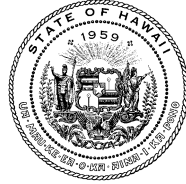


DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Jill Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: Thursday, February 26, 2015
Time: 1:00 P.M.
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 193, S.D. 1, Relating to Enhanced 911 Surcharges

The Department of Taxation (Department) appreciates the intent of S.B. 193, H.D. 1 and provides the following comments for your consideration.

S.B. 193, H.D. 1 imposes a surcharge on each retail transaction of prepaid wireless telecommunications service. The bill deems the consumer liable for the surcharge but requires the seller or provider to collect the surcharge from the consumer. The seller or provider must remit the surcharge through the eHawaii.gov.

S.B. 193, H.D. 1 excludes the proposed surcharge from any tax, fee, or surcharge imposed by the State if the surcharge is separately stated on a receipt or invoice to the customer. The current enhanced 911 surcharge is excluded from any tax, fee, or surcharge by the state but the exclusion does not depend on the fee being separately stated. The Department suggests amending the exclusion language to ensure consistency between the two surcharges.

S.B. 193, H.D. 1 refers to section 237-13.8, HRS, for sourcing of sales to the state for purposes of the surcharge. The Department recommends replacing the direct reference to section 237-13.8, HRS, with the rule from that section. This will prevent any confusion between the general excise tax and the proposed surcharge. The amendment will also clarify the operation of the sourcing rule by replacing the cross-reference with a unified rule.

The following language, to replace the current subsection (c), is provided as a suggested amendment:

(c) A retail transaction that is transacted in person by a consumer at a seller's business location shall be treated as occurring within the State if the business location is within the State. A transaction shall also be treated as occurring within the State if tangible personal property is shipped and the customer's shipping address is within the state, or if there is no shipment, if the customer's billing address is within the State. If no tangible personal property is shipped and the customer's billing address is not known, the transaction shall be treated as occurring within the State if the consumer's mobile telephone is associated with an address within the State."

The above amendment maintains the sourcing rules proposed in the original subsection (c) but without reference to chapter 237, HRS.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Impose enhanced 911 surcharge on prepaid phones

BILL NUMBER: SB 193, SD-1

INTRODUCED BY: Senate Committees on Public Safety, Intergovernmental and Military Affairs and Commerce and Consumer Protection

BRIEF SUMMARY: Adds a new section to HRS chapter 138 to provide that the enhanced 911 surcharge of ___ cents shall be imposed as a one-time charge on prepaid wireless telecommunications services. The surcharge shall be the liability of the consumer but collected by the seller. Allows the seller to retain 3% of the surcharge collected from consumers and remit the balance to the enhanced 911 board.

EFFECTIVE DATE: July 1, 2020

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 an excess \$16 million in the enhanced 911 fund. At the time, public safety officials complained that diversion of receipts in the fund could disqualify the state from participating in federal grant programs to enhance the technology of 911 systems. But the fund was raided anyway. 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 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. Because prepaid phones also have access to enhanced 911 services, it appears equitable to assess those phones a fair rate as well.

One practical issue to examine is when prepaid phones are recharged with minutes purchased online. Section 237-13.8, HRS, which is referred to in this bill, appears to source such a transaction to Hawaii if the customer's billing address is in Hawaii. For a Hawaii customer, then, the recharge would be a retail transaction and the surcharge would apply. However, the communications company has neither presence nor property in Hawaii (they make the customers buy the phones), so constitutional nexus may be lacking. If the communications company doesn't pay GET, its customer is considered to be importing a service, so that Use Tax is payable. But there is nothing comparable to the Use Tax for this surcharge, so an out-of-state communications company may be able to get away without paying it and thus gain a competitive advantage.

Digested 2/25/15

TESTIMONY OF THE HAWAII POLICE DEPARTMENT

SENATE BILL 193, SD1

RELATING TO ENHANCED 911 SURCHARGES

BEFORE THE COMMITTEE ON WAYS AND MEANS

DATE : Thursday, February 26, 2015

TIME : 1:00 P.M.

PLACE : Conference Room 211
State Capitol
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Harry S. Kubojiri
Hawaii Police Department
County of Hawaii

(Written Testimony Only)

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

February 3, 2015

Senator Jill N. Tokuda
Chairman and Committee Members
Committee on Ways and Means
415 South Beretania Street, Room 211
Honolulu, Hawai'i 96813

Re: SENATE BILL 193, SD1 RELATING TO ENHANCED 911 SURCHARGES

Dear Senator Espero:

The Hawai'i Police Department supports Senate Bill 191, with its purpose being to establish an unspecified prepaid wireless E911 surcharge per retail transaction of prepaid wireless telecommunications service at the point of sale, which basically eliminates the exemption for prepaid wireless connections.

We believe this legislation as written will serve to ensure an act of equity amongst consumers of wireless communications devices in terms of needed revenue for enhanced 911 (E911) services attendant to these devices. In essence, the wireless communications industry similar to the computer industry is constantly incorporating and deploying newer, faster, and more efficient technology into the field.

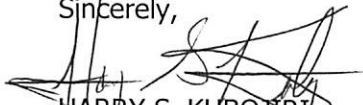
In response, the Public Safety Answering Points (PSAPS) must also constantly upgrade their equipment in order to take advantage of the increasing capabilities of these devices as well as to meet public expectations for the technology. The recent movement towards the Next Generation 911 upgrading of PSAPS is a prime example. These upgrades will allow PSAPS to receive text messages, photos, and video from wireless phones.

In that the E911 funding is utilized for necessary upgrades, we believe the rise in use of prepaid wireless connections should be attendant with elimination of the exemption in the best interests of the communities served by the various PSAPS in the state of Hawai'i. We also cannot overlook the fact that the "pay as you go" industry is making wide gains into the wireless market share and we believe in order to sustain our needs, we will need to make up for the loss of market share of the traditional data plans.

It is for these reasons, we urge this committee to approve this legislation.

Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 193, SD1.

Sincerely,



HARRY S. KUBOJIRI
POLICE CHIEF

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

KIRK W. CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE **AN-AS**

February 26, 2015

The Honorable Jill N. Tokuda, Chair
and Members
Committee on Ways and Means
State Senate
Hawaii State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Tokuda and Members:

SUBJECT: Senate Bill No. 193, SD1, Relating to Enhanced 911 Surcharges

I am Allan Nagata, Acting Major of the Communications Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 193, SD1, Relating to Enhanced 911 Surcharges, with the suggested amendment to set the unspecified prepaid wireless enhanced 911 surcharge at \$0.66.

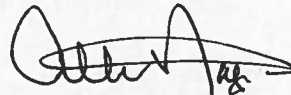
This bill provides fair and equitable contribution to the funding of the 911 system. Currently, prepaid wireless consumers are exempt from paying the \$0.66 surcharge but have the same access to the 911 system. The collection and payment obligation of charges to support the 911 system should be in parity with other wireless consumers.

The HPD urges you to support Senate Bill No. 193, SD1, with the suggested amendment.

The Honorable Jill N. Tokuda, Chair
and Members
Committee on Ways and Means
February 26, 2015
Page 2

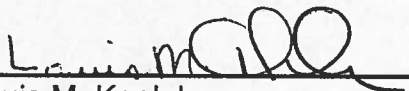
Thank you for the opportunity to testify.

Sincerely,



Allan Nagata, Acting Major
Communications Division

APPROVED:



Louis M. Kealoha
Chief of Police

February 25th, 2015

Honorable Jill. N. Tokuda
Chair, Senate Ways and Means Committee
Hawaii State Capitol
Room 207
Honolulu, HI 96813

Honorable Ronald D. Kouchi
Vice Chair, Senate Ways and Means Committee
Hawaii State Capitol
Room 210
Honolulu, HI 96813

RE: Senate Bill 193 SD1, 9-1-1 Prepaid Surcharge – Support with Amendments

Dear Chair Tokuda and Vice Chair Kouchi:

On behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I am writing to express our support for Senate Bill 193 SD1, with amendments, 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 those 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 and other general retailers, 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 35 states and the District of Columbia.

CTIA does support the policy espoused by Senate Bill 193 SD1, but would respectfully suggest one amendment. We would request Senate Bill 193 SD1 be amended to require the remittance of the 9-1-1 surcharge to the Department of Taxation. As amended, Senate Bill 193 SD1 would require the 9-1-1 surcharge to be remitted to the 9-1-1 Board. We would respectfully request the 9-1-1 surcharge be remitted to the Department of Taxation, the state agency that is familiar with administering other taxes and fees in Hawaii. Furthermore, this would streamline the remittance process for retailers who are already submitting Hawaii excise tax to the Department of Taxation. Requiring retailers to remit to two separate agencies creates administrative complexity and burdens. Furthermore, designating the Department of Taxation for 9-1-1 surcharge



remittance is consistent with the NCSL model-endorsed legislation that 35 states and the District of Columbia have adopted.

Thank you for the opportunity to submit testimony in favor of Senate Bill 193 SD1, with amendments.

Sincerely,



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



John R. Cmelak
Vice President
State Tax Policy-West Area

February 25, 2015

Honorable Jill N. Tokuda
Chair, Senate Committee On Ways and Means
Hawaii State Capitol
Room 207
Honolulu, HI 96813

Honorable Ronald D. Kouchi
Vice Chair, Senate Committee On Ways and Means
Hawaii State Capitol
Room 210
Honolulu, HI 96813

RE: Senate Bill 193 SD1, 9-1-1 Prepaid Surcharge – Support

Dear Chair Tokuda and Vice Chair Kouchi:

Verizon supports SB 193, legislation relating to the imposition of Hawaii's 9-1-1 surcharge on prepaid wireless services.

This bill captures the key components of the NCSL model bill. SB 193 is legislation similar to that which has already been adopted in 35 states, the District of Columbia and the Virgin Islands. It is the most appropriate method by which to accurately impose Hawaii's 9-1-1 surcharge on prepaid wireless services.

Verizon is a strong supporter of the public safety community and believes that an efficient and fair 9-1-1 system is in the best interest of the People of Hawaii.

Concerning implementation of this legislation, we recommend an effective date of January 1, 2017 to allow time for carriers and retailers to set up systems for 9-1-1 surcharge collection and remittance.

Verizon appreciates the opportunity to support SB 193.

Respectfully submitted,

John R. Cmelak



2785 Mitchell Drive, MS: 8-2
Walnut Creek, CA 94598

Phone 925 279-6789
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Mobile 510 468-4477
john.cmelak@verizonwireless.com



Executive Officers:
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Derek Kurisu, KTA Superstores - Vice Chair
Lisa DeCoito, Aloha Petroleum - Treasurer
John Erickson, Frito-Lay - Secretary
Lauren Zirbel, Executive Director

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

TO:
COMMITTEE ON WAYS AND MEANS
Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 26, 2015
TIME: 1pm
PLACE: Conference Room 211

RE: SB193

Position: Oppose

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 businesses and our customers already pay several costly taxes and fees that are not only a financial burden, but an administrative burden as well. The state's system is complex and hard to navigate and adding an additional surcharge creates unnecessary added cost for retailers and consumers.

We appreciate that the bill allots 3% of the fee to the retailer and has clarified some other aspects of this program. However, we believe that given the importance of 911 to all residents, and visitors, this program is precisely the type of thing that should be covered by an appropriation from the General Fund.

For these reasons we ask that this bill be held.

Thank you for the opportunity to testify.