

JAN 20 2012

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# A BILL FOR AN ACT

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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 both that the public is provided its rightful access  
5 to 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 and protect its operations against  
12 any possible influences, political or otherwise.

13       The purpose of this Act is to change the office of  
14 information practices to an information practices commission.

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



1        "§92F-        Staff.    The information practices commission may  
2 employ and at pleasure remove any persons, including an  
3 executive director, as it may deem necessary for the performance  
4 of its functions.    The commission shall fix the compensation of  
5 its employees, including the executive director, within the  
6 amounts made available by appropriation therefor.    The employees  
7 of the commission shall be exempt from chapter 76.

8        §92F-        Prohibition from political activity.    No member  
9 of the information practices commission or any of its employees  
10 shall take an active part in political management or in  
11 political campaigns during a commissioner's or employee's term  
12 of office or employment."

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

15        **"§26-1    Office of the lieutenant governor.    (a)    Except as**  
16 **otherwise provided by law, the lieutenant governor is designated**  
17 **the secretary of state for intergovernmental relations and shall**  
18 **perform the duties and functions heretofore exercised by the**  
19 **secretary of Hawaii.    The duties and functions shall include[7]**  
20 **but not be limited to, recordation of all legislative and**  
21 **gubernatorial acts, certification of state documents, and**  
22 **maintenance of an official file of rules adopted by state**



1 departments as provided in chapter 91. The lieutenant governor  
2 may employ staff as necessary without regard to chapter 76.

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

21 (c) Nothing in this section shall be construed to  
22 authorize the person to exercise and discharge the powers and



1 duties of the office of the governor as provided by the first  
2 paragraph of ~~[Article]~~ article V, section 4, of the  
3 ~~[Constitution of the State.]~~ state constitution. The person  
4 shall not be authorized to exercise any powers whenever a  
5 successor to the lieutenant governor assumes the duties of the  
6 lieutenant governor pursuant to ~~[Article]~~ article V, section 4,  
7 of the ~~[Constitution.]~~ state constitution.

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

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

13 SECTION 4. Chapter 92F, part IV, Hawaii Revised Statutes,  
14 is amended to read as follows:

15 "PART IV. ~~[OFFICE OF]~~ INFORMATION PRACTICES COMMISSION;

16 DUTIES

17 §92F-41 ~~[Office of information practices;]~~ Information  
18 practices commission; established. (a) There is established [a  
19 ~~temporary office of information practices for a special purpose~~  
20 ~~within the office of the lieutenant governor for administrative~~  
21 ~~purposes.]~~ within the department of accounting and general



1 services for administrative purposes only a commission to be  
2 known as the information practices commission.

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

6 ~~(c) All powers and duties of the office of information~~  
7 ~~practices are vested in the director and may be delegated to any~~  
8 ~~other officer or employee of the office.~~

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

12 (b) The commission shall consist of five members appointed  
13 by the governor from a panel of ten persons nominated by the  
14 judicial council. Each member of the commission shall be a  
15 citizen of the United States and a resident of the State.  
16 Members of the commission shall hold no other public office.

17 (c) The chairperson of the commission shall be elected by  
18 the majority of the members of the commission. The term of each  
19 member of the commission shall be for four years; provided that  
20 of the five members initially appointed, two members shall hold  
21 office for two years, two members shall hold office for three  
22 years, and one member shall hold office for four years. No



1 person shall be appointed consecutively to more than two terms  
2 as a member of the commission. A vacancy on the commission  
3 shall be filled for the remainder of the unexpired term in the  
4 same manner as the original appointment, except that the  
5 judicial council shall nominate for gubernatorial appointment  
6 two persons for a vacancy.

7 (d) No member of the commission shall hold office for more  
8 than one hundred twenty days after the expiration of the  
9 member's term. If the governor fails to appoint a person to a  
10 vacant office within sixty days after receipt of the list of  
11 nominees from the judicial council, the judicial council shall  
12 select a person from the list of nominees to fill the vacant  
13 office, notwithstanding subsection (c) and section 26-34 to the  
14 contrary.

15 (e) The members of the information practices commission  
16 shall serve without compensation but shall be allowed their  
17 actual and necessary expenses incurred in the performance of  
18 their duties.

19 (f) The governor may remove or suspend any member of the  
20 commission upon the filing of a written finding with the  
21 commission, and upon service of a copy of the written finding on  
22 the member to be removed or suspended.



1       §92F-42 Powers and duties of the [~~office of information~~  
2 ~~practices.~~] information practices commission. The [~~director of~~  
3 ~~the office of~~] information practices[+] commission shall have  
4 the following powers and duties:

5       (1) [~~Shall, upon~~] Upon request, the commission shall  
6 review and rule on an agency denial of access to  
7 information or records, or an agency's granting of  
8 access; provided that any review by the [~~office of~~  
9 ~~information practices~~] commission shall not be a  
10 contested case under chapter 91 and shall be optional  
11 and without prejudice to rights of judicial  
12 enforcement available under this chapter;

13       (2) Upon request by an agency, the commission shall  
14 provide and make public advisory guidelines, opinions,  
15 or other information concerning that agency's  
16 functions and responsibilities;

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

21       (4) [~~May~~] The commission may conduct inquiries regarding  
22 compliance by an agency and investigate possible



1 violations by any agency~~[+]~~, including holding  
2 hearings;

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

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

8 (7) ~~[Shall]~~ The commission shall report annually to the  
9 governor and the state legislature on the activities  
10 and findings of the ~~[office of information practices,]~~  
11 commission, including recommendations for legislative  
12 changes;

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

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

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

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





1 (A) The right of access to records pertaining to the  
2 individual;

3 (B) The right to obtain a copy of records pertaining  
4 to the individual;

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

7 (D) The right to be informed of the uses and  
8 disclosures of records pertaining to the  
9 individual;

10 (E) The right to correct or amend records pertaining  
11 to the individual; and

12 (F) The individual's right to place a statement in a  
13 record pertaining to that individual;

14 (12) ~~[Shall]~~ The commission shall adopt, amend, or repeal  
15 rules pursuant to chapter 91 necessary for the  
16 purposes of this chapter, including rules that set  
17 forth:

18 (A) ~~[an]~~ An administrative appeals structure ~~[which]~~  
19 that provides for:

20 ~~[(A)]~~ (i) Agency procedures for processing records  
21 requests;



~~[(B)]~~ (ii) A direct appeal from the division

maintaining the record; and

~~[(C)]~~ (iii) Time limits for action by agencies;

~~[(13) Shall adopt rules that set forth the]~~

(B)    The fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of fees when the public interest would be served;

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

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

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

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

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

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



1        [~~(18)~~ Shall] (14) The commission shall take action to  
2        oversee compliance with part I of chapter 92 by all  
3        state and county boards including:  
4        (A) Receiving and resolving complaints;  
5        (B) Advising all government boards and the public  
6        about compliance with chapter 92; and  
7        (C) Reporting each year to the legislature on all  
8        complaints received pursuant to section 92-1.5."

9        SECTION 5. Sections 27G-3 and 92-3.1, Hawaii Revised  
10       Statutes, are amended by substituting the words "executive  
11       director of the information practices commission" wherever the  
12       words "director of the office of information practices" appear,  
13       as the context requires.

14       SECTION 6. Sections 91-2.5, 92F-15, 92F-15.3, 92F-15.5,  
15       92F-18, 92F-26, 92F-27, 92F-27.5, 231-19.5, and 396-5.1, Hawaii  
16       Revised Statutes, are amended by substituting the words  
17       "information practices commission" wherever the words "office of  
18       information practices" appear, as the context requires.

19       SECTION 7. Section 92-1.5, Hawaii Revised Statutes, is  
20       amended by substituting the words "executive director" and  
21       "information practices commission", respectively, wherever the



1 words "director" and "office of information practices" appear,  
2 as the context requires.

3 SECTION 8. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect on January 1, 2013.

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INTRODUCED BY:

*[Signature]*  
Anzanne Chun Oakland

*Carol F. [Signature]*  
*[Signature]*



**Report Title:**

Office of Information Practices; Information Practices  
Commission

**Description:**

Renames the office of information practices to the information practices commission and places the commission administratively within DAGS. Requires the governor to name the commission members. Authorizes the commission to hire an executive director and staff. Effective 01/01/13.

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