
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 judiciary.

16 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
17 by adding a new section to be appropriately designated and to
18 read as follows:

19 "§92- Administration of this chapter. The director of
20 the office of information practices shall administer this

1 chapter. The director shall establish procedures for filing,
2 investigating, and responding to complaints filed by any person
3 concerning the failure of any agency to comply with this chapter.
4 The director of the office of information practices shall submit
5 an annual report of these complaints along with final resolution
6 of complaints, and other statistical data to the legislature, no
7 later than twenty days before the convening of each regular
8 session."

9 SECTION 3. Section 92-12, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The attorney general and the prosecuting attorney
12 shall enforce this part. The director of the office of
13 information practices may forward for enforcement to the attorney
14 general or the prosecuting attorney any complaint concerning this
15 chapter that the director is unable to resolve with the agency in
16 question."

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

19 "(a) All boards as defined by section 92-2(1) established
20 to license or regulate any profession, occupation, industry, or
21 service, shall receive complaints from consumers and other
22 persons claiming to be aggrieved by business practices related to
23 their respective jurisdictions[.]; provided that any complaint

1 concerning any of those boards with respect to this chapter shall
2 be submitted to the office of information practices."

3 SECTION 5. Section 92F-41, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§92F-41 Office of information practices.** (a) There shall
6 be within the [department of the attorney general, for
7 administrative purposes only,] judicial branch of government, for
8 administrative purposes only, an office of information practices.

9 (b) The [governor shall appoint, not subject to chapters 76
10 and 77,] chief justice of the supreme court shall appoint a
11 director of the office of information practices [who is] to be
12 its chief executive officer[.], who shall be exempt from chapters
13 76 and 77 and who shall serve at the pleasure of the supreme
14 court.

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

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

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

1 **"§92F-42 Powers and duties of the office of information**

2 **practices.** (a) The director of the office of information

3 practices:

- 4 (1) Shall, upon request, review and rule on an agency
5 denial of access to information or records, or an
6 agency's granting of access; provided that any review
7 by the office of information practices shall not be a
8 contested case under chapter 91 and shall be optional
9 and without prejudice to rights of judicial enforcement
10 available under this chapter;
- 11 (2) Upon request by an agency, shall provide and make
12 public advisory guidelines, opinions, or other
13 information concerning that agency's functions and
14 responsibilities;
- 15 (3) Upon request by any person, may provide advisory
16 opinions or other information regarding that person's
17 rights and the functions and responsibilities of
18 agencies under this chapter;
- 19 (4) May conduct inquiries regarding compliance by an agency
20 and investigate possible violations by any agency;
- 21 (5) May examine the records of any agency for the purpose
22 of paragraph (4) and seek to enforce that power in the
23 courts of this State;

- 1 (6) May recommend disciplinary action to appropriate
- 2 officers of an agency;
- 3 (7) Shall report annually to the [governor and the] state
- 4 legislature on the activities and findings of the
- 5 office of information practices, including
- 6 recommendations for legislative changes;
- 7 (8) Shall receive complaints from and actively solicit the
- 8 comments of the public regarding the implementation of
- 9 this chapter;
- 10 (9) Shall review the official acts, records, policies, and
- 11 procedures of each agency;
- 12 (10) Shall assist agencies in complying with the provisions
- 13 of this chapter;
- 14 (11) Shall inform the public of the following rights of an
- 15 individual and the procedures for exercising them:
- 16 (A) The right of access to records pertaining to the
- 17 individual;
- 18 (B) The right to obtain a copy of records pertaining
- 19 to the individual;
- 20 (C) The right to know the purposes for which records
- 21 pertaining to the individual are kept;
- 22 (D) The right to be informed of the uses and
- 23 disclosures of records pertaining to the

1 individual;

2 (E) The right to correct or amend records pertaining
3 to the individual; and

4 (F) The individual's right to place a statement in a
5 record pertaining to that individual;

6 (12) Shall adopt rules that set forth an administrative
7 appeals structure which provides for (A) agency
8 procedures for processing records requests; (B) a
9 direct appeal from the division maintaining the record;
10 and (C) time limits for action by agencies;

11 (13) Shall adopt rules that set forth the fees and other
12 charges that may be imposed for searching, reviewing,
13 or segregating disclosable records, as well as to
14 provide for a waiver of [such] fees when the public
15 interest would be served;

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

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

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

23 (17) Shall adopt, amend, or repeal rules [pursuant to

1 chapter 91] necessary for the purposes of this
2 chapter[.]; and

3 (18) Shall take action to oversee compliance with chapter 92
4 by all state boards including:

5 (A) Receiving, investigating, and resolving
6 complaints;

7 (B) Advising all government boards and the public
8 about compliance with chapter 92; and

9 (C) Reporting each year to the legislature on all
10 complaints received pursuant to section 92- .

11 (b) Rules adopted under subsection (a) shall be in
12 accordance with rulemaking procedures of the judiciary."

13 SECTION 7. All rights, powers, functions, and duties of the
14 existing office of information practices are transferred to the
15 judicial branch; provided that no employee shall suffer any loss
16 of salary, prior service credit, vacation, sick leave, or other
17 employee benefit or privilege, as consequence of the transfer.

18 All employees of the office of information practices not
19 subject to chapters 76 and 77, Hawaii Revised Statutes, are
20 transferred to comparable positions within the judiciary. All
21 employees whose functions are transferred by this Act shall be
22 transferred with their functions and shall continue to perform
23 their regular duties upon their transfer, subject to the state

1 personnel laws and this Act.

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

18 SECTION 8. All appropriations, records, equipment,
19 machines, files, supplies, contracts, books, papers, documents,
20 maps, computer software and data, authorizations, and other
21 personal property previously made, used, acquired, or held by the
22 office of information practices relating to the functions
23 transferred to the judicial branch shall be transferred with the

1 function to which they relate.

2 SECTION 9. Rules adopted by the office of information
3 practices on the effective date of this Act shall remain in force
4 and effect until amended or repealed by the office of information
5 practices following its transfer to the judiciary.

6 SECTION 10. Statutory material to be repealed is bracketed.
7 New statutory material is underscored.

8 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 judiciary for administrative purposes. (SD2)