

# **SB 3103**

## **RELATING TO ENHANCED 911 SURCHARGES**

Imposes an enhanced 911 surcharge upon prepaid wireless telecommunications service providers.

PSM/CPN, WAM

TESTIMONY  
OF  
PAUL K. FERREIRA,  
STATE OF HAWAII, ENHANCED 911 BOARD  
TO THE  
SENATE COMMITTEES  
ON  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS  
AND  
ON  
COMMERCE AND CONSUMER PROTECTION  
ON  
FEBRUARY 6, 2014  
2:45 P.M.  
STATE CAPITOL, CONFERENCE ROOM 224

IN SUPPORT WITH AMENDMENTS  
OF  
SENATE BILL 3103  
RELATING TO ENHANCED 911 SURCHARGES

Chair Espero, Chair Baker, Vice Chair Taniguchi, and members of the committees, thank you for the opportunity to testify on SB 3103.

The Enhanced 911 Board supports what we believe is the intended concept of SB 3103 to collect the 911 surcharge from prepaid wireless consumers at the retail point of sale, however, there is unclear language in SB 3103 that is confusing. In light of that fact, we are offering amendments to SB 3103 that reflect model legislation from the wireless industry with two differences. In summary these are:

1. The 911 surcharge be collected on prepaid wireless at 66 cents per retail transaction at the point of sale which is the same as the 911 surcharge today for postpaid wireless bringing parity, fair and equitable to all.
2. The retailers submit the 911 surcharge collected at the retail point of sale to ehawaii.gov, as is the retailer's procedure today on other State matters.

The collection on prepaid wireless 911 surcharge is very important in order to sustain adequate funding for enhanced 911 statewide. Our testimony is provided today on behalf of the thirteen members Enhanced 911 Board that is comprised of representatives from each of the Public Safety Answering Points (PSAP's), representatives of the communications service providers, the public utility, and representatives from State agencies.

911 surcharges should be imposed in a fair and equitable manner with respect for prepaid mobile service like the 911 surcharge is collected today for postpaid wireless. The 911 surcharge should be imposed upon all consumers of telecommunication services that have the ability to access 911. This is an important funding mechanism to assist state and local governments in sustaining 911 systems and to provide for the deployment of new and emerging technologies. Prepaid wireless telecommunications services are an important segment of the telecommunications industry and have grown in use by consumers; however, today prepaid wireless consumers are exempt from the surcharge and yet have always had access to 911.

Today consumers of prepaid wireless are being subsidized by postpaid consumers who pay a monthly 911 surcharge. To be fair and equitable prepaid wireless consumers should not be exempt from the 66 cent 911 surcharge and therefore should pay 66 cents 911 surcharge per transaction at the point of sale.

The telecommunications industry association estimates prepaid wireless consumers represent approximately 20% of the consumer market in Hawaii. All states have experienced tremendous growth of prepaid which is why 36 states have now adopted legislation to collect a 911 surcharge from prepaid wireless consumers. The prepaid business model rather than postpaid contracts is the trend for the wireless industry today. While in the beginning prepaid was a good option for low income consumers, this is not the only consumers opting for prepaid rather than a contract today. The commercial ads on Super Bowl Sunday made it evident that the prepaid consumer is a broad market in the competitive market of the wireless industry. Contracts will likely be non-existent in the near future. Without the collection of the 911 surcharge on prepaid wireless, the state of Hawaii will be facing reductions in revenue to support our 911 system.

Wireless Enhanced 911 was established by the State of Hawaii in 2004. The 911 surcharge has to date been funded in the postpaid model. The 911 surcharge is service connections that are purchased by consumers at retail on a "pay as you go" basis with no contracts or monthly bills.

SB 3103 as is written doesn't appear to remove the exemption on prepaid service connections but does establish a one-time enhanced 911 surcharge to be imposed upon each prepaid wireless telecommunication service. Given consumers of prepaid wireless are "pay as

Testimony of Paul K. Ferreira, State Of Hawai'i, Enhanced 911 Board  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Senate Committee on Commerce and Consumer Protection

February 5, 2014

Page 3

you go" a one-time fee for prepaid is not fair and equitable. What is fair and equitable would be to collect the 911 surcharge of 66 cents per transaction at the point of sale. This 911 surcharge would be collected at each sale at the time of purchase directly from the consumer. The surcharge on prepaid like postpaid would be remitted to the special fund established for enhanced 911 outside the State Treasury known as the Enhanced 911 fund that is administered by the Enhanced 911 Board. Moneys in the fund are expended exclusively by the board for the purposes of ensuring adequate funding to deploy and sustain enhanced 911 services statewide.

The benefit to the public is a comprehensive, efficient, and coordinated statewide 911 system serving all citizens that is funded in a fair and equitable manner for all.

For these reasons, we urge the committees to support our amendments that we have provided with this testimony. Thank you for this opportunity to testify on this important matter.

Sincerely,



PAUL K. FERREIRA  
LEGISLATIVE COMMITTEE CHAIR  
WIRELESS E911 BOARD

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## A BILL FOR AN ACT

RELATING TO ENHANCED 911 SERVICES.

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

SECTION 1. Section 138-3, Hawaii Revised Statutes, is amended to read as follows:

"§138-3 **Enhanced 911 fund.** There is established outside the state treasury a special fund, to be known as the enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under sections 138-4 and 138-4.5. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from ~~the~~ general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate funding to deploy and sustain enhanced 911 service, developing and funding future enhanced 911 technologies, and funding future enhanced 911 technologies, and funding expenses of administering the fund. [L 2004, c 159, pt of §2; am L 2009, c 79, §2; am L 2011, c 168, pt of §1]"

SECTION 2. Chapter 138, Hawaii Revised Statutes, is amended by adding a new section and to read as follows:

"§138-4.5 Prepaid Wireless Surcharge. (a) As used in this section, unless the context requires otherwise:

"Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

"Department" means the eHawaii.Gov.

"Prepaid wireless E911 surcharge" means the surcharge that is required to be collected by a seller from a consumer in the amount established under subsection (b) of this section.

"Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

"Seller" means a person who sells prepaid wireless telecommunications service to another person.

"Wireless telecommunications service" means commercial mobile radio service.

(b) A prepaid wireless E911 surcharge of 66 cents shall be imposed on each retail transaction.

(c) The prepaid wireless E911 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring within the State. The amount of the prepaid wireless E911 surcharge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(d) For purposes of subsection (c) of this section, a retail transaction that is transacted in person by a consumer at a business location of the seller shall be treated as occurring within the State if that business location is within the State, and any other retail transaction shall be treated as occurring within the State if the retail transaction is treated as occurring in the State for purposes of the tax imposed under section 237-13.8. Provided, however, that if no tangible personal property is shipped and the billing address of the

consumer or the consumer's payment instrument is not known, the transaction shall be sourced to the State if the consumer's mobile telephone number is associated with an address within the State.

(e) The prepaid wireless E911 surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in this section, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(f) The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the State, any political subdivision of the State, or any intergovernmental agency.

(g) If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the surcharge imposed in subsection (b) to



the transaction. For purposes of this paragraph, an amount of service denominated as ten (10) minutes or less, or five dollars (\$5) or less, is minimal.

(h) Prepaid wireless E911 surcharges collected by sellers shall be remitted to the Department. The Department may require sellers to remit the surcharge electronically. The Department shall establish registration and payment procedures.

(i) A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911 surcharges that are collected by the seller from consumers.

(j) The audit and appeal procedures applicable to retailers under the General Excise Tax Law imposed by chapter 237 shall apply to prepaid wireless E911 surcharges.

(k) The Department shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under the General Excise Tax Law imposed by chapter 237.

(l) The Department shall transfer all remitted prepaid wireless E911 surcharge funds to the Enhanced E911 fund established under section 138-3 within thirty (30) days of

receipt, for use in accordance with the purposes permitted by this chapter. The Department may retain an amount, not to exceed two percent (2%) of collected charges, to reimburse its direct costs of administering the prepaid wireless E911 charges.

(m) (1) The provisions of section 138-9 shall apply to providers and sellers of prepaid wireless telecommunications service.

(2) No provider or seller shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

(n) The prepaid wireless E911 surcharge imposed by this section shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service within the State, and no tax, fee, surcharge, or other charge shall be imposed by the State, any political subdivision of the State, or any intergovernmental agency, for E911 funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2015.

INTRODUCED BY: \_\_\_\_\_

**Report Title:**

Enhanced 911 Surcharge; Prepaid Connection

**Description:**

Establishes an enhanced 911 surcharge for prepaid connections at  
\_\_\_cents per transaction at the point of sale.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 05, 2014 2:52 PM  
**To:** PSMTestimony  
**Cc:** tina@tfhawaii.org  
**Subject:** Submitted testimony for SB3103 on Feb 6, 2014 14:45PM  
**Attachments:** S3103-14.pdf

**SB3103**

Submitted on: 2/5/2014

Testimony for PSM/CPN on Feb 6, 2014 14:45PM in Conference Room 224

| <b>Submitted By</b> | <b>Organization</b>      | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------|---------------------------|---------------------------|
| Thomas Yamachika    | Tax Foundation of Hawaii | Comments Only             | Yes                       |

Comments: Here is the Tax Foundation of Hawaii testimony on SB 3103.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Impose enhanced 911 surcharge on prepaid phones

BILL NUMBER: SB 3103

INTRODUCED BY: Espero

BRIEF SUMMARY: Amends HRS section 138-4 to provide that the enhanced 911 surcharge of \_\_\_ shall be imposed as a one-time charge on prepaid wireless telecommunications service.

EFFECTIVE DATE: January 1, 2015

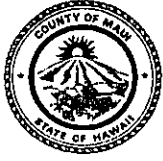
STAFF COMMENTS: The legislature by Act 159, SLH 1994, established a wireless enhanced 911 surcharge of 66 cents per month and a wireless enhanced 911 fund to allow deployment of phase 1 and phase 2 of the wireless enhanced 911 service and expenses of administering the fund. The wireless enhanced 911 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 Act 79, SLH 2009, the legislature determined that there was \$16 million in wireless enhanced 911 funds in excess of the requirements of the programs serviced by the funds. At the time, public safety officials pointed out that diversion of receipts in the fund would disqualify the state from participating in federal grant programs to enhance the technology of 911 systems. It now may be a good time for lawmakers to investigate whether all the funding needs of the system have been made and if upgrades are still needed. Are there technologies still to be implemented to fully operate the system? Is the rate too high, bringing in revenues faster than they can be spent? If the latter is true, then lawmakers should consider reducing the rate so the monthly burden will not be as great on the users.

Currently, wireless phones are assessed a surcharge of 66 cents per month while landline phones are assessed 27 cents per month. Prepaid service connections or prepaid pay as you go cell phones are exempt from this surcharge. Inasmuch as these prepaid phones have access to the enhanced 911 services, from the standpoint of equity, these prepaid phones should also be assessed a comparable amount.

In addition, prepaid phones may be recharged with minutes purchased online. Decisions also need to be made about how to treat recharges; the current language appears to allow recharges to be exempt because the intent appears to be to surcharge prepaid phones only once.

Digested 2/5/14



ALAN M. ARAKAWA  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411



GARY A. YABUTA  
CHIEF OF POLICE

CLAYTON N.Y.W. TOM  
DEPUTY CHIEF OF POLICE

February 5, 2014

The Honorable Will Espero, Chair  
And Members of the Committee on Public Safety,  
Intergovernmental and Military Affairs  
The Senate  
State Capitol  
Honolulu, HI 96813

The Honorable Rosalyn H. Baker, Chair  
And Members of the Committee on Commerce  
and Consumer Protection  
The Senate  
State Capitol  
Honolulu, HI 96813

RE: Senate Bill No. 3103 – Relating to Enhanced 911 Surcharges

Dear Chairs Espero and Baker, and Members of the Committees:

The Maui Police Department supports SB 3103, which imposes an enhanced 911 surcharge upon prepaid wireless telecommunications service providers.

The passage of this bill will ensure that prepaid wireless communication service providers are not exempt from the enhanced 911 surcharge imposed on other wireless providers. The surcharge, collected from consumers by prepaid wireless communications service providers or resellers, is essential to ensure equitable contributions to the enhanced 911 system.

The Maui Police Department supports the passage of SB 3103.

Thank you for the opportunity to testify.

Sincerely,

*For* GARY A. YABUTA  
Chief of Police



Executive Officers:  
Stanley Brown, ConAgra Foods - Chairperson  
John Schilf, RSM Hawaii - Vice Chair  
Derek Kurisu, KTA Superstores - Treasurer  
Lisa DeCoito, Aloha Petroleum - Secretary  
Lauren Zirbel, Executive Director

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1050 Bishop St. PMB 235  
Honolulu, HI 96813  
Fax : 808-791-0702  
Telephone : 808-533-1292

TO:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS and SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Will Espero and Senator Rosalyn Baker, Chairs

Senator Rosalyn Baker and Senator Brian Taniguchi, Vice Chairs

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: February 6, 2014

TIME: 2:45pm

PLACE: Conference Room 224

RE: SB3103

Position: Opposition

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

Here in Hawaii our retailers already pay several costly taxes and fees which are not only a financial burden, but an administrative burden as well. The state's system is incredibly complex and hard to navigate. It is unfair to add to that burden on our retailers without some form of compensation. This bill does not make it clear which agency is prepared to implement it and how retailers are expected to incorporate it into an already overly complicated system.

In addition to the negative impact on retailers this bill targets users of prepaid mobile devices, many of whom are from lower income brackets and have prepaid service as an alternative to more costly contract services. Technological literacy and access to mobile communication devices is more important than ever in this day and age. It seems that we should be taking steps to bridge the digital divide rather than creating additional financial barriers for lower income users to access mobile technology.

With many retailers and individuals still recovering from the financial crisis, and with the state reporting a budget surplus of \$844 million, we do not believe this is the right time to be increasing fees and surcharges. And while we cannot support this measure as it is currently written, we would be willing to work with AT&T and Verizon on a better solution.

Please do not pass this measure in its current form.

Thank you for the opportunity to testify.



February 5, 2014

Honorable Senator Will Espero  
Chair, Hawaii Senate Public Safety, Intergovernmental and Military Affairs Committee  
Hawaii State Capitol  
Room 231  
Honolulu, HI 96813

Honorable Senator Rosalyn H. Baker  
Chair, Hawaii Senate Commerce and Consumer Protection Committee  
Hawaii State Capitol  
Room 230  
Honolulu, HI 96813

**RE: Opposition To Senate Bill 3103, 9-1-1 Surcharge on Prepaid Wireless Services**

Dear Chair Espero and Baker,

On behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I am writing to respectfully oppose Senate Bill 3103 related to the imposition of the 9-1-1 surcharge on prepaid wireless services.

CTIA and the wireless industry are strong supporters of the public safety community and also believe a fully-funded and efficient 9-1-1 system is in the best interest of the people of Hawaii. With the proliferation of 9-1-1 calls made from wireless devices, it is that much more imperative that all who benefit from access to the 9-1-1 system are also contributors. As such, CTIA supports the public policy that prepaid wireless consumers should be paying a 9-1-1 surcharge.

Due to the unique business model of prepaid wireless services, where the majority of transactions occur at national 'big box' stores, the only way to accurately capture the 9-1-1 surcharge is to collect the surcharge at the point-of-sale at the time of the retail transaction. The wireless industry believes that model legislation endorsed by the National Conference of State Legislatures (NCSL) in 2009 is the appropriate method in which to accurately capture this surcharge. This legislation has been adopted in 31 states and the District of Columbia.

While Senate Bill 3103 is an improvement in comparison to other 9-1-1 pieces of legislation pending before the legislature, the bill does not provide the level of detail necessary to implement an effective system for collecting 9-1-1 surcharge from prepaid wireless users and contains some significant gaps. We believe that Senate Bill 3103 remains deficient in several key respects:

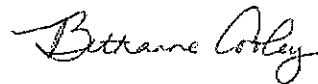
- The definition of "reseller" from the existing law may not capture all retailers selling prepaid wireless service, potentially leaving a large gap in revenue collections from third-party retailers.
- There are no "sourcing" rules to determine which sales are subject to the surcharge. The current law uses language from the federal Mobile Telecommunications Sourcing Act (MTSA), specifically the definition of "place of primary use," to determine when the surcharge applies to "postpaid" wireless plans. However, the federal MTSA expressly exempts prepaid thereby making the place of primary use definition unworkable for sourcing purposes.

- The bill would require retailers to remit to the 9-1-1 Board instead of the Department of Revenue. This would require sellers of prepaid wireless to deal with two state agencies – the Hawaii Department of Taxation and the 9-1-1 Board. This would lead to duplication of administration, compliance costs, etc. The NCSL-endorsed model bill would require all remittances to go to a single agency (the state's revenue department).

To reiterate, CTIA and its members support the public policy that all consumers who use the 9-1-1 system should share in the cost of funding that system. However, it is vital that the legislature make the statutory changes necessary to ensure that the system fairly captures all transactions and is not subject to protracted legal challenges.

In closing, CTIA respectfully opposes Senate Bill 3103 as it is currently drafted. However, CTIA and its members would be happy to supply the NCSL-endorsed point-of-sale model legislation for your consideration. We would be happy to work with you towards enacting a solution that accurately captures the 9-1-1 surcharge from prepaid wireless users.

Sincerely,



Bethanne Cooley  
Director, State Legislative Affairs  
CTIA-The Wireless Association ®





Dan Youmans  
Regional Vice President  
External Affairs

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February 6, 2014

Honorable Senator Rosalyn Baker  
Chair, Committee on Commerce and Consumer Protection  
Honorable Senator Will Espero  
Chair, Committee on Public Safety, Intergovernmental and Military Affairs  
Hawaii State Capitol  
Honolulu, HI 96813

RE: Testimony in **Opposition** to Senate Bill 3103, Hearing Room 224, 2:45 p.m.

Dear Sen. Baker, Sen. Espero, and Committee Members:

AT&T opposes Senate Bill 3103 as introduced. While we support the use of the Point of Sale method to collect and remit surcharges on prepaid wireless services to help fund the state's 911 system, Senate Bill 3103 is deficient in setting up such a process.

The National Conference of State Legislatures (NCSL) has endorsed model legislation for properly establishing a Point of Sale process for prepaid 911 surcharges. We are currently in discussions with the state's Enhanced 911 Board and the Hawaii retail associations to provide the appropriate amendments needed for this bill to offer a viable process for Point of Sale to work. It's critical that all of the necessary procedures for creating this new surcharge on prepaid wireless services are established in statute. The model bill provides this direction and should be the basis for the Hawaii law.

AT&T urges the Committees to defer Senate Bill 3103 until the appropriate amendments can be offered by the wireless industry, Enhanced 911 Board, and the retailers.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Dan Youmans".

Dan Youmans  
AT&T

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 03, 2014 4:55 PM  
**To:** PSMTestimony  
**Cc:** admin@rmhawaii.org  
**Subject:** Submitted testimony for SB3103 on Feb 6, 2014 14:45PM

**SB3103**

Submitted on: 2/3/2014

Testimony for PSM/CPN on Feb 6, 2014 14:45PM in Conference Room 224

| <b>Submitted By</b> | <b>Organization</b>        | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------------|---------------------------|---------------------------|
| Sheri Sakamoto      | Retail Merchants of Hawaii | Oppose                    | No                        |

Comments: RMH opposes SB3103 in its current form, imposing an enhanced 911 surcharge upon prepaid wireless telecommunications service providers. In its current form, there are no plans indicated as to how the surcharge will be collected in addition, we would recommend that retailers receive a .4 cent compensation for the administration of the program.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)