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Testimony of
MARK B. GLICK, Chief Energy Officer

before the
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Friday, February 23, 2024
2:00 PM
State Capitol, Conference Room 325 and Videoconference

In Support of
HB 2582

RELATING TO CRITICAL INFRASTRUCTURE INFORMATION.

Chair Tarnas, Vice Chair Takayama, and members of the Committee, the Hawai'i State Energy Office (HSEO) supports HB 2582 that excludes critical infrastructure information from disclosure requirements under the Uniform Information Practices Act.

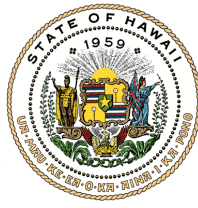
HSEO, through our work with energy sector partners in emergency response and energy security planning, understands the sensitive nature of energy system information. Energy isn't simply one of Federal Emergency Management Agency's designated lifelines; it's the enabling lifeline, powering every aspect 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 Protection (CIP) 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.

Exclusion of critical infrastructure information from UIPA, as proposed in this bill, presents an opportunity to alleviate these concerns and 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.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



JORDAN LOWE
DIRECTOR

MICHAEL VINCENT
Deputy Director
Administration

JARED K. REDULLA
Deputy Director
Law Enforcement

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

TESTIMONY ON HOUSE BILL 2582
RELATING TO CRITICAL INFRASTRUCTURE INFORMATION

Before the House Committee on Judiciary & Hawaiian Affairs

Friday, February 23, 2024; 2:00 p.m.

State Capitol Conference Room 325, Via Videoconference

Testifiers: Michael Vincent, Frank Pace or Jimmie Collins

Chair Tarnas, Vice Chair Takayama, and members of the Committee:

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

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

This bill is similar to the administration bill HB 2460 Relating to Homeland Security in that the proposed protections are aligned with those under the federal Critical Infrastructure Information Act of 2002 and would enhance the sharing of critical infrastructure information between owners and operators of critical infrastructure and the State of Hawai'i. To maintain trusted partnerships with owners and operators of critical infrastructure, we must be able to assure them that sensitive and proprietary information relating to the security of critical infrastructure is protected from public disclosure.

The retention and assured protection of this information is crucial for agencies in supporting the security and resilience of the State of Hawai'i.

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

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 23, 2024, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 2582
Relating to Critical Infrastructure Information

Thank you for the opportunity to submit testimony on this bill, which would add a new exception to disclosure to the Uniform Information Practices Act (UIPA), chapter 92F, HRS, allowing state and county agencies to withhold any information concerning the possibility of compromise of or attacks on critical infrastructure, the resiliency of critical infrastructure, and critical infrastructure operational problems past or present. **The Office of Information Practices (OIP) has concerns about this overly broad new UIPA exception and prefers the more narrowly applicable and program-specific protection provided in another bill that the House Water & Land Committee has already reported out, H.B. 2460, H.D. 1.**

The proposed new exception under section 92F-13, HRS, is so broadly worded as to cover not just truly sensitive records that would give a potential attacker information detailed technical information about potential vulnerabilities in critical infrastructure, but all sorts of information, including information of high public interest, relating to the ongoing operations of and public safety of critical infrastructure. **The proposal is not limited to specific records whose**

disclosure would create a security threat and thus should rightfully be withheld, but would also prevent disclosure of records currently deemed to be public, such as an agency’s Annual Report detailing its current operations and challenges involving transportation systems, water systems, a computer network, or similar infrastructure. If this overbroad exception had been in place when OIP decided OIP Opinion Letter No. F18-02, for example, tsunami inundation maps could continue to be withheld by the Civil Defense Division, even though other coastal states routinely publish such maps to prepare their communities for potential tsunamis. And if the Honolulu Board of Water Supply is led by a different person in the future who wants to withhold any and all Red Hill information, this proposal would allow important information of high public interest to not be disclosed. Alternatively, if the Legislature or the public wanted to learn general information about the safety status of dams or risks of potential cyberattacks or misuse of artificial intelligence technology, this exception would allow agencies to withhold such records. OIP has concerns about the overbreadth of this proposed new exception.

The UIPA’s frustration exception at section 92F-13(3) already allows agencies to withhold records that “must be confidential in order for the government to avoid the frustration of a legitimate government function.” Keeping our critical infrastructure secure from attacks, or the need to encourage information sharing by protecting confidential business information or trade secrets, would provide justifications to fall under this existing UIPA exception to disclosure. The frustration exception thus allows an agency to withhold specific information, especially detailed technical information, that could be used to exploit vulnerabilities in either government or private infrastructure, while keeping more general information available to the extent it traditionally has been for the public to

request from the government agency maintaining it, so as not to deny the public access to important public safety information such as government reports on dam safety, information about the Red Hill water contamination, or information about the potential for the power grid to contribute to a future wildfire.

The Water & Land Committee has already passed out an Administration bill—H.B. 2460, H.D. 1—that augments the frustration exception’s general protection by providing program-specific certainty in the form of a confidentiality provision specifically for the critical infrastructure information maintained by the Office of Homeland Security’s Hawaii State Critical Infrastructure Security and Resilience Program, which collects information about critical infrastructure and its vulnerabilities from other government agencies and from private parties such as utilities. OIP therefore respectfully requests that this Committee use the language of H.B. 2460, H.D. 1, if it wishes to move a measure that would protect critical infrastructure information maintained by the Office of Homeland Security.

OIP has also been in discussion with the Honolulu Board of Water Supply to create a similar program-specific confidentiality provision based on H.B.2460, H.D., but had not reached a mutual agreement when this testimony was submitted. **Therefore, if this Committee wishes to amend this measure to create a narrowly tailored confidentiality provision that specifically addresses critical infrastructure information needs of the county boards of water supply, then OIP recommends the attached language.** OIP’s proposal would protect from disclosure the county boards of water supply’s critical infrastructure information that is required by state or federal law, while still requiring them to disclose public information that has historically been required by the UIPA, such as

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water service consumption data, procedural rules, environmental test results, annual reports, meeting minutes, and limited government employee data.

Thank you for considering OIP's testimony and proposed amendments.

SECTION 1. The legislature finds that in order to succeed in the legislated responsibilities of the State and requirements of federal law regarding protection of critical infrastructure under chapter 54, Hawaii Revised Statutes, it is necessary to establish protections for critical infrastructure information maintained by county boards of water supply. The legislature further finds that protection of critical infrastructure information does not require confidentiality for information created and made confidential by the county boards of water supply for other purposes and that has historically been of public record, including but not limited to the water service consumption data made public by section 92F-12, Hawaii revised Statutes.

The purpose of this Act is to establish and specify protections for information that is required by federal law to be received or maintained by a county board of water supply for use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution or other informational purposes. This Act is not intended to alter the public's existing right to access information that is created for a purpose other than use in a federal or state infrastructure and resilience program, even when such information is also used in and maintained by the infrastructure security and resilience program.

SECTION 2. Chapter 54, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"§54- Confidentiality of critical infrastructure information. (a) Notwithstanding section 92F-11 and any other law to the contrary, critical infrastructure information required by federal or Hawaii state law to be collected or maintained by a county board of water supply in connection with a federal or Hawaii state critical infrastructure security and resilience program shall be confidential and shall not be available to the public.

(b) Nothing contained in this section shall be construed to alter existing rights to access government records subject to chapter 92F created or maintained by a county board of water supply or other agency for a purpose other than a federal or state critical infrastructure security and resilience program."

SECTION 3. Section 54-211, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Critical infrastructure information" means information that is not customarily in the public domain and is related to the security of critical infrastructure or protected systems, including documents, records or other information concerning:

(1) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct, including the misuse of or unauthorized access to all types of communications and data transmission systems, that violates federal, state, local, or tribal law, harms interstate commerce of the United States, or threatens public health or safety;

(2) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk-management planning, or risk audit; or

(3) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation."

SECTION 4. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall take effect on July 1, 2024.

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

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February 23, 2024

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and Hawaiian Affairs
House of Representatives
Hawai'i State Capitol, Room 325
Honolulu, Hawai'i 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill 2582: Relating to Critical Infrastructure Information

The Honolulu Board of Water Supply supports House Bill (HB) 2582, relating to Critical Infrastructure Information, which excludes critical infrastructure information from disclosure requirements under the Uniform Information Practices Act.

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.

On November 25, 2002, the U.S. Congress passed the Homeland Security Act of 2002, which includes Subtitle B. Critical Infrastructure Information Act of 2002 (CII Act) to protect information voluntarily shared with the government on the security of private and state/local government critical infrastructure.¹ Accordingly, the term “critical infrastructure information” means “information not customarily in the public domain and related to the security of critical infrastructure or protected systems . . .” To date, there are 16 Critical Infrastructure Sectors of which water and wastewater systems sector (water systems) is included to protect the stability and health of the nation and is the mission of the water and wastewater systems sector. According to the Cybersecurity and Infrastructure Security Agency (CISA) of the Department of Homeland Security (DHS), water systems are vulnerable to a variety of attacks, including contamination

¹ Public Law No. 107-296 (H.R. 5005)

with deadly agents; physical attacks, such as the release of toxic gaseous chemicals; and cyberattacks.²

On October 23, 2018, America's Water Infrastructure Act (AWIA) was signed into law amending numerous provisions of the Safe Drinking Water Act. 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 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. While HRS chapter 92F may offer *some* protections that may or may not apply to critical infrastructure information, we strongly believe that the critical infrastructure information in the RRA and ERP must be securely maintained and treated as confidential with absolute certainty.

The EPA has been considering other measures to address critical infrastructure information and these requirements are going to change over time as it impacts the 16 critical infrastructure sectors named in the CII Act. In particular, the DHS and the Biden-Harris Administration are presently taking new actions to protect American maritime critical infrastructure, bolster port cybersecurity, and improve supply chain resilience given the recent cybersecurity attacks on the nation's transportation system.³ In today's

² <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/water-and-wastewater-sector>

³ Homeland Security Fact Sheet, February 21, 2024. <https://www.dhs.gov/news/2024/02/21/fact-sheet-dhs-moves-improve-supply-chain-resilience-and-cybersecurity-within-our>

The Honorable David A. Tarnas, Chair
and Members
February 23, 2024
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changing world, the DHS asserts it is imperative we meet the threats and challenges of securing our digital ecosystem and defend our Nation's critical infrastructure.⁴

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ernest Y. W. Lau".

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

⁴ Ibid.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS**

**HB 2582
Relating to Critical Infrastructure Information**

Friday, February 23, 2024
2:00 PM
State Capitol, Conference Room 325

James Abraham
Associate General Counsel
Hawaiian Electric

Dear Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

My name is James Abraham and I am testifying on behalf of Hawaiian Electric in **support** of HB 2582, Relating to Critical Infrastructure Information.

Energy is one of the sixteen federally designated critical infrastructure sectors. Here in Hawaii, this sector includes the electric grid and supporting systems owned and maintained by Hawaiian Electric. We support this bill's alignment of the state Uniform Information Practices Act with the federal Critical Infrastructure Information Act of 2002, which is intended to protect confidential information not only within the energy sector, but also among the many other critical infrastructure sectors that make up the backbone of Hawaii.

Hawaiian Electric agrees that the protections proposed in this 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 Hawaii.

Thank you for the opportunity to testify in support of HB 2582.



House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair

RE: Testimony on H.B. 2582, Relating to Critical Infrastructure Information
Hearing: February 23, 2024 at 2:00 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.

This measure is unnecessary. It adds a new exemption to the Uniform Information Practices Act (UIPA) for “critical infrastructure information.” This type of information, however, is already 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 is also overly broad and subject to misapplication. The term “critical infrastructure” is undefined. The term “critical infrastructure information” is vague and expansively defined as including certain information without limitation. 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.



HB-2582

Submitted on: 2/23/2024 8:40:33 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Corinne Solomon	Individual	Comments	Written Testimony Only

Comments:

Aloha Committee Chair Tarnas and JDC Committee Members,

I am offering comments only on HB2582.

While it is common sense that records that compromise security related to critical infrastructure be kept private, I would like to offer my personal experience with UIPA (public records) denials under the term "critical infrastructure".

Elections were deemed critical infrastructure in 2017.

In an attempt to learn more about our elections I have sent several UIPA requests to the Office of Elections over the past couple of years. The majority of the requests are denied, citing "critical infrastructure".

What is interesting is that similar records requests sent by citizens in other states such as Washington and Colorado for example, which are both "Blue" states, have been granted, or, in the case of CO, the records are freely available to the public on the Secretary of State's website. The San Francisco county elections division also lists these same records on the county website.

Why would Hawaii elections officials designate records as critical infrastructure when other states release the same records to the public?

When I requested a list of election related documents that the OE considers to be "critical infrastructure", that request was also denied. Why was that? I think they don't have a list, and they just use the reason of critical infrastructure when it's convenient so that they do not have to fulfill records requests.

I'm not clear why we need a HRS OIP law on critical infrastructure when this designation is already in use, and used quite freely.

Respectfully submitted,

Corinne Solomon HD20 resident

