

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 SENATE COMMITTEE ON **JUDICIARY**

BY

JAMES DS. BARROS  
ADMINISTRATOR  
HAWAI'I EMERGENCY MANAGEMENT AGENCY

APRIL 4, 2023

Aloha Chair Rhoads, Vice-Chair Gabbard, 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 as it is written.

However, HI-EMA and the Hawaii Association of Broadcasters have been working toward an agreed amendment that would address the concerns raised by the bill's supporters, explicitly protecting constitutionally protected speech while preserving the State's ability to protect people and property during an emergency.

Here is the amendment as currently proposed:

Shut off water facilities, gas facilities, electric facilities, and/or other critical infrastructure as required when the impairment or operation of such facilities is an immediate or imminent threat to common defense, public health, safety or welfare, provided that the governor shall to the extent practicable limit any shut off or suspension only by scope of time, location, and type necessary to address the threat. This power shall not be construed to restrict the exercise of constitutionally protected free speech or interfere with dissemination of news or comment on public affairs.

We are also in conversation with the Attorney General's office to have them review this amendment.

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 in the way set forth by HB522 HD1 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 HD1 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.

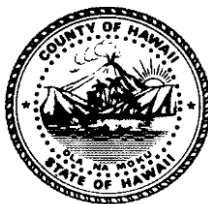
This bill, in its current form, would eliminate the executive branch's authority to take actions which, in certain circumstances, could save lives, based on the fear of a hypothetical restriction of free speech rights. The language in question was originally written decades ago and is due for an update, but simply deleting it, as currently proposed, is a course which HI-EMA cannot support.

I commit to the members of this committee that HI-EMA will continue to 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](mailto:james.barros@hawaii.gov); 808-733-4300

*From the office of -*  
Council Member  
District 3



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

**SUSAN L.K. LEE LOY**

25 Aupuni Street, Hilo, Hawai'i 96720

April 3, 2023

The Honorable Senator Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice-Chair  
Members of the Senate Committee on Judiciary

Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

**Re: Support for HB 522 relating to a Emergency Management**

Aloha Chair Rhoads, Vice-Chair Gabbard and Members of the Committee on Judiciary:

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 safe and 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



SENATE COMMITTEE ON JUDICIARY

April 5, 2023, 9:45 AM, State Capitol Room 016 & Videoconference

HB 522, HD1

Relating to Emergency Management

**TESTIMONY**

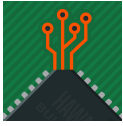
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Gabbard, 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.



Testimony of  
**Ryan Kawailani Ozawa**  
Publisher, Hawaii Bulletin  
Founder, Hawaii Hui LLC / Kilinahe Foundation

Before the  
COMMITTEE on JUDICIARY  
Hawaii State Capitol in Conference Room 016  
Wednesday, April 5, 2023

HB522 — Relating to Emergency Management

Senator Karl Rhoads, Chair; Senator Mike Gabbard, Vice Chair;  
and Members of the Committee:

I am submitting this testimony to express my **STRONG SUPPORT** of **HB522** relating to Emergency Powers.

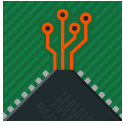
I would prefer to ascribe the inclusion of the clause regarding suspending electronic media transmission to simple error rather than nefarious overreach, but either way, it does not belong in any law.

A simple question to guide your deliberations: In what way is ‘transmission of electronic media’ different from ‘speech’?

I am flabbergasted to see that there is any opposition at all to this bill. Instead, the agency most likely and erroneously granted this unconstitutional power is attempting to retain it, however vague and unclear it may be.

HI-EMA claims that those who support this bill are relying on “the fear of a hypothetical restriction of free speech rights.” Yet the specific threat it cites is as realistic as a Hollywood screenplay, noting that electronic transmissions “could trigger an explosive device or ignite volatile chemicals.”

Yes, remote detonators are a thing, via radio or digital signals. But the authority to regulate these signals lies solely within the purview of the FCC, and—practically speaking—effectively unstoppable.



HI-EMA then attempts to justify its continued existence by saying that the power has never been exercised... but if it is invoked, “any governor or mayor” would do so thoughtfully.

I’m sorry, but Hawaii public’s confidence in its political leaders to exercise restraint is dismally low—even in mundane, day-to-day circumstances, let alone a real emergency.

HI-EMA’s request to retain this broad and dangerous power in place is unconscionable. I hope that you recognize this desperate attempt to capitalize on poorly written, outdated law for the frantic, reactionary power grab that it is.

Thank you for your consideration.

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

Senate Committee on Judiciary  
Honorable Karl Rhoads, Chair  
Honorable Mike Gabbard, Vice Chair

**RE: Testimony Supporting H.B. 522 H.D. 1, Relating to Emergency Management**  
Hearing: April 5, 2023 at 9:45 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 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.

Contrary to the testimony of the Hawai'i Emergency Management Agency, removing this very likely unconstitutional language broadly targeting electronic broadcasters will not impact the ability of officials to address the much more specific concern about potential use of cellphones in terror attacks. Suspension of cellular service is decided by the federal government; a governor or mayor only makes a request. *See* U.S. Dep't of Homeland Security, Nat'l Coordinating Ctr. for Telecommunications, *Standard Operating Procedure* 303 (Sept. 25, 2009). HRS chapter 127A cannot grant State officials a power that is reserved to the federal government. And removal of the language as proposed in this bill does not change the authority granted to State officials under federal law to request that the federal government exercise its power to suspend cellular service. HRS § 127A-11(b).

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





Testimony of Chris Leonard  
President – Hawai'i Association of Broadcasters, Inc.  
President – New West Broadcasting Corp.  
Chairman – Hawai'i State Emergency Communications Committee (SECC)  
Hearing: Senate Committee on Judiciary  
4/5/23 – 9:45AM

In strong support of HB 522 Relating to Emergency Management  
w/proposed amendment

Good afternoon Chairman Rhoads, Vice Chair Gabbard and committee members. 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

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.**”*

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

1. The statute 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 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 Rhoads, Vice Chair Gabbard and committee members we have been in communication with HI-EMA and have come up with what we believe is an appropriate amendment to the language that will satisfy the concerns of our public safety officials, address the constitutional issues with the existing law. It will also allow Hawaii's radio and television broadcasters along with other electronic media outlets 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.

I have provided the suggested language below.

**Strike:**

~~(6) [Shut off water mains, gas mains, or electric power connections, or suspend other services, and, to the extent permitted by or under federal law, suspend electronic media transmission];~~

~~(3) Shut off water mains, gas mains, or electric power connections, or suspend other services; [and, to the extent permitted by or under federal law, suspend electronic media transmission];~~

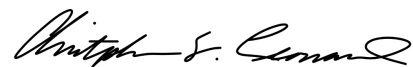
**Replace with:**

**[Shut off water facilities, gas facilities, electric facilities, and/or other critical infrastructure as required when the impairment or operation of such facilities is an immediate or imminent threat to common defense, public health, safety or welfare, provided that the governor shall to the extent practicable limit any shut off or suspension only by scope of time, location, and type necessary to address the threat. This power shall not be construed to restrict the exercise of constitutionally protected free speech or interfere with dissemination of news or comment on public affairs.]**

We ask that you pass HB522 with the suggested ammendment.

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.



April 5, 2023

9:45 a.m.

VIA VIDEOCONFERENCE

Conference Room 016

**To: Senate Committee on Judiciary**

**Sen. Karl Rhoads, Chair**

**Sen. Mike Gabbard, 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 would remove 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. 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



# 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](mailto:mphillips@bigislandpressclub.org)

April 3, 2023

To: Senate Judiciary Committee

From: Michael Phillips, President, Big Island Press Club

**In SUPPORT of HB 522, HB522 HD1, HSCR933, SB 103 Relating to Emergency Management**

The Big Island Press Club, Hawaii's oldest press club, is in strong support of HB 522, HB 522\_HD1, HSCR 933, and SB 103 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 the government would want in a declared emergency.

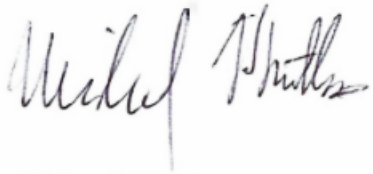
This is why we also object to HI-EMA’s previously submitted testimony in opposition of this bill. HI-EMA’s Administrator, James Barros, wrote, “The bill would eliminate the Executive Branch’s authority to take actions which, in certain circumstances, could save lives, based on a fear of a hypothetical restriction of free speech rights.” However, there is nothing hypothetical about this: HI-EMA explicitly states that they want to take away such free speech rights in an emergency, an action the Constitution doesn’t allow.

In his transmission to the House with regards to the passage of HB 522\_HD1 by his Committee on Judiciary and Hawaiian Affairs, Chair David Tarnas wrote, “ Your Committee finds that the constitutionality of the Governor's or a mayor's authority to suspend electronic media transmission during an emergency is highly questionable. This measure addresses the issue before any state action is taken that deprives the public and press of their First Amendment rights.” The Big Island Press Club concurs with that assessment.

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 and its current forms and the original Senate companion bill, SB 103. 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 horizontal line at the end.

Michael Phillips  
President, Big Island Press Club