

STAND. COM. REP. NO. 2857

Honolulu, Hawaii

FEB 29 2008

RE: S.B. No. 2828
S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committee on Ways and Means, to which was referred S.B. No. 2828, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DISASTER RELIEF,"

begs leave to report as follows:

The purpose of this measure is to clarify the use of the Governor's emergency powers.

Specifically, this measure, among other things:

- (1) Clarifies under what circumstances the Governor may suspend laws under the Civil Defense and Emergency Act and requires the Governor to report to the Legislature to authorize the continuance of disaster relief actions provided under such a suspension of laws;
- (2) Establishes that certain provisions of the State's disaster relief chapter are operative and supersede provisions of the Civil Defense and Emergency Act in times when an emergency arises that is not considered a civil defense emergency; and
- (3) Provides that any emergency declarations in force prior to the effective date of the measure to expire at the end of the 2008 Regular Session unless reauthorized by the Legislature.



Testimony in opposition to this measure was received from the Senior Policy Advisor of the Governor, the Department of Land and Natural Resources, the Department of the Attorney General, the Department of Accounting and General Services, the Department of Agriculture, and the State Department of Defense.

Your Committee finds that the Governor should not utilize the power to suspend laws in times of acts of war or natural disaster as authorized under the Civil Defense and Emergency Act for purposes of noncivil defense situations unless there is a tangible and measurable threat to the people or environment of the State.

While departmental testimony opposed to this measure detailed ongoing disaster mitigation projects that would be adversely impacted by its implementation, your Committee believes that these disaster mitigation projects will not be impaired by enactment of this measure. Instead this measure will alleviate your Committee's concern with the improper use of emergency powers to circumvent existing laws and county ordinances that prevent improper procurement of services, construction of unsafe and unhealthy structures, uncontrolled development, destruction of Hawaii's fragile environment, pollution of our waters, and the Legislature's authority to ensure the proper expenditure of public funds.

Recently, the Governor issued no less than four emergency proclamations to authorize the expedited construction of structures for the homeless on the Leeward Coast of Oahu and extended the terms of the emergency proclamations during periods when the Legislature was not in session. These emergency proclamations and their extensions while the Legislature was not in session prevented the Legislature from ensuring that public funds were being properly expended by the Governor according to law. These emergency proclamations by the Governor that rely on the authority of the Civil Defense and Emergency Act to develop homeless shelters lack the elements of a civil defense or disaster emergency but allow the Governor to expedite construction and developments without the need to comply with the procurement code, building and zoning codes, environmental and other laws and county ordinances that are intended to prevent construction of unhealthy and unsafe structures and uncontrolled development in the State.

Your Committee notes that, during the 2007 Regular Session, although the Governor had ample opportunity to report to the Legislature on the use of these emergency powers, the Governor did



not seek legislative approval to continue the services provided under the emergency proclamations. Rather, the Governor waited until after the 2007 Regular Session adjourned, and then extended the term of the original emergency proclamations for an additional year. What concerns your Committee even more is that throughout the three Special Sessions of the Legislature in 2007, and thus far in the 2008 Regular Session, the Governor has yet to seek approval for continuing this endeavor. Through the use of the powers provided under the existing emergency proclamations and until June 30, 2008 - if the Governor does not further extend the emergency proclamations - the Governor will have circumvented the provisions of at least eighteen state laws and county ordinances for a period of two years.

Again, while your Committee believes that sheltering and providing services to the homeless is an appropriate exercise of governmental authority and resources, your Committee does not concur with the approach the Governor has taken to provide the shelter and services, particularly when the Governor had ample opportunity to collaborate with the Legislature on this important issue. Your Committee believes that the issue of the homeless is a situation that falls under the category of a periodic societal inequity or circumstance that is most appropriately addressed through initiatives proposed by the Governor and approved by the Legislature through the legislative process and one that certainly does not rise to the level of a manmade or natural disaster, the basis upon which the Governor justifies circumventing state laws and county ordinances.

Mindful of the concerns raised by testifiers that the measure as received may prevent the State from taking preventative actions upon the threat of a major natural or manmade disaster or act of war or terrorism, as well as adversely impact ongoing emergency projects that are being undertaken to mitigate previous flood, erosion, wind, earthquake, and other damage caused by natural disasters, your Committee has amended this measure by:

- (1) Amending section 127-2, Hawaii Revised Statutes, to specify that the "disaster relief agency" and "the director of disaster relief" shall be the state civil defense agency and the state director of civil defense;
- (2) Specifying that the limitations on the Governor's emergency powers do not apply to disasters caused by fire, flood, tidal wave, volcanic eruption, pandemic



illness, earthquake, or other natural causes, or manmade disasters including massive oil spills, nuclear accidents, airplane crashes, and civil disturbances, and enemy attacks or acts of terrorism;

- (3) Specifying that the term "other disaster relief" does not include remedying periodic or longstanding societal inequities or circumstances that could otherwise be remedied through the legislative process;
- (4) Clarifying that the definition of "tangible and measurable harm or damage" includes harm or damage that may occur in the immediate future;
- (5) Providing an exception to expiration provisions in Section 4 for certain ongoing disaster related projects; and
- (6) Changing the effective date to upon approval.

Your Committee intends, with this amended measure, to continue to provide the Governor with the powers necessary to protect against the damages that may be caused by acts of war or terrorism as well as by manmade or natural disasters but wishes to make clear that the Governor shall not abuse these powers to circumvent existing laws and the authority vested in the Legislature by the Constitution of the State of Hawaii.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2828, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2828, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,



ROSALYN H. BAKER, Chair



