
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 public records can range from serious to routine but,
6 in all cases, result in a less informed citizenry. Fee waivers
7 offer a simple and flexible solution to ensure equitable public
8 access to government records. Former governor Ige stated,
9 "[e]ffective citizen participation in state government requires
10 timely access to information and appropriate opportunities for
11 the public to provide its government with feedback and ideas".

12 The legislature notes the intent indicated by the
13 legislative history of section 92F-42, Hawaii Revised Statutes,
14 and the section's provision on waiver of fees, first introduced
15 in H.B. No. 2002 (1988). The original language of H.B. No. 2002
16 (1988) allowed fees only for copies of records, but the house of
17 representatives' standing committee on judiciary's House Draft 1



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

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

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

16 The purpose of this Act is to:

- 17 (1) Establish provisions regarding the fees and other
18 costs charged to reproduce certain government
19 documents during a nationally declared disaster; and
20 (2) Require the office of information practices to adopt
21 certain rules regarding the fees and other charges



1 that may be imposed for searching, reviewing, or
2 segregating disclosable records during a nationally
3 declared disaster.

4 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
5 by adding a new section to be appropriately designated and to
6 read as follows:

7 "§92- Copies of records; other costs and fees;
8 nationally declared disasters. (a) Except as provided in
9 section 91-2.5 subsection (b), the cost of reproducing any
10 government record during a nationally declared disaster shall
11 not exceed 25 cents per page, sheet, or fraction thereof;
12 provided that the first one hundred pages shall be reproduced at
13 no charge to the requester if the record's disclosure serves the
14 public interest, will likely contribute significantly to the
15 public understanding of the government's operations or
16 activities, and is not primarily in the commercial interest.
17 Reproduction costs shall not be charged for producing documents
18 provided to requesters in an electronic format; provided that
19 the agency maintains the documents in an electronic format;
20 provided further that requesters shall be charged for the
21 agency's provision of documents requested in an electronic



1 format that are not maintained by the agency in an electronic
2 format and must be manually faxed or converted into an
3 electronic format.

4 (b) The cost of reproducing geographic information system
5 digital data, photographs, maps, audio recordings, digital or
6 electronic records, and other types of physical records during a
7 nationally declared disaster shall be in accordance with rules
8 adopted by the agency having charge or control of that data.
9 The reproduction cost pursuant to this subsection shall
10 represent the reasonable direct cost of making the copies and be
11 limited to the salary of the operator of the reproduction
12 machinery as well as the cost of the machinery.

13 (c) All fees shall be paid in by the public officer
14 receiving or collecting the same to the state director of
15 finance, the county director of finance, or the agency or
16 department by which the officer is employed, as government
17 realizations; provided that fees collected by the public
18 utilities commission pursuant to this section shall be deposited
19 in the public utilities commission special fund established
20 under section 269-33."



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

3 **"§92F-42 Powers and duties of the office of information**
4 **practices.** The director of the office of information practices:

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

12 (2) Upon request by an agency, shall provide and make
13 public advisory guidelines, opinions, or other
14 information concerning that agency's functions and
15 responsibilities;

16 (3) Upon request by any person, may provide advisory
17 opinions or other information regarding that person's
18 rights and the functions and responsibilities of
19 agencies under this chapter;



- 1 (4) May conduct inquiries regarding compliance by an
- 2 agency and investigate possible violations by any
- 3 agency;
- 4 (5) May examine the records of any agency for the purpose
- 5 of paragraphs (4) and [~~+18~~] (19) and seek to enforce
- 6 that power in the courts of this State;
- 7 (6) May recommend disciplinary action to appropriate
- 8 officers of an agency;
- 9 (7) Shall report annually to the governor and the state
- 10 legislature on the activities and findings of the
- 11 office of information practices, including
- 12 recommendations for legislative changes;
- 13 (8) Shall receive complaints from and actively solicit the
- 14 comments of the public regarding the implementation of
- 15 this chapter;
- 16 (9) Shall review the official acts, records, policies, and
- 17 procedures of each agency;
- 18 (10) Shall assist agencies in complying with the provisions
- 19 of this chapter;
- 20 (11) Shall inform the public of the following rights of an
- 21 individual and the procedures for exercising them:



- 1 (A) The right of access to records pertaining to the
- 2 individual;
- 3 (B) The right to obtain a copy of records pertaining
- 4 to the individual;
- 5 (C) The right to know the purposes for which records
- 6 pertaining to the individual are kept;
- 7 (D) The right to be informed of the uses and
- 8 disclosures of records pertaining to the
- 9 individual;
- 10 (E) The right to correct or amend records pertaining
- 11 to the individual; and
- 12 (F) The individual's right to place a statement in a
- 13 record pertaining to that individual;
- 14 (12) Shall adopt rules that set forth an administrative
- 15 appeals structure [~~which~~] that provides for:
- 16 (A) Agency procedures for processing records
- 17 requests;
- 18 (B) A direct appeal from the division maintaining the
- 19 record; and
- 20 (C) Time limits for action by agencies;



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

6 (14) Shall adopt rules that set forth the fees and other
7 charges that may be imposed for searching, reviewing,
8 or segregating disclosable records during a nationally
9 declared disaster. The rules shall:

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

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

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



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

5 [~~(14)~~] (15) Shall adopt rules [~~which~~] that set forth uniform
 6 standards for the records collection practices of
 7 agencies;

8 [~~(15)~~] (16) Shall adopt rules that set forth uniform
 9 standards for disclosure of records for research
 10 purposes;

11 [~~(16)~~] (17) Shall have standing to appear in cases where the
 12 provisions of this chapter or part I of chapter 92 are
 13 called into question;

14 [~~(17)~~] (18) Shall adopt, amend, or repeal rules pursuant to
 15 chapter 91 necessary for the purposes of this chapter;
 16 and

17 [~~(18)~~] (19) Shall take action to oversee compliance with
 18 part I of chapter 92 by all state and county boards
 19 including:

20 (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, 2112.



Report Title:

OIP; Public Records; Nationally Declared Disasters;
Duplications; Costs; Disclosures; Public Interest; Waivers

Description:

Establishes provisions regarding the fees and other costs charged to reproduce certain government documents during a nationally declared disaster. Requires the Office of Information Practices to adopt certain rules regarding the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records during a nationally declared disaster. Takes effect 7/1/2112. (SD1)

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

