

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO THE OFFICE OF INFORMATION PRACTICES.

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

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

4           "§92-     Alternative enforcement by the office of  
5 information practices. (a) Upon the filing of a complaint by  
6 any person or at the discretion of the director of the office of  
7 information practices, the office of information practices shall  
8 review or investigate any action of a board for the purpose of:

- 9           (1) Requiring compliance with this part;  
10           (2) Preventing violations of this part; or  
11           (3) Determining the applicability of this part to actions  
12           of the board.

13 Submission of a complaint to the office of information practices  
14 concerning the action of a board shall not prejudice the  
15 person's right to bring a judicial action under section 92-  
16 12(c).

17           (b) If the office of information practices concludes after  
18 review or investigation pursuant to subsection (a) that an

1 action of the board has violated or will cause a violation of  
2 this part or is subject to this part, the office of information  
3 practices shall, in writing, notify the person who filed the  
4 complaint and the board of the decision, the reasons for the  
5 decision, and the actions necessary to ensure compliance with or  
6 to correct the violation of this part. If the decision is that  
7 the action of the board has not violated or will not cause a  
8 violation of this part or is not subject to this part, the  
9 office of information practices shall, in writing, notify the  
10 person who filed a complaint and the board of the decision, the  
11 reasons for the decision, and the person's right to bring a  
12 judicial action under 92-12(c).

13 (c) The office of information practices may apply to the  
14 circuit court of the circuit in which a board is located for a  
15 judgment to enforce the provisions of the decision made pursuant  
16 to this section. A proceeding to enforce the decision shall be  
17 commenced within ninety days of the action of the board."

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

21 "§92- Notice to the office of information practices.

1 When filing a civil action that is under, related to, or is  
2 affected by this part, a person shall notify the office of  
3 information practices in writing at the time of the filing. The  
4 office of information practices may intervene in the action."

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

7 "[+]§92-1.5[+] **Administration of this part.** The director  
8 of the office of information practices shall administer this  
9 part. The director [~~shall establish procedures for filing and~~  
10 ~~responding to complaints filed by any person concerning the~~  
11 ~~failure of any board to comply with this part. The director of~~  
12 ~~the office of information practices shall submit an annual~~  
13 ~~report of these complaints along with final resolution of~~  
14 ~~complaints, and other statistical data to the legislature, no~~  
15 ~~later than twenty days prior to the convening of each regular~~  
16 ~~session.]:~~

17 (1) Shall, upon request or the filing of a complaint by  
18 any person concerning the failure of any board to  
19 comply with this part, review and rule on any issue  
20 regarding compliance of a board with the requirements  
21 under this part; provided that any review by the

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- 1           office of information practices shall not be a  
2           contested case under chapter 91 and shall be optional  
3           and without prejudice to rights of judicial  
4           enforcement available under this part;
- 5       (2) Upon request by a board, shall provide and make public  
6           advisory guidelines, opinions, or other information  
7           concerning that board's functions and responsibilities  
8           under this part;
- 9       (3) Upon request by any person, may provide advisory  
10           opinions or other information regarding that person's  
11           rights and the functions and responsibilities of  
12           boards under this part;
- 13       (4) May conduct inquiries regarding compliance by a board  
14           and investigate possible violations under this part;
- 15       (5) May examine the records and make inquiries of any  
16           board for the purpose of paragraph (4) and seek to  
17           enforce that power in the courts of this State;
- 18       (6) May recommend disciplinary action to the appointing  
19           authority of a board for violations of this part;
- 20       (7) Shall receive complaints from and actively solicit the  
21           comments of the public regarding the implementation of  
22           this part;

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- 1        (8) May review the official acts, records, policies, and
- 2            procedures of a board under this part;
- 3        (9) Shall assist boards in complying with the provisions
- 4            of this part;
- 5        (10) Shall have standing to appear in cases relating to the
- 6            application of this part;
- 7        (11) May commence a proceeding in circuit court to enforce
- 8            a decision made pursuant to this part; and
- 9        (12) Shall report annually to the governor and the
- 10           legislature on the activities and findings of the
- 11           office of information practices."

12        SECTION 4. Section 92-12, Hawaii Revised Statutes, is  
13 amended to read as follows:

14        "**§92-12 Enforcement.** (a) The attorney general and the  
15 prosecuting attorney shall enforce [~~this part.~~] section 92-13.

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

19        (c) Any person may commence a suit in the circuit court of  
20 the circuit in which a prohibited act occurs for the purpose of  
21 requiring compliance with or preventing violations of this part  
22 or to determine the applicability of this part to [~~discussions~~

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1 ~~or decisions of the public body.]~~ actions of the board. The  
2 court may order payment of reasonable attorney fees and costs to  
3 the prevailing party in a suit brought under this section.

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

7 (1) There is likelihood that the party bringing the action  
8 will prevail on the merits;

9 (2) Irreparable damage will result if a stay is not  
10 ordered;

11 (3) No irreparable damage to the public will result from  
12 the stay order; and

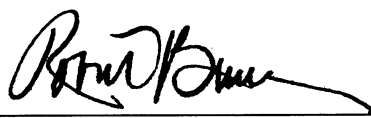
13 (4) Public interest will be served by the stay order."

14 SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2366

DEPARTMENT: OFFICE OF THE LIEUTENANT GOVERNOR,  
OFFICE OF INFORMATION PRACTICES

TITLE: A BILL FOR AN ACT RELATING TO THE OFFICE OF  
INFORMATION PRACTICES.

PURPOSE: To make the powers and duties of the Office of  
Information Practices (OIP) in administering  
part I of chapter 92, Hawaii Revised Statutes  
(Sunshine Law), consistent with its powers and  
duties in administering chapter 92F, Hawaii  
Revised Statutes, the Hawaii Uniform Information  
Practices Act (Modified) (UIPA); in particular,  
giving OIP the ability to render decisions,  
making compliance by boards mandatory, and, if  
necessary, allowing OIP to obtain court  
enforcement of its decisions.

To provide to the public a convenient, timely,  
and optional alternative to bringing an action  
in court to require compliance with or prevent  
violation of the Sunshine Law or to determine  
the applicability of the statute's provisions to  
the actions of a board.

To limit the enforcement role of the Attorney  
General and the prosecuting attorney to  
prosecution of the criminal violation section of  
the Sunshine Law.

To require that notice be given to OIP of any  
civil lawsuit related to the Sunshine Law and to  
allow OIP to intervene in such action.

MEANS: Add two new sections to part I of chapter 92 and  
amend sections 92-1.5 and 92-12, Hawaii Revised  
Statutes (HRS).

JUSTIFICATION: Pursuant to sections 92-1.5 and 92F-42(18), HRS,  
the Legislature has charged OIP generally with  
the administration of the Sunshine Law. The  
Legislature did not, however, provide specific  
powers and duties to OIP as it did under the  
UIPA. This bill will make the powers and duties

of OIP consistent under both statutes.

Further, the Legislature assigned the responsibility of administration of the Sunshine Law to OIP in 1998, but left enforcement to the Attorney General, the prosecuting attorney, and the public serving as a private attorney general. Giving OIP the ability to enforce the Sunshine Law administratively would be consistent with the Legislature's transfer of responsibility for the statute's administration to OIP and would give OIP the means to fully carry out that function.

At present, OIP issues opinions regarding the Sunshine Law, but has no means to enforce those opinions. The proposed amendments to the statute will increase OIP's ability to gain compliance with the Sunshine Law by authorizing OIP to render decisions under the Sunshine Law, by making board compliance with OIP's decisions mandatory, and by giving OIP the ability, if necessary, to obtain a court judgment to enforce its decisions.

Impact on the public: This bill will give the public an administrative avenue of recourse. It will allow the public to rely upon OIP to enforce compliance with the Sunshine Law instead of requiring individual members of the public to expend the time, effort, and cost of bringing an action in court. The result will be better compliance with the Sunshine Law allowing the public to better participate in and scrutinize government.

This bill will also remove the confusion and frustration the public often expresses to OIP over OIP's lack of enforcement powers.

This bill will require members of the public to give OIP notice of any action filed that concerns the Sunshine Law.

Impact on the department and other agencies: The bill will give OIP the means to carry out its administrative functions with a possible



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increase in its workload if it is required to seek judicial enforcement of its decisions.

This bill will have no effect on boards that currently comply with OIP's opinions. For those boards that do not, they will now be expressly required to comply and may be subject to a court order to do so.

This bill will free the Attorney General from the civil enforcement responsibilities being given to OIP under this bill.

GENERAL FUND: None.

OTHER FUNDS: Expenses incurred by OIP when filing suit in circuit court to enforce its decisions.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: All state and county boards.

EFFECTIVE DATE: Upon approval.