
A BILL FOR AN ACT

RELATING TO OPEN GOVERNMENT.

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

1 SECTION 1. Chapter 92F, Hawaii Revised Statutes, is
2 amended by adding to part IV a new section to be appropriately
3 designated and to read as follows:

4 "§92F- Agency appeal of a decision by the office of
5 information practices. (a) An agency may not appeal a decision
6 by the office of information practices made under this chapter
7 or part I of chapter 92, except as provided in this section. An
8 agency may seek judicial review of a decision rendered by the
9 office of information practices under this chapter or part I of
10 chapter 92, by filing a complaint within thirty days of the date
11 of the decision to initiate a special proceeding in the circuit
12 court of the judicial circuit where the request for access to a
13 record was made, or the act the office determined was prohibited
14 under part I of chapter 92 occurred.

15 (b) The agency shall give notice of the suit to the office
16 of information practices and the person who requested the
17 decision for which the agency seeks judicial review by serving a
18 copy of the complaint on them respectively; provided that



1 neither the office of information practices nor the person who
2 requested the decision shall be required to participate in the
3 proceeding; and provided further that the court shall proceed to
4 review the decision pursuant to the rules applicable to a
5 special proceeding, upon the expiration of time that an answer
6 to the complaint would otherwise need to be filed under the
7 rules of court by the office or the person upon whom the
8 complaint was served. The office of information practices or
9 the person who requested the decision may intervene in the
10 proceeding.

11 (c) Within thirty days of service of the complaint, the
12 office shall file in the circuit court a certified copy of the
13 record that it compiled to make its decision and mail a copy of
14 the index to that record to the agency. The circuit court's
15 review shall be limited to the record that was before the office
16 of information practices when it rendered the decision, unless
17 the circuit court finds that extraordinary circumstances justify
18 discovery and admission of additional evidence. The circuit
19 court shall uphold a decision of the office of information
20 practices unless it concludes that the decision was palpably
21 erroneous."



1 SECTION 2. Section 92-12, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§92-12 Enforcement.** (a) The attorney general and the
4 prosecuting attorney shall enforce this part.

5 (b) The circuit courts of the State shall have
6 jurisdiction to enforce the provisions of this part by
7 injunction or other appropriate remedy.

8 (c) Any person may commence a suit in the circuit court of
9 the circuit in which a prohibited act occurs for the purpose of
10 requiring compliance with or preventing violations of this part
11 or to determine the applicability of this part to discussions or
12 decisions of the public body. The court may order payment of
13 reasonable [~~attorney~~] attorney's fees and costs to the
14 prevailing party in a suit brought under this section.

15 (d) Opinions and rulings of the office of information
16 practices shall be admissible in an action brought under this
17 part and shall be considered as precedent unless found to be
18 palpably erroneous.

19 [~~(d)~~] (e) The proceedings for review shall not stay the
20 enforcement of any agency decisions; but the reviewing court may
21 order a stay if the following criteria have been met:



- 1 (1) There is likelihood that the party bringing the action
2 will prevail on the merits;
- 3 (2) Irreparable damage will result if a stay is not
4 ordered;
- 5 (3) No irreparable damage to the public will result from
6 the stay order; and
- 7 (4) Public interest will be served by the stay order."

8 SECTION 3. Section 92F-15, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) In an action to compel disclosure, the circuit court
11 shall hear the matter de novo. Opinions and rulings of the
12 office of information practices shall be admissible[-] and shall
13 be considered as precedent unless found to be palpably
14 erroneous, except that in an action to compel disclosure brought
15 by an aggrieved person after the office of information practices
16 upheld the agency's denial of access to the person as provided
17 in section 92F-15.5(b), the opinion or ruling upholding the
18 agency's denial of access shall be reviewed de novo. The
19 circuit court may examine the government record at issue, in
20 camera, to assist in determining whether it, or any part of it,
21 may be withheld."



1 SECTION 4. Section 92F-27, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§92F-27 Civil actions and remedies.** (a) An individual
4 may bring a civil action against an agency in a circuit court of
5 the State whenever an agency fails to comply with any provision
6 of this part, and after appropriate administrative remedies
7 under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

8 (b) Opinions and rulings of the office of information
9 practices shall be admissible and shall be considered as
10 precedent unless found to be palpably erroneous, except that the
11 opinion or ruling upholding the agency's denial of access to the
12 aggrieved person shall be reviewed de novo. The circuit court
13 may examine the record at issue, in camera, to assist in
14 determining whether it, or any part of it, may be withheld.

15 [~~b~~] (c) In any action brought under this section the
16 court may order the agency to correct or amend the complainant's
17 personal record, to require any other agency action, or to
18 enjoin such agency from improper actions as the court may deem
19 necessary and appropriate to render substantial relief.

20 [~~e~~] (d) In any action brought under this section in
21 which the court determines that the agency knowingly or
22 intentionally violated a provision of this part, the agency



1 shall be liable to the complainant in an amount equal to the sum
2 of:

3 (1) Actual damages sustained by the complainant as a
4 result of the failure of the agency to properly
5 maintain the personal record, but in no case shall a
6 complainant (individual) entitled to recovery receive
7 less than the sum of \$1,000; and

8 (2) The costs of the action together with reasonable
9 attorney's fees as determined by the court.

10 [~~(d)~~] (e) The court may assess reasonable attorney's fees
11 and other litigation costs reasonably incurred against the
12 agency in any case in which the complainant has substantially
13 prevailed, and against the complainant where the charges brought
14 against the agency were frivolous.

15 [~~(e)~~] (f) An action may be brought in the circuit court
16 where the complainant resides, the complainant's principal place
17 of business is situated, or the complainant's relevant personal
18 record is situated. No action shall be brought later than two
19 years after notification of the agency denial, or where
20 applicable, the date of receipt of the final determination of
21 the office of information practices."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Sunshine Law; Uniform Information Practices Act; Appeals

Description:

Creates a process for an agency to obtain judicial review of a decision made by the office of information practices relating to the open meetings law or the Uniform Information Practices Act, and clarifies standard of review. Effective 7/1/50. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

