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# 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.



**Report Title:**

Public Records; Duplication; Costs; Disclosure; Public Interest; Waiver; Records; Appropriation

**Description:**

Beginning 7/1/2023, imposes a cap on the costs charged for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in an electronic format; imposes a cap on costs charged for searching for, reviewing, and segregating records; and provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for positions. (CD1)

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

