



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 572, HD. 1, RELATING TO THE HAWAII EMERGENCY MANAGEMENT AGENCY.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, April 1, 2021 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Michael S. Vincent,
Deputy Attorney General, at 808-586-1100)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General (Department) opposes provisions of this bill that will be subject to challenge as being in violation of section 6 of article V of the Constitution of the State of Hawaii, which requires that all executive branch agencies be placed within the principal departments of the executive branch.

This bill amends section 127A-3(a), Hawaii Revised Statutes (HRS), which established the Hawaii Emergency Management Agency within the Department of Defense, to provide that the agency is instead “to be administratively attached to” the Department of Defense. The bill would also authorize the Governor to appoint the Administrator of Emergency Management, who shall serve as the Director of Emergency Management who reports directly to the Governor.

Section 6 of article V of the State Constitution provides in the first paragraph that:

All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and ***within*** not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions. Temporary commissions or agencies for special purposes may be established by law and need not be allocated ***within*** a principal department. [Emphases added.]

In Attorney General Opinion No. 96-01, dated February 16, 1996, we reviewed the first paragraph of section 6 of article V and stated as follows:

[W]e believe that “offices” or other agencies created by law and not placed within a principal department of the state executive branch, “in such a manner as to group the same according to common purposes and related functions,” are subject to attack as being invalidly placed in violation of the first sentence of the first paragraph of section 6 of article V of the State Constitution. However, if the “offices” or other agencies are temporary and for special purposes, they may be established by law and need not be allocated within a principal department pursuant to the second sentence of the first paragraph of section 6 of article V of the State Constitution.

<https://ag.hawaii.gov/wp-content/uploads/2013/01/96-01.pdf>

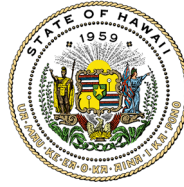
The Hawaii Emergency Management Agency is not an agency that is temporary and for special purposes. Consequently, the present wording of section 127A-3(a), HRS, that established the Hawaii Emergency Management Agency within the Department of Defense should remain unamended to avoid a challenge as to a violation of section 6 of article V of the State Constitution. However, if the intent of the Legislature is to place the organizational structure of the Hawaii Emergency Management within the Department of Defense for administrative purposes only, then we suggest amending the first sentence of section 127A-3(a), HRS, to read as follows:

“(a) There is established [~~within the department of defense~~] the Hawaii emergency management agency[~~;~~], placed within the department of defense for administrative purposes only.”

If the bill is amended to incorporate the above amendment, the first paragraph of section 26-21(a), HRS, should also be amended to read as follows:

“(a) The department of defense shall be headed by a single executive to be known as the adjutant general. The adjutant general shall also be [~~the director of the Hawaii emergency management agency as established in section 127A-3 and~~] the director of homeland security.”

Thank you for the opportunity to provide these comments.



STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE DIRECTOR OF EMERGENCY MANAGEMENT
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STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON HOUSE BILL 572, HD1,
RELATING TO THE HAWAII EMERGENCY MANAGEMENT AGENCY

Before the Senate Committee on
WAYS and MEANS

By

Luke P. Meyers

Administrator, Hawaii Emergency Management Agency (HI-EMA)

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran and Members of the Committee:

House Bill 572, HD1 specifies that the Hawaii Emergency Management Agency is an administratively attached agency to, rather than established within, the department of defense. Requires the governor to appoint the administrator of the Hawaii Emergency Management Agency.

The Hawaii Emergency Management Agency (HI-EMA) **offers comments on** House Bill 572, HD1.

Although HI-EMA supports the intent of becoming an attached agency or being part of an alternative organizational structure, this was an action that the Governor's Office wanted to address after the COVID-19 Incident had stabilized and we support this vision. We recommend that an implementation date be effective in 2022 to allow for further assessment, planning, and implementation.

We also support that the Administrator position within HI-EMA be changed to a Director position to build on best practices and lessons learned from our partner organizations and from here in State.

HI-EMA would welcome a further discussion on this opportunity.

Thank you.

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

HB-572-HD-1

Submitted on: 3/29/2021 11:07:08 AM

Testimony for WAM on 4/1/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support.

The Hawaii State Legislature
The Senate Committee on Ways and Means
HB 572 HD 1

March 31, 2021

To: Senator Donovan Dela Cruz, Chair
Committee on Ways and Means



Re: Opposition to HB 572, HD 1

Aloha Senator Dela Cruz, Senator Keith-Agaran and members of the Committee

My name is Gerald (Gerry) Silva and I served for over a decade as Chief of Staff of the Hawaii Army National Guard. During that period I was part of the team that dealt with the recovery effects after Hurricane Iniki. For the past two years I've also done volunteer work with the Hawaii Emergency Management Agency (HI-EMA).

HI-EMA's roots go back to December 7, 1941 when Territorial Governor Ingram Stainback established the Office of Civilian Defense (OCD) under Hawaii Defense Act Rule 2. Since then, OCD and its successor (HI-EMA) have served Hawaii's people with distinction in the wake of a wide range of natural disasters; including volcanic eruptions, tsunamis, tropical cyclones, floods, wildfires and more. In the current configuration, the State Director of Emergency Management and the Adjutant General are one and the same. This unity of command makes it simpler for the Director of Emergency Management (in his role as Adjutant General) to quickly employ a major state asset—the Hawaii National Guard.

This past year, HI-EMA played a key role in Hawaii's response to the COVID-19 global pandemic. The world was, and still is, in uncharted waters. Under the current configuration, Major General Hara and his team have been able to work with a variety of government agencies and help shape Hawaii's response and keep our hospitalizations and fatalities among the lowest in the nation. As a reminder, this was accomplished under the current structure. But the job is not yet done.

I oppose this bill because of its timing. The agency is still in the process of dealing with COVID and should not be distracted. It is also reshaping its internal structure to better deal with future emergencies. Lessons are being learned at the international, national and local levels and plans are being revised accordingly as the agency moves forward. At best, this proposal is premature. The agency needs time to stabilize before it takes on a major structural change.

There is no compelling reason to make the changes that this bill advocates—especially at this time in HI-EMA's history.

GERRY SILVA