



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, HD1, SD1
RELATING TO EMERGENCY POWERS

Before the Senate Committees on
JUDICIARY and WAYS AND MEANS

By

Luke P. Meyers

Administrator, Hawaii Emergency Management Agency (HI-EMA)

Aloha Chairs Rhoads and Dela Cruz, Vice-Chairs Keohokalole and Keith-Agaran, and Members of the Committee:

House Bill 103, HD1, SD1 Clarifies that the powers granted for emergency purposes shall not be inconsistent with the state constitution. Provides parameters for the duration of suspension of laws and requires justification for the suspension. 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. 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. (SDI)

The Hawaii Emergency Management Agency **opposes** House Bill 103, HD1, SD1.

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*Holding Power Accountable*Statement Before The
SENATE COMMITTEE ON JUDICIARY
and
SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, April 6, 2021

9:55 AM

Via Videoconference, Conference Room 211

in consideration of
HB 103, HD1, SD1
RELATING TO EMERGENCY POWERS.Chairs RHOADS and DELA CRUZ, Vice Chairs KEOHOKALOLE and KEITH-AGARAN,
and Members of the Senate Judiciary and Ways and Means Committees

Common Cause Hawaii provides written comments on HB 103, HD1, SD1, which (1) clarifies that the powers granted for emergency purposes shall not be inconsistent with the state constitution, (2) provides parameters for the duration of suspension of laws and requires justification for the suspension, (3) 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 (4) 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 partially suspended the Sunshine Law (Hawaii Revised Statutes (HRS) Chapter 92) and completely suspended the public records law (HRS Chapter 92F). See Supplementary Proclamation Related to the COVID-19 Emergency 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 Supplementary 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 an Eighteenth Emergency Proclamation Related to the COVID-19 Emergency dated February 12, 2021, which will expire on April 13, 2021. Remote meetings are still permitted under the Eighteenth Emergency Proclamation in the same manner since the Seventh Emergency Proclamation. However, under the Eighteenth Proclamation, public records may now be requested but timelines for responding may still be suspended under certain limited parameters. See https://governor.hawaii.gov/wp-content/uploads/2021/02/2102078-ATG_Eighteenth-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 completely and fully restored, if we are to have any trust and confidence in our government. HRS Chapter 92F and a Sunshine Law, which properly allows for remote meetings, should not be immediately and wholesale suspended by any governor without thorough justification and unless absolutely necessary and for the minimum time necessary.

Thank you for the opportunity to provide comments in support of HB 103, HD1, SD1. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Jarrett Keohokalole, Vice Chair

Senate Committee on Ways and Means
Honorable Donovan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair

RE: Testimony Supporting H.B. 103 H.D. 1 S.D. 1, Relating to Emergency Powers
Hearing: April 6, 2021 at 9:55 a.m.

Dear Chairs and Members of the Committees:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony **supporting H.B. 103 and requesting amendment to track the language in S.B. 134.**¹

The public records law serves a fundamental role even in emergencies. In crisis, we must reaffirm, not abandon our most basic democratic principles. When government boldly declares that it will hide information and conceal decision-making, rumor, innuendo, and special interests thrive, while democracy withers.

Suspension of the public records law for emergencies is unnecessary because the rules that govern record requests already provide flexibility for agencies to address other priorities.² The two week deadline for an initial response may be extended two more weeks for an agency “to avoid an unreasonable interference with its other statutory duties and functions” or for a “natural disaster or other situation beyond the agency’s control.” HAR §§ 2-71-13(c), -15(a). And if response would be burdensome within that

¹ Please note that the Chapter 92 and 92F language in HRS § 127A-13**(b)(2)** could be **deleted**. That subsection concerns the county mayors’ authority to suspend county laws. The mayors do not have authority under that provision to suspend the state laws on open meetings or public records.

² Hawai`i agencies do not consistently respond in compliance with the administrative deadlines in any event. For example, a recent national audit of various states found that only a third of agencies contacted in Hawai`i responded within the administrative deadlines. A. Jay Wagner (Marquette University), *Probing the People’s Right to Know: A 10-State Audit of Freedom of Information Laws* (Mar. 2020).

extended period, disclosure may occur in monthly batches to accommodate other priorities. *Id.* § 2-71-15(b).

Please amend H.B. 103 consistent with S.B. 134. S.B. 134 unequivocally reaffirms the State's commitment to the public's right to know about how its government functions during an emergency through the public records law.

Specifically, the Law Center would request the new section below and amendment of HRS § 127A-13(a)(3) as follows (referencing the new section and removing the reference to 92F).

§127A- Suspension of certain record requests; prohibited. The governor or the mayor shall not, through any proclamation or declaration of emergency or any rule or order adopted pursuant to this chapter, suspend requests for:

- (1) Public records pursuant to part II of chapter 92F; or
- (2) Vital records or statistics pursuant to sections 338-18 or 338-18.5.

HRS § 127A-13(a)(3)

Except as provided in section 127A- , suspend any law that impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions, including laws which by this chapter specifically are made applicable to emergency personnel; provided that any suspension of law shall be no broader and for no longer than required for expeditious and efficient execution of emergency functions, and any suspension of laws shall identify the sections of laws suspended and, for each section, shall specify the emergency functions facilitated with justification based on protecting the public health, safety, and welfare, and, in particular, careful regard to the public's right to know under chapter[s] 92 [~~and 92F~~]

Thank you again for the opportunity to testify in **support** of H.B. 103.



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SENATE COMMITTEE ON JUDICIARY
SENATE COMMITTEE ON WAYS & MEANS
Tuesday, April 6, 2021, 9:55 am, State Capitol Room 211
HB 103, SD1
Relating to Emergency Powers

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Chair Dela Cruz and Committee Members:

The League of Women Voters of Hawaii supports the intent of HB 103, SD1. Please revise HB 103, SD1 as necessary to prevent any conflict with SB 134, HD1 which is “in the pipeline” to pass the State House.

Thank you for the opportunity to submit testimony.



MAUI

CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY AND THE
COMMITTEE ON WAYS AND MEANS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211
TUESDAY, APRIL 6, 2021 AT 9:55 A.M.**

To The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair; and
Members of the Committee on Judiciary,

To The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair; and
Members of the Committee on Ways and Means,

OPPOSE HB103 HD1 SD1 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 HD1 SD1.

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

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-SD-1

Submitted on: 4/1/2021 9:30:32 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

You are trying to turn Hawaii in to a Communist State. we will not allow this!!

This is a great way to start a WAR!! Witch will not go well For you!!

HB-103-SD-1

Submitted on: 4/1/2021 9:44:46 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

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.

HB-103-SD-1

Submitted on: 4/2/2021 9:47:52 AM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
mike biechler	Individual	Support	No

Comments:

I strongly support increased oversight and limitations on the governor's and mayors' emergency powers. Please pass HB 103.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

The Thirty-First Legislature, State of Hawaii
The Senate
Committee on Judiciary
Committee on Ways & Means

Testimony by
Hawaii Government Employees Association

April 6, 2021

H.B. 103, H.D. 1, S.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, S.D. 1 which clarifies that the powers granted for emergency purpose shall not be inconsistent with the state constitution, provides parameters and justification for the suspension of laws, and requires approval of the legislature to extend or deny a proclamation of a state of emergency.

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 13th month of the pandemic and the 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 that were adopted by successive Committees 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, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

April 6, 2021

9:55 a.m.

VIA VIDEOCONFERENCE

Conference Room 211

To: Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB103 HD1 SD1 — RELATING TO EMERGENCY POWERS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB103, 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:

>> Ensure that restrictions and regulations are narrowly tailored, with a clear connection between the restriction and the public health aim.

>> 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.

>> 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 justification requirement and parameters for the suspension of laws as well as 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



LATE

For Our Rights a non-profit organization

P.O. Box 1633
Kapa'a, Hi. 96746
www.forourrights.org

April 5, 2021

TESTIMONY ON HOUSE BILL 103 HD1, SD1: A BILL RELATING TO
EMERGENCY POWERS

PRESENTATION TO THE HOUSE COMMITTEE ON JUDICIARY AND WAYS
AND MEANS COMMITTEE

STRONGLY SUPPORT

BY LEVANA LOMMA, CEO OF FOR OUR RIGHTS, A NON-PROFIT CORP.

Our constitutional structure does not contemplate unilateral rule by executive decree. It consists of policy choices enacted into law by the legislature and carried out by the executive branch. Therefore, if the Governor or Mayors have the authority to exercise certain expanded powers not provided in our constitution,

it must be because the legislature has enacted a law that passes constitutional muster and gives the defendants that authority. Where the defendants rely on the same enabling condition for multiple states of emergency then duration limiting provisions would cease to perform any meaningful function. These limitations would be no more than perfunctory renewal requirements and would serve as merely a trivial check on indefinite emergency executive powers.

In preservation of the people's inherent right to liberty, the Framers of the United States Constitution devised a system of separate and distinct powers among the three branches of government. "To the Framers of the United States Constitution, the concentration of governmental power presented an extraordinary threat to individual liberty: 'The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, . . . may justly be pronounced the very definition of tyranny.' The Federalist No. 47, at 298 (James Madison) (Clinton Rossiter ed., 1961)." *Gabler v. Crime Victims Rights Bd.*, 2017. The Framers were inspired by the wisdom of Montesquieu: "There can be no liberty where the legislative and executive powers are united in the same person." The Federalist No. 47, at 302 (quoting Baron de Montesquieu, XI The Spirit of the Laws 216 (John Nourse and Paul Vaillant eds., 1758)). The people of Hawai'i adopted the same separation of governmental powers in our state constitution. It is

the legislature's duty to make the laws that govern our lives, the governor's duty to execute them, and the judiciary's duty to ensure they comport with the constitution.

Where the legislature gave the executive the unilateral authority to declare successive states of emergency, based upon the same underlying cause, with no prescribed end date, and without the approval (much less the input) of the legislature, this is unconstitutional, and therefore remedy is justified by the passing of this bill.

For over a year now we have witnessed blatant rights violations under the pretense of an emergency with no end in sight, for as long as the governor declares an emergency exists. The language within the emergency statute which declares that the governor and/or mayor will be the “sole judge” of the existence of an emergency, means not only has he been given the authority to make laws but has also been given the power of the judiciary. This is nothing less than a dictatorship.

House Bill 103 must be passed in order to ensure the checks and balances that our constitutional structure is founded on, upholding the separation of powers doctrine and subsequently safeguarding the liberty interests of the people of the state of Hawai'i. For Our Rights supports HB103.

Sincerely,



Levana Lomma, CEO

LATE

HB-103-SD-1

Submitted on: 4/5/2021 3:37:32 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew Crossland	Individual	Oppose	No

Comments:

Emergency powers are for emergencies only, should adhere to the existing rules of authority and length, and should not be expanded.