

JAN 29 2015

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# A BILL FOR AN ACT

RELATING TO PUBLIC ACCESS.

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

1           SECTION 1. The legislature finds that access to  
2 information is critical to an informed engaged public and  
3 increases government transparency and accountability. However,  
4 access to public information is hindered by confusing request  
5 processes, high fees, and outdated practices.

6           The legislature also finds that several provisions of the  
7 laws relating to public agency meetings and records in chapter  
8 92, Hawaii Revised Statutes, have not been amended for over  
9 forty years, and, as a result, have outdated technological  
10 references. Meanwhile, electronic posting of information has  
11 become common because it is easy, efficient, relatively  
12 inexpensive, and it increases public access to the information.  
13 Efforts are underway throughout state and county governments to  
14 reduce the use of hard-copy documents, improve public access to  
15 government records, and facilitate communication through  
16 technology.



1           The legislature further finds that board members must be  
2 held accountable for violations of chapter 92, Hawaii Revised  
3 Statutes, by making accountability measures available to the  
4 public including tolling the statute of limitations and awarding  
5 attorney's fees. A mandatory award of attorney's fees to a  
6 prevailing member of the public will ensure that the public will  
7 not be hindered by holding board members accountable.

8           The legislature finds that requesters frequently do not  
9 understand how an agency maintains its records and processes  
10 requests. Because of this, requesters are not able to tailor  
11 requests to minimize the burden on agencies and the expense to  
12 requesters. The agency is in the best position to identify the  
13 most efficient way to obtain information sought by a requester.

14           The legislature also finds that fees were not intended to  
15 hinder public access or chill the exercise of First Amendment  
16 rights. However, fees have become an impediment to access  
17 public information that should be widely accessible.

18           The legislature further finds that these actions will  
19 provide more flexibility in how the public obtains information,  
20 enhance government transparency, accountability, and lead to a  
21 more engaged informed public.



1 The purpose of this Act is to:

2 (1) Update public meeting practices, including posting  
3 meeting notices and board minutes electronically,  
4 informing the public of notices electronically, and  
5 making public records that are available to the board  
6 also available to the public;

7 (2) Provide increased accountability measures to the  
8 public when holding board members accountable  
9 including mandatory award of attorney's fees and  
10 tolling the statute of limitations when a member of  
11 the public files a complaint to void a board action  
12 pursuant to section 92-1.5, Hawaii Revised Statutes;

13 (3) Require agency officials to assist public requests for  
14 information, when reasonable; and

15 (4) Waive fees for access to public records when in the  
16 public interest.

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

20 "§92- Board packet; filing. At the time that the  
21 agenda is filed and posted under section 92-7(b) or when the



1 board packet is distributed to the board members, whichever  
2 occurs earlier, the board shall file the board packet in the  
3 board's office for public inspection and provide copies to  
4 persons requesting notification pursuant to section 92-7(e).

5 For purposes of this subsection, "board packet" means  
6 documents subject to disclosure under chapter 92F, or  
7 disclosable portions thereof, that are compiled by the board and  
8 distributed to the board members before a meeting for use at  
9 that meeting."

10 SECTION 3. Section 1-28.5, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By amending subsection (a) to read:

13 "(a) Notwithstanding any other statute, law, charter  
14 provision, ordinance, or rule to the contrary, whenever a  
15 government agency is required to give public notice or to  
16 publish notice, the notice shall be given [~~only~~] as follows:

17 (1) For statewide publication:

18 (A) In a daily or weekly publication of statewide  
19 circulation; or



- 1 (B) By publication in separate daily or weekly
- 2 publications whose combined circulation is
- 3 statewide; and
- 4 (C) By electronic or online publication on the
- 5 designated central State of Hawaii website; and
- 6 (2) For county-wide publication[-]:
- 7 (A) [~~by~~] By publication in a daily or weekly
- 8 publication in the affected county[-]; and
- 9 (B) Electronic or online publication on the website
- 10 of the affected county.

11 Additional supplemental notice may also be given through Hawaii  
12 FYI, the State's interactive computer system."

13 2. By amending subsection (c) to read:

14 "(c) Whenever a public notice is published [~~in a newspaper~~  
15 ~~or other publication~~] as described in subsection (a), proof of  
16 the publication shall be [~~the affidavit of the~~]:

- 17 (1) The affidavit of the printer, publisher, designated
- 18 agent of the publishing group, principal clerk, or
- 19 business manager of the newspaper or other publication
- 20 [~~or of the designated agent of the group that~~
- 21 ~~published the notice.]; or~~



1        (2) Provided by the designated representative of the  
2        government agency operating the designated central  
3        State of Hawaii website or the website of the affected  
4        county, as applicable; provided that if the notice is  
5        published on the designated central State of Hawaii  
6        website or the website of the affected county, the  
7        public notice shall include information or links to  
8        other locations of the electronic or online notice."

9        SECTION 4. Section 92-7, Hawaii Revised Statutes, is  
10       amended to read as follows:

11       "**§92-7 Notice.** (a) The board shall give written and  
12       electronic public notice of any regular, special, or rescheduled  
13       meeting, or any executive meeting when anticipated in advance.  
14       The notice shall include an agenda [~~which~~] that lists all of the  
15       items to be considered at the forthcoming meeting, the date,  
16       time, and place of the meeting, and in the case of an executive  
17       meeting the purpose shall be stated. If an item to be  
18       considered is the proposed adoption, amendment, or repeal of  
19       administrative rules, an agenda meets the requirements for  
20       public notice pursuant to this section if it contains a  
21       statement on the topic of the proposed rules or a general



1 description of the subjects involved, as described in section  
2 91-3(a)(1)(A), and a statement of when and where the proposed  
3 rules may be viewed in person and on the Internet as provided in  
4 section 91-2.6. The means specified by this section shall be  
5 the only means required for giving notice under this part  
6 notwithstanding any law to the contrary.

7 (b) ~~[The]~~ At least six calendar days before the meeting,  
8 the board shall:

9 (1) ~~[file]~~ File the notice in the office of the lieutenant  
10 governor or the appropriate county clerk's office~~]~~  
11 ~~and]~~;

12 (2) File the notice in the board's office for public  
13 inspection~~]~~~~, at least six calendar days before the~~  
14 ~~meeting.]~~; and

15 (3) Publicly post the notice on the board's website or, if  
16 the board does not have a website, on a designated  
17 central State of Hawaii website.

18 The notice shall also be posted at the site of the meeting  
19 whenever feasible.

20 (c) If the written public notice is filed in the office of  
21 the lieutenant governor or the appropriate county clerk's office



1 or electronically posted on the appropriate internet website  
2 less than six calendar days before the meeting, the lieutenant  
3 governor or the appropriate county clerk shall immediately  
4 notify the chairperson of the board, or the director of the  
5 department within which the board is established or placed, of  
6 the [~~tardy~~] late filing or posting of the meeting notice. [The]  
7 If a meeting notice is filed or posted late, the meeting shall  
8 be canceled as a matter of law, and the chairperson or the  
9 director shall ensure that a notice canceling the meeting is  
10 posted in the board's office, and whenever feasible, at the  
11 [~~place~~] location of the meeting, and no meeting shall be held.

12 (d) No board shall change the agenda, once filed[~~7~~] and  
13 posted, by adding items thereto without a two-thirds recorded  
14 vote of all members to which the board is entitled; provided  
15 that no item shall be added to the agenda if it is of reasonably  
16 major importance and action thereon by the board will affect a  
17 significant number of persons. Items of reasonably major  
18 importance not decided at a scheduled meeting shall be  
19 considered only at a meeting continued to a reasonable day and  
20 time.





1           (e) The board shall maintain a list of names and  
2 ~~[addresses]~~ contact information of persons who request written  
3 or electronic notification of meetings and shall provide ~~[mail]~~  
4 a copy of the notice to ~~[such]~~ these persons at their last  
5 recorded mailing or electronic mailing address ~~[no later than~~  
6 ~~the time the agenda is filed under subsection (b).]~~ at least six  
7 calendar days before the meeting."

8           SECTION 5. Section 92-8, Hawaii Revised Statutes, is  
9 amended by amending subsections (a) and (b) to read as follows:

10           "(a) If a board finds that an imminent peril to the public  
11 health, safety, or welfare requires a meeting in less time than  
12 is provided for in section 92-7, the board may hold an emergency  
13 meeting; provided that:

14           (1) The board states in writing the reasons for its  
15 findings;

16           (2) Two-thirds of all members to which the board is  
17 entitled agree that the findings are correct and an  
18 emergency exists;

19           (3) An emergency agenda and the findings are filed ~~[with~~  
20 ~~the office of the lieutenant governor or the~~  
21 ~~appropriate county clerk's office, and in the board's~~



1           ~~office,~~] and posted as provided in section 92-7(b);

2           and

3           (4) Persons requesting notification on a regular basis are  
4           contacted [~~by mail or telephone~~] as soon as  
5           practicable.

6           (b) If an unanticipated event requires a board to take  
7           action on a matter over which it has supervision, control,  
8           jurisdiction, or advisory power, within less time than is  
9           provided for in section 92-7 to notice and convene a meeting of  
10          the board, the board may hold an emergency meeting to deliberate  
11          and decide whether and how to act in response to the  
12          unanticipated event; provided that:

13          (1) The board states in writing the reasons for its  
14          finding that an unanticipated event has occurred and  
15          that an emergency meeting is necessary and the  
16          attorney general concurs that the conditions necessary  
17          for an emergency meeting under this subsection exist;

18          (2) Two-thirds of all members to which the board is  
19          entitled agree that the conditions necessary for an  
20          emergency meeting under this subsection exist;



1 (3) The finding that an unanticipated event has occurred  
2 and that an emergency meeting is necessary and the  
3 agenda for the emergency meeting under this subsection  
4 are filed [~~with the office of the lieutenant governor~~  
5 ~~or the appropriate county clerk's office, and in the~~  
6 ~~board's office,]~~ and posted as provided in section 92-  
7 7(b);

8 (4) Persons requesting notification on a regular basis are  
9 contacted [~~by mail or telephone~~] as soon as  
10 practicable; and

11 (5) The board limits its action to only that action which  
12 must be taken on or before the date that a meeting  
13 would have been held, had the board noticed the  
14 meeting pursuant to section 92-7."

15 SECTION 6. Section 92-9, Hawaii Revised Statutes, is  
16 amended by amending subsections (b) and (c) to read as follows:

17 "(b) [~~The~~] Within thirty days after the meeting, the  
18 minutes, in whatever form and regardless whether approved by the  
19 board, shall be public records and shall be [available within  
20 thirty days after the meeting] publicly posted on the board's  
21 website or, if the board does not have a website, a designated



1 central State of Hawaii website, except where such disclosure  
2 would be inconsistent with section 92-5; provided that minutes  
3 of executive meetings may be withheld so long as their  
4 publication would defeat the lawful purpose of the executive  
5 meeting, but no longer.

6 (c) All or any part of a meeting of a board may be  
7 recorded by any person in attendance by [~~means of a tape~~  
8 ~~recorder or~~] any [~~other~~] means of [~~some~~] reproduction, except  
9 when a meeting is closed pursuant to section 92-4; provided the  
10 recording does not actively interfere with the conduct of the  
11 meeting."

12 SECTION 7. Section 92-11, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§92-11 Voidability.** (a) Any final action taken in  
15 violation of sections 92-3 and 92-7 may be voidable upon proof  
16 of violation.

17 (b) A suit to void any final action shall be commenced  
18 within [~~ninety~~]:

19 (1) Ninety days of the final action[-]; or



1        (2) Ten days after a final decision of the office of  
2        information practices, regarding a complaint filed  
3        pursuant to section 92-1.5.

4        (c) When the office of information practices receives a  
5        complaint that may void a final action of a board, it shall give  
6        precedence to the complaint and expedite the final decision  
7        regarding the complaint, to the extent practicable."

8        SECTION 8. Section 92-12, Hawaii Revised Statutes, is  
9        amended by amending subsection (c) to read as follows:

10        "(c) Any person may commence a suit in the circuit court  
11        of the circuit in which a prohibited act occurs for the purpose  
12        of requiring compliance with or preventing violations of this  
13        part or to determine the applicability of this part to  
14        discussions or decisions of the public body. ~~[The]~~ If the  
15        complainant prevails in an action brought under this section,  
16        the court ~~[may order payment of]~~ shall assess against the board  
17        reasonable attorney's fees and ~~[costs to the prevailing party in~~  
18        a suit brought under this section.] all other expenses  
19        reasonably incurred in the litigation."

20        SECTION 9. Section 92F-11, Hawaii Revised Statutes, is  
21        amended by amending subsection (b) to read as follows:



1           "(b) Except as provided in section 92F-13, each agency,  
2 upon request by any person, shall make government records  
3 available for inspection and copying during regular business  
4 hours. To assist a person making a request, the agency shall,  
5 when reasonable under the circumstances:

- 6           (1) Assist the person to identify records that are  
7           responsive to the request or the purpose of the  
8           request, if stated;
- 9           (2) Describe the medium in which the records are available  
10           and their physical location; and
- 11           (3) Provide suggestions for overcoming any practical basis  
12           for denying access to the records requested."

13           SECTION 10. Section 92F-42, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "**§92F-42 Powers and duties of the office of information**  
16 **practices.** The director of the office of information practices:

- 17           (1) Shall, upon request, review and rule on an agency  
18           denial of access to information or records, or an  
19           agency's granting of access; provided that any review  
20           by the office of information practices shall not be a  
21           contested case under chapter 91 and shall be optional



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

18 (14) Shall adopt rules [~~which~~] that set forth uniform  
19 standards for the records collection practices of  
20 agencies;



1 (15) Shall adopt rules that set forth uniform standards for  
2 disclosure of records for research purposes;

3 (16) Shall have standing to appear in cases where the  
4 provisions of this chapter are called into question;

5 (17) Shall adopt, amend, or repeal rules pursuant to  
6 chapter 91 necessary for the purposes of this chapter;  
7 and

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

10 (A) Receiving and resolving complaints;

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

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

15 SECTION 10. This Act does not affect rights and duties  
16 that matured, penalties that were incurred, and proceedings that  
17 were begun before its effective date.

18 SECTION 11. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



# S.B. NO. 1322

1 SECTION 12. This Act shall take effect upon its approval.

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INTRODUCED BY:

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*[Handwritten signature]*

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# S.B. NO. 1322

**Report Title:**

Public Access to Information; Public Records; Board Meetings;  
OIP

**Description:**

Requires notice to be posted on the appropriate internet website. Allows notice to be sent electronically to persons who request notification. Provides for award of attorney's fees if a complainant prevails in an action pursuant to section 92-12, HRS. Requires agency officials to assist persons making requests for records. Waives fees for access to public records, when in 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.*

