

TESTIMONY OF INTRADO

Before the Hawaii Senate Finance Committee RE: SB 884

February 10, 2009

In 2005 the nation watched a major U.S. city drown. One lesson of the tragic events and aftermath of Hurricane Katrina, when mission critical networks proved to be unreliable and government officials were unable to communicate with each other, is that effective public safety networks *cannot and should not be considered a luxury*. Moreover, funding mechanisms designed to pay for public emergency communications systems has only recently begun to address the gap between traditional support mechanisms for outdated analog systems and the level of support needed for the transition that includes advanced communications technologies. Indeed, Hawaii's enabling legislation for enhanced wireless was enacted in 2004.

SB 884 Is Inconsistent with Federal Policy Direction

The federal government has renewed its commitment to the modernization of public safety networks. Indeed, a recent Congressional Research Service report on the future of emergency communications affirms that Congress is committed to making the promise of next-generation public safety networks a reality. In similar fashion, the Obama Administration has called for the modernization of public safety networks to spur the development of technologies to promote interoperability, broadband access, and more effective communications among first responders and emergency response systems. Significantly, the recently enacted federal NET 9-1-1 Act contains a provision that directs the FCC to ensure that state 9-1-1 funds are protected and used for the purpose for which they are intended.¹ Thus, the direction of change is clear and, with recent lessons vivid in the nation's collective memory, state legislators should resist the urge to reduce 911 funds to close budget deficits..²

Hawaii Has Extraordinary Needs Related to 9-1-1

Hawaii, an island nation, is no less shielded from cataclysmic natural disasters than is any other area of the United States. Furthermore, it is susceptible to hurricanes, volcanic eruptions, and tsunamis as are other Pacific Rim locations.³ Nonetheless, S.B. Number 884, without a strong public policy rationale, seeks to transfer \$9M from the enhanced

¹ *New And Emerging Technologies Act of 2009*, Sec 101 (6)(f); See also, Moore, Linda K., CRS Report for Congress. "Emergency Communications: The Future of 911," November 21, 2008, http://assets.opencrs.com/rpts/RL32939_20080228.pdf

² SB 884 states in pertinent part that "any funds that accumulate in the wireless enhanced fund shall be retained in the fund unless determined by the legislature to be in excess (Sec 2 §138-3) ... The legislature determines that there is in the wireless enhanced fund at least \$9,000,000 in excess of the requirements of the fund" (Sec. 5).

³ Tsunamis struck the Big Island at Hilo in 1946 and 1960 and were two of the largest tsunamis recorded in the Pacific. Others struck the group in 1952, 1957, and 1975. Five serious hurricanes have struck Hawaii since 1950, including Iwa in 1982 that caused \$230M in damage and Iniki in 1992 that caused over \$2B in property damage.

wireless fund to the general fund. Regardless of whether \$9M or any portion thereof can be proved to be “excess,” such proposed action is not prudent. This is because wireless penetration and adoption in Hawaii is not expected to decline. Table 1 below provides data demonstrating the relationship between increasing use of wireless communications technologies and calls to 911 that are originated using wireless devices.

Table 1: Comparison of Wireless Penetration and 9-1-1 Calling

Year	% CMRS Penetration	% CMRS Penetration	% 9-1-1 Calls
	National	Hawaii	National
1996	16.5 %	XX	13.0 %
2002	48.0 %	56.9%	41.6 %
2004	61.8 %	68.5%	48.7 %
2006	73.3 %	76.5%	55.9 %
2008*	>80 %	>80%	60.9 %

* Estimates

The data in Table 1 show that wireless penetration in Hawaii is (i) increasing, (ii) tracks with national wireless penetration trends, and (iii) neither shows any signs of reversing course.⁴ The percentage of calls received by PSAPs nationwide that are originated from wireless devices nationwide end of year 2008 has reached more than 60 %. Hawaii, likewise, follows the national trend. Thus, it is illogical to contemplate constraining the state’s emergency response systems at the same time that the citizens of Hawaii increasingly rely on wireless technology for all communications needs.

SB 884 Undermines Support for State / Local Oversight of Emergency Services

Intrado strongly supports state authority and control over 9-1-1 governance and funding. That said, however, Intrado fears that states will significantly weaken their case for oversight if public funds that are currently targeted to saving lives are given over to purposes for which they were not intended.

Thank you for your consideration and the opportunity to testify.

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⁴ Data sources include FCC Reports on Local Competition (wireless subscription), DOT Quick Fact (population), and Intrado internal data on national wireless calling patterns.

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SUBJECT: MISCELLANEOUS, Transfer of non general funds

BILL NUMBER: SB 884; HB 1066 (Identical)

INTRODUCED BY: SB by Hanabusa by request; HB by Say by request

BRIEF SUMMARY: Amends HRS section 138-3 to remove the restriction that moneys in the wireless enhanced 911 fund shall not be general funds of the state. Also provides that any funds that accumulate in the fund shall be retained in the fund unless determined by the legislature to be in excess.

Amends HRS section 342G-104 to provide that any funds in the deposit beverage container deposit special fund shall be retained in the fund unless the legislature determines that it is in excess.

If the legislature determines that there is at least an excess of \$10 million in the deposit beverage container deposit special fund on July 1, 2009, it shall authorize the director of finance to transfer \$10 million to the general fund for fiscal 2010.

If the legislature determines that there is at least an excess of \$9 million in the wireless enhanced 911 fund on July 1, 2009, it shall authorize the director of finance to transfer \$9 million to the general fund for fiscal 2010.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This is an administration measure submitted by the department of budget and finance BUF-13(09). The proposed measure would transfer moneys in special funds, that are determined to be in excess of what is needed in the fund, to the general fund. The measure proposes to transfer \$10 million from the deposit beverage container deposit special fund and \$9 million from the wireless enhanced 911 fund. Due to the state budget shortfall, lawmakers are searching to moneys to cover that shortfall and are tapping the various special funds of the state.

It should be noted that the transfer of moneys from special funds to the general fund was found to be unconstitutional. In Hawaii Insurers Council v. Lingle, Hawaii Supreme Court, No. 27840, December 18, 2008, the court found that the transfer of moneys held in a special fund to the general fund was unconstitutional under the separation of powers doctrine. The court determined that the assessments which were deposited into a special fund were regulatory fees since they were imposed because they were: (1) imposed by a regulatory agency; (2) the agency placed the moneys in a special fund; and (3) the money was not used for a general purpose but to defray expenses generated by the insurers. The transfer of moneys from the special fund to the general fund was unconstitutional because it made the fees collected by the agency for a specific purpose as if they were derived from general tax revenues. The court found that the legislature's bills to transfer the moneys from the special fund to the general fund resulted in an "impermissible blurring of the distinction between the executive power to assess regulatory fees and the legislative power to tax for general purposes." While this measure proposes to transfer

moneys from special funds to the general fund, such transfer may be unconstitutional. Before pursuing this proposal, an opinion from the attorney general should be secured.

It should be remembered that the 1990 legislature directed the State Auditor to evaluate all special and revolving funds as of July 1, 1990 and recommend whether they should be continued or eliminated. The Auditor is also to examine any new or proposed special or revolving fund which would decrease general fund revenues. While the Auditor had a completion date of 1995, the review was completed in 1992.

The Auditor's report noted that, "Special funds give agencies full control of these unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. Many experts say that special funds are likely to hamper budget administration. And from a legislative perspective, they are less desirable because they are not fully controlled by the appropriation process."

Given the findings of the Auditor and the current financial crisis, it is quite clear that the creation of numerous special funds has eroded the integrity of state finances. Moneys in special funds are neither subject to the general fund expenditure limitation nor to the close scrutiny that general funds are subject to in the budgeting process. Special funds which earmark general fund revenues cannot be justified as they restrict budget flexibility, create inefficiencies, and lessen accountability.

There is no doubt that carving out portions from the general fund has created the lack of funds lawmakers face each year. Such a shortfall will inevitably lead to a call for tax increases even though money abounds in these special funds. One only has to review the measures introduced each year which set up numerous new special funds or add new fees or charges, the receipts of which are earmarked for special funds, to see the prolific establishment of special funds. The result is what this measure proposes to do, to raid these special funds.

As has been consistently noted, these fees were increased or approved and earmarked for totally irrelevant programs. The result has been this mismatch of either not enough funds to carry out the program or, as in this case, an excess of funds that then become the target for a raid like this. Lawmakers should learn a lesson and repeal many of the earmarked sources and their special funds and cease from creating any more new special funds or earmarking any more revenues for such worthy causes.

It should be noted that since the enhanced 911 system is up and running in the state, it is questionable whether the wireless enhanced 911 surcharge is still necessary.

Digested 2/10/09