



STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON HOUSE BILL 1585, HD1
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS

BY

Luke P. Meyers
Administrator, Hawai'i Emergency Management Agency (HI-EMA)

FEBRUARY 23, 2022

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Members of the
Committee:

Thank you for the opportunity to submit testimony to **OFFER COMMENTS**
on HB1585, HD1.

House Bill 1585, HD1 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; authorizes the governor to require counties to obtain approval prior to issuing any emergency order, rule, or proclamation; clarifies that a state of emergency may be extended or terminated by a separate or supplementary proclamation; and specifies that prohibitions on price increases of essential commodities during a severe weather warning expire seventy-two hours after the effective date and time of the initial declaration or any supplemental proclamation.

The COVID-19 incident has demonstrated the need for state-wide operation control and/or coordination when emergency management functions are needed to be consistent across the State.

House Bill 1585, HD1 also authorizes the legislature to terminate a state of emergency, in part or in whole, by an affirmative two-thirds vote of each house.

The bill also defines Severe Weather Warning from the National Weather Service on p. 4 line 1-7. To align with best practices and the HI-EMA

Statewide Alert & Warning Systems Plan, we would recommend the term “Severe Weather Warning” be changed to “Severe Warnings”. The National Weather Service and other partners including Pacific Tsunami Warning Center and/or the United State Geologic Survey issue severe warning messages.

While the administration prefers the measure it has proposed and is advancing (SB 3089, SD1) that addresses many of the same issues as HB 1585, HD1, we are grateful for the thoughtful work and intent that has been put into this measure.

Thank you for the opportunity to provide testimony on House Bill 1585, HD1.

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

Hawaii*Holding Power Accountable*Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Wednesday, February 23, 2022

2:00 PM

Via Video Conference

in consideration of

HB 1585, HD1**RELATING TO EMERGENCY POWERS.**

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

Common Cause Hawaii provides written comments on HB 1585, HD1, 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) authorizes the governor to require counties to obtain approval prior to issuing any emergency order, rule, or proclamation, (4) clarifies that a state of emergency may be extended or terminated by a separate or supplementary proclamation, (5) authorizes the legislature to terminate a state of emergency, in part or in whole, by an affirmative two-thirds vote, and (6) specifies that prohibitions on price increases of essential commodities during a severe weather warning expire seventy-two hours after the effective date and time of the initial declaration or any supplemental proclamation.

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 (retrieved Jan. 28, 2022). 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 (retrieved Jan. 28, 2022). The public records law was suspended through the Twenty-First Proclamation Related To The COVID-19 Emergency dated June 7, 2021, which expired August 6, 2021. See https://governor.hawaii.gov/wp-content/uploads/2021/06/2106080-ATG_21st-Emergency-Proclamation-for-COVID-19-distribution-signed.pdf (retrieved Jan. 28, 2022). The Sunshine Law continues to be impacted by the pandemic. On December 29, 2021, Gov. Ige issued an Emergency Proclamation Related To Sunshine Law In-Person Meetings, which will expire February 28, 2022, suspending only that portion of the law requiring at least one physical meeting location to be open to the public. See https://governor.hawaii.gov/wp-content/uploads/2021/12/2112177-ATG_Emergency-Proclamation-Related-to-Sunshine-Law-In-Person-Meetings-distribution-signed.pdf (retrieved Jan. 28, 2022). The remainder of the Sunshine Law is currently in effect.

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 for over one year, government is shutoff from public oversight and accountability, which are necessary for a functioning democracy. HRS Chapter 92F, the public records law, should not be suspended, if we are to have any trust and confidence in our government. HRS Chapter 92F and our Sunshine Law, which properly allows for remote meetings, should also not be 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 on HB 1585, HD1. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause 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 Judiciary and Hawaiian Affairs

Testimony by
Hawaii Government Employees Association

February 23, 2022

H.B. 1585, H.D. 1 – RELATING TO EMERGENCY MANAGEMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1585, H.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 authorizes the legislature to terminate a state of emergency by an affirmative two-thirds vote.

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 nearly two years of the pandemic and yet another extension of an emergency 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 authorizing the legislature to terminate, either in part or in whole, a state of emergency by supermajority support in both chambers. We strongly support the components of H.B. 1585, H.D. 1 that ensure the Governor’s emergency powers do not supersede rights enshrined in our state constitution and clarify 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. 1585, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

HB-1585-HD-1

Submitted on: 2/22/2022 1:41:42 AM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Brett Kulbis	Honolulu County Republican Party	Oppose	No

Comments:

Honolulu County Republican Party OPPOSES this bill, specifically as it pertains to section "**§127A-14 State of emergency.**" The current language continues to give the Governor carte blanc authority to extend emergency proclamations every 60-days, without any legislative check unless legislator's take action.

Emergency proclamations allow the governor to both make and enforce laws. This is immense authority and allowing him to extend the proclamation without a legislative check, violates the separation of powers provisions under Hawaii's state constitution. If the governor believes the emergency proclamation should be extended beyond the initial 60-days, it should be incumbent on him to make the case for the extension and get approval from the legislature. He should not have unchecked authority indefinitely.

We recommend the following amendment:

(d) A state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, unless the state of emergency is extended by concurrent resolution of the legislature. 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.

Another option is to use the language in HB 103, which was introduced in 2021 and made it all the way through to conference committee before being shelved.



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

February 21, 2022

ONLINE/FAX: 808-586-6684; 808-586-8474

The Honorable Mark M. Nakashima
Chair
The Honorable Scot Z. Matayoshi
Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol, Rooms 331, 432
415 South Beretania Street
Honolulu, HI 96813

Re: **HB1585 HD1-Relating to Emergency Management**

Dear Chair Nakashima, Vice-Chair Matayoshi, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union in strong support of HB1585 HD1. This bill will amend HRS §127A to ensure that the executive powers exercised during a crisis, including the current Covid-19 pandemic, have proper protections in place to prevent the potential abuse of those powers by a single executive.

This bill seeks to put into place reasonable safeguards relating to the exercise of 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 we certainly agree that the executive branch must and should have certain powers that it can immediately, freely and broadly exercise in response to a genuine emergency and crisis like the current Covid-19 pandemic and Kauai floods, at the same time vesting such ominous powers in the hands of one executive head should and must be subject to appropriate checks and balances by the collective legislative body to avoid the potential and risk of abuse.

HB1585 HD1 provides a reasonable and fair check and balance on the executive branch's emergency powers by allowing the legislature to terminate a state of emergency, in part or whole, that has been declared by the governor. This safety protection will insure that the extension of an emergency and the exercise of all the emergency powers related to an emergency, including the unilateral and unchecked suspension of various laws by the governor and county mayors, are subject to an appropriate review by the legislature.

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The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice-Chair
House Committee on Judiciary & Hawaiian Affairs
February 21, 2022
Re: HB1585 HD1-Relating to Emergency Management
Page 2

In addition, this bill will require the executive branch to “justify” the suspension of any specific law by the executive head. During the pandemic and beyond, the executive branch can and has suspended without justification various collective bargaining laws provided in HRS Chapter §89, even after government operations resumed, tourism reopened, businesses restarted, and children returned to school. The breath of the executive branch’s suspension of collective bargaining laws essentially stripped the public unions of their constitutional right to bargain collectively. It further resulted in the State and the county employers asserting the position that they were not obligated to engage in collective bargaining nor required to process grievances filed by the public unions during the pandemic, even after governmental operations resumed.

Last, the bill will restore and require consistency between the emergency orders, rules and proclamations issued by the governor and the county mayors by requiring the mayors to obtain the governor’s approval prior to issuing an order, rule or proclamation pursuant to HRS §127A. What became evident during the pandemic was a perceived disconnect between the multiple emergency orders issued by the State and counties due to inconsistencies within the orders. Requiring the governor’s approval prior to the issuance of any county emergency order will promote uniformity, consistency, and stability.

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

Respectfully submitted,

ROBERT “BOBBY” CAVACO
SHOPO President



HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022

Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Wednesday, February 23, 2022, 2:00PM
Conference Room 325 and via Videoconference

Re: Testimony in support of HB1585, HD1 - RELATING TO EMERGENCY MANAGEMENT

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

UPW **supports the intent of** HB1585, HD1, which clarifies that the powers granted for emergency purposes shall not be inconsistent with the state constitution. Additionally, the bill provides parameters for the duration of suspension of laws, requires justification for the suspension and authorizes the legislature to terminate a state of emergency, in part or in whole, by an affirmative two-thirds vote.

When the COVID-19 pandemic finally made its way to Hawaii, it was understandable that the Governor needed to take immediate action to protect our residents by suspending some laws with the implementation of the emergency proclamation in March 2020. However, as we approach nearly two years of dealing with the ongoing pandemic, and with several extensions of the original proclamation, many wonder if it’s still necessary to continue suspending numerous state laws. HB1585, HD1, will help to provide the legislature with the necessary checks and balances to help ensure that future emergency actions are balanced and reasonable.

Thank you for the opportunity to provide testimony.

Sincerely,

Liz Ho
Administrator



Feb. 23, 2022

2 p.m.

VIA VIDEOCONFERENCE

Conference Room 325

To: House Committee on Judiciary & Hawaiian Affairs

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: HB1585 HD1 — RELATING TO EMERGENCY MANAGEMENT

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB1585](#), which would amend the state's emergency-management statute to clarify that the powers granted for emergency purposes should not be inconsistent with the Hawaii Constitution, require justification for the suspension of laws and place parameters on such suspensions, and allow the Legislature to terminate an emergency. in part or in whole, by a two-thirds vote.

If enacted, this bill will 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.

Here are some proposed amendments that would make the bill better.

1. On page 3, add the following after section 2, subsection (c):

(d) The exercise of any emergency power the governor or other official may have under the Hawaii Constitution and state law that binds or regulates the public are limited as follows:

(1) State courts shall have jurisdiction to hear cases challenging the lawfulness of state and local emergency orders, including compliance with this chapter's limitations on such orders, and the courts shall expedite consideration of such challenges to the extent practicable. Inequality in the applicability or impact of emergency orders on analogous groups, situations, and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose.

2. On page 14, change section 5, subsection (d) to read:

(d) A state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, ~~[or]~~ unless extended or terminated by a separate or supplementary proclamation of the governor or mayor, ~~[whichever occurs first]~~ provided that the proclamation extending the emergency meets the following qualifications:

- (1) It is the first extension of the emergency period issued by the governor or mayor and extends that emergency by no more than 60 days.
- (2) The Legislature has approved the extension by concurrent resolution.
- (3) The Legislature has not convened a special session to debate the extension of the emergency within 10 days of the issue date of the proclamation extending the emergency.
 - (a) Pursuant to the Legislature's rules governing petition for a special session, the House and Senate may petition the President of the Senate and Speaker of the House to convene a special session for the purpose of debating the extension of the emergency. The petition and special session must occur within 10 days of the issue date of the proclamation extending the emergency. If the special session does not convene within 10 days, the extension is deemed approved by the Legislature.

(b) If the Speaker of the House or President of the Senate notifies the governor or mayor of the need for a special session to debate the extension of an emergency, the governor or mayor may withdraw the proclamation extending the emergency and allow the emergency to terminate.

3. On page 15, add the following after section 5, subsection (e):

(f) A proclamation by the governor declaring the existence of a state of emergency arising from the same emergency or disaster for which a previous emergency proclamation was terminated by the Legislature may be authorized for a period of up to sixty days only upon request of the governor and adoption of a concurrent resolution by the Legislature.

In general, this bill makes several much-needed changes to the existing emergency-management statute, but 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.

Throughout the COVID-19 emergency, we have had the opportunity to learn more about what we do well and what could be improved. This bill, if enacted, would be a good start toward making our state better-equipped to handle future emergencies.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

February 22, 2022

Dear Chair and Committee Members,

Please find below comments relating to HB1585, regarding emergency management.

The bill currently proposed, HB1585, is a reasonable start at an attempt to clarify and limit the emergency powers of the executive branch of the state government. In point of fact, there are several provisions in the original statute, Hawaii Revised Statutes (HRS) Chapter 127A, which seem counter to its stated intention of being within the confines of the state and federal constitutions. As such the bill must be substantially modified to include more remedies than it currently provides. Please see the following list of issues with both HRS Ch. 127A and the proposed amendments currently under consideration in this bill, and a list of proposed remedies.

1. Subsection 127A-13(a)(3) is fundamentally contrary to the principle of separation of powers. It provides that an executive may suspend laws, in whole or in part, subsequent to a declaration of an emergency. At the federal and state levels, it is common for the legislative branch to delegate some of its power to the executive branch to perform rule-making pursuant to specific statutes, relating to specific topics, e.g. water quality regulations. Delegation is generally specific and relatively narrow. This is in stark contrast to the provisions of this subsection that allow for the wholesale suspension of laws by executive proclamation.

As far as it can be seen, there are no provisions within the state or federal constitutions that allow for the executive branch to suspend a duly enacted law. Such an action would constitute an effective repeal of the law, however temporary.

2. Subsection 127A-14(d) provides for the automatic expiration of a state of emergency after sixty days. The amendments to this in HB1585 are laudable but ultimately negated by two provisions: 1.) the executive can extend a state of emergency with a separate or supplemental proclamation and 2.) termination of a state of emergency by the legislature requires a two-thirds majority vote.
 1. Permitting a separate or supplemental proclamation to extend a state of emergency allows for the executive branch to effectively suspend laws indefinitely on its own, and rule by decree. No other provisions in this bill exist to practically limit this power except the following provision.
 2. The two-thirds majority vote required to override a declared state of emergency is not realistic. Even in a single party-controlled legislature, it is often difficult to find enough consensus on any given topic to reach a supermajority.

Taken together, the above two sub-points effectively eliminate automatic expiration, allowing the governor or mayor to indefinitely rule by proclamation, if they so choose.

3. The third item at issue is in subsection 127A-13(a)(6) and elsewhere that allows for the governor or mayor to "...suspend electronic media transmission", subject to limitations in federal law. It is not clear what these limitations are, if any. It is also not clear what constitutes "electronic media". For example, can the governor suspend internet traffic to certain websites he or she deems harmful to his or her emergency management efforts? How would one determine that such a suspension is not being done to engage in political censorship under the

guise of safety? Would any of this actually be subject to limitations under federal law? If so, how long will it take to determine what those limitations are? Would the governor (or mayor) have to wait until such a determination under federal law is made before the suspension of electronic media transmission begins? This clause is particularly troubling in the modern digital age.

On its face this provision would seriously place First Amendment protections in jeopardy, and put them in jeopardy at the mere whim of the executive branch. No protections for free expression are provided other than a vague reference to federal law.

The aforementioned are serious matters. They create serious concerns as to the separation of powers, the guarantee of a representative republican government, and free expression. The following list of items provides some remedies that should be considered and perhaps adopted.

1. The statute ought not to allow the governor, mayor, or their delegates or proxies to suspend laws. In an emergency, even in a viral pandemic such as the one we are currently in, the executive at any level of government should only be allowed to direct the resources of the executive branch or suspend regulations it has created pursuant to a duly enacted law, not trodden on that which is properly within the purview of the legislature. Naturally, during an emergency not all situations can be anticipated and doing so may be difficult, so flexibility of the governor or mayor may be necessary. However, such difficulty does not absolve the legislature of the hard task of researching, planning, and legislating some specifics for emergency preparedness. Nor does it justify allowing the executive such authority as to suspend laws following some emergency proclamation issued solely by him or her. Additionally, in the era of ubiquitous videoconferencing and seemingly perpetual states of emergency, it cannot be reasonably said that the legislature cannot be called into session in a rapid or timely manner to legislate during an emergency.
2. If the governor wishes to extend the state of emergency after sixty days, then he or she may issue a separate or supplementary proclamation stating so, except in the case where the separate or supplementary proclamation is substantially the same as the original proclamation, in terms of relating to the original stated emergency. In such a case the separate or supplemental proclamation ought not to go into effect but for the consent of a majority of the legislature. If the legislature is not in session then sixty days should be enough time to decide whether it should be recalled, in most likely emergency scenarios. If the legislature is not called back then the state of emergency ought to expire with no ability for the executive to issue a new proclamation relating to the same emergency.
3. The legislature ought to be able to terminate any state of emergency at any time, with only a simple majority vote. The bill's current requirement of two-thirds is not realistic.
4. The provision relating to the suspension of electronic media communication ought to be removed completely.

The main goal of the current bill, HB1585, is to limit and clarify the emergency authority of the governor and mayors. Unfortunately, the current contents of the bill are not sufficient toward that goal. Four suggestions have been provided that would make HB1585 sufficient to protect constitutional norms while providing flexibility to the governor and mayors to manage an emergency.

Sincerely,
Shawn Dubey