



GOV. MSG. NO. 1279

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 28, 2012, the following bill was signed into law:

SB2858 SD1 HD2 CD1

RELATING TO OPEN GOVERNMENT.
Act 176 (12)

Signature
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
on JUN 28 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 176
S.B. NO. 2858
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO OPEN GOVERNMENT.

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

1 SECTION 1. Chapter 92F, Hawaii Revised Statutes, is
2 amended by adding to part IV a new section to be appropriately
3 designated and to read as follows:
4 "§92F- Agency appeal of a decision by the office of
5 information practices. (a) An agency may not appeal a decision
6 by the office of information practices made under this chapter
7 or part I of chapter 92, except as provided in this section.
8 Within thirty days of the date of the decision, an agency may
9 seek judicial review of a final decision rendered by the office
10 of information practices under this chapter or part I of chapter
11 92, by filing a complaint to initiate a special proceeding in
12 the circuit court of the judicial circuit in the State where:
13 (1) The request for access to a record was made;
14 (2) The act the office determined was prohibited under
15 part I of chapter 92 occurred; or
16 (3) The agency's principal place of business is located.
17 (b) The agency shall give notice of the complaint to the
18 office of information practices and the person who requested the



1 decision for which the agency seeks judicial review by serving a
2 copy of the complaint on each; provided that the office of
3 information practices and the person who requested the decision
4 shall not be required to participate in the proceeding; and
5 provided further that the court shall proceed to review the
6 decision pursuant to the rules applicable to a special
7 proceeding, upon the expiration of time that an answer to the
8 complaint would otherwise need to be filed under the rules of
9 court by the office of information practices or the person upon
10 whom the complaint was served. The office of information
11 practices or the person who requested the decision may intervene
12 in the proceeding.

13 (c) Within thirty days of service of the complaint, the
14 office of information practices shall file a certified copy of
15 the record that it compiled to make its decision in the circuit
16 court and mail a copy of the index to that record to the
17 appealing agency. The circuit court's review shall be limited
18 to the record that was before the office of information
19 practices when it rendered the decision, unless the circuit
20 court finds that extraordinary circumstances justify discovery
21 and admission of additional evidence. The circuit court shall
22 uphold a decision of the office of information practices, unless



1 the circuit court concludes that the decision was palpably
2 erroneous."

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

5 "[+]§92-1.5[+] **Administration of this part.** The director
6 of the office of information practices shall administer this
7 part. The director shall establish procedures for filing and
8 responding to complaints filed by any person concerning the
9 failure of any board to comply with this part. An agency may
10 not appeal a decision by the office of information practices
11 made under this chapter, except as provided in section 92F- .
12 The director of the office of information practices shall submit
13 an annual report of these complaints along with final resolution
14 of complaints, and other statistical data to the legislature, no
15 later than twenty days prior to the convening of each regular
16 session."

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

19 "**§92-12 Enforcement.** (a) The attorney general and the
20 prosecuting attorney shall enforce this part.



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

4 (c) Any person may commence a suit in the circuit court of
5 the circuit in which a prohibited act occurs for the purpose of
6 requiring compliance with or preventing violations of this part
7 or to determine the applicability of this part to discussions or
8 decisions of the public body. The court may order payment of
9 reasonable ~~[attorney]~~ attorney's fees and costs to the
10 prevailing party in a suit brought under this section.

11 (d) Opinions and rulings of the office of information
12 practices shall be admissible in an action brought under this
13 part and shall be considered as precedent unless found to be
14 palpably erroneous.

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

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

20 (2) Irreparable damage will result if a stay is not
21 ordered;



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

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

4 SECTION 4. Section 92F-15, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 " (b) In an action to compel disclosure, the circuit court
7 shall hear the matter de novo[-]; provided that if the action to
8 compel disclosure is brought because an agency has not made a
9 record available as required by section 92F-15.5(b) after the
10 office of information practices has made a decision to disclose
11 the record and the agency has not appealed that decision within
12 the time period provided by 92F- , the decision of the office
13 of information practices shall not be subject to challenge by
14 the agency in the action to compel disclosure. Opinions and
15 rulings of the office of information practices shall be
16 admissible[-] and shall be considered as precedent unless found
17 to be palpably erroneous, except that in an action to compel
18 disclosure brought by an aggrieved person after the office of
19 information practices upheld the agency's denial of access to
20 the person as provided in section 92F-15.5(b), the opinion or
21 ruling upholding the agency's denial of access shall be reviewed
22 de novo. The circuit court may examine the government record at



1 issue, in camera, to assist in determining whether it, or any
2 part of it, may be withheld."

3 SECTION 5. Section 92F-27, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§92F-27 Civil actions and remedies.** (a) An individual
6 may bring a civil action against an agency in a circuit court of
7 the State whenever an agency fails to comply with any provision
8 of this part, and after appropriate administrative remedies
9 under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

10 (b) Opinions and rulings of the office of information
11 practices shall be admissible and shall be considered as
12 precedent unless found to be palpably erroneous, except that the
13 opinion or ruling upholding the agency's denial of access to the
14 aggrieved person shall be reviewed de novo. The circuit court
15 may examine the record at issue, in camera, to assist in
16 determining whether it, or any part of it, may be withheld.

17 [~~(b)~~] (c) In any action brought under this section the court
18 may order the agency to correct or amend the complainant's
19 personal record, to require any other agency action, or to
20 enjoin such agency from improper actions as the court may deem
21 necessary and appropriate to render substantial relief.



1 [~~(e)~~] (d) In any action brought under this section in which
2 the court determines that the agency knowingly or intentionally
3 violated a provision of this part, the agency shall be liable to
4 the complainant in an amount equal to the sum of:

5 (1) Actual damages sustained by the complainant as a
6 result of the failure of the agency to properly
7 maintain the personal record, but in no case shall [~~a~~
8 ~~complainant (individual)~~] an individual complainant
9 entitled to recovery receive less than the sum of
10 \$1,000; and

11 (2) The costs of the action together with reasonable
12 attorney's fees as determined by the court.

13 [~~(d)~~] (e) The court may assess reasonable attorney's fees
14 and other litigation costs reasonably incurred against the
15 agency in any case in which the complainant has substantially
16 prevailed, and against the complainant where the charges brought
17 against the agency were frivolous.

18 [~~(e)~~] (f) An action may be brought in the circuit court
19 where the complainant resides, the complainant's principal place
20 of business is situated, or the complainant's relevant personal
21 record is situated. No action shall be brought later than two
22 years after notification of the agency denial, or where



1 applicable, the date of receipt of the final determination of
2 the office of information practices."

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

8 SECTION 8. This Act shall take effect on January 1, 2013.

APPROVED this 28 day of JUN, 2012


GOVERNOR OF THE STATE OF HAWAII