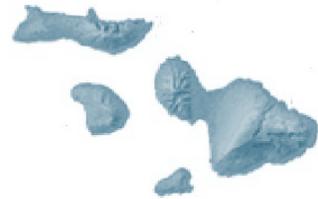


RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

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DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
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TESTIMONY ON
S.B. 371
RELATING TO PROPERTY DAMAGE
OF CRITICAL INFRASTRUCTURE FACILITIES

January 27, 2025

The Honorable Glenn Wakai
Chair
The Honorable Stanley Chang
Vice Chair
and Members of the Committee on Energy and Intergovernmental Affairs

The Honorable Brandon J.C. Elefante
Chair
The Honorable Glenn Wakai
Vice Chair
and Members of the Committee on Public Safety and Military Affairs

Chairs Wakai and Elefante, Vice Chairs Chang and Wakai, and Members of the Committees:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments **in support of S.B. 371, Relating to Property Damage of Critical Infrastructure Facilities**. This measure creates two new offenses relating to damage of critical infrastructure facilities, as well as adding a new means of committing manslaughter via damage to a critical infrastructure facility.

The Department of the Prosecuting Attorney, County of Maui supports this bill because of our community's increasing reliance on the electrical grid to provide power for essential services like respiratory devices, temperature control and emergency response. That increased reliance, in turn, makes us increasingly vulnerable to any criminal act that damages infrastructure. While existing laws may cover particular acts or provide particular penalties, as a whole they do not completely address a scenario where an offender intentionally damages

critical infrastructure. This bill addresses that issue, although we would note that it does not appear to address conduct that endangers other critical infrastructure facilities such as water systems, telecommunication networks, emergency services, transportation infrastructure like roads and airports, or financial systems. To that end, we also support any proposed amendments submitted by the Department of the Attorney General to improve the scope and clarity of this bill.

For these reasons, the Department of the Prosecuting Attorney, County of Maui **supports S.B. 371**. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries.

Thank you very much for the opportunity to provide testimony on this bill.



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

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 371, RELATING TO PROPERTY DAMAGE OF CRITICAL INFRASTRUCTURE FACILITIES.

BEFORE THE:

SENATE COMMITTEES ON ENERGY AND INTERGOVERNMENTAL AFFAIRS
AND ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Tuesday, January 28, 2025 **TIME:** 3:10 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tricia M. Nakamatsu, Deputy Attorney General

Chairs Wakai and Elefante and Members of the Committees:

The Department of the Attorney General (Department) provides the following comments, with suggested amendments.

The purpose of this bill is to create two new offenses: (1) Criminal Property Damage of a Critical Infrastructure Facility in the First Degree, a Class A felony, and (2) Criminal Property Damage of a Critical Infrastructure Facility in Second Degree, a Class B felony. Additionally, the bill defines relevant terms and classifies these offenses as manslaughter when they result in the death of another person.

The proposed offenses would complement existing statutes by establishing heightened penalties if a person damages a critical infrastructure facility and the damage results in widespread community effects. Although section 708-892, Hawaii Revised Statutes (HRS) (Computer Damage in the First Degree), addresses damage to the computers, computer systems, and computer networks that manage or control any critical infrastructure in Hawaii, it does not cover **direct** damages to critical infrastructure.

To streamline the offense of Criminal Property Damage of a Critical Infrastructure Facility in the First Degree, on page 1, line 4, to page 2, line 6, and make it more consistent with other offenses under chapter 708, HRS, the Department recommends

the following amendments (underscoring removed from new material in bill to Ramseyer additional changes):

- §708-A Criminal property damage of a critical infrastructure facility in the first degree.** (1) A person commits the offense of criminal property damage of a critical infrastructure facility in the first degree ~~[if, without the effective consent of the owner or operator of the critical infrastructure facility,]~~ if the person[:
- ~~(a) Intentionally]~~ intentionally or knowingly damages~~[-, destroys, vandalizes, or impairs the function of a]~~ any critical infrastructure ~~[facility, in]~~ facility without the owner or operator's consent and:
 - (a) Recklessly or negligently causes damage in an amount exceeding [\$100,000,] \$20,000 and [as a result of the conduct,] recklessly or negligently causes [an extended power outage;] substantial impairment of the critical infrastructure facility; or
 - ~~(b) [Intentionally or knowingly damages, destroys, vandalizes, or impairs the function of a critical infrastructure facility using]~~ Knowingly uses a firearm, drone, ~~[cyber-attack,]~~ or explosive weapon in the commission of the offense, and ~~[as a result of the conduct,]~~ recklessly or negligently causes [an extended power outage;] substantial impairment of the critical infrastructure facility.
- (2) Criminal property damage of a critical infrastructure facility in the first degree is a class A felony.

Without the Ramseyer markings, this would read as follows:

- §708-A Criminal property damage of a critical infrastructure facility in the first degree.** (1) A person commits the offense of criminal property damage of a critical infrastructure facility in the first degree if the person-intentionally or knowingly damages any critical infrastructure facility without the owner or operator's consent and:
- (a) Recklessly or negligently causes damage in an amount exceeding \$20,000 and recklessly or negligently causes substantial impairment of the critical infrastructure facility; or
 - (b) Knowingly uses a firearm, drone, or explosive weapon in the commission of the offense, and recklessly or negligently causes substantial impairment of the critical infrastructure facility.
- (2) Criminal property damage of a critical infrastructure facility in the first degree is a class A felony.

The suggested revisions above are based upon the following:

- Delete "destroys" and "vandalizes": These words are synonymous with the term "damages," and the term "damages" is used effectively throughout chapter 708, HRS.
- Negligent state of mind regarding extent of damages: Lowering the state of mind to reckless or negligent regarding the extent of the damages (i.e., exceeds certain dollar amount, or substantial impairment of the critical infrastructure facility) will make it less likely for offenders to avoid prosecution by asserting that they did not foresee the full impact of their actions.
 - Lower \$100,000 to \$20,000: This change aligns with section 708-820(1)(b), HRS (Criminal Property Damage in the First Degree), where damage exceeding \$20,000 is a Class B felony.
 - Expand "extended power outage" to "substantial impairment"; and redefine "critical infrastructure facility". The Department recommends deleting the terms "extended power outage," defined on page 4, lines 1-4, and "critical infrastructure facility," defined on page 3, lines 1-2 (part of this definition is missing from the pdf version of the bill on the Legislature's website); and further recommends defining "substantial impairment" and redefining "critical infrastructure facility," as provided below.
 - Delete "cyber attack": This type of offense appears to be covered under section 708-892, HRS (Computer Damage in the First Degree), which makes it a class A felony to intentionally cause or attempt to cause damage to a computer, computer system, or computer network that manages or controls any critical infrastructure, if the damage results in--or would have resulted in if completed--substantial impairment of the computer, computer system, or computer network, or the critical infrastructure managed thereby.¹

¹ See the Senate committee report, under the enacting legislation for section 708-892, HRS: "Your Committee finds that existing computer damage offenses only apply when a perpetrator uses one computer to damage another computer, such as by hacking or transmitting a computer virus. However, greater protections are needed for critical infrastructure computers, as damage to these computers jeopardize public health, safety, and security, *regardless of how the damage occurs*. This measure provides a deterrent against intentionally damaging critical infrastructure computers." S.Journal, 27th Leg., S.C.Rep. 2693-14 (Haw. 2014). (Emphasis added.)

In addition to these recommendations, the Department recommends that the bill add a third new section to part III of chapter 708, HRS, as follows:

§708-C Criminal property damage of a critical infrastructure facility; definitions of terms. For purposes of sections 708-A and 708-B:

"Critical infrastructure facility" has the same meaning as "critical infrastructure" in section 708-890.

"Substantial impairment" means impairment of a critical infrastructure facility that lasts for two hours or more or affects one thousand or more retail customers of the affected critical infrastructure facility.

Although the bill currently focuses on damage that results in electrical power outages, the definition of "critical infrastructure" under section 708-890, HRS, extends far beyond electrical power delivery systems. Because all of these systems are critical to public health, safety, and security, and the overall functioning of our society, the Department recommends covering all of these systems under the heightened protections afforded by this bill.

Because "critical infrastructure facility" covers such a wide variety of services, the Department suggests that both offenses be expanded to apply more generally to substantial impairment of any critical infrastructure facility. Although the term "substantial impairment" is not defined under section 708-892, HRS, nor anywhere in chapter 708, HRS, a modified version of the bill's definition of "extended power outage," from page 4, lines 1-4, could be used.

Finally, the Department recommends amending section 708-B (Criminal Property Damage of a Critical Infrastructure Facility in the Second Degree) on page 2, lines 7-17, similarly to the recommended language for section 708-A, as follows (underscoring removed from new material in bill, to Ramseyer additional changes):

§708-B Criminal property damage of a critical infrastructure facility in the second degree. (1) A person commits the offense of criminal property damage of a critical infrastructure facility in the second degree ~~[if, without the effective consent of the owner or operator of the critical infrastructure facility,]~~ if the person intentionally or knowingly [damages, destroys, vandalizes, or impairs the function of a] damages any critical infrastructure [facility, resulting in an extended power outage.] facility without the owner or operator's consent, and recklessly or

negligently causes substantial impairment to the critical infrastructure facility.

(2) Criminal property damage of a critical infrastructure facility in the second degree is a class B felony.

Regarding section 3, the Department suggests removing that section of the bill. Even without any amendments to section 707-702, HRS, prosecutors could charge Manslaughter under the existing language, in addition to the offense of Criminal Property Damage of a Critical Infrastructure Facility in the first or second degree. This helps to cover the various levels of culpability; if the jury finds that prosecutors did not prove the intentional or knowing state of mind, to convict a defendant for Criminal Property Damage of a Critical Infrastructure Facility in the first or second degree, the jury could still convict on the reckless state of mind for Manslaughter.

Thank you for the opportunity to testify on this matter.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE COMMITTEES ON
ENERGY AND INTERGOVERNMENTAL AFFAIRS
&
PUBLIC SAFETY AND MILITARY AFFAIRS**

**SB 371
Relating to Property Damage of Critical Infrastructure Facilities**

Tuesday, January 28, 2025
3:10 PM
State Capitol, Conference Room 016

Jonathon Grems
Security Manager
Hawaiian Electric

Dear Chairs Wakai and Elefante, Vice Chair Chang, and Members of the Committees,

My name is Jonathon Grems, and I am testifying on behalf of Hawaiian Electric **in strong support** of SB 371, Relating to Property Damage of Critical Infrastructure Facilities.

This legislation represents a proactive step in addressing increasing threats to our state's electrical grid. SB 371 appropriately acknowledges the gravity of sabotage or deliberate attacks on critical infrastructure which could have far-reaching consequences, impacting public safety, community well-being, and our organization's ability to deliver uninterrupted services. By enacting this bill, Hawai'i will bolster the protection of critical infrastructure and deter malicious actors from damaging our systems. Additionally, SB 371 demonstrates the state's dedication to safeguarding essential infrastructure and prioritizing the safety and security of its residents.

Accordingly, Hawaiian Electric strongly supports SB 371 and urge the Committees to pass this bill. Thank you for this opportunity to testify.

SB-371

Submitted on: 1/25/2025 12:49:57 PM

Testimony for EIG on 1/28/2025 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Support	Written Testimony Only

Comments:

Aloha Committee Members,

Ensuring the security of our critical infrastructure is a non-negotiable task of government. I believe this legislation advances that goal in protecting our critical infrastructure and appropriately punishes those who damage it. I strongly urge this Committee to pass this legislation!