

JAN 26 2022

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 the emergence of
2 coronavirus disease 2019 (COVID-19) and its variants created a
3 great challenge to global health, the economy, and our way of
4 life. The Governor and county mayors have had to exercise their
5 emergency powers under chapter 127A, Hawaii Revised Statutes, to
6 impose rules aimed to control the spread of COVID-19. The
7 enforcement of those rules has been critical to efforts to limit
8 the spread of COVID-19, protect the health and safety of the
9 community, manage medical resources, and promote economic
10 recovery. The COVID-19 pandemic has highlighted the importance
11 of clear legal frameworks for State and county emergency
12 management to ensure the State and counties are ready for any
13 type of emergency. The purpose of this Act is to clarify State
14 and county emergency management authority, ensure effective and
15 adaptable emergency responses, and further the goals of
16 transparency and democratic accountability within our
17 constitutional system.

1 The legislature finds that chapter 127A, Hawaii Revised
2 Statutes, should clearly specify and articulate the bases for
3 emergency actions. To that end, this Act amends chapter 127A to
4 require specificity when suspending provisions of law during an
5 emergency; clarify when and how Hawaii's emergency management
6 system involves coordination between state and county emergency
7 management functions; and clarify the legal framework governing
8 the extension and termination of states of emergency.

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

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

1 SECTION 3. Section 127A-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Severe weather warning" means the issuance by the
5 National Weather Service of a public notification that a
6 dangerous weather condition exists that could impact the State,
7 or any portion of it, within a specified period of time. This
8 term includes but is not limited to, warnings of coastal
9 inundation, high surf, flash flooding, tsunami, or hurricane."

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

12 **"§127A-13 Additional powers in an emergency period. (a)**
13 In the event of a state of emergency declared by the governor
14 pursuant to section 127A-14, the governor may exercise the
15 following additional powers pertaining to emergency management
16 during the emergency period:

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

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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~~] that
6 is a source of contamination or is in a dangerous
7 condition in any case where, in the governor's
8 opinion, the existing laws are not adequate to assure
9 the public health and safety, and designate as public
10 nuisances acts, practices, conduct, or conditions that
11 are 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;
22 (2) Relieve hardships and inequities, or obstructions to
23 the public health, safety, or welfare, found by the

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1 governor to exist in the laws and to result from the
2 operation of federal programs or measures taken under
3 this chapter, by suspending the laws, in whole or in
4 part, or by alleviating, ~~[the provisions of laws on~~
5 ~~such]~~ subject to terms and conditions ~~[as]~~ that the
6 governor may ~~[impose]~~ specify, the provisions of laws,
7 including licensing laws, quarantine laws, and laws
8 relating to labels, grades, and standards;

9 (3) Suspend any law that impedes or tends to impede or be
10 detrimental to the expeditious and efficient execution
11 of, or to conflict with, emergency functions,
12 including laws ~~[which]~~ that by this chapter
13 specifically are made applicable to emergency
14 personnel; provided that any suspension of law shall
15 be no broader and last no longer than the governor
16 deems necessary for the execution of emergency
17 management functions, and any suspension of law shall
18 identify the section of law suspended and, for each
19 section, shall both specify the emergency management
20 functions facilitated and justify the suspension based
21 on protecting the public health, safety, and welfare;

22 (4) Suspend the provisions of any regulatory law
23 prescribing the procedures for out-of-state utilities

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

10 (5) In the event of disaster or emergency beyond local
11 control, or an event which, in the opinion of the
12 governor, is such as to make state operational control
13 or coordination necessary, or upon request of the
14 [~~local entity,~~] county, assume direct operational
15 control over all or any part of the emergency
16 management functions within the affected area; and
17 notwithstanding sections 127A-14 and 127A-25, require
18 the county to obtain the governor's approval, or the
19 approval of the director of the Hawaii emergency
20 management agency, prior to issuing any emergency
21 order, rule, or proclamation under this chapter;

22 (6) Shut off water mains, gas mains, electric power
23 connections, or suspend other services, and, to the

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

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1 period, and suspend those provisions of section 11-131
2 that fix the hours for voting, and fix other hours by
3 stating the same in the election proclamation or
4 notice, as the case may be;

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

10 (12) Except as provided in section 134-7.2, whenever in the
11 governor's opinion, the laws of the State do not
12 adequately provide for the common defense, public
13 health, safety, and welfare, investigate, regulate, or
14 prohibit the storage, transportation, use, possession,
15 maintenance, furnishing, sale, or distribution of, as
16 well as any transaction related to, explosives,
17 firearms, and ammunition, inflammable materials and
18 other objects, implements, substances, businesses, or
19 services of a hazardous or dangerous character, or
20 particularly capable of misuse, or obstructive of or
21 tending to obstruct law enforcement, emergency
22 management, or military operations, including
23 intoxicating liquor and the liquor business; and

1 authorize the seizure and forfeiture of any such
2 objects, implements, or substances unlawfully
3 possessed, as provided in this chapter.

4 (b) In the event of a local state of emergency declared by
5 the mayor pursuant to [†]section[†] 127A-14, the mayor may
6 exercise the following additional powers pertaining to emergency
7 management during the emergency period:

8 (1) Relieve hardships and inequities, or obstructions to
9 the public health, safety, or welfare, found by the
10 mayor to exist in the laws of the county and to result
11 from the operation of federal programs or measures
12 taken under this chapter, by suspending the county
13 laws, in whole or in part, or by alleviating, ~~[the~~
14 ~~provisions of county laws on such]~~ subject to terms
15 and conditions ~~[as]~~ that the mayor may ~~[impose]~~
16 specify, the provisions of county laws, including
17 county licensing laws~~[r]~~ and county laws relating to
18 labels, grades, and standards;

19 (2) Suspend any county law that impedes or tends to impede
20 or be detrimental to the expeditious and efficient
21 execution of, or to conflict with, emergency
22 functions, including laws ~~[which]~~ that by this chapter
23 specifically are made applicable to emergency

1 personnel; provided that any suspension of law shall
2 be no broader and last no longer than the mayor deems
3 necessary for the execution of emergency management
4 functions, and any suspension of law shall identify
5 the section of law suspended and, for each section,
6 shall both specify the emergency management functions
7 facilitated and justify the suspension based on
8 protecting the public health, safety, and welfare;

- 9 (3) Shut off water mains, gas mains, electric power
10 connections, or suspend other services; and, to the
11 extent permitted by or under federal law, suspend
12 electronic media transmission;
- 13 (4) Direct and control the mandatory evacuation of the
14 civilian population; and
- 15 (5) Exercise additional emergency functions, to the extent
16 necessary to prevent hoarding, waste, or destruction
17 of materials, supplies, commodities, accommodations,
18 facilities, and services, to effectuate equitable
19 distribution thereof, or to establish priorities
20 therein as the public welfare may require; to
21 investigate; and any other county law to the contrary
22 notwithstanding, to regulate or prohibit, by means of
23 licensing, rationing, or otherwise, the storage,

1 transportation, use, possession, maintenance,
2 furnishing, sale, or distribution thereof, and any
3 business or any transaction related thereto."

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

6 "**§127A-14 State of emergency.** (a) The governor may
7 declare the existence of a state of emergency in the State by
8 proclamation if the governor finds that an emergency or disaster
9 has occurred or that there is imminent danger or threat of an
10 emergency or disaster in any portion of the State.

11 (b) A mayor may declare the existence of a local state of
12 emergency in the county by proclamation if the mayor finds that
13 an emergency or disaster has occurred or that there is imminent
14 danger or threat of an emergency or disaster in any portion of
15 the county.

16 (c) The governor or mayor shall be the sole judge of the
17 existence of the danger, threat, or circumstances giving rise to
18 a declaration, extension, or termination of a state of emergency
19 in the State or a local state of emergency in the county, as
20 applicable. This section shall not limit the power and
21 authority of the governor under section 127A-13(a)(5).

22 (d) A state of emergency and a local state of emergency
23 shall terminate automatically sixty days after the issuance of a

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1 proclamation of a state of emergency or local state of
2 emergency, respectively, [~~or~~] unless extended or terminated by a
3 separate or supplementary proclamation of the governor or
4 mayor[~~, whichever occurs first~~]. The governor or mayor shall
5 proclaim the termination of a state of emergency or local state
6 of emergency, respectively, at the earliest possible date that
7 conditions warrant."

8 SECTION 6. Section 127A-30, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) The prohibitions under subsection (a) shall remain in
11 effect until twenty-four hours after the severe weather warning
12 is canceled by the National Weather Service; or in the event of
13 a declaration, [~~the later of a date specified by the governor or~~
14 ~~mayor in the declaration or ninety-six~~] seventy-two hours after
15 the effective date and time of the declaration, unless such
16 prohibition is identified and continued [~~by a supplementary~~
17 ~~declaration issued~~] by the governor or mayor[~~-~~] in the
18 proclamation or any supplementary proclamation. Any
19 proclamation issued under this chapter that fails to state the
20 time at which it will take effect, shall take effect at twelve
21 noon of the day on which it takes effect."

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

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

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INTRODUCED BY: *Wes McMillan*

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BY REQUEST

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Report Title:

Emergency Management

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Defense

TITLE: A BILL FOR AN ACT RELATING TO EMERGENCY MANAGEMENT.

PURPOSE: To amend chapter 127A Hawaii Revised Statutes (HRS), to clarify State and county authority, ensure effective and adaptable emergency response, and further the goals of transparency and democratic accountability; to clarify that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution; to provide for greater clarity and specificity regarding the scope of suspensions of law under chapter 127A, HRS; to clarify that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate; to clarify the legal framework governing the extension and termination of emergency periods, and to add the definition of the term "severe weather warning" as used in section 127A-30, HRS.

MEANS: Amend sections 127A-1,-2,-13,-14, and -30, HRS.

JUSTIFICATION: The Legislature finds that the emergence of Coronavirus disease 2019 (COVID-19) and its variants has created a great challenge to global health, the economy, and our way of life. 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.

The purpose of this measure is to amend chapter 127A, HRS, to clarify State and local authority, ensure effective and adaptable emergency response, and further the goals of transparency and democratic accountability within our constitutional system.

This measure would clarify that powers granted for emergency purposes shall not be construed as permitting actions inconsistent with the state constitution. It would also clarify chapter 127A, HRS, by defining the term "severe weather warning" as used in section 127A-30, HRS.

The measure would also require the State and counties to provide greater justification and specificity than currently required when provisions of law are suspended pursuant to chapter 127A, HRS. Additionally, the measure would clarify that Hawaii's emergency management system includes coordination between State and county emergency management functions, where appropriate.

Impact on the public: The public would benefit from increased clarity and transparency into how emergency management authority is exercised and the scope of emergency powers, thus increasing public confidence and understanding.

Impact on the department and other agencies: The Department and other State and county agencies would benefit from increased clarity in the legal framework governing emergency management functions. Increased statutory clarity will mitigate litigation risk associated with the application of chapter 127A, HRS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: DEF 118.

OTHER AFFECTED
AGENCIES: State and county agencies.

EFFECTIVE DATE: Upon approval.