

HB-103-HD-1

Submitted on: 2/9/2021 9:42:06 PM

Testimony for JHA on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tim Streitz	Individual	Support	No

Comments:

This bill is helpful to reduce imbalances of power. Even in emergencies, it can be harmful to society for any one individual to have unilateral decision-making authority for an extended length of time. By allowing the legislative body to be involved after an initial emergency order is declared, there can be more oversight and representation into the process. The bill offers a good compromise through an automatic extension of the order should the legislative body fail to take action, such as if it agrees with the order or the nature of the emergency prevents such action.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Thursday, February 11, 2021

2:00 PM

Via Video Conference, Conference Room 325

in consideration of

HB 103, HD1**RELATING TO EMERGENCY POWERS.**

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the Judiciary & Hawaiian Affairs Committee

Common Cause Hawaii provides written comments on HB 103, HD1, which (1) requires approval of the legislature by concurrent resolution to extend to a date certain, or deny the extension of, a proclamation of a state of emergency timely requested by the governor beyond sixty days of its issuance, unless the legislature fails to take action, in which case the state of emergency is automatically extended for sixty days and (2) allows the authorization of the issuance of a separate proclamation arising from the same emergency or disaster as a previous proclamation that expired, upon request of the governor and adoption of a concurrent resolution by the legislature.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through promoting ethics, accountability, and transparency in our democratic form of government.

When the COVID-19 pandemic first impacted Hawaii, Governor Ige's partially suspended the Sunshine Law (Hawaii Revised Statutes (HRS) Chapter 92) and completely suspended the public records law (HRS Chapter 92F). See Supplementary Proclamation Dated March 16, 2020 https://governor.hawaii.gov/wp-content/uploads/2020/03/2003109-ATG_COVID-19-Supplementary-Proclamation-signed.pdf. By Governor Ige's seventh emergency proclamation, guidance was provided for the Sunshine Law to allow for remote meetings but the public records law was still suspended "to the extent they contain any deadlines for agencies, including deadlines for the OIP, relating to requests for government records and/or complaints to OIP." See Seventh Supplemental Proclamation Related to the COVID-19 Emergency Dated May 5, 2020 https://governor.hawaii.gov/wp-content/uploads/2020/05/2005024-ATG_Seventh-Supplementary-Proclamation-for-COVID-19-distribution-signed-1.pdf at Exhibit H. Currently, there is a Seventeenth Supplemental Proclamation Related to the COVID-19 Emergency Dated December 16, 2020 which will expire on February 14, 2021, with the same Sunshine Law and public records provisions. See https://governor.hawaii.gov/wp-content/uploads/2020/12/2012088-ATG_Seventeenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf at Exhibit F.

During regular times and especially during these pandemic times, it is vitally important that the people be able to have access to their government and know that their government is functioning properly and in the best interest of the people. Without being able to request public records and timely receive them, government is shutoff from public oversight and accountability, which are necessary for a functioning democracy. HRS Chapter 92F, the public records law, must be restored if we are to have any trust and confidence in our government.

Thank you for the opportunity to provide comments on HB 103, HD1. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



SHOPO



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To : The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
Committee on Judiciary & Hawaiian Affairs
House of Representatives, State of Hawaii

From : Malcolm Lutu, SHOPO President

Date : February 10, 2021

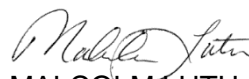
Re : HB 103 Relating to Emergency Powers
Testimony in Support

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in strong support of HB103. This bill seeks to provide safeguards on the emergency management powers that are vested in the executive branch at the State and county levels. It has been suggested that Chapter 127A provides the Governor and county Mayors with unilateral and unbridled power to indefinitely suspend "any law" during a declared emergency. While there is no question that certain powers must be permitted to be exercised by our executive branch during an emergency such as the current Covid-19 pandemic, placing such ominous power in the hands of one executive head should nonetheless be subject to an appropriate check and balance by the collective legislative body.

HB103 provides a reasonable check and balance on the executive branch's emergency powers by allowing the legislature to review and concur to an extension of a state of emergency beyond 60 days. This safety measure along with the proposed suggested amendments made by HGEA will insure that the extension of an emergency and the concurring power to suspend any law by the executive branch is subject to the protections that can be provided by the legislature's review and concurrence.

We thank you for allowing us to be heard on this very important issue and hope your committee will unanimously support this bill.

Respectfully submitted,


MALCOLM LUTU
SHOPO President

jmo

Visit us at
shopohawaii.org

STATE OF HAWAII

DEPARTMENT OF DEFENSE

OFFICE OF THE DIRECTOR OF EMERGENCY MANAGEMENT

3949 DIAMOND HEAD ROAD

HONOLULU, HAWAII 96816-4495

STATE OF HAWAII

DEPARTMENT OF DEFENSE

HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON **HOUSE BILL 103**,

RELATING TO EMERGENCY POWERS

Before the House Committee on

JUDICIARY AND HAWAIIAN AFFAIRS

By

Luke P. Meyers

Administrator, Hawaii Emergency Management Agency (HI-EMA)

Aloha Chair Ichiyama, Vice-Chair Eli and Members of the Committee:

House Bill 103 requires approval of the legislature by concurrent resolution to extend to a date certain, or deny the extension of, a proclamation of a state of emergency timely requested by the governor beyond sixty days of its issuance, unless the legislature fails to take action, in which case the state of emergency is automatically extended for sixty days.

The Hawaii Emergency Management Agency **opposes** House Bill 103.

This bill would add section 127A-14(e), HRS, to specify termination dates for a proclamation of a state of emergency of up to sixty days after the issuance of the proclamation with a possible sixty day extension which could be denied by the Legislature, and section 127A(f), HRS, to allow for a separate proclamation of a state of emergency of up to sixty days with the adoption of a concurrent resolution of the Legislature. These amendments would severely limit the Governor's duties and legal obligations to provide for the public health, safety, and welfare by limiting his ability to determine the duration of a state of emergency or disaster within the State. The necessary flexibility to protect the public is currently properly with the executive branch of government, subject to the laws, support, and limitations imposed by the Legislature.

While section 127A-14(e) includes a proviso that would allow the Governor to extend the declaration of a state of emergency if the Legislature agrees via concurrent resolution, or automatically if the Legislature fails to act within a specified time, the reality is that the bill strips the Governor and the emergency management structure in Hawaii of their authority and capability to provide for the public health, safety, and welfare in the event the Legislature is unable to reach an agreement and issue a concurrent resolution to continue a state of emergency. The requirement that the Governor make the request for an extension to the Legislature no later than twelve days prior to the expiration of the emergency period, including county emergencies, may create a situation where necessary ongoing emergency actions must be abruptly halted causing confusion or inadvertently reversing progress made by the emergency action. The ultimate decision to cease emergency operations should be within the emergency management structure as established by the Legislature specifically for that purpose.

The Department of the Attorney General also notes that the Legislature currently has oversight controls, if needed. For example, section 127A-11, HRS, requires the Governor to submit requests to the Legislature every year seeking moneys for the Major Disaster Fund, which allows the Legislature to review the use of those moneys in addition to budget requests. Section 127A-11 also requires the Governor to report to the Legislature no later than sixty days after any allotment or expenditure of any fund moneys from the Major Disaster Fund to account for the purpose of the allotment or expenditure. The Legislature has the authority to hold hearings on all rightful subjects of legislation not inconsistent with the Constitution of the United States or the State of Hawaii.

Thank you.

Luke P. Meyers: Luke.P.Meyers@hawaii.gov; 808-733-4300



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Judiciary and Hawaiian Affairs

Testimony by
Hawaii Government Employees Association

February 11, 2021

H.B. 103, H.D. 1 – RELATING TO EMERGENCY POWERS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 103, H.D. 1 which requires legislative approval via concurrent resolution to extend or deny a proclamation of a state of emergency, clarifies that emergency powers shall not be inconsistent with the state constitution, and provides parameters & requires justification for the suspension of laws. We appreciate the amendments from the Committee on Pandemic and Disaster Preparedness made in the H.D. 1.

Needless to say, the COVID-19 worldwide pandemic immediately and significantly impacted every person in our state, therefore it was appropriate for the Governor to take action to provide relief for damages and to protect our health, safety, and welfare by suspending some laws via emergency proclamation in March 2020. However, as we embark on the 11th month of the pandemic and the 17th – soon to be 18th – Proclamation, the great majority of us are now functioning in a “new normal,” therefore we respectfully question the need to continuously suspend a wide variety of state laws. This measure appropriately provides a necessary legislative check and balance to the executive by requiring legislative approval via concurrent resolution to extend or deny a state of emergency. The amendments in the H.D. 1 strengthen the intent of the measure by ensuring that the Governor’s emergency powers do not supersede rights enshrined in our State Constitution and clarifying the breadth of the Executive’s suspension of laws by identifying which specific sections of law are being suspended and what emergency functions will be facilitated by the suspension.

It is contrary to our democracy for any one individual to have unilateral authority to suspend laws indefinitely without a mechanism for public input and review. Passage of this measure will ensure that emergency actions are balanced, constitutional, and justifiable. Thank you for the opportunity to testify in strong support of H.B. 103, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



February 11, 2021

2:00 p.m.

VIA VIDEOCONFERENCE

Conference Room 325

To: House Committee on Judiciary & Hawaiian Affairs

Rep. Mark M. Nakashima, Chair

Rep. Scott Z. Matayoshi, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB103 HD1 — RELATING TO EMERGENCY POWERS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB103 HD1, which would amend the state's emergency management statute to require the approval of the Legislature to extend a state of emergency.

If enacted, this bill would take an important step toward addressing an oversight in the state's current emergency management law that was not apparent until the COVID-19 pandemic: the lack of a meaningful legislative check on the governor's emergency powers.

At present, the law includes a 60-day limit on emergencies, but does not address what should happen if an emergency exceeds that limit. Thus, it is possible for the governor to extend an emergency period indefinitely, with little input or oversight from the legislative branch.

Given that the emergency management law already gives broad legislative powers to the executive, the result is an upsetting of the balance of powers in the state for an extended period of time.

Without a voice in government via their elected representatives, the people lose trust in their elected officials. It is clear that the Legislature must play a larger role in any proposed extension of an emergency period and act as a safeguard for the rights, safety and health of the public.

By requiring legislative approval for the extension of an emergency past a 60-day time limit, HB103 would take a positive step toward protecting the balance of powers and the public trust. However, we suggest that the committee make two major changes to further advance that goal.

>> Remove the clause that allows the emergency to continue “automatically” if the Legislature fails to take action on the governor’s request to extend the emergency, as this frustrates the intent of the bill.

We appreciate that there might be occasions where the Legislature wouldn’t hesitate to approve the governor’s proclamation, but there is still a useful purpose to requiring official approval via concurrent resolution.

Removing the “automatic renewal” clause would ensure that Hawaii’s residents always have the chance to weigh in on the governor’s actions. It also would emphasize the importance of maintaining the constitutional balance of powers, even in an emergency.

>> Have Hawaii follow the example of other states and allow the Legislature to end the emergency period at any time by concurrent resolution.

Finally, we ask that the committee consider how to better protect civil liberties during an emergency.

In our recent policy brief, “[Lockdowns Versus Liberty](#),” we looked at how the state’s emergency management law could be reformed in light of the lessons learned over the past year.

In addition to the need for a legislative check and restoring the balance of powers, we identified three principles that should be considered while dealing with emergencies touching on public health.

They are: (1) ensure that restrictions and regulations are narrowly tailored, with a clear connection between the restriction and the public health aim; (2) reinforce the importance of due process standards by requiring the government to bear the burden of proving that an order which closes a business or deprives an individual of a right is both necessary and reasonable;

and (3) strive for more transparency in decision-making and directives, including protections for existing sunshine and open-records laws.

Helpful and well-considered additions to this bill include both the rational-basis requirement for the suspension of laws and the clarification that emergency actions must remain consistent with the Hawaii Constitution. However, it would be good to see a firmer statement in favor of preserving government transparency, especially the state's sunshine laws and open records, as well as stronger guarantees that emergency orders that close a business or deprive an individual of a right would also have to demonstrate a rational basis for the restriction.

The COVID-19 pandemic has forced us to reevaluate how our state deals with emergencies. We have learned much about what we do well and what could be improved. This bill is a good start toward making our state better-equipped to handle future emergencies.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

HB-103-HD-1

Submitted on: 2/11/2021 5:09:49 AM

Testimony for JHA on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brendan Ajolo	Individual	Oppose	No

Comments:

Why would you want to confiscate firearms during an emergency? This does not make sense vote no and oppose this bill



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
THURSDAY, FEBRUARY 11, 2021 AT 2:00 P.M.**

To The Honorable Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair; and
Members of the Committee Judiciary & Hawaiian Affairs,

OPPOSE HB103 HD1 RELATING TO EMERGENCY POWERS

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our opposition to HB103.

When it comes to disasters, the key is the ability to quickly make decisions and take appropriate action to assist in recovery efforts. Hawaii is both a multi-island state and separated from the continental U.S., which makes fast decisions even more critical as we cannot drive for additional resources and the urgency of decision making often has a huge impact on our economic, health and local community recovery. Therefore, any action that could delay the Governor from extending a proclamation is problematic.

Further, this bill could also force legislators to be called back for special sessions, increasing the cost of providing government services and delaying decision making. If Legislators have concerns with the Governor's actions, we hope they would engage in a conversation to share thoughts and suggestions and try to work toward winning solutions together.

Mahalo for your consideration of our testimony and ask that you please defer this bill.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

HB-103-HD-1

Submitted on: 2/11/2021 10:25:04 AM

Testimony for JHA on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carol D. Yokoyama	Individual	Support	No

Comments:

Aloha,

I have read through HB103. Please SUPPORT HB103.

Mahalo.

HB-103-HD-1

Submitted on: 2/11/2021 1:20:54 PM

Testimony for JHA on 2/11/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barry Yokoyama	Individual	Support	No

Comments:

Please SUPPORT HB103.

Mahalo.