

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary & Hawaiian Affairs

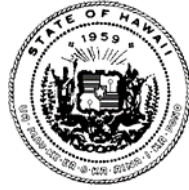
From: Carlotta Amerino, Director

Date: March 18, 2025, 2:15 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 353, S.D. 2, H.D. 1
Relating to Emergency Management

Thank you for the opportunity to submit testimony on this bill, which would prohibit the Governor or a mayor from suspending agency response deadlines for requests for public records under chapter 92F, HRS, the Uniform Information Practices Act (UIPA), or for 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 two-and-a-half-month full suspension of the UIPA in 2020, and subsequent year-plus partial suspension of only the UIPA's agency response deadlines, had a significant effect on requesters, agencies, and OIP's own operations. During that time, many requesters experienced long delays receiving agency responses to their record requests, and the UIPA did not fulfill its stated purpose of giving the public timely access to government records.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
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

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

March 17, 2025

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 353 SD2 HD1 – RELATING TO EMERGENCY MANAGEMENT.**

Hearing: March 18, 2025, 2:15 p.m.
Conference Room 325 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent and respectfully opposes the measure as drafted, defers to the Hawaii Emergency Management Agency and other impacted departments, and provides comments.

PURPOSE: This bill amends chapter 127A, HRS, to clarify state and county authority. Prohibits the Governor or Mayor from suspending requests for public records or vital specifics during a state of emergency. Adds definition of the term "severe warning". Allows the Legislature and county councils to terminate a state of emergency, in whole or in part, issued by the Governor or Mayor, respectively. Effective 7/1/3000. (HD1)

The Committee on Public Safety and Military Affairs amended this measure by:

- (1) Inserting an effective date of July 1, 2077, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The Committee on Judiciary made additional technical amendments.

The Committee on Public Safety further amended the measure by:

- (1) Changing its effective date to July 1, 3000, to encourage further discussion; and

- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The suspension of provisions of the Uniform Information Practices Act (UIPA), especially during the initial emergency response, is necessary, as DHS does not have the workforce capacity to review or consider all requests for information in a timely manner. When an emergency declaration is made, the demands on agency leadership and staff can vary depending on the magnitude of the declared emergency. When the emergency requires a complete shift in operations, such as the COVID-19 pandemic, or is entirely devastating, like the 2023 Maui Wildfires, DHS leadership, and staff are committed to the State's emergency response while maintaining regular programming and operationalizing new disaster-responsive programming.

From a human resource perspective, DHS programs do not have enough staff dedicated to responding to the many information requests received by the department. DHS has only one public information officer (PIO) who leads the Department's communications. The PIO and several key staff from the Director's office, administrative officers, and all divisions and attached agencies also participate in emergency support functions, including the Joint Information Center, as part of the State's emergency management response.

Many staff responding to an emergency management incident are the same staff that are called upon to respond to requests for information pursuant to the Uniform Information Practices Act (UIPA) during "blue skies."

The suspension of UIPA per the Governor's emergency proclamations during the COVID-19 pandemic assisted DHS in pivoting its processes and service delivery quickly and providing 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 have led 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. The caseloads remained at historic highs while we were "unwinding" from the federal pandemic program changes in 2023 when the Maui Wildfires happened. Responding to the Maui Wildfires was on a different scale and magnitude than the COVID-19 response and involved a different level of department resources to respond to the needs of Maui residents; DHS continues significant new

programming on Maui. Also, with a federal declaration, specific programs only available during emergencies may have to be stood up, and along with the new programs, accurate communications must be developed to inform the public to facilitate access to the new programs. Lastly, we are challenged to fill vacancies as workers seek higher salaries and less stressful positions in the private sector or other departments, and we are losing institutional knowledge through the retirements of long-time staff.

Further, as part of the public's response to emergencies, we experience an increase in call volume and requests for assistance. Residents impacted economically or experiencing a loss of food during an extended power loss, community advocates, legislators, and providers ramp up calls and emails for immediate assistance or information. Requests for individual assistance take priority over requests for government records. Unless we have additional dedicated resources for information sharing, requests for assistance will continue to be the priority.

During the pandemic, DHS also experienced increased inquiries from information brokers tracking Requests for Proposal dates, winning proposals, and score sheets from winning contracts. Many of these requests were in the broker's interest and not the public interest.

However, DHS received multiple UIPA requests from members of the media for data relating to the public health emergency specific to child abuse and neglect intakes. The Associated Press and other media entities asked, if there are fewer eyes on children (i.e., less interaction with mandated reporters) during stay-at-home orders, would this put more children at risk? DHS made an effort to respond to these inquiries in a timely manner in spite of a heavier workload because of the importance of the particular inquiry. These requests were examples of UIPA requests from media that had the public's interest at the forefront.

During the pandemic, DHS diligently tracked information requests and gathered records to eventually ensure responses to all requests. DHS continues to experience an increase in UIPA requests since the COVID-19 pandemic and Maui Wildfires:

- (19) FY2019 – (39) FY2020 – increase 105%,
- (39) FY2020 – (64) FY2021 – increase 64%,
- (64) FY2021 – (92) FY2022 – increase 43%,
- (92) FY2022 – (54) FY2023 – decreased 41%, and
- (54) FY2023 – (123) FY2024 – increase 127%.

DHS also has concerns with the proposal to allow the Legislature or county councils to terminate a state of emergency declared by the governor or mayor. Undermining the executive's leadership during a declared emergency would further erode the public's trust in the government and may lead residents to respond in ways that may be detrimental to their interests or the interests of others.

Thank you for the opportunity to provide comments on this measure.



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

JAMES DS. BARROS
ADMINISTRATOR OF
EMERGENCY MANAGEMENT
KAHU HO'OMALU PŌULIA

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON SENATE BILL 353 SD2 HD1,
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEE ON
JUDICIARY AND HAWAIIAN AFFAIRS

BY

JAMES DS. BARROS
ADMINISTRATOR
HAWAII EMERGENCY MANAGEMENT AGENCY

MARCH 18, 2025

Aloha Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee:

Thank you for the opportunity to submit a testimony in **OPPOSITION** of Senate Bill 353 SD2 HD1.

During emergencies the ability to respond effectively relies on the immediate authority of the governor of the state and/or the mayors of each county. As this bill suggests, to prematurely end emergency proclamations - would limit executive powers; similarly, there would be limitations to the use of any monies from the Major Disaster Fund.

Preserving the unity of effort approach is a critical principle in emergency management that ensures a clear chain of authority and responsibility. It enables effective decision-making and coordinated response efforts during crises. In times of emergency, it is essential that executive leaders maintain the ability to execute agile and decisive action during any emergency management crisis or disaster.

Furthermore, preserving the current structure will ensure effective leadership and a timely response to protect our communities.

Thank you for the opportunity to provide testimony on Senate Bill 353 SD2 HD1.

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



House Committee on Judiciary & Hawaiian Affairs

Tuesday, March 18, 2025, 2:15 PM Hearing in Conference Room 325 on
SB 353, SD2, HD1 Relating to Emergency Management

TESTIMONY

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

Chair Tarnas, Vice Chair Poepoe, and Committee Members:

The League of Women Voters of Hawaii supports SB 353, SD2, HD1. State law should not authorize either the Governor or any county mayor to completely suspend or unreasonably delay public access to public records during an emergency. And state law should authorize the appropriate state or county legislative body to stop arbitrary or abusive use of executive emergency powers under Chapter 127A, Hawaii Revised Statutes.

Thank you for the opportunity to submit testimony.



March 12, 2025

Rep. David Tarnas
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: Senate Bill 353, SD2, HD1

Chairman Tarnas and Committee Members:

This bill blocks the governor or a mayor from suspending agency response deadlines for requests for public records or vital statistics during an official state of emergency.

We consider this bill to be a good one because such openness is important particularly during emergencies, and the measure already allows for reasonable delays in responding to such requests because of extenuating circumstances.

Please pass this bill.

Thank you for your attention,

Stirling Morita
President
Hawaii Chapter SPJ

March 18, 2025, 2:15 p.m.
Hawaii State Capitol
Conference Room 325 and Videoconference

To: House Committee on Judiciary & Hawaiian Affairs

Rep. David A. Tarnas, Chair

Rep. Mahina Poepoe, Vice-Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: TESTIMONY IN SUPPORT OF SB353 SD2 HD1 — RELATING TO EMERGENCY MANAGEMENT

Aloha Chair, Vice-Chair and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer its **strong support** for [SB353 SD2 HD1](#), which would amend the state's emergency management statute to prohibit the suspension of requests for public records or vital statistics during states of emergency.

The bill would also require justification for the suspension of laws; limit the length of such suspensions to the times necessary to fulfill the emergency functions; and allow the Legislature and county councils to terminate declared states of emergency, in whole or in part, by an affirmative two-thirds vote.

These are all excellent ways to preserve the intent of the emergency statute while simultaneously protecting the public interest and ensuring that the emergency powers do not become a tool for unchecked executive power.

Regarding the suspension of public records or vital statistics during an emergency, Gov. David Ige at the outset of the COVID-19 crisis 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. This bill would address that error by ensuring that government transparency is maintained even during states of emergency.

As a practical matter, there really is no reason anyway for any concern that open-records requests could hinder government operations during an emergency. Hawaii's [open-records statute](#) already provides flexibility to agencies that require additional time to respond, and this bill would reinforce that provision by expressly giving agencies permission to delay a response under extenuating circumstances.

The addition of reasonable limitations on the ability to suspend laws also would help protect Hawaii's constitutional balance of powers. The governor and mayors need leeway to handle emergencies as needed, but they should not have carte blanche to suspend laws indefinitely or arbitrarily.

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.

As for the duration of states of emergency, Hawaii's emergency statute currently includes a 60-day time limit, but also allows an emergency to be extended by proclamation. Thus, there is no protection against the possibility that the governor or mayors would be able to extend a state of emergency indefinitely, with little input or oversight from the legislative branch.

Given the increased use of emergency orders for situations that do not pose an immediate threat to life, health or property – such as housing policy – the emergency management statute could be abused as a public policy tool that allows the governor to bypass the legislative process.

What is needed is a legislative check on the possibility of an unending emergency, and SB353 would fulfill that purpose by enabling the Legislature and county councils to end emergencies by a two-thirds vote.

In conclusion, it is important that Hawaii's emergency-management law reflects the lessons we have learned over the past few years.

The main lesson is that it is possible to protect open government and the constitutional balance of powers without handicapping the ability of the governor and mayors to respond quickly and effectively to emergency situations.

This bill would correct current deficiencies in the emergency management statute and ensure that Hawaii is better able to address future emergencies.

We urge you to pass SB353.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Mahina Poepoe, Vice Chair

RE: Testimony in Support of S.B. 353 S.D. 2 H.D. 1, Relating to Emergency Management
Hearing: March 18, 2025 at 2:15 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency.

Thank you for the opportunity to submit testimony in **support** of S.B. 353 S.D. 2 H.D. 1. We also **recommend an amendment** to better effectuate the intent of this bill.

Public records laws are a critical mechanism to ensure government transparency. This bill seeks to safeguard that promise of openness for the public during government-declared emergencies, when transparency is especially crucial.

But this measure, as drafted, only safeguards one part of the public records law. We thus recommend the following amendment (in bold) at page 2, lines 14 - 18, clarifying that *all* of chapter 92F is shielded from suspension:

(a) The governor or mayor shall not, through any proclamation or declaration of emergency or any rule or order adopted pursuant to this chapter, suspend **[agency response deadlines for requests] access to: [Public records]** Records pursuant to **[part II of]** chapter 92F . . .

This amendment would ensure that members of the public are still able to access their personal records under part III of chapter 92F. It would also ensure that the Office of Information Practices (OIP) remains empowered, under part IV of chapter 92F, to administer the law, which addresses the operational challenges faced by OIP when former Governor David Ige suspended the entirety of chapter 92F during the COVID-19 pandemic.

Thank you again for the opportunity to testify in support of S.B. 353 S.D. 2 H.D. 1.





Testimony in **Support** of SB353

The Libertarian Party of Hawaii strongly supports SB353. This legislation is a much-needed step toward transparency, accountability, and the preservation of civil liberties during states of emergency. The Governor & Mayor should already be prohibited from suspending requests for public records during a state of emergency. SB353 safeguards the public's right to know. In times of crisis, when decisions are made swiftly and often without comprehensive public input, citizens must have the ability to hold their leaders accountable by accessing vital information.

We must delineate the powers of the Governor and Mayor to prevent the types of overreach from the past. We must end arbitrary use of “emergency powers”. Allowing the Legislature and city councils to terminate a state of emergency, in whole or in part, is a vital mechanism for checks and balances.

Elected representatives should retain the power to assess and respond to emergencies, reflecting the will of the people they directly serve, rather than having a top-down mandatory system. This is a giant step toward protecting Hawaii from the types of needless mandates and authoritarian lock-downs experienced during the Covid-19 era.

This principled approach to governance prioritizes individual rights and public transparency. We urge the committee to support this bill to protect the freedoms of all citizens, especially in challenging times.

Mahalo for considering our testimony,

The Libertarian Party of Hawaii

SB-353-HD-1

Submitted on: 3/15/2025 11:13:56 AM

Testimony for JHA on 3/18/2025 2:15:00 PM

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

Comments:

This is an excellent bill. I believe that restrictions on accessibility of governmental records was way overdone and there needs to be a check and balance on states of emergency.

SB-353-HD-1

Submitted on: 3/17/2025 2:42:54 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Terrie Armbruster	Individual	Comments	Written Testimony Only

Comments:

The proposed amendments in SB353 are a small improvement in right direction, but MUCH

MORE changes need to be made in reining in Emergency powers of Gov & Mayor:

Revise ALL of HRS 127A-13:Additional powers in an Emergency period!! This section gives

Governor broad overreaching powers and his allowed actions are solely based on his

"opinion". He decides which person(s) will be quarantined or segregated, force-vaccinated, if he "thinks" person MAY have been exposed to infectious virus/disease,

w/o solid proof? Also decide which property(s) are possibly contaminated, then isolated;

suspend laws as long as he wants; sole authority to shut off water, electricity, other svcs

& force evacuations...And section 127A-14: Governor & Mayor are sole judge of the

existence of threat or danger to declare Emergency, and extend as long as he "deems

necessary". Both are given too much power w/o proper checks & balances!!!

Question: why didn't legislature try to end the overly extended Emergency Proclamation

during Covid?

Thanks for proposed amendments, But Please draft More amendments in SB353 to rein

in Governor & Mayor powers in Emergency, then pass SB353 SD2 HD1 "HD2"

SB-353-HD-1

Submitted on: 3/17/2025 8:16:19 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Nicholas Zehr	Individual	Support	Written Testimony Only

Comments:

Honorable Chair, Vice Chair, and Members of the Committee,

I write in SUPPORT of SB353 and urge you to pass this bill. While the state has a duty to protect public health and safety, this should never come at the expense of our fundamental freedoms or without proper checks and balances. SB353 offers a crucial step in ensuring that emergency powers are used responsibly, transparently, and within clear legal frameworks. It strikes a necessary balance between effective government response and the preservation of individual liberties.

1. **Transparency and Accountability:** The bill mandates that any suspension of laws during an emergency be narrowly defined and justified, with clear explanations provided for each suspension. This is essential for maintaining democratic principles and ensuring that government actions during emergencies are subject to oversight. The provision that prohibits the suspension of public records and vital statistics requests ensures that citizens can continue to hold government officials accountable, even in times of crisis. Transparency is crucial to safeguard the rights of individuals and ensure that government actions do not exceed their necessary scope.
2. **Limiting Executive Overreach:** While emergencies demand quick and decisive action, it is essential that such actions are not used to expand executive power unnecessarily. SB353 requires that any suspension of laws be specifically justified, limited in duration, and tied to the immediate needs of the emergency. By providing a clear and specific legal framework for the suspension of laws, this bill prevents the abuse of emergency powers and ensures that the response is proportional to the situation at hand. It also prevents the use of emergency powers as a tool for political control or the imposition of unnecessary restrictions.
3. **Protecting Property Rights:** The bill ensures that any government intervention on private property is narrowly defined and specifically targeted at addressing the emergency. By requiring justification for suspending laws, SB353 protects the fundamental right to private property and prevents arbitrary or excessive government actions that could infringe upon property rights. It provides clear guidelines for emergency powers, ensuring that they are used only when absolutely necessary to protect public health and safety.
4. **Ensuring Swift but Controlled Action:** It is undeniable that emergencies require rapid responses, and SB353 provides the flexibility necessary for government officials to act quickly. However, it also ensures that such actions are not excessive or indefinite. The

bill's provisions for clear justifications and time-limited suspensions streamline decision-making during an emergency while safeguarding individual freedoms. This balance ensures that while the government can take swift action, it will not overstep its bounds.

5. **Preserving Local Autonomy and Self-Reliance:** While SB353 provides a clear structure for state and county emergency management, it is important to emphasize that it does not undermine local autonomy or the self-reliance of communities. The bill ensures that emergency powers are narrowly focused and that local governments maintain the ability to take action in accordance with their unique circumstances. It allows for the coordination of state and local responses without centralizing all decision-making power in the hands of a few individuals. This approach fosters local empowerment while maintaining essential oversight to prevent overreach.
6. **Preventing Harm to Small Businesses:** One concern during emergencies is that regulations may disproportionately harm small businesses. SB353 addresses this concern by requiring that any suspension of laws, including licensing laws and business regulations, be specific and justified in relation to the emergency. This ensures that businesses are not unduly harmed and that the government's response does not interfere unnecessarily with economic activity. The bill aims to protect both public safety and economic vitality, preventing arbitrary actions that could disproportionately affect small businesses or local economies.
7. **Ensuring Emergency Powers Are Not Permanent:** One of the key strengths of SB353 is its requirement that any declaration of emergency be time-limited, with clear procedures for extension or termination. The bill ensures that emergency powers do not become indefinite and that they are subject to democratic oversight, either by the legislature or local councils. This provision guarantees that emergency powers are not used to justify ongoing government intervention in the lives of citizens once the immediate threat has passed.
8. **Addressing the Risk of Bureaucratic Expansion:** SB353 includes provisions that ensure emergency powers cannot be indefinitely extended or used beyond their original purpose. The automatic termination of emergency declarations after sixty days, unless extended with appropriate justification and legislative review, prevents the gradual erosion of liberties through bureaucratic expansion. This safeguard ensures that the emergency powers granted during a crisis are not used as an excuse for permanent or excessive control.

SB353 is a crucial step toward creating a legal framework for emergency management that respects both individual freedoms and the need for effective government action. By ensuring transparency, limiting the scope of emergency powers, and requiring that actions are justified and time-limited, this bill strikes the right balance between security and liberty. It empowers both the government and citizens with a clear, structured response to emergencies, while ensuring that our constitutional rights are protected throughout the process.

Respectfully,

Nick Zehr

SB-353-HD-1

Submitted on: 3/17/2025 9:25:57 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
M. Leilani DeMello	Individual	Support	Written Testimony Only

Comments:

Aloha,

KĀKO‘O au i kēia pila! I SUPPORT this bill.

Mahalo,

M. Leilani DeMello

‘Ōla‘a, Puna, Hawai‘i