

ACT 137

S.B. NO. 2983

A Bill for an Act Relating to Office of Information Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that chapter 92, Hawaii Revised Statutes, popularly known as the “Sunshine Law” is not administered by any particular agency. While the law is enforced by the attorney general, there is no one agency in government which is responsible for overseeing compliance of open meeting requirements in a manner similar to the law requiring open government records. Similarly, there is no single agency that collects, investigates, responds to inquiries, or reports to the legislature about all open meeting violations.

The purpose of this Act is to establish a temporary office of information practices, to be administratively attached to the office of the lieutenant governor and administered by the director of information practices. The office of information practices is established for the special purpose of bringing together the administration of the open meetings law and the open records law.

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

“§92- Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of

complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session.”

SECTION 3. Section 26-1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In addition to the functions and duties provided by law, the lieutenant governor shall assume administrative responsibility for the Hawaii state commission on the status of women[.] and the office of information practices.”

SECTION 4. Section 92F-41, Hawaii Revised Statutes, is amended to read as follows:

“§92F-41 Office of information practices[.]; established. (a) There [shall be within the department of the attorney general, for administrative purposes only, an] is established a temporary office of information practices[.] for a special purpose within the office of the lieutenant governor for administrative purposes.

(b) The governor shall appoint[, not subject to chapters 76 and 77,] a director of the office of information practices [who is] to be its chief executive officer[.] and who shall be exempt from chapters 76 and 77.

(c) All powers and duties of the office of information practices are vested in the director and may be delegated to any other officer or employee of the office.

(d) The director may employ [such] any other personnel [as] that are necessary, including but not limited to attorneys and clerical staff[. None of the employees shall be subject to chapter 76 or 77.] without regard to chapters 76 and 77.”

SECTION 5. Section 92F-42, Hawaii Revised Statutes, is amended to read as follows:

“§92F-42 Powers and duties of the office of information practices. The director of the office of information practices:

- (1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency’s granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;
- (2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency’s functions and responsibilities;
- (3) Upon request by any person, may provide advisory opinions or other information regarding that person’s rights and the functions and responsibilities of agencies under this chapter;
- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;
- (5) May examine the records of any agency for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;
- (6) May recommend disciplinary action to appropriate officers of an agency;
- (7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;
- (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;

- (9) Shall review the official acts, records, policies, and procedures of each agency;
- (10) Shall assist agencies in complying with the provisions of this chapter;
- (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:
 - (A) The right of access to records pertaining to the individual;
 - (B) The right to obtain a copy of records pertaining to the individual;
 - (C) The right to know the purposes for which records pertaining to the individual are kept;
 - (D) The right to be informed of the uses and disclosures of records pertaining to the individual;
 - (E) The right to correct or amend records pertaining to the individual; and
 - (F) The individual's right to place a statement in a record pertaining to that individual;
- (12) Shall adopt rules that set forth an administrative appeals structure which provides for:
 - (A) [agency] Agency procedures for processing records requests;
 - (B) [a] A direct appeal from the division maintaining the record; and
 - (C) [time] Time limits for action by agencies;
- (13) Shall adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of [such] fees when the public interest would be served;
- (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 are called into question; [and]
- (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;
 - (B) Advising all government boards and the public about compliance with chapter 92; and
 - (C) Reporting each year to the legislature on all complaints received pursuant to section 92-_____."

SECTION 6. All rights, powers, functions, and duties of the department of the attorney general, relating to the office of information practices, are transferred to the office of the lieutenant governor; provided that no employee shall suffer any loss of salary, prior service credit, vacation, sick leave, or other employee benefit or privilege, as a consequence of the transfer.

All employees of the office of information practices not subject to chapters 76 and 77, Hawaii Revised Statutes, are transferred to comparable positions within the office of the lieutenant governor. All employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

Any employee of the office of information practices subject to chapters 76 and 77, Hawaii Revised Statutes, may elect to transfer to the office of the lieutenant governor. If an employee elects to transfer to the office of the lieutenant governor,

the employee shall not thereafter be subject to chapters 76 and 77, Hawaii Revised Statutes, but shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act. If an employee of the office of information practices subject to chapters 76 and 77, Hawaii Revised Statutes, elects not to transfer to the office of the lieutenant governor, the employee, with the same pay and classification, shall be transferred to positions within the executive branch for which the employee is eligible under the applicable personnel laws of the State without any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations, and other personal property previously made, used, acquired, or held by the office of information practices relating to the functions transferred to the office of the lieutenant governor shall be transferred with the function to which they relate.

SECTION 8. Rules adopted by the office of information practices on the effective date of this Act shall remain in force and effect until amended or repealed by the office of information practices following its transfer to the office of the lieutenant governor.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 1998.

(Approved June 24, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.