



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1035, H.D. 1, S.D. 1, RELATING TO HOMELAND SECURITY.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Friday, March 24, 2023

**TIME:** 9:40 a.m.

**LOCATION:** State Capitol, Room 016

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

(For more information, contact Trista N. Speer,  
Deputy Attorney General, at (808) 587-2978)

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Chair Rhoads and Members of the Committee:

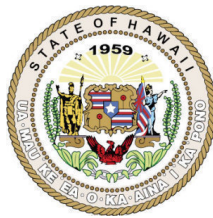
The Department of the Attorney General supports this bill in its current form and provides the following comments.

The purpose of this bill is to establish protections for critical infrastructure information (CII) that is received or maintained by the Office of Homeland Security, on behalf of the State of Hawai'i, for use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other information purposes (section 1 on page 1, lines 6-11). The bill amends chapter 128A, Hawaii Revised Statutes (HRS), to protect CII from public disclosure, notwithstanding section 92F-11, HRS, or any other law to the contrary. Proper protection of CII and its confidentiality is essential to enhance the sharing of this information between infrastructure owners and operators and the state government and to ensure the protection, security, and resiliency of the State.

The amendment to the definition of CII, made by the Senate Committee on Public Safety and Intergovernmental and Military Affairs in section 3, page 2, lines 14-17, of the Senate Draft 1, which reverts back to the definition of CII as proposed in the original draft of the bill, ensures the stated purpose of the bill is met, and matches the definition of CII in the federal Critical Infrastructure Information Act of 2002. See 6 U.S.C.A. § 671(3) (citing 6 U.S.C.A. § 650).

Thank you for the opportunity to provide these comments.

JOSH GREEN  
GOVERNOR



JORDAN LOWE  
DIRECTOR

MICHAEL S. VINCENT  
Deputy Director  
Administration

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII  
**DEPARTMENT OF LAW ENFORCEMENT**  
*Ka 'Oihana Ho'opalekana Lehulehu*

1177 Alakea Street  
Honolulu, Hawaii 96813  
(808) 587-2562

**Vacant**  
Deputy Director  
Law Enforcement

No.

TESTIMONY ON HOUSE BILL 1035, HD 1, SD1

RELATING TO HOMELAND SECURITY

Before the Senate Committee on Judiciary

Friday, March 24, 2023; 9:40 a.m.

State Capitol Conference Room 016, via Videoconference

**WRITTEN TESTIMONY ONLY**

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

The Department of Law Enforcement (DLE) supports House Bill 1035, HD 1, SD1.

This 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.

For the Office of Homeland Security and the Hawaii State Fusion Center to work closely with the private sector involved in the ownership, operation, or management of critical infrastructure, it must be able to assure its private partners that proprietary information relating to the security of critical infrastructure is protected from disclosure to the public. Protection of such information helps the Office of Homeland Security to establish and develop relationships and access to information necessary for it to help protect the public and critical infrastructure relied upon by all members of our community.

The amendment found in the SD1 version of this bill is necessary to make it clear that very limited and specific information that generally not available to the public is protected from disclosure because the amendment in the HD 1 version essentially treated Critical Infrastructure Information the same as any other government record for

purposes of the Uniform Information Practices Act. The only reason this Critical Infrastructure Information would be available is that it was somehow voluntarily given to the Office of Homeland Security or the Hawaii State Fusion Center. If the HD1 version of the bill were allowed to pass, we anticipate that owners and operators of critical infrastructure in Hawai'i will be reluctant to share proprietary information relating to the security thereby placing our communities at risk.

The DLE strongly recommends that the Critical Infrastructure Information definition language of the current version of this bill remain to make it clear that Critical Infrastructure Information provided voluntarily to the Office of Homeland Security, or the Hawaii State Fusion Center is protected from disclosure to the public.

Thank you for the opportunity to testify in support of this bill.

JOSH GREEN  
GOVERNOR  
KE KIA'ĀINA



**KENNETH S. HARA**  
MAJOR GENERAL  
ADJUTANT GENERAL  
KA 'AKUKANA KENELALA

**STEPHEN F. LOGAN**  
BRIGADIER GENERAL  
DEPUTY ADJUTANT GENERAL  
KA HOPE 'AKUKANA KENELALA

STATE OF HAWAII  
**DEPARTMENT OF DEFENSE**  
**KA 'OIHANA PILI KAUA**  
OFFICE OF THE ADJUTANT GENERAL  
3949 DIAMOND HEAD ROAD  
HONOLULU, HAWAII 96816-4495

STATE OF HAWAII  
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 1035  
RELATING TO HOMELAND SECURITY  
BEFORE THE SENATE COMMITTEE ON JUDICIARY

BY

MAJOR GENERAL KENNETH S. HARA  
ADJUTANT GENERAL  
DIRECTOR OF HAWAII EMERGENCY MANAGEMENT AGENCY  
AND HOMELAND SECURITY ADVISOR

MARCH 24, 2023

Aloha Chair Rhoads, Vice-Chair Gabbard, and members of the committee:

I am Major General Kenneth Hara, Adjutant General, Director of Hawaii Emergency Management Agency, and Homeland Security Advisor, State of Hawaii, Department of Defense.

The Department of Defense (DEF) provides written testimony in **SUPPORT** of HB1035 HD1-SD1.

This measure would establish protections for critical infrastructure information that is received or maintained by the Hawaii Office of Homeland Security (OHS). 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 Hawaii. Providing homeland security partners additional reassurance that their shared proprietary information will be protected.

The holding and protection of this information is crucial for OHS in supporting the security and resilience of the State of Hawaii.

Thank you for the opportunity to provide testimony in **SUPPORT** of HB1035.

MG Kenneth S. Hara, [Kenneth.s.hara@hawaii.gov](mailto:Kenneth.s.hara@hawaii.gov); 808-672-1001  
Frank Pace, Administrator: [frank.j.pace@hawaii.gov](mailto:frank.j.pace@hawaii.gov), 808-369-3570

**JOSH GREEN**  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII  
**DEPARTMENT OF DEFENSE**  
**KA 'OIHANA PILI KAUA**  
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ADJUTANT GENERAL  
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BRIGADIER GENERAL  
DEPUTY ADJUTANT GENERAL  
KA HOPE 'AKUKANA KENELALA

STATE OF HAWAII  
DEPARTMENT OF DEFENSE  
HAWAII OFFICE OF HOMELAND SECURITY

TESTIMONY ON HOUSE BILL 1035  
RELATING TO HOMELAND SECURITY  
BEFORE THE SENATE COMMITTEE ON JUDICIARY

BY

FRANK J. PACE  
ADMINISTRATOR  
HAWAII OFFICE OF HOMELAND SECURITY

MARCH 24, 2023

Aloha Chair Rhoads, Vice-Chair Gabbard, and members of the committee:

I am Frank Pace, Administrator for the Hawaii Office of Homeland Security.

Thank you for the opportunity to submit testimony in **SUPPORT** of HB1035 HD1-SD1.

The purpose of this bill is to establish protections for critical infrastructure information that is received or maintained by the Office of Homeland Security (OHS) – on behalf of the State of Hawaii - for use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purposes.

To succeed in the legislated responsibilities of the State regarding protection of critical infrastructure under chapter 128A, Hawaii Revised Statutes, it is necessary to establish state-based protections for critical infrastructure information.

The protections offered by this bill will enhance sharing of critical infrastructure information (CII) between infrastructure owners and operators and the state government. Critical infrastructure information protected under the bill is crucial for OHS for the direct support of the security and resilience of the State of Hawaii. The protections will provide homeland security partners

reassurance that their proprietary information provided to the State of Hawaii government will be protected.

Voluntary collaboration is crucial in providing for critical infrastructure security. Up-front protections in statute for non-disclosure of specific security-related information underpins the homeland security mission and our understanding and identification of:

- Security risks and threats from physical and cyber-attack (like the types and characteristics of physical security or technology systems);
- Vulnerabilities and mitigation strategies during special events (including actions taken to manage potential threats at an event venue);
- Overall critical infrastructure security (such as understanding the nature of previous incidents to identify and ultimately close vulnerability gaps).

If passed, this measure would establish protections for the critical infrastructure information that is received and/or maintained by OHS on par with the protections that our federal counterpart, the Department of Homeland Security, can afford to those entities under the Critical Infrastructure Information Act of 2002. With ever-increasing threats across all the critical infrastructure sectors nationwide, the ability to offer commiserate protections to those entities within the state is paramount. The protections give the Office of Homeland Security added ability to truly partner with the critical infrastructure entities within the state crucial to the security and resilience of the State of Hawaii.

Thank you for the opportunity to provide testimony in SUPPORT of HB1035.

Frank Pace, Administrator: [frank.j.pace@hawaii.gov](mailto:frank.j.pace@hawaii.gov), 808-369-3570

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 24, 2023, 9:40 a.m.  
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 1035, H.D. 1, S.D. 1  
Relating to Homeland Security

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Thank you for the opportunity to submit testimony on this bill, which would create a confidentiality requirement for “critical infrastructure information” held by the Office of Homeland Security. “Critical infrastructure information” would be defined to include only “information not customarily in the public domain[.]” The Office of Information Practices (OIP) offers comments on the bill.

The definition of “critical infrastructure information” made confidential by this bill specifically excludes information in the “public domain.” Since **the term “public domain” may mean different things to different people and thus is vague, OIP recommended the original bill refer instead to the UIPA, which sets the legal standard** for what government records are in the public domain. That change was made in the H.D. 1 version of the bill. However, the S.D. 1 version restored the original version, in which the confidentiality provision excludes “public domain” information without referencing a specific standard for what is in the public domain.

Whether the confidentiality provision excludes “public domain” information or information that is public under the UIPA, the bill’s apparent effect in either version is not to take information that is currently public and make it

confidential, but rather to ensure **confidential treatment for information that is not public**. Thus, under the original or HD 1 of this bill, such information must be held confidential, can only be shared in limited circumstances, and cannot be made public.

The apparent focus of this bill is protection of critical infrastructure information provided to OHS by third parties, such as a private company or another state or federal government. The UIPA would protect the sort of information voluntarily provided to OHS by third parties that OHS described its previous testimony. But because the confidentiality provision created by this bill applies more broadly to information “received or maintained” by OHS, it **would also make confidential whatever records OHS itself creates and maintains, and not just information provided by a third party**. OIP had attempted to close this loophole and discussed proposals with the OHS and its deputy AG that would have limited the bill’s applicability to information provided to OHS by a third party, but no agreement on such language was reached.

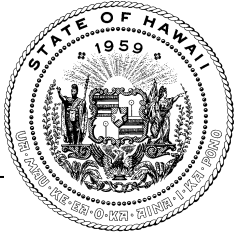
OIP is concerned that the term “public domain” is too vague, particularly since the earlier legislative history of this bill suggests that OHS believes that information that is public under the UIPA is not necessarily in the “public domain.” This has the potential to pose a conundrum for OIP or a court in an appeal involving access to records created and maintained by OHS itself. Is there supposed to be a distinction between information in a government record that is in the “public domain” and information in a government record that is public under the UIPA’s usual standards? If there is a difference, **OIP asks this Committee to please provide guidance in the Committee Report or the bill itself as to what sort of OHS records or information that are currently public record under the UIPA should be deemed to not be in the “public**



Senate Committee on Judiciary  
March 24, 2023  
Page 3 of 3

**domain” under this bill. Alternatively, what currently public records does this bill intend to make confidential?**

Thank you for considering OIP’s testimony.



# HAWAII STATE ENERGY OFFICE STATE OF HAWAII

JOSH GREEN, M.D.  
GOVERNOR

MARK B. GLICK  
CHIEF ENERGY OFFICER

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813  
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Testimony of  
**MARK B. GLICK, Chief Energy Officer**

before the  
**SENATE COMMITTEE ON JUDICIARY**

Friday, March 24, 2023  
9:40 AM  
State Capitol, Conference Room 016 and Videoconference

In SUPPORT of  
**HB 1035, HD1, SD1**

**RELATING TO HOMELAND SECURITY.**

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee, the Hawai'i State Energy Office (HSEO) supports HB 1035, HD1, SD1, which establishes protections for critical infrastructure information that is received or maintained by the Office of Homeland Security (OHS) for use regarding the security of critical infrastructure.

HSEO collaborates with OHS on planning activities related to the protection and resilience of critical energy infrastructure that often requires sensitive information and data from critical infrastructure owners and operators. This measure would offer strong reassurance that proprietary information and data shared with OHS will have protection by Hawaii law. Further, it is also important that confidentiality will be maintained and extended as OHS works closely with agencies such as HSEO.

Thank you for the opportunity to testify.

## BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843  
www.boardofwatersupply.com



March 24, 2023

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair  
KAPUA SPROAT, Vice Chair  
MAX J. SWORD  
NA'ALEHU ANTHONY  
JONATHAN KANESHIRO

DAWN B. SZEWCZYK, P.E., Ex-Officio  
EDWIN H. SNIFFEN, Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ERWIN M. KAWATA  
Deputy Manager

The Honorable Karl Rhoads, Chair  
and Members  
Senate Committee on Judiciary  
Hawaii State Capitol, Room 016  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

**SUBJECT: House Bill 1035, HD1, SD1: Relating to Homeland Security**

The Honolulu Board of Water Supply (BWS) supports House Bill (HB) 1035, House Draft (HD) 1, Senate Draft (SD) 1, as it restores the definition of "critical infrastructure information" to mean information not customarily in the public domain and related to the security of critical infrastructure or protected systems.

This purpose of this bill is to establish protections for critical infrastructure information (CII) that is received or maintained by the Hawai'i Office of Homeland Security (OHS) for use regarding the security of critical infrastructure. 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 (such as the Honolulu Board of Water Supply) and the State of Hawai'i, with additional reassurance that shared proprietary information will be protected.

The SD1 version of the bill would establish protections for the critical infrastructure information that is received and/or maintained by OHS on par with the protections afforded by the federal Department of Homeland Security, under the Critical Infrastructure Information Act of 2002. These protections are crucial to the security and resilience of the State of Hawaii as it will enable the Office of Homeland Security to truly partner with the critical infrastructure entities within the state.

Thank you for the opportunity to provide testimony in support of HB1035, HD1, SD1.

Very truly yours,

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer



**Hawaiian  
Electric**

**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE**

**HB 1035, HD 1, SD 1**

**Relating to Homeland Security**

March 24, 2023

9:40 am, Agenda Item #5

State Capitol, Conference Room 016

Lisa Dangelmaier

Director, System Operations (Hawaii-Maui)

Hawaiian Electric

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

I am testifying on behalf of Hawaiian Electric in support of HB 1035 HD 1, SD 1.

If enacted, this bill would provide assurances that information about our critical infrastructure shared during emergency events will be kept confidential. This would be useful when providing transmission system diagrams for emergency situations, when Hawaiian Electric is involved in discussing potential community impacts. For example, Hawaiian Electric shared critical infrastructure information with government entities when we were involved in considering the potential impact on the electric system associated with the recent lava flow on the Big Island on the electric system. This type of shared information should remain confidential.

Accordingly, Hawaiian Electric supports H.B. No. 1035 HD 1, SD 1. Thank you for this opportunity to testify.

**HB-1035-SD-1**

Submitted on: 3/23/2023 6:52:31 PM

Testimony for JDC on 3/24/2023 9:40:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose HB1035 HD1 SD1. No to the Homeland Security Fusion Center; no to militarization of police forces; no to the police state.