

# SB 478

**Measure Title:**

RELATING TO DISASTER RELIEF

**Report Title:**

Disaster Relief; Emergency Powers; Clarification

**Description:**

Activates provisions of the State's disaster relief law to apply to emergencies, except for enemy attack. Clarifies the use of the governor's emergency powers in response to a natural or manmade disaster. Limits the governor's powers to provide disaster relief or the length of time that the governor may provide disaster relief in specific circumstances without legislative authorization. States that, in certain cases, emergency powers in force prior to the effective date of this measure expire at the end of the 2009 regular session unless reauthorized by the legislature.



**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of  
**Barry Fukunaga**  
Chief of Staff to the Governor

Before the  
**SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**  
Thursday, February 5, 2009, 1:15 p.m.  
Room 229, State Capitol

**S.B. 478 RELATING TO DISASTER RELIEF**

Chair Espero, Vice Chair Bunda and Members of the Committee:

The Office of the Governor opposes S.B. 478 because the proposed changes will adversely affect the State's chief executive from possessing flexibility and the immediate capability to respond to disasters and emergencies. The bill requires a Governor to only respond to disasters and emergencies if "tangible and measurable harm" has occurred and such harm cannot be resolved through legislation. This measure will prohibit the Governor from taking pre-emptive action and impair the State's ability to provide immediate assistance when it is necessary and warranted by the circumstances of an emergency situation.

This measure prescribes 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 the appropriate course of action during its legislative session or if the emergency occurs when the Legislature is not in session. This bill also offers no guarantees that a legislative solution will be provided to the Governor.

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.

During the previous session, several members of the Legislature called upon the Governor to exercise emergency powers resulting from conditions such as the Aloha Airlines bankruptcy, while simultaneously trying to curtail these emergency powers. If this bill is enacted this session, 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.

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

A key requirement for effective responses to any emergency is the ability to respond quickly and effectively. The ability to do so requires flexibility and broad decision making capability. It would be prudent to ensure that the Governor is 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 478  
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

February 5, 2009

Chair Espero and Committee Members:

I am Bob Lee, Director of Civil Defense, State Department of Defense. I am providing written testimony in opposition to Senate Bill 478.

Senate Bill 478 amends HRS Section 127-2 which is indefinitely suspended. More importantly the proposed bill 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.

If passed, Senate Bill 478 will inhibit 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.

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 federally-declared disasters and longer given the authority under federal regulations to extend the performance period for the repair of infrastructure repair projects.

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

LINDA LINGLE  
GOVERNOR OF HAWAII



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

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CHAIRPERSON  
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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  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
PUBLIC SAFETY AND MILITARY AFFAIRS**

**Thursday, February 5, 2009  
1:15 p.m.  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 478  
RELATING TO DISASTER RELIEF**

Senate Bill 478 clarifies the use of the Governor's emergency powers in response to a natural or manmade disaster. The Department of Land and Natural Resources (Department) does not support this measure.

The Department believes that it is difficult to sometimes evaluate with an absolute certainty the full scope and nature of all emergencies, and by their very nature, they require a speedy and flexible response. The ability to act quickly and flexibly should be the best way for the state to provide an emergency response.

The Department is also currently involved with addressing 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 (state or county) 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 public's health, safety and welfare.

The "recovery period" may take years to address depending upon 1) when exactly the emergency events took place, 2) the severity of the damages, 3) 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 or enactment of law 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.

LINDA LINGLE  
Governor



SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
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TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS  
THURSDAY, FEBRUARY 5, 2009  
1:15 PM  
ROOM 229

SENATE BILL NO. 478  
RELATING TO DISASTER RELIEF

Chairperson Espero and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 478 which activates provisions of the State's disaster relief law to apply to emergencies, except for enemy attack; Clarifies the use of the governor's emergency powers in response to a natural or manmade disaster; Limits the governor's powers to provide disaster relief or the length of time that the governor may provide disaster relief in specific circumstances without legislative authorization; and States that, in certain cases, emergency powers in force prior to the effective date of this measure expire at the end of the 2009 regular session unless reauthorized by the legislature. The Hawaii Department of Agriculture is 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.

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.

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



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  
SENATE COMMITTEE  
ON  
PUBLIC SAFETY AND MILITARY AFFAIRS  
ON  
February 5, 2009

S.B. 478

RELATING TO DISASTER RELIEF

Chair Espero and members of the Committee, thank you for the opportunity to testify on S.B. 478.

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 the specifically listed causes. This means that the Governor will be limited if a disaster, that is not specifically listed, occurs. Furthermore, it is impractical for 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 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 the relief".

This would preclude the Governor from exercising the Governor's emergency power for imminent, not specifically named, potential disasters. And, in the aftermath of a not specifically named 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. This bill, if passed into law, will interfere with the Governor's responsibilities.

In addition to hindering the Governor from taking timely action, this bill would create problems for the Governor even when the Governor is able to provide disaster relief without legislation. In these cases, the relief that is provided would terminate at the end of the next legislative session unless the Legislature adopts a concurrent resolution or enacts a law to authorize the continued disaster relief. This would be disruptive as relief projects often take over a year to complete and precious resources would be diverted to justifying the continuance rather than continuing the relief. There may be dozens or hundreds of projects involved. There may also be impacts on cost recovery, and federal and state aid.

DAGS recommends that this bill be held.

Thank you for the opportunity to testify on this matter.