



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2828, RELATING TO DISASTER RELIEF.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON INTERGOVERNMENTAL AND MILITARY AFFAIRS

DATE: Wednesday, February 13, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 016
Deliver to: Committee Clerk, Room 219, 1 copies

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

Chairs Taniguchi and Inouye and Members of the Committees:

The Attorney General has numerous concerns regarding this bill.

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 appear 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."

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.

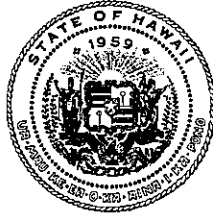
Under this bill, in addition to finding that the harm or damage must have already occurred, the Governor must find, that unless acted upon immediately, the damage will be irreparable, result in the imminent loss of life, or pose an immediate health or safety hazard to humans or the environment. This 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 to 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 Committees to hold this bill.

LINDA LINGLE
GOVERNOR OF HAWAII



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

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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
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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—Relating To Disaster Relief

**BEFORE THE SENATE COMMITTEES ON
JUDICIARY AND LABOR**

And

INTERGOVERNMENTAL AND MILITARY AFFAIRS

February 13, 2008

Senate Bill 2828, 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 \$1,700,000 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.

DEPARTMENT OF LAND AND NATURAL RESOURCES TESTIMONY ON S.B. 2828

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
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
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

Testimony by Ken Casarez, Deputy Trustee
Laborers' Union Local 368

In support of

SB2828 RELATING TO DISASTER RELIEF
To the

COMMITTEE ON JUDICIARY AND LABOR
And

COMMITTEE ON INTERGOVERNMENTAL AND MILITARY
AFFAIRS

Wednesday, February 13, 2008, 9:00 a.m.
Room 016, State Capitol

Honorable Senator Brian Taniguchi, Chair, Committee on Judiciary and Labor; Senator Lorraine Inouye, Chair, Committee on Intergovernmental and Military Affairs and Members of the joint committees:

SB2828 is an important bill that will clarify the powers of the governor during an emergency. In order for the governor to exercise the powers authorized under chapter 127 and chapter 128 for a disaster not caused by an enemy attack, the governor must first find and declare an emergency through a proclamation that tangible and measurable harm or damage has resulted as a consequence of the disaster.

The bill also provides in part, that if a disaster relief can be achieved through legislation during the next legislative session or in a special session called by the governor for the purpose of providing disaster relief, then the governor shall not execute any action to provide for disaster relief under this chapter.

We support the intent and purposes of this bill. Thank you for the opportunity to submit this testimony.

LATE

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
SENATE COMMITTEES
ON
JUDICIARY AND LABOR
AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS
ON
February 13, 2008

S.B. 2828

RELATING TO DISASTER RELIEF

Chairs Taniguchi, Inouye and members of the Committees, thank you for the opportunity to testify on S.B. 2828.

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.

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

LATE

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON JUDICIARY AND LABOR
AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS
FEBRUARY 13, 2008
9:00 A.M.

SENATE BILL NO. 2828
RELATING TO DISASTER RELIEF

Chairpersons Taniguchi and Inouye and Members of the Committees:

Thank you for the opportunity to testify on SB 2828 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.

The Hawaii Department of Agriculture was severely impacted by the Spring floods of 2006 and the October 15, 2006 Kiholo earthquake. If the Governor had not had the authority to take swift and decisive action, the negative impact to agriculture would have been much greater.

LATE

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON SENATE BILL 2828
A BILL RELATING TO DISASTER RELIEF

PRESENTATION TO THE
COMMITTEE ON JUDICIARY AND LABOR

AND

COMMITTEE OF INTERGOVERNMENTAL AND MILITARY AFFAIRS

BY

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

February 13, 2008

Chair Taniguchi, Chair Inouye, 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 Senate Bill 2828.

Senate Bill 2828 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 legislature enacted in the next regular session or by special session. This requirement may take too much time to calculate at the risk of public safety. This bill could also result in the establishment of a separate disaster relief agency which could frustrate the recovery process.

Finally, 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. This provision runs counter to our current practice of keeping Emergency Proclamations open to facilitate recovery operations and activities. Our disaster management experience has shown that it takes about four years to close out a small disaster and about ten years to close out a large disaster like the 1992 Hurricane Iniki Disaster.

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