

JAN 27 2021

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# A BILL FOR AN ACT

RELATING TO EMERGENCY MANAGEMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that, despite the need  
2   for rapid executive action and centralized decision-making in  
3   time of emergency, such actions should be limited in scope and  
4   duration to no more and no longer than those necessary to  
5   facilitate emergency response. All executive emergency actions  
6   should be rationally related to expediting emergency response.  
7   Executive emergency action must neither be overbroad nor  
8   interminable, and the balance of authority between the branches  
9   of government should be restored as soon as feasible. Standards  
10   must be provided for the courts to consider cases of alleged  
11   overreach.

12       The purpose of this Act is to maintain oversight by the  
13   appropriate legislative bodies by establishing an advise and  
14   consent process for certain executive emergency actions and  
15   empowering the legislative bodies to terminate any executive  
16   emergency proclamation no longer serving its purpose.



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SECTION 2. Section 127A-1, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) It is the intent of the legislature to provide for and confer comprehensive powers for the purposes stated herein. This chapter shall be liberally construed to effectuate its purposes; provided that this chapter shall not be construed as conferring any power or permitting any action which is inconsistent with the Constitution and laws of the United States, or the Constitution of the State of Hawaii, but, in so construing this chapter, due consideration shall be given to the circumstances as they exist from time to time. This chapter shall not be deemed to have been amended by any act hereafter enacted at the same or any other session of the legislature, unless this chapter is amended by express reference."

SECTION 3. Section 127A-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise expressly provided, all of the powers conferred by this chapter are conferred on the governor or mayor, as applicable. The governor or mayor may delegate any of these powers to governmental, private-sector, and nonprofit agencies and organizations, officials, officers, employees, and



1 other individuals created, appointed, or employed under, or  
2 engaged in carrying out this chapter; provided that the  
3 following powers shall be retained by the governor or mayor, as  
4 applicable:

5 (1) Proclaiming a state of emergency or local state of  
6 emergency, proclaiming a state of emergency or local  
7 state of emergency terminated, or making any other  
8 proclamation provided for by this chapter;

9 (2) Prescribing rules having the force and effect of law;  
10 and

11 (3) Making allotments of funds appropriated or available  
12 for the purposes of this chapter.

13 Unless otherwise directed by the governor or mayor, all of the  
14 powers pertaining to emergency management authorized to be  
15 delegated by the governor or mayor shall be deemed to have been  
16 delegated by the governor to the director of Hawaii emergency  
17 management and by the mayor to the administrator or director of  
18 the county emergency management agency, as applicable, and the  
19 administrator or director of the county emergency management  
20 agency, respectively, shall have the authority to further  
21 delegate any of these powers to any agency or person to whom the



1 governor or mayor could have directly delegated such powers.  
2 Any delegation of powers made under this section to non-  
3 governmental entities, or to individuals not employed by the  
4 government, shall be with the advice and consent of the senate,  
5 in the case of a power conferred on the governor, or the advice  
6 and consent of the county legislative body, in the case of a  
7 power conferred on a mayor."

8 SECTION 4. Section 127A-13, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§127A-13 Additional powers in an emergency period. (a)**

11 In the event of a state of emergency declared by the governor  
12 pursuant to section 127A-14, the governor may exercise the  
13 following additional powers pertaining to emergency management  
14 during the emergency period:

- 15 (1) Provide for and require the quarantine or segregation  
16 of persons who are affected with or believed to have  
17 been exposed to any infectious, communicable, or other  
18 disease that is, in the governor's opinion, dangerous  
19 to the public health and safety, or persons who are  
20 the source of other contamination, in any case where,  
21 in the governor's opinion, the existing laws are not



1       adequate to assure the public health and safety;  
2       provide for the care and treatment of the persons;  
3       supplement the provisions of sections 325-32 to 325-38  
4       concerning compulsory immunization programs; provide  
5       for the isolation or closing of property which is a  
6       source of contamination or is in a dangerous condition  
7       in any case where, in the governor's opinion, the  
8       existing laws are not adequate to assure the public  
9       health and safety, and designate as public nuisances  
10      acts, practices, conduct, or conditions that are  
11      dangerous to the public health or safety or to  
12      property; authorize that public nuisances be summarily  
13      abated and, if need be, that the property be  
14      destroyed, by any police officer or authorized person,  
15      or provide for the cleansing or repair of property,  
16      and if the cleansing or repair is to be at the expense  
17      of the owner, the procedure therefor shall follow as  
18      nearly as may be the provisions of section 322-2,  
19      which shall be applicable; and further, authorize  
20      without the permission of the owners or occupants,  
21      entry on private premises for any such purposes;



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1       (2) Relieve hardships and inequities, or obstructions to  
2       the public health, safety, or welfare, found by the  
3       governor to exist in the laws and to result from the  
4       operation of federal programs or measures taken under  
5       this chapter, by suspending the laws, in whole or in  
6       part, or by alleviating the provisions of laws on such  
7       terms and conditions as the governor may impose,  
8       including licensing laws, quarantine laws, and laws  
9       relating to labels, grades, and standards;

10       (3) Suspend any law that impedes or tends to impede or be  
11       detrimental to the expeditious and efficient execution  
12       of, or to conflict with, emergency functions,  
13       including laws which by this chapter specifically are  
14       made applicable to emergency personnel; provided that  
15       any suspension of law shall be no broader and for no  
16       longer than required for expeditious and efficient  
17       execution of emergency functions, and any suspension  
18       of laws shall identify the sections of laws suspended  
19       and, for each section, shall specify the emergency  
20       functions facilitated thereby, with sufficient



1           explanation to demonstrate a rational basis for the  
2           suspension;

3           (4) Suspend the provisions of any regulatory law  
4           prescribing the procedures for out-of-state utilities  
5           to conduct business in the State including any  
6           licensing laws applicable to out-of-state utilities or  
7           their respective employees, as well as any order,  
8           rule, or regulation of any state agency, if strict  
9           compliance with the provisions of any such law, order,  
10          rule, or regulation would in any way prevent, hinder,  
11          or delay necessary action of a state utility in coping  
12          with the emergency or disaster with assistance that  
13          may be provided under a mutual assistance agreement;

14          (5) In the event of disaster or emergency beyond local  
15          control, or an event which, in the opinion of the  
16          governor, is such as to make state operational control  
17          necessary, or upon request of the local entity, assume  
18          direct operational control over all or any part of the  
19          emergency management functions within the affected  
20          area;



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- 1       (6) Shut off water mains, gas mains, electric power  
2       connections, or suspend other services, and, to the  
3       extent permitted by or under federal law, suspend  
4       electronic media transmission;
- 5       (7) Direct and control the mandatory evacuation of the  
6       civilian population;
- 7       (8) Exercise additional emergency functions to the extent  
8       necessary to prevent hoarding, waste, or destruction  
9       of materials, supplies, commodities, accommodations,  
10      facilities, and services, to effectuate equitable  
11      distribution thereof, or to establish priorities  
12      therein as the public welfare may require; to  
13      investigate; and notwithstanding any other law to the  
14      contrary, to regulate or prohibit, by means of  
15      licensing, rationing, or otherwise, the storage,  
16      transportation, use, possession, maintenance,  
17      furnishing, sale, or distribution thereof, and any  
18      business or any transaction related thereto;
- 19      (9) Suspend section 8-1, relating to state holidays,  
20      except the last paragraph relating to holidays  
21      declared by the president, which shall remain





1 unaffected, and in the event of the suspension, the  
2 governor may establish state holidays by proclamation;

3 (10) Adjust the hours for voting to take into consideration  
4 the working hours of the voters during the emergency  
5 period, and suspend those provisions of section 11-131  
6 that fix the hours for voting, and fix other hours by  
7 stating the same in the election proclamation or  
8 notice, as the case may be;

9 (11) Assure the continuity of service by critical  
10 infrastructure facilities, both publicly and privately  
11 owned, by regulating or, if necessary to the  
12 continuation of the service thereof, by taking over  
13 and operating the same; and

14 (12) Except as provided in section 134-7.2, whenever in the  
15 governor's opinion, the laws of the State do not  
16 adequately provide for the common defense, public  
17 health, safety, and welfare, investigate, regulate, or  
18 prohibit the storage, transportation, use, possession,  
19 maintenance, furnishing, sale, or distribution of, as  
20 well as any transaction related to, explosives,  
21 firearms, and ammunition, inflammable materials and



1           other objects, implements, substances, businesses, or  
2           services of a hazardous or dangerous character, or  
3           particularly capable of misuse, or obstructive of or  
4           tending to obstruct law enforcement, emergency  
5           management, or military operations, including  
6           intoxicating liquor and the liquor business; and  
7           authorize the seizure and forfeiture of any such  
8           objects, implements, or substances unlawfully  
9           possessed, as provided in this chapter.

10           (b) In the event of a local state of emergency declared by  
11           the mayor pursuant to [§]section[§] 127A-14, the mayor may  
12           exercise the following additional powers pertaining to emergency  
13           management during the emergency period:

14           (1) Relieve hardships and inequities, or obstructions to  
15           the public health, safety, or welfare, found by the  
16           mayor to exist in the laws of the county and to result  
17           from the operation of federal programs or measures  
18           taken under this chapter, by suspending the county  
19           laws, in whole or in part, or by alleviating the  
20           provisions of county laws on such terms and conditions  
21           as the mayor may impose, including county licensing



1 laws, and county laws relating to labels, grades, and  
2 standards;

3 (2) Suspend any county law that impedes or tends to impede  
4 or be detrimental to the expeditious and efficient  
5 execution of, or to conflict with, emergency  
6 functions, including laws which by this chapter  
7 specifically are made applicable to emergency  
8 personnel; provided that any suspension of law shall  
9 be no broader and for no longer than required for  
10 expeditious and efficient execution of emergency  
11 functions, and any suspension of laws shall identify  
12 the sections of laws suspended and, for each section,  
13 shall specify the emergency functions facilitated  
14 thereby, with sufficient explanation to demonstrate a  
15 rational basis for the suspension;

16 (3) Shut off water mains, gas mains, electric power  
17 connections, or suspend other services; and, to the  
18 extent permitted by or under federal law, suspend  
19 electronic media transmission;

20 (4) Direct and control the mandatory evacuation of the  
21 civilian population; and



(5) Exercise additional emergency functions, to the extent necessary to prevent hoarding, waste, or destruction of materials, supplies, commodities, accommodations, facilities, and services, to effectuate equitable distribution thereof, or to establish priorities therein as the public welfare may require; to investigate; and any other county law to the contrary notwithstanding, to regulate or prohibit, by means of licensing, rationing, or otherwise, the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution thereof, and any business or any transaction related thereto."

SECTION 5. Section 127A-14, Hawaii Revised Statutes, is amended to read as follows:

**"§127A-14 State of emergency.** (a) The governor may declare the existence of a state of emergency in the State by proclamation if the governor finds that an emergency or disaster has occurred or that there is imminent danger or threat of an emergency or disaster in any portion of the State[+]; provided that any proclamation must specify a date upon which the effects of the proclamation will terminate.



1 (b) A mayor may declare the existence of a local state of  
2 emergency in the county by proclamation if the mayor finds that  
3 an emergency or disaster has occurred or that there is imminent  
4 danger or threat of an emergency or disaster in any portion of  
5 the county[-]; provided that any proclamation must specify a  
6 date upon which the effects of the proclamation will terminate.

7 (c) The governor or mayor shall be the sole judge of the  
8 existence of the danger, threat, or circumstances giving rise to  
9 a declaration of a state of emergency in the State or a local  
10 state of emergency in the county, as applicable. This section  
11 shall not limit the power and authority of the governor under  
12 section 127A-13(a)(5).

13 (d) ~~[A state of emergency and a local state of emergency~~  
14 ~~shall terminate automatically sixty days after the issuance of a~~  
15 ~~proclamation of a state of emergency or local state of~~  
16 ~~emergency, respectively, or by a separate proclamation of the~~  
17 ~~governor or mayor, whichever occurs first.]~~ No proclamation of  
18 emergency under this chapter, nor any combination of  
19 proclamations, however dated, sequenced, or denominated, shall  
20 have effect beyond one hundred twenty days from the date of the  
21 first proclamation, absent the advice and consent of the senate,



1 in the case of a state of emergency, or the advice and consent  
2 of the county legislative body, in the case of a local state of  
3 emergency.

4 At any time, the legislature, by concurrent resolution, may  
5 terminate a proclamation of a state of emergency, in whole or in  
6 part. At any time, the county legislative body, by resolution,  
7 may terminate a proclamation of a local state of emergency, in  
8 whole or in part."

9 SECTION 6. Section 127A-25, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) For the purpose of carrying out any provision of this  
12 chapter, the governor may adopt rules for the State and the  
13 mayor may adopt rules for the county which may, for the duration  
14 of the emergency proclamation, if so stated in the rules, have  
15 the force and effect of law. Even though the rules are  
16 prescribed pursuant to a power conferred, or having mandatory or  
17 prohibitive effect, only in the event of a state of emergency or  
18 local state of emergency, the rules nevertheless may be  
19 prescribed prior thereto if stated therein to have the force and  
20 effect of law only in the event of a state of emergency or local  
21 state of emergency. All the rules, and likewise all other



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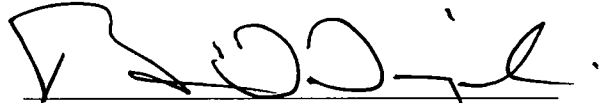
1 action taken under this chapter, shall be made and taken with  
2 due consideration of the orders, rules, regulations, actions,  
3 recommendations, and requests of federal authorities relevant  
4 thereto. In these rules, reasonable classifications,  
5 exceptions, and exemptions may be made and granted. Such rules  
6 shall not be subject to chapter 91."

7 SECTION 7. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect upon its approval.

10

INTRODUCED BY:

  
by request



# S.B. NO. 1330

**Report Title:**

Emergency Management; Powers; Proclamation; State of Emergency;  
Local State of Emergency; Scope and Duration; Advise and Consent

**Description:**

During a state of emergency or local state of emergency, provides parameters for delegation of powers and scope and duration of suspension of laws. Provides an advise and consent process for an emergency proclamation to extend beyond one hundred twenty days. Provides a legislative means for an emergency proclamation to be terminated.

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