



EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of Barry Fukunaga  
Chief of Staff, Office of the Governor

Before the

House Committee on Finance

Thursday, March 27, 2008, 2:00 p.m.  
State Capitol, Conference Room 308

SB 2828 SD2 HD1 Relating to Disaster Relief

Chair Oshiro and Members of the Committee:

The Administration opposes SB 2828 SD2 HD1, which restricts a Governor's ability to take effective action in response to emergencies and disasters.

As Attorney General Mark Bennett has stated, this bill would turn back the clock fifty-seven years on emergency management law in Hawaii and significantly hamper a Governor's ability to respond to emergencies and disasters. SB 2828 SD2 HD1 requires a Governor to first declare through an emergency proclamation that tangible harm occurred as a result of the disaster. This prohibits the Governor from taking pre-emptive action to mitigate and prevent further damage when an emergency has occurred or is about to impact the islands, such as a hurricane or tsunami. The State would be placed in harm's way in disasters and emergencies if a Governor could only act after tangible harm or damage has been documented.

The bill states that if the tangible harm and damage could be resolved through legislation in a regular or special session, "then the governor shall not execute any action to further provide for disaster relief." This provision is extremely problematic in that the Governor would be unable to mitigate the harm that has already been caused while the Legislature passes appropriate legislation. The bill does not address what would happen if the Legislature cannot come to a decision on an appropriate course of action during its legislative session, or if the emergency occurs when the Legislature is not in session.

Earlier this week Molokai Ranch announced it would cease operations. It is the main purveyor of water for much of the island. Should the Ranch determine it could no longer handle this responsibility, the Governor might need to exercise her emergency

powers. Yet, this bill would prohibit the Governor from doing so until a documented public health problem had already occurred.

Disasters and emergencies require immediate attention. Yet there is no guarantee that a legislative solution will be provided if this bill is enacted. This provision would prevent timely recovery efforts and possibly affect federal disaster relief funding by taking away the continuity needed for ongoing disaster relief. This measure requires that any disaster relief provided under this chapter shall not extend beyond the adjournment sine die of the next regular session unless expressly authorized by the Legislature. Since it often takes years to mitigate and repair all damage caused by disasters, requiring extensions for disaster relief to be renewed on an annual basis could likely delay and disrupt relief efforts.

Governor Lingle recognizes and understands the complicated nature of finding proper solutions and responses for issues facing Hawaii. Governor Lingle has exercised her emergency powers judiciously.

Several members of the Legislature have called upon the Governor to exercise emergency powers resulting from conditions such as the Aloha Airlines bankruptcy, while simultaneously trying to curtail these powers. If this bill became law, any Governor would be unable to respond to such circumstances. This only illustrates that flexibility is needed in exercising emergency powers, as a broad range of emergency situations may arise that require emergency attention.

It is essential that any Governor be able to act quickly and decisively when emergencies and disasters occur. This measure is not in the best interest of the State and our residents.

STATE OF HAWAII  
DEPARTMENT OF DEFENSE

TESTIMONY ON SENATE BILL 2828 SD2 HD1  
A BILL RELATING TO DISASTER RELIEF

PRESENTATION TO THE  
COMMITTEE ON FINANCE

BY

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

March 27, 2008

Chair Oshiro and Committee Members:

I am Major General Bob Lee, Director of Civil Defense, State Department of Defense. I am providing testimony in strong opposition to Senate Bill 2828 SD2 HD1.

Senate Bill 2828 SD2 HD1 will limit the Governor's emergency powers by restricting our ability to take action when immediate and decisive action may be needed regardless of the cause for the emergency. The proposed bill will slow down the process for requesting a Governor's Emergency Proclamation to protect life and property and to prevent suffering by requiring the State Civil Defense Agency to determine if disaster relief to affected residents can be achieved through legislation enacted in the next regular session or by special session. Most emergencies and disasters are fluid events, the extent of which can rarely be predicted let alone depicted in minute detail. The gravity of these events as they become known or reported through various channels is often underestimated.

The proposed bill will require that disaster relief authorized by a Governor's Emergency Proclamation will not extend beyond the adjournment sine die of the next occurring regular session of the legislature. Our current practice is to keep Emergency Proclamations open to facilitate recovery activities which may take 4-6 years to complete.

Finally, if this restrictive bill passes, the Governor may have to convene additional special sessions to deal with emergencies and disasters.

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**  
P.O. BOX 119  
HONOLULU, HAWAII 96810-0119

TESTIMONY  
OF  
RUSS K. SAITO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
HOUSE COMMITTEE  
ON  
FINANCE  
ON  
March 27, 2008

S.B. 2828, S.D. 2, H.D. 1

RELATING TO DISASTER RELIEF

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on S.B. 2828, S.D. 2, H.D. 1.

The Department of Accounting and General Services (DAGS) opposes this bill because it severely limits the Governor in the Governor's exercise of emergency power for disasters not caused by an enemy attack. This means that the Governor will be limited in almost all disasters, as enemy attacks, fortunately, seldom occur. It is impractical for the Governor to "first find and declare through an emergency proclamation that tangible and measurable harm or damage has resulted as a consequence of the disaster and that the disaster relief could not otherwise be achieved through legislation enacted in the next regular session of the legislature or special session of the Legislature called by the Governor for the purpose of providing such relief".

This would preclude the Governor from exercising the Governor's emergency power for imminent potential disasters such as hurricanes or tsunamis. The Governor

would need to wait until a disaster occurs. And, in the aftermath of a disaster, the Governor would need to find and declare the tangible and measurable harm and determine if relief could be achieved through legislation. If so, the Governor would be compelled to call a special session of the legislature to provide such relief. Meanwhile, whatever harm has occurred would remain, and any health and safety problems will fester until the legislature passes the appropriate legislation.

In an emergency, the Governor, as both the chief executive and commander in chief of the state must be able to take action as swiftly as the situation warrants. This bill would prevent the Governor from acting on the advice of experts in disaster prevention and response and from ensuring the health, and safety of the state's citizenry. As a department that has assigned responsibilities for responding to disasters, DAGS understands the need for the Governor to take swift and decisive action. The legislature sets policy and creates laws. It should not interfere with the Governor's responsibilities.

Thank you for the opportunity to testify on this matter.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2828, S.D. 2, H.D. 1, RELATING TO DISASTER RELIEF.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Thursday, March 27, 2008 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 308  
*Deliver to: Committee Clerk, Room 306, 2 copies*

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

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Chair Oshiro and Members of the Committee:

The Attorney General has numerous concerns regarding this bill and strongly opposes its passage.

This bill would turn the clock on emergency management law in Hawaii back fifty-seven years and significantly hamper the Governor's ability to respond to emergencies and disasters. Sections 127-1 to 127-9, Hawaii Revised Statutes, have been suspended since 1951 and for the last fifty-seven years, virtually all of the Governor's emergency management powers and capabilities have been found primarily in chapter 128, Hawaii Revised Statutes. This bill effectively terminates the suspension, leaves the Governor with two very separate and distinct chapters for emergency management, and dangerously hampers the Governor's ability to respond to emergencies and disasters.

The reinstatement of chapter 127 carries with it the establishment and operation of a state disaster relief agency as well as county disaster relief agencies. The implementation of chapters 127 and 128 appears to provide for two separate and distinct response structures with separate directors and personnel. It is not clear at this time whether the existing civil defense administrative structure could simply be called the Disaster Relief Agency without more comprehensive legislation and planning than provided in this bill or additional

legislation is required to establish, fund, and reorganize the structure contemplated in chapter 127.

Additionally, if passed, the Governor and director of disaster relief do not have the same broad response powers found in chapter 128. The powers of the director of disaster relief are significantly limited while the director of civil defense has broad emergency management response powers not found in chapter 127.

Another major concern is the significant limits placed on the Governor's ability to exercise emergency response powers under chapters 127 and 128 for disasters not caused by an enemy attack by requiring the Governor to first find and declare through an emergency proclamation that tangible and measurable harm or damage has resulted as a consequence of the disaster and that the disaster relief could not be achieved through legislation enacted in the next regular session or special session of the Legislature. "Tangible and measurable harm or damage" is specifically defined on page 3, at lines 17-21, as "harm or damage that has already occurred and that, unless immediately acted upon, would otherwise be irreparable, result in the imminent loss of life, or pose an immediate health or safety hazard to humans or the environment" (emphases added).

Section 127-1 includes a broad range of emergency functions including "fire fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, protection of important installations, temporary restoration of public utility services, and other functions related to civilian protection." The existing chapter 127 does not require the Governor to wait until the public is injured, but under this new standard included with this bill, the Governor would be legally prohibited from providing any disaster relief or taking pre-event protective actions, including the issuing of a pre-landfall

declaration in the face of a hurricane or tsunami threatening the State.

Under this bill, in addition to finding that the harm or damage must have already occurred, the Governor must find, that unless acted upon immediately, the damage will be irreparable, result in the imminent loss of life, or pose an immediate health or safety hazard to humans or the environment. This will eliminate any disaster assistance that is not directed to preventing the loss of life or immediate health or safety hazards to humans or the environment. Emergency powers cannot be used to address any other type of damage, which could include debris removal, repair of damaged property, and other types of relief.

A further complication with this bill is the restriction prohibiting the Governor from providing any disaster relief if disaster relief could be achieved through legislation enacted at the next regular session or a special session of the Legislature. Because the Governor may always request a special session, it is conceivable that there are very few situations where the Governor may legally provide disaster relief under this bill except for those instances involving immediate threats to the loss of life or property.

An additional complication is the fact that even in those rare cases where the Governor is able to provide disaster relief, such relief automatically terminates at the end of the next regular or special legislative session. The termination is automatic unless the Legislature adopts a concurrent resolution or enacts a law to authorize the continued disaster relief. This termination applies not just to disaster relief under chapter 127, but also civil defense emergencies under chapter 128. At this point, we are not sure how this would impact federal assistance or the ability of the public or government agencies to apply for disaster assistance under the various federal and state disaster assistance programs.

We respectfully ask the Committee to hold this bill.



LINDA LINGLE  
Governor



SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE  
THURSDAY, MARCH 27, 2008  
2:00 P.M.  
ROOM 308

SENATE BILL NO. 2828, S.D.2, H.D. 1  
RELATING TO DISASTER RELIEF

Chairperson Oshiro and Members of the Committee:

Thank you for the opportunity to testify on SB 2828, S.D. 2, H.D. 1, which clarifies that the governor shall not utilize the power to suspend laws authorized under the Civil Defense and Emergency Act when the State is attacked for purposes of noncivil defense situations unless there is a tangible and measureable threat to the people or environment of the State. It 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. It states that any emergency powers in force prior to the effective date of this measure expire at the end of the 2008 regular session unless reauthorized by the legislature.

The Hawaii Department of Agriculture is strongly opposed to this measure. In an emergency, the Governor must have the ability to immediately take action and deploy resources that in her mind, and with the advice of experts, comprises the best, safest, and most effective means to address the emergency at hand.

Oftentimes, "tangible and measurable harm" is not readily apparent and valuable time and resources may be spent to determine if such harm has occurred. Further, the

definition requires that the harm or damage require immediate action, is irreparable, may result in imminent loss or life or pose an immediate health or safety hazard. Very few disasters would meet all of the criteria together and therefore would require waiting for the next legislative session or a special session.

It is only after taking action under an emergency declaration as now allowed that a comprehensive understanding of the scope and magnitude of the problem can be determined with accuracy. A delay could endanger lives and add thousands or millions of dollars to the cost of repair or replacement.

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
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 Senate Bill 2828, Senate Draft 2, House Draft 1 – RELATING TO DISASTER RELIEF**

**BEFORE THE HOUSE COMMITTEE ON  
FINANCE**

**March 27, 2008**

Senate Bill 2828, Senate Draft 2, House Draft 1, among other provisions, states that any emergency powers in force prior to the effective date of this measure, expire at the end of the 2008 Legislative Session unless reauthorized by the Legislature. 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 and the Kiholo earthquake emergencies. The Proclamations allows the Department and others, to expeditiously work on mitigation/repair projects by “suspending any law which impedes or tends to impede or is detrimental to the expeditious and efficient execution of, or conflicts with, disaster relief or other necessary functions”. Ensuring that the Proclamations remain in full force and effect throughout the “recovery period” is essential in the Department’s ability to address the publics’ health, safety and welfare.

For example, some damages from the 2006 heavy rains and flooding are still being reported to the Department to investigate. Just last month (January 2008), a report from Senator Carol Fukunaga’s Office indicated that there were several areas along Makiki Stream and Ditch near Keeaumoku/Wilder Streets and Nehoa Street that sustained storm related damage. Other examples may relate to unforeseen circumstances that may arise during mitigation/repair projects such as the discovery of burials in the area or in the case of the Kauai Dam break, federal funds were made available last April 2007 and the design of these projects are on-going. Federal funds from the Natural Resources Conservation Service in the tune of \$5,000,000 will be used for the Makaua Stream Restoration and Debris Removal project in Kaaawa, Oahu and the Wailapa Stream/Kilauea River Debris Removal project in Kilauea, Kauai. These federal monies will be matched with approximately \$1,300,000 state appropriations made available through Act 118, Session Laws of Hawaii 2006. Once again, maintaining the Proclamations in full force and effect is essential in helping the Department to address these matters in a timely manner to protect the publics’ health, safety and welfare.

Attached for the Committee's information is a listing of some of the emergency projects which the Department has or is addressing and its status.

As indicated on the Attachment, the "recovery period" after the emergencies occurred takes several years to address depending upon, 1) When exactly the emergency events took place, 2) When available state funding is made available, and 3) If there are federal recovery funds involved. Although the Department tries its best at making emergency projects a priority as well implementing these projects in a timely manner, it would be hard-pressed or impossible to complete projects by the next regular session of the Legislature. If by some chance, a concurrent resolution is not adopted by the Legislature to continue the emergency proclamation(s) in full force and effect, this may cripple the Department's ability to address projects related to protecting the public's health, safety and welfare.

The Department is particularly concerned with SECTION 3 in this measure and is unclear as to how this might affect the current emergency proclamations which the Department is relying upon. It appears that SECTION 3 may prematurely cancel the current emergency proclamations which are still being relied upon by the Department.

## ATTACHMENT – SUMMARY OF EMERGENCY PROJECTS

<u>Project</u>	<u>Status</u>
Kaaawa Landslide, Oahu	Completed March 2006
Driveway Culvert Repairs in Maunalaha Valley, Oahu	Completed April 2006
Diamond Head Rockfall Mitigation, Oahu	Completed April 2006
Hauula Ditch Debris Removal, Oahu	Completed August 2006
Round Top Drive Emergency Slope Repairs, Phase I, Oahu	Completed October 2006
Fasone Residence Rockfall Mitigation, Oahu	Completed December 2006
Takahashi Residence Rockfall Mitigation, Kauai	Completed January 2007
Fern Grotto Rockfall Mitigation and Damage Repairs, Kauai	Completed March 2007
Wailoa Small Boat Harbor Emergency Dredging, Hawaii	Completed June 2007
Halamanu (Field 21) Reservoir Emergency Spillway Repairs, Kauai	Completed August 2007
Debris Fences Above Individual Homes in Manoa, Oahu	Completed December 2007
Mala Wharf Boat Ramp Emergency Dredging, Maui	Completed February 2008

**ATTACHMENT – SUMMARY OF EMERGENCY PROJECTS (continued)**

<u>Project</u>	<u>Status</u>
Drainage Improvements At Individual Homes in Manoa, Oahu	
2750 Puuhonua Street	Construction Start December 2007 Estimated Completion March 2008
2718/2726 Puuhonua Street	Construction Start February 2008 Estimated Completion April 2008
2577 Sonoma Street	Pending Construction Estimated Start March 2008
Dispersion Channels at Round Top Drive/Manoa, Oahu	Pending Construction Estimated Start May 2008
Round Top Drive Phase II & Maunalaha Slope Restoration, Oahu	Construction Start September 2007 Estimated Completion April 2008
Maunalaha Stream Restoration, Oahu	Construction Start September 2007 Estimated Completion April 2008
Anahola Slope Erosion Mitigation, Kauai	Construction Start July 2007 Re-Design Burials Discovered
Hanapepe Culvert Repairs, Kauai	Construction Start January 2008 Estimated Completion April 2008
Waikaea Boat Ramp Emergency Dredging, Kauai	Construction Start April 2008 Estimated Completion July 2008
Alexander Dam Emergency Spillway Repairs, Kauai (Private Kauai Coffee)	Construction Start August 2006 Estimated Completion March 2008
Elua Dam Emergency Spillway Repairs, Kauai (Private Kauai Coffee)	Construction Start March 2008 Estimated Completion May 2008
Makaua Stream Restoration and Debris Removal, Oahu	Under Design Estimated Bid Opening April 2008
Wailapa Stream/Kilauea River Debris Removal, Kauai	Under Design Estimated Bid Opening August 2008