



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

RE: Testimony in Support of S.B. 2312 S.D. 1, Relating to Government Contracts
Hearing: February 27, 2026 at 10:30 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 Hawai'i nonprofit organization that promotes open government. Thank you for the opportunity to submit testimony in **strong support** of S.B. 2312 S.D.1, with a **recommended amendment to delete the exemption at page 2, lines 15-16.**

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 gives away its right to obtain records related to a contractor's performance on an agency contract. This only happens when the agency affirmatively modifies the existing standard terms and conditions for all government contracts. There is no good reason to do that.

The loophole is no mere theory. It was prominently used by the UH Board of Regents in 2024 when it outsourced its presidential search function to a private contractor. *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/>); 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 blatant circumvention violates the intent of the UIPA to require "the discussions, deliberations, decisions, and action of government agencies" to be "conducted as openly as possible." HRS § 92F-2.

S.B. 2312 S.D. 1 ensures agencies will preserve their right to access contractor records concerning the performance of agency functions. If the agency has access to the records, that protects the public's right of access – subject to the normal UIPA exemptions. The public's right to know should not be diminished when agency functions are outsourced to private companies. Taking this action now is important as our state and county governments increasingly rely on private contractors to perform important government functions.



It is baffling that agencies would forfeit their right to review and audit contractor records. Even aside from public access, if agencies give up that right, it undermines the contracting agency's ability to enforce the contract. Allowing agencies to waive their own right of access to contractor records opens agencies to potential fraud, waste, and abuse in government contracting.

Despite our good faith efforts, we fail to understand the Attorney General's continued opposition to this bill. In effect, this proposal simply requires that agencies not waive a standard term and condition of government contracting – the agency's right to review contractor records.

The concerns raised by the Employees' Retirement System (ERS) and others misunderstand the bill. This proposal does not change existing protections for contractor records. If records are protected from disclosure today, those records will remain protected if this measure is enacted. The bill does not expand UIPA's reach or diminish existing exemptions. Thus, we respectfully ask the Committee to **delete the ERS exemption at page 2, lines 15-16**. It is unnecessary and overbroad and may be read to make contractor records of ERS *less accessible than existing law*.

Thank you again for the opportunity to testify in strong support of S.B. 2312 S.D. 1.