

ACT 160

H.B. NO. 1597

A Bill for an Act Relating to Open Meetings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to better align the enforcement mechanisms for the State's open meetings law with the State's Uniform Information Practices Act. Specifically, this Act:

- (1) Clarifies that members of the public may sue a board or alleged board after receiving an adverse office of information practices decision, and that the decision will be reviewed de novo;
- (2) Establishes a two-year statute of limitations to bring actions and reaffirms a complainant's right to seek review by the office of information practices first;
- (3) Consistent with the Hawaii supreme court's observations in *Kahana Sunset Owners Ass'n v. Maui Cnty. Council*, 86 Hawaii 132 (1997), recognizes that only a member of the public may recover attorney's fees and costs if that person prevails in an open meetings lawsuit;
- (4) Requires that persons suing for open meetings law violations notify the office of information practices about the lawsuit so that it may decide whether to intervene; and
- (5) Requires open meetings lawsuits that seek to void a board's final action to be prioritized by the courts.

SECTION 2. Section 92-12, Hawaii Revised Statutes, is amended to read as follows:

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

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

(c) Any person may commence a suit against a board or alleged board in the circuit court of the circuit in which a prohibited act occurs for the purpose of ~~requiring~~:

- (1) Requiring compliance with or preventing violations of this part ~~or to determine~~;
- (2) Determining the applicability of this part to discussions or decisions of the public body ~~The~~; or
- (3) Challenging an opinion or ruling of the office of information practices concerning a complaint by that person.

The person may bring the action within two years of a prohibited act; provided that a decision to appeal to the office of information practices for review shall not prejudice the person's right to appeal to the circuit court after a decision is made by the office of information practices. If the person prevails, the court may order payment of reasonable attorney's fees and costs ~~to the prevailing party~~ by the board in a suit brought under this section.

(d) In an action under this section, the circuit court shall hear the matter de novo. Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous ~~;~~ provided that in an action under this section challenging an opinion or ruling of the office of information practices concerning a complaint by the plaintiff, the circuit court shall hear the challenged adverse determination de novo. Except as provided in section 92F-43, a board or alleged board shall not challenge an opinion or ruling of the office of information practices about the board or alleged board.

(e) When filing a suit that is under, related to, or affected by this part, a person shall notify the office of information practices in writing at the time of the filing. The office of information practices may intervene in the action.

(f) Except as to cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, shall take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way when the suit seeks to void any final action pursuant to section 92-11.

~~(e)~~ (g) The proceedings for review shall not stay the enforcement of any agency decisions; ~~but~~ provided that the reviewing court may order a stay if the following criteria have been met:

- (1) There is likelihood that the party bringing the action will prevail on the merits;
- (2) Irreparable damage will result if a stay is not ordered;
- (3) No irreparable damage to the public will result from the stay order; and
- (4) Public interest will be served by the stay order.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 2024.)