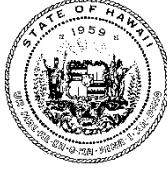


JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



BONNIE KAHAKUI
ADMINISTRATOR
DAYNA OMIYA
ASSISTANT ADMINISTRATOR

**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
GOVERNMENT OPERATIONS
FEBRUARY 3, 2026, 3:00 PM**

**SENATE BILL 2312
RELATING TO GOVERNMENT CONTRACTS**

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2312. The State Procurement Office (SPO) acknowledges the intent of this bill to ensure records from outsourced governmental functions continue to promote transparency, oversight, and public access. The SPO respectfully offers the following comments.

Chapter 92F, Hawaii Revised Statutes (HRS), the Uniformed Information Practices Act (UIPA), establishes the governance of public records, including their accessibility, maintenance, and privacy protections. This Act promotes transparency, accountability, and public access to government records while maintaining protection of personal privacy. The SPO acknowledges the intent to enhance public trust; however, Senate Bill 2312 does not explicitly address the privacy of proprietary or confidential information. Records related to government functions will be considered government records under UIPA. Furthermore, existing exemptions for trade secrets and confidential commercial information should remain applicable.

To ensure compliance with UIPA, implementation of clear procedures is necessary to identify, label, and protect proprietary or confidential information in records created, received, or used during the performance of outsourced governmental functions. Implications include additional administrative resources to ensure UIPA compliance for outsourced functions and potential disclosure liability for contractors or agencies that fail to protect sensitive information.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

**ON THE FOLLOWING MEASURE:
S.B. NO. 2312, RELATING TO GOVERNMENT CONTRACTS.**

**BEFORE THE:
SENATE COMMITTEE ON GOVERNMENT OPERATIONS**

DATE: Tuesday, February 3, 2026 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225

TESTIFER(S): Anne E. Lopez, Attorney General, or
Jung Min (Charles) Lee, Deputy Attorney General

Chair McKelvey and Members of the Committee:

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

This bill would require government services contracts to include mandatory provisions obligating contractors performing a "government function" to retain records created, received, maintained, or used in contract performance in accordance with the contracting agency's records retention schedule, and to provide the agency access to those records for potential disclosure under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (UIPA). The bill also defines "government function" broadly as any service, program, or activity an agency is authorized or required by law to perform.

The Department is concerned that these requirements are overly burdensome and will discourage contractors from bidding on state projects, thereby reducing competition and increasing costs to the State. In particular, subsection (a)(1) of the new section to be added to chapter 92F (page 2, lines 7-9) requires private vendors to adopt rigid, state-mandated retention and destruction timelines regardless of existing records management systems or industry practices. Contractors may be unwilling to assume these compliance obligations, and those that do bid may increase prices to account for the additional administrative burden, legal risk, and technical resources needed to implement and monitor compliance.

Testimony of the Department of the Attorney General

Thirty-Third Legislature, 2026

Page 2 of 2

The bill further provides that records retained by contractors "shall be deemed government records" for purposes of chapter 92F. This provision raises significant practical and legal concerns for agencies, including increased disputes over whether particular records are subject to disclosure, whether responsive records exist, and whether records have been properly retained. It would also place agencies in the position of responding to UIPA requests and defending the record-keeping practices of private contractors—entities over which the State does not exercise the same level of control as it does over agency personnel and internal systems.

Additionally, the Department is concerned that the UIPA's statutory response deadlines would continue to apply even though agencies would first need to obtain records from contractors and then review, redact, and segregate them as necessary before disclosure. The ten working-day response deadline will often be insufficient where contractor records are voluminous or where contractors delay in providing requested records. As a result, the State may be exposed to UIPA litigation and potential liability for attorneys' fees based on factors outside agencies' direct control.

Finally, the Department believes the bill is unnecessary because records related to government-contracted services are already subject to UIPA disclosure requirements to the extent they are administratively maintained by the agency, including situations in which the agency has contractual access rights to contractor records.

For these reasons, the Department respectfully requests that this Committee hold this bill.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII

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TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Government Operations

From: Carlotta Amerino, Director

Date: February 3, 2026, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 2312
Relating to Government Contracts

Thank you for the opportunity to submit testimony on this bill, which would add a new section to chapter 92F, HRS, the Uniform Information Practices Act (UIPA), requiring (via a mandatory contract provision) every government contractor performing a government function to retain related records and make them accessible to the agency on request, including for the purpose of the UIPA. The Office of Information Practices (OIP) offers **comments** on this proposal.

The UIPA applies not only to records in an agency's direct possession but also to records administratively maintained by the agency, and OIP has long interpreted that to include government contractor records that the agency has a contractual right to access. This bill would make such a contractual right of access a standard feature of government contracts for performance of a government function, and thus promote the public's ability to request records relating to government work even when that work is actually performed by a contractor. OIP therefore considers this bill generally consistent with the UIPA's intent and current provisions.

OIP is concerned, though, that use of the term “government function” in this provision will have unintended consequences on one of the UIPA’s exceptions to disclosure. Section 92F-13(3), HRS, commonly known as the “frustration exception,” allows an agency to withhold records when disclosure would frustrate a legitimate government function. This bill proposes a new definition of “government function” that is limited to things an agency is “authorized or required by law to perform.” In other words, a government function would be limited to programs, services, or activities that are specifically required or authorized by statute, constitution, or other law.

That limitation is appropriate for this bill’s proposal to ensure that government contractors’ records of performing such activities are available under the UIPA. The problem is that since the frustration exception uses the same term, the definition would apply with equal force to the existing frustration exception and could significantly narrow it. For instance, OIP has in the past recognized as a “government function” an agency’s interest in prudently managing public money, or in conducting an internal investigation without interference, or in maintaining a fair marketplace by preventing substantial competitive harm to contractors or regulated businesses through disclosure of their confidential commercial and financial information. These sorts of functions may or may not be reflected in an agency’s specific statutory duties and authorizations, and thus adoption of the proposed definition of a “government function” would throw into doubt the extent to which agencies could withhold records of an ongoing investigation, or detailed financial and commercial information of regulated businesses, or other types of information that would currently fall within the frustration exception.

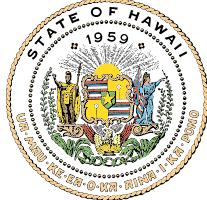
OIP therefore recommends that this Committee **replace the term “government function” in the proposed new section and new definition**

with “**agency function**,” and note in the Committee Report that “government function” and “agency function” are not intended to be synonymous terms. Specifically, **“agency function” should replace “government function” on bill page 2, lines 5 and 18.**

Thank you for considering OIP’s testimony.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



KALBERT K. YOUNG
EXECUTIVE DIRECTOR

GAIL STROHL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

**TESTIMONY BY KALBERT YOUNG
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
ON
SENATE BILL NO. 2312**

**February 3, 2026
3:00 PM
Conference Room 225 and VIA Videoconference**

RELATING TO GOVERNMENT CONTRACTS.

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee,

While the Board of Trustees (BOT) has not had a chance to review the bill, the Employees' Retirement System (ERS) appreciates the intent of SB 2312 and is thankful for the opportunity to offer comments regarding this measure.

SB 2312 proposes to amend chapter 92F, Hawaii Revised Statutes (HRS) by adding the requirement that contractors performing the function of a government agency be subject to the same records retention and information disclosure requirements as the agency under the Uniform Information Protection Act (UIPA).

Should this bill progress, we respectfully urge some considerations to keep in mind. The ERS is a complex system managing multiple systems to invest, account for, and disburse billions in income and benefits. As such, engagement with specialized and expert contractors is both necessary and valuable.



**Employees' Retirement System
of the State of Hawaii**

City Financial Tower • 201 Merchant Street, Suite 1400 • Honolulu, Hawaii 96813-2980
Telephone (808) 586-1735 • Fax (808) 586-1677 • <http://ers.ehawaii.gov>

Confidentiality of proprietary information and processes is crucial to both attract and retain the services of partner organizations and maintain competitive market positions. This was recognized by the Legislature in the passage of Act 71 in 2021 which codified rules to maintain the confidentiality of information related to alternative investments of the system which are actively managed by investment partners. We respectfully recommend that this need for certain specific exemptions continue to be recognized so that the system can carry out its fiduciary duty to protect member interest while maintaining transparency through publishing non-confidential aggregate data.

Thank you for the opportunity to provide comments on SB 2312.

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 HAWAII
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

February 2, 2026

TO: The Honorable Senator Angus L.K. McKelvey, Chair
Senate Committee on Government Operations

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 2312 – RELATING TO GOVERNMENT CONTRACTS**

Hearing: February 3, 2026, 3:00 p.m.
Conference Room 225 & Via videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services provides comments. Requiring government-contracted providers to retain all records related to their performance of the government contract and subjecting contractors to the requirements of the Uniform Information Practices Act (UIPA) would likely require extensive increases in general fund appropriations to include these added responsibilities in the scope of any contract and thereby increase the cost of services across the board.

DHS contracts primarily include services for individuals, such as health care coverage for nearly a third of Hawaii's population, and are subject to other federal and state laws that prohibit disclosure except as permitted, as well as sections 92F-13, -14, Hawaii Revised Statutes. DHS expresses concern that re-identifying capabilities are becoming easier to do by leveraging demographic data enabled by large data models and artificial intelligence.

The Department would require additional human resources to prepare for and respond to UIPA requests, which are expected to increase in volume and complexity if this bill becomes law.

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



Senate Committee on Government Operations

Tuesday, February 3, 2026, 3 PM Hearing in Conference Room 225 on
SB 2312, Relating to Government Records

TESTIMONY

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

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii supports the intent of SB 2312. However, we are uncertain whether the bill needs to be amended so that it does not require inappropriate disclosure of contractor “trade secrets”.

A couple years ago the University of Hawaii (UH) entered into a controversial personnel search contract which deliberately prevented normal disclosure of contractor work products to the UH. Non-disclosure of contractor work products to the UH also shielded contractor work products from public disclosure under UIPA. In effect this UH contract pioneered a new and abusive way for public agencies to frustrate public review and comment on the performance of government contractors.



Senate Committee on Government Operations
Honorable Angus L.K. McKelvey, Chair
Honorable Mike Gabbard, Vice Chair

RE: Testimony in Support of S.B. 2312, Relating to Government Contracts
Hearing: February 3, 2026 at 3:00 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 submit testimony in **strong support** of S.B. 2312 and **recommending a clarifying amendment**.

The Uniform Information Practices Act (UIPA) is a critical tool for ensuring an open and transparent government. This bill addresses a loophole in the UIPA, where an agency contracts away its right to obtain records related to a private company's performance of a government function.

As a notable illustration, the University of Hawai`i Board of Regents outsourced its presidential search function and agreed to relinquish its rights to "any candidate information." 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/>); accord Sen. Stand. Comm. Rep. No. 321 (2025) ("Your Committee finds that outsourcing contracts that hire contractors to perform government functions often result in the public losing access to documents that would have otherwise been available for inspection as government records under the [UIPA]."). Such action plainly violates the intent of the UIPA to require "the discussions, deliberations, decisions, and action of government" to be "conducted as openly as possible." HRS § 92F-2.

S.B. 2312 ensures that the public's right to know is not be diminished when agency functions are outsourced to private companies. It closes the loophole by affirmatively establishing that contracts for the performance of an agency function require the contractor to retain and provide the agency with access to records related to performance under the contract. It also addresses concerns raised in response to a similar measure introduced last session—S.B. 1255 (2025)—regarding existing protection for trade secrets. Nothing in this proposal limits or dilutes the disclosure exemptions under HRS § 92F-13, including the protections for trade secrets.



Senate Committee on Government Operations
February 3, 2026
Page 2

In consultation with the Office of Information Practices, we respectfully recommend **replacing** “government function” **with** “agency function” at page 1, lines 5, 9, & 14; and page 2, lines 5 & 18 to avoid potential confusion with the existing “frustration of a legitimate government function” exemption under HRS § 92F-13(3).

Thank you again for the opportunity to testify in strong support of S.B. 2312.



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

Februar 1, 2026

The Honorable Sen. Angus McKelvey , Chair
The Honorable Sen. Mike Gabbard, Vice Chair
Senate Committee on Judiciary

From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com publisher@allhawaiinews.com 808.781.7945

In SUPPORT of SB 2312 RELATING TO GOVERNMENT CONTRACTS

All Hawaii News, a state government and political news, commentary and aggregate blog covering Hawaii since 2008, supports SB 2312, clarifying that records created, received, maintained or used by private contractors performing government functions on behalf of public agencies shall be subject to the Uniform Information Practices Act.

Contractors performing government functions using taxpayer money should be subject to the same laws and rules as government agencies themselves. The public has the right to know certain details of agency research and actions, whether performed by government agencies themselves or contractors they have retained.

Transparency and accountability should always be the default where the public's money and government powers are at issue. There are plenty of UIPA exceptions for the areas of concern.

This is a good-government bill that should be supported. I am grateful to the bill's introducers and to the committee for hearing this measure.

Mahalo nui for considering SB 2312

Feb. 3, 2026, 3 p.m.
Hawaii State Capitol
Conference Room 225 and Videoconference

To: Senate Committee on Government Operations

Sen. Angus L.K. McKelvey, Chair
Sen. Mike Gabbard, Vice-Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: TESTIMONY IN SUPPORT OF SB2312 — RELATING TO GOVERNMENT CONTRACTS

Aloha chair, vice-chair and other committee members,

The Grassroot Institute of Hawaii would like to offer its **support** for [SB2312](#), which would clarify state law regarding government contracting. It states that any records created, received, maintained or used by contractors performing government functions on behalf of public agencies shall be subject to the Uniform Information Practices Act.

We applaud this effort to eliminate a loophole that could allow an agency to evade 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 of 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.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

SB-2312

Submitted on: 2/1/2026 10:56:57 AM
Testimony for GVO on 2/3/2026 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sean Taketa McLaughlin	Individual	Support	Written Testimony Only

Comments:

Maximum transparency is essential for an effective democracy.

SB-2312

Submitted on: 2/2/2026 1:58:15 PM
Testimony for GVO on 2/3/2026 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kaleo K	Individual	Support	Written Testimony Only

Comments:

Aloha Chair and Members of the Committee,

I am writing in **strong support** of SB2312. Transparency and accountability are essential to maintaining public trust, and this measure closes a gap that could allow public agencies to avoid disclosure obligations by outsourcing work.

Ensuring that records held by contractors remain accessible supports good governance, strengthens public confidence and trust, and allows the community to stay informed about the services and programs that affect them. I respectfully urge the Committee to pass SB2312.

Mahalo for your consideration.