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GOVERNOR  
KE KIA'ĀINA



**KENNETH S. HARA**  
DIRECTOR OF EMERGENCY  
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**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**  
4204 DIAMOND HEAD ROAD  
HONOLULU, HAWAI'I 96816-4420

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

TESTIMONY ON HOUSE BILL 2581  
RELATING TO EMERGENCY MANAGEMENT

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

BY

JAMES DS. BARROS  
ADMINISTRATOR  
HAWAI'I EMERGENCY MANAGEMENT AGENCY

FEBRUARY 22, 2024

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

Thank you for the opportunity to submit testimony to **COMMENT** on House Bill 2581.

I would like to offer **comments** on a bill that was previously supported, which has undergone revisions in language for the current year. HI-EMA believes that initiating the discussion from the framework of last year's bill is essential for a comprehensive understanding of its potential impact.

In 2023, HI-EMA made significant progress on last year's HB 522 HD1 SD1 with input from various stakeholders who supported and agreed on compromise language. We believe it is important to reference the previous bill in order to fully understand the potential impact of the current revision.

Additionally, referencing last year's bill is crucial as it provides a foundation for building upon existing agreements and compromises. By starting the discussion from the previous language, we can ensure continuity and avoid unnecessary duplication of efforts. This approach will also help streamline the process and focus on making necessary improvements without starting from scratch.

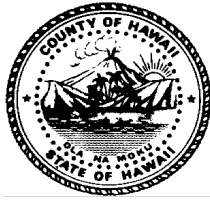
We hope the House committee will consider the framework of last year's bill rather than disregarding the diligent work that was done.

Thank you for the opportunity to provide testimony on House Bill 2581.

James Barros: [james.barros@hawaii.gov](mailto:james.barros@hawaii.gov); 808-733-4300

*Ashley L. Kierkiewicz*  
*County Council District IV*

*Policy Committee on Planning,  
Land Use and Development – Chair*



(808) 961-8265  
*ashley.kierkiewicz@hawaiiicounty.gov*

*Policy Committee on Infrastructure  
and Assets – Vice-Chair*

## **HAWAI‘I COUNTY COUNCIL**

25 Aupuni Street • Hilo, Hawai‘i 96720

February 21, 2024

### **House Committee on Judiciary & Hawaiian Affairs**

Rep. David Tarnas, Chair

Rep. Gregg Takayama, Vice-Chair

### **RE: Support for HB2581, relating to emergency management**

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

Mahalo nui for hearing **HB2581**, to ensure effective communication during times of emergency and natural disasters.

In 2022, our office undertook a comprehensive analysis and revision of our County’s natural disaster and emergency management code, aligning it with Hawai‘i Revised Statutes while integrating valuable insights gained from past disasters. During this process we encountered a provision in HRS that grants broad authority to the Governor and County Mayors “suspend electronic media transmission” during a declared state of emergency.

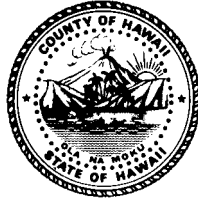
Recognizing the potential implications of such sweeping authority, our Council took a proactive approach. We revised our local code language to now state that the Governor and County Mayors can, “to the extent permitted by or under Federal law, authorize any actions necessary to ensure continuity of electronic media transmission.” This strategic amendment emphasizes the importance of maintaining open lines of communication during emergencies, understanding that the public requires more information, not less, to navigate challenging circumstances. Since then we have advocated for addressing this issue in HRS.

Electronic media platforms serve as critical tools for disseminating timely and accurate information, empowering communities to make informed decisions that keep their districts and households safe. In times of crisis, absence or lack of communication stokes fear, chaos, and confusion. The ability to communicate through all available channels is paramount, and the proposed changes to HRS contained in HB2581 aligns with this, ensuring that the authority granted to our leaders is balanced and communication pathways are preserved.

Cheers,

Ashley Lehualani Kierkiewicz  
COUNCIL MEMBER, DISTRICT IV

**Susan L.K. Lee Loy**  
Council Member  
District 3



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## **HAWAI‘I COUNTY COUNCIL**

25 Aupuni Street, Hilo, Hawai‘i 96720

February 21 , 2024

The Honorable Representative David Tarnas, Chair  
The Honorable Representative Gregg Takayama, Vice Chair  
Members of the House Committee on Judiciary & Hawaiian Affairs

Hawai‘i State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

### **Re: Support for HB 2581 Relating to Emergency Management**

Aloha Chair Tarnas and Vice Chair Takayama, and Members of the Committee on Judiciary & Hawaiian Affairs,

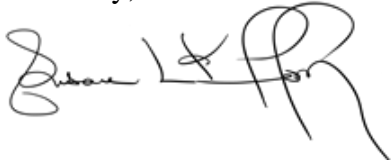
Mahalo for the opportunity to express support for House Bill No. 1778. This bill is of utmost importance in addressing the challenges and concerns regarding electronic media transmission during a state of emergency.

Our County Council has done great policy work to rewrite Hawai‘i County Code Chapter 7 (Disaster and Emergency Management), to be in alignment with HRS 127A and to include lessons learned during previous disaster events. In that process, we discovered an emergency powers section of HRS 127A, which allows the Mayor or Governor to suspend electronic media transmissions in a state of emergency.

We all know from experience that the public requires more information, not less, in times of emergency and crisis. Recognizing this, our Council amended the County Code to state "To the extent permitted by or under Federal law, authorize any actions necessary to ensure continuity of electronic media transmission." However, given that HRS takes precedence over County Code, a statutory amendment is critical, and HB2581 aims to provide this necessary fix.

HB 2581, in concert with Hawai‘i County Code Chapter 7, reflects our local community’s recognition of the urgency to address this critical issue and is a positive step towards protecting the public during a state of emergency. Please support this important piece of legislation for our communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L.K. Lee Loy". The signature is fluid and cursive, with a large, stylized "R" at the end.

Susan "Sue" L.K. Lee Loy  
Council Member, County of Hawai'i



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 2581  
Hearing: House Committee on Judiciary & Hawaiian Affairs  
2/22/23 – 2:00PM

In strong support of HB 2581 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 HB2581 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. During the tragic Maui fires, mostly all internet, phone and wireless service failed, while broadcast stations remained available for use by emergency management

officials. 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:

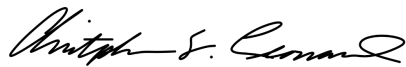
*“The governor may [(1)-(7)] (8) Air raid drills, etc. Direct or control, as may be necessary for civil defense [(A)-(D)] (E) Shutting off water mains, gas mains, . . . suspension of radio transmission.”*

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.

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 HB2581! 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.



Feb. 22, 2024, 2 p.m.  
Hawaii State Capitol  
Conference Room 325 and Videoconference

**To: House Committee on Judiciary & Hawaiian Affairs**  
**Rep. David A. Tarnas, Chair**  
**Rep. Gregg Takayama, Vice-Chair**

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

RE: TESTIMONY IN SUPPORT OF HB2581 — RELATING TO EMERGENCY MANAGEMENT

*Comments only*

Aloha Chair and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments on [HB2581](#), which would remove the ability of a mayor or governor to suspend electronic media transmissions 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.

The fact that it remains unclear as to whether a state of emergency could be prolonged indefinitely via supplemental proclamations makes it even more important that the Legislature constrain powers that could affect free speech.

In addition, there is a substantial difference between the suspension of electronic communications as part of a governor or mayor's emergency proclamation and any action required to disrupt cellular transmissions to prevent terrorist attacks.

The latter example, though extreme, has been raised in the past as an objection to this bill. However, suspension of cellular service is the sole prerogative of the federal government and this bill would not prevent federal officials from carrying out activities necessary for public safety.

HB2581 deals only with the powers of a Hawaii executive under the emergency management statute — that is to say, whether the governor can suspend electronic communications for an indefinite amount of time.

In our 2021 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.

Recent experiences have forced us to reevaluate the state's emergency management statute. This bill would be a good start toward protecting civil rights and accountable government during an emergency.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii

**HB-2581**

Submitted on: 2/20/2024 5:03:17 PM

Testimony for JHA on 2/22/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I **support** this Bill.