

JAN 27 2010

A BILL FOR AN ACT

RELATING TO GOVERNMENT OPERATIONS.

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

1 SECTION 1. The legislature finds that as a result of the
2 recent court ruling in *County of Kauai v. Office of Information*
3 *Practices*, 120 Hawaii 34 (App. 2009), government boards now have
4 broad discretion in discussing public matters in executive
5 sessions by consulting with their attorney. Also, boards are
6 allowed to file lawsuits against the office of information
7 practices to avoid complying with their opinions.

8 The legislature further finds that government should, as
9 much as possible, conduct its business in full view of the
10 public. Also, the office of information practices was
11 established by the legislature to ensure that government boards
12 comply with the spirit and requirements of the State's freedom
13 of information laws. The legislature finds that the *County of*
14 *Kauai v. Office of Information Practices* ruling allows boards
15 too much flexibility in limiting public access to government
16 proceedings.

17 The purpose of this Act is to clarify:



1 (1) The scope of discussions that a government entity may
2 have with its attorney during a closed executive
3 session by limiting discussions to matters that may
4 have the potential for litigation; and

5 (2) That government entities have no statutory right to
6 request judicial review of decisions of the OIP.

7 SECTION 2. Section 92-5, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) A board may hold a meeting closed to the public
10 pursuant to section 92-4 for one or more of the following
11 purposes:

12 (1) To consider and evaluate personal information relating
13 to individuals applying for professional or vocational
14 licenses cited in section 26-9 or both;

15 (2) To consider the hire, evaluation, dismissal, or
16 discipline of an officer or employee or of charges
17 brought against the officer or employee, where
18 consideration of matters affecting privacy will be
19 involved; provided that if the individual concerned
20 requests an open meeting, an open meeting shall be
21 held;



- 1 (3) To deliberate concerning the authority of persons
2 designated by the board to conduct labor negotiations
3 or to negotiate the acquisition of public property, or
4 during the conduct of such negotiations;
- 5 (4) To consult with the board's attorney on questions and
6 issues pertaining to the board's legal
7 responsibilities and matters pertaining to potential
8 or actual lawsuits involving the board or the board's
9 powers, duties, privileges, immunities, and
10 liabilities;
- 11 (5) To investigate proceedings regarding criminal
12 misconduct;
- 13 (6) To consider sensitive matters related to public safety
14 or security;
- 15 (7) To consider matters relating to the solicitation and
16 acceptance of private donations; and
- 17 (8) To deliberate or make a decision upon a matter that
18 requires the consideration of information that must be
19 kept confidential pursuant to a state or federal law,
20 or a court order."

21 SECTION 3. Section 92F-15.5, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) [~~If the~~] Notwithstanding any other law to the
2 contrary, if the office of information practices' decision is to
3 disclose, the decision shall not be subject to appeal or any
4 other judicial action to the circuit court by the agency. The
5 office of information practices shall notify the person and the
6 agency, and the agency shall make the record available. If the
7 denial of access is upheld, in whole or in part, the office of
8 information practices shall, in writing, notify the person of
9 the decision, the reasons for the decision, and the right to
10 bring a judicial action under section 92F-15(a)."

11 SECTION 4. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

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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Carol Fulem



Report Title:

Government Operations; Public Agency Meetings; Uniform
Information Practices Act

Description:

Narrows the reasons why a board may hold a meeting closed to the public with the board's attorney; clarifies that an agency shall not appeal an office of information practices' decision to disclose to circuit court.

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

