

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



JORDAN LOWE
DIRECTOR

MICHAEL VINCENT
Deputy Director
Administration

SYLVIA LUKE
LT GOVERNOR
KE KE'ENA

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LAW ENFORCEMENT

Ka 'Oihana Ho'okō Kānāwai

715 South King Street
Honolulu, Hawaii 96813

JARED K. REDULLA
Deputy Director
Law Enforcement

TESTIMONY ON HOUSE BILL 2582, HOUSE DRAFT 1
RELATING TO CRITICAL INFRASTRUCTURE INFORMATION

Before the Senate Committee on
Public Safety and Intergovernmental and Military Affairs
Monday, March 11, 2024; 3:00 p.m.
State Capitol Conference Room 225, Via Videoconference
Testifier: Jordan Lowe or Michael Vincent

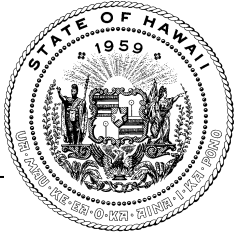
Chair Wakai, Vice Chair Elefante, and members of the Committee:

The Department of Law Enforcement (DLE) **supports**, House Bill 2582, House Draft 1.

This bill establishes protections for critical infrastructure information that is received or maintained by county boards of water supply for use regarding the security of critical infrastructure in Hawai'i.

The retention and assured protection of critical infrastructure information relating to water systems is crucial for the security and resilience of the State of Hawai'i and our communities. This bill ensures that protection of critical infrastructure information relating to water systems is aligned with those under the federal Critical Infrastructure Information Act of 2002.

Thank you for the opportunity to testify in support of this bill.



HAWAII STATE ENERGY OFFICE STATE OF HAWAII

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone:
Web:

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARK B. GLICK
CHIEF ENERGY OFFICER

(808) 451-6648
energy.hawaii.gov

Testimony of
MARK B. GLICK, Chief Energy Officer

before the
**SENATE COMMITTEE ON PUBLIC SAFETY AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS**

Monday, March 11, 2024
3:00 PM
State Capitol, Conference Room 225 and Videoconference

Providing Comments on
HB 2582, HD1

RELATING TO CRITICAL INFRASTRUCTURE INFORMATION.

Chair Wakai, Vice Chair Elefante, and members of the Committee, the Hawai'i State Energy Office (HSEO) offers comments on HB 2582, HD1, that requires critical infrastructure information mandated by federal or state law to be collected or maintained by a county board of water supply in connection with a federal or state critical infrastructure security and resilience program to be confidential and not available to the public.

HSEO, through our work with energy sector partners in emergency response and energy security planning, understands the sensitive nature of energy system information. Energy is not only one of FEMA's designated lifelines; it is considered to be the enabling lifeline due to its integral role in powering all aspects and functions of our communities, from communication and healthcare to transportation and water treatment. A disruption to our energy system has impacts that are felt in every facet of our lives, highlighting the critical need for robust security measures.

HSEO collaborates closely with industry partners as well as other agencies such as the Office of Homeland Security on their Critical Infrastructure Security and Resilience Program, actively engaging in information sharing and threat mitigation

strategies. However, a persistent hurdle remains: private industry's concerns about government's ability to protect sensitive information under transparency laws such as UIPA.

HSEO prefers HB 2460, HD1, as the vehicle for addressing the protection of critical infrastructure information. However, should the committee move this measure forward, HSEO suggests amending the two instances that refer to records/information "collected/created or maintained by a board" in Section 2 to "data received or maintained by Office of Homeland Security".

These amendments will foster a more collaborative environment, encouraging the necessary flow of information between industry partners and government agencies. By understanding vulnerabilities and potential threats, we can anticipate, mitigate, and work to prevent catastrophic disruptions to our energy infrastructure.

Thank you for the opportunity to testify.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Public Safety and Intergovernmental
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: March 11, 2024, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on H.B. No. 2582, H.D. 1
Relating to Critical Infrastructure Security Information

Thank you for the opportunity to submit testimony on this bill, which would provide confidentiality for critical infrastructure information required by federal or state law to be collected or maintained by a county board of water supply in connection with a federal or state critical infrastructure security and resilience program. The Office of Information Practices **(OIP) supports the bill as amended in House Draft 1.**

OIP worked with the Honolulu Board of Water Supply (BWS) to create language that would provide program-specific confidentiality for critical infrastructure security information collected by the boards of water supply. OIP understands that the BWS's current concern is the risk and resilience assessments (RRA) and emergency response plans (ERP) it developed to meet the requirements of the federal America's Water Infrastructure Act (AWIA). According to BWS, its RRA addresses topics including the risk from malevolent acts and natural hazards, resilience of infrastructure, monitoring practices, financial infrastructure, chemical handling, and system operation and maintenance, and its ERP sets out strategies to

enhance system resilience, plans and procedures for malevolent acts or natural hazards, actions to mitigate impact, and strategies for detecting threats.

Because of the sensitive nature of this information, BWS was concerned that statutory confidentiality was needed for it to protect the information it collected and the documents it created pursuant to the AWIA, rather than relying on the assumption that such information would fall within the UIPA's exception for records whose disclosure would frustrate a legitimate government function. OIP did not object in concept to such statutory confidentiality, but wanted to ensure that it would be clearly specific to either BWS's AWIA compliance program or a program based on similar state or federal requirements that may be created in the future. **OIP and BWS were able to agree on language that would accomplish both those goals, and OIP believes the H.D. 1 version of this bill meets BWS's security concern without limiting the public's access to historically public information maintained by the boards of water supply.**

Thank you for considering OIP's testimony.

**BOARD OF WATER SUPPLY
KA 'OIHANA WAI
CITY AND COUNTY OF HONOLULU**

630 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96843
Phone: (808) 748-5000 • www.boardofwatersupply.com

LATE

RICK BLANGIARDI
MAYOR
MEIA

ERNEST Y. W. LAU, P.E.
MANAGER AND CHIEF ENGINEER
MANAKIA A ME KAHU WILIKI

ERWIN KAWATA
DEPUTY MANAGER
HOPE MANAKIA



NĀ'ĀLEHU ANTHONY, Chair
KAPUA SPROAT, Vice Chair
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EDWIN H. SNIFFEN, Ex-Officio
GENE C. ALBANO, P.E., Ex-Officio

March 11, 2024

The Honorable Glenn Wakai, Chair
and Members
Senate Committee on Public Safety and Intergovernmental
and Military Affairs
Hawaii State Capitol, Room 225
Honolulu, Hawaii 96813

Dear Chair Wakai and Members:

SUBJECT: House Bill 2582, HD1: Relating to Critical Infrastructure Information

The Honolulu Board of Water Supply supports House Bill (HB) 2582, House Draft (HD) 1, relating to Critical Infrastructure Information, which excludes critical infrastructure information from disclosure requirements under the Hawaii Revised Statutes (HRS) Chapter 54.

BWS believes that this measure will establish explicit protections for critical infrastructure information that is created, received, or maintained by government agencies such as BWS to ensure public health and safety.

By way of background, on October 23, 2018, America's Water Infrastructure Act (AWIA) was signed into law. Section 2013 of the AWIA mandates that community (drinking) water systems serving more than 3,300 people, including BWS, develop or update risk and resilience assessments (RRAs) and emergency response plans (ERPs). The law specifies that the RRA address various aspects, including the risk from malevolent acts and natural hazards, resilience of infrastructure, monitoring practices, financial infrastructure, chemical handling, and system operation and maintenance, while the ERP address strategies to enhance system resilience, plans and procedures for malevolent acts or natural hazards, actions to mitigate impact, and strategies for detecting threats.

Due to the sensitive nature of the mandated RRA and ERP, AWIA safeguards any information submitted to the EPA from disclosure at the federal level. However, it is

The Honorable Glenn Wakai, Chair
and Members
March 11, 2024
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important to note that the actual RRA and ERP is not required to be submitted to the EPA, and therefore explicit protection from disclosure under the federal statute is not provided. Consequently, protection of the information contained in documents such as the RRA and ERP thus defaults to state law concerning public disclosure requirements.

Recognizing the security sensitive nature of information that is created, received, or maintained by state and local entities, 34 states have taken measures to exempt such information from public release. Unfortunately, Hawai'i is among the eight remaining states that do not explicitly protect the information included in the RRA and ERP. We strongly believe that the critical infrastructure information in the RRA and ERP must be securely maintained and treated as confidential with absolute certainty.

Thank you for your consideration of our testimony in support of HB 2582, HD 1.

Very truly yours,



ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**HB 2582, HD1
Relating to Critical Infrastructure Information**

Monday, March 11, 2024
3:00 pm
State Capitol, Conference Room 225

James Abraham
Associate General Counsel
Hawaiian Electric

Dear Chair Wakai, Vice Chair Elefante, and Members of the Committee,

My name is James Abraham and I am testifying on behalf of Hawaiian Electric providing comments and proposed amendments to HB 2582, HD1, Relating to Critical Infrastructure Information.

The original intent of this bill was to enhance the sharing of critical infrastructure information between private entities and government agencies by excluding such information from disclosure requirements under the Uniform Information Practices Act. The original bill would have provided protections for ALL critical infrastructure sectors, including energy, emergency services, water, health care, and others, that are part of a complex, interconnected ecosystem. However, the most recent amendments to this bill drastically narrowed its scope to only protect water infrastructure. If the Legislature wants to protect private parties' critical infrastructure information shared with government agencies, it should not do so in a piecemeal fashion, as all of these sectors are vital for the State's security.

Energy is one of the sixteen federally designated critical infrastructure sectors. Here in Hawai'i, this sector includes the electric grids and supporting systems owned

and maintained by Hawaiian Electric. We support the original bill's alignment of the state Uniform Information Practices Act with the federal Critical Infrastructure Information Act of 2002, which would protect confidential information not only within the energy sector, but also among the many other critical infrastructure sectors that make up the backbone of Hawai'i.

Accordingly, we respectfully request that this Committee revert the language of this HD1 version back to the original bill language as found in HB 2582. The protections proposed in the original bill would enhance sharing of critical infrastructure information between private entities like Hawaiian Electric and government agencies, and promote collaborative efforts to harden energy infrastructure, supporting openness and transparency between the private and public sectors as we all work together toward a more resilient Hawai'i.

Hawaiian Electric appreciates the Committee's consideration of its comments on and proposed amendments to HB 2582, HD1. Thank you for this opportunity to testify.

Senate Committee on Public Safety and
Intergovernmental and Military Affairs
Honorable Glenn Wakai, Chair
Honorable Brandon J.C. Elefante, Vice Chair

**RE: Testimony in Opposition to H.B. 2582 H.D. 1, Relating to Critical
Infrastructure Information**

Hearing: March 11, 2024 at 3:00 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency. Thank you for the opportunity to respectfully submit testimony **in opposition** to H.B. 2582 H.D.1.

This measure is unnecessary. We appreciate the removal of the express exemption to the Uniform Information Practices Act (UIPA) that was proposed by the original draft of this bill. The information H.B. 2582 H.D.1 seeks to protect, however, is still shielded from disclosure under the “frustration of a legitimate government function” exemption provided by Hawaii Revised Statutes (HRS) § 92F-13(3). *E.g.*, OIP Op. Ltr. 07-05 (agency need not disclose sensitive information regarding physical security of critical infrastructure) ([link](#)).

This measure also remains overly broad and subject to misapplication. The term “critical infrastructure” is expansively defined as “information that is not customarily in the public domain and is related to the security of critical infrastructure or protected systems.” This creates significant potential for misuse as these terms can be read to swallow public records with any connection to infrastructure – like records of water main breaks – that pose no legitimate security risk to critical infrastructure.

Thank you again for the opportunity to testify in opposition to H.B. 2582 H.D. 1.