

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety and Military Affairs

From: Carlotta Amerino, Director

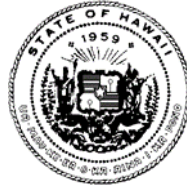
Date: January 27, 2025, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 353
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 in receipt of agency responses to their record requests, and the UIPA did not fulfill its stated purpose of giving the public timely access to government records.

Thank you for considering OIP's testimony.

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

January 26, 2025

TO: The Honorable Senator Brandon J.C. Elefante, Chair
Senate Committee on Public Safety

FROM: Ryan I. Yamane, Director

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

Hearing: January 27, 2025, 3:00 p.m.
Conference Room 225 & Videoconference, State Capitol

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

PURPOSE: Amends chapter 127A, HRS, to clarify State and local 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 city councils to terminate a state of emergency, in whole or in part, issued by the Governor or Mayor, respectively.

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 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, 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. 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.

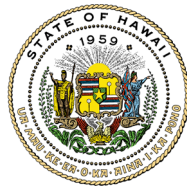
During the pandemic, DHS diligently tracked information requests and gathered records to eventually ensure responses to all requests. DHS continues to experience an increase in UIPA requests since the COVID-19 pandemic and Maui Wildfires:

- There was an 89% increase in UIPA requests between 2019 and 2020.
- There was a 77% increase in UIPA requests between 2020 and 2021.
- There was a 43% increase in UIPA requests between 2021 and 2022.
- There was a 30% increase in UIPA requests between 2022 and 2023.

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.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STEPHEN F. LOGAN
MAJOR GENERAL
ADJUTANT GENERAL
KA 'AKUKANA KENELALA

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

LATE

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 353
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE SENATE COMMITTEE ON
PUBLIC SAFETY AND MILITARY AFFAIRS

BY

JAMES DS. BARROS
ADMINISTRATOR
HAWAI'I EMERGENCY MANAGEMENT AGENCY

JANUARY 27, 2025

Aloha Chair Elefante, Vice-Chair Wakai, and Members of the Committee:

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

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 command 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 leadership positions maintain the ability to execute agile and decisive action during any emergency management crisis or disaster.

Preserving the current structure will ensure effective leadership and timely response to protect our communities.

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

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



Senate Committee on Public Safety and Military Affairs
Honorable Brandon J.C. Elefante, Chair
Honorable Glenn Wakai, Vice Chair

RE: Testimony in Support of S.B. 353, Relating to Emergency Management
Hearing: January 27, 2025 at 3:00 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. We also **recommend an amendment** to better effectuate the intent of this measure.

Government transparency is especially crucial during emergencies. Transparency holds government accountable for its actions and decisions. And it helps government address the misinformation that can proliferate in times of crisis and erode the public's trust in government. Transparency builds trust by providing clarity about a given situation and the steps being taken to address it.

Public records laws are a critical mechanism to ensure government transparency. This bill seeks to safeguard that mechanism for the public during emergencies. As written, however, S.B. 353 only safeguards one part of the public records law. We thus recommend the following amendment (in bold):

(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 public records law. This change would address 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.





Senate Committee on Public Safety and Military Affairs

Monday, January 27, 2025 3 PM Hearing in Conference Room 225 on
SB 353, Relating to Emergency Management

TESTIMONY

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

Chair Elefante, Vice Chair Wakai, and Committee Members:

The League of Women Voters of Hawaii supports SB 353. 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 executive use of executive emergency powers under Chapter 127A, Hawaii Revised Statutes.

Thank you for the opportunity to submit testimony.

Jan. 27, 2025, 3:00 p.m.
Hawaii State Capitol
Conference Room 225 and Videoconference

To: Senate Committee on Public Safety and Intergovernmental and Military Affairs
Sen. Brandon J.C. Elefante, Chair
Sen. Glenn Wakai, Vice-Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

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

Aloha Chair, Vice-Chair and other Committee members,

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

Fortunately, there is no reason 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 helps protect the constitutional balance of powers. The governor and mayors need leeway to handle an emergency 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 the emergencies, 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 there is room 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

SB-353

Submitted on: 1/25/2025 12:38:18 PM

Testimony for PSM on 1/27/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Support	Written Testimony Only

Comments:

Aloha Committee Members,

The COVID-19 Pandemic challenged all of us to quickly adapt to a dangerous and rapidly changing situation. One of the critical shortfalls correctly identified in this bill is the ability of the state and county governments to suspend record requests. This harms government transparency and public trust when we need it most. We all saw and felt the harmful effects of lack of transparency and accountability during the pandemic. We do NOT need to experience this again. I urge the Committee to pass this bill!

SB-353

Submitted on: 1/25/2025 11:48:36 PM

Testimony for PSM on 1/27/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brett Kulbis	Individual	Support	Written Testimony Only

Comments:

Chair Elefante, Committee Members,

My name is Brett Kulbis, I'm a 26yr Navy Veteran and Retired Civil Servant. I live in Ewa Beach.

I SUPPORT SB-353.

Respectfully, I encourage you to vote **YES** on SB-353.

SB-353

Submitted on: 1/26/2025 11:21:17 AM

Testimony for PSM on 1/27/2025 3:00:00 PM

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

Comments:

This is an excellent bill. Thank you Senator Rhoads for introducing it. 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.

LATE

LATE

SB-353

Submitted on: 1/27/2025 2:46:31 PM

Testimony for PSM on 1/27/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Susan Pcola_Davis	Individual	Comments	Written Testimony Only

Comments:

Comment: these should be separate.

Strongly support access to vital records should not be suspended during emergencies. I have not heard one valid reason for doing this in any case.

Strongly oppose allowing the legislature or city councils to terminate a state of emergency, in whole or in part, issued by the Governor or Mayor, respectively. This is a slippery slope.