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# A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1           SECTION 1. The legislature finds that the house of  
2 representatives adopted House Resolution No. 9 (2022) to  
3 establish the commission to improve standards of conduct. The  
4 resolution requests the commission ensure state laws and rules  
5 relating to standards of conduct of public officers and  
6 employees contain clear standards, enforcement, and penalties  
7 and provide recommendations to increase awareness of, compliance  
8 with, and deterrent effects of the code of ethics, lobbying  
9 laws, campaign finance laws, and other relevant laws and rules.

10           Pursuant to House Resolution No. 9, the commission to  
11 improve standards of conduct convened regularly throughout 2022  
12 to diligently review, discuss, and consider the issues  
13 presented, submitted an interim report to the house of  
14 representatives outlining areas of immediate and long-term  
15 focus, then continued its work with input from the public and  
16 invited individuals and agencies to issue a final report with  
17 various recommendations and accompanying proposed legislation.



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1           The legislature also finds that the strength and stability  
2 of our democratic government rely upon the public's trust in  
3 government institutions, including the expectation that officers  
4 act ethically with prudence, integrity, and sound judgement.  
5 Therefore, an essential goal of the commission was to provide  
6 recommendations that would help restore public trust in state  
7 government and increase the level of transparency in its  
8 operations and accountability of individuals.

9           Additionally, the legislature finds that public records  
10 laws are a critical mechanism to maintain government  
11 accountability and transparency and support citizen involvement  
12 in government decision-making. The real-world consequences of  
13 restricting access to that information can range from serious to  
14 routine but, in all cases, result in a less informed citizenry.  
15 Fee waivers offer a simple and flexible solution.

16           The legislature also finds that further direction is  
17 necessary to carry out the intent indicated by the legislative  
18 history of section 92F-42, Hawaii Revised Statutes, and the  
19 section's provision on waiver of fees, first introduced in House  
20 Bill No. 2002, regular session of 1988. The original language  
21 of House Bill No. 2002 only authorized fees for copies of



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1 records, but the version passing out of the house of  
2 representatives judiciary committee amended the bill to also  
3 allow charges for searching, reviewing, and segregating records,  
4 while also allowing waivers for public interest. The house  
5 judiciary committee report, House Standing Committee Report No.  
6 342-88, states:

7 It is the intent of your Committee that such charges  
8 for search, compilation, and segregation shall not be  
9 a vehicle to prohibit access to public records. It is  
10 the further intent of your Committee that the Office  
11 of Information Practices move aggressively against any  
12 agency that uses such charges to chill the exercise of  
13 first amendment rights. Your Committee also added new  
14 language to allow waiver of these charges when such  
15 action serves the public interest.

16 By providing public-interest fee waivers uniformly, the public  
17 records request process can provide equitable access.

18 Accordingly, the purpose of this Act is to implement  
19 recommendations of the commission to improve standards of  
20 conduct relating to the open records law by providing more  
21 equitable access to government records, including:



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- 1 (1) Imposing a cap on charges for the reproduction of
- 2 certain government records;
- 3 (2) Waiving the cost of duplication of government records
- 4 provided to requestors in an electronic format;
- 5 (3) Imposing a cap on charges for searching for,
- 6 reviewing, and segregating records;
- 7 (4) Providing for a waiver of fees when the public
- 8 interest is served by a record's disclosure; and
- 9 (5) Appropriating funds for two permanent positions within
- 10 the office of information practices.

11 SECTION 2. Section 92-21, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§92-21 Copies of records; other costs and fees.** Except  
14 as otherwise provided by law, a copy of any government record,  
15 including any map, plan, diagram, photograph, photostat, or  
16 geographic information system digital data file, [~~which~~] that is  
17 open to the inspection of the public, shall be furnished to any  
18 person applying for the same by the public officer having charge  
19 or control thereof upon the payment of the reasonable cost of  
20 reproducing [~~such~~] the copy. Except as provided in section  
21 91-2.5, the cost of reproducing any government record, except



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1 geographic information system digital data, photographs, maps,  
2 audio recordings, digital or electronic records, and other types  
3 of physical records, shall not [~~be less than 5~~] exceed 25 cents  
4 per page, sheet, or fraction thereof. Reproduction costs shall  
5 not be charged for producing documents provided to requesters in  
6 an electronic format; provided that the agency maintains those  
7 documents in an electronic format; provided further that  
8 requesters shall be charged for the agency's provision of  
9 documents requested in an electronic format that are not  
10 maintained by the agency in an electronic format and must be  
11 manually faxed or converted into an electronic format. The cost  
12 of reproducing geographic information system digital data,  
13 photographs, maps, audio recordings, digital or electronic  
14 records, and other types of physical records shall be in  
15 accordance with rules adopted by the agency having charge or  
16 control of that data. [~~Such~~] The reproduction cost shall  
17 [~~include but shall not be limited to labor cost for search and~~  
18 ~~actual time for reproducing, material cost, including~~  
19 ~~electricity cost, equipment cost, including rental cost, cost~~  
20 ~~for certification, and other related costs.~~] represent the  
21 reasonable direct cost of making the copies and be limited to



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1 the salary of the operator of the reproduction machinery as well  
2 as the cost of the machinery. All fees shall be paid in by the  
3 public officer receiving or collecting the same to the state  
4 director of finance, the county director of finance, or [~~te~~] the  
5 agency or department by which the officer is employed, as  
6 government realizations; provided that fees collected by the  
7 public utilities commission pursuant to this section shall be  
8 deposited in the public utilities commission special fund  
9 established under section 269-33."

10 SECTION 3. Section 92F-42, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§92F-42 Powers and duties of the office of information**  
13 **practices.** The director of the office of information practices:

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



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- 1           (2) Upon request by an agency, shall provide and make  
2           public advisory guidelines, opinions, or other  
3           information concerning that agency's functions and  
4           responsibilities;
- 5           (3) Upon request by any person, may provide advisory  
6           opinions or other information regarding that person's  
7           rights and the functions and responsibilities of  
8           agencies under this chapter;
- 9           (4) May conduct inquiries regarding compliance by an  
10          agency and investigate possible violations by any  
11          agency;
- 12          (5) May examine the records of any agency for the purpose  
13          of paragraphs (4) and (18) and seek to enforce that  
14          power in the courts of this State;
- 15          (6) May recommend disciplinary action to appropriate  
16          officers of an agency;
- 17          (7) Shall report annually to the governor and the state  
18          legislature on the activities and findings of the  
19          office of information practices, including  
20          recommendations for legislative changes;



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- 1           (8) Shall receive complaints from and actively solicit the  
2           comments of the public regarding the implementation of  
3           this chapter;
- 4           (9) Shall review the official acts, records, policies, and  
5           procedures of each agency;
- 6           (10) Shall assist agencies in complying with the provisions  
7           of this chapter;
- 8           (11) Shall inform the public of the following rights of an  
9           individual and the procedures for exercising them:
- 10           (A) The right of access to records pertaining to the  
11           individual;
- 12           (B) The right to obtain a copy of records pertaining  
13           to the individual;
- 14           (C) The right to know the purposes for which records  
15           pertaining to the individual are kept;
- 16           (D) The right to be informed of the uses and  
17           disclosures of records pertaining to the  
18           individual;
- 19           (E) The right to correct or amend records pertaining  
20           to the individual; and





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

3 (12) Shall adopt rules that set forth an administrative  
4 appeals structure ~~[which]~~ that provides for:

5 (A) Agency procedures for processing records  
6 requests;

7 (B) A direct appeal from the division maintaining the  
8 record; and

9 (C) Time limits for action by agencies;

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

15 (A) Set forth fees not exceeding \$5 per fifteen  
16 minutes or fraction thereof for the search for  
17 the record;

18 (B) Set forth fees not exceeding \$7.50 per fifteen  
19 minutes or fraction thereof for the review and  
20 segregation of the record; and



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1           (C) Provide for a waiver of fees when the public  
2           interest would be served by the record's  
3           disclosure; provided that the waiver shall  
4           require that the search for or review or  
5           segregation of records be provided at no charge  
6           to the requester if disclosure of the record is  
7           in the public interest because the disclosure is  
8           likely to contribute significantly to public  
9           understanding of the operations or activities of  
10           the government and is not primarily in the  
11           commercial interest;

12           (14) Shall adopt rules [~~which~~] that set forth uniform  
13           standards for the records collection practices of  
14           agencies;

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

17           (16) Shall have standing to appear in cases where the  
18           provisions of this chapter or part I of chapter 92 are  
19           called into question;

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1 (17) Shall adopt, amend, or repeal rules pursuant to  
2 chapter 91 necessary for the purposes of this chapter;  
3 and

4 (18) Shall take action to oversee compliance with part I of  
5 chapter 92 by all state and county boards including:

- 6 (A) Receiving and resolving 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 92-1.5."

11 SECTION 4. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$185,000 or so much  
13 thereof as may be necessary for fiscal year 2023-2024 and the  
14 same sum or so much thereof as may be necessary for fiscal year  
15 2024-2025 for two full-time equivalent (2.0 FTE) permanent  
16 positions to be placed within the office of information  
17 practices.

18 The sums appropriated shall be expended by the office of  
19 information practices for the purposes of this Act.

20 SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



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**1** SECTION 6. This Act shall take effect on July 1, 2023;  
**2** provided that sections 2 and 3 shall take effect on July 1,  
**3** 2024.  
**4**

INTRODUCED BY: \_\_\_\_\_



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**Report Title:**

Commission to Improve Standards of Conduct; Public Records; Duplication; Costs; Disclosure; Public Interest; Waiver; Appropriation

**Description:**

Beginning 7/1/2024, imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on charges for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions in the office of information practices.

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

