



GOV. MSG. NO. 702

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 1, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2828 SD2 HD2, without my approval, and with the statement of objections relating to the measure.

SB2828 SD2 HD2

A BILL FOR AN ACT RELATING TO DISASTER
RELIEF.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

May 1, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2828

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2828, entitled "A Bill for an Act Relating to Disaster Relief."

The purpose of this bill is to confine the Governor's power to provide relief for disasters caused by events other than acts of nature, enemy attack, or acts of terrorism, solely to the period immediately after a man-made disaster occurs until the Legislature acts to provide further relief in a regular or special session. It also limits the extent to which the Governor may suspend laws to provide relief for man-made disasters only until the next occurring regular session of the Legislature is adjourned sine die, unless the suspension of laws is extended by a concurrent resolution or legislative enactment.

Unless the Legislature is already sitting in a regular session, the Legislature will have to be called into special session every time a disaster occurs that falls outside the narrow scope of this bill.

This measure is particularly onerous because the substantial restrictions placed on the State's ability to respond to disasters in the future, are also imposed on disaster relief efforts that are currently underway, unless the Legislature permits them to continue by concurrent resolution. Allowing this measure to become law could prevent us from

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2828
Page 2

completing on-going efforts to shelter and provide needed health and social services for the homeless on Oahu.

This bill also creates substantial potential legal issues for the several emergency proclamations pursuant to which disaster relief for the homeless is currently being provided. This bill terminates those proclamations immediately--creating significant uncertainty. This immediate termination is inappropriate.

The full panoply of the State's resources should be available to respond to every disaster that may threaten the community. The Governor should not be precluded from utilizing those resources until the Legislature gives its permission to act.

For all of these reasons, therefore, I am returning Senate Bill No. 2828 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO DISASTER RELIEF.

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

1 SECTION 1. Section 127-2, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "~~§127-2 Disaster relief agency.~~ (a) There shall be
4 within the executive branch of the state government a division
5 of disaster relief, hereinafter called the [~~"disaster relief~~
6 ~~agency".~~] "disaster relief agency." The director of disaster
7 relief [~~, hereinafter called the "director", who shall be~~
8 ~~appointed and removed in the manner provided by section 26-34,~~
9 ~~and who shall receive such compensation as the governor may~~
10 ~~determine,~~] shall be in charge of the disaster relief agency.
11 For the purposes of this chapter, the "disaster relief agency"
12 and the "director of disaster relief" shall be the civil defense
13 agency and the director of civil defense described in section
14 128-3, respectively.

15 (b) There shall be a vice-director of disaster relief who
16 shall be appointed by the director. The vice-director shall be
17 the chief administrative assistant to the director and shall, in



1 the absence of the director, have all the duties and
2 responsibilities of the director.

3 ~~[(e) The director shall, with the approval of the county~~
4 ~~council, appoint a deputy director for each political~~
5 ~~subdivision. Deputy directors shall serve without pay. They~~
6 ~~may hold other office or employment in the state government, or~~
7 ~~any political subdivision.~~

8 ~~(d)]~~ (c) The director may employ such technical, clerical,
9 stenographic, and other personnel and may make such expenditures
10 as may be necessary to carry out the purposes of this chapter.

11 ~~(e)]~~ (d) The director shall be responsible for
12 formulating and carrying out programs for disaster relief. The
13 director shall coordinate the activities of all organizations
14 for disaster relief, public or private, and shall cooperate with
15 state and federal disaster relief agencies. The director shall
16 be responsible for carrying out this chapter and in the event of
17 disaster beyond local control the director may assume direct
18 operational control over all or any part of the disaster relief
19 functions within the ~~[State.]~~ state."

20 SECTION 2. Section 127-10, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§127-10 Disaster relief [~~during suspension of preceding~~
2 ~~sections.~~] for disasters not caused by enemy attacks. [During
3 ~~any period in which sections~~] (a) Sections 127-1 to 127-9 [~~are~~
4 ~~not~~] shall be in effect [~~]~~ and available to provide relief for
5 disasters not covered under chapter 128, and the governor and
6 political subdivisions may exercise any and all of their powers
7 [~~that relate to disasters resulting from enemy attacks, in~~
8 ~~order~~] authorized under this chapter to provide [~~other disaster~~]
9 ~~relief~~ [~~+~~] for these disasters. All provisions of law that
10 relate to disasters resulting from enemy attacks [~~during such~~
11 ~~period~~] are made applicable to other disaster relief, including
12 without limitation, provisions making or authorizing
13 appropriations or expenditures [~~+~~]; provided that to exercise the
14 powers authorized under this chapter and chapter 128 for
15 disasters that are not caused by:

- 16 (1) A fire, flood, tidal wave, volcanic eruption,
17 earthquake, pandemic illness, or other natural causes
18 and major disasters caused by acts of man, including
19 but not limited to massive oil spills, nuclear
20 accidents, airplane crashes, and civil disturbances;
21 or
22 (2) An enemy attack or act of terrorism,



1 the governor shall first find and declare through an emergency
2 proclamation that tangible and measurable harm or damage has
3 resulted or is about to result as a consequence of the disaster
4 and that the disaster relief could not otherwise be achieved
5 through legislation enacted in the next occurring regular
6 session of the legislature or a special session of the
7 legislature called by the governor for the purpose of providing
8 for the relief. If disaster relief can be achieved through
9 legislation enacted in the next occurring regular session of the
10 legislature or a special session of the legislature called by
11 the governor for the purpose of providing for the relief, then
12 the governor shall not execute any action to further provide for
13 disaster relief under this chapter.

14 (b) Any relief provided under this chapter for a disaster
15 not enumerated in subsection (a)(1) and (2) shall not extend
16 beyond the adjournment sine die of the next occurring regular
17 session of the legislature after the governor declares that the
18 disaster relief is necessary, unless expressly authorized by the
19 legislature through the adoption of a concurrent resolution or
20 by the enactment of law. The governor shall submit a report on
21 the governor's findings and recommendations on whether to extend
22 any disaster relief provided under this chapter, and any



1 enabling proposed legislation or appropriations to authorize the
2 continuance of any disaster relief provided. If the legislature
3 does not adopt a concurrent resolution or enact legislation to
4 execute or extend disaster relief, the governor shall not
5 execute disaster relief actions under this chapter or extend the
6 provision of disaster relief for a particular disaster beyond
7 the adjournment sine die of the legislature during the session
8 in which the legislation was considered.

9 As used in this section [~~other~~]:

10 "Other disaster relief" means the preparation for and the
11 carrying out of all functions, other than functions for which
12 military forces are primarily responsible, to minimize and
13 repair injury and damage resulting from disasters caused by
14 fire, flood, tidal wave, volcanic eruption, earthquake, or other
15 natural causes and major disasters caused by acts of man,
16 including but not limited to[~~7~~] massive oil spills, nuclear
17 accidents, airplane crashes, and civil disturbances[~~-~~]; provided
18 that the term does not include the remedying of periodic or
19 longstanding societal inequities or circumstances that may arise
20 over the course of time that could otherwise be contemplated and
21 remedied through the enactment of law under the legislative
22 process.



1 "Tangible and measurable harm or damage" means harm or
2 damage that may occur in the immediate future or that has
3 already occurred and that, unless immediately acted upon, would
4 otherwise be irreparable, result in the imminent loss of life,
5 or pose an immediate health or safety hazard to humans or the
6 environment."

7 SECTION 3. Section 128-7, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§128-7 Civil defense emergency period.** The term "civil
10 defense emergency period" includes (1) a period of civil defense
11 emergency proclaimed pursuant to the Federal Civil Defense Act
12 of 1950, or (2) the period of the existence of a state of civil
13 defense emergency in the [~~State~~] state hereby authorized to be
14 proclaimed by the governor if the governor finds that an attack
15 upon the [~~State~~] state has occurred or that there is danger or
16 threat thereof, or that there has arisen any state of affairs or
17 circumstances of such a grave nature as to affect the common
18 defense or the readiness of the community to meet an attack, and
19 which requires the invocation of provisions of this chapter that
20 are effective only during a period of civil defense emergency.
21 The governor shall be the sole judge of the existence of the
22 danger, threat, state of affairs, or circumstances[+] during a



1 civil defense emergency period. A [~~period of~~] civil defense
2 emergency period proclaimed pursuant to the Federal Civil
3 Defense Act of 1950 shall terminate as therein provided, and a
4 period of civil defense emergency proclaimed by the governor
5 shall terminate upon proclamation by the governor[+] unless
6 otherwise provided by law."

7 SECTION 4. The emergency powers authorized and exercised
8 under any emergency proclamation issued prior to the effective
9 date of this Act that:

- 10 (1) Is still in full force and effect on the effective
11 date of this Act;
- 12 (2) Purports to provide disaster relief in this state
13 through the powers authorized under chapter 127 or
14 128, Hawaii Revised Statutes;
- 15 (3) Was not issued to:
 - 16 (A) Establish drainage improvements to mitigate past,
17 present, or future flood damage;
 - 18 (B) Mitigate earthquake damage;
 - 19 (C) Mitigate slope erosion;
 - 20 (D) Effectuate emergency culvert repairs;
 - 21 (E) Conduct emergency boat ramp dredging;
 - 22 (F) Conduct emergency dam spillway repairs; or



1 (G) Conduct stream or river restoration and debris
2 removal;
3 and

4 (4) Is not in compliance with the provisions of this Act,
5 shall expire upon the effective date of this Act unless the
6 legislature, by adoption of a concurrent resolution or enactment
7 of law during the 2008 regular session, expressly reauthorizes
8 those powers for the specific disaster relief action.

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

