

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."



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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.