

JAN 23 2015

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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 access to government  
2 information is fundamental to public participation in government  
3 affairs. The office of information practices plays a key role  
4 in ensuring that the public is provided its rightful access to  
5 public documents and that privacy rights are protected as  
6 required by law.

7           Currently, the office of information practices is a  
8 temporary office within the office of the lieutenant governor  
9 for administrative purposes. The legislature finds, however,  
10 that establishing an information practices commission would  
11 create an independent agency, the operations of which would be  
12 protected against any possible influences, political or  
13 otherwise.

14           The purpose of this Act is to reconstitute the office of  
15 information practices as an information practices commission and  
16 permanently establish the commission in the department of  
17 accounting and general services.



1 SECTION 2. Chapter 92F, part IV, Hawaii Revised Statutes,  
2 is amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 "§92F- Staff. The information practices commission may  
5 employ and at its pleasure remove any persons, including an  
6 executive director, as it may deem necessary for the performance  
7 of its functions. The commission shall fix the compensation of  
8 its employees, including the executive director, within the  
9 amounts made available by appropriation therefor. The employees  
10 of the commission shall be exempt from chapter 76.

11 §92F- Prohibition from political activity. No member of  
12 the information practices commission or any of its employees  
13 shall take an active part in political management or in  
14 political campaigns during a commissioner's or employee's term  
15 of office or employment."

16 SECTION 3. Section 26-1, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§26-1 Office of the lieutenant governor. (a) Except as  
19 otherwise provided by law, the lieutenant governor is designated  
20 the secretary of state for intergovernmental relations and shall  
21 perform the duties and functions heretofore exercised by the



1 secretary of Hawaii. The duties and functions shall include,  
2 but not be limited to, recordation of all legislative and  
3 gubernatorial acts, certification of state documents, and  
4 maintenance of an official file of rules adopted by state  
5 departments as provided in chapter 91. The lieutenant governor  
6 may employ staff as necessary without regard to chapter 76.

7 (b) The lieutenant governor, with the approval of the  
8 governor, may designate some other officer of the government of  
9 the State to authenticate documents on behalf of the lieutenant  
10 governor during the lieutenant governor's temporary absence  
11 outside the State or during the lieutenant governor's illness  
12 whenever the documents require the signature of the lieutenant  
13 governor. The person shall affix the person's own signature to  
14 the document with the words, "for the lieutenant governor"  
15 following and the signature shall be deemed to satisfy the  
16 requirement of the lieutenant governor's signature on the  
17 document. The designation and approval shall be in writing and  
18 shall be filed in the office of the governor and a copy thereof,  
19 certified by the governor, shall be filed with the public  
20 archives. The person so designated shall serve without  
21 additional compensation and the lieutenant governor shall be



1 responsible and liable on the lieutenant governor's official  
2 bond for all acts done by the person so designated in the  
3 performance of the duties on behalf of the lieutenant governor.

4 (c) Nothing in this section shall be construed to  
5 authorize the person to exercise and discharge the powers and  
6 duties of the office of the governor as provided by the first  
7 paragraph of [~~Article~~] article V, section 4, of the  
8 [~~Constitution of the State.~~] state constitution. The person  
9 shall not be authorized to exercise any powers whenever a  
10 successor to the lieutenant governor assumes the duties of the  
11 lieutenant governor pursuant to [~~Article~~] article V, section 4,  
12 of the [~~Constitution.~~] state constitution.

13 [~~(d) In addition to the functions and duties provided by~~  
14 ~~law, the lieutenant governor shall assume administrative~~  
15 ~~responsibility for the office of information practices.~~

16 ~~(e)]~~ (d) The governor shall identify and direct other  
17 duties as necessary to the lieutenant governor."

18 SECTION 4. Chapter 92F, part IV, Hawaii Revised Statutes,  
19 is amended by amending its title to read as follows:

20 "PART IV. [~~OFFICE OF~~] INFORMATION PRACTICES [~~+~~] COMMISSION;  
21 DUTIES"



1 SECTION 5. Section 92F-41, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§92F-41 [~~Office of information practices;~~] Information  
4 practices commission; established. (a) There is established [a  
5 ~~temporary office of information practices for a special purpose~~  
6 ~~within the office of the lieutenant governor for administrative~~  
7 ~~purposes.] within the department of accounting and general  
8 services, for administrative purposes only, a commission to be  
9 known as the information practices commission.~~

10 [~~(b) The governor shall appoint a director of the office~~  
11 ~~of information practices to be its chief executive officer and~~  
12 ~~who shall be exempt from chapter 76.~~

13 [~~(c) All powers and duties of the office of information~~  
14 ~~practices are vested in the director and may be delegated to any~~  
15 ~~other officer or employee of the office.~~

16 [~~(d) The director may employ any other personnel that are~~  
17 ~~necessary, including but not limited to attorneys and clerical~~  
18 ~~staff without regard to chapter 76.]~~

19 (b) The commission shall consist of five members appointed  
20 by the governor from a panel of ten persons nominated by the  
21 judicial council. Each member of the commission shall be a



1 citizen of the United States and a resident of the State.

2 Members of the commission shall hold no other public office.

3 (c) The chairperson of the commission shall be elected by  
4 the majority of the members of the commission. The term of each  
5 member of the commission shall be for four years; provided that  
6 of the five members initially appointed, two members shall hold  
7 office for two years, two members shall hold office for three  
8 years, and one member shall hold office for four years. No  
9 person shall be appointed consecutively to more than two terms  
10 as a member of the commission. A vacancy on the commission  
11 shall be filled for the remainder of the unexpired term in the  
12 same manner as the original appointment, except that the  
13 judicial council shall nominate for gubernatorial appointment  
14 two persons for a vacancy.

15 (d) No member of the commission shall hold office for more  
16 than one hundred twenty days after the expiration of the  
17 member's term. If the governor fails to appoint a person to a  
18 vacant office within sixty days after receipt of the list of  
19 nominees from the judicial council, the judicial council shall  
20 select a person from the list of nominees to fill the vacant



1 office, notwithstanding subsection (c) and section 26-34 to the  
2 contrary.

3 (e) The members of the information practices commission  
4 shall serve without compensation but shall be allowed their  
5 actual and necessary expenses incurred in the performance of  
6 their duties.

7 (f) The governor may remove or suspend any member of the  
8 commission upon the filing of a written finding with the  
9 commission, and upon service of a copy of the written finding on  
10 the member to be removed or suspended."

11 SECTION 6. Section 92F-42, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§92F-42 Powers and duties of the [~~office of information~~**  
14 **~~practices.] information practices commission.~~** The [~~director of~~  
15 ~~the office of]~~ information practices[+] commission shall have  
16 the following powers and duties:

17 (1) [~~Shall, upon~~] Upon request, the commission shall  
18 review and rule on an agency denial of access to  
19 information or records, or an agency's granting of  
20 access; provided that any review by the [~~office of~~  
21 ~~information practices]~~ commission shall not be a



1           contested case under chapter 91 and shall be optional  
2           and without prejudice to rights of judicial  
3           enforcement available under this chapter;

4           (2) Upon request by an agency, the commission shall  
5           provide and make public advisory guidelines, opinions,  
6           or other information concerning that agency's  
7           functions and responsibilities;

8           (3) Upon request by any person, the commission may provide  
9           advisory opinions or other information regarding that  
10          person's rights and the functions and responsibilities  
11          of agencies under this chapter;

12          (4) [~~May~~] The commission may conduct inquiries regarding  
13          compliance by an agency [~~and~~], investigate possible  
14          violations by any agency[+], and hold hearings;

15          (5) [~~May~~] The commission may examine the records of any  
16          agency for the purpose of paragraph (4) and seek to  
17          enforce that power in the courts of this State;

18          (6) [~~May~~] The commission may recommend disciplinary action  
19          to appropriate officers of an agency;

20          (7) [~~Shall~~] The commission shall report annually to the  
21          governor and the state legislature on the activities





1 and findings of the [~~office of information practices,~~  
2 commission, including recommendations for legislative  
3 changes;

4 (8) [~~Shall~~] The commission shall receive complaints from  
5 and actively solicit the comments of the public  
6 regarding the implementation of this chapter;

7 (9) [~~Shall~~] The commission shall review the official acts,  
8 records, policies, and procedures of each agency;

9 (10) [~~Shall~~] The commission shall assist agencies in  
10 complying with the provisions of this chapter;

11 (11) [~~Shall~~] The commission shall inform the public of the  
12 following rights of an individual and the procedures  
13 for exercising [~~them+~~] those rights:

14 (A) The right of access to records pertaining to the  
15 individual;

16 (B) The right to obtain a copy of records pertaining  
17 to the individual;

18 (C) The right to know the purposes for which records  
19 pertaining to the individual are kept;



- 1 (D) The right to be informed of the uses and
- 2 disclosures of records pertaining to the
- 3 individual;
- 4 (E) The right to correct or amend records pertaining
- 5 to the individual; and
- 6 (F) The individual's right to place a statement in a
- 7 record pertaining to that individual;
- 8 (12) ~~[Shall]~~ The commission shall adopt, amend, or repeal
- 9 rules pursuant to chapter 91 necessary for the
- 10 purposes of this chapter, including rules that set
- 11 forth [aa]:
- 12 (A) An administrative appeals structure [which] that
- 13 provides for:
- 14 ~~[(A)]~~ (i) Agency procedures for processing records
- 15 requests;
- 16 ~~[(B)]~~ (ii) A direct appeal from the division
- 17 maintaining the record; and
- 18 ~~[(C)]~~ (iii) Time limits for action by agencies;
- 19 ~~[-(13)- Shall adopt rules that set forth the]~~
- 20 (B) The fees and other charges that may be imposed
- 21 for searching, reviewing, or segregating



1           disclosable records, as well as to provide for a  
2           waiver of fees when the public interest would be  
3           served;

4    ~~[(14) Shall adopt rules which set forth uniform]~~

5           (C) Uniform standards for the records collection  
6           practices of agencies; and

7    ~~[(15) Shall adopt rules that set forth uniform]~~

8           (D) Uniform standards for disclosure of records for  
9           research purposes;

10   ~~[(16)]~~ (13) [Shall] The commission shall have standing to  
11   appear in cases where the provisions of this chapter  
12   are called into question;

13   ~~[(17) Shall adopt, amend, or repeal rules pursuant to~~  
14   ~~chapter 91 necessary for the purposes of this~~  
15   ~~chapter;] and~~

16   ~~[(18)]~~ (14) [Shall] The commission shall take action to  
17   oversee compliance with part I of chapter 92 by all  
18   state and county boards including:

19           (A) Receiving and resolving complaints;

20           (B) Advising all government boards and the public  
21           about compliance with chapter 92; and



1           (C) Reporting each year to the legislature on all  
2                       complaints received pursuant to section 92-1.5."

3           SECTION 7. Sections 27G-3 and 92-3.1, Hawaii Revised  
4 Statutes, are amended by substituting the words "executive  
5 director of the office of information practices" wherever the  
6 words "director of the office of information practices" appear,  
7 as the context requires.

8           SECTION 8. Sections 27-44.3, 91-2.5, 92-12, 92F-15,  
9 92F-15.3, 92F-15.5, 92F-18, 92F-26, 92F-27, 92F-27.5, 92F-43,  
10 231-19.5, and 396-5.1, Hawaii Revised Statutes, are amended by  
11 substituting the words "information practices commission"  
12 wherever the words "office of information practices" appear, as  
13 the context requires.

14           SECTION 9. Section 92-1.5, Hawaii Revised Statutes, is  
15 amended by substituting the words "executive director" and  
16 "information practices commission" wherever the words "director"  
17 and "office of information practices", respectively, appear, as  
18 the context requires.

19           SECTION 10. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect on July 1, 2015;  
2 provided that the amendments made to section 92-3.1, Hawaii  
3 Revised Statutes, by section 7 of this Act shall not be repealed  
4 when that section is repealed and reenacted pursuant to Act 221,  
5 Session Laws of Hawaii 2014.

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INTRODUCED BY: 



# S.B. NO. 658

**Report Title:**

Office of Information Practices; Information Practices  
Commission

**Description:**

Reconstitutes the office of information practices as the information practices commission and places the commission administratively within the department of accounting and general services. Requires the governor to appoint the commission members from a panel of members nominated by the judicial council. Authorizes the commission to hire an executive director and staff.

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

