

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: March 30, 2022, 2:00 p.m.  
State Capitol, Conference Room 325 and Via Videoconference

Re: Testimony on S.B. No. 3089, S.D. 2, H.D. 1  
Relating to Emergency Management

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Thank you for the opportunity to submit testimony on this bill, which among other things would prohibit the Governor or a Mayor from suspending requests for public records or vital statistics during a declared state of emergency. The Office of Information Practices (**OIP**) **takes no position** on this bill because it is a policy decision for the Legislature to determine what limit, if any, is appropriate for the Governor's use of emergency powers. However, to assist the Legislature in making this decision, OIP offers comments regarding how the two and a half month full suspension of the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), and subsequent suspension for over a year of the UIPA's deadlines, affected record requesters, agencies, and OIP's own work.

On March 16, 2020, the UIPA was temporarily suspended in its entirety by Governor Ige, and that suspension was subsequently extended until May 31, 2020. Because the UIPA was suspended in its entirety, OIP's powers and duties found in part IV of chapter 92F, HRS, were also suspended during that time, including OIP's power to accept and issue determinations on UIPA appeals.

On May 5, 2020, with the Governor's Seventh Supplementary Proclamation for COVID-19 (see Exhibit H on pages 73-75), OIP's powers and duties found in part IV of the UIPA were restored, except that the UIPA and OIP's rules were "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." The partial suspension of the UIPA was continued for more than a year, through August 5, 2021.

### **Effect Upon UIPA Cases**

During the two and a half months the UIPA was fully suspended, OIP could not accept UIPA appeals, even on record requests made and denied prior to March 16, but instead had to inform would-be appellants to wait and ask again after the suspension was lifted. While OIP averaged over 17 new UIPA related cases a month in the first 9 months of FY 2020, it opened no new cases from March 16 to May 5, 2020 and only 4 new UIPA related cases per month for the remainder of FY 2020.

OIP was also unable to issue opinions during the time its powers were suspended. Nevertheless, OIP continued to advise agencies and the public primarily through correspondence and email due to the COVID-19 restrictions in effect at that time. OIP also continued to work on appeal files and prepare opinions for later issuance. In fact, OIP ended FY 2020 with its lowest backlog formal cases (67) in a decade, thanks to the hard work of its experienced team who worked throughout the government shutdown.

With the substantial restoration of its powers and duties in May 2020, OIP was able to issue opinions again and open certain new cases. However, **OIP still could not accept appeals based on causes of action dependent on alleged violations of the portions of the UIPA that were suspended and**

**therefore not in effect**, such as an agency's failure to respond to or denial of a record request made while the UIPA was fully suspended, or an agency's failure to make a timely response to a record request made while the UIPA's deadlines were suspended. Moreover, because they still were not required to follow the deadlines for responses to OIP's inquiries, **OIP was unable to compel agencies to provide the substantive response required by OIP's appeal rules and necessary for OIP to resolve the appeal.** Although agencies are theoretically required to provide this response, for more than a year **the suspension of deadlines made it optional to provide the response that OIP needs before it can resolve a case.**

While UIPA deadlines were suspended, many agencies nonetheless continued to respond to newly opened appeals even without the spur of an enforceable deadline, but other agencies did not respond until after the UIPA was fully restored in August 2021 and OIP was able to once again enforce UIPA deadlines. While deadlines were suspended, OIP was obviously unable to resolve those appeals for which the agency had not responded, though it was able to focus its work instead on those appeals that were ripe for resolution. Once deadlines were restored, agencies' delayed responses were in many cases based on events from a year or more previously, during which time recollections had faded.

During the year and a half that the UIPA was first fully and then partially suspended, some agencies continued to respond to public UIPA requests but others took advantage of the suspension to put off answering indefinitely. The media reported on some unanswered UIPA requests of particularly high public interest, while many other unanswered requests were of interest only to the requester. The UIPA's purpose, however, is to give the public access to government records regardless of whether the request is of high public interest or specifically of

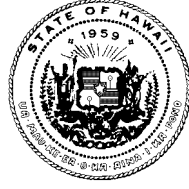
interest mainly just to the requester, and for many requesters the UIPA did not fulfill that purpose during its year and half long suspension.

### **Conclusion**

In conclusion, OIP saw a definite impact to record requesters, agencies, and OIP's own operations during the year and a half that the UIPA was first fully and then partially suspended, but cannot attribute the impact solely to the Governor's suspension proclamations or to the statewide shutdown's impacts on agency staffing and operations and the public's reactions. OIP recognizes that any limitation on the Governor's power to suspend the UIPA in whole or in part is a **policy call for the Legislature** to make.

Thank you for considering OIP's testimony.

DAVID Y. IGE  
GOVERNOR



CATHY BETTS  
DIRECTOR

JOSEPH CAMPOS II  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 28, 2022

TO: The Honorable Representative Mark M. Nakashima, Chair  
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **SB 3089 SD2 HD1 – RELATING TO EMERGENCY MANAGEMENT.**

Hearing: March 30, 2022, 2:00 p.m.  
Via Videoconference, State Capitol

**POSITION:** The Department of Human Services (DHS) supports this administration measure and provides comments regarding the amendment related to public information requests. The Department defers to the Department of Defense and the Hawaii Emergency Management Agency.

**PURPOSE:** The purpose of the bill is to amend chapter 127A, Hawaii Revised Statutes (HRS), to clarify State and local authority, ensure effective and adaptable emergency response, and further the goals of transparency and democratic accountability. Prohibits the Governor or Mayor from suspending requests for public records or vital specifics during a state of emergency. Allows for a reasonable delay in an agency's response to a request as a result of extenuated circumstances. Clarifies that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution. Amends chapter 127A, HRS, to provide for greater clarity and specificity regarding the scope of suspensions of law. Clarifies that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate. Clarifies the legal framework governing the extension and termination of emergency periods. Adds the definition

of the term "severe warning" as used in section 127A-30, HRS. Allows the Legislature to, by an affirmative vote of two-thirds of the members to which each house is entitled, terminate a state of emergency, in part or in whole, declared by the Governor. Effective date July 1, 2050. (HD1).

The SD1 amended the measure by:

- (1) Allowing the Legislature to, by an affirmative vote of two-thirds of the members to which each house is entitled, terminate a state of emergency, in part or in whole, declared by the Governor; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The SD2 amended the measure by:

- (1) Prohibiting the Governor or a mayor from suspending requests for public records or vital statistics during a declared state of emergency and allowing for a reasonable delay in an agency's response to a request as a result of extenuated circumstances;
- (2) Changing "severe weather warning" to "severe warning" and broadening the definition to include severe warnings by other entities;
- (3) Eliminating the need for most supplementary proclamations for permits, authorizations, or approvals to allow for repair work to continue beyond the emergency period;
- (4) Clarifying that the Governor's authority to be the sole judge of an emergency is subject to the Legislature's termination of a state of emergency;
- (5) Allowing a county council, by an affirmative vote of two-thirds, to terminate emergency proclamations made by a mayor; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The HD1 amended the measure by:

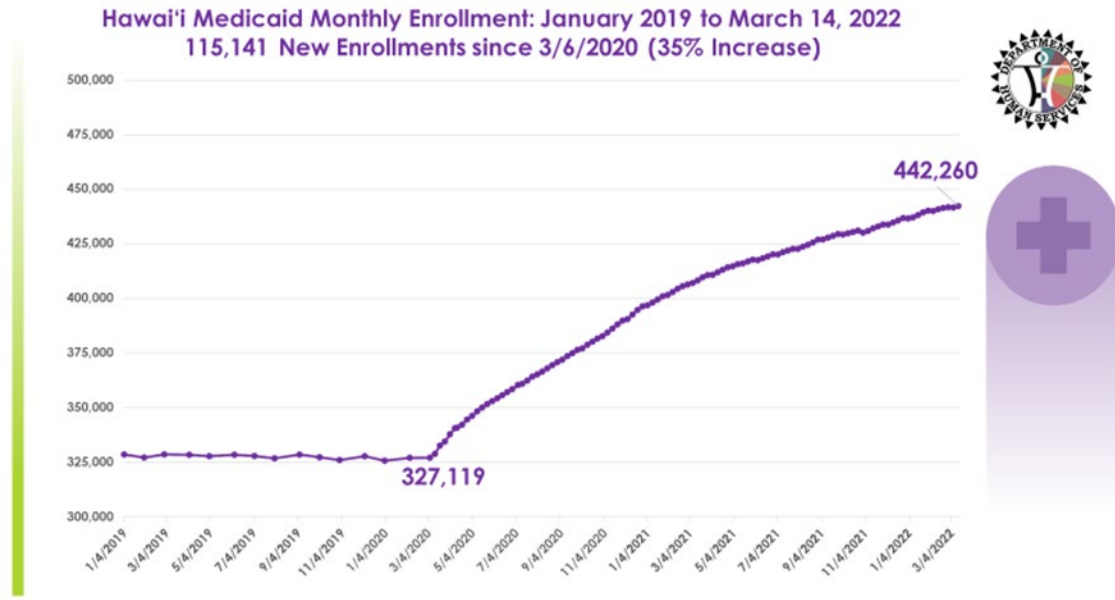
- (1) Deleting the references to section 338-18.5, Hawaii Revised Statutes, as that section was repealed by Act 1999, Session Laws of Hawaii 2021;
- (2) Clarifying that an exemption to disclosure for certain records is allowed if an exemption is allowed pursuant to existing law;
- (3) Deleting language that would have: (A) Required the Governor or Mayor to reclaim the termination of a state of emergency or local State of emergency, respectively, at the earliest possible date that conditions warrant; and (B) Authorized a county council, by an affirmative vote of two-thirds, to terminate a local state of emergency declared by the Mayor;
- (4) Changing the effective date to July 1, 2050, to encourage further discussion; and

- (5) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The Department provides comments on the amendment related to requests for public records. The suspension of the Uniform Information Practice Act (UIPA) per the Governor's emergency proclamations during the COVID-19 pandemic was necessary as DHS would not have been able to meet the UIPA response times under the pandemic's extraordinary circumstances. The pandemic is an extraordinary emergency management "incident" that has required significantly different responses and considerable staff time than weather-related incidents that are generally time and geographically limited. As we enter the third year of the pandemic, we must acknowledge the staggering losses and continuing trauma that individuals, families, and communities are grappling with: as of March 27, 2022, the U.S. has 79,787,583 reported cases and 974,569 fatalities; as of March 23, 2022, Hawaii has 239,591 reported cases and 1,373 fatalities.

From a human resource perspective, DHS has only one public information officer (PIO) who leads the Department's internal and external communications. Depending upon the severity of the incident, DHS staff serve on different emergency support functions as part of the State's or County's overall emergency response infrastructure. The PIO becomes part of the State's emergency management joint information center.

During the COVID-19 pandemic, DHS experienced historic and dramatic increases in the number of applications for benefits and recipients. Pre-COVID-19, DHS served 1 in 4 Hawaii residents; by late 2020, 1 in 3 Hawaii residents accessed one or more DHS programs. The graph below shows the 35% increase in Medicaid enrollees since the pandemic.



However, with these historically high caseloads, the Legislature reduced DHS staff by 319 positions (Act 9, SLH 2020) and 18 positions (Act 88, SLH 2021) to address the severe drop in State revenue. Additionally, DHS was subject to the executive hiring freeze from April 3, 2020, through July 30, 2021, and could not begin filling vacancies until August 2021, when the hiring freeze ended. This session, the Department's budget requests include funding to restore 100 positions and for 36 new positions to rebuild the human services workforce and increase the capacity to serve.

With the first shut-down order in March 2020, the Department rapidly shifted most of its services to a telework environment to maintain access to benefits. To do this successfully, the Directors, PIO, program administrators, and staff officers increased internal communications to address operational and administrative challenges and program changes. Additionally, staff fielded many questions from current recipients and new applicants about program and service changes, inquiries from media, community organizations, and Legislators about federal program waivers, new federal stimulus programs, and uses of additional funds, facilitated requests for personal protective equipment for staff, providers, and clients, and continually updated guidance as COVID-19 mitigation strategies changed, especially in the context of child care, homeless shelters, foster care emergency shelters, domestic violence shelters, and in DHS statewide offices.



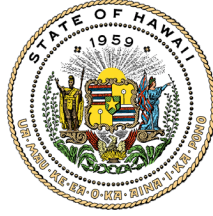
In addition to statewide emergency management responsibilities, the PIO engaged in public outreach with news media and regularly updated the DHS website during this time. Researchers and community advocates made numerous inquiries to track child abuse and neglect reporting trends and the increase in Supplemental Nutrition Assistance Program (SNAP) and financial assistance applications when stay-at-home orders began. Also, DHS experienced an increase in the number of inquiries received from information brokers tracking Requests For Proposal dates, winning proposals, and score sheets from winning contracts.

Additionally, the Directors, division, and program administrators participated in Legislative briefings, hearings, submitted required reports, and responded to constituents and other inquiries on the status of new federal funds.

Nonetheless, DHS diligently tracked UIPA requests and gathered records to ensure responses to all requests. Before COVID-19 proclamations, DHS received approximately 20-30 UIPA requests per fiscal year. In state fiscal year (SFY)21, DHS received over 60 UIPA requests, and many were complex multi-layered requests. There was a 260% increase in UIPA requests comparing SFY19 to SFY21. The public's requests on the impacts of COVID-19 continue to come in, and from current analysis, the number of requests received thus far may surpass SFY21.

In emergency management incidents that impact the State, nation, or the globe, the Department's human resources need to focus on the health and safety of the public and staff and the continuity of government. Therefore, the Department respectfully requests that the departments be given as much flexibility to respond to UIPA requests during these extraordinary events.

Thank you for the opportunity to testify on this bill.



STATE OF HAWAII  
DEPARTMENT OF DEFENSE  
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 3089, SD2, 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)

March 30, 2022

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

Thank you for the opportunity to submit testimony in **SUPPORT** of SB3089,  
SD2, HD1.

Senate Bill 3089 SD2, HD1 Prohibits the governor or mayor from suspending requests for public records or vital statistics records during a state of emergency. Allows for a reasonable delay in a department or state or county agency's response to a request as a result of extenuated circumstances. Clarifies that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution. Provides for greater clarity and specificity regarding the scope of suspensions of law. Clarifies that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate. Clarifies the legal framework governing the extension and termination of emergency periods. Defines "severe warning". Allows the legislature to, by an affirmative vote of two-thirds of the members to which each house is entitled, terminate a state of emergency, in part or in whole, declared by the governor

The Governor and county mayors have had to exercise their emergency powers under chapter 127A, HRS, to impose rules aimed to control the spread of COVID-19. The enforcement of these rules has been critical to efforts to limit the spread of COVID-19, protect the health and safety of the community, manage medical resources, and promote economic recovery.

The COVID-19 pandemic has highlighted the importance of clear legal frameworks for State and county emergency management to ensure that the State and counties are ready for any types of emergencies. This bill would improve and further clarify those frameworks.

Recent amendments added a provision to prohibit the Governor or Mayors from suspending requests for public records during a declared emergency. The HI-EMA would note that this prohibition could divert resources from emergency response during an incident; and that during the COVID-19 incident response, such a suspension was imposed only temporarily. The HI-EMA would ask that the committee consider removing this language on public records from Senate Bill 3089, SD2, HD1.

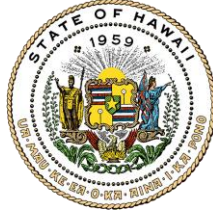
In addition, the HI-EMA notes that Senate Bill 3089, SD2, HD1 includes language that would grant to the Legislature authority to terminate, in part or in whole, a state of emergency declared by the governor, by an affirmative vote of two-thirds of the members to which each house is entitled. This language was added by a previous committee. The HI-EMA has concerns that exercising that authority could reduce the efficiency and effectiveness of an ongoing emergency response.

The HI-EMA is in support of Senate Bill 3089, SD2, HD1 and believes it will benefit the public, the department, and other state and county agencies by providing more transparency, adaptability, and clarity in emergency management functions, and affirmatively state that such functions must occur within the framework of both the U.S. and Hawai'i state constitutions.

Thank you for the opportunity to provide testimony on Senate Bill 3089, SD2, HD1.

Luke P. Meyers: [Luke.P.Meyers@hawaii.gov](mailto:Luke.P.Meyers@hawaii.gov); 808-733-4300

**LATE**



STATE OF HAWAII  
DEPARTMENT OF DEFENSE  
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 3089, SD2, HD1  
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEE ON  
**JUDICIARY & HAWAIIAN AFFAIRS**  
BY

MAJOR GENERAL KENNETH S. HARA  
ADJUTANT GENERAL  
DIRECTOR OF THE HAWAII EMERGENCY MANAGEMENT AGENCY  
AND HOMELAND SECURITY ADVISOR

March 30, 2022

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

Thank you for the opportunity to submit testimony in **SUPPORT** of SB3089,  
SD2, HD1.

The Governor and county mayors have had to exercise their emergency powers under chapter 127A, HRS, to impose rules aimed to control the spread of COVID-19 and the pandemic has highlighted the importance of clear legal frameworks for State and county emergency management to ensure that the State and counties are ready for any types of emergencies. The enforcement of these rules have been critical to efforts to limit the spread of COVID-19, protect the health and safety of the community, manage medical resources, and promote economic recovery. This bill would improve and further clarify those frameworks.

Our department also asks that the committee consider removing this language on public records from Senate Bill 3089, SD2, HD1, as well as language that would grant to the Legislature authority to terminate, in part or in whole, a state of emergency declared by the governor, by an affirmative vote of two-thirds of the members to which each house is entitled. This authority could reduce the efficiency and effectiveness of an ongoing emergency response.

This bill will benefit the public, our department, and other state and county agencies by providing more transparency, adaptability, and clarity in emergency management functions.

Thank you for the opportunity to provide testimony on Senate Bill 3089, SD2, HD1.

MG Kenneth Hara, [kenneth.s.hara@hawaii.gov](mailto:kenneth.s.hara@hawaii.gov); 808-672-1001  
Administrator Luke Meyers, [luke.p.meyers@hawaii.gov](mailto:luke.p.meyers@hawaii.gov); 808-733-4300



HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
Wednesday, March 30, 2022, 2 pm, State Capitol Room 325 & Videoconference  
SB 3089, SD2, HD1  
Relating to Emergency Management

**TESTIMONY**

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

Chair Ichiyama and Committee Members:

**The League of Women Voters of Hawaii strongly supports Section 2 of SB 3089, SD2, HD1.**

Authorizing the Governor or a county mayor to deny public access to government records does not protect either public health or public safety.

The League has no expertise and takes no position concerning other provisions of SB 3089, SD2, HD1.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701  
Honolulu, HI 96813

Office: (808) 531-4000  
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info@civilbeatlawcenter.org

House Committee on Judiciary & Hawaiian Affairs  
Honorable Mark M. Nakashima, Chair  
Honorable Scot Z. Matayoshi, Vice Chair

**RE: Testimony Supporting S.B. 3089 S.D. 2 H.D. 1,  
Relating to Emergency Management**  
Hearing: March 30, 2022 at 2:00 p.m.

Dear Chair and Members of the Committee:

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 Section 2 of S.B. 3089 S.D. 2 H.D. 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.

In every article and study that discusses public access during the COVID-19 pandemic, our state is highlighted as taking the most extreme position. No other state suspended its entire public records law – much less for months as Governor Ige did. That type of government blackout on information during an emergency should never happen again.

Suspension of the public records law for emergencies is unnecessary because the rules that govern record requests provide flexibility for agencies to address other priorities.<sup>1</sup> The deadline for an initial response may be extended 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 extended period, disclosure may occur in monthly batches to accommodate other priorities. *Id.* § 2-71-15(b).

Thank you again for the opportunity to testify in **support of Section 2 of S.B. 3089 S.D. 2 H.D. 1.**

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<sup>1</sup> 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).



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

" A Police Organization for Police Officers Only "  
Founded 1971

March 27, 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: **SB3089 SD2, 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 to express our strong **support** of SB3089 SD2, HD1 with comments and suggestions. This bill, as amended, will amend HRS §127A to ensure the executive powers exercised by the governor and mayors during a crisis, including the current Covid-19 pandemic, have certain protections and oversight in place to prevent the abuse of those powers.

Our one comment and suggestion pertains to the language that was deleted from the earlier version of this bill which required the Governor or Mayors to reclaim the termination of a state of emergency or local state of emergency at the earliest date possible as conditions warrant. We believe this safeguard language ensures an emergency is not unnecessarily prolonged because the longer a declared state of emergency exists without good cause, the longer the Governor and Mayors have unilateral power to suspend any law. We therefore respectfully suggest and recommend that this deleted language be re-inserted on page 15, end of line 16 as follows: “The governor or mayor shall proclaim the termination of a state of emergency or local state of emergency, respectively, at the earliest possible date that conditions warrant.”

In addition, the current bill deleted the language authorizing the county councils to terminate a state of emergency as a check and balance on the respective Mayors, similar to the authority this bill grants the legislature to provide oversight on the Governor’s actions during an

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The Honorable Mark M. Nakashima, Chair  
The Honorable Scot Z. Matayoshi, Vice-Chair  
House Committee on Judiciary & Hawaiian Affairs  
Re: SB3089 SD2, HD1-Relating to Emergency Management  
March 27, 2022  
Page 2

emergency. We therefore suggest and recommend the following language be re-inserted on page 15, line 20, by adding a new subsection (f) to read as follows: “(f) The county council may, by an affirmative vote of two-thirds, terminate a state of emergency, in part or in whole, declared by the mayor pursuant to this section.” The bill’s description should likewise reflect this subsection as follows: “Allows the county council to, by an affirmative vote of two-thirds, terminate a state of emergency, in part or in whole, declared by the mayor.”

SHOPO otherwise appreciates the amendments that have shaped this important bill and the adoption of several suggested changes we have made along the way, including adding the language that authorizes the legislature to terminate a state of emergency with a two-thirds vote and providing the Governor and Mayors with the authority to be the “sole judge” of extending or terminating a state of emergency rather than just being the sole judge as to the “existence” of an emergency.

This bill will provide an appropriate protection against the abuse and prolonged 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 and discretion that can be immediately and freely invoked in response to a genuine emergency and crisis, such as the current Covid-19 pandemic and the Kauai flooding, at the same time we believe that vesting such ominous powers in the hands of one executive head should nonetheless be subject to appropriate checks and balances by the collective legislative and county council bodies. SB3089 SD2, HD1 provides that check and balance on the executive branch’s broad emergency powers. Providing the legislature and county councils with a safety valve to terminate a state of emergency that has been extended beyond reason by the Governor or a Mayor will ensure that the prolonged declaration of an emergency and the exercise of the executive’s emergency powers related to that emergency, including the suspension of laws by the governor and county mayors, is subject to an appropriate review and backstop by the legislature and councils.

For these reasons, we respectfully ask for your committee’s unanimous support for this bill, and our recommended amendments.

RESPECTFULLY SUBMITTED,

ROBERT “BOBBY” CAVACO  
SHOPO President



March 30, 2022

Rep. Mark Nakashima  
House Judiciary and Hawaiian Affairs Committee  
State Capitol  
Honolulu, HI 96813

Re: SB 3089 SD2 HD1

Chair Nakashima and Committee Members:

We support this measure, which would bar the governor from suspending public records requests during emergencies.

State law already provides for delays in responses to records requests under many circumstances.

It could be a major problem if the governor restricts such records requests because release of information can be very important during times of emergencies.

Thank you for your time and attention,

Stirling Morita  
President  
Hawaii Chapter of the Society of Professional Journalists

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

Wednesday, March 30, 2022

2:00 PM

Via Videoconference and Conference Room 325

in consideration of

**SB 3089, SD2, HD1****RELATING TO EMERGENCY MANAGEMENT.**

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

Common Cause Hawaii provides written comments on SB 3089, SD2, HD1, which (1) prohibits the governor or mayor from suspending requests for public records or vital statistics records during a state of emergency, (2) allows for a reasonable delay in a department or state or county agency's response to a request as a result of extenuated circumstances, (3) clarifies that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution, (4) provides for greater clarity and specificity regarding the scope of suspensions of law, (5) clarifies that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate, (6) clarifies the legal framework governing the extension and termination of emergency periods, (7) defines "severe warning", and (8) allows the legislature to, by an affirmative vote of two-thirds of the members to which each house is entitled, terminate a state of emergency, in part or in whole, declared by the governor.

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 (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](https://governor.hawaii.gov/wp-content/uploads/2020/03/2003109-ATG_COVID-19-Supplementary-Proclamation-signed.pdf) (retrieved Feb. 4, 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](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 Feb. 4, 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](https://governor.hawaii.gov/wp-content/uploads/2021/06/2106080-ATG_21st-Emergency-Proclamation-for-COVID-19-distribution-signed.pdf) (retrieved Feb. 4, 2022). On January 26, 2022, Gov. Ige issued an Emergency Proclamation Related To COVID-19 (Omicron Variant), which expired March 25, 2022, suspending that portion of the Sunshine Law (HRS § 92-3.7) requiring at least one physical meeting location to be open to the public. See [https://governor.hawaii.gov/wp-content/uploads/2022/01/2201143-ATG\\_Emergency-Proclamation-Related-to-COVID-19-Omicron-Variant-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2022/01/2201143-ATG_Emergency-Proclamation-Related-to-COVID-19-Omicron-Variant-distribution-signed.pdf) at page 11 (retrieved Feb. 25, 2022).

These actions are why Hawaii is known to have adopted the most extreme open records limits during the ongoing pandemic. See <https://www.usnews.com/news/best-states/hawaii/articles/2021-03-15/hawaii-adopts-most-extreme-open-records-limits-amid-pandemic> (retrieved Feb. 4, 2022).

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. Thus, Common Cause Hawaii appreciates that SB 3089, SD2, HD1 prohibits the Governor or a mayor from suspending requests for public records or vital statistics during a declared state of emergency, unless an exemption is allowed pursuant to existing law and only permits reasonable delays in an agency's response to a request as a result of extenuating circumstances.

Our Sunshine Law, which properly allows for remote meetings, should also not be suspended by any governor or mayor without thorough justification and unless absolutely necessary and for the minimum time necessary.

Thank you for the opportunity to provide comments on SB 3089, SD2, HD1. If you have questions of me, please contact me at [sma@commoncause.org](mailto: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

March 30, 2022

S.B. 3089, S.D. 2, H.D. 1 – RELATING TO EMERGENCY MANAGEMENT

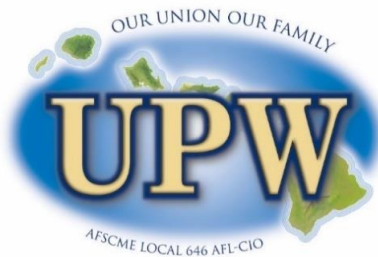
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 3089, S.D. 2, H.D. 1 which ensures that the powers granted for emergency purpose shall not be inconsistent with the state constitution, provides parameters and justification for the suspension of laws, and authorizes the legislature to terminate a state of emergency by an affirmative two-thirds vote, among other things.

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, it has been over two years since the beginning of the pandemic and 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 S.B. 3089, S.D. 2, 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 S.B. 3089, S.D. 2, H.D. 1.

Respectfully submitted,

Randy Perreira  
Executive Director



**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, March 30, 2022, 2:00PM  
Conference Room 325 and via Videoconference

**Re: Testimony in SUPPORT of SB3089, SD2, 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** SB3089, SD2, HD1, which clarifies that the powers granted for emergency purposes shall not be inconsistent with the state constitution and clarifies the legal framework governing the extension and termination of emergency periods. Additionally, the bill provides parameters for the duration of suspension of laws, requires justification for the suspension and allows the legislature to terminate a state of emergency, in part or in whole, by an affirmative vote of two-thirds of the members of each house.

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. SB3089, SD2, 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,

Kalani Werner  
State Director



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Judiciary & Hawaiian Affairs  
Wednesday, March 30, 2022, at 2:00 P.M.  
Conference Room 325 & Via Videoconference**

**RE: SB 3089 SD2 HD1 Relating to Emergency Management**

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

The Chamber of Commerce Hawaii ("The Chamber") **offers comments on** SB 3089 SD2, which prohibits the governor or mayor from suspending requests for public records or vital statistics records during a state of emergency. Allows for a reasonable delay in a department or state or county agency's response to a request as a result of extenuated circumstances. Clarifies that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution. Provides for greater clarity and specificity regarding the scope of suspensions of law. Clarifies that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate. Clarifies the legal framework governing the extension and termination of emergency periods. Defines "severe warning". Allows the legislature to, by an affirmative vote of two-thirds of the members to which each house is entitled, terminate a state of emergency, in part or in whole, declared by the governor.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

During the start of the pandemic in 2020, the emergency declaration was important to make swift policy changes for the benefit of public health and safety. HRS Section 127A-30 was designed to address short periods of "state of emergencies," but was used for an extended period during the still ongoing pandemic. Even though the statute was designed to help the people of Hawaii during a crisis, section 127A-30 has had some unintended consequences on industries in Hawaii and it is affecting our economy.

Many of our industries in Hawaii are dependent on seasonal pricing due to increases in tourism and travel to the state. The costs of goods can increase during certain times of the year, and supply and demand could have an impact on the price of products or services. The way the statute is currently written, it would not allow for seasonal price increases due to the interpretation of "price gouging."

Thank you for the opportunity to testify.



March 30, 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: SB3089 SD2 HD1— RELATING TO EMERGENCY MANAGEMENT

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB3089 SD2 HD1](#), 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 limits on such suspensions, and allow the Legislature or county councils to terminate an emergency, in part or in whole, by a two-thirds vote.

If enacted, this bill would be an important step toward addressing an oversight in the state's current emergency-management law that was not apparent until the COVID-19 lockdowns: the lack of a meaningful legislative check on the governor's emergency powers.

Of special note is the bill's prohibition against suspending public records requests during an emergency. This is an important addition that will preserve transparency and help improve public trust in government.

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.



This bill does attempt to create a legislative check on the possibility of an unending emergency arising from the governor's or a mayor's ability to issue supplemental proclamations extending the original emergency period. However, that check would be more meaningful if multiple extensions of an emergency required legislative approval, regardless of whether the Legislature is in session.

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

1. In Section 3, add the following after the amendments to Section 127A-1, 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. In Section 6, amend Section 127A-14, 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. In addition, add the following after Section 127-A14 (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.
- (g) The governor or mayor shall proclaim the termination of a state of emergency or local state of emergency, respectively, at the earliest possible date that conditions warrant

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

**SB-3089-HD-1**

Submitted on: 3/24/2022 9:05:06 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I support the intent of this bill. However, i object to having the legislature or the council terminate a state of emergency, in whole or in part. This should remain the purview of the mayor or governor. Just see what has occurred on the mainland when legislatures overruled the governor. This is a bad move.

**SB-3089-HD-1**

Submitted on: 3/25/2022 2:30:03 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jennifer Azuma Chrupaluk	Individual	Support	Written Testimony Only

Comments:

It is the year 2022 and we are only now thinking about protecting our women?

How else does our system hold them vulnerable? Do you know how many former inmates and women who were arrested on Maui and Molokai alone, have been violated? Tons of them.... which is also a reason that some of them do not rehabilitate efficiently. Go to a women rehab facility and start asking those questions. I promise that you will be appalled to find out what they have been through in the system.

# JAMES HOCHBERG

## ATTORNEY AT LAW, LLLC

March 28, 2022

### TESTIMONY STRONGLY SUGGESTING MODIFICATIONS TO SB 3089 SD2

House Committee On Judiciary and Hawaiian Affairs

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

Rep. Linda Ichiyama

Rep. Nadine K. Nakamura

Rep. Dale T. Kobayashi

Rep. Roy M. Takumi

Rep. Matthew S. LoPresti

Rep. James Kunane Tokioka

Rep. Nicole E. Lowen

Rep. Gene Ward

Rep. Angus L.K. McKelvey

Hearing: SB 3089 SD2: Wednesday, March 30, 2022 at 2:00 pm by video only

Dear Chairman, Vice Chairman and Committee Members,

My name is Jim Hochberg and I am a civil rights attorney seeking to protect the Constitutional Rights of the people of Hawaii in the federal and state courts in Hawaii. I have practiced law in Hawaii since 1984 (38 years). With respect to SB 3089 SD2, I propose amendment to the language in the bill to actually protect the holders of the political power in Hawaii from continued abuse of emergency powers. I have litigated two cases here since 2020 challenging the governor's exercise of powers under HRS 127A. I offer this testimony based on the understanding I have gained in that process concerning how the courts are forced to analyze the challenges to government power under Chapter 127A.

**I propose that you amend SB 3089 SD2 to offer a Constitutional Amendment to add to Article 1, Section 1, new language to state that any exercise of emergency powers must automatically terminate on the 60<sup>th</sup> day after the initiation of the first action pursuant to emergency power unless both the executive and legislative branches act to extend the emergency powers for that**

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Address: 700 Bishop Street, Suite 2100, Honolulu, Hawaii 96813

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Telephone: 808-256-7382

Email: [Jim@JamesHochbergLaw.com](mailto:Jim@JamesHochbergLaw.com)

JAMES HOCHBERG  
ATTORNEY AT LAW, LLLC

House Committee on Judiciary and Hawaiian Affairs  
Rep. Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair  
March 28, 2022  
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**emergency.<sup>1</sup>**

SB 3089 SD2 states that the “purpose of this Act is to clarify state and county emergency management authority, . . . and further the goals of transparency and democratic accountability within our constitutional system..”

SB 3089 SD2 goes on to make several amendments to HRS Chapter 127A, including to Section 127A-14(d), which currently demands the automatic termination of the emergency powers on the sixtieth day after the proclamation of emergency. Several of the many challenges to the continuation of emergency powers have addressed this point. SB 3089 SD2 takes the completely wrong approach by weakening the protections of the people’s political power rather than protecting the political power of the people of Hawaii.

While emergencies can require drastic action, such action must be limited to that period of time absolutely necessary to protect against infringement on our fundamental rights. I agree that Chapter 127A must be amended to ensure that e emergency powers are not abused. However, in order to protect the proper balance between the political power of government and the political power of the people being governed, revising Chapter 127A must give way to revising the Constitution of the State of Hawaii. This is because judges must look at a statute in the context of the entire chapter in which it

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<sup>1</sup> Perhaps providing for the amendment to the Hawaii Constitution should be put forth in a different bill that relates to Constitutional Amendments. If that is the case, this bill should not pass out of your committee because of the exacerbation of the negative effect it will have on the tension between the emergency powers and the people of Hawaii.

JAMES HOCHBERG  
ATTORNEY AT LAW, LLLC

House Committee on Judiciary and Hawaiian Affairs  
Rep. Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair  
March 28, 2022  
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occurs. In this case, Chapter 127A broadly empowers the governor and mayors to take over the legislative law-making powers when in their discretion some emergency or disaster leads them to the conclusion that it is necessary.

**Tinkering with the language within that context leaves the judge determining the legality of a section of that Chapter within that same context.**

In that context, the tension is between the political power of the executive versus the legislative branch. The political power of the people is lost. Judges need to see the tension as between the government and the people since the emergency orders affect the people, not the legislature.

The people of Hawaii have constitutionally protected political power, and limits on the Governor's emergency powers is an important protection for your voters. The Bill of Rights in the Hawaii Constitution provides at Article I, Section 1 that:

**“All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority.”**

Therefore, allowing exercise of emergency powers by a governor for so long as he desires unless interrupted by legislation is contrary to the constitutional protection of the inherent political power held by the people. The limitation on the exercise of emergency powers is necessary to maintain appropriate levels of governmental authority under the Constitution of the State of Hawaii. The separation of powers reserve law-making to the legislative branch (each member being duly elected in small

JAMES HOCHBERG  
ATTORNEY AT LAW, LLLC

House Committee on Judiciary and Hawaiian Affairs  
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districts by a subset of the population) and, with citizen participation, protects the people from authoritarian rule and ensures that they are properly represented by elected officials. Executive decrees ordering quarantine with criminal penalties, along with various other rules that have been enacted with no public input, are contrary to Hawaii's Constitution. While this may be proper for very limited periods of time, the Legislature must exercise its law-making power to protect the voters from abuse.

In order to arm the judge with the proper perspective for reviewing abuse of emergency powers, the brakes on abuse of emergency powers must be stated where the judge will see the tension properly: between the political power of the people and the political power of the government. I propose that you amend the Hawaii Constitution. I suggest that you delete the changes to Section 127A-14 in Section 6 of the bill, In order to clarify in the strongest possible terms that abuse of emergency powers occurs beyond the first 60 days after the emergency is proclaimed, the following amendment to the Hawaii Constitution is proposed:

Article I Section 1 shall be amended as follows:

Section 1. All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority.  
**Any exercise of emergency powers must automatically terminate on the 60<sup>th</sup> day after the initiation of the first action pursuant to emergency power unless both the executive and legislative branches act to extend the emergency powers for that specific emergency.**



JAMES HOCHBERG  
ATTORNEY AT LAW, LLLC

House Committee on Judiciary and Hawaiian Affairs  
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Rep. Scot Z. Matayoshi, Vice Chair  
March 28, 2022  
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I do not support the language in SB 3089 SD2 that seeks to weaken the current limits on the exercise of emergency powers. If you have any questions please feel free to call me.

Sincerely,

/s/ JAMES HOCHBERG

JH

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# RYAN KAWAILANI OZAWA

P.O. Box 892727

Mililani, HI 96789-8332

Main: (808) 707-3027

Fax: (808) 427-9227



@hawaii A row of social media icons including Instagram, Twitter, YouTube, LinkedIn, Facebook, and others.

Email: hawaii@hey.com

March 28, 2022

Aloha, Rep. Mark M. Nakashima, Chair; Rep. Scot Z. Matayoshi, Vice Chair; and members of the Committee on Judiciary & Hawaiian Affairs:

I am writing to express my **support** of SB3089 SD2 HD1, which prohibits the Governor or mayor from suspending requests for public records or vital specifics during a state of emergency.

This bill reasonably allows for a delay in an agency's response to a request because of extenuated circumstances.

It is unconscionable that our governor felt that the appropriate response to a crisis was to stifle access to government information rather than opting for more transparent practices.

Hawaii was one of fifty states dealing with the sweeping impacts of a pandemic. Hawaii distinguished itself as having the most draconian public information restrictions in the country. It's disappointing that this clause of this bill is necessary, but recent practice proves that it must be done.

Mahalo for your consideration.



Ryan Kawailani Ozawa

**SB-3089-HD-1**

Submitted on: 3/29/2022 7:41:56 PM

Testimony for JHA on 3/30/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dawn Poiani	Individual	Comments	Written Testimony Only

Comments:

comments on SB3089 SD2 HD1

SB3089 is a good start in the right directions to making several needed changes to the current emergency statutes, but this bill needs further fortitude to secure that constitution and laws of this state.

At present, the law includes a 60-day limit on emergencies, but does not address what should happen if an emergency exceeds that limit. As such this bill must be modified to include further clarification and remedies to limit executive powers.

There needs to be clear language that the legislative branch delegates executive powers. There should never be a time when the executive powers executes a suspension of laws by executive powers. This places way too much power in the hands of 1 or 2 people.

There is no clarity on what the limitations of powers are. The currently “electronic media is allowed to be suspended if the information is deemed “harmful” to emergency management. Censorship is very dangerous in a democracy and even if the communication is deemed “harmful”. Emergency powers need to have further guidelines to clarify the constitutional fortitude and the electronic media communication provision should be completely removed.

The statute should not to allow the governor, mayor or their delegates to suspend laws. In an emergency, such as the current pandemic, there is no justification of the suspension of laws. This should be clearly stated in this bill.

A 2/3 majority vote required to override a state of emergency is a big ask. The legislature should be able to terminate any state of emergency at anytime with a simple majority vote.

This bill needs some modification to keep emergency powers further in check from unregulated extensions without legislative oversight. Emergency powers must end within 60 days. The legislation may convene a special session to debate the extension. If the special session is not debated promptly, emergency powers may be extended for an additional 10 days. If within the 10 days a special session is not convened, then the emergency powers shall end. If for some reason the legislators cannot meet quickly for a special session in person, they may meet in an online meeting.

Thank you for your considerations,

Dawn Poiani