

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 2663
A BILL RELATING TO EMERGENCIES

PRESENTATION TO THE
COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

BY

MAJOR GENERAL ROBERT G. F. LEE
DIRECTOR OF CIVIL DEFENSE

February 14, 2008

Chair Evans and Committee Members:

I am Major General Bob Lee, Director of Civil Defense, State Department of Defense. I am providing written testimony in opposition to House Bill 2663.

House Bill 2663 clarifies when the Governor may exercise emergency powers under the provisions of section 127-10, Hawaii Revised Statutes. The proposed bill provides new definitions for "major accident," "other disaster relief," and "substantial detrimental effect" which are not necessary.

From a State Civil Defense perspective House Bill 2663 should be deferred indefinitely as it will result in a major impediment in the conduct of emergency protective and disaster response measures at the county and State levels of government. The proposed bill will limit the Governor's emergency powers by restricting our ability to take action when decisive action is needed to save lives and protect property regardless of the cause of the emergency and possible "substantial detrimental effect" in one or more representative districts.

Thank you for the opportunity to provide written testimony that opposes this measure.

LINDA LINGLE
GOVERNOR



RUSS K. SAITO
Comptroller

BARBARA A. ANNIS
Deputy Comptroller

**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
PUBLIC SAFETY & MILITARY AFFAIRS
ON
February 14, 2008

H.B. 2663

RELATING TO EMERGENCIES

Chair Evans and members of the Committee, thank you for the opportunity to testify on H.B. 2663.

The Department of Accounting and General Services (DAGS) opposes H.B. 2663. In clarifying when the governor may exercise emergency powers, the bill eliminates certain well established events and replaces them with "acts of God", and "major accidents", which are not as specific. Worse, it leaves out acts of man, which may include terrorism. These shortcomings would make it difficult for a Governor to quickly determine when the Governor's emergency power may be exercised.

The Act also defines "substantial detrimental effect" as actual or potential detrimental effect to the health and safety of the majority of residents in at least one representative district, or the income or structures of a majority of businesses located in at least one representative district or the physical environment of a majority of the land or coastline of at least one representative district. Defining detrimental effect in terms of

representative districts is unnecessary. Reasoned judgement should be used, and the Governor should not be bound by a requirement that detrimental effect be measured in terms of representative districts.

Thank you for the opportunity to testify on this matter.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2663, RELATING TO EMERGENCIES.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Thursday, February 14, 2008 **TIME:** 9:15 AM

LOCATION: State Capitol, Room 309
Deliver to: Committee Clerk, Room 313, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Michael S. Vincent, Deputy Attorney General

Chair Evans and Members of the Committee:

The Attorney General has numerous concerns regarding this bill.

This bill establishes minimum standards for the provision of disaster relief by requiring the Governor to find actual or potential detrimental effect to the majority of residents, income or structures of businesses, or the physical environment of land area or coast line in at least one representative district. This limitation is highly likely to prevent the Governor from providing disaster relief to much of the people impacted by an emergency or disaster in those cases where less than a majority is impacted.

While section 127-1, Hawaii Revised Statutes defines "political subdivisions," the term "representative district" is not defined in the bill, nor is it identified in chapter 4, Hawaii Revised Statutes.

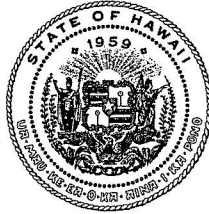
Our primary concern is the requirement that there must be actual or detrimental effect to the health and safety of at least fifty percent of residents, the income or structures of at least fifty percent of businesses, or the physical environment of at least fifty percent of the land area or coastline of at least one representative district. Under this standard, the Governor would be precluded from providing disaster relief if less than fifty percent

of the residents, businesses, or land area or coastline is impacted or threatened.

Many of the people suffering as a result of disasters in Hawaii have not been able to get federal assistance as a result of irrational standard mathematical formulas used by the Federal Emergency Management Agency to approve federal assistance. We should not put the people of Hawaii at risk because not enough of the public have been injured or are at risk.

We respectfully ask the Committees to hold this bill

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 2663—Relating To Emergencies

**BEFORE THE HOUSE COMMITTEE ON
PUBLIC SAFETY & MILITARY AFFAIRS**

February 14, 2008

House Bill 2663 clarifies when the Governor may exercise emergency powers particularly for “major accidents” as further defined by having “substantial detrimental effect”. The Department of Land and Natural Resources (Department) strongly opposes this measure.

The Department is currently involved with addressing a multitude of emergency mitigation or repair projects associated with the Emergency Proclamations (Proclamations) issued by the Governor as it relates to the 2006 heavy rains and flooding, the Kiholo earthquake, and the Kula Forest Reserve Forest Fire emergencies. The Proclamations allows the Department and others, to expeditiously work on mitigation/repair projects, secure additional State and Federal resources, and address the needs of public health, safety and welfare.

The amendments, as proposed in this measure, could preclude the Department from addressing emergencies such as the Kauai dam break of 2006, the Kula Forest Reserve Forest Fire or other similar types of emergencies.

For example, the Kauai dam break affected just a fraction of Representative District No. 14 (Hanalei, Anahola, Kealia, Kapaa, Waipoli) but seven lives were lost and millions of dollars is being spent on repairing and mitigating property damages. Approximately, \$4,500,000 was spent by the State and the County of Kauai for Kuhio Highway repairs and debris removal along the Wailapa Stream corridor. Federal funds from the Natural Resources Conservation Service in the tune of \$4,000,000 were made available last April 2007 and will be used for the Wailapa Stream/Kilauea River Debris Removal project in Kilauea, Kauai. These Federal monies will be matched with approximately \$1,700,000 state appropriations made available through Act 118, Session Laws of Hawaii 2006. It is unclear at this time whether the Kauai dam break would fall under an “Act of God” but it would not be considered a “major accident” under the proposed definition of this measure. Only time will tell as this event is litigated through the courts. This measure may preclude any other dam failures from qualifying as being an emergency.

Another example would be the Kula Forest Reserve Forest Fire (KFRFF) emergency or other similar forest fire events that could also be precluded from being considered an emergency. In the case of the KFRFF, approximately 2,300 acres of forested public lands were burned but still, this makes up only a fraction of the area within Representative District No. 12 (Pukalani, Makawao, Olinda, Pulehu, Kula, Ulupalakua) and would not qualify as being a “major accident” even though it has been reported that a discarded cigarette started the fire. Emergency measures are being implemented to protect and stabilize soils that are now prone to erosion, control the onslaught and impact of invasive species which are likely to colonize the newly opened area, restore important hydrological and ground water benefits that the upland forested watershed provided, enhance native species habitat and native ecosystem recovery, and restore recreational values (hiking, hunting, etc.) for the Maui community.