

DAVID Y. IGE
GOVERNOR



KENNETH S. HARA
MAJOR GENERAL
ADJUTANT GENERAL

STEPHEN F. LOGAN
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STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

TESTIMONY ON SENATE BILL 3089, SD1
RELATING TO EMERGENCY MANAGEMENT

PRESENTED TO THE SENATE COMMITTEE ON
JUDICIARY

BY

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

March 3, 2022

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee on Judiciary.

I am Major General Kenneth Hara, Adjutant General, Director of the Hawaii Emergency Management Agency and Homeland Security Advisor.

The Department of Defense (DOD) provides written testimony in **SUPPORT** of SB 3089, SD1.

This measure, if passed, amends 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. 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 weather 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.

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 have been critical to the 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 to ensure the State and counties are ready for any type of emergency. This bill would improve and further clarify those frameworks.

Moving forward we would ask the measure include language in section 4 relating to the suspension, to include the continuation of certain suspensions both for 127A-13(a)(3) and 127A-13(b)(2). The following language is recommended to be added to 127A-13(a)(3) and 127A-13(b)(2) and will eliminate the need for most supplementary proclamations: ": provided further that any suspension of any law that requires permits, authorizations, or approvals from any state or county agency may continue beyond the emergency period to allow for the completion of any repairs, reconstruction, rebuilding, or construction of any state or county infrastructure, facilities, or properties that would otherwise be delayed by any such permit, authorization, or approval;"

The bill also defines Severe Weather Warning from the National Weather Service on p. 3 lines 6-11. To align with best practices and the HI-EMA Statewide Alert & Warning Systems Plan, we 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 States Geological Survey issue severe hazard warning messages.

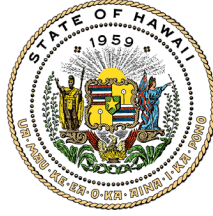
We additionally recommend the definition for A2 read as the following: "Severe warning" means the issuance by the National Weather Service, Pacific Tsunami Warning Center, United State Geological Survey, or other public authority of a notification that dangerous conditions exist that could impact the State, or any portion of it, within a specified period of time. This term includes but is not limited to warnings of coastal inundation, high surf, flash flooding, volcano, tsunami, or hurricane."

Finally, we recommend on p. 13 lines 11-16 SECTION 6. Section 127A-30, Hawaii Revised Statutes, subsection (c) to read as follows: "(c) The prohibitions under subsection (a) shall remain in effect until twenty-four hours after the severe weather warning by the national weather service is canceled; or in the event of a declaration,"

Senate Bill 3089, SD1 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 this opportunity to provide testimony in support of of SB 3089, SD1.

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



STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 3089, SD1
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE SENATE COMMITTEE ON
JUDICIARY
BY

Luke P. Meyers
Administrator, Hawaii Emergency Management Agency (HI-EMA)

March 3, 2022

Aloha Chair Rhoads, Vice-Chair Keohokalole, and Members of the
Committee:

Thank you for the opportunity to submit testimony in **SUPPORT** of SB3089,
SD1.

Senate Bill 3089 amends 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. 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 weather 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.

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.

As this bill moves forward, the HI-EMA would ask that the measure include language in section 4 relating to the suspension, to include the continuation of certain suspensions both for 127A-13(a)(3) and 127A-13(b)(2).

The following language added to 127A-13(a)(3) and 127A-13(b)(2) is very important and will eliminate the need for most supplementary proclamations:

"; provided further that any suspension of any law that requires permits, authorizations, or approvals from any state or county agency may continue beyond the emergency period to allow for the completion of any repairs, reconstruction, rebuilding, or construction of any state or county infrastructure, facilities, or properties that would otherwise be delayed by any such permit, authorization, or approval;"

The bill also defines Severe Weather Warning from the National Weather Service on p. 3 lines 6-11. To align with best practices and the HI-EMA Statewide Alert & Warning Systems Plan, we 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 States Geological Survey issue severe hazard warning messages.

HI-EMA recommends the definition for A2 read as the following: "Severe warning" means the issuance by the National Weather Service, Pacific Tsunami Warning Center, United State Geological Survey, or other public authority of a notification that dangerous conditions exist that could impact the State, or any portion of it, within a specified period of time. This term includes but is not limited to warnings of coastal inundation, high surf, flash flooding, volcano, tsunami, or hurricane."

On p. 13 lines 11-16 SECTION 6. Section 127A—30, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows: "(c) The prohibitions under subsection (a) shall remain in effect until twenty—four hours after the severe weather warning by the national weather service is canceled; or in the event of a declaration,

The HI-EMA is in support of the additional changes to Senate Bill 3089, SD1 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, SD1.

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



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

February 24, 2022

ONLINE/FAX: 808-586-6131; 808-587-7220

The Honorable Karl Rhoads
Chair
The Honorable Jarrett Keohokalole
Vice-Chair
Senate Committee on Judiciary
Hawaii State Capitol, Rooms 204, 205
415 South Beretania Street
Honolulu, HI 96813

Re: **SB3089 SD1-Relating to Emergency Management**

Dear Chair Rhoads, Vice-Chair Keohokalole, 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** regarding SB3089 SD1. 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.

Before the Committee on Public Safety, Intergovernmental, and Military Affairs, our Union pointed out that SB3285 and HB1585 were similar bills on the same issue. However, the glaring difference between those bills and the original SB3089 was that SB3089 omitted the following language relating to HRS §127A-14:

(e) The legislature may, 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 pursuant to this section.

That committee heard our concerns and amended SB3089 to include that language which is now found in SB3089 SD1. In addition, we respectfully suggest and recommend the following clarifying language (bold/underline) also be inserted on page 12, lines 13-18, to read as follows:

(c) ~~[The]~~ **Except as provided in subsection (e) the** governor or mayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration, **extension, or termination** of a state of emergency in the State or a local state of emergency in the county, as applicable. This section shall not limit the power and authority of the governor under section 127A—13(a)(5).

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The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice-Chair
Senate Committee on Judiciary
February 24, 2022
Re: SB3089 SD1-Relating to Emergency Management
Page 2

The aforementioned language provides a safeguard 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 that can be immediately and freely invoked in response to a genuine emergency and crisis, such as 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.

SB3089 SD1 now provides that check and balance on the executive branch’s broad emergency powers. Providing the legislature with a safety valve to terminate a state of emergency that has been extended beyond reason by the governor or 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.

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. For these reasons, we submit that the current bill should be amended to include a subsection (e) as set forth above.

We thank you for allowing us to be heard on this very important issue and hope your committee will amend SB3089 SD1, as suggested, and otherwise unanimously support this bill.

Respectfully submitted,

ROBERT “BOBBY” CAVACO
SHOPO President

Hawaii*Holding Power Accountable*Statement Before The
SENATE COMMITTEE ON JUDICIARY

Thursday, March 3, 2022

9:30 AM

Via Videoconference

in consideration of

SB 3089, SD1**RELATING TO EMERGENCY MANAGEMENT.**

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii provides written comments on SB 3089, SD1, which (1) amends 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, (2) clarifies that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution, (3) amends chapter 127A, HRS, to provide for greater clarity and specificity regarding the scope of suspensions of law, (4) clarifies that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate, (5) clarifies the legal framework governing the extension and termination of emergency periods, (6) adds the definition of the term "severe weather warning" as used in section 127A-30, HRS, and (7) 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 (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 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 (retrieved Feb. 4, 2022). The Sunshine Law continues to be impacted by the pandemic. On January 26, 2022, Gov. Ige issued an Emergency Proclamation Related To COVID-19 (Omicron Variant), which will expire 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 at page 11 (retrieved Feb. 25, 2022). The remainder of the Sunshine Law is currently in effect. *Id.*

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. 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. Unfortunately, SB 3089, SD 1 does not provide any real guidelines for open government and records protections and is insufficient to keep executive power overreach in check during emergency situations.

Thank you for the opportunity to provide comments on SB 3089, SD1. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022

Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Thursday, March 3, 2022, 9:30AM
Via Videoconference

Re: Testimony in support of SB3089, SD1 - RELATING TO EMERGENCY MANAGEMENT

Chair Rhoads, Vice Chair Keohokalole, 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, SD1, 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,

Kalani Werner
State Director

UNITED PUBLIC WORKERS
AFSCME Local 646, AFL-CIO





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
The Senate
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

March 3, 2022

S.B. 3089, S.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. 1 which clarifies state and local authority, ensures that the powers granted for emergency purpose shall not be inconsistent with the state constitution, and provides parameters and justification for the suspension of laws. **We appreciate the amendments from the Committee on Public Safety, Intergovernmental, and Military Affairs that 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 S.B. 3089, S.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. 1.

Respectfully submitted,

Randy Perreira
Executive Director

JAMES HOCHBERG

ATTORNEY AT LAW, LLLC

March 2, 2022

TESTIMONY STRONGLY SUGGESTING MODIFICATIONS TO SB 3089 SD1

Senate Committee On Judiciary
Chair: Senator Karl Rhoads
Vice Chair: Senator Jarrett Keohokalole

Hearing: SB 3089 SD1: Thursday, March 3, 2022 at 9:30 a.m.

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 SD1, I propose amendment to the language in the bill¹ to protect the people of Hawaii from abuse of emergency powers.

I propose that you amend SB 3089 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 60th 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 emergency.

I come to this conclusion as the result of litigating challenges to the exercise of emergency powers since 2020 based on the COVID 19 emergency.

Many people of Hawaii have sued to challenge HRS, Chapter 127A (Emergency Powers) in court numerous times since it was employed in the context of COVID 19, because the many residents

¹ 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

SENATE COMMITTEE ON JUDICIARY

Chair: Senator Karl Rhoads

Vice Chair: Senator Jarrett Keohokalole

March 2, 2022

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believe that Hawaii's political leaders have abused those powers. I have litigated two such cases here since 2020. 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.

SB 3089 SD1 states that the "purpose of this Act is to . . . clarify the legal framework governing the extension and termination of states of emergency."

SB 3089 SD1 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 SD1 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. The political leadership in many other countries around the world (and even many states within our United States of America) determined last year and earlier this year that the emergency from COVID 19 has ended, and these governments have eliminated the drastic emergency actions in their jurisdiction. Hawaii continues to exercise emergency powers concerning COVID 19 when it is unnecessary with 99% of current COVID 19 cases being omicron. SB 3089 takes the wrong approach to re-evaluating the statutory language to end emergency powers.

I agree that Chapter 127A must be amended to ensure that 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 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.

Address: 700 Bishop Street, Suite 2100, Honolulu, Hawaii 96813
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JAMES HOCHBERG
ATTORNEY AT LAW, LLLC

SENATE COMMITTEE ON JUDICIARY

Chair: Senator Karl Rhoads

Vice Chair: Senator Jarrett Keohokalole

March 2, 2022

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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 an unchecked exercise of emergency powers by a governor 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 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.

That is why I propose that you amend the Hawaii Constitution.

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JAMES HOCHBERG
ATTORNEY AT LAW, LLLC

SENATE COMMITTEE ON JUDICIARY

Chair: Senator Karl Rhoads

Vice Chair: Senator Jarrett Keohokalole

March 2, 2022

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Therefore, I suggest that you delete the changes to Section 127A-14 in Section 5 of the bill and instead insert this language in SB 3089 SD1:

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 60th 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.**

I do not support the language in SB 3089 SD1 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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March 3, 2022

9:30 a.m.

VIA VIDEOCONFERENCE

Conference Room 325

To: Senate Committee on Judiciary

Sen. Karl Rhoads, Chair

Sen. Jarrett Keohokalole, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: SB3089 SD1— RELATING TO EMERGENCY MANAGEMENT

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB3089 SD1](#), 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 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. In Section 2, 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 5, 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.

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 and open-records laws, 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
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