

JAN 25 2006

S.B. NO. 2657

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# 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 ~~[director]~~ 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 ~~[director]~~ 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.

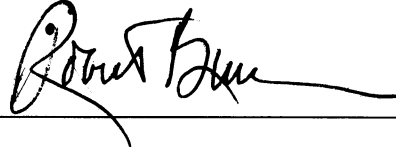


1 SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:



By Request



**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.

