

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 3089, SD2
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEE ON
PANDEMIC & DISASTER PREPAREDNESS
BY

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

March 15, 2022

Aloha Chair Ichiyama, Vice-Chair Eli, and Members of the Committee:

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

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. 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. 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.

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.

The SD2 version of the bill addresses a change to "severe warning" from "severe weather warning" to encompass other entities that issue severe warnings, however, p. 13, lines 11-16 SECTION 6 subsection (c) only addresses the national weather service. The HI-EMA recommends the following change:

"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,"

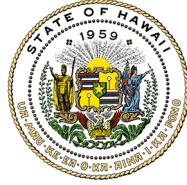
In addition, the most recent amendments added a provision to prohibit the Governor or Mayors from suspending requests for public records during a declared emergency, essentially incorporating the contents of Senate Bill 2916, SD1. The HI-EMA would note that this prohibition could divert resources from emergency response during an incident; and that during the COVID-19 response, such a suspension was imposed only temporarily. Given that separate legislation addressing this topic remains before the Legislature for a fuller debate on the issue – separate from the other matters addressed in this bill – the HI-EMA would ask that the committee consider removing this language on public records from Senate Bill 3089, SD2.

The HI-EMA is in support of the additional changes to Senate Bill 3089, SD2 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.

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

DAVID Y. IGE
GOVERNOR



KENNETH S. HARA
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TESTIMONY ON SENATE BILL 3089, SD2
RELATING TO EMERGENCY MANAGEMENT

PRESENTED TO THE HOUSE COMMITTEE ON
PANDEMIC & DISASTER PREPAREDNESS

BY

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

March 15, 2022

Chair Ichiyama, Vice Chair Eli, and Members of the Committee on Pandemic & Disaster Preparedness.

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, SD2.

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. 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. 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.

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.

The SD2 version of the bill addresses a change to "severe warning" from "severe weather warning" to encompass other entities that issue severe warnings, however, p. 13, lines 11-16 SECTION 6 subsection (c) only addresses the national weather service. I recommend the following change:

"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,"

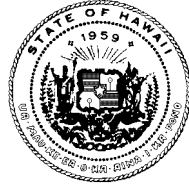
In addition, the most recent amendments added a provision to prohibit the Governor or Mayors from suspending requests for public records during a declared emergency, essentially incorporating the contents of Senate Bill 2916, SD1. I would note that this prohibition could divert resources from emergency response during an incident; and that during the COVID-19 response, such a suspension was imposed only temporarily. Given that separate legislation addressing this topic remains before the Legislature for a fuller debate on the issue – separate from the other matters addressed in this bill – I would ask that the committee consider removing this language on public records from Senate Bill 3089, SD2.

Senate Bill 3089, SD2 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, SD2.

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Administrator Luke Meyers, luke.p.meyers@hawaii.gov; 808-733-4300

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 15, 2022

TO: The Honorable Representative Linda Ichiyama, Chair
House Committee on Pandemic & Disaster Preparedness

FROM: Cathy Betts, Director

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

Hearing: March 15, 2022, 10:00 a.m.
Via Videoconference, State Capitol

POSITION: The Department of Human Services (DHS) supports this administration measure and provides comments regarding new language added by the SD2 regarding 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. 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. (SD2)

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:

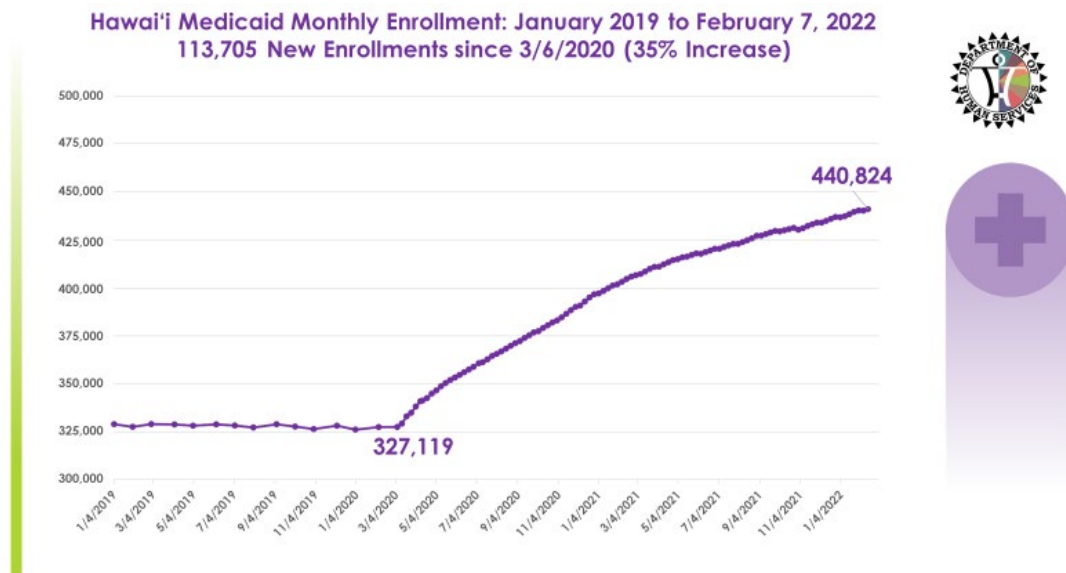
- (1) Prohibiting the Governor or a mayor from suspending requests for public records or vital statistics during a declared state of emergency and allowing for a reasonable delay in an agency's response to a request as a result of extenuated circumstances;
- (2) Changing "severe weather warning" to "severe 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 Department provides comments on the SD2 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 12, 2022, the U.S. has 79,411,749 reported cases and 966,218 fatalities; as of March 13, 2022, Hawaii has 231,844 reported cases and 1,351 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. This graph 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 in effect from April 3, 2020, through July 30, 2021, and could not begin to fill vacancies generally 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.

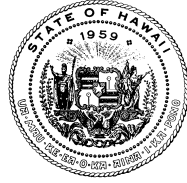
In addition to statewide emergency management responsibilities, the PIO engaged in public outreach with news media and regularly updated the DHS website during this time. Researchers and community advocates made numerous inquiries to track child abuse and neglect reporting trends and the increase in 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
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**Testimony COMMENTING on SB3089 SD2
RELATING TO EMERGENCY MANAGEMENT.**

REP. LINDA ICHIYAMA, CHAIR
HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

Hearing Date: March 15, 2022

Room Number: Video & 309

- 1 **Fiscal Implications:** N/A.
- 2 **Department Testimony:** The Department of Health offers comments on the proposed
- 3 subsection (a), specifically regarding the prohibition to suspend agency response deadlines to
- 4 public records requests during a declared state of emergency. While the Department
- 5 acknowledges and supports the public's right to access government records, during a declared
- 6 emergency, resources are often diverted to essential response functions. These response
- 7 functions may limit resources available to respond to public records requests.

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To: House Committee on Pandemic & Disaster Preparedness

From: Cheryl Kakazu Park, Director

Date: March 15, 2022, 10:00 a.m.
State Capitol, Conference Room 309 and Via Videoconference

Re: Testimony on S.B. No. 3089
Relating to Emergency Management

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.

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House Committee on Pandemic & Disaster Preparedness
Honorable Linda Ichiyama, Chair
Honorable Stacelynn K.M. Eli, Vice Chair

RE: Testimony Supporting S.B. 3089 S.D. 2, Relating to Emergency Management
Hearing: March 15, 2022 at 10:00 a.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.**

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 already provide flexibility for agencies to address other priorities.¹ The two week deadline for an initial response may be extended two more weeks 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.**

¹ 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).

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March 11, 2022

Aloha, Rep. Linda Ichiyama, Chair; Rep. Stacelynn K.M. Eli, Vice Chair;
and members of the Committee on Pandemic & Disaster Preparedness:

I am writing to express my **support** of SB3089 SD1, 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 as a result 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



HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS
Tuesday, March 15, 2022, 10 am, State Capitol Room 309 & Videoconference
SB 3089, SD2
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.

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.

Thank you for the opportunity to submit testimony.

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

Tuesday, March 15, 2022

10:00 AM

Via Videoconference and Conference Room 309

in consideration of

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

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

Common Cause Hawaii provides written comments on SB 3089, SD2, 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) prohibits the Governor or mayor from suspending requests for public records or vital specifics during a state of emergency, (3) allows for a reasonable delay in an agency's response to a request as a result of extenuated circumstances, (4) clarifies that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution, (5) amends chapter 127A, HRS, to provide for greater clarity and specificity regarding the scope of suspensions of law, (6) clarifies that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate, (7) clarifies the legal framework governing the extension and termination of emergency periods, (8) adds the definition of the term "severe warning" as used in section 127A-30, HRS, (9) 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, and (10) 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.

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. Thus, Common Cause Hawaii appreciates that SB 3089, SD 2 prohibits the Governor or a mayor from suspending requests for public records or vital statistics during a declared state of emergency but does allow for a reasonable delay 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. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii





HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Pandemic & Disaster Preparedness

Testimony by
Hawaii Government Employees Association

March 15, 2022

S.B. 3089, S.D. 2 – 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 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, among other things. 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. 2 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.

Respectfully submitted,

Randy Perreira
Executive Director



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

Committee on Pandemic and Disaster Preparedness
Representative Linda Ichiyama, Chair
Representative Stacelynn K.M. Eli, Vice Chair

Tuesday, March 15, 2022, 10:00AM
Conference Room 309 and via Videoconference

Re: Testimony in support of SB3089, SD2 - RELATING TO EMERGENCY MANAGEMENT

Chair Ichiyama, Vice Chair Eli, 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, 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 or county council 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. SB3089, SD2, will help to provide the legislature and councils 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**





March 15, 2022

Rep. Linda Ichiyama
House Committee on Pandemic and Disaster Preparedness
State Capitol
Honolulu, HI 96813

Re: SB 3089 SD2

Chair Ichiyama 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 is many times very important during times of emergencies.

Thank you for your time and attention,

Stirling Morita
President
Hawaii Chapter of the Society of Professional Journalists



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 SD2— 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](#), 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 pandemic: 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 (f):

- (g) 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.
- (h) 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



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

March 14, 2022

ONLINE/FAX: 808-586-6221; 808-586-8469

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

Re: **HB3089 SD2-Relating to Emergency Management**

Dear Chair Ichiyama, Vice-Chair Eli, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union to express our strong **support** regarding SB3089 SD2. 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 Senate Committee on Public Safety, Intergovernmental, and Military Affairs, our Union pointed out that SB3285 and HB1585 were similar bills on the same issue as SB3089. 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 SD1 to include that language which is incorporated in SB3089 SD2 (page 15, lines 8-11). In addition, we suggested and recommended the following clarifying language (**bold/underline**) be inserted as follows:

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1717 Hoe Street
Honolulu, Hawaii 96819-3125
Tel: (808) 847-4676 "84 SHOPO"
www.shopohawaii.org Fax: (808) 841-4818

Hawaii Chapter Office
688 Kinoole Street, Room 220B
Hilo, Hawaii 96720-3877
Tel: (808) 934-8405
Fax: (808) 934-8210

Kauai Chapter Office
3176 Oihana Street, Suite 104, Lihue
Mailing Add: P. O. Box 1708
Lihue, Hawaii 96766-5708
Tel: (808) 246-8911

Maui Chapter Office
1887 Wili Pa Loop, Suite 2
Wailuku, Hawaii 96793-1253
Tel: (808) 242-6129
Fax: (808) 242-9519

The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice-Chair
House Committee on Pandemic & Disaster Preparedness
Re: HB3089 SD2-Relating to Emergency Management
March 14, 2022
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(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)

The aforementioned language was also adopted and incorporated into the bill and is found on page 14, line 16 of SB3089 SD2. This 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 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, however, 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 and county council bodies.

SB3089 SD2 now 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.

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 obvious reasons, we would like to prevent the situation from developing again where an executive is vested and exercises unrestrained power without any checks and balances.

The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice-Chair
House Committee on Pandemic & Disaster Preparedness
Re: HB3089 SD2-Relating to Emergency Management
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For these reasons, we respectfully ask for your committee's unanimous support for this bill, as amended.

RESPECTFULLY SUBMITTED,

ROBERT "BOBBY" CAVACO
SHOPO President

JAMES HOCHBERG

ATTORNEY AT LAW, LLC

March 12, 2022

TESTIMONY STRONGLY SUGGESTING MODIFICATIONS TO SB 3089 SD2

House Committee on Pandemic & Disaster Preparedness

Chair: Chair Linda Ichiyama

Vice Chair Stacelynn K. M. Eli

Hearing: SB 3089 SD2: 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 SD2, I propose amendment to the language in the bill¹ to protect the people of Hawaii from abuse of emergency powers. 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.

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 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.

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.

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

USPS: P.O. Box 3226, Honolulu, Hawaii 96801

Telephone: 808-256-7382

Email: Jim@JamesHochbergLaw.com

**JAMES HOCHBERG
ATTORNEY AT LAW, LLLC**

House Committee on Pandemic & Disaster Preparedness
Chair: Chair Linda Ichiyama
Vice Chair Stacelynn K. M. Eli
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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 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 SD2 states that the "purpose of this Act is to . . . further the goals of transparency and democratic accountability within our constitutional system" concerning state and county emergency management authority.

SB 3089 SD2 goes on to make several amendments to HRS Chapter 127A, including to Section 127A-14(d), (e) & (f). Section 127A-14(d) 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 clearly and purposefully limited to that period of time which is 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 SD2 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 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 occurs. In this case, Chapter 127A broadly empowers the governor and

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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, the end of the exercise of emergency power must not be changed from the current mandatory to a new permissive termination. The 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

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JAMES HOCHBERG
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House Committee on Pandemic & Disaster Preparedness
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Vice Chair Stacelynn K. M. Eli
March 12, 2022
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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.

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 SD2:

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 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

Address: 700 Bishop Street, Suite 2100, Honolulu, Hawaii 96813
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Email: Jim@JamesHochbergLaw.com

TO: Members of the Committee on Pandemic & Disaster Preparedness

FROM: Natalie Iwasa
808-395-3233

HEARING: 10 a.m. Tuesday, March 15, 2022

SUBJECT: SB 3089, SD2 – Emergency Management – **COMMENTS**

Aloha Chair Ichiyama and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB 3089, SD2, which relates to emergency management.

Please note that the bill details were not available at the time of this writing (see screenshot below), but I would like to comment based on what I know of this bill.

I support a two-thirds vote by the legislature and/or county councils to terminate a state of emergency as declared by the governor or mayor, respectively.

Hawaii State Legislature
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