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# 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 each; provided that neither the office



1 of information practices nor the person who requested the  
2 decision shall be required to participate in the proceeding; and  
3 provided further that the court shall proceed to review the  
4 decision pursuant to the rules applicable to a special  
5 proceeding, upon the expiration of time that an answer to the  
6 complaint would otherwise need to be filed under the rules of  
7 court by the office of information practices or the person upon  
8 whom the complaint was served. The office of information  
9 practices or the person who requested the decision may intervene  
10 in the proceeding.

11 (c) Within thirty days of service of the complaint, the  
12 office of information practices shall file a certified copy of  
13 the record that it compiled to make its decision in the circuit  
14 court and mail a copy of the index to that record to the  
15 appealing agency. The circuit court's review shall be limited  
16 to the record that was before the office of information  
17 practices when it rendered the decision, unless the circuit  
18 court finds that extraordinary circumstances justify discovery  
19 and admission of additional evidence. The circuit court shall  
20 uphold a decision of the office of information practices, unless  
21 the circuit court concludes that the decision was palpably  
22 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[-]; provided that if the action to  
 12 compel disclosure is brought because an agency has not made a  
 13 record available as required by section 92F-15.5(b) after the  
 14 office of information practices has made a decision to disclose  
 15 the record and the agency has not appealed that decision within  
 16 the time period provided by 92F- , the decision of the office  
 17 of information practices shall not be subject to challenge by  
 18 the agency in the action to compel disclosure. Opinions and  
 19 rulings of the office of information practices shall be  
 20 admissible[-] and shall be considered as precedent unless found  
 21 to be palpably erroneous, except that in an action to compel  
 22 disclosure brought by an aggrieved person after the office of



1 information practices upheld the agency's denial of access to  
2 the person as provided in section 92F-15.5(b), the opinion or  
3 ruling upholding the agency's denial of access shall be reviewed  
4 de novo. The circuit court may examine the government record at  
5 issue, in camera, to assist in determining whether it, or any  
6 part of it, may be withheld."

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

9 "**§92F-27 Civil actions and remedies.** (a) An individual  
10 may bring a civil action against an agency in a circuit court of  
11 the State whenever an agency fails to comply with any provision  
12 of this part, and after appropriate administrative remedies  
13 under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

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

21 [~~(b)~~] (c) In any action brought under this section the court  
22 may order the agency to correct or amend the complainant's



1 personal record, to require any other agency action, or to  
2 enjoin such agency from improper actions as the court may deem  
3 necessary and appropriate to render substantial relief.

4 ~~[(e)]~~ (d) In any action brought under this section in which  
5 the court determines that the agency knowingly or intentionally  
6 violated a provision of this part, the agency shall be liable to  
7 the complainant in an amount equal to the sum of:

8 (1) Actual damages sustained by the complainant as a  
9 result of the failure of the agency to properly  
10 maintain the personal record, but in no case shall [a  
11 ~~complainant (individual)]~~ an individual complainant  
12 entitled to recovery receive less than the sum of  
13 \$1,000; and

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

16 ~~[(d)]~~ (e) The court may assess reasonable attorney's fees  
17 and other litigation costs reasonably incurred against the  
18 agency in any case in which the complainant has substantially  
19 prevailed; and against the complainant where the charges brought  
20 against the agency were frivolous.

21 ~~[(e)]~~ (f) An action may be brought in the circuit court  
22 where the complainant resides, the complainant's principal place



1 of business is situated, or the complainant's relevant personal  
2 record is situated. No action shall be brought later than two  
3 years after notification of the agency denial, or where  
4 applicable, the date of receipt of the final determination of  
5 the office of information practices."

6 SECTION 5. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on January 1, 2013.



**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 Sunshine Law or the Uniform Information Practices Act, and clarifies standard of review. Effective January 1, 2013.  
(SB2858 HD1)

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

