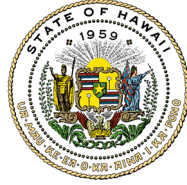


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KENNETH S. HARA
DIRECTOR OF EMERGENCY
MANAGEMENT

JAMES DS. BARROS
ADMINISTRATOR OF
EMERGENCY MANAGEMENT

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF DEFENSE
KA 'OIHANA PILI KAUA
HAWAI'I EMERGENCY MANAGEMENT AGENCY
4204 DIAMOND HEAD ROAD
HONOLULU, HAWAI'I 96816-4420

STATE OF HAWAI'I
DEPARTMENT OF DEFENSE
HAWAI'I EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 767
RELATING TO EMERGENCY POWERS

BEFORE THE SENATE COMMITTEE ON **JUDICIARY**

BY

JAMES DS. BARROS
ADMINISTRATOR
HAWAI'I EMERGENCY MANAGEMENT AGENCY

FEBRUARY 7, 2023

Aloha Chair Rhoads, Vice-Chair Gabbard, and members of the committee:

I am James Barros, Administrator of the Hawai'i Emergency Management Agency (HI-EMA).

HI-EMA provides written testimony to **PROVIDE COMMENTS** on SB767.

This bill would, among other actions, prohibit the Governor or a Mayor from suspending requests for public records or vital statistics during a declared emergency.

HI-EMA recognizes the value of maintaining transparent access to government records. The agency also recognizes and applauds the bill's provisions allowing for a reasonable delay in fulfilling requests for public records or vital statistics as a result of extenuating circumstances.

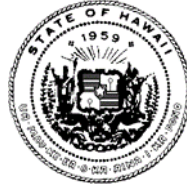
The agency would note, however, that emergency powers laws are intended to provide flexibility of response commensurate with the demands of an emergency. What may be considered "reasonable delay" is likely to be open to interpretation by those requesting records, and a "reasonable delay" during a hurricane emergency may not be the same as a delay during a pandemic with a novel pathogen or some other emergency with unique characteristics.

We would urge the committee to consider whether it would provide additional flexibility but maintain the bill's intent to add language to clarify that the "reasonable delay" permitted should be "commensurate with the scope and nature of the emergency."

Thank you for the opportunity to provide testimony.

James Barros: james.barros@hawaii.gov; 808-733-4300

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 9, 2023

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: [SB 767](#) – RELATING TO EMERGENCY POWERS.

Hearing: February 10, 2023, 9:35 a.m.
Conference Room 016 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this measure and provides comments.

PURPOSE: The bill's purpose prohibits the Governor or a Mayor from suspending requests for public records or vital statistics during a declared state of emergency. Allows for a reasonable delay in an agency's response to a request as a result of extenuating circumstances.

The suspension of the Uniform Information Practice Act (UIPA) per the Governor's emergency proclamations during the COVID-19 pandemic was necessary for DHS to pivot its processes and service delivery quickly and provide necessary and updated information to the public, staff, and contracted providers. Without the suspension, DHS would not have been able to meet the UIPA response times, which would lead to additional administrative processes.

The Department experienced historic and dramatic increases in the number of applications for benefits when COVID-19 impacted Hawaii in March 2020. Pre-COVID-19, DHS served 1 in 4 Hawaii residents; by late 2020, 1 in 3 Hawaii residents accessed one or more DHS programs. These caseloads remain at historic highs while we are "unwinding" from the federal

pandemic program changes and continue rebuilding our workforce following the Legislature's defunding of more than 300 positions in 2020 and the Executive freezing hires until the summer of 2021. We are also challenged to fill vacancies as state workers seek higher salaries and less stressful positions in the private sector.

From a resource perspective, DHS programs do not have dedicated staff to respond to information requests. DHS has only one public information officer (PIO) who leads the Department's internal and external communications. The PIO and several key staff from the Director's office, administrative officers, the Governor's Coordinator on Homelessness, and all divisions and attached agencies also participate in emergency support functions as part of the States emergency management response.

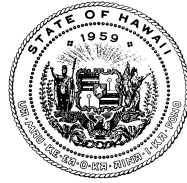
In addition, in response to emergencies, residents impacted economically or experiencing a loss of food during an extended power loss, community advocates, legislators, and providers call us for immediate assistance or information. Also, with a federal declaration, specific programs available during emergencies may have to be stood up. All of these emergency responses are the immediate priority of the program staff in addition to maintaining access to regular benefits and services.

During the pandemic, DHS also experienced increased inquiries from information brokers tracking Requests For Proposal dates, winning proposals, and score sheets from winning contracts.

During the pandemic, DHS diligently tracked information requests and gathered records to ensure responses to all requests.

Lastly, if the measure passes as is, DHS will require additional staff dedicated to responding to UIPA and other requests for information, especially during emergencies.

Thank you for the opportunity to testify on this bill.



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on SB767
RELATING TO EMERGENCY POWERS.**

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date: February 3, 2023

Room Number: 016

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health (DOH) issues certified copies of vital
3 records such as birth and death certificates. During the COVID-19 pandemic, the issuance of
4 vital records was identified as an essential service for which operational continuity was priority.
5 Time and effort were required to adjust to the reality of the shutdown, which was a common
6 experience across the community. Although DOH temporarily suspended in-person counter
7 services, online orders continued to be processed, and walk-ins were serviced once social
8 distancing and pandemic management practices were in place.

9 The department acknowledges the intent of this measure, which is to assure access to essential
10 documents and government services, but expresses concerns that future emergencies are
11 unpredictable and may endanger the health or wellbeing of department staff.

12 Thank you for the opportunity to testify.

13 **Offered Amendments:** N/A.

14

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 10, 2023, 9:35 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 767
Relating to Emergency Powers

Thank you for the opportunity to submit testimony on this bill, which 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 and what potential emergencies would warrant the Governor's use of emergency powers. However, OIP can confirm that the purpose clause of this bill accurately states the effect of the two and a half month full suspension and subsequent year-plus partial suspension of chapter 92F, HRS, the Uniform Information Practices Act (UIPA), on requesters, agencies, and OIP's own operations. For many requesters, the UIPA did not fulfill its purpose of giving the public access to government records during its year and a half long full, and then partial, suspension.

Thank you for considering OIP's testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair

RE: Testimony Supporting S.B. 767, Relating to Emergency Powers
Hearing: February 10, 2022 at 9:35 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** S.B. 767.

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.

Suspension of the public records law for emergencies is unnecessary because the rules for record requests provide flexibility for agencies to address other priorities.¹ The two week deadline for a 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).

As it concerns the preamble to the bill, however, the Law Center notes that OIP has **never** reduced its backlog to an acceptable level since 2008. And backlog increases started well before the COVID-19 pandemic and any staffing issues at OIP two years ago. As reflected in the Law Center’s latest report, OIP’s backlog has continued to trend upward year over year since 2012, even though new filings continue to decline. www.civilbeatlawcenter.org/resources/

Thank you again for the opportunity to testify in **support** of S.B. 767.

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).



SENATE COMMITTEE ON JUDICIARY
Friday, February 10, 2023, 9:35 am hearing, State Capitol Room 016 & Videoconference

SB 767
Relating to Emergency Powers

TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii supports SB 767.

Denial of public access to government records does not protect either public health or public safety.

Thank you for the opportunity to submit testimony.



February 10, 2022

9:35 a.m.

Conference Room 016

VIA VIDEOCONFERENCE

To: Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: SB767 — RELATING TO EMERGENCY POWERS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB767](#), which would prohibit the governor or mayor from suspending requests for public records or vital statistics during a declared state of emergency while maintaining flexibility for agencies to delay their response to a request due to extenuating circumstances.

Transparency is the best way to ensure accountability in governance. This bill makes it clear that the government's responsibility to the people does not take a hiatus during an emergency.

Anyone concerned that this proposal would hinder government agencies from carrying out their duties in an emergency need not worry. Hawaii's [open-records statute](#) already provide flexibility to agencies that require additional time to respond, and this bill reinforces that provision by expressly giving agencies permission to delay a response under extenuating circumstances.

With this language in place, any suspension of open-records laws by the governor or mayors would be unnecessary and redundant.

At the outset of the COVID-19 emergency, Gov. David Ige suspended Hawaii's open-records and sunshine laws — an extreme response not taken by any other state governor.

Not only did his action raise questions about the health rationale for the suspension, it also undermined public trust in the workings of government at a time when trust was needed most.

In the Grassroot Institute of Hawaii's policy brief "[Lockdowns Versus Liberty](#)," we looked at how Hawaii's emergency-management law could be reformed in light of the lessons learned during the COVID-19 lockdowns.

One of the points made was that government transparency is even more important in times of emergency, since a lack of accurate information about government decision-making can lead to a loss of public trust.

Open government is not only at the core of our constitutional principles, it is also essential to uphold public faith in the decision-making of our leaders and the democratic process.

We understand that Hawaii's governor needs leeway to handle an emergency as needed, but he or she should not have carte blanche to suspend laws merely because they are inconvenient.

Instead, government actions during an emergency should be narrowly tailored and must demonstrate a clear connection between the actions taken and the protection of public health or safety.

Hawaii's experience with emergency rule has raised important questions about the scope of executive power under the state's emergency-management statute. This bill, if enacted, would be a good start toward protecting civil rights and open government during an emergency.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

6 February 2023

Senate Committee on Judiciary

The Honorable Senator Karl Rhoads, Chair

The Honorable Senator Mike Gabbard, Vice Chair

From: Nancy Cook Lauer, publisher, All Hawaii News

www.allhawaiinews.com publisher@allhawaiinews.com 808.781.7945

In SUPPORT of SB 767, Relating to Emergency Powers

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 767, Relating to Emergency Powers and allowing the public access to their public records during declared emergencies.

Public records belong to the people, not the government. The hunger for fact-based information is never stronger than during an emergency, and when that information is hard to come by, people often resort to rumors and speculation. One would think that's the last thing the government would want in a declared emergency.

During an emergency, as the protocols instituted during the COVID-19 pandemic illustrated, people often have an even greater need for vital statistics as they navigate new emergency rules designed to protect society.

The administration has proven it won't neglect or postpone other important work when requests for public information come in. Therefore, it's unnecessary for them to have the power to unilaterally slam the door on access to public records during declared emergencies.

Mahalo nui for your consideration of this bill that enhances government transparency.

IRON WORKERS STABILIZATION FUND

February 10, 2023
9:35 am

Senate Committee on Judiciary

Conference Room 016 & Videoconference
State Capitol
415 South Beretania Street

Re: SB767 – RELATING TO EMERGENCY POWERS

Aloha Chair Karl Rhoads, Vice Chair Mike Gabbard, and Members of the Committee:

We **SUPPORT** the intent of SB767. The bill prohibits the Governor or a Mayor from suspending requests for public records or vital statistics during a declared state of emergency. Allows for a reasonable delay in an agency's response to a request as a result of extenuating circumstances.

Hawaii would be well served to amend its emergency powers to ensure that the public has access to vital statistics and public records while allowing for reasonable delay given a declared emergency. Our members have been denied access to public records or vital statistics for months, and some for years, during the ongoing pandemic emergency. It is reasonable to expect some delay during an emergency, but not a delay for many months or years like that our members and others from the public have experienced during the pandemic. It is critical that our members and the rest of the public be able access public records and vital statistics even during emergencies in a timely manner. We urge the committee to PASS SB767.

SB-767

Submitted on: 2/4/2023 2:13:18 PM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Tiffany Edwards Hunt	Individual	Support	Written Testimony Only

Comments:

Thank you for any and all efforts to support government transparency and openness AT ALL TIMES. In emergencies especially, the public (and journalists serving the public) need to have access to as much information as possible. Mahalo.

SB-767

Submitted on: 2/5/2023 2:24:33 PM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

For years governors have worked to keep the public from seeing public records. The worst example was during the pandemic, when requests were put on hold and new ones non accepted. This must not happen again. Please move the bill forward.

SB-767

Submitted on: 2/3/2023 8:02:57 PM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support thsi Bill.

SB-767

Submitted on: 2/6/2023 2:52:09 AM

Testimony for JDC on 2/10/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Robin Miyajima	Individual	Support	Written Testimony Only

Comments:

I support this bill, because access to public records needs to be constant. I understand that there may be extenuating circumstances, but that doesn't give anyone the right to lock off access to public records.