



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1255, S.D. 1, RELATING TO GOVERNMENT RECORDS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 21, 2025

**TIME:** 10:20 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Stella M.L. Kam,  
Deputy Attorney General, at 586-0618)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

This bill would require mandatory provisions in government services contracts for contractors to follow the state's records retention schedules for any records the contractor creates, receives, maintains, or uses in the performance of the contract, and also to allow the contracting agency to access and to disclose such records if a records request is made under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (UIPA). This bill would prohibit the government agencies from asserting the UIPA's "frustration of a legitimate government function" exception, section 92F-13(3), Hawaii Revised Statutes, to withhold the contractor's trade secret or proprietary information unless specifically authorized by law.

The Department is concerned that the bill's onerous contract requirements will discourage contractors from submitting bids for government services solicitations. Contractors are unlikely to agree to turn over all records they have created, received, maintained, or used in the performance of the government contract, particularly when their trade secret or proprietary information may be subject to public disclosure, potentially benefiting their competitors. Government services contracts can range from tree trimming and maintenance to technology to highway design. Contractors may be unwilling to enter into government services contracts and risk losing their proprietary

information to competitors when the only protection depends upon whether there is a statute authorizing protection for their specific type of trade secret or proprietary information.

The Department believes that this bill is unnecessary because records related to government-contracted services are already subject to the UIPA's disclosure requirements imposed upon government agencies. The UIPA's protection for confidential commercial and financial information as well as trade secrets and proprietary information is on a case-by-case basis depending upon the information contained in the records.

For the reasons set forth above, the Department respectfully requests that the Committee defer 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. 1255, S.D. 1  
Relating to Government Records

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Thank you for the opportunity to submit testimony on this bill, which would extend the Uniform Information Practices Act (UIPA), chapter 92F, HRS, to cover records generated or used by private entities contracting with a government agency. The Office of Information Practices (OIP) offers **comments and suggested amendments**.

Currently, the UIPA applies to records maintained by a government agency, which includes not only the records the agency keeps in its own office or computer systems, but also records it administratively maintains, i.e. records the agency is legally entitled to access even though they are in the possession of a third party, such as a government contractor. When an agency contracts with a third party to provide services that the agency would otherwise provide, OIP understands it is typical for that contract to include a clause stating that the agency has the right to review the contractor's records related to the work it does for the contract. Such a contractual right to review the contractor's records means that the agency administratively maintains those records for the purpose of the UIPA, and thus the

public can access those contractor records (assuming no UIPA exception applies) through a UIPA request to the agency.

The S.D. 1 version of this bill was amended to leave in place that current structure under which a UIPA request for contractor records would be made to the contracting agency, rather than directly to the contractor, while adding to the UIPA a new requirement that all agency contracts “to perform a government function” must include a clause giving agencies express access rights to the contractor’s records, and expanding the current definition of a “government record” to include any records used in performing a government function, including records of “private person[s].” The bill also adds definitions of a “government function” and a “trade secret.” Finally, the bill adds a new subsection to section 92F-11, HRS, providing that the existing exceptions to disclosure applicable to government records do not allow an agency to deny a request for contractor records “used in the performance of a government function” on the basis that those records include a trade secret or “proprietary information.”

OIP believes that the expanded definition of a “government record” is unnecessary given the proposed new UIPA section requiring agency contracts to require the contractor to retain and provide the agency with access to records, since such records would already be considered “government records” administratively maintained by the contracting agency and thus potentially available through a UIPA request to the contracting agency. However, OIP would recommend that the provision be amended to limit it to only records relating to the work done pursuant the contract. Specifically, **OIP respectfully recommends that the amendment to the definition of “government record” be removed from the bill, and the proposed new UIPA section (at bill page 2, lines 4-9) be amended** to read:

Each contract with an agency to perform a government function shall expressly require the contractor to retain in accordance with the

retention schedule of the agency, and to provide the agency with access to, all records related to the contractor's performance of the government function.

With regard to the provision (starting on bill page 3, line 19) barring an agency from denying a request for records of a contractor's performance of a government function "on the basis of trade secret or other proprietary information," OIP notes that the definition of a government function proposed by this bill would include activities such as running a snack bar at a beach park or an airport gift shop, since it is not limited to activities an agency is required to do or that are traditionally the role of government, but instead includes anything an agency is authorized to do. Presumably an agency would not be contracting to do activities it was not authorized to do in the first place, so the definition would appear to cover any activity an agency contracts to have done. Thus, the provision would potentially require public disclosure of annual sales and profit information for airport store and restaurant lessees and authorized park vendors, reports to a government pension fund provided by contracted investment advisors, destination marketing plans created under contract for the Hawaii Tourism Authority, or similar materials.

OIP notes that the UIPA's frustration exception currently allows an agency to withhold confidential commercial or financial information when disclosure would frustrate a legitimate agency function, which generally requires establishing that the information is not just considered proprietary by a business but would in fact be likely to cause competitive harm if disclosed, and that its disclosure would frustrate the agency's ability to do its work. An agency can likewise withhold information that constitutes a trade secret, but that information would have to meet the definition of a trade secret as already set out in section 482B-2, HRS, which OIP has

applied when assessing such claims. That definition does not encompass the sort of information typically found in materials related to an agency's regulation of a business, or consideration of a permit application, or a government contractor's performance of a contract. Thus, **OIP respectfully suggests that the proposed amendment to section 92F-11, HRS, in bill section 4 is unnecessary and should be deleted** (from page 3, line 11, to page 4, line 14). **OIP further recommends deletion of the definition of a trade secret** at bill page 1, lines 17-18; it is unnecessary since OIP already looks to the existing definition of a trade secret as relevant in UIPA disputes.

Thank you for considering OIP's testimony.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
**DEPARTMENT OF CORRECTIONS  
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No. \_\_\_\_\_

## WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL 1255, SENATE DRAFT 1  
RELATING TO GOVERNMENT RECORDS.

by

Tommy Johnson, Director  
Department of Corrections and Rehabilitation

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

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 Corrections and Rehabilitation (DCR) opposes Senate Bill (SB) 1255, Senate Draft (SD) 1, which seeks to (1) clarify that government records subject to disclosure requirements under the Uniform Information Practices Act (UIPA) include information that is created, received, maintained, or used by private contractors in performance of a government function outsourcing contract; (2) establishes requirements for parties to government function outsourcing contracts; and (3) allows the Office of Information Practices to conduct inquiries regarding compliance by a private contractor and investigate possible violations."

In effect, what Senate Bill 1255, SD 1 does is it forces private contractors to disclose all information requested under the UIPA, even though the law allows for the withholding of information for various reasons. This bill does this because if a contractor denies a request for such information, and the Office of Information Practices (OIP) finds that the denial violated UIPA, its contract with the State would be terminated,

and subject to civil penalties of \$10,000 for each violation. As a result, this bill encourages individuals to submit multiple requests for information under UIPA, to obstruct or punish contractors, projects, or departments they object to or criticize, resulting in massive increases in workload for the agencies and OIP, and making it even harder for the State to attract bids for large projects.

SB 1255, SD 1 also states that a contractor cannot deny a request for government records on basis of trade secret, or other proprietary information, except as determined by OIP. These parts of the bill will further discourage private contractors from working with the State, especially those outside the State, as they will have to litigate whether their internal information, products or services constitute a trade secret or proprietary information in this State.

In addition, this bill appears to violate the right of government agencies and contractors to appeal OIP opinions, as stated in Hawai'i Revised Statutes section 92F-43. If the agency or contractor wins an appeal, and OIP's opinion or findings is reversed, under the language of this bill, its contract will still be terminated, and it will still be subject to civil penalties. Therefore, DCR opposes this measure based on the information presented above.

Thank you for the opportunity to present this testimony opposing SB 1255, SD 1.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



RYAN I. YAMANE  
DIRECTOR  
KA LUNA HO'OKELE

JOSEPH CAMPOS II  
DEPUTY DIRECTOR  
KA HOPE LUNA HO'OKELE

STATE OF HAWAII  
KA MOKU'ĀINA O HAWAI'I  
DEPARTMENT OF HUMAN SERVICES  
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TRISTA SPEER  
DEPUTY DIRECTOR  
KA HOPE LUNA HO'OKELE

February 19, 2025

TO: The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 1255 SD1 – RELATING TO GOVERNMENT RECORDS.**

Hearing: February 21, 2025, 10:20 a.m.  
Conference Room 016 & Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) respectfully opposes this measure and provides comments. This proposed measure would require a release of trade secrets and proprietary information, which would likely reduce the number of vendors interested in submitting competitive bids for necessary government work. Lack of vendors to submit bids would delay the implementation of important services and benefits. Also, if the measure passed, we would likely experience an increase in requests for information that includes trade secrets and proprietary information as we already receive high numbers of requests from technology firms for proposals responding to Requests for Proposals (RFP), scoring sheets, and evaluations.

**PURPOSE:** Amends the Uniform Information Practices Act to require each contract to perform a government function to expressly require the contractor to retain records in accordance with the retention schedule of the agency and provide the agency with access to all records subject to the Uniform Information Practices Act; define "government function" and "trade secret"; clarify that "government record" includes information that is created, received,

maintained, or used by a private person in performance of a government function contract; and prohibit agencies from denying a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information. Effective 1/1/2491. (SD1)

The Committee on Government Operations amended the measure by:

- (1) Deleting its contents and inserting language amending chapter 92F, Hawaii Revised Statutes, the Uniform Information Practices Act to:
  - (A) Require each contract to perform a government function to expressly require the contractor to retain records in accordance with the retention schedule of the agency and provide the agency with access to all records subject to the Uniform Information Practices Act;
  - (B) Define "government function" and "trade secret";
  - (C) Clarify that "government record" includes information that is created, received, maintained, or used by a private person in performance of a government function contract; and
  - (D) Prohibit agencies from denying a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information;
- (2) Inserting an effective date of January 1, 2491, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Thank you for the opportunity to provide comments on this measure.



**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I**  
**STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
BONNIE KAHAKUI, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
JUDICIARY

February 21, 2025; 10:20 AM

SENATE BILL 1255, SD1  
RELATING TO GOVERNMENT RECORDS

Chair Rhoads, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1255, SD1. The State Procurement Office (SPO) understands the bill's intent to ensure that records created, received, maintained, or used by private contractors performing governmental functions on behalf of public agencies are subject to the Uniform Information Practices Act (UIPA). The SPO provides comments on this bill.

Pursuant to Hawaii Revised Statutes (HRS) Chapter 103D, government purchasing entities must comply with **§103D-105, Public access to procurement information**, which states "Government records relating to procurement shall be available to the public as provided in chapter 92F. Part I of chapter 92 shall not apply to discussions, deliberations, or decisions required to be conducted or made confidentially under this chapter.

Furthermore, pursuant to HRS **§103D-101, Requirements of ethical public procurement**, all parties involved in the negotiation, performance, or administration of state contracts shall act in good faith. It would be unethical for the state to require contractors to disclose documents that are determined to be trade secrets, or confidential, which is information that is legally protected.

The proposed language in Section 4 of the bill would require that an agency shall not deny a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information except where specifically protected by law. The SPO comments that this causes unintended consequences, including discouraging private contractors from bidding on State contracts knowing that they would be forced to turn over internal information about products or services, which may include trade secrets or proprietary information. In addition, this bill appears to violate the right of government agencies and contractors to appeal Office of Information Practices (OIP) opinions, as stated in HRS

section 92F-43. If the agency or contractor wins an appeal and OIP's opinion or finding is reversed, under the language of this bill, its contract may still be terminated, and subject to civil penalties.

The SPO's final comment is that the bill creates ambiguity and confusion because it does not directly point to HRS §103D-105, Public access to procurement information and to HRS §482B-2 – Trade Secrets.

Thank you for the opportunity to submit testimony on this measure.

**LATE**



## DISABILITY AND COMMUNICATION ACCESS BOARD

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Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • (808) 204-2466 (VP)

February 21, 2025

### TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY

#### Senate Bill 1255 SD1– Relating to Government Records

The Disability and Communication Access Board (DCAB) provides comments on Senate Bill 1255 SD1 – Relating to Government Records. This bill would amend the Uniform Information Practices Act to require each contract to perform a government function to expressly require the contractor to retain records in accordance with the retention schedule of the agency and provide the agency with access to all records subject to the Uniform Information Practices Act; define "government function" and "trade secret"; clarify that "government record" includes information that is created, received, maintained, or used by a private person in performance of a government function contract; and prohibit agencies from denying a request for access to records of a contractor used in the performance of a government function on the basis of trade secret or other proprietary information. Effective 1/1/2491. (SD1)

To ensure equal access for people with disabilities, SB1255 SD1 should clarify that public records, including those produced by private contractors, must be provided in accessible formats. Signed documents and date stamps should not be excluded from accessibility requirements, as they are often graphics that must include alternate text for screen readers. The U.S. Department of Justice has issued a final rule on web accessibility standards, with a compliance date of April 24, 2026. It is essential to begin implementing accessibility measures now to ensure all digital public records, including those created by contractors, comply with these standards in a timely manner.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW  
Executive Director



Senate Committee on Government Operations

Friday, February 21, 2025, 10:20 AM Hearing in Conference Room 016 on  
SB 1255, SD1 Relating to Government Records

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoad, Vice Chair Gabbard, and Committee Members:

**The League of Women Voters of Hawaii supports SB 1255, SD1.**

Because UIPA allows public review of government records, it is appropriate to require that public contracts allow government access to contractor work products and records. We understand that the University of Hawaii (UH) entered into a controversial personnel search contract which deliberately prevented disclosure of contractor work products to the UH. Non-disclosure of contract work products to the UH also shielded contractor work products from public disclosure under UIPA. In effect this UH contract seems to have pioneered a new and abusive way for public agencies to frustrate public review and comment on the performance of government contractors.

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

**RE: Testimony in support of S.B. 1255 S.D. 1, Relating to Government Records**  
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 submit testimony in **support** of S.B. 1255 S.D. 1.

We commend the Legislature’s effort to close a loophole that frustrates the intent of the Uniform Information Practices Act (UIPA). The need for this bill was recently highlighted when the University of Hawai‘i contracted out its presidential search function to a third-party company and ostensibly relinquished – by agreement – its rights to “any candidate information.” *E.g., Stewart Yerton, UH Contract Specifically Hides President Search Details from the Public, Honolulu Civil Beat* (Dec. 6, 2024) (<https://www.civilbeat.org/2024/12/uh-contract-hides-president-search-details-from-public/>).

S.B. 1255 S.D. 1 closes this loophole by amending the definition of “government record” to mean any information, regardless of form, that is “maintained by an agency or used in the performance of a government function.” It also requires contracts for the performance of a government function to “expressly require the contractor to retain records in accordance with the retention schedule of the agency and provide the agency with access to all records subject to this chapter.”

As noted by the Department of the Attorney General in prior testimony on this bill, “records related to government-contracted services are already subject to the UIPA’s disclosure requirements imposed upon government agencies.” S.B. 1255 S.D. 1 thus represents a clarification, not expansion, of existing law. It curbs a troubling practice where an agency effectively contracts that law out of existence.

We respectfully recommend **deleting** the full sentence at page 3, lines 4 – 10. That language is already covered by the proposed definition of “government record,” which includes records “used in the performance of a government function.”



Senate Committee on Judiciary  
February 21, 2025  
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Last, we note that the bill description is partially inaccurate. The description provides that S.B. 1255 S.D. 1 “prohibit[s] agencies from denying a request for access to records of a contractor . . . on the basis of trade secret or other proprietary information[,]” but the bill goes on to provide, “except where specifically protected by law.” In other words, that information is still protected to the full extent of existing law.

Thank you again for the opportunity to testify in support of S.B. 1255 S.D. 1.

Feb. 21, 2025 10:20 a.m.  
Hawaii State Capitol  
Conference Room 016 and Videoconference

**To: Senate Committee on Judiciary**  
**Sen. Karl Rhoads, Chair**  
**Sen. Mike Gabbard, Vice-Chair**

**From: Grassroot Institute of Hawaii**  
**Ted Kefalas, Director of Strategic Campaigns**

RE: TESTIMONY IN SUPPORT OF SB1255 SD1 — RELATING TO GOVERNMENT RECORDS

Aloha Chair Rhoads, Vice-Chair Gabbard and other Committee members,

The Grassroot Institute of Hawaii would like to offer its **support** for [SB1255 SD1](#), which would amend the state Uniform Information Practices Act in order to ensure public access to records used, created, maintained or received by contractors performing government functions. .

We applaud this effort to eliminate the possibility of evading transparency requirements for records that are related to work carried out by private entities under a government contract.

The intent of sunshine laws is to provide public access to government decision-making and actions, especially when those actions involve the use of public funds. Allowing agencies to avoid disclosure or records related to contract work would frustrate this intent.

Furthermore, transparency laws help discourage government corruption and self-dealing — concerns that are often heightened in the case of government contracting.

We urge you to pass SB1255 SD1.

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii