

June 27, 2024

Governor Josh Green, M.D.
Office of the Governor

Re: Support for H.B. 2581, Relating to Emergency Management

Dear Governor Green:

My name is Brian Black. I am the Executive Director of the Public First Law Center, a nonprofit organization that promotes government transparency. We understand the impulse to veto a bill that would deprive the office of the governor of *legitimate and necessary* authority to address an emergency. But H.B. 2581 is not that bill. Please let this important bill become law.

Hawai`i Revised Statutes (HRS) § 127A-13(a) vests the governor with a robust array of powers to respond to declared emergencies. These powers include suspending laws; assuming “operational control” of private entities; shutting off water, gas, electrical, and other services; ordering evacuations; “taking over and operating” critical infrastructure facilities; and seizing objects for public health and safety. H.B. 2581 does *not* limit any of these extraordinary powers.

To the contrary, H.B. 2581 removes language that is overly broad, vague, and very likely unconstitutional if exercised. It is commendable that the Legislature took steps to remove this language before any state action that denied the press and others the right to broadcast, and the public its right to listen to, electronic media under the First Amendment.

In explaining your intent to veto H.B. 2581, you reasoned, “we must still guard against acts of extreme violence or acts of terrorism which can use social media or other electronic media to communicate and activate crowds or destructive devices.” As noted, however, chapter 127A already provides robust tools to address legitimate public safety concerns. *See also* HRS § 127A-1 (“This chapter shall be liberally construed to effectuate its purposes”); HRS § 127A-11(b) (“The powers conferred upon the governor or mayor by this chapter are in addition to any other powers or authority conferred upon the governor or mayor by the laws of the United States and of the State or county for the same or a like purpose”).



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It is also unclear how, if at all, the power to “suspend electronic media transmissions” could be exercised from a practical perspective to address the cited concerns. In light of the expansive authority granted elsewhere in HRS § 127A-13(a), what constitutionally valid additional power does “suspension of electronic media” provide the government – that is not preempted by federal law? And how would that work? Would a governor declare a state of emergency for anticipated terrorist activity and order X (formerly Twitter) or Hawai`i News Now to stop broadcasting? The Internet is not based solely out of Hawai`i, so such an order would simply be futile – even if it were not an obviously unconstitutional prior restraint.

If there is some value to suspending electronic transmissions (not electronic media), that can be achieved legally under other provisions of HRS § 127A-13(a) or in coordination with federal authorities. Given the lack of utility and potential for abuse of the subject language, we urge you to let H.B. 2581 become law.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Brian Black', with a long horizontal flourish extending to the right.

R. Brian Black
Executive Director