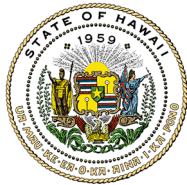


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KENNETH S. HARA
DIRECTOR OF EMERGENCY
MANAGEMENT

JAMES DS. BARROS
ADMINISTRATOR, HAWAII
EMERGENCY MANAGEMENT
AGENCY

STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF DEFENSE
KA 'OIHANA PILI KAUA
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON HOUSE BILL 522
RELATING TO EMERGENCY MANAGEMENT

BEFORE THE HOUSE COMMITTEE ON **WATER AND LAND**

BY

JAMES DS. BARROS
ADMINISTRATOR
HAWAII EMERGENCY MANAGEMENT AGENCY

FEBRUARY 1, 2023

Aloha Chair Ichiyama, Vice-Chair Poepoe, and members of the committee:

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

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

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 executives' emergency powers may inadvertently create a situation that endangers 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 Hawaii. Any governor or mayor who invokes emergency powers weighs the benefits of doing so against the harm which doing so might cause.

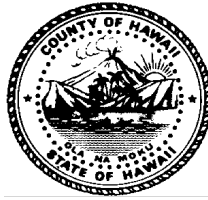
This bill would eliminate the executive branch's authority to take actions which in certain circumstances could save lives, based on the fear of a hypothetical restriction of free speech rights. The language in question was originally written decades ago and may be due for an update, but deleting it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

We ask for your opposition of this bill.

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



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ashley.kierkiewicz@hawaiicounty.gov

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

February 2, 2023

House Committee on Water & Land

Rep. Linda Ichiyama, Chair
Rep. Mahina Poepoe, Vice-Chair

RE: Support for HB 522, relating to emergency management

Aloha, Chair Ichiyama, Vice-Chair Poepoe, and Members of the Committee on Water & Land:

Mahalo for the opportunity to testify in strong support for HB 522, relating emergency management during states of emergency, specifically electronic media transmission.

In 2022, our office led an 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 would allow the Governor and County Mayor's the ability "to the extent permitted by or under federal law, suspend electronic media transmission." There is absolutely no reason to justify this kind of power.

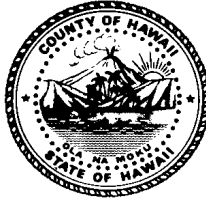
As someone who has coordinated emergency response efforts during the 2018 Kīlauea eruption and COVID-19 pandemic, I can tell you that information is critical to fostering a sense of calm amidst the chaos and helps individuals make decisions to keep their 'ohana safe. In times of emergency and natural 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

From the office of -
Council Member
District 3



Office: (808) 961-8396
Fax: (808) 961-8912
Email: sue.leeloy@hawaiicounty.gov

SUSAN L.K. LEE LOY

25 Aupuni Street, Hilo, Hawai'i 96720

February 2, 2023

The Honorable Representative Linda Ichiyama, Chair
The Honorable Representative Mahina Poepoe, Vice-Chair
Members of the House Committee on Water & Land

Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: Support for HB 522 relating to a Emergency Management

Aloha Chair Ichiyama, Vice-Chair Peopoe and Members of the Committee on Water & Land:

Mahalo for the opportunity to testify in strong support of HB 522, relating to emergency management.

In our work on the Hawai'i County Council to update and clarify our Disaster and Emergency Management code last year [Ordinance 22-103], it has become clear that we have many challenges facing our County. With our growing population and geography, I am hopeful we can substantially address these issues by clarifying the process for the communication of emergency updates to the public.

I share your concern about public safety and understand the need to grant additional authority to the Governor and Mayors during a State of Emergency. This bill removes the language which could create the potential censorship and hamper the efforts of our professional local broadcasters. The decisions and direction set through this endeavor will directly impact the collaborative efforts of public and private sectors to deliver critical emergency information to the public in a timely manner when they are needed the most.

Mahalo, again, for the opportunity to recognize the collaboration needed between the State and County as we evolve our disaster and emergency management planning for Hawai'i Island. By partnering and focusing our efforts, we will make the best use of our precious resources and develop viable solutions for a more efficient and effective emergency communication system. Our residents deserve access and opportunities to live in a vibrant Hawai'i.

Aloha Piha,

A handwritten signature in black ink, appearing to read "Susan L.K. Lee Loy". The signature is fluid and cursive, with the first name "Susan" written in a larger, more prominent script than the last name "Lee Loy".

Susan "Sue" L.K. Lee Loy
Council Member, County of Hawai'i, District 3
Chair, Policy Committee on Infrastructure and Assets

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 Water & Land
Honorable Linda Ichiyama, Chair
Honorable Mahina Poepoe, Vice Chair

RE: Testimony Supporting H.B. 522, Relating to Emergency Management
Hearing: February 2, 2023 at 9:30 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 governmental transparency. Thank you for the opportunity to submit testimony **supporting H.B. 522**.

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.



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 Water & Land (WAL)
2/2/23 – 9am

In strong support of HB 522 Relating to Emergency Management

Good morning Chairwoman Ichiyama, Vice Chair Poepoe 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 and SB103 Relating to Emergency Management.

As you may know, Hawai'i's radio and television broadcasters and broadcasters across our nation play a vital role in emergency alerting. We are the Country, States, and counties first choice for emergency updates. 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. FEMA has noted that there is no more reliable source of information during natural disasters than local broadcasters. We are very concerned that we have a law on

the books that would allow for the suspension of electronic media transmission that would potentially cut off a vital lifeline for the public in times of emergency.

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:

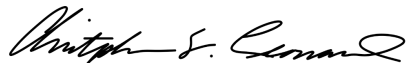
“The governor may [(1)-(7)] (8) Air raid drills, etc. Direct or control, as may be necessary for civil defense [(A)-(D)] (E) Shutting off water mains, gas mains, . . . suspension of radio transmission.”

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.

Chairwoman Ichiyama and committee members, we will continue to face emergency situations across the State of Hawaii. Broadcasters, elected officials and emergency managers are bound by a common thread. We all have a duty to serve the public interest. Hawaii's Broadcasters are committed to meet these obligations. HRS § 127A needs to be revised! We strongly support HB522 (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 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.



Testimony of Katie Pickman
General Manager – Hawai'i News Now
Re: HB 522
Hearing: House Committee on Water & Land (WAL)
2/2/23 – 9am

In strong support of HB 522 Relating to Emergency Management

Aloha Chairwoman Ichiyama, Vice Chair Poepoe and committee members. My name is Katie Pickman and I am the General Manager of Hawaii News Now: KGMB, KHNL & K5. I strongly support HB522 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 last weekend when many of our islands experienced extreme rainfall and flooding like we saw on Molokai, causing unsafe conditions and school closures. 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.

Chairwoman Ichiyama and committee members, we continue to face emergency situations across the State of Hawaii. Hawaii’s television broadcasters are committed to serving the public in times of emergencies. HRS § 127A should be updated. We strongly support HB522 (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



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

January 31, 2023

To: House Committee on Public Safety, Intergovernmental, and Military Affairs
House Committee on Judiciary and Hawaiian Affairs

From: Michael Phillips, President, Big Island Press Club

In SUPPORT of HB 522 Relating to Emergency Management

The Big Island Press Club, Hawaii's oldest press club, is in strong support of HB 522 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.

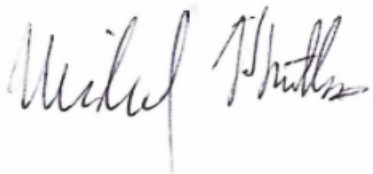
Even in times of a declared state of emergency, no government leader or state or county agency should ever be able to suspend media, or as Section 127A-13, Hawaii Revised Statutes, specifically says in its original form, "suspend electronic media transmission," which could have a wide range of interpretation.

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. Thank you for the opportunity to testify on this important matter.

Signed,

A handwritten signature in cursive script, appearing to read "Michael Phillips".

Michael Phillips
President, Big Island Press Club

HB-522

Submitted on: 2/1/2023 7:35:46 AM

Testimony for WAL on 2/2/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Stirling Morita	Hawaii Chapter Society of Professional Journalists	Support	Written Testimony Only

Comments:

HB-522

Submitted on: 1/31/2023 10:48:04 AM

Testimony for WAL on 2/2/2023 9:30:00 AM

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.

HB-522

Submitted on: 1/31/2023 8:54:18 PM

Testimony for WAL on 2/2/2023 9:30:00 AM

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

Comments:

As a 20-year member of the Big Island Press Club and a citizen who believes wholeheartedly in government transparency and openness, I support this bill.

Journalists are the lifeline for the dissemination of information, and the last thing we should be doing an emergency is hindering communication with the public.

Lack of information creates frustration and panic among the citizenry, particularly in this Information Age when people want information in real-time, at their fingertips.

if anything, government should become more adept at providing information in real-time, and treating journalists and others trained with journalistic principles in mind as a friend and not a foe to leave in darkness.

Please support this bill and any and all efforts to support openness and transparency in government.

aloha