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# A BILL FOR AN ACT

RELATING TO OPEN MEETINGS.

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

1           SECTION 1. The purpose of this Act is to better align the  
2 enforcement mechanisms for the State's open meetings law with  
3 the State's Uniform Information Practices Act. Specifically,  
4 this Act:

5           (1) Clarifies that members of the public may sue a board  
6 or alleged board after receiving an adverse office of  
7 information practices decision, and that the decision  
8 will be reviewed de novo;

9           (2) Establishes a two-year statute of limitations to bring  
10 actions and reaffirms a complainant's right to seek  
11 review by the office of information practices first;

12           (3) Consistent with the Hawaii supreme court's  
13 observations in *Kahana Sunset Owners Ass'n v. Maui*  
14 *Cnty. Council*, 86 Hawaii 132 (1997), recognizes that  
15 only a member of the public may recover attorney's  
16 fees and costs if that person prevails in an open  
17 meetings lawsuit;



1 (4) Requires that persons suing for open meetings law  
2 violations notify the office of information practices  
3 about the lawsuit so that it may decide whether to  
4 intervene; and

5 (5) Requires open meetings lawsuits that seek to void a  
6 board's final action to be prioritized by the courts.

7 SECTION 2. Section 92-12, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**§92-12 Enforcement.** (a) The attorney general and the  
10 prosecuting attorney shall enforce this part.

11 (b) The circuit courts of the State shall have  
12 jurisdiction to enforce the provisions of this part by  
13 injunction or other appropriate remedy.

14 (c) Any person may commence a suit against a board or  
15 alleged board in the circuit court of the circuit in which a  
16 prohibited act occurs for the purpose of [~~requiring~~];

17 (1) Requiring compliance with or preventing violations of  
18 this part [~~or to determine~~];

19 (2) Determining the applicability of this part to  
20 discussions or decisions of the public body[~~.—The~~];

21 or



1       (3) Challenging an opinion or ruling of the office of  
2           information practices concerning a complaint by that  
3           person.

4   The person may bring the action within two years of a prohibited  
5   act; provided that a decision to appeal to the office of  
6   information practices for review shall not prejudice the  
7   person's right to appeal to the circuit court after a decision  
8   is made by the office of information practices. If the person  
9   prevails, the court may order payment of reasonable attorney's  
10   fees and costs [to the prevailing party] by the board in a suit  
11   brought under this section.

12       (d) In an action under this section, the circuit court  
13   shall hear the matter de novo. Opinions and rulings of the  
14   office of information practices shall be admissible in an action  
15   brought under this part and shall be considered as precedent  
16   unless found to be palpably erroneous[-]; provided that in an  
17   action under this section challenging an opinion or ruling of  
18   the office of information practices concerning a complaint by  
19   the plaintiff, the circuit court shall hear the challenged  
20   adverse determination de novo. Except as provided in section  
21   92F-43, a board or alleged board shall not challenge an opinion



1 or ruling of the office of information practices about the board  
2 or alleged board.

3 (e) When filing a suit that is under, related to, or  
4 affected by this part, a person shall notify the office of  
5 information practices in writing at the time of the filing. The  
6 office of information practices may intervene in the action.

7 (f) Except as to cases the circuit court considers of  
8 greater importance, proceedings before the court, as authorized  
9 by this section, and appeals therefrom, shall take precedence on  
10 the docket over all cases and shall be assigned for hearing and  
11 trial or for argument at the earliest practicable date and  
12 expedited in every way when the suit seeks to void any final  
13 action pursuant to section 92-11.

14 [~~e~~] (g) The proceedings for review shall not stay the  
15 enforcement of any agency decisions; [~~but~~] provided that the  
16 reviewing court may order a stay if the following criteria have  
17 been met:

18 (1) There is likelihood that the party bringing the action  
19 will prevail on the merits;

20 (2) Irreparable damage will result if a stay is not  
21 ordered;



1 (3) No irreparable damage to the public will result from  
2 the stay order; and

3 (4) Public interest will be served by the stay order."

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

6 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

OIP; Open Meetings Law; Enforcement

**Description:**

Clarifies that members of the public may sue a board or alleged board after receiving an adverse Office of Information Practices decision, and that the decision will be reviewed de novo. Establishes a two-year statute of limitations to bring the lawsuit and reaffirms a complainant's right to seek review by the Office of Information Practices first. Recognizes that only a member of the public may recover attorney's fees and costs if that person prevails in an open meetings lawsuit. Requires that persons suing for open meetings law violations notify the Office of Information Practices about the lawsuit so that it may decide whether to intervene. Requires open meetings lawsuits that seek to void a board's final action to be prioritized by the courts. (SD1)

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

