



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

Written Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
HOUSE COMMITTEE ON PUBLIC SAFETY
Thursday, March 19, 2009, 8:30 a.m.
Room 309, State Capitol

SB 478 SD2 RELATING TO DISASTER RELIEF

Chair Hanohano, Vice Chair Aquino and Members of the Committee:

The Office of the Governor opposes SB 478 SD2 because the changes proposed by this measure will prevent the State's chief executive from possessing the flexibility and immediate capability needed to respond to disasters and emergencies. The bill requires a Governor to only respond to disasters and emergencies if "tangible and measurable harm" has occurred and such harm cannot be resolved through legislation. This measure will prohibit the Governor from taking pre-emptive action and impair the State's ability to provide immediate assistance when it is necessary and warranted by the circumstances of an emergency situation.

This measure prescribes that if the tangible harm and damage could be resolved through legislation in a regular or special session, "then the governor shall not execute any action to further provide for disaster relief." This provision is extremely problematic in that the Governor would be unable to mitigate the harm that has already been caused while the Legislature passes appropriate legislation. The bill does not address what would happen if the Legislature cannot come to a decision on the appropriate course of action during its legislative session or if the emergency occurs when the Legislature is not in session. This bill also offers no guarantees that a legislative solution will be provided to the Governor.

Additionally, this measure requires that any disaster relief provided, except for natural disasters and civil defense emergencies, shall not extend beyond the adjournment sine die of the next regular session unless expressly authorized by the Legislature. This provision would prevent timely recovery efforts by taking away the continuity needed for ongoing relief. Since it often takes years to recover from disasters

and emergencies, requiring extensions for relief to be renewed on an annual basis would only delay and disrupt relief efforts.

During the previous session, several members of the Legislature called upon the Governor to exercise emergency powers resulting from conditions such as the Aloha Airlines bankruptcy, while simultaneously trying to curtail these emergency powers. If this bill is enacted this session, any Governor would be unable to respond to such circumstances. This only illustrates that flexibility is needed in exercising emergency powers, as a broad range of emergency situations may arise that require emergency attention.

Governor Lingle recognizes and understands the complicated nature of finding proper solutions and responses for emergency situations facing Hawaii and has exercised her emergency powers judiciously.

A key requirement for effective responses to any emergency is the ability to respond quickly and effectively. The ability to do so requires flexibility and broad decision making capability. It would be prudent to ensure that the Governor is able to act quickly and decisively when emergencies and disasters occur. This measure is not in the best interest of the State and our residents.



Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 19, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION
SENATE BILL NO. 478, S.D.2, RELATING TO DISASTER RELIEF.
COMMITTEE ON PUBLIC SAFETY

The Department of Transportation (DOT) **strongly opposes** this bill.

If enacted, this bill will seriously restrict the State's ability (including the DOT's ability) to respond quickly to natural and manmade disasters and civil defense emergencies. This bill would require the Governor to take no action to help the victims of these disasters and emergencies, if disaster relief could be achieved through legislation enacted in the next occurring regular session of the legislature or in a special session of the legislature called by the Governor for the purpose of providing for the relief. To require such a disaster response protocol during an actual disaster or emergency is totally irresponsible.

During these times of disasters and emergencies, the public expects, demands, and is entitled to quick responses from the State. Only by quickly responding, can the State live up to its obligation to protect the lives and property of its citizens. This bill is counterproductive to this obligation. In effect, it encourages the Governor to take no action except to wait for the Legislature to provide the oversight and direction in addressing the disaster relief to be provided. Neither the Governor nor the public should be in such a situation during such a crisis.

Accordingly, we respectfully request that this bill be held in committee.

LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

**TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON PUBLIC SAFETY
THURSDAY, MARCH 19, 2009
8:30 A.M.
ROOM 309**

**SENATE BILL NO. 478, SD 2
RELATING TO DISASTER RELIEF**

Chairperson Hanohano and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 478, SD 2 which activates provisions of the State's disaster relief law to apply to emergencies, except for enemy attack; Clarifies the use of the governor's emergency powers in response to a natural or manmade disaster; Limits the governor's powers to provide disaster relief or the length of time that the governor may provide disaster relief in specific circumstances without legislative authorization; and states that, in certain cases, emergency powers in force prior to the effective date of this measure expire at the end of the 2009 regular session unless reauthorized by the legislature. The Hawaii Department of Agriculture is opposed to this measure.

In an emergency, the Governor must have the ability to immediately take action and deploy resources that in her mind, and with the advice of experts, comprises the best, safest, and most effective means to address the emergency at hand.

Oftentimes, "tangible and measurable harm" is not readily apparent and valuable time and resources may be spent to determine if such harm has occurred. Further, the definition requires that the harm or damage requires immediate action, is irreparable,

may result in imminent loss of life or pose an immediate health or safety hazard. Very few disasters would meet all of the criteria together and therefore would require waiting for the next legislative session or a special session.

The Hawaii Department of Agriculture was severely impacted by the spring floods of 2006 and the October 15, 2006 Kiholo earthquake. If the Governor had not had the authority to take swift and decisive action, the negative impact to agriculture would have been much greater.

It is only after taking action under an emergency declaration as now allowed that a comprehensive understanding of the scope and magnitude of the problem can be determined with accuracy. A delay could endanger lives and add thousands or millions of dollars to the cost of repair or replacement.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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LAND
STATE PARKS

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
PUBLIC SAFETY**

**Thursday, March 19, 2009
8:30 a.m.
State Capitol, Conference Room 309**

**In consideration of
SENATE BILL 478, SENATE DRAFT 2
RELATING TO DISASTER RELIEF**

Senate Bill 478, Senate Draft 2 clarifies the use of the Governor's emergency powers in response to a natural or manmade disaster. The Department of Land and Natural Resources (Department) does not support this measure.

The Department believes that it is difficult to sometimes evaluate with an absolute certainty the full scope and nature of all emergencies, and by their very nature, they require a speedy and flexible response. The ability to act quickly and flexibly should be the best way for the state to provide an emergency response.

The Department is also currently involved with addressing emergency mitigation or repair projects associated with the Emergency Proclamations (Proclamations) issued by the Governor as it relates to the 2006 heavy rains and flooding and the Kiholo earthquake emergencies. The Proclamations allows the Department and others, to expeditiously work on mitigation/repair projects by "suspending any law (state or county) which impedes or tends to impede or is detrimental to the expeditious and efficient execution of, or conflicts with, disaster relief or other necessary functions". Ensuring that the Proclamations remain in full force and effect throughout the "recovery period" is essential in the Department's ability to address the public's health, safety and welfare.

The "recovery period" may take years to address depending upon 1) When exactly the emergency events took place, 2) The severity of the damages, 3) when available State funding is made available, and 3) If there are federal recovery funds involved. Although the Department tries its best at making emergency projects a priority as well implementing these projects in a timely manner, it would be hard-pressed or impossible to complete projects by the next regular session of the Legislature. If by some chance, a concurrent resolution or enactment of law is not

adopted by the Legislature to continue the emergency proclamation(s) in full force and effect, this may cripple the Department's ability to address projects related to protecting the public's health, safety and welfare.