

JAN 27 1998

S.B. NO. 2983

App(CMA)  
C: AG  
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OIP  
MK

## A BILL FOR AN ACT

RELATING TO OFFICE OF INFORMATION PRACTICES.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Findings and purpose. The legislature finds  
2 that chapter 92, Hawaii Revised Statutes, popularly known as the  
3 "Sunshine Law" is not administered by any particular agency.  
4 While the law is enforced by the attorney general, there is no  
5 one agency in government which is responsible for overseeing  
6 compliance of open meeting requirements in a manner similar to  
7 the law requiring open government records. Similarly, there is  
8 no single agency that collects, investigates, responds to  
9 inquiries, or reports to the legislature about all open meeting  
10 violations. The purpose of this Act is to bring together the  
11 administration of the open meetings law and the open records law  
12 under the office of information practices by placing  
13 responsibility for administration of the open meetings law in the  
14 office of information practices and moving the office from the  
15 department of the attorney general to the legislature.

16 SECTION 2. Section 21E-1, Hawaii Revised Statutes, is  
17 amended by amending the definition of "legislative service  
18 agency" to read as follows:

19 "Legislative service agency" means the office of the

1 auditor, the office of the legislative reference bureau, [and]  
2 the office of the ombudsman[.], and the office of information  
3 practices."

4 SECTION 3. Chapter 92, Hawaii Revised Statutes, is amended  
5 by adding a new section to be appropriately designated and to  
6 read as follows:

7 "§92- Administration of this chapter. The director of  
8 the office of information practices shall administer this  
9 chapter. The director shall establish procedures for filing,  
10 investigating, and responding to complaints filed by any person  
11 concerning the failure of any agency to comply with this chapter.  
12 The director of the office of information practices shall submit  
13 an annual report of these complaints along with final resolution  
14 of complaints, and other statistical data to the legislature, no  
15 later than twenty days before the convening of each regular  
16 session."

17 SECTION 4. Section 92-12, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) The attorney general and the prosecuting attorney  
20 shall enforce this part. The director of the office of  
21 information practices may forward for enforcement to the attorney  
22 general or the prosecuting attorney any complaint concerning this

1 chapter that the director is unable to resolve with the agency in  
2 question."

3 SECTION 5. Section 92-17, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) All boards as defined by section 92-2(1) established  
6 to license or regulate any profession, occupation, industry, or  
7 service, shall receive complaints from consumers and other  
8 persons claiming to be aggrieved by business practices related to  
9 their respective jurisdictions[.]; provided that any complaint  
10 concerning any of those boards with respect to this chapter shall  
11 be submitted to the office of information practices."

12 SECTION 6. Section 92F-41, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**\$92F-41 Office of information practices.** (a) There shall  
15 be within the [department of the attorney general, for  
16 administrative purposes only,] legislative branch of government,  
17 an office of information practices.

18 (b) The [governor shall appoint, not subject to chapters 76  
19 and 77,] speaker of the house of representatives and the  
20 president of the senate shall jointly appoint a director of the  
21 office of information practices who is its chief executive  
22 officer[.] and who shall be exempt from chapters 76 and 77.

1 (c) All powers and duties of the office of information  
2 practices are vested in the director and may be delegated to any  
3 other officer or employee of the office.

4 (d) The director may employ such other personnel as are  
5 necessary, including but not limited to attorneys and clerical  
6 staff. None of the employees shall be subject to chapter 76 or  
7 77."

8 SECTION 7. Section 92F-42, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§92F-42 Powers and duties of the office of information**  
11 **practices.** The director of the office of information practices:

12 (1) Shall, upon request, review and rule on an agency  
13 denial of access to information or records, or an  
14 agency's granting of access; provided that any review  
15 by the office of information practices shall not be a  
16 contested case under chapter 91 and shall be optional  
17 and without prejudice to rights of judicial enforcement  
18 available under this chapter;

19 (2) Upon request by an agency, shall provide and make  
20 public advisory guidelines, opinions, or other  
21 information concerning that agency's functions and  
22 responsibilities;

- 1       (3) Upon request by any person, may provide advisory  
2           opinions or other information regarding that person's  
3           rights and the functions and responsibilities of  
4           agencies under this chapter;
- 5       (4) May conduct inquiries regarding compliance by an agency  
6           and investigate possible violations by any agency;
- 7       (5) May examine the records of any agency for the purpose  
8           of paragraph (4) and seek to enforce that power in the  
9           courts of this State;
- 10      (6) May recommend disciplinary action to appropriate  
11          officers of an agency;
- 12      (7) Shall report annually to the governor and the state  
13          legislature on the activities and findings of the  
14          office of information practices, including  
15          recommendations for legislative changes;
- 16      (8) Shall receive complaints from and actively solicit the  
17          comments of the public regarding the implementation of  
18          this chapter;
- 19      (9) Shall review the official acts, records, policies, and  
20          procedures of each agency;
- 21      (10) Shall assist agencies in complying with the provisions  
22          of this chapter;

- 1       (11) Shall inform the public of the following rights of an  
2       individual and the procedures for exercising them:  
3       (A) The right of access to records pertaining to the  
4       individual;  
5       (B) The right to obtain a copy of records pertaining  
6       to the individual;  
7       (C) The right to know the purposes for which records  
8       pertaining to the individual are kept;  
9       (D) The right to be informed of the uses and  
10       disclosures of records pertaining to the  
11       individual;  
12       (E) The right to correct or amend records pertaining  
13       to the individual; and  
14       (F) The individual's right to place a statement in a  
15       record pertaining to that individual;  
16       (12) Shall adopt rules that set forth an administrative  
17       appeals structure which provides for (A) agency  
18       procedures for processing records requests; (B) a  
19       direct appeal from the division maintaining the record;  
20       and (C) time limits for action by agencies;  
21       (13) Shall adopt rules that set forth the fees and other  
22       charges that may be imposed for searching, reviewing,



1 or segregating disclosable records, as well as to  
2 provide for a waiver of such fees when the public  
3 interest would be served;

4 (14) Shall adopt rules which set forth uniform standards for  
5 the records collection practices of agencies;

6 (15) Shall adopt rules that set forth uniform standards for  
7 disclosure of records for research purposes;

8 (16) Shall have standing to appear in cases where the  
9 provisions of this chapter are called into question;  
10 [and]

11 (17) Shall adopt, amend, or repeal rules pursuant to chapter  
12 91 necessary for the purposes of this chapter[.]; and

13 (18) Shall take action to oversee compliance with chapter 92  
14 by all state agencies including:

15 (A) Receiving, investigating, and resolving complaints  
16 regarding that law;

17 (B) Advising all government agencies and the public  
18 about compliance with chapter 92; and

19 (C) Reporting each year to the legislature on all  
20 complaints received pursuant to section 92- ."

21 SECTION 8. All rights, powers, functions, and duties of the  
22 existing office of information practices are transferred to the

1 legislative branch, provided that no employee shall suffer any  
2 loss of salary, prior service credit, vacation, sick leave, or  
3 other employee benefit or privilege, as consequence of the  
4 transfer.

5 All employees of the office of information practices not  
6 subject to chapters 76 and 77, Hawaii Revised Statutes, are  
7 transferred to comparable positions within the legislature. All  
8 employees whose functions are transferred by this Act shall be  
9 transferred with their functions and shall continue to perform  
10 their regular duties upon their transfer, subject to the state  
11 personnel laws and this Act.

12 Any employee of the office of information practices subject  
13 to chapters 76 and 77, Hawaii Revised Statutes, may elect to  
14 transfer to the legislative branch. If an employee elects to  
15 transfer to the legislative branch, the employee shall not  
16 thereafter be subject to chapters 76 and 77, Hawaii Revised  
17 Statutes, but shall not suffer any loss of salary, seniority,  
18 prior service credit, vacation, sick leave, or other employee  
19 benefit or privilege as a consequence of this Act. If an  
20 employee of the office of information practices subject to  
21 chapters 76 and 77, Hawaii Revised Statutes, elects not to  
22 transfer to the legislative branch, the employee shall, with the



1 same pay and classification be transferred to positions within  
2 the executive branch for which they are eligible under the  
3 applicable personnel laws of the State without any loss of  
4 salary, seniority, prior service credit, vacation, sick leave, or  
5 other employee benefit or privilege as a consequence of this Act.

6       In the event that an office or position held by an officer  
7 or employee having tenure is abolished, the officer or employee  
8 shall not thereby be separated from public employment, but shall  
9 remain in the employment of the State with the same pay and  
10 classification and shall be transferred to some other office or  
11 position for which the officer or employee is eligible under the  
12 personnel laws of the State as determined by the legislature.

13       SECTION 9. All appropriations, records, equipment,  
14 machines, files, supplies, contracts, books, papers, documents,  
15 maps, computer software and data, authorizations, and other  
16 personal property previously made, used, acquired, or held by the  
17 office of information practices relating to the functions  
18 transferred to the legislative branch shall be transferred with  
19 the function to which they relate.

20       SECTION 10. Statutory material to be repealed is bracketed.  
21 New statutory material is underscored.

1       SECTION 11.   This Act shall take effect upon its approval.

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INTRODUCED BY:

*[Handwritten signatures on lines]*  
*[Signature 1]*  
*[Signature 2]*  
*[Signature 3]*  
*[Signature 4]*

**REPORT TITLE:**

Open Meetings; OIP

**DESCRIPTION:**

Requires open meeting law to be administered by the office of information practices (OIP) moves OIP from the department of the attorney general to legislature for administrative purposes.

