

Senate Committee on Public Safety and Military Affairs  
Honorable Brandon Elefante, Chair  
Honorable Glen Wakai, Vice Chair

**RE: Testimony in Opposition to S.B. 1451, Relating to Critical Infrastructure**  
Hearing: February 3, 2025 at 3:15 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 S.B. 1451.

We support efforts to protect Hawai`i's critical infrastructure. However, this measure is unnecessary, overly complicated, overly broad, inconsistent with existing law, and unbalanced.

This bill is unnecessary given existing law. The bill justification asserts, the "protections offered by this bill will enhance sharing of critical infrastructure information between critical infrastructure owners and operators and the state government." Such protection already exists under the Uniform Information Practices Act (UIPA). *E.g.*, OIP Op. Ltr. 07-05 (agency need not disclose sensitive information regarding physical security of critical infrastructure).

If the Committee wishes to codify existing law, then nothing as convoluted as this bill is necessary to define critical infrastructure information. The definition could borrow instead from the U.S. Department of Defense critical infrastructure standard. *See* 10 U.S.C. § 130e(e). The following proposed amendment would eliminate some of our concerns.

**"Critical infrastructure information" means information provided by private entities that is not customarily in the public domain and that, if disclosed, 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.**

Nevertheless, multiple iterations of this bill have been introduced in recent legislative sessions. But the Office of Homeland Security (OHS) has not explained why existing protections under UIPA are inadequate. Public First is not aware of any instance in which an agency was required to disclose potentially sensitive critical infrastructure



information. If OHS needs more access to critical infrastructure information than other agencies and seeks to incorporate federal law under the Critical Infrastructure Information Act of 2002 (CII Act), then it should also abide by the other restrictions and provisions of the CII Act, which have been stripped out of this proposal.

Moreover, S.B. 1451 is complicated and unwieldy. Depending on the circumstances, the Office of Information Practices and courts would need to determine whether the information concerns: (1) “[a]ctual, 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”; (2) “the ability of any critical infrastructure or protected system to resist” such interference; or (3) “[a]ny planned or past operational problem or solution regarding critical infrastructure or protected systems.” S.B. 1451 further calls on agencies to analyze whether disclosure: violates federal, state, local, or tribal law; harms interstate commerce; or threatens public health or safety.

The breadth of S.B. 1451 creates significant potential for misuse. For example, what are “protected systems” and “critical infrastructure”? Those key terms are not explained in HRS chapter 128A or defined for the exemption.

The bill’s expansive and vague language 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. Public First is aware of at least one such request, which was made by a neighborhood board member who used the information to analyze where water main breaks were most likely to occur in his community for purposes of improving planning and response to these inevitable events.

Thank you again for the opportunity to testify in opposition to S.B. 1451.