



GOV. MSG. NO. 1407

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB3252 SD2 HD2 CD1, without my approval and with the statement of objections relating to the measure.

SB3252 SD2 HD2 CD1

RELATING TO PUBLIC RECORDS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2022

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3252

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 3252, entitled "A Bill for an Act Relating to Public Records."

The purpose of this bill is to impose a cap on the costs charged for copying certain government records; waive duplication costs for requesters seeking government records in electronic format; and set a cap on search, review, and segregation fees, which are to be set forth through administrative rules adopted by the Office of Information Practices (OIP), with a waiver of search, review, and segregation fees for requests for government records when the public interest is served by the disclosure of the record(s).

This bill is objectionable because it will have a significant adverse impact upon government agency operations. The full waiver of search, review and segregation fees for virtually all records requests acts as a disincentive for records requesters to narrow the scope of their requests, thus resulting in the consequential increase in overbroad requests. Agencies, the majority of whom do not have dedicated personnel responding to records requests, will be vulnerable to UIPA lawsuits, which will increase costs to government agencies through awards of attorneys' fees and costs to plaintiffs filing those lawsuits. As a result, agencies may be forced to prioritize responding to records requests over the agencies' primary functions. Eleven government agencies testified with concerns or in opposition to this bill due to the adverse effects of the waiver of search/review and segregation fees upon agencies .

STATEMENT OF OBJECTIONS
SENATE BILL NO. 3252
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For the foregoing reasons, I am returning Senate Bill No. 3252 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige", with a stylized flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO PUBLIC RECORDS.

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

1 SECTION 1. The legislature finds that public records laws
2 are a critical mechanism to maintain government accountability
3 and transparency and support citizen involvement in government
4 decision-making. The real-world consequences of restricting
5 access to that information can range from serious to routine
6 but, in all cases, result in a less informed citizenry. Fee
7 waivers offer a simple and flexible solution. Governor David
8 Ige has stated, "Effective citizen participation in state
9 government requires timely access to information and appropriate
10 opportunities for the public to provide its government with
11 feedback and ideas".

12 The legislature further finds that further direction is
13 necessary to carry out the intent indicated by the legislative
14 history of section 92F-42, Hawaii Revised Statutes, and the
15 section's provision on waiver of fees, first introduced in House
16 Bill No. 2002, regular session of 1988. The original language
17 of House Bill No. 2002 (1988) allowed fees for only copies of
18 records, but the house of representatives' judiciary committee's



1 House Draft 1 amended the bill to also allow charges for
2 searching, reviewing, and segregating records, while also
3 allowing waivers for public interest. The house judiciary
4 committee's report, house standing committee report No. 342-88,
5 stated that:

6 It is the intent of your Committee that such charges for
7 search, compilation, and segregation shall not be a vehicle
8 to prohibit access to public records. It is the further
9 intent of your Committee that the Office of Information
10 Practices move aggressively against any agency that uses
11 such charges to chill the exercise of first amendment
12 rights. Your Committee also added new language to allow
13 waiver of these charges when such action serves the public
14 interest.

15 By providing public-interest fee waivers uniformly, the public
16 records request process can provide equitable access.

17 The purpose of this Act is to:

- 18 (1) Impose a cap on the costs charged for the reproduction
19 of certain government records;
20 (2) Waive the cost of duplication of government records
21 provided to requestors in an electronic format;



- 1 (3) Impose a cap on costs charged for searching for,
2 reviewing, and segregating records;
- 3 (4) Provide for a waiver of fees when the public interest
4 is served by a record's disclosure; and
- 5 (5) Appropriate funds for two permanent positions within
6 the office of information practices.

7 SECTION 2. Section 92-21, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§92-21 Copies of records; other costs and fees.** Except
10 as otherwise provided by law, a copy of any government record,
11 including any map, plan, diagram, photograph, photostat, or
12 geographic information system digital data file, which is open
13 to the inspection of the public, shall be furnished to any
14 person applying for the same by the public officer having charge
15 or control thereof upon the payment of the reasonable cost of
16 reproducing [such] the copy. Except as provided in section
17 91-2.5, the cost of reproducing any government record, except
18 geographic information system digital data, photographs, maps,
19 audio recordings, digital or electronic records, and other types
20 of physical records, shall not [~~be less than 5~~] exceed 25 cents
21 per page, sheet, or fraction thereof. Reproduction costs shall



1 not be charged for producing documents provided to requesters in
2 an in electronic format; provided that the agency maintains
3 those documents in an electronic format; provided further that
4 requesters shall be charged for the agency's provision of
5 documents requested in an electronic format that are not
6 maintained by the agency in an electronic format and must be
7 manually faxed or converted into an electronic format. The cost
8 of reproducing geographic information system digital data,
9 photographs, maps, audio recordings, digital or electronic
10 records, and other types of physical records shall be in
11 accordance with rules adopted by the agency having charge or
12 control of that data. [Sueh] The reproduction cost shall
13 ~~[include but shall not be limited to labor cost for search and~~
14 ~~actual time for reproducing, material cost, including~~
15 ~~electricity cost, equipment cost, including rental cost, cost~~
16 ~~for certification, and other related costs.]~~ represent the
17 reasonable direct cost of making the copies and be limited to
18 the salary of the operator of the reproduction machinery as well
19 as the cost of the machinery. All fees shall be paid in by the
20 public officer receiving or collecting the same to the state
21 director of finance, the county director of finance, or to the



1 agency or department by which the officer is employed, as
2 government realizations; provided that fees collected by the
3 public utilities commission pursuant to this section shall be
4 deposited in the public utilities commission special fund
5 established under section 269-33."

6 SECTION 3. Section 92F-42, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§92F-42 Powers and duties of the office of information**
9 **practices.** The director of the office of information practices:

10 (1) Shall, upon request, review and rule on an agency
11 denial of access to information or records, or an
12 agency's granting of access; provided that any review
13 by the office of information practices shall not be a
14 contested case under chapter 91 and shall be optional
15 and without prejudice to rights of judicial
16 enforcement available under this chapter;

17 (2) Upon request by an agency, shall provide and make
18 public advisory guidelines, opinions, or other
19 information concerning that agency's functions and
20 responsibilities;



- 1 (3) Upon request by any person, may provide advisory
2 opinions or other information regarding that person's
3 rights and the functions and responsibilities of
4 agencies under this chapter;
- 5 (4) May conduct inquiries regarding compliance by an
6 agency and investigate possible violations by any
7 agency;
- 8 (5) May examine the records of any agency for the purpose
9 of paragraphs (4) and (18) and seek to enforce that
10 power in the courts of this State;
- 11 (6) May recommend disciplinary action to appropriate
12 officers of an agency;
- 13 (7) Shall report annually to the governor and the state
14 legislature on the activities and findings of the
15 office of information practices, including
16 recommendations for legislative changes;
- 17 (8) Shall receive complaints from and actively solicit the
18 comments of the public regarding the implementation of
19 this chapter;
- 20 (9) Shall review the official acts, records, policies, and
21 procedures of each agency;



- 1 (10) Shall assist agencies in complying with the provisions
2 of this chapter;
- 3 (11) Shall inform the public of the following rights of an
4 individual and the procedures for exercising them:
- 5 (A) The right of access to records pertaining to the
6 individual;
- 7 (B) The right to obtain a copy of records pertaining
8 to the individual;
- 9 (C) The right to know the purposes for which records
10 pertaining to the individual are kept;
- 11 (D) The right to be informed of the uses and
12 disclosures of records pertaining to the
13 individual;
- 14 (E) The right to correct or amend records pertaining
15 to the individual; and
- 16 (F) The individual's right to place a statement in a
17 record pertaining to that individual;
- 18 (12) Shall adopt rules that set forth an administrative
19 appeals structure which provides for:
- 20 (A) Agency procedures for processing records
21 requests;



1 (B) A direct appeal from the division maintaining the
2 record; and

3 (C) Time limits for action by agencies;

4 (13) Shall adopt rules that set forth the fees and other
5 charges that may be imposed for searching, reviewing,
6 or segregating disclosable records[, ~~as well as to~~
7 ~~provide for a waiver of fees when the public interest~~
8 ~~would be served,~~]. The rules shall:

9 (A) Set forth fees not exceeding \$5 per fifteen
10 minutes or fraction thereof for the search for
11 the record;

12 (B) Set forth fees not exceeding \$7.50 per fifteen
13 minutes or fraction thereof for the review and
14 segregation of the record; and

15 (C) Provide for a waiver of fees when the public
16 interest would be served by the record's
17 disclosure; provided that the waiver shall
18 require that the search for or review or
19 segregation of records be provided at no charge
20 to the requester if disclosure of the record is
21 in the public interest because the disclosure is



1 likely to contribute significantly to public
2 understanding of the operations or activities of
3 the government and is not primarily in the
4 commercial interest;

5 (14) Shall adopt rules [~~which~~] that set forth uniform
6 standards for the records collection practices of
7 agencies;

8 (15) Shall adopt rules that set forth uniform standards for
9 disclosure of records for research purposes;

10 (16) Shall have standing to appear in cases where the
11 provisions of this chapter or part I of chapter 92 are
12 called into question;

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

16 (18) Shall take action to oversee compliance with part I of
17 chapter 92 by all state and county boards including:

18 (A) Receiving and resolving complaints;

19 (B) Advising all government boards and the public
20 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 4. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$185,000 or so much
5 thereof as may be necessary for fiscal year 2022-2023 for two
6 full-time equivalent (2.0) permanent positions to be placed
7 within the office of information practices.

8 The sum appropriated shall be expended by the office of
9 information practices for the purposes of this Act.

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2022;
13 provided that sections 2 and 3 shall take effect on July 1,
14 2023.



S.B. NO. 3252
S.D. 2
H.D. 2
C.D. 1


APPROVED this day of , 2022


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.


President of the Senate


Clerk of the Senate

SB No. 3252, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 03, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives