



STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON HOUSE BILL 1585,
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEES ON
PANDEMIC AND DISASTER PREPAREDNESS AND JUDICIARY & HAWAIIAN AFFAIRS

BY

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

FEBRUARY 1, 2022

Aloha Chairs Ichiyama and Nakashima, Vice-Chairs Eli and Matayoshi, and Members of the Committee:

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

House Bill 1585 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 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 does limit the Governor and the emergency management structure in Hawaii in 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. This 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.

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

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 Pandemic & Disaster Preparedness

Testimony by
Hawaii Government Employees Association

February 1, 2022

H.B. 1585 – RELATING TO EMERGENCY MANAGEMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1585 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 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.

Respectfully submitted,

Randy Perreira
Executive Director

Hawaii*Holding Power Accountable*Statement Before The
HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

Tuesday, February 1, 2022

10:00 AM

Via Videoconference, Conference Room 309

in consideration of

HB 1585**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 1585, 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. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

SHOPO



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

" A Police Organization for Police Officers Only "
Founded 1971

January 31, 2022

The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice-Chair
Committee on Pandemic & Disaster Preparedness
Hawaii State Capitol, Rooms 418, 426
415 South Beretania Street
Honolulu, HI 96813

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

Dear Chair Ichiyama, Vice-Chair Eli, 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. 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.

This bill seeks to provide safeguards on 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 nonetheless be subject to appropriate checks and balances by the collective legislative body.

HB1585 provides a reasonable and fair check and balance on the executive branch’s emergency powers by allowing the legislature to concur or terminate a state of emergency that has been declared by the governor. This safety measure will insure that the extension of an emergency and the exercise of all the emergency powers related to an emergency, including the suspension of laws by the governor and county mayors, is subject to an appropriate review by the legislature.

The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice-Chair
Committee on Pandemic & Disaster Preparedness
January 31, 2022

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Re: HB1585-Relating to Emergency Management

In addition, this bill will require the executive branch to “justify” the suspension of any specific law. During the pandemic and beyond, the executive branch can and has suspended without justification various collective bargaining laws provided for 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.

Respectfully Submitted,

ROBERT “BOBBY” CAVACO
SHOPO President



Feb. 1, 2022

10:00 a.m.

VIA VIDEOCONFERENCE

Conference Room 309

To: House Committee on Pandemic & Disaster Preparedness

Rep. Linda Ichiyama, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB1585 — 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 $\frac{2}{3}$ (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.

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 restoring legislative authority via the ability to end an emergency and the limitations on suspension of laws, this bill would take a positive step toward protecting the balance of powers and the public trust. Moreover, the clarification that the exercise of emergency powers must be consistent with the state Constitution is a welcome and necessary addition.

However, we suggest that the committee make a few additional changes in order to accomplish the intent of the bill.

>> The bill addresses the problem of the statute's vague "automatic-termination" clause by specifying that the governor may extend the emergency by supplementary proclamation. While this does clarify the issue, it does little to discourage extended/perpetual emergencies. We suggest adding a provision stating that supplementary proclamations extending an emergency must be approved by the Legislature via concurrent resolution.

>> While the Legislature can end the emergency while in session, the bill does not provide an avenue for the Legislature to act while not in session. This could be addressed via a requirement that the governor obtain legislative approval for before extending an emergency by supplemental proclamation. Given the need to create a streamlined approval process in an emergency, the bill could include a mechanism whereby the Legislature could approve or deny extension through the use of remote technology.

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-termination 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.

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

In the Grassroot Institute 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 pandemic.

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.

This bill makes several much-needed changes to the existing emergency management statute. 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.

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 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-1585

Submitted on: 1/31/2022 10:47:04 PM

Testimony for PDP on 2/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Doug Pasnik	Individual	Oppose	No

Comments:

This bill continues to add broad sweeping powers to the governor and mayor that circumvent the legislative process. I strongly OPPOSE the provisions of this bill.