

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO INFORMATION PRACTICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that access to government  
2 information is fundamental to public participation in government  
3 affairs. The office of information practices plays a key role  
4 in ensuring both that the public is provided its rightful access  
5 to public documents and that privacy rights are protected as  
6 required by law.

7           Currently, the office of information practices is a  
8 temporary office within the office of the lieutenant governor  
9 for administrative purposes. The legislature finds, however,  
10 that establishing an information practices commission would  
11 create an independent agency and protect its operations against  
12 any possible influences, political or otherwise.

13           The purpose of this Act is to change the office of  
14 information practices to an information practices commission and  
15 permanently establish the commission in the department of  
16 accounting and general services.



1           SECTION 2. Chapter 92F, part IV, Hawaii Revised Statutes,  
2 is amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4           "**§92F- Staff.** The information practices commission may  
5 employ and at pleasure remove any persons, including an  
6 executive director, as it may deem necessary for the performance  
7 of its functions. The commission shall fix the compensation of  
8 its employees, including the executive director, within the  
9 amounts made available by appropriation therefor. The employees  
10 of the commission shall be exempt from chapter 76.

11           "**§92F- Prohibition from political activity.** No member of  
12 the information practices commission or any of its employees  
13 shall take an active part in political management or in  
14 political campaigns during a commissioner's or employee's term  
15 of office or employment."

16           SECTION 3. Section 26-1, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "**§26-1 Office of the lieutenant governor.** (a) Except as  
19 otherwise provided by law, the lieutenant governor is designated  
20 the secretary of state for intergovernmental relations and shall  
21 perform the duties and functions heretofore exercised by the  
22 secretary of Hawaii. The duties and functions shall include[7]



1 but not be limited to, recordation of all legislative and  
2 gubernatorial acts, certification of state documents, and  
3 maintenance of an official file of rules adopted by state  
4 departments as provided in chapter 91. The lieutenant governor  
5 may employ staff as necessary without regard to chapter 76.

6 (b) The lieutenant governor, with the approval of the  
7 governor, may designate some other officer of the government of  
8 the State to authenticate documents on behalf of the lieutenant  
9 governor during the lieutenant governor's temporary absence  
10 outside the State or during the lieutenant governor's illness  
11 whenever the documents require the signature of the lieutenant  
12 governor. The person shall affix the person's own signature to  
13 the document with the words, "for the lieutenant governor"  
14 following and the signature shall be deemed to satisfy the  
15 requirement of the lieutenant governor's signature on the  
16 document. The designation and approval shall be in writing and  
17 shall be filed in the office of the governor and a copy thereof,  
18 certified by the governor, shall be filed with the public  
19 archives. The person so designated shall serve without  
20 additional compensation and the lieutenant governor shall be  
21 responsible and liable on the lieutenant governor's official



1 bond for all acts done by the person so designated in the  
2 performance of the duties on behalf of the lieutenant governor.

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

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

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

17 SECTION 4. Chapter 92F, part IV, Hawaii Revised Statutes,  
18 is amended to read as follows:

19 "PART IV. [~~OFFICE OF~~] INFORMATION PRACTICES[~~;~~] COMMISSION;  
20 DUTIES

21 §92F-41 [~~Office of information practices;~~] Information  
22 practices commission; established. (a) There is established [a

1 ~~temporary office of information practices for a special purpose~~  
2 ~~within the office of the lieutenant governor for administrative~~  
3 ~~purposes.] within the department of accounting and general~~  
4 ~~services for administrative purposes only a commission to be~~  
5 ~~known as the information practices commission.~~

6 ~~(b) The governor shall appoint a director of the office~~  
7 ~~of information practices to be its chief executive officer and~~  
8 ~~who shall be exempt from chapter 76.~~

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

12 ~~(d) The director may employ any other personnel that are~~  
13 ~~necessary, including but not limited to attorneys and clerical~~  
14 ~~staff without regard to chapter 76.]~~

15 ~~(b) The commission shall consist of five members appointed~~  
16 ~~by the governor from a panel of ten persons nominated by the~~  
17 ~~judicial council. Each member of the commission shall be a~~  
18 ~~citizen of the United States and a resident of the State.~~

19 ~~Members of the commission shall hold no other public office.~~

20 ~~(c) The chairperson of the commission shall be elected by~~  
21 ~~the majority of the members of the commission. The term of each~~  
22 ~~member of the commission shall be for four years; provided that~~



1 of the five members initially appointed, two members shall hold  
2 office for two years, two members shall hold office for three  
3 years, and one member shall hold office for four years. No  
4 person shall be appointed consecutively to more than two terms  
5 as a member of the commission. A vacancy on the commission  
6 shall be filled for the remainder of the unexpired term in the  
7 same manner as the original appointment, except that the  
8 judicial council shall nominate for gubernatorial appointment  
9 two persons for a vacancy.

10 (d) No member of the commission shall hold office for more  
11 than one hundred twenty days after the expiration of the  
12 member's term. If the governor fails to appoint a person to a  
13 vacant office within sixty days after receipt of the list of  
14 nominees from the judicial council, the judicial council shall  
15 select a person from the list of nominees to fill the vacant  
16 office, notwithstanding subsection (c) and section 26-34 to the  
17 contrary.

18 (e) The members of the information practices commission  
19 shall serve without compensation but shall be allowed their  
20 actual and necessary expenses incurred in the performance of  
21 their duties.



1        (f) The governor may remove or suspend any member of the  
2 commission upon the filing of a written finding with the  
3 commission, and upon service of a copy of the written finding on  
4 the member to be removed or suspended.

5        **§92F-42 Powers and duties of the ~~[office of information~~**  
6 **~~practices.] information practices commission.~~** The ~~[director of~~  
7 ~~the office of]~~ information practices[+] commission shall have  
8 the following powers and duties:

- 9        (1) ~~[Shall, upon]~~ Upon request, the commission shall  
10        review and rule on an agency denial of access to  
11        information or records, or an agency's granting of  
12        access; provided that any review by the ~~[office of~~  
13        ~~information practices]~~ commission shall not be a  
14        contested case under chapter 91 and shall be optional  
15        and without prejudice to rights of judicial  
16        enforcement available under this chapter;
- 17        (2) Upon request by an agency, the commission shall  
18        provide and make public advisory guidelines, opinions,  
19        or other information concerning that agency's  
20        functions and responsibilities;
- 21        (3) Upon request by any person, the commission may provide  
22        advisory opinions or other information regarding that



1 person's rights and the functions and responsibilities  
2 of agencies under this chapter;

3 (4) [~~May~~] The commission may conduct inquiries regarding  
4 compliance by an agency [~~and~~], investigate possible  
5 violations by any agency[+], and hold hearings;

6 (5) [~~May~~] The commission may examine the records of any  
7 agency for the purpose of paragraph (4) and seek to  
8 enforce that power in the courts of this State;

9 (6) [~~May~~] The commission may recommend disciplinary action  
10 to appropriate officers of an agency;

11 (7) [~~Shall~~] The commission shall report annually to the  
12 governor and the state legislature on the activities  
13 and findings of the [~~office of information practices,~~]  
14 commission, including recommendations for legislative  
15 changes;

16 (8) [~~Shall~~] The commission shall receive complaints from  
17 and actively solicit the comments of the public  
18 regarding the implementation of this chapter;

19 (9) [~~Shall~~] The commission shall review the official acts,  
20 records, policies, and procedures of each agency;

21 (10) [~~Shall~~] The commission shall assist agencies in  
22 complying with the provisions of this chapter;





1           (11) ~~[Shall]~~ The commission shall inform the public of the  
2 following rights of an individual and the procedures  
3 for exercising ~~[them.]~~ those rights:

4           (A) The right of access to records pertaining to the  
5 individual;

6           (B) The right to obtain a copy of records pertaining  
7 to the individual;

8           (C) The right to know the purposes for which records  
9 pertaining to the individual are kept;

10          (D) The right to be informed of the uses and  
11 disclosures of records pertaining to the  
12 individual;

13          (E) The right to correct or amend records pertaining  
14 to the individual; and

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

17          (12) ~~[Shall]~~ The commission shall adopt, amend, or repeal  
18 rules pursuant to chapter 91 necessary for the  
19 purposes of this chapter, including rules that set  
20 forth [an]:

21          (A) An administrative appeals structure [which] that  
22 provides for:



1 [~~(A)~~](i) Agency procedures for processing records  
2 requests;

3 [~~(B)~~](ii) A direct appeal from the division  
4 maintaining the record; and

5 [~~(C)~~](iii) Time limits for action by agencies;

6 [~~(13)~~] ~~Shall adopt rules that set forth the]~~

7 (B) The fees and other charges that may be imposed  
8 for searching, reviewing, or segregating  
9 disclosable records, as well as to provide for a  
10 waiver of fees when the public interest would be  
11 served;

12 [~~(14)~~] ~~Shall adopt rules which set forth uniform]~~

13 (C) Uniform standards for the records collection  
14 practices of agencies; and

15 [~~(15)~~] ~~Shall adopt rules that set forth uniform]~~

16 (D) Uniform standards for disclosure of records for  
17 research purposes;

18 [~~(16)~~] (13) [~~Shall~~] The commission shall have standing to  
19 appear in cases where the provisions of this chapter  
20 are called into question;



1       ~~[(17) Shall adopt, amend, or repeal rules pursuant to~~  
2       ~~chapter 91 necessary for the purposes of this~~  
3       ~~chapter,] and~~  
4       ~~[(18)]~~ (14) ~~[Shall]~~ The commission shall take action to  
5       oversee compliance with part I of chapter 92 by all  
6       state and county boards including:  
7       (A) Receiving and resolving complaints;  
8       (B) Advising all government boards and the public  
9       about compliance with chapter 92; and  
10       (C) Reporting each year to the legislature on all  
11       complaints received pursuant to section 92-1.5."

12       SECTION 5. Sections 27G-3 and 92-3.1, Hawaii Revised  
13       Statutes, are amended by substituting the words "executive  
14       director of the information practices commission" wherever the  
15       words "director of the office of information practices" appear,  
16       as the context requires.

17       SECTION 6. Sections 91-2.5, 92-12, 92F-15, 92F-15.3,  
18       92F-15.5, 92F-18, 92F-26, 92F-27, 92F-27.5, 92F-43, 231-19.5,  
19       and 396-5.1, Hawaii Revised Statutes, are amended by  
20       substituting the words "information practices commission"  
21       wherever the words "office of information practices" appear, as  
22       the context requires.



# S.B. NO. 230

1           SECTION 7. Section 92-1.5, Hawaii Revised Statutes, is  
2 amended by substituting the words "executive director" and  
3 "information practices commission", respectively, wherever the  
4 words "director" and "office of information practices" appear,  
5 as the context requires.

6           SECTION 8. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8           SECTION 9. This Act shall take effect on January 1, 2014.

9

INTRODUCED BY: 



# S.B. NO. 230

**Report Title:**

Office of Information Practices; Information Practices  
Commission

**Description:**

Renames the office of information practices to the information practices commission and places the commission administratively within DAGS. Requires the governor to name the commission members. Authorizes the commission to hire an executive director and staff. Effective 01/01/14.

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

