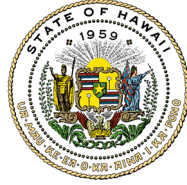


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAI'I 96816-4420

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

TESTIMONY ON HOUSE BILL 522 HD1
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEE ON **JUDICIARY & HAWAIIAN AFFAIRS**

BY

JAMES DS. BARROS
ADMINISTRATOR
HAWAI'I EMERGENCY MANAGEMENT AGENCY

FEBRUARY 23, 2023

Aloha Chair Tarnas, Vice-Chair Takayama, and members of the committee:

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

The HI-EMA provides written testimony to **OPPOSE** House Bill 522 HD1.

The emergency powers enumerated in Hawaii Revised Statutes section 127A are intended to give the Governor and Mayors flexibility in responding to emergency situations, recognizing that the circumstances of emergencies may be variable and unexpected. While HI-EMA recognizes the concern raised by the language on suspending electronic media transmission that is addressed by this bill, we also have grave concerns that an *ad hoc* approach to editing the executive branch emergency powers may inadvertently endanger the life or safety of Hawaii's people, including first responders, in some future emergency.

The bill expresses concern that the current language of 127A "could potentially include text messages, emails and posts to social media platforms" if the power to suspend transmission of electronic media is invoked during an emergency. HI-EMA has concerns that eliminating that power also could have consequences, such as preventing the restriction of electronic transmissions that could trigger an explosive device or ignite volatile chemicals.

To the best of HI-EMA's knowledge, the provision of the emergency powers addressed by HB522 has never been invoked in Hawai'i. Any governor or mayor who invokes emergency powers weighs the benefits of doing so against the harm which doing so might cause.

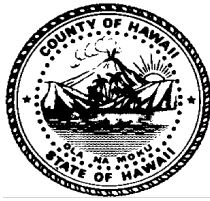
This bill would eliminate the executive branch's authority to take actions which, in certain circumstances, could save lives, based on the fear of a hypothetical restriction of free speech rights. The language in question was originally written decades ago and may be due for an update, but deleting it entirely, without a detailed analysis, is a course which HI-EMA cannot support.

We ask for your opposition of this bill. I commit to the members of this committee that HI-EMA will work with the Hawai'i Association of Broadcasters to propose a future amendment to HRS 127A that addresses their concerns while still preserving flexibility for action by the State's emergency managers.

Thank you for the opportunity to provide testimony.

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

County of Hawai'i
Council District 4 -
Lower Puna



Office: (808) 961-8265
Fax: (808) 961-8912
ashley.kierkiewicz@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL
OFFICE OF COUNCILMEMBER ASHLEY L. KIERKIEWICZ
25 Aupuni Street • Hilo, Hawai'i 96720

February 23, 2023

House Committee on Judiciary & Hawaiian Affairs

Rep. David Tarnas, Chair

Rep. Gregg Takayama, Vice-Chair

RE: Strong support for HB 522, relating to emergency management

Aloha, Chair Tarnas, Vice-Chair Takayama, and Members of the Committee on JHA:

In 2022, our office led a comprehensive analysis and rewrite of our County's natural disaster and emergency management section of code to align with Hawai'i Revised Statutes as well as incorporate lessons learned from previous disasters. During this process we discovered a line in HRS that grants the Governor and County Mayors authority *"to the extent permitted by or under federal law, suspend electronic media transmission."* There is absolutely no reason to justify this kind of power.

I question Hi-EMA's opposition to this measure, as their charge is to plan for and respond to emergencies. At the heart of planning and response is communication. The absence or lack of communication stokes fear, chaos, and confusion, which is what we want to avoid during disaster situations. Electronic media platforms are vital to deploying information so that communities are empowered to make decisions that keep their districts and households safe.

As someone who has coordinated emergency response efforts during the 2018 Kīlauea eruption and COVID-19 pandemic, I can tell you that clear and consistent information is critical to fostering a sense of calm, managing misinformation, and building trust in leadership. In times of emergency and natural disasters, the public needs more information – *not less* – and communication should flow through all possible channels as frequently as possible.

Thank you for the opportunity to testify.

Cheers,

Ashley Lehualani Kierkiewicz
Hawai'i County Council, District 4
Chair, Policy Committee on Planning, Land Use & Development



Testimony of Chris Leonard
President – Hawai'i Association of Broadcasters, Inc.
President – New West Broadcasting Corp.
Chairman – Hawai'i State Emergency Communications Committee (SECC)
Re: HB 522
Hearing: House Committee on Judiciary & Hawaiian Affairs
2/24/23 – 2:00PM

In strong support of HB 522 Relating to Emergency Management

Good afternoon Chairman Tarnas, Vice Chair Takayama and committee members. For the record, my name is Chris Leonard and I am the President of the Hawai'i Association of Broadcasters. The Association represents over 100 television and radio stations that serve local communities across the State of Hawai'i. I am also the President of New West Broadcasting Corp., a locally-owned broadcast company that owns and operates six radio stations in Hilo and Kona including KWXX, B97/B93 and KPUA. I also serve as the Chairman of the Hawaii State Emergency Communications Committee and as a member of our Local Emergency Planning Committee in Hawai'i County. I am a lifelong broadcaster that has dedicated my professional career to serving the public. I have over 30 years of experience with emergency management communications and significant knowledge of the technical systems and equipment used to provide that communication. We strongly support HB522 as it addresses a threat to public safety and fixes an unconstitutional provision in HRS § 127A

As you may know, Hawai'i's radio and television broadcasters and broadcasters across our nation play a vital role in emergency alerting. Our stations are an integral part of the communities that we serve and have proven time and again that we will not hesitate to put ourselves and resources in harm's way to deliver critical emergency information to the public.

Often times, local radio and television stations are the only available communications medium during disasters. Our transmission systems are not subject to outages due to network congestion. The robust "one-to-many" nature of our technology and the redundancy provided by multiple broadcasters who have invested heavily in equipment and generators ensure that we are uniquely situated to remain on air and deliver critical information before, during and after natural disasters. We are very concerned that we have a law on the books that would jeopardize our ability to deliver a vital lifeline to the public by allowing for the suspension of electronic media transmission under an emergency declaration.

We share your concern about public safety in the State of Hawaii and understand the need to grant additional authority to the Governor and Mayors during a State of Emergency, however HRS § 127A grants unnecessary, unconstitutional and unwarranted additional powers in an emergency period that pose a threat to public safety. The current language in 127A-13(6) states that the Governor may exercise the following additional powers....

*“Shut off water mains, gas mains, electric power connections , and, **to the extent permitted by or under federal law, suspend electronic media transmission.**”*

Subsection (b)(3) contains the same language as subsection (6) but bestows the same power to Mayors.

There are numerous issues with this statute. I have listed a handful of the more significant issues below:

1. The Statue is clearly an unconstitutional prior restraint. Prior restraint is censorship that allows the government to prevent publication. Allowing the Governor or Mayors the ability to suspend any all “electronic media transmissions” during a state of emergency, the statute creates a clear prior restraint on lawful free speech and publication and violates the First Amendment. Prior restraints against lawful speech have been resoundingly rejected by the Supreme Court of the United States.
2. There are jurisdictional issues with this law. I am unaware of any federal law that grants this authority at the state or county level and nobody at the state or county level has been able to provide language that grants this unconstitutional right. While the language says “to the extent permitted under federal law,” the language leaves this up to the administration’s interpretation during an emergency. The state or counties could force a shutdown under a state of emergency and electronic media outlets would have to litigate the issue after the fact to get it resolved. This would be a time-consuming and costly endeavor and more importantly, jeopardize public safety during an emergency.
3. The language grants a “blank check” to shut down electronic media transmission (all) without providing for why this would be necessary, what systems, for how long and how the determination would be made. All electronic media potentially includes radio, television, internet, cable, cell service, text messaging, social media, etc.

4. The Provision is loosely based on a repealed Civil Defense Air Raid law from 1951 that was created to provide power to Governor's during air raids. HRS § 128-6, Civil Defense powers, in general provided:

“The governor may [(1)-(7)] (8) Air raid drills, etc. Direct or control, as may be necessary for civil defense [(A)-(D)] (E) Shutting off water mains, gas mains, . . . suspension of radio transmission.”

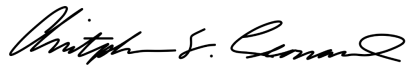
This may have been practical in 1951 to prevent triangulating radio/tv signals to find coordinates for attacks by our enemies but serves no purpose today.

5. In previous testimony regarding this bill, HI-EMA acknowledged that the “...language in question was originally written decades ago and may be due for an update...” but suggested that somehow this language allows the Governor or Mayors to protect us from a hypothetical situation where electronic media “...could trigger an explosive device or ignite volatile chemicals.” The language in HRS 127A does **NOT** say this. It does, however, allow for the shutdown of electronic media with no extenuating circumstances other than an emergency declaration.

Chairman Tarnas, Vice Chair Takayama and committee members, Broadcasters, elected officials and emergency managers are bound by a common thread. We all have a duty to serve the public interest. Hawai'i's Broadcasters are committed to meet these obligations. HRS § 127A needs to be revised! We strongly support HB522! A simple edit to HRS § 127A will allow us to continue to deliver potentially life-saving information and keep our communities informed during a state of emergency, a time when we need **MORE**, not less communication.

Thank you for your consideration of this matter.

Sincerely,



Christopher S. Leonard
President – Hawai'i Association of Broadcasters
Chairman - Hawai'i State Emergency Communications Committee (SECC)
President/General Manager - New West Broadcasting Corp.

HB-522-HD-1

Submitted on: 2/24/2023 12:01:57 AM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bruce Nakamura	KHON2	Support	In Person

Comments:

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

House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair

RE: Testimony Supporting H.B. 522 H.D. 1, Relating to Emergency Management
Hearing: February 24, 2023 at 2:00 p.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 governmental transparency. Thank you for the opportunity to submit testimony **supporting H.B. 522 H.D. 1.**

This bill proposes to revoke the purported authority of the Governor or a county mayor to “suspend electronic media transmission” during an emergency. The constitutionality of any such authority under existing law is highly questionable. It is commendable that this Committee is taking steps to address the issue before any state action is taken that deprives the press and others of their right to broadcast, and the public of its right to listen to, electronic media under the First Amendment.

Thank you again for the opportunity to testify **supporting** H.B. 522 H.D. 1.

TESTIMONY ON SB 522

I fully support the legal and moral reasons that SB522 addresses.

The Hawaii executive branch should not have the absolute authority to disconnect the people of Hawaii from the communication lifeline to their TV and radio stations.

From a Constitutional perspective, this law, if remained unchanged, would be a violation of the First Amendment. The doctrine of prior restraint holds that the government may not impose any system to remove delivery of media. This law as it stands enables the executive branch to practice censorship if they did not support the truth reported by the media.

From a practical standpoint, broadcasters are members of this community...we believe in our role to provide information, to be an independent eye, and to provide emergency communication in times of high alert to the people of the State of Hawaii. Evidenced by the significant increase in TV viewership during the early COVID years, broadcasters were the key conduits distributing reliable information on testing, vaccinations. We reported vital health information, verified by experts in the field.

As an independent eye, we share the concerns of our community and allow the audience to develop their own conclusions. We are the watchdogs for our island community, sharing stories about injustice, inequity, and crimes against our community. The ability for the executive branch removes this part of democracy.

Our weather and Amber alerts allow the people of Hawaii to plan their lives with care and prevent risk of injury and death. Additionally, our federal broadcast license requires us to have reliable infrastructure to push out reliable emergency communications for local and national emergencies on all our platforms. The enablement of the current law would be in violation of federal law in addition removing the assurance of safety.

I appreciate the legislators who sponsored and supported this bill. These mindful legislators realize that this existing law does not embrace the role of broadcasters serving the people of Hawaii, does not help protect Hawaii's people's First Amendment rights, and does not strengthen the vital emergency communications role that broadcasters deliver.

Sincerely,



Jason Hagiwara
President & General Manager



Testimony of Katie Pickman
General Manager – Hawai‘i News Now
HB522 HD1

Hearing: House Committee on Judiciary and Hawaiian Affairs
2/24/23

In strong support of HB522 HD1, Relating to Emergency Management

Aloha esteemed committee members.

My name is Katie Pickman and I’m the General Manager of Hawaii News Now: KGMB-KHNL-K5. I strongly support HB522 HD1 and SB103 Relating to Emergency Management.

I have been a broadcaster since 2000 and am fortunate to be surrounded by colleagues who make emergency response their number one priority. Hawai‘i’s television broadcasters are essential to emergency alerting. This is demonstrated regularly with severe weather forecasts and updates as we faced over the last month when many of our islands experienced extreme rainfall and flooding like we saw on Hawaii Island and Maui County. Our stations are an integral part of the communities that we serve and have proven that we will do whatever it takes to deliver critical emergency information to the public and keep our communities safe.

During disasters, local television and radio stations are the only available communications medium. Our transmitters are not subject to outages due to network congestion, and we have invested heavily in equipment and generators ensure that we remain on air to deliver critical information before, during and after natural disasters. FEMA has noted that there is no more reliable source of information during natural disasters than local broadcasters. In our view, Hawaii has a law on the books that would allow for the suspension of electronic media transmission and potentially cut off a vital lifeline for the public in times of emergency.

HRS 127A grants unnecessary, unconstitutional, and unwarranted additional powers in an emergency period that pose a threat to public safety. The current language in 127A-13(6) states that the Governor may exercise the following additional powers....

*“Shut off water mains, gas mains, electric power connections , and, **to the extent permitted by or under federal law, suspend electronic media transmission.**”*

Subsection (b)(3) contains the same language as subsection (6) but bestows the same power to Mayors.

-A major issue with this law is that by creating a clear prior restraint on lawful free speech and publication, the law violates the First Amendment. The language to shut down all electronic media transmission would include All electronic media television, radio, internet, cable, cell service, text messaging, social media, and more.

-While it could be argued that there is no federal law that grants this authority at the state or county level and nobody at the state or county level the language leaves this up to the administration's interpretation during an emergency. The state or counties could force a shutdown under a state of emergency and electronic media outlets would have to litigate the issue after the fact to get it resolved. This would be a time-consuming and costly endeavor and more importantly, jeopardize public safety during an emergency. As stewards of emergency alerting, we just cannot let that happen.

We continue to face emergency situations across the State of Hawaii as recent as this weekend. Hawaii's television broadcasters are committed to serving the public in times of emergencies. HRS § 127A should be updated. We strongly support HB522 HD1 (and SB103) which will allow us to continue to deliver potentially life-saving information and keep our communities informed during a state of emergency, a time when our communities turn to us the most.

Thank you for your consideration of this matter.

Sincerely,



Katie Pickman
General Manager
Hawaii News Now
KGMB, KHNL & K5



Feb. 24, 2023

David Tarnas
House Judiciary and Hawaiian Affairs Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 522, HD1

Chairman Tarnas and Committee Members:

We support this bill, which would revoke the authority of the mayor or governor to suspend electronic media transmissions during an emergency.

The constitutionality of such a law is highly questionable. It is an outdated law crafted after the fears of World War II.

In April 2020, the Reporters Committee for Freedom of the Press surveyed news media exemptions in the U.S. emergency management laws, and found more than half had a so-called carve-out exemption for media.

In about a third of the states, most notably California, emergency powers “cannot ‘[i]nterfere with dissemination of news or comment on public affairs,’ ” the RCFP said. However, the laws can require news outlets to carry public service announcements about emergencies.

We believe that Hawaii should follow suit.

Please pass this measure.

Thank you for your attention,

Stirling Morita
President
Hawaii Chapter SPJ



February 24, 2023

2 p.m.

VIA VIDEOCONFERENCE

Conference Room 325

To: House Committee on Judiciary & Hawaiian Affairs

Rep. David A. Tarnas Chair

Rep. Gregg Takayama, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB522 HD1 — RELATING TO EMERGENCY MANAGEMENT

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer comments on [HB522 HD1](#), which removes the power of the governor or the mayors to suspend electronic media communications during a state of emergency.

The current statute dates back to 1951 and the end of World War II. It was crafted in a very different time when the term “electronic communications” did not encompass the wide range of technologies that it does today.

As written, the law could cover text messaging, phone calls, television, video streaming, email and various forms of social media. Today, these decentralized forms of communication are foundational to the United States’ democratic form of government.

The current statute raises significant questions of Constitutionality, and the committee should be commended for acting to address that problem before it can be used to infringe upon civil liberties.

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

One of the points made in that brief is that government accountability is even more important in times of emergency, not less. Instead of imposing blanket prohibitions, government actions during emergencies should be narrowly tailored to demonstrate a connection between the actions and the protection of public health or safety.

Freedom of communication is not only at the core of our constitutional principles, it is also essential to keeping the general public informed on matters of critical importance during crises.

Hawaii's experience with COVID-19 has forced us to reevaluate the state's emergency management statute. This bill is a good start toward protecting civil rights and accountable government during an emergency.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii



HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Friday, February 24, 2023, 2 pm, State Capitol Room 325 & Videoconference
HB 522, HD1

Relating to Emergency Management

TESTIMONY

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

Chair Tarnas, Vice Chair Takayama, and Committee Members:

The League of Women Voters of Hawaii supports HB 522, HD1.

Neither the Governor nor a county mayor should have statutory authority to suspend or censor “electronic media” during any kind of emergency.

Thank you for the opportunity to submit testimony.



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

Feb. 23, 2023

House Committee on Judiciary & Hawaiian Affairs

From: Nancy Cook Lauer, publisher, All Hawaii News

www.allhawaiinews.com * publisher@allhawaiinews.com * 808.781.7945

In SUPPORT of HB 522 HD1, Relating to Emergency Management

To the Honorable Reps. David Tarnas and Takayama and the Committee:

All Hawaii News, a state government and political news aggregate and commentary blog covering Hawaii since 2008, supports HB 522 HD1 removing the ability of the governor or a mayor to unilaterally suspend electronic media transmission during a state of emergency.

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.

While the First Amendment protects freedom of the press, likely rendering the current law unconstitutional, actions of the state under its current state law could exercise prior restraint on the media as it attempts to do its job covering the emergency and informing the citizenry. It would only be later, in the courts, that the matter would almost certainly be resolved in favor of the media.

Mahalo nui for considering this important bill.



Big Island Press Club

Since 1967, protecting the public's right to know

Big Island Press Club
P.O. Box 1920
Hilo, Hawaii 96721

CONTACT:
mphillips@bigislandpressclub.org

February 23, 2023

To: House Committee on Judiciary and Hawaiian Affairs

From: Michael Phillips, President, Big Island Press Club

In SUPPORT of HB 522 HD1 Relating to Emergency Management

The Big Island Press Club, Hawaii's oldest press club, continues its strong support of HB 522_HD1 relating to Emergency Management.

Since 1967, the Big Island Press Club has been protecting the public's right to know. Serving as a watchdog for openness and credibility for Hawaii Island, we believe government agencies exist to aid the people in the formation and conduct of public policy. We also believe that the media is responsible for relaying important information from the government to the people it represents at all times.

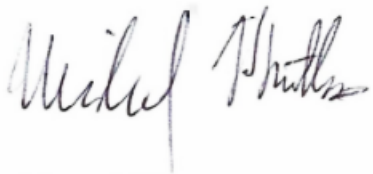
Even in times of a declared state of emergency, no government leader or state or county agency should ever be able to suspend media, or as Section 127A-13, Hawaii Revised Statutes, specifically says in its original form, "suspend electronic media transmission," which could have a wide range of interpretation.

The hunger for fact-based information is never higher than during an emergency, and when that information is hard to come by, people will sometimes resort to rumors and speculation. That should be the last thing government would want in a declared emergency.

While we believe rights and protections provided by the Constitution protect the media's right to transmit information at all times, emergency or not, the potential exists that any dispute of the language and its meaning would need to be litigated. In times of emergency, the priority of the press should be to quickly get information out and not be burdened by unnecessary litigation. As such, correcting the language in this statute through this House Bill would eliminate that unnecessary risk and burden.

With that said, we wholeheartedly support HB 522_HD1. Thank you for the opportunity to testify on this important matter.

Signed,

A handwritten signature in black ink that reads "Michael Phillips". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael Phillips
President, Big Island Press Club

HB-522-HD-1

Submitted on: 2/22/2023 4:51:51 PM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ryan Kawaihani Ozawa	Individual	Support	Written Testimony Only

Comments:

I would prefer to ascribe the inclusion of the clause regarding suspending electronic media transmission to simple error rather than nefarious overreach (despite the "federal law" carveout), but either way, it does not belong in any law.

If you think there is any merit to keeping this vague and dangerous power on the books, make sure you can answer this question: in what way is "transmission of electronic media" different from "speech"?

HB-522-HD-1

Submitted on: 2/23/2023 10:34:45 AM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

STRONGLY OPPOSE: The phrase, "In the Governr's Opinion" stikes fear in my heart. More indiscriminate power to a single person is dangerous and UnConstitutional.

HB-522-HD-1

Submitted on: 2/24/2023 4:04:14 PM

Testimony for JHA on 2/24/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support