

Statement Before The
HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

Tuesday, February 2, 2021

9:45 AM

Via Video Conference
Conference Room 309

in consideration of

HB 103**RELATING TO EMERGENCY POWERS.**

Chair ICHIYAMA, Vice Chair ELI, and Members of the House Pandemic & Disaster Preparedness Committee

Common Cause Hawaii provides written comments on HB 103, 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. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

February 2, 2021

9:45 a.m.

Conference Room 309

To: House Committee on Pandemic and Disaster Preparedness

Rep. Linda Ichiyama, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB103 — 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 happens 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, as this measure 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 that 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 would also 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 other principles that should be considered while dealing with emergencies touching on public health.

They are: (1) ensuring that restrictions and regulations are narrowly tailored, with a clear connection between the restriction and the public health aim; (2) reinforcing 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) striving for more transparency in decision-making and directives, including protections for existing sunshine and open records laws.

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



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 Pandemic & Disaster Preparedness

Testimony by
Hawaii Government Employees Association
February 2, 2021

H.B. 103 – RELATING TO EMERGENCY POWERS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 103 which requires legislative approval via concurrent resolution to extend or deny a proclamation of a state of emergency, **with proposed suggested amendments.**

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 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.

We respectfully propose the following amendments contained in H.B.1128 to clarify and justify the use of emergency powers:

- Section 127A-1(c), page 2, line 9 of H.B. 1128: add, “the Constitution of the State of Hawaii” to ensure that the Governor’s emergency powers do not supersede rights enshrined in our Constitution
- Section 127A-13(a)(3), page 6, beginning on line 14 of H.B. 1128 and (b)(2), page 11 beginning on line 8 of H.B. 1128: added language will clarify the breadth of the Executive’s suspension of laws by identifying which specific sections 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 with the proposed amendments will ensure that emergency actions are balanced, constitutional, and justifiable. Thank you for the opportunity to testify in strong support of H.B. 103.

Respectfully submitted,

Randy Perreira
Executive Director

HB-103

Submitted on: 1/30/2021 2:16:57 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Individual	Oppose	No

Comments:

We should be open by now if masks and social distancing works.

HB-103

Submitted on: 1/30/2021 5:31:45 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Puglia	Individual	Oppose	No

Comments:

I OPPOSE HB103

HB-103

Submitted on: 1/30/2021 11:11:00 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brett Kulbis	Individual	Comments	No

Comments:

Honolulu County Republican Party supports the intent of HB-103.

The governor has the authority to declare an emergency and make rules regarding the emergency on the grounds that it can be difficult to quickly assemble the Legislature to respond to an emergency, but that authority expires after 60 days unless extended. From day 61 on, the governor is both making laws and enforcing them, in violation of the separation of powers provisions under Hawaii's state constitution.

We recommend the following addition to prevent the continuation of an emergency proclamation if the legislature is not in session at the end of the first 60 days:

If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the waiver or suspension by concurrent resolution. For purposes of this section, "leadership of the senate and the house of representatives" means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives.

Brett Kulbis
Chairman
Honolulu County Republican Party

HB-103

Submitted on: 1/31/2021 9:27:56 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Camas Cook	Individual	Support	No

Comments:

I strongly support this bill. Our current "state of emergency" has been unreasonably and baselessly extended for far too long without consulting with the citizens of Hawaii. The governor must have his power balanced by the input of the public and legislature as it affects every aspect of our personal lives. Please end the eternal emergency declaration and do not allow one person to have so much power over every single person's life.

LATE

HB-103

Submitted on: 2/1/2021 7:10:51 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gary Decker	Individual	Support	No

Comments:

There are already clear limits to the governors powers to declare an emergency. The 60 days are OVER and it has become an unconstitutional overreach of power. It is ridiculous that it takes another bill to enforce an existing law, but if thats what it takes, then let this bill be passed!

in addition, "The Pandemic" is OVER! "cases" do not equal "illnesses". Deaths are declining and the case fatality ratio is comparable to the seasonal flu. STOP this hysterical lockdown and mask mandates!

LATE

HB-103

Submitted on: 2/1/2021 8:55:45 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Morozov	We The People support this Bill!	Support	No

Comments:

We The People are supporting this Bill!

We need to stop the lies and get back to real world living!

THERE IS NO EMERGENCY!

No to Government overreach, it's unconstitutional!

Thank you

LATE

HB-103

Submitted on: 2/1/2021 9:56:58 PM

Testimony for PDP on 2/2/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
chandra radiance	Individual	Support	No

Comments:

The Governor is definitely abusing his powers as an elected official. WE MST have Legislative approval if there is to be ongoing declaration of emergency.

Gov. Ige's multitude of mandates over a year for ongoing lockdowns are UNCONSTITUTIONAL! There must be checks and balances as the Legislature needs to be able to intervene as we are experiencing a dire state of increased FASCISM ruining the quality of life exponentially for almost every human being each month as it continues seemingly indefinitely, vaccines or not!

The TRUTH s there is NO EMERGENCY in Hawaii and never has been. We are being lied to by our media, our Governor and Mayor are forcing us to comply with their illegitimate lockdown, masking, quarantining healthy people for weeks based on false PCR tests for a virus that has not even ever been isolated in a lab!

To anyone who has sicerely done their own independent scientific research, and thus has not based their beliefs from merely the mainstream propganda media machne f manufactured consent, COVID certainly does NOT qualify to meet the requirement of proportionality to qualify as a Pandemic, requiring these extreme 'EMERGENCY' meaasures. This insanity should have been finished after the first 60 days.

Added to the fact that few people allegedly died from COVID in HI in 2020 (significantly less than are the CDC reported as dying from the flu in 2018, COVID does not qualify to be considered a state emergency! It is the greatest direct and indirect restrictions on freedom, gigantic financial damage, immense damage to health and spiritual damage costing billions in debt, countless lives wasted, super increased suicides, mental illness and domestic violence over the top, bankrupcies, children suffering from being dehumanized and treated like ZOOM robots. masks are dangerous for humans as they create lack of necessary oxygen levels in the brain and circulatory system, this alone will cause disease and lack of freedom to play and live a happy, free life causes depresson and anxiety which our whole society is suffering from lack of ALOHA spirit as trust is broken down when we can't see each others' faces.

Governor Ige is guilty of crimes against humanity. His abuse of power makes him worthy of being locked up. Please help to stop this fascism now before it's too late before we all end up dead from this idiotic government control program dictating

medical tyranny! I do not consent, I declare I am sovereign to choose whether i will mask or quarantine or stay home or work when I know there is nothing to fear but fear itself!

Gov Ige and the mayors are likely getting paid off by the global elite billionaires to keep the rest of the tourists off the islands so they can have it all to themselves as their safe havens in 'paradise'. And then they force all of the tax paying citizens to have to live in a state of compliance with their illegal mandates that have no basis in real hard science. Do you want your country to be free again or do you want the best 'democracy money can buy'?