

ACT 92

H.B. NO. 461

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

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

SECTION 1. Section 26-1, Hawaii Revised Statutes, is amended to read as follows:

“§26-1 Office of the lieutenant governor. (a) Except as otherwise provided by law, the lieutenant governor is designated the secretary of state for intergovernmental relations and shall perform the duties and functions heretofore exercised by the secretary of Hawaii. The duties and functions shall include[-] but not be limited to[-] recordation of all legislative and gubernatorial acts, certification of state documents, and maintenance of an official file of rules adopted by state departments as provided in chapter 91. The lieutenant governor may employ staff as necessary without regard to chapter 76.

(b) The lieutenant governor, with the approval of the governor, may designate some other officer of the government of the State to authenticate documents on behalf of the lieutenant governor during the lieutenant governor's temporary absence outside the State or during the lieutenant governor's illness whenever the documents require the signature of the lieutenant governor. The person shall affix the person's own signature to the document with the words, “for the lieutenant governor” following and the signature shall be deemed to satisfy the requirement of the lieutenant governor's signature on the document. The designation and approval shall be in writing and shall be filed in the office of the governor and a copy thereof, certified by the governor, shall be filed with the public archives. The person [sø] designated shall serve without additional compensation and the lieutenant governor shall be responsible and liable on the lieutenant governor's official bond for all acts done by the person [sø] designated in the performance of the duties on behalf of the lieutenant governor.

(c) Nothing in this section shall be construed to authorize the person to exercise and discharge the powers and duties of the office of the governor as provided by the first paragraph of [~~Article~~ article V, section 4, of the Constitution of the State[-] of Hawaii. The person shall not be authorized to exercise any powers whenever a successor to the lieutenant governor assumes the duties of the lieutenant governor pursuant to [~~Article~~ article V, section 4, of the Constitution[-] of the State of Hawaii.

~~[(d) In addition to the functions and duties provided by law, the lieutenant governor shall assume administrative responsibility for the office of information practices.~~

~~(e)~~ (d) The governor shall identify and direct other duties as necessary to the lieutenant governor.

~~[(f)]~~ (e) A lieutenant governor whose legal residence is on an island other than Oahu and who is required to remain away from the island of the lieutenant governor's legal residence but within the State overnight or longer while on official business shall receive an allowance to cover personal expenses such as board, lodging, and incidental expenses. The allowance authorized under this subsection shall be set at a daily single rate to be determined by a joint agreement between the senate president and speaker of the house of representatives. This rate shall:

- (1) Not exceed the greater of the maximum allowance for such expenses payable to any public officer or employee of the State; and
- (2) Be reasonably calculated to cover the expenses specified in this subsection.

~~[(g)]~~ (f) The allowance authorized under subsection ~~[(f)]~~ (e) shall be in addition to and shall not supplant any portion of the salary of the lieutenant governor determined pursuant to section 26-51. The allowance shall be paid out of any available appropriation made by the legislature for expenses, other than the salary, of the lieutenant governor."

SECTION 2. Section 26-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall:

- (1) Preaudit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts;
- (2) Report to the governor and to each regular session of the legislature as to the finances of each department of the State;
- (3) Administer the state risk management program;
- (4) Establish and manage motor pools;
- (5) Manage the preservation and disposal of all records of the State;
- (6) Undertake the program of centralized engineering and office leasing services, including operation and maintenance of public buildings, for departments of the State;
- (7) Undertake the functions of the state surveyor;
- (8) Establish accounting and internal control systems;
- (9) Provide centralized computer information management and processing services, coordination in the use of all information processing equipment, software, facilities, and services in the executive branch of the State, and consultation and support services in the use of information processing and management technologies to improve the efficiency, effectiveness, and productivity of state government programs; ~~and~~
- (10) Establish, coordinate, and manage a program to provide a means for public access to public information and develop and operate an information network in conjunction with its overall plans for establishing a communication backbone for state government[-]; and
- (11) Assume administrative responsibility for the office of information practices."

SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice’s designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the office of Hawaiian affairs;
- (8) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- (9) As grand jury counsel;
- ~~[(10) By the Hawaiian home lands trust individual claims review panel;~~
- ~~[(11) (10) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;~~
- ~~[(12) (11) By the auditor;~~
- ~~[(13) (12) By the office of ombudsman;~~
- ~~[(14) (13) By the insurance division;~~
- ~~[(15) (14) By the University of Hawaii;~~
- ~~[(16) (15) By the Kahoolawe island reserve commission;~~
- ~~[(17) (16) By the division of consumer advocacy;~~
- ~~[(18) (17) By the office of elections;~~
- ~~[(19) (18) By the campaign spending commission;~~
- ~~[(20) (19) By the Hawaii tourism authority, as provided in section 201B-2.5;~~
- ~~[(21) (20) By the division of financial institutions for any action involving the mortgage loan recovery fund; [e]~~
- (21) By the office of information practices; or
- (22) By a department, ~~[in the event]~~ if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor waives the provision of this section.”

2. By amending subsection (c) to read:

“(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and

industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation or its regional system boards, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-2.5, the ~~[Hawaiian home lands trust individual claims review panel,]~~ office of information practices, or as grand jury counsel, shall be a deputy attorney general.”

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

“§92F-41 Office of information practices; established. (a) There is established ~~[a temporary]~~ an office of information practices ~~[for a special purpose]~~ within the ~~[office of the lieutenant governor]~~ department of accounting and general services for administrative purposes~~[-];~~ provided that:

- (1) Any quasi-judicial functions of the office of information practices shall not be subject to the approval, review, or control of the comptroller; and
 - (2) The comptroller shall not have the power to supervise or control the office of information practices in the exercise of its functions, duties, and powers under section 92F-42.
- (b) The governor shall appoint a director of the office of information practices to be its chief executive officer and who shall be exempt from chapter 76.
- (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 any other personnel that are necessary, including ~~[but not limited to]~~ attorneys and clerical staff. The office of information practices shall follow and be subject to all applicable personnel laws. All personnel of the office of information practices shall be employed without regard to chapter 76.
- (e) The office of information practices shall make direct communications with the governor and legislature.”

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]~~ paragraphs (4) and (18) 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 procedures for processing records requests;
 - (B) A direct appeal from the division maintaining the record; and
 - (C) 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 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 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;
 - (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 92-1.5."

SECTION 6. All rights, powers, functions, and duties of the office of the lieutenant governor relating to the office of information practices are transferred to the department of accounting and general services.

Employees shall be transferred without loss of salary, seniority (except as prescribed by applicable collective bargaining agreements), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess the minimum qualifications and public employment requirements for the class or position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act may retain the employee's exempt status, but shall not be appointed to a civil service position as a consequence of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, vacation or sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of the office of information practices may prescribe the duties and qualifications of these employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the office of the lieutenant governor relating to the functions transferred to the department of accounting and general services shall be transferred with the functions to which they relate.

SECTION 8. All rules, policies, procedures, guidelines, and other material adopted or developed by the office of information practices to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of accounting and general services by this Act, shall remain in full force and effect until amended or repealed by the office of information practices pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the office of the lieutenant governor or the lieutenant governor in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of accounting and general services or the comptroller as appropriate.

SECTION 9. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the office of information practices pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of accounting and general services by this Act, shall remain in full force and effect. Upon the effective date of this Act, every reference to the office of the lieutenant governor or the lieutenant governor therein shall be construed as a reference to the department of accounting and general services or the comptroller as appropriate.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2016; provided that section 5 shall take effect upon approval.

(Approved June 5, 2015.)