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

1 the office of the ombudsman[.], and the office of information  
2 practices."

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

6 "§92- Administration of this chapter. The director of  
7 the office of information practices shall administer this  
8 chapter. The director shall establish procedures for filing,  
9 investigating, and responding to complaints filed by any person  
10 concerning the failure of any agency to comply with this chapter.  
11 The director of the office of information practices shall submit  
12 an annual report of these complaints along with final resolution  
13 of complaints, and other statistical data to the legislature, no  
14 later than twenty days before the convening of each regular  
15 session."

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

18 "(a) The attorney general and the prosecuting attorney  
19 shall enforce this part. The director of the office of  
20 information practices may forward for enforcement to the attorney  
21 general or the prosecuting attorney any complaint concerning this  
22 chapter that the director is unable to resolve with the agency in  
23 question."

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

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

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

12 "**§92F-41 Office of information practices.** (a) There shall  
13 be within the [department of the attorney general, for  
14 administrative purposes only,] legislative branch of government,  
15 an office of information practices.

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

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

1 (d) The director may employ [such] any other personnel [as]  
2 that are necessary, including but not limited to attorneys and  
3 clerical staff. None of the employees shall be subject to  
4 chapter 76 or 77."

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

7 "§92F-42 Powers and duties of the office of information  
8 practices. The director of the office of information practices:

- 9 (1) Shall, upon request, review and rule on an agency  
10 denial of access to information or records, or an  
11 agency's granting of access; provided that any review  
12 by the office of information practices shall not be a  
13 contested case under chapter 91 and shall be optional  
14 and without prejudice to rights of judicial enforcement  
15 available under this chapter;
- 16 (2) Upon request by an agency, shall provide and make  
17 public advisory guidelines, opinions, or other  
18 information concerning that agency's functions and  
19 responsibilities;
- 20 (3) Upon request by any person, may provide advisory  
21 opinions or other information regarding that person's  
22 rights and the functions and responsibilities of  
23 agencies under this chapter;

- 1       (4) May conduct inquiries regarding compliance by an agency  
2           and investigate possible violations by any agency;
- 3       (5) May examine the records of any agency for the purpose  
4           of paragraph (4) and seek to enforce that power in the  
5           courts of this State;
- 6       (6) May recommend disciplinary action to appropriate  
7           officers of an agency;
- 8       (7) Shall report annually to the [governor and the] state  
9           legislature on the activities and findings of the  
10          office of information practices, including  
11          recommendations for legislative changes;
- 12       (8) Shall receive complaints from and actively solicit the  
13          comments of the public regarding the implementation of  
14          this chapter;
- 15       (9) Shall review the official acts, records, policies, and  
16          procedures of each agency;
- 17       (10) Shall assist agencies in complying with the provisions  
18          of this chapter;
- 19       (11) Shall inform the public of the following rights of an  
20          individual and the procedures for exercising them:
- 21           (A) The right of access to records pertaining to the  
22              individual;
- 23           (B) The right to obtain a copy of records pertaining

- 1 to the individual;
- 2 (C) The right to know the purposes for which records  
3 pertaining to the individual are kept;
- 4 (D) The right to be informed of the uses and  
5 disclosures of records pertaining to the  
6 individual;
- 7 (E) The right to correct or amend records pertaining  
8 to the individual; and
- 9 (F) The individual's right to place a statement in a  
10 record pertaining to that individual;
- 11 (12) Shall adopt rules that set forth an administrative  
12 appeals structure which provides for (A) agency  
13 procedures for processing records requests; (B) a  
14 direct appeal from the division maintaining the record;  
15 and (C) time limits for action by agencies;
- 16 (13) Shall adopt rules that set forth the fees and other  
17 charges that may be imposed for searching, reviewing,  
18 or segregating disclosable records, as well as to  
19 provide for a waiver of [such] fees when the public  
20 interest would be served;
- 21 (14) Shall adopt rules which set forth uniform standards for  
22 the records collection practices of agencies;
- 23 (15) Shall adopt rules that set forth uniform standards for

- 1 disclosure of records for research purposes;
- 2 (16) Shall have standing to appear in cases where the
- 3 provisions of this chapter are called into question;
- 4 [and]
- 5 (17) Shall adopt, amend, or repeal rules pursuant to chapter
- 6 91 necessary for the purposes of this chapter[.]; and
- 7 (18) Shall take action to oversee compliance with chapter 92
- 8 by all state boards including:
- 9 (A) Receiving, investigating, and resolving
- 10 complaints;
- 11 (B) Advising all government boards and the public
- 12 about compliance with chapter 92; and
- 13 (C) Reporting each year to the legislature on all
- 14 complaints received pursuant to section 92- ."

15 SECTION 8. All rights, powers, functions, and duties of the

16 existing office of information practices are transferred to the

17 legislative branch, provided that no employee shall suffer any

18 loss of salary, prior service credit, vacation, sick leave, or

19 other employee benefit or privilege, as consequence of the

20 transfer.

21 All employees of the office of information practices not

22 subject to chapters 76 and 77, Hawaii Revised Statutes, are

23 transferred to comparable positions within the legislature. All

1 employees whose functions are transferred by this Act shall be  
2 transferred with their functions and shall continue to perform  
3 their regular duties upon their transfer, subject to the state  
4 personnel laws and this Act.

5 Any employee of the office of information practices subject  
6 to chapters 76 and 77, Hawaii Revised Statutes, may elect to  
7 transfer to the legislative branch. If an employee elects to  
8 transfer to the legislative branch, the employee shall not  
9 thereafter be subject to chapters 76 and 77, Hawaii Revised  
10 Statutes, but shall not suffer any loss of salary, seniority,  
11 prior service credit, vacation, sick leave, or other employee  
12 benefit or privilege as a consequence of this Act. If an  
13 employee of the office of information practices subject to  
14 chapters 76 and 77, Hawaii Revised Statutes, elects not to  
15 transfer to the legislative branch, the employee shall, with the  
16 same pay and classification be transferred to positions within  
17 the executive branch for which the employee is eligible under the  
18 applicable personnel laws of the State without any loss of  
19 salary, seniority, prior service credit, vacation, sick leave, or  
20 other employee benefit or privilege as a consequence of this Act.

21 If an office or position held by an officer or employee  
22 having tenure is abolished, the officer or employee shall not  
23 thereby be separated from public employment, but shall remain in

1 the employment of the State with the same pay and classification  
2 and shall be transferred to some other office or position for  
3 which the officer or employee is eligible under the personnel  
4 laws of the State as determined by the legislature.

5       SECTION 9. All appropriations, records, equipment,  
6 machines, files, supplies, contracts, books, papers, documents,  
7 maps, computer software and data, authorizations, and other  
8 personal property previously made, used, acquired, or held by the  
9 office of information practices relating to the functions  
10 transferred to the legislative branch shall be transferred with  
11 the function to which they relate.

12       SECTION 10. Statutory material to be repealed is bracketed.  
13 New statutory material is underscored.

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

**REPORT TITLE:**

Office Of Info. Practices

**DESCRIPTION:**

Requires open meetings law to be administered by the office of information practices (OIP). Moves OIP from the department of the attorney general to the legislature for administrative purposes. (SD1)