
7 Hawaiian Telcom. The board is required to submit an annual
8 report to the legislature regarding the total amount of
9 surcharge funds collected and disbursed, the recipient and
10 purpose of each disbursement, the amount of planned expenditures
11 and unexpended funds to carry over in the next fiscal year, a
12 cost study to guide the legislature with regard to adjusting the
13 fund or surcharge, and a progress report of jurisdictional
14 readiness for wireless E911 services, including public safety
15 answering points, wireless providers, and wireline providers.

16 PART II. THE WIRELESS ENHANCED 911 BOARD

17 SECTION 2. In section 321-224(a)(7), Hawaii Revised
18 Statutes, the legislature assigned to the department of health
19 the responsibility of assisting each county in the development
20 of a 911 emergency telephone system. The legislature limited
21 the role of the wireless enhanced 911 board to reimbursing the
22 public safety answering points and the wireless service



1 providers for certain costs related to deployment of the
2 wireless part of the 911 system. Nonetheless, the wireless
3 enhanced 911 board took onto itself, in a mission statement
4 adopted on July 26, 2006, the broad task of overseeing the
5 implementation of wireless enhanced services by wireless
6 providers and the public safety answering points.

7 The legislature finds that this mission exceeds the mandate
8 of chapter 138, Hawaii Revised Statutes, which is to reimburse
9 the public safety answering points and wireless service
10 providers for the cost of deploying phase I and phase II
11 wireless enhanced 911 service. The public safety answering
12 points are not required to deploy this service. The Federal
13 Communications Commission only requires the wireless service
14 providers to transmit the data necessary for the service if the
15 public safety answering points request it. The public safety
16 answering points, and the counties of which they are a part, are
17 primarily responsible for funding deployment and operation of
18 phase I and phase II wireless enhanced 911 service. The public
19 safety answering points, and the counties of which they are a
20 part, must find a means of funding the cost of deployment until
21 reimbursed and must bear operational costs thereafter.



1 PART III. REIMBURSABLE EXPENSES

2 SECTION 3. The legislature also finds that the wireless
3 enhanced 911 board has similarly taken a broad view of what
4 costs may be reimbursed. At its September 29, 2005, meeting,
5 the board discussed an opinion from the attorney general that it
6 may not reimburse the public safety answering points for
7 operating costs, such as long distance calls to call back a
8 visitor whose call had been dropped, or for wages and salaries.
9 In 2006, the Board introduced S.B. No. 2239 that would have
10 authorized the board to "determine by policy that certain
11 expenses necessary to the provision of wireless enhanced 911
12 services by the public safety answering points may be recovered
13 from the fund". However, the bill did not pass and the
14 legislature thereby affirmed its intent that only a narrowly
15 defined class of expenses should be eligible for reimbursement.
16 Nonetheless, at its November 9, 2007, meeting, the board
17 apparently agreed to reimburse the public safety answering
18 points for these long distance calls. At that same meeting, the
19 board reconsidered an earlier decision to deny reimbursement for
20 the cost of maintaining call recorders that are used to meet the
21 requirement of section 46-1.7, Hawaii Revised Statutes, that
22 each county public safety answering point retain recordings of



1 all emergency 911 telephone calls and radio dispatches for a
2 period of not less than one year. While the Honolulu Police
3 Department sought to justify the request on the grounds that
4 "the fund was created to help pay for costs incurred for
5 wireless service", the recording requirement has nothing to do
6 with deployment of wireless enhanced 911 service, is an
7 operational cost not covered by chapter 138, Hawaii Revised
8 Statutes, and is the responsibility of the counties.

9 The wireless enhanced 911 board was also asked at its
10 November 9, 2007, meeting to reimburse the Honolulu Police
11 Department for its purchase of twenty monitors to be used at its
12 alternate communications center site at Kapolei to process 911
13 calls. No attempt was made to demonstrate that the monitors
14 would be used to answer wireless 911 calls, or to apportion the
15 expense between wireline and wireless 911 calls. Instead, the
16 request for reimbursement justified the expense as an integral
17 component required to provide technical functionality for
18 wireless enhanced 911 "as required by the Federal Communications
19 Commission", even though the Commission does not require the
20 public safety answering points to provide wireless enhanced
21 service at all.



1 SECTION 4. The legislature also finds that the wireless
2 enhanced 911 board also appears to have departed from, or
3 perhaps circumvented, the prohibition against reimbursing the
4 public safety answering points for day-to-day operational costs
5 such as staffing and overhead. As early as the meeting of
6 September 29, 2005, the board noted that salaries may not be
7 reimbursed from the fund. The issue arose again at the meeting
8 on August 11, 2006, when the board asked the attorney general
9 whether overtime costs for training could be reimbursed from the
10 fund. At its September 8, 2006, meeting, the board was advised
11 by the attorney general that overtime costs cannot be reimbursed
12 from the fund because of the restriction in section 138-5,
13 Hawaii Revised Statutes. Yet, in its fiscal year 2007 report,
14 the board lists a disbursement of \$2,993.31 for that very
15 purpose. At its April 13, 2007, meeting, the board discussed
16 the need for someone to manage wireless enhanced 911 service for
17 all six Oahu public safety answering points. After the attorney
18 general again advised the board of the prohibition against
19 paying for staffing, the board instead decided to allow the Oahu
20 public safety answering points to contract for the personnel
21 services that they cannot acquire by hiring.



1 PART IV. METHOD OF REIMBURSEMENT

2 SECTION 5. The legislature also finds that the wireless
3 enhanced 911 board has taken a broad view of how allowable costs
4 may be reimbursed. Notwithstanding the legislature's clear
5 intent to reimburse, rather than to pay in the first instance,
6 expenses that the public safety answering points choose to
7 undertake in the deployment of wireless enhanced 911 service,
8 the board sought to relieve the public safety answering points
9 of the need to budget those expenses as part of the county
10 appropriation process. In 2006, the board introduced
11 legislation to permit the public safety answering points to seek
12 "recovery" of enhanced wireless 911 deployment costs, rather
13 than reimbursement. However, H.B. No. 2276 did not pass and the
14 legislature thereby affirmed its intent to reimburse expenses
15 undertaken by the public safety answering points, not fund
16 choices that initially should be made by the counties.

17 With the failure of the legislation in 2006, the board
18 considered other options not authorized by the legislature. At
19 the board's May 12, 2006, meeting, the comptroller suggested
20 that the board consider a loan arrangement with the department
21 of budget and finance to assist the public safety answering
22 points in funding deployment costs for wireless enhanced 911



1 service. Another board member suggested that the board simply
2 buy items on behalf of the public safety answering points. The
3 board sought advice from the attorney general who noted that
4 some public safety answering points "are having difficulty
5 getting their respective county councils to appropriate the
6 money required for deployment". Of course, the county councils
7 are the bodies that, in the first instance, have responsibility
8 for setting budget priorities within their respective
9 jurisdictions.

10 At its July 14, 2006, meeting, the board asked the attorney
11 general to "research the legalities" of the board buying
12 software and equipment for the public safety answering points
13 outright, setting up bridge loans for the public safety
14 answering points to use, or establishing a trust account. Based
15 on an opinion from the attorney general, the board decided at
16 its August 11, 2006, meeting that it would make purchases on
17 behalf of the public safety answering points using a trust
18 account to facilitate the purchases. As a result, the board has
19 become the funding source of first resort, absolving the county
20 councils of the responsibility to determine whether provision of
21 wireless enhanced 911 services is a budget priority within their
22 respective jurisdictions.



1 PART V. POTENTIAL CONFLICT OF INTEREST

2 SECTION 6. When the legislation, ultimately codified as
3 chapter 138, Hawaii Revised Statutes, was first introduced in
4 2004, it did not provide for membership on the board by the
5 wireline provider of enhanced 911 service. This made sense
6 because, while coordination with the only wireline provider that
7 delivers enhanced 911 data from the wireless service provider to
8 the public safety answering point is desirable, the wireline
9 provider is not eligible under chapter 138, Hawaii Revised
10 Statutes, for reimbursement of expenses in connection with
11 deployment of wireless enhanced 911 services. However, the
12 opportunity to provide that exclusive link put the wireline
13 provider in position to reap substantial revenues. The
14 legislature notes that in the final version of the legislation,
15 as enacted, the wireline provider had gained a seat on the board
16 and seemingly has made the most of that position.

17 The legislature further notes that the wireline
18 representative has been the finance committee chair for the
19 board and thus has been in a position to recommend reimbursement
20 to the public safety answering points of the wireline trunking
21 costs imposed by the wireline provider. Indeed, those costs are
22 the single largest disbursement by the board each year. While



1 the county of Maui paid the wireline provider an average of
2 \$153,421.25 per year in fiscal years 2006 and 2007, the city and
3 county of Honolulu paid \$225,869.57 in fiscal year 2007. It
4 also appears that in October 2007, the board approved payment of
5 the Honolulu public safety answering point's monthly answering
6 position charges from the wireline provider for the entire
7 fiscal year 2008, in the amount of \$1,003,972.80, or
8 approximately \$83,664.40 per month. If the board continues its
9 current practice of reimbursing these operational expenses in
10 apparent violation of section 138-5(a), Hawaii Revised Statutes,
11 the wireline provider stands to benefit handsomely from its
12 representation on the board and resulting influence over
13 expenditures from the fund.

14 PART VI. DISCRIMINATORY SURCHARGE

15 SECTION 7. The legislature also finds that continuing to
16 require wireless service subscribers to pay a surcharge that is
17 used to reimburse monthly operational costs such as the wireline
18 trunking charges is discriminatory. While the wireline
19 provider, pursuant to section 269-16.95, Hawaii Revised
20 Statutes, may assess a telephone line surcharge to recover the
21 capital and associated operating expenses of providing a
22 statewide enhanced 911 emergency telephone service, the wireline



1 provider keeps those surcharge funds. No surcharge is levied on
2 wireline subscribers for the public safety answering points'
3 costs in providing wireline enhanced 911 service to the forty
4 per cent of callers who access the public safety answering point
5 by a wireline 911 call. Moreover, the lack of precision in
6 segregating public safety answering point costs attributable to
7 wireline and wireless enhanced 911 calls and the commingled use
8 of assets to answer each suggests that the board is using the
9 burgeoning wireless enhanced 911 fund to subsidize wireline
10 enhanced 911 costs that would ordinarily be, and have
11 customarily been, paid by the counties. The legislature finds
12 that for these reasons, alone, the wireless enhanced 911
13 surcharge and fund should be discontinued once phase I and phase
14 II wireless enhanced 911 service is fully deployed.

15 PART VII. ANNUAL REPORTS

16 SECTION 8. The legislature also finds that the wireless
17 enhanced 911 board has been less than forthcoming in providing
18 useful information in the annual reports required by section
19 138-6, Hawaii Revised Statutes. Although the board reported
20 collections and interest amounting to \$7,377,330.58 in fiscal
21 year 2006 and a carryover to fiscal year 2007 of \$11,821,936.81,
22 the two-and-a-half page report did not itemize any of the



1 \$3,328,810 in anticipated fiscal year 2007 reimbursements to the
2 public safety answering points or the anticipated \$550,628 in
3 anticipated fiscal year 2007 reimbursements to the wireless
4 service providers. It also did not contain a cost study that
5 would have allowed the legislature to consider adjusting the
6 monthly surcharge or give any report on the state of readiness
7 of the public safety answering points, wireless service
8 providers, or wireline providers to provide wireless enhanced
9 911 service.

10 The fiscal year 2007 report was similarly short on details,
11 consisting of three-and-a-half pages despite collections and
12 interest amounting to \$7,865,305.09 and a carryover to fiscal
13 year 2008 of \$18,156,815. Again, the report contains no cost
14 study, although the board at its November 9, 2007, meeting
15 received a three-year budget forecast from its finance
16 committee. Similarly, the board discussed a five-year budget
17 forecast at its December 14, 2007, meeting. Instead, the report
18 summarily states that the board would recommend a reduction of
19 the surcharge to \$0.43 per month, without elaboration. That
20 amounts to no reduction at all because, as the report notes, the
21 wireless service providers have decided to self-recover their
22 costs and will not be seeking reimbursement. The public safety



1 answering points are entitled to reimbursements only up to two-
2 thirds of the balance in the fund and the \$0.43 per month is
3 almost exactly equal to two-thirds of the current \$0.66 per
4 month surcharge.

5 Despite the clear restrictions on expenditures imposed by
6 chapter 138, Hawaii Revised Statutes, the report also states
7 that it is the board's intention to "expend the balance of the
8 fund [\$20,157,156.50 as of December 31, 2007] for projects to
9 expand coverage in rural areas and in-building coverage, and
10 other future technologies not yet identified by the wireless
11 community". The fiscal year 2007 report also states the board's
12 intention to spend \$1,385,000 to retain a consultant to manage
13 the improvement of wireless coverage within public buildings.
14 Legislation to reduce the surcharge has been offered, but no
15 legislation has been offered that would permit these expanded
16 uses of the fund.

17 The fiscal year 2007 report also does not provide a
18 progress report on each public safety answering point, wireless
19 service provider, and wireline provider, although it does report
20 that the State moved from 14.8 per cent to 89.8 per cent
21 deployment of wireless enhanced 911 service. That being the
22 case and there being a \$15,000,000 gap between the current fund



1 balance of the proposed fiscal year 2008 expenditures, the
2 legislature finds that it would appear the fund contains far in
3 excess of the funds the board needs and that the surcharge
4 should be suspended or discontinued.

5 The legislature further finds that the wireless enhanced
6 911 board's administration of the wireless enhanced 911 fund has
7 preempted both the department of health's statutory mandate to
8 assist each county in the development of a 911 emergency
9 telephone system and the county council's role in determining
10 whether provision of wireless enhanced 911 services is a budget
11 priority within their respective jurisdictions. The legislature
12 further finds that the mission of the board has crept from
13 reimbursement of the counties' wireless enhanced 911 service
14 deployment costs to making policy in excess of its authority and
15 expending funds for purposes not authorized by the legislature
16 and not in proportion to the costs imposed by the wireless
17 subscribers that pay the surcharge. The fund has become, in
18 effect, a solution in search of a problem.

19 VII. PURPOSE

20 SECTION 9. It is the purpose of this Act to:

- 21 (1) Suspend the wireless enhanced 911 surcharge
22 indefinitely;



1 (2) Provide that funds expended from the wireless enhanced
 2 911 fund for reimbursement of capital costs shall
 3 supplement, but not supplant, funds regularly
 4 appropriated by the counties;

5 (3) Require the wireless enhanced 911 board to present a
 6 multi-year plan to the legislature prior to the
 7 convening of the 2009 regular legislative session
 8 that:

9 (A) Establishes, if necessary, a surcharge no greater
 10 than is necessary to meet its requirements for
 11 fiscal years 2010 and 2011; and

12 (B) Proposes to refund surcharge funds not needed for
 13 fiscal years 2010 and 2011.

14 VIII. STATUTORY AMENDMENTS

15 SECTION 10. Section 138-4, Hawaii Revised Statutes, is
 16 amended by amending subsections (a) and (b) to read as follows:

17 "(a) A monthly wireless enhanced 911 surcharge, subject to
 18 this chapter, [~~shall~~] may be imposed upon each commercial mobile
 19 radio service connection.

20 (b) [~~The effective date of the surcharge shall be July 1,~~
 21 ~~2004.~~] The rate of the surcharge shall be set at 66 cents per
 22 month for each commercial mobile radio service connection[.]



1 until June 30, 2008. The surcharge shall be suspended
2 indefinitely effective July 1, 2008. The surcharge shall have
3 uniform application and shall be imposed on each commercial
4 mobile radio service connection operating within the State
5 except:

- 6 (1) Connections billed to federal, state, and county
7 government entities; and
8 (2) Prepaid connections."

9 SECTION 11. Section 138-5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) After January 1, 2005, every public safety answering
12 point shall be eligible to seek reimbursement from the fund
13 solely to pay for the reasonable costs to lease, purchase, or
14 maintain all necessary equipment, including computer hardware,
15 software, and database provisioning, required by the public
16 safety answering point to provide technical functionality for
17 the wireless enhanced 911 service pursuant to the Federal
18 Communications Commission order. Reimbursements under this
19 section shall supplement but not supplant the funds regularly
20 appropriated for these purposes. All other expenses necessary
21 to operate the public safety answering point, including but not
22 limited to those expenses related to overhead, staffing, and



1 other day-to-day operational expenses, shall continue to be paid
2 through the general funding of the respective counties."

3 SECTION 12. Section 138-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]**§138-6**[~~+~~] **Report to the legislature.** The board shall
6 submit an annual report to the legislature[~~7~~] no later than
7 twenty days prior to the convening of each regular session of
8 the legislature, beginning with the 2009 regular session,
9 including:

- 10 (1) The total aggregate surcharge collected by the State
11 in the last fiscal year;
- 12 (2) The amount of disbursement from the fund;
- 13 (3) The recipient of each disbursement and a description
14 of the project for which the money was disbursed;
- 15 (4) The conditions, if any, placed by the board on
16 disbursements from the fund;
- 17 (5) The planned expenditures from the fund in the next two
18 fiscal [~~year7~~] years;
- 19 (6) The amount of any unexpended funds carried forward for
20 the next fiscal year;



- 1 (7) A cost study to guide the legislature towards
2 necessary adjustments to the fund and the monthly
3 surcharge[+] that:
- 4 (A) Specifies the level of surcharge necessary to
5 fund the board's expenses and planned
6 expenditures; and
- 7 (B) Proposes to refund surcharge funds in excess of
8 the funds necessary to fund the board's expenses
9 and planned expenditures; and
- 10 (8) A progress report of jurisdictional readiness for
11 wireless E911 services, including each public safety
12 answering [~~points,~~] point, wireless [~~providers,~~]
13 service provider, and wireline [~~providers,~~] provider.
14 The report shall include the status of requirements
15 outlined in the Federal Communications Commission
16 Order 94-102 and subsequent supporting orders related
17 to phase I and phase II wireless 911 services."

IX. CONCLUSION

19 SECTION 13. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 14. This Act shall take effect on June 29, 2008.

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INTRODUCED BY: Kiric Caldwell

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JAN 23 2008



Report Title:

Wireless Enhanced 911; Surcharge

Description:

Suspends \$0.66 per month surcharge on wireless telephone accounts for deployment of system to locate wireless 911 callers. Requires wireless enhanced 911 board to present a 2-year plan to the 2009 legislature including expenditures for fiscal years 2010 and 2011, the level of surcharge necessary to support those expenditures, and return of surcharge funds in excess of those needed for fiscal years 2010 and 2011.

