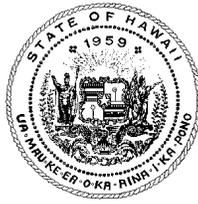


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No.

TESTIMONY ON SENATE BILL 1451, SENATE DRAFT 1  
RELATING TO CRITICAL INFRASTRUCTURE

Before the Senate Committee on Judiciary

Friday, February 21, 2025; 10:20 a.m.

State Capitol Conference Room 016, & Videoconference

Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

The Department of Law Enforcement (DLE) **strongly supports** Senate Bill 1451 (SD 1).

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

The proposed protections are aligned with those under the Critical Infrastructure Information Act of 2002 and would enhance the sharing of critical infrastructure information between owners and operators and the State of Hawai'i. For the Office of Homeland Security (OHS) to maintain trusted partnerships with owners and operators, it 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 OHS 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

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To: Senate Committee on Judiciary

From: Carlotta Amerino, Director

Date: February 21, 2025, 10:20 a.m.  
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 1451, S.D. 1  
Relating to Critical Infrastructure

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Thank you for the opportunity to submit testimony on this bill, which would provide confidentiality for critical infrastructure information maintained by the Office of Homeland Security's Hawaii State Critical Infrastructure Security and Resilience Program (Program). The Office of Information Practices (OIP) **supports** this bill.

OIP worked with the Office of Homeland Security (OHS) previously to reach agreement on language to address both OHS's and OIP's concerns. OIP understands that the Program collects information about critical infrastructure and its vulnerabilities from other government agencies and from private parties such as utilities, and OHS was concerned that the Program should not become a one-stop-shop for people seeking information about such vulnerabilities. At the same time, OIP's concern has been to ensure that information about infrastructure, including potential problems with that infrastructure, should remain public to the extent that it previously has been. Although the UIPA's frustration exception at section 92F-13(3), HRS, would allow an agency to withhold specific information, especially detailed technical information, that could be used to exploit vulnerabilities in either

government or private infrastructure, more general information should remain 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.

OIP notes that the S.D. 1 version of this bill was amended to limit the definition of “critical infrastructure information” by adding an additional requirement that such information “would reveal vulnerabilities in critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to operations, property, or facilities.” The limitation of what information qualifies as “critical infrastructure information” potentially reduces the amount of information the Program could withhold from public disclosure under this proposed confidentiality provision, and OIP defers to OHS as to whether that change is problematic for OHS. OIP believes this bill in either its original form or the current S.D. 1 form strikes an acceptable balance between protection of the sensitive critical infrastructure information collected by the Program and ensuring continued public access to more general information maintained by the various agencies about infrastructure, including information that discusses potential problems. OIP therefore **supports** this bill.

Thank you for considering OIP’s testimony.

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

**RE: Testimony with comments on S.B. 1451 S.D. 1, Relating to Critical Infrastructure Information**  
Hearing: February 21, 2025 at 10:20 a.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 with **comments** on S.B. 1451 S.D. 1.

We appreciate the prior committee’s amendments to this measure, which clarifies the subject of protection and curbs potential abuses, and further recommend the amendments provided below. We have shared with these recommendations with the Office of Homeland Security (OHS) and have been informed that OHS is not conceptually opposed to them.

First, we recommend **replacing** “shall” with “may” at page 2, line 3. “Shall” potentially exposes the State to unnecessary liability for inadvertent disclosures, disclosures necessary to protect health and safety, or disclosures that are otherwise in the public interest. “May” reduces that exposure and provides the State discretion to disclose information should circumstances require – like the existence of fuel in our drinking water supply.

Second, we recommend **deleting** the language at page 3, line 5 to page 4, line 9. This appears to be a remnant from the prior draft’s definition of “critical infrastructure information” and is unnecessary and confusing.

Third, we recommend **adding** language to require private entities to identify and mark the confidential information they share with OHS. This would closer track federal law and reduce disputes later about what is and is not protected. For example, the Critical Infrastructure Act of 2002 requires a written marking substantially similar to the following: “This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.”



Senate Committee on Judiciary  
February 21, 2025  
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Last, we recommend **adding** language to require private entities to segregate out confidential information from non-confidential, to the extent practicable, when submitting information to OHS. This would conform with records management best practices and address concerns over excessive confidentiality designations.

Thank you again for the opportunity to testify with comments on S.B. 1451 S.D. 1.