

JAN 20 2023

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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 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. Former Governor Ige  
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 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 House Bill No. 2002, regular session of 1988. The original  
16 language of House Bill No. 2002 (1988) allowed fees only for  
17 copies of records, but the house of representatives' judiciary



# S.B. NO. 991

1 committee's House Draft 1 amended the bill to also allow charges  
2 for 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 states:

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 costs charged to reproduce certain  
19 government records;



- 1           (2) Waive reproduction costs charged for the first one
- 2                   hundred pages if a record's disclosure serves the
- 3                   public interest;
- 4           (3) Waive costs charged to duplicate government records in
- 5                   an electronic format;
- 6           (4) Impose a cap on costs charged to search for, review,
- 7                   and segregate records; and
- 8           (5) Provide for a waiver of fees when a record's
- 9                   disclosure serves the public interest.

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

12           "**§92-21 Copies of records; other costs and fees.** Except  
13 as otherwise provided by law, a copy of any government record,  
14 including any map, plan, diagram, photograph, photostat, or  
15 geographic information system digital data file, which is open  
16 to the inspection of the public, shall be furnished to any  
17 person applying for the same by the public officer having charge  
18 or control thereof upon the payment of the reasonable cost of  
19 reproducing [~~such~~] the copy. Except as provided in section 91-  
20 2.5, the cost of reproducing any government record, except  
21 geographic information system digital data, photographs, maps,



1 audio recordings, digital or electronic records, and other types  
2 of physical records, shall not [be less than 5] exceed 25 cents  
3 per page, sheet, or fraction thereof. The first one hundred  
4 pages shall be reproduced at no charge to the requester if the  
5 record's disclosure serves the public interest, will likely  
6 contribute significantly to the public understanding of the  
7 government's operations or activities, and is not primarily in  
8 the commercial interest. Reproduction costs shall not be  
9 charged for producing documents provided to requesters in an  
10 electronic format; provided that the agency maintains the  
11 documents in an electronic format; provided further that  
12 requesters shall be charged for the agency's provision of  
13 documents requested in an electronic format that are not  
14 maintained by the agency in an electronic format and must be  
15 manually faxed or converted into an electronic format. The cost  
16 of reproducing geographic information system digital data,  
17 photographs, maps, audio recordings, digital or electronic  
18 records, and other types of physical records shall be in  
19 accordance with rules adopted by the agency having charge or  
20 control of that data. [Such] The reproduction cost shall  
21 [include but shall not be limited to labor cost for search and



1 ~~actual time for reproducing, material cost, including~~  
2 ~~electricity cost, equipment cost, including rental cost, cost~~  
3 ~~for certification, and other related costs.] represent the~~  
4 reasonable direct cost of making the copies and be limited to  
5 the salary of the operator of the reproduction machinery as well  
6 as the cost of the machinery. All fees shall be paid in by the  
7 public officer receiving or collecting the same to the state  
8 director of finance, the county director of finance, or ~~to~~ the  
9 agency or department by which the officer is employed, as  
10 government realizations; provided that fees collected by the  
11 public utilities commission pursuant to this section shall be  
12 deposited in the public utilities commission special fund  
13 established under section 269-33."

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

16 "**§92F-42 Powers and duties of the office of information**  
17 **practices.** The director of the office of information practices:

- 18 (1) Shall, upon request, review and rule on an agency  
19 denial of access to information or records, or an  
20 agency's granting of access; provided that any review  
21 by the office of information practices shall not be a



- 1           contested case under chapter 91 and shall be optional  
2           and without prejudice to rights of judicial  
3           enforcement available under this chapter;
- 4           (2) Upon request by an agency, shall provide and make  
5           public advisory guidelines, opinions, or other  
6           information concerning that agency's functions and  
7           responsibilities;
- 8           (3) Upon request by any person, may provide advisory  
9           opinions or other information regarding that person's  
10          rights and the functions and responsibilities of  
11          agencies under this chapter;
- 12          (4) May conduct inquiries regarding compliance by an  
13          agency and investigate possible violations by any  
14          agency;
- 15          (5) May examine the records of any agency for the purpose  
16          of paragraphs (4) and (18) and seek to enforce that  
17          power in the courts of this State;
- 18          (6) May recommend disciplinary action to appropriate  
19          officers of an agency;
- 20          (7) Shall report annually to the governor and the state  
21          legislature on the activities and findings of the



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



1 (E) The right to correct or amend records pertaining  
2 to the individual; and

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

5 (12) Shall adopt rules that set forth an administrative  
6 appeals structure ~~[which]~~ that provides for:

7 (A) Agency procedures for processing records  
8 requests;

9 (B) A direct appeal from the division maintaining the  
10 record; and

11 (C) Time limits for action by agencies;

12 (13) Shall adopt rules that set forth the fees and other  
13 charges that may be imposed for searching, reviewing,  
14 or segregating disclosable records ~~[, as well as to~~  
15 ~~provide for a waiver of fees when the public interest~~  
16 ~~would be served,]~~. The rules shall:

17 (A) Set forth fees not exceeding \$5 per fifteen  
18 minutes or fraction thereof for the search for  
19 the record;





- 1           (B) Set forth fees not exceeding \$7.50 per fifteen
- 2           minutes or fraction thereof for the review and
- 3           segregation of the record; and
- 4           (C) Provide for a waiver of fees when the record's
- 5           disclosure would serve the public interest;
- 6           provided that the waiver shall require that the
- 7           search for or review or segregation of records be
- 8           provided at no charge to the requester if the
- 9           record's disclosure serves the public interest,
- 10           will likely contribute significantly to public
- 11           understanding of the government's operations or
- 12           activities, and is not primarily in the
- 13           commercial interest;
- 14           (14) Shall adopt rules [~~which~~] that set forth uniform
- 15           standards for the records collection practices of
- 16           agencies;
- 17           (15) Shall adopt rules that set forth uniform standards for
- 18           disclosure of records for research purposes;
- 19           (16) Shall have standing to appear in cases where the
- 20           provisions of this chapter or part I of chapter 92 are
- 21           called into question;



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

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

6 (A) Receiving and resolving complaints;

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

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

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

13 SECTION 5. This Act shall take effect on July 1, 2023.

14

INTRODUCED BY: Karl Rhoad



# S.B. NO. 991

**Report Title:**

Public Records; Duplications; Costs; Disclosures; Public Interest; Waivers

**Description:**

Imposes a cap on costs charged to reproduce certain government records. Waives reproduction costs charged for the first one hundred pages if disclosure serves the public interest. Waives costs charged to duplicate certain government records in an electronic format. Imposes a cap on costs charged to search for, review, and segregate records. Provides for a waiver of fees when a record's disclosure serves the public interest.

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

