H.B. NO. 3182

# 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 92-1.5, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§92-1.5**[~~]~~] **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.~~]:

(1) Shall, upon the filing of a complaint by any person alleging the failure of a board to comply with this part, review the allegations and determine whether the board has satisfied the requirements of this part; provided that any review shall not be a contested case under chapter 91 and shall not preclude the

complainant or any other person from filing suit or initiating a civil action under this part;

(2) Upon request by a board, shall provide and make public advisory guidelines, opinions, or other information concerning that board's functions and responsibilities under this part;

(3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of boards under this part;

(4) May conduct inquiries regarding compliance by a board and investigate possible violations under this part;

(5) May examine the records and make inquiries of any board for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;

(6) May recommend disciplinary action to the appointing authority of a board for violations of this part;

(7) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this part;

(8) May review the official acts, records, policies, and procedures of a board under this part;

(9) Shall assist boards in complying with the provisions of this part;

(10) Shall have standing to appear in civil actions relating to the application of this part; and

(11) Shall report annually to the governor and the legislature on the activities and findings of the office of information practices."

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

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

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

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the [~~public body.~~] board. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.

(d) When filing a civil action under this part, the plaintiff shall notify the office of information practices of the filing by delivering a file-stamped copy of the complaint.

(e) The office of information practices may intervene in any civil action filed under this part.

[~~(d)~~] (f) The proceedings for review shall not stay the enforcement of any [~~agency~~] board decisions; but the reviewing court may order a stay if the following criteria have been met:

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

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

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

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

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

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

INTRODUCED BY: Calvin K Y Say

BY REQUEST

JAN 22 2008

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**Report Title:**
Clarifying duties of the Office of Information Practices; Sunshine Law.

**Description:**
Authorizes the Office of Information Practices to conduct inquiries and provide advisory opinions on alleged Sunshine Law violations the same way the office is authorized to conduct inquires and provide opinions for violations of the Uniform Information Practices Act

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# JUSTIFICATION SHEET

DEPARTMENT: OFFICE OF THE LIEUTENANT GOVERNOR, OFFICE OF INFORMATION PRACTICES

TITLE: A BILL FOR AN ACT RELATING TO THE OFFICE OF INFORMATION PRACTICES.

PURPOSE: To make the powers and duties of the Office of Information Practices (OIP) in administering part I of chapter 92, Hawaii Revised Statutes (HRS) (Sunshine Law), consistent with its powers and duties in administering chapter 92F, HRS, the Hawaii Uniform Information Practices Act (Modified) (UIPA), set forth in section 92F-42, HRS.

To require that notice be given to OIP of any civil lawsuit related to the Sunshine Law and to allow OIP to intervene in such action.

MEANS: Amend sections 92-1.5 and 92-12, HRS.

JUSTIFICATION: Pursuant to sections 92-1.5 and 92F-42(18), HRS, the Legislature has charged OIP with administration of the Sunshine Law. The Legislature did not, however, specifically set forth OIP's powers and duties under the Sunshine Law as it did under the UIPA. This bill will make the powers and duties of OIP generally consistent under both statutes.

The proposed amendments to the statute will allow OIP to better administer the Sunshine Law by specifically authorizing OIP to render determinations in response to complaints.

Impact on the public: This bill makes clear the public's ability to obtain administrative review by OIP of alleged violations of the Sunshine Law.

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This bill will require members of the public to give OIP notice of any action filed that concerns the Sunshine Law.

Impact on the department and other agencies: This bill makes clear OIP's duty and powers to review and determine whether boards' actions comply with the Sunshine Law in response to complaints received from the public.

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| GENERAL FUND: | None. |
| OTHER FUNDS: | None. |
| PPBS PROGRAM DESIGNATION: | LTG-105. |
| OTHER AFFECTED AGENCIES: | All state and county boards. |
| EFFECTIVE DATE: | Upon approval. |