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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 two new sections to part I to be appropriately  
3 designated and to read as follows:

4 "§92- Alternative enforcement by the office of  
5 information practices; complaints. (a) Any person may file an  
6 administrative complaint regarding a board's action based upon a  
7 violation of this part. Upon the filing of a complaint by any  
8 person or at the discretion of the director of the office of  
9 information practices, the office of information practices shall  
10 review or investigate any action of a board for the purpose of:

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

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



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

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

20        **§92-    Notice to the office of information practices.**  
21 When filing a civil action pursuant to section 92-12 that is  
22 under, related to, or is affected by this part, a person shall

1 notify the office of information practices in writing at the  
2 time of the filing. The office of information practices may  
3 intervene in the action."

4 SECTION 2. Section 92-1.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~§~~92-1.5] **Administration of this part.** The director  
7 of the office of information practices shall administer this  
8 part. The director [~~shall establish procedures for filing and~~  
9 ~~responding to complaints filed by any person concerning the~~  
10 ~~failure of any board to comply with this part. The director of~~  
11 ~~the office of information practices shall submit an annual~~  
12 ~~report of these complaints along with final resolution of~~  
13 ~~complaints, and other statistical data to the legislature, no~~  
14 ~~later than twenty days prior to the convening of each regular~~  
15 ~~session.]:~~

16 (1) Upon request or the filing of a complaint by any  
17 person concerning the failure of any board to comply  
18 with this part, shall review and rule on any issue  
19 regarding compliance of a board with the requirements  
20 under this part; provided that any review by the  
21 office of information practices shall not be a  
22 contested case under chapter 91 and shall be optional



- 1       (8) Shall assist boards in complying with the provisions  
2           of this part;
- 3       (9) Shall have standing to appear in cases relating to the  
4           application of this part;
- 5       (10) May commence a proceeding in circuit court to enforce  
6           a decision made pursuant to section 92- ; and
- 7       (11) Shall report annually to the governor and the  
8           legislature on the activities and findings of the  
9           office of information practices."

10       SECTION 3. Section 92-12, Hawaii Revised Statutes, is  
11 amended to read as follows:

12       "**§92-12 Enforcement.** (a) The attorney general [~~and~~], the  
13 prosecuting attorney, and the office of information practices  
14 shall enforce this part.

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

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

1 court may order payment of reasonable attorney fees and costs to  
2 the prevailing party in a suit brought under this section.

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

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

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

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

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

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

SB2366, SD1

**Report Title:**

Public Information; Decisions; Compliance

**Description:**

Makes the powers and duties of the office of information practices in administering the sunshine law consistent with its powers and duties in administering the Hawaii uniform information practices Act. Gives OIP the ability to render decisions, makes compliance by boards mandatory, and allows OIP to obtain court enforcement of its decisions. (SD1)

