

JAN 25 2010

S.B. NO. 2769

A BILL FOR AN ACT

RELATING TO ENHANCED 911 SERVICES.

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

1 SECTION 1. The legislature finds that Public Law 110-283,
2 the New and Emerging Technologies 911 Improvement Act of 2008,
3 became law on July 23, 2008. The purpose of the Act is to
4 facilitate the rapid deployment of internet protocol-enabled 911
5 and enhanced 911 services, encourage the nation's transition to
6 a national internet protocol-enabled emergency network, and
7 improve 911 and E-911 access to those with disabilities. Hawaii
8 is one of only six states that do not have a single entity that
9 coordinates all enhanced 911 services and has instead only the
10 wireless enhanced 911 board that administers cost recovery for
11 provision of wireless enhanced 911 services in the State.

12 The legislature also finds that technologies involved in
13 providing enhanced 911 services have converged to a point that
14 systems required to provide such service are blended and are
15 evolving to accept other forms of communications such as text,
16 video, and telematics data. The current surcharges for wireline
17 enhanced 911 service, administered by the public utilities



1 commission, and wireless enhanced 911 service do not account for
2 prepaid wireless connections or for future technologies such as
3 broadband service or internet protocol-enabled services. In
4 addition, the wireless enhanced 911 board does not include
5 members of other communications service providers that may begin
6 to offer enhanced 911 service.

7 The purpose of this Act is to promote and protect the
8 safety of residents and visitors alike by establishing a single
9 state entity to administer enhanced 911 services for the State.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 **"Chapter**

14 **ENHANCED 911 SERVICES**

15 § -1 **Definitions.** As used in this chapter, unless the
16 context requires otherwise:

17 "911" means the digits, address, internet protocol address,
18 or other information used to access or initiate a call to a
19 public safety answering point.

20 "911 service" means a public communications service that
21 provides service users with the ability to reach a public safety
22 answering point by accessing a "9-1-1 system".



1 "911 system" means an emergency telephone system that
2 includes the following features:

3 (1) Enables the user of a voice or data communications
4 service connection to reach a public safety answering
5 point by dialing 911;

6 (2) The voice communications service may be telephone
7 service, computer service, wireless service, or other
8 service that facilitates the placing of calls by
9 persons in need of emergency services to a public
10 safety answering point;

11 (3) The data communications service may be text message or
12 some other service that transmits data exclusively;
13 and

14 (4) Provides enhanced 911 service.

15 "Board" means the enhanced 911 board established under this
16 chapter.

17 "Call" means any communication, message, signal, or
18 transmission.

19 "Communication service" means a service capable of
20 accessing, connecting with, or interfacing with a 911 system, by
21 dialing, initializing, or otherwise activating the 911 system by
22 means of a local telephone device, cellular telephone device,



1 wireless communication device, interconnected voice over the
2 internet device, or any other means.

3 "Communications service connection" means each telephone
4 number assigned to a residential or commercial subscriber by a
5 communications service provider, without regard to technology
6 deployed.

7 "Communications service provider" means an entity that
8 provides communications service to a subscriber.

9 "Enhanced 911 fund" or "fund" means the statewide special
10 fund established to ensure adequate cost recovery for the
11 deployment of enhanced 911 services in this State, as provided
12 for in Public Law 110-283.

13 "Enhanced 911 service costs" means all nonrecurring and
14 recurring capital costs directly related or ancillary to the
15 implementation, operation, and administration of enhanced 911
16 services.

17 "Prepaid connection" means the sale of a telecommunications
18 service that provides the right to utilize service and other
19 non-telecommunications services, including the download of
20 digital products delivered electronically, content, and
21 ancillary services that must be paid for in advance and that is



1 sold in predetermined units of dollars of which the number
2 declines with use in a known amount.

3 "Proprietary information" means customer lists and other
4 related information (including the number of customers),
5 technology descriptions, technical information, or trade
6 secrets, and the actual or developmental costs of enhanced 911
7 service that are developed, produced, or received internally by
8 a communications service provider or by a provider's employees,
9 directors, officers, or agents.

10 "Public safety agency" means a functional division of the
11 State or a county that provides or has authority to provide, or
12 a private entity contracted by a state or county agency that
13 provides, firefighting, law enforcement, ambulance, medical, or
14 other emergency services.

15 "Public safety answering point" means the public safety
16 agency that receives incoming 911 calls and dispatches
17 appropriate public safety agencies to respond to those calls.

18 "Reseller" means a person or entity that purchases
19 communications services from a communications service provider
20 for the purpose of reselling communications service to end-
21 users.



1 "Voice-over-internet-protocol provider" means an entity
2 that provides interconnected voice-over-internet-protocol
3 service.

4 § -2 **Enhanced 911 board.** (a) There is created within
5 the department of public safety, for administrative purposes, an
6 enhanced 911 board consisting of fourteen voting members;
7 provided that the membership shall consist of:

- 8 (1) The director of public safety or designee;
- 9 (2) The chairperson of the public utilities commission or
10 designee;
- 11 (3) The consumer advocate or designee;
- 12 (4) The comptroller or designee;
- 13 (5) One representative each from Oahu, Hawaii, Kauai,
14 Maui, and Molokai, who is employed by or manages the
15 respective primary public safety answering point and
16 who shall be appointed by the governor without regard
17 to section 26-34;
- 18 (6) One representative from the predominant voice-over-
19 internet-protocol communications service provider, who
20 shall be appointed by the governor as provided in
21 section 26-34;



1 (7) Three representatives from the wireless communications
2 service providers, one of whom shall represent network
3 based carriers and two of whom shall represent global
4 positioning system-based carriers, all of whom shall
5 be appointed by the governor for terms of two years
6 but otherwise as provided in section 26-34; and

7 (8) One representative of the incumbent local exchange
8 carrier company in the State, who shall be appointed
9 by the governor, as provided in section 26-34.

10 (b) A simple majority of the voting members of the board
11 shall constitute a quorum, whose affirmative vote shall be
12 necessary for all actions by the board.

13 (c) The consumer advocate or designee shall serve as the
14 chairperson of the board and vote only in the event of a tie.

15 (d) The board shall meet upon the call of the chairperson
16 or a majority of the board but not less than quarterly.

17 (e) Each voting member shall hold office until the
18 member's successor is appointed and qualified. Section 26-34
19 shall apply only insofar as it relates to succession, vacancies,
20 and suspension of board members, and as provided in subsection

21 (a).



1 (f) Members of the board shall serve without compensation
2 provided that members shall be entitled to reimbursements from
3 the enhanced 911 fund for reasonable expenses, including travel
4 expenses, necessarily incurred in connection with the
5 performance of board duties.

6 (g) The board or its chairperson, with the approval of the
7 board, may retain independent, third-party accounting firms,
8 consultants, or other third parties to:

9 (1) Create reports, conduct audits or assessments, make
10 payments into the fund, process checks, and make
11 distributions from the fund, as directed by the board
12 and as allowed by this chapter; and

13 (2) Perform administrative duties necessary to administer
14 the fund or oversee operations of the board, including
15 providing technical advisory support.

16 (h) The board shall develop reasonable procedures to
17 ensure that all members receive adequate notice of board
18 meetings and information concerning board decisions.

19 (i) The board shall adopt rules pursuant to chapter 91
20 necessary for the purposes of this chapter.

21 § -3 **Enhanced 911 fund.** There is established outside
22 the state treasury a special fund, to be known as the enhanced



1 911 fund, to be administered by the board. The fund shall
2 consist of amounts collected under section -4. Moneys paid
3 into the fund are not general fund revenues of the State. The
4 board shall place the funds in an interest-bearing account at
5 any federally insured financial institution, separate and apart
6 from the general fund of the State. Moneys in the fund shall be
7 expended by the board for the exclusive purposes of ensuring
8 adequate funding for the deployment and sustainment of enhanced
9 911 services and for expenses of administering the fund.

10 § -4 **Surcharge.** (a) A monthly enhanced 911 surcharge,
11 subject to this chapter, shall be imposed upon each
12 communications service connection.

13 (b) The enhanced 911 surcharge shall be 55 cents per month
14 for each communications service connection. The surcharge shall
15 have uniform application and shall be imposed on each
16 communications service connection operating within the State to
17 ensure parity of protection, except connections billed to
18 federal, state, or county government entities.

19 (c) All communications service providers and resellers
20 shall bill to and collect from each of their customers a monthly
21 surcharge at the rate established for each communications
22 service connection. The communications service provider or



1 reseller may list the surcharge as a separate line item on each
2 bill. If a communications service provider or reseller receives
3 a partial payment for a monthly bill from a communications
4 service customer, the communications service provider or
5 reseller shall apply the payment against the amount the customer
6 owes the communications service provider or reseller, before
7 applying the partial payment against the surcharge.

8 (d) All communications service providers that provide
9 communication service through a prepaid connection shall also
10 remit the surcharge to the board. The communications service
11 provider shall collect the surcharge on a monthly basis from
12 each active prepaid connection customer whose account balance is
13 equal to or greater than the amount of the surcharge.

14 (e) A communications service provider that:

15 (1) Is collecting the surcharge and remitting appropriate
16 portions of the surcharge to the fund pursuant to this
17 chapter; and

18 (2) Has been requested by a public safety answering point
19 to provide enhanced 911 services in a particular
20 county or counties,

21 may recover enhanced 911 service costs as provided in this
22 chapter.



1 (f) Each communications service provider or reseller may
2 retain two per cent of the amount of surcharges collected to
3 offset administrative expenses associated with billing and
4 collecting the surcharge.

5 (g) A provider of 911 service that collects a surcharge
6 pursuant to section 269-16.95 may retain the fee until an audit
7 is conducted by the board. If the audit finds any cause for
8 either a reduction or increase of the surcharge, the board shall
9 take action to ensure that the surcharge amount provides a fair
10 and reasonable fee consistent with national cost models and is
11 sufficient to enable the service providers to provide enhanced
12 911 services for their customers.

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

20 (i) The surcharges collected by the communications service
21 provider or reseller pursuant to this section shall not be



1 subject to any tax, fee, or assessment, nor are they considered
2 revenue of the provider or reseller.

3 (j) Each customer who is subject to this chapter shall be
4 liable to the State for the surcharge until it has been paid to
5 the communications service provider. Communications service
6 providers shall have no liability to remit surcharges that have
7 not been paid by customers. A communications service provider
8 or reseller shall have no obligation to take any legal action to
9 enforce the collection of the surcharge for which any customer
10 is billed. However, the board may initiate a collection action
11 against the customer. If the board prevails in a collection
12 action, reasonable attorney's fees and costs shall be awarded.
13 The communications service provider, on a quarterly or other
14 periodic basis established by the board, shall provide to the
15 board a list of delinquent accounts that includes the customer
16 name, billing address, and the amount of the surcharge that has
17 not been collected.

18 (l) At any time the members deem it necessary and
19 appropriate, the board may meet to make recommendations to the
20 legislature as to whether the surcharge and fund should be
21 discontinued or amended.



1 (m) When considering whether to discontinue or amend the
2 surcharge or fund, the board's recommendations shall be based on
3 the most current available information concerning costs
4 associated with providing enhanced 911 service.

5 § -5 Use of the fund.. (a) Each public safety answering
6 point may seek cost recovery from the fund solely to pay for the
7 reasonable costs to lease, purchase, or maintain all equipment,
8 including computer hardware, software, database provisioning,
9 and support services, required by the public safety answering
10 point to provide technical functionality for the enhanced 911
11 service.

12 (b) The board may make purchases and enter into agreements
13 on behalf of one or more public safety answering points to pay
14 for the reasonable costs to lease, purchase, or maintain all
15 necessary equipment, including computer hardware, software,
16 database provisioning, and support services, required by the
17 public safety answering point to provide and administer
18 technical functionality for the enhanced 911 service.

19 (c) Each communications service provider that provides
20 enhanced 911 service may request reimbursement from the fund for
21 reasonable costs incurred for providing enhanced 911 service.
22 In no event shall a communications service provider be



1 reimbursed for any amount above its actual costs to provide
2 enhanced 911 service.

3 § -6 Report to the legislature. (a) On or before
4 January 1, 2011, the board shall submit to the legislature a
5 statewide 911 deployment plan, including:

6 (1) A timeline for the deployment of a next generation 911
7 internet protocol-enabled network;

8 (2) A study that details the costs of equipment, network,
9 support services, and staff necessary to deploy and
10 operate a next generation 911 internet protocol-
11 enabled network; and

12 (3) Changes to the enhanced 911 surcharge needed to
13 support the funding of a next generation 911 internet
14 protocol-enabled network.

15 (b) The board shall submit an annual report to the
16 legislature not less than twenty days before the convening of
17 each regular session, including:

18 (1) The total aggregate surcharge collected by the State
19 in the last fiscal year;

20 (2) The amount of expenditures paid by the fund;

21 (3) The recipient of each payment and a description of the
22 project;



- 1 (4) The conditions, if any, placed by the board on
- 2 payments from the fund;
- 3 (5) The planned expenditures from the fund in the next
- 4 fiscal year and subsequent four fiscal years;
- 5 (6) The amount of any unexpended funds carried forward for
- 6 the next fiscal year;
- 7 (7) A cost study for the next fiscal year and subsequent
- 8 four fiscal years, to guide the legislature towards
- 9 necessary adjustments to the fund and the monthly
- 10 surcharge; and
- 11 (8) A status report on E911 services, including public
- 12 safety answering points, and communications service
- 13 providers.

14 § -7 **Audits.** (a) During any period in which an

15 enhanced 911 surcharge is imposed upon customers, the board may

16 request an audited report prepared by an independent certified

17 public accountant, to determine whether the amounts recovered by

18 public safety answering points, pursuant to section -5(a),

19 and by communications service providers, pursuant to section

20 -4(a), are limited to only those costs and expenses directly

21 related to the provision of enhanced 911 service, as authorized

22 by this chapter. The cost of the audited reports shall be



1 considered an expense of the board. The board shall prevent
2 public disclosure of proprietary information contained in the
3 audited report, unless required by court order or appropriate
4 administrative agency decision.

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

12 § -8 **Proprietary information.** (a) All proprietary
13 information submitted to the board by any third party used by
14 the board in connection with its duties or any public safety
15 answering point in deploying enhanced 911 services shall be
16 retained in confidence. Proprietary information submitted
17 pursuant to this chapter shall not be released to any person,
18 other than to the submitting communications service provider or
19 reseller, the board, or any independent, third-party accounting
20 firm retained by the board, without the express permission of
21 the submitting communications service provider or reseller.
22 General 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 communications service provider.

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

17 (c) A committee consisting of all board members, except
18 the communications service provider representatives, shall have
19 the power to act for the board on the specific matters defined
20 by the board, when at least two-thirds of the members of the
21 board determine that a board action may be conducted by the



1 committee to prevent disclosure of proprietary information to
2 the communications service provider representatives.

3 § -9 **Limitation of liability.** (a) Notwithstanding any
4 law to the contrary, in no event shall any communications
5 service provider, reseller, or their respective employees,
6 directors, officers, assigns, affiliates, or agents, except in
7 cases of gross negligence or wanton and wilful misconduct, be
8 liable for any civil damages or criminal liability resulting
9 from the death or injury to a person or from damage to property
10 incurred by any person in connection with any act or omission in
11 developing, designing, adopting, establishing, installing,
12 participating in, implementing, maintaining, or providing access
13 to enhanced 911 or any other communications service intended to
14 help persons obtain emergency assistance. In addition, no
15 communications service provider, reseller, or their respective
16 employees, directors, officers, assigns, affiliates, or agents
17 shall be liable for civil damages or criminal liability in
18 connection with the release of customer information to any
19 governmental entity, including any public safety answering
20 point, as required under this chapter.

21 (b) In no event shall any public safety answering point,
22 or its employees, assigns, or agents, or emergency response



1 personnel, except in cases of gross negligence or wanton and
2 wilful misconduct, be liable for any civil damages or criminal
3 liability resulting from the death or injury to the person or
4 from damage to property incurred by any person in connection
5 with any act or omission in the development, installation,
6 maintenance, operation, or provision of enhanced 911 service.

7 § -10 **Database or location information.** (a) Any data
8 or information contained in a database of the enhanced 911
9 calling system is the sole property of the State and shall be
10 maintained by the communications service provider designated by
11 the board.

12 (b) Communications service location information, including
13 geographical information systems information produced by any
14 public safety answering point or public safety agency or its
15 personnel for public safety purposes shall not be a government
16 record subject to disclosure under chapter 92F.

17 (c) No person shall disclose or use, for any purpose other
18 than the enhanced 911 calling system, information contained in
19 the database of the enhanced 911 calling system established
20 pursuant to this chapter.

21 § -11 **Dispute resolution.** (a) Any communications
22 service provider, reseller, or public safety answering point



1 aggrieved by a decision of the board shall have the right to
2 petition the board for reconsideration within ten days following
3 the rendering of the board's decision. As part of its request
4 for reconsideration, the aggrieved party may present any
5 reasonable evidence or information for the board to consider.
6 The board shall render its decision on the reconsideration
7 petition as soon as reasonably possible, but not later than
8 thirty days after the reconsideration request is made.

9 (b) An aggrieved party, following the completion of the
10 reconsideration petition process, upon agreement of the other
11 party, may have the dispute resolved through final and binding
12 arbitration by a single arbitrator in accordance with the
13 Industry Arbitration Rules of the American Arbitration
14 Association. The costs of the arbitration, including the fees
15 and expenses of the arbitrator, shall be borne by the non-
16 prevailing party of any arbitration proceeding. The
17 arbitrator's decision shall be final and binding and may be
18 confirmed and enforced in any court of competent jurisdiction.


19 (c) Nothing in this section shall preclude any
20 communications service provider, reseller, or public safety
21 answering point from pursuing any existing right or remedy to
22 which it is entitled in any court having jurisdiction thereof.



1 § -12 **Service contracts.** A communications service
2 provider shall not be required to provide enhanced 911 service
3 until the communications service provider and the board or
4 public safety answering point providing enhanced 911 service in
5 the county or counties in which the communications service
6 provider is licensed to provide communications service have
7 entered into a written agreement setting forth the basic terms
8 of service to be provided."

9 SECTION 3. Chapter 138, Hawaii Revised Statutes, is
10 repealed.

11 SECTION 4. This Act shall take effect on July 1, 2010.
12

INTRODUCED BY: Will Ezew
Ronny
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Report Title:

Enhanced 911 Service; Emerging Technologies

Description:

Establishes a monthly surcharge on communications service connections to fund deployment and operation of enhanced 911 system communications service providers and public safety agencies. Creates enhanced 911 board to oversee collection and distribution of surcharge funds. Requires reports to the legislature, protection of proprietary information, and regular audits of the fund. Repeals Chapter 138, HRS (enhanced 911 services for mobile phones).

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