

JAN 26 2022

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 Ige has
8 stated, "Effective citizen participation in state government
9 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 this Act seeks to
13 provide further direction and carry out the intent indicated by
14 the legislative history of section 92F-42(13), Hawaii Revised
15 Statutes, waiver of fees provision first introduced in House
16 Bill No. 2002 (1988). The original language of House Bill No.
17 2002 (1988) allowed fees for only copies of records, but the



1 House of Representatives' Judiciary Committee's House Draft 1
2 amended the bill to also allow charges for searching, reviewing,
3 and segregating records, while also allowing waivers for public
4 interest. The House Judiciary Committee's report, House
5 Standing Committee Report No. 342-88, stated that:

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

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

17 The purpose of this Act is to:

- 18 (1) Impose a cap on the charged costs for the reproduction
19 of certain government records;
20 (2) Waive reproduction costs for the first one hundred
21 pages if disclosure is in the public interest;



(3) Waive the cost of duplication of government records in an electronic format;

(4) Impose a cap on charged costs for searching, reviewing, and segregating records; and

(5) Provide for a waiver of fees when the public interest is served.

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

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



1 pages shall be reproduced without any charge if disclosure of
2 the information is in the public interest because it is likely
3 to contribute significantly to the public understanding of the
4 operations or activities of the government and is not primarily
5 in the commercial interest. Reproduction costs shall not be
6 charged for producing documents provided to requesters in
7 electronic format. The cost of reproducing geographic
8 information system digital data, photographs, maps, audio
9 recordings, digital or electronic records, and other types of
10 physical copies shall be in accordance with rules adopted by the
11 agency having charge or control of that data. [Such] The
12 reproduction cost shall [include but shall not be limited to
13 labor cost for search and actual time for reproducing, material
14 cost, including electricity cost, equipment cost, including
15 rental cost, cost for certification, and other related costs.]
16 represent the reasonable direct costs of making the copies and
17 be limited to the salary of the operator as well as the cost of
18 the reproduction machinery. All fees shall be paid in by the
19 public officer receiving or collecting the same to the state
20 director of finance, the county director of finance, or to the
21 agency or department by which the officer is employed, as



1 government realizations; provided that fees collected by the
2 public utilities commission pursuant to this section shall be
3 deposited in the public utilities commission special fund
4 established under section 269-33."

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

7 **"§92F-42 Powers and duties of the office of information**
8 **practices.** The director of the office of information practices:

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

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

20 (3) Upon request by any person, may provide advisory
21 opinions or other information regarding that person's



1 rights and the functions and responsibilities of
2 agencies under this chapter;

3 (4) May conduct inquiries regarding compliance by an
4 agency and investigate possible violations by any
5 agency;

6 (5) May examine the records of any agency for the purpose
7 of paragraphs (4) and (18) and seek to enforce that
8 power in the courts of this State;

9 (6) May recommend disciplinary action to appropriate
10 officers of an agency;

11 (7) Shall report annually to the governor and the state
12 legislature on the activities and findings of the
13 office of information practices, including
14 recommendations for legislative changes;

15 (8) Shall receive complaints from and actively solicit the
16 comments of the public regarding the implementation of
17 this chapter;

18 (9) Shall review the official acts, records, policies, and
19 procedures of each agency;

20 (10) Shall assist agencies in complying with the provisions
21 of this chapter;



1 (11) Shall inform the public of the following rights of an
2 individual and the procedures for exercising them:

3 (A) The right of access to records pertaining to the
4 individual;

5 (B) The right to obtain a copy of records pertaining
6 to the individual;

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

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

12 (E) The right to correct or amend records pertaining
13 to the individual; and

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

16 (12) Shall adopt rules that set forth an administrative
17 appeals structure which provides for:

18 (A) Agency procedures for processing records
19 requests;

20 (B) A direct appeal from the division maintaining the
21 record; and



1 (C) Time limits for action by agencies;

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

7 (A) Not exceed \$5 per fifteen minutes or fraction
8 thereof for a search for the record;

9 (B) Not exceed \$7.50 per fifteen minutes or fraction
10 thereof for the review and segregation of the
11 record; and

12 (C) Provide for a waiver of fees when the public
13 interest would be served; provided that the
14 waiver shall require searching, reviewing, or
15 segregating of documents be provided without any
16 charge if disclosure of the information is in the
17 public interest because it is likely to
18 contribute significantly to public understanding
19 of the operations or activities of the government
20 and is not primarily in the commercial interest;



(14) Shall adopt rules which set forth uniform standards
for the records collection practices of agencies;

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

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

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

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

(A) Receiving and resolving complaints;

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

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

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



1 SECTION 5. This Act shall take effect on July 1, 2024.

2 INTRODUCED BY: Kal Rhoads



S.B. NO. 3252

Report Title:

Public Records; Duplication; Costs; Waiver

Description:

Imposes a cap on the charged costs for the reproduction of certain government records. Waives reproduction costs for the first one hundred pages if disclosure is in the public's interest. Waives the cost of duplication of government records in an electronic format. Imposes a cap on charged costs for searching, reviewing, and segregating records. Provides for a waiver of fees when the public interest is served. Takes effect 7/1/2024.

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

