
A BILL FOR AN ACT

RELATING TO INFORMATION PRACTICES.

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

1 SECTION 1. The legislature finds that chapter 92, Part I,
2 Hawaii Revised Statutes, commonly referred to as the "sunshine
3 law," and chapter 92F, HRS, relating to the Uniform Information
4 Practices Act (UIPA), are intended to promote openness in, and
5 public access to, Hawaii state and county government. The
6 sunshine law facilitates public access to government agency
7 meetings, and UIPA promotes public access to government records.

8 Section 92-1, HRS, states in part: "Governmental agencies
9 exist to aid the people in the formation and conduct of public
10 policy." The opinions and advice of the office of information
11 practices, which administers the sunshine law and the UIPA,
12 often have a significant impact on the access rights of the
13 public. Ironically, the office of information practices is
14 headed by a single director, and no opportunity is provided for
15 public input in the operation of the office and its
16 interpretation and enforcement of the sunshine law and the UIPA.
17 Other state executive officers with investigative and advisory
18 functions similar to those of the director of the office of



1 information practices are subject to the advice and good counsel
2 of panels composed of citizens representing the perspectives of
3 the public. Two notable and successful examples of these panels
4 are the campaign spending commission under chapter 11, HRS, and
5 the ethics commission under chapter 84, HRS.

6 The legislature is cognizant of the concern that subjecting
7 a board to the same law that the board itself must administer
8 may create a conflict of interest situation. However, in this
9 instance the overriding interest is the fair and even
10 administration of the sunshine law and the UIPA, and the
11 construction of practical and workable interpretations of those
12 laws. The integrity of these laws would remain intact inasmuch
13 as the office of information practices has advisory functions
14 only, as would the board of information practices. Enforcement
15 lies with the attorney general and the courts, as well as
16 citizen suits.

17 The purpose of this Act is to establish a board of
18 information practices to administer chapters 92 and 92F, HRS.

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



1 "§92F- Board of information practices; established;
2 composition; appointment; duties. (a) There is established a
3 board of information practices, which shall consist of five
4 members appointed by the governor, subject to the advice and
5 consent of the senate. The duties of the board shall be to:
6 (1) Appoint, and at its pleasure remove, the executive
7 director of the office of information practices
8 pursuant to section 92F-41; and
9 (2) Administer the office of informational practices.
10 The members shall be selected by the governor from a list of ten
11 persons nominated by the judicial council in accordance with
12 subsection (d). Each member of the board shall be a citizen of
13 the United States and a resident of the State. At least one
14 member shall have served a full term on a state board, and at
15 least one member shall have served a full term on a county
16 board. Members of the board shall hold no other public office
17 during their tenure on the board.
18 (b) The term of each member of the board shall be for four
19 years; provided that two members of the initial board, who shall
20 have previously served on a board, shall be appointed for a two-
21 year term. No person shall be appointed consecutively to more
22 than two terms as a member of the board.



1 (c) The chairperson of the board shall be elected by the
2 majority of the members of the board. Members of the board
3 shall serve without compensation, but they shall be reimbursed
4 for reasonable expenses, including travel expenses, incurred in
5 the discharge of their duties.

6 (d) The judicial council shall solicit applications for
7 the nominees through community organizations, advertisements in
8 any newspaper of general circulation, or other means designed to
9 obtain qualified applicants. The judicial council shall meet
10 and expeditiously to select nominees whenever a vacancy or
11 anticipated vacancy exists on the board. A vacancy on the board
12 shall be filled for the remainder of the unexpired term in the
13 same manner as the original appointment; provided that the
14 number of nominees to fill a vacancy shall be two."

15 SECTION 3. Section 92-1.5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§92-1.5[+] **Administration of this part.** The director
18 of the office of information practices shall administer this
19 part. The [~~director~~] board of information practices shall
20 establish procedures for filing and responding to complaints
21 filed by any person concerning the failure of any board to
22 comply with this part. The [~~director of the office~~] board of



1 information practices shall submit an annual report of these
2 complaints along with final resolution of complaints, and other
3 statistical data to the legislature, no later than twenty days
4 prior to the convening of each regular session."

5 SECTION 4. Section 92F-41, Hawaii Revised Statutes, is
6 amended by amending subsections (b), (c), and (d) to read as
7 follows:

8 " (b) ~~[The governor shall appoint a director of the office~~
9 ~~of information practices to be its chief executive officer and~~
10 ~~who shall be exempt from chapter 76.]~~ There shall be an
11 executive director of the office of information practices who
12 shall be appointed by the board of information practices under
13 section 92F- . The director shall be exempt from chapter 76.

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

18 (d) The ~~[direeter]~~ board may employ any other personnel
19 that are necessary, including but not limited to attorneys and
20 clerical staff without regard to chapter 76."

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



1 "§92F-42 Powers and duties of the office of information
2 practices. The [~~director of the office~~] board 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
10 enforcement 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
20 agency and investigate possible violations by any
21 agency;



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

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

- 1 (14) Shall adopt rules which set forth uniform standards
- 2 for the records collection practices of agencies;
- 3 (15) Shall adopt rules that set forth uniform standards for
- 4 disclosure of records for research purposes;
- 5 (16) Shall have standing to appear in cases where the
- 6 provisions of this chapter are called into question;
- 7 (17) Shall adopt, amend, or repeal rules pursuant to
- 8 chapter 91 necessary for the purposes of this chapter;
- 9 and
- 10 (18) Shall take action to oversee compliance with part I of
- 11 chapter 92 by all state and county boards including:
- 12 (A) Receiving and resolving complaints;
- 13 (B) Advising all government boards and the public
- 14 about compliance with chapter 92; and
- 15 (C) Reporting each year to the legislature on all
- 16 complaints received pursuant to section 92-1.5."

17 SECTION 6. The employment status, salary and employee

18 benefits of all officers and employees of the office of

19 information practices on the day before the effective date of

20 this Act shall not be affected by this Act, but shall be subject

21 to subsequent personnel action by the board of information

22 practices.



H.B. NO. 2985

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____

Cole - KY Ay
BY REQUEST

JAN 25 2006



HB 2985

Report Title:

Information Practices; Board of Information Practices

Description:

Creates a board of information practices with power to appoint and remove the executive director of information practices.

