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Testimony of Rep. Adam Lee presenting
**LD 1524, An Act to Enhance Legislative Participation in the Governor's
Exercise of Emergency Powers**
Before the Joint Standing Committee on State and Local Government

Senator Baldacci, Representative Salisbury, esteemed members of the Joint Committee on State and Local Government, I'm always excited to appear in front of this committee because it means that I'm talking about the tremendously important issue of separation of powers – and about this branch of government asserting its power as the first branch of government.

This bill isn't about the present chief executive, nor is it about any former or future chief executive. This bill is about this branch of government, the primary policy-making branch of government, the one closest to Maine citizens, modestly reasserting its role in participating in governance of the state in the event of an emergency.

The executive emergency power is not vested in the chief executive by the constitution; rather, it's delegated to the governor by this body via statute. That we've delegated means it's our power. That means it's well within this body's authority, this body's responsibility, to assert its right to amend our statute to ensure our participation in the emergency governance of this state.

This bill does that in five modest ways:

1. It requires that the chief executive directly consult with the Legislative Council when acting on emergency powers;
2. It provides that the governor's actions must be narrowly tailored to address the specific public health or safety emergency for which the emergency was declared.
3. It provides the Superior Court jurisdiction to issue temporary restraining orders or preliminary injunctions against executive actions in excess of the narrow tailoring and, in the event, one is granted, it gives an expedited appeal to the governor to challenge the injunction to the Law Court;
4. During the state of emergency, it requires the governor to provide a written weekly briefing to the Legislative Council detailing all actions taken pursuant to the emergency powers and how and whether those actions have helped abate the emergency;
5. Finally, it requires 91 Representatives and 21 Senators to extend an emergency beyond 30 days.

District 89: Part of Auburn

While I can understand that in emergency circumstances, it is more efficient for a single person advised by talented and intelligent, but nevertheless unelected individuals to make decisions for the people, that efficiency comes at the expense of having these decisions made by the individuals closest to the people.

When decisions are made without the inclusion of *all voices* through their representatives to State Government, it can hardly be said that those decisions are made *by the people*.

I usually quote James Madison, but today, I'll quote Daniel Webster about the importance of the Legislative Branch, the branch closest to the people, as the guardian of constitutional principles.

“Sir this watchfulness for public liberty, this duty of foreseeing danger and proclaiming it, this promptitude and boldness in resisting attacks on the constitution from any quarter, this defense of established landmarks, this fearless resistance of whatever would transcend or remove them, all belong to the representative character, are interwoven with its very nature and of which it cannot be deprived, without converting an active intelligent faithful agent of the people into an unresisting and passive instrument of power. A representative body which gives up these rights and duties gives itself up. It is a representative body no longer. It has broken the tie between itself and its constituents, and henceforth is fit only to be regarded as an inert, self-sacrificed mass, from which all appropriate principle of vitality has departed forever.”

I'd be happy to answer your questions.