



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Thursday, March 13, 2008 **TIME:** 8:30 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, including the amendments contained in this version.

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, but not county disaster relief agencies. The Senate tried to address the concerns with two separate and distinct response structures by identifying the Director of Civil Defense to also be the Director of Disaster Relief and the Civil Defense Agency to be the Disaster Relief Agency. However, it remains unclear 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 that has not been remedied in the amended version of this bill 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 or is about to result 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 6, at lines 3-8, as "harm or damage that may occur in the immediate future or 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."

Under this standard included in 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 unless harm or damage "may occur in the immediate future" or "has already occurred." The Governor must also 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 that can be repaired, mitigation to prevent damage that can be repaired, 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 irreparable 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 Committee to hold this bill.



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of Linda L. Smith
Senior Policy Advisor to the Governor

Before the

House Committee on Public Safety & Military Affairs

Thursday, March 13, 2008, 8:30 a.m.
State Capitol, Conference Room 309

SB 2828 SD2 Relating to Disaster Relief

Chair Baker and Members of the Committee:

The Office of the Governor opposes SB 2828 SD2, which restricts a Governor's ability to take effective action in response to certain types of emergencies and disasters that arise as a result of "periodic or longstanding societal inequities or circumstances."

This measure impairs the State's ability to provide immediate assistance when it is necessary and warranted by the facts. By requiring the Governor to first declare through an emergency proclamation that tangible harm occurred as a result of the emergency, this measure would prohibit the Governor from taking any action to mitigate and prevent further damage. As a result, the State would become a "sitting duck" if the Governor could only act after tangible harm or damage has been documented to the Legislature's satisfaction.

Moreover, this measure requires that if the tangible harm and damage that arose from longstanding societal inequities 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 the appropriate course of action during its legislative session or if the emergency occurs when the Legislature is not in session.

More importantly, disasters and emergencies require immediate attention and action no matter if it affects 100 residents or 10,000 residents, and no matter if the cause is unexpected or longstanding. This bill offers no guarantees that a legislative solution will be provided to the Governor in cases where the Governor is required to not take

action. There are also no procedures that will enable the Governor to act if the Legislature is unable to come to agreement.

The Governor recognizes and understands the complicated nature of finding proper solutions and responses for issues facing Hawaii. However, she should not be required to "not execute any action to further provide for disaster relief" on the basis that the issue could possibly be solved through legislation.

Additionally, this measure requires that any disaster relief provided, except for natural disasters and civil defense emergencies, shall not extend beyond the adjournment sine die of the next regular session unless expressly authorized by the Legislature. This provision would prevent timely recovery efforts by taking away the continuity needed for ongoing relief. Since it often takes years to recover from disasters and emergencies, requiring extensions for relief to be renewed on an annual basis would only delay and disrupt relief efforts.

The Office of the Governor respectfully asks that this measure be held as it is not in the best interest of the State and our residents.

LINDA LINGLE
GOVERNOR OF HAWAII



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

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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DEPUTY DIRECTOR - WATER

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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 Senate Bill 2828, Senate Draft 2 – Relating To Disaster Relief

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

March 13, 2008

Senate Bill 2828, Senate Draft 2, 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 public's 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 as 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.

DEPARTMENT OF LAND AND NATURAL RESOURCES TESTIMONY ON SB 2828, SD 2

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

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

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS
THURSDAY, MARCH 13, 2008
8:30 A.M.

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

Chairperson Evans and Members of the Committee:

Thank you for the opportunity to testify on SB 2828, S.D. 2 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, the true nature and extent of damage and danger is not readily apparent. It is only after taking action allowable under an emergency declaration 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.

STATE OF HAWAII
DEPARTMENT OF DEFENSE

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

PRESENTATION TO THE
COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

BY

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

March 13, 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 Senate Bill 2828 SD2.

Senate Bill 2828 SD2 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. This requirement may take too much time to calculate at the risk of public safety.

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Also, recommend that the provision that the director, with the approval of the county council, shall appoint a deputy director for each political subdivision be reinstated. The deputy director of civil defense for each county is the mayor. This process has worked extremely well because it allows the director with direct and immediate access with to each county mayor for the purpose of maximizing emergency preparedness and response activities.

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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 activities. Our disaster management experience has shown that it takes about four years to close out a small disaster. It took ten years for the State and counties to close out the 1992 Hurricane Iniki Disaster which involved the receipt of about \$160 million in federal funds.

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

FRIENDS OF PAI'OLU KAI AULU

LIFT OF ENCOURAGEMENT AS THE JOURNEY BEGINS

Friends of Pai'olu Kaiaulu, Inc.
85-638 Farrington Highway
Wai'anae, Hi 96792

Before the

Public Safety & Military Affairs Committee

Thursday, March 13, 2008
State Capitol Conference Room 309

RE: OPPOSES SB2828 SD2

Chair Evans and Members of the Committee:

The Friends of Pai'olu Kaiaulu, Inc. is a non-profit organization dedicated to the enrichment and promotion of health, education and culture for the residents of Pai'olu Kaiaulu, a homeless facility in Wai'anae with a population of about three hundred, including children from birth to 18.

This measure impairs the State's ability to provide immediate assistance when it is necessary and warranted by the facts. 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.

The Governor, as both the chief executive and commander in chief of the state of Hawaii must 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.

We know from facts, this bill came about in the Governor's judgments in the health and safety of our children, who was placed in imminent potential disasters such as hurricanes or tsunamis on our beaches. However, for the good and best interest of the State and our residents, we oppose this Bill.

Houselessness is a disaster and the shame is shared among all.

Alice U. [Signature]
(371-8958)