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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 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;



- 1 (3) Waive the cost of duplication of government records in  
2 an electronic format;
- 3 (4) Impose a cap on charged costs for searching,  
4 reviewing, and segregating records; and
- 5 (5) Provide for a waiver of fees when the public interest  
6 is served.

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 copies, shall not [~~be less than 5~~] exceed 25 cents  
21 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; provided that the agency maintains those  
8 documents in an electronic format; provided further that  
9 requesters shall be charged for providing documents requested in  
10 an electronic format that are not maintained by the agency in  
11 electronic format and must be manually faxed or scanned into an  
12 electronic format. The cost of reproducing geographic  
13 information system digital data, photographs, maps, audio  
14 recordings, digital or electronic records, and other types of  
15 physical copies shall be in accordance with rules adopted by the  
16 agency having charge or control of that data. [~~Such~~] The  
17 reproduction cost shall [~~include but shall not be limited to~~  
18 ~~labor cost for search and actual time for reproducing, material~~  
19 ~~cost, including electricity cost, equipment cost, including~~  
20 ~~rental cost, cost for certification, and other related costs.]~~  
21 represent the reasonable direct costs of making the copies and



1 be limited to the salary of the operator as well as the cost of  
2 the reproduction machinery. All fees shall be paid in by the  
3 public officer receiving or collecting the same to the state  
4 director of finance, the county director of finance, or to the  
5 agency or department by which the officer is employed, as  
6 government realizations; provided that fees collected by the  
7 public utilities commission pursuant to this section shall be  
8 deposited in the public utilities commission special fund  
9 established under section 269-33."

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

12 "**§92F-42 Powers and duties of the office of information**  
13 **practices.** The director of the office of information practices:

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



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



- 1           (8) Shall receive complaints from and actively solicit the
- 2           comments of the public regarding the implementation of
- 3           this chapter;
- 4           (9) Shall review the official acts, records, policies, and
- 5           procedures of each agency;
- 6           (10) Shall assist agencies in complying with the provisions
- 7           of this chapter;
- 8           (11) Shall inform the public of the following rights of an
- 9           individual and the procedures for exercising them:
- 10           (A) The right of access to records pertaining to the
- 11           individual;
- 12           (B) The right to obtain a copy of records pertaining
- 13           to the individual;
- 14           (C) The right to know the purposes for which records
- 15           pertaining to the individual are kept;
- 16           (D) The right to be informed of the uses and
- 17           disclosures of records pertaining to the
- 18           individual;
- 19           (E) The right to correct or amend records pertaining
- 20           to the individual; and



- 1 (F) The individual's right to place a statement in a  
2 record pertaining to that individual;
- 3 (12) Shall adopt rules that set forth an administrative  
4 appeals structure which provides for:
- 5 (A) Agency procedures for processing records  
6 requests;
- 7 (B) A direct appeal from the division maintaining the  
8 record; and
- 9 (C) Time limits for action by agencies;
- 10 (13) Shall adopt rules that set forth the fees and other  
11 charges that may be imposed for searching, reviewing,  
12 or segregating disclosable records [~~, as well as to~~  
13 ~~provide for a waiver of fees when the public interest~~  
14 ~~would be served,~~]. The rules shall:
- 15 (A) Not exceed \$5 per fifteen minutes or fraction  
16 thereof for a search for the record;
- 17 (B) Not exceed \$7.50 per fifteen minutes or fraction  
18 thereof for the review and segregation of the  
19 record; and
- 20 (C) Provide for a waiver of fees when the public  
21 interest would be served; provided that the



waiver shall require searching, reviewing, or segregating of documents be provided without any charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government 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;



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

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

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

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



**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. (SD1)

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

