

STATE EMERGENCY RESPONSE COMMISSION MEETING

Thursday, July 16, 1987

Board Room, 3rd floor  
State Department of Health  
1260 Punchbowl Street

*Meeting #1*

AGENDA

Welcome and introductory remarks by Dr. John Lewin

Overview of Title III (Bruce Anderson)

New Business:

Organizations that should be represented on the State  
Emergency Response Commission

Designation of local emergency planning districts.

Constituency of local emergency planning committees;

Emergency response training needs (Norman Lamb)

Establishment of a revolving contingency fund to clean-up  
land-based oil spills and hazardous materials spills.

Other new business

MEETING SUMMARY DRAFT

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Hawaii State Emergency Response Commission Meeting #1  
Department of Health Board Room  
16 July 1987, 2:00 p.m.

Members Attending:

Tadashi Tojo for Suzanne Peterson, DOA  
Major General Alexis Lum, DOD  
John C. Lewin, M.D., Chair-DOH  
Mario R. Ramil, DLIR  
William W. Paty, DLNR  
Tom Smyth for Roger Ulveling, DBED  
Edward Hirata, DOT  
Harlin Hashimoto for Jerold M. Michael, UH-SPH  
Steve Murray, ARC  
Marvin Miura, OEQC

Others Attending:

Carter Davis, HFD  
Bruce Anderson, DOH  
Mark Ingoglia, OEQC  
Donna Maiava, EMS

1. Meeting was called to order by the Chairperson, Dr. John Lewin, at 2:00 p.m. Introductory remarks were offered by the Chair.
2. Dr. Bruce Anderson, Department of Health Deputy Director for Environmental Health, offered a brief overview of Title III and the duties and responsibilities of the commission.
3. Additional membership for the commission was discussed. It was concluded that, thus far, additional membership should be limited. The issue of including a hospital representative was discussed. The commission concluded that such expertise should be included at the local planning committee level where their concerns can be included in the local emergency plans.

4. Designation of local emergency planning districts was discussed. After review of the issue, the Chair recommended that the county lines serve as

the district perimeters and that the mayors serve as interim district liaisons to the commission. William Paty made a motion to adopt the recommendation and Marvin Miura seconded it. The commission unanimously agreed with the motion.

5. Constituency of local emergency planning districts was discussed. It was agreed that the mayors should handle this issue utilizing Title III minimum membership requirement outlines. The Chairperson indicated that a letter would be sent to all the mayors with background on Title III and a request that committees be formed to address local responsibilities under the Act.

6. Emergency response training needs were discussed. Norman Lamb, State Civil Defense and Carter Davis, Honolulu Fire Department described the Fire Department's efforts to develop an emergency training plan to be reviewed by the Federal Emergency Management Agency. Submittal of this plan is required to obtain Federal training funds. Nationally, \$3.9 million is available. The training proposal material must be forwarded to FEMA by 31 July 1987.

7. Establishment of a revolving contingency fund to clean up land-based oil spills and hazardous materials spills was discussed by the committee. It was recommended that a revolving fund similar to the Clean Island Council be established. No particular amount was agreed upon. The Chair suggested a subcommittee be formed to review this issue. Bruce Anderson, Harlin Hashimoto, and Tom Smyth agreed to form the subcommittee.

8. The meeting adjourned at 3:40 p.m.

MEETING SUMMARY

HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)  
TECHNICAL SUBCOMMITTEE MEETING #1

Department of Health Board Room  
14 October 1988, 9.00 a.m.

Members Attending:

Hal Barks, DOSH/DLIR  
Tom Bello, Hawaii Fire Department  
Tom Brown, State Civil Defense  
Carter Davis, Honolulu Fire Department  
Neil Gytoku, Hawaii Civil Defense  
Leroy Hokoana, Maui Fire Department  
Thomas Kam, Department of Land and Natural Resources (DLNR)  
Gerald Kinro, Department of Agriculture  
George S. Matsumoto, DLNR  
Premlata Menon, Ph.D., Department of Health (DOH)  
Sel Menor, Maui Civil Defense  
Ralph Moore, Department of Transportation  
Joe Reed, Oahu Civil Defense  
Paul Takamiya, Oahu Civil Defense  
Mark Ingoglia, DOH

1. The meeting was called to order by Mark Ingoglia, Coordinator, HSERC Subcommittee. He noted DOH received comments from United States Coast Guard to include review of state, county and federal HAZMAT enforcement capability in the first draft of State Plan.
2. M. Ingoglia requested Subcommittee members to comment on the first draft of the plan. The meeting was opened for discussion of needs and concerns of federal and county representatives to be addressed in State plan. The state \$150,000 Superfund was discussed. It was noted that currently one has to go through Attorney General's procedure of obtaining bids from contractors in order to use fund. C.

Davis suggested obtaining a retainer (private hazardous material cleanup) for a year in addition to a waiver of bidding process prior to emergency process. M. Ingoglia noted DOH was in process of applying for waiver from Governor. J. Reed, noted HAZMAT issues are currently of great concern and that a mechanism to respond should be accelerated through Legislative processes and drafting administrative rules. R. Moore stressed the need for implementing 49 CFR rules relating to HAZMAT transportation, accident notification and labelling. Further concerns were expressed regarding coordination between DOSH and DOT regarding notification on transport and use of explosives.

3. All the members agreed to meet every third Monday of the month.
4. All members agreed that next meeting will be dedicated to express the need for holding a workshop to foster understanding of the hazardous materials legal authority pertaining to DOH, DOSH, DOT, USCG, DLNR, DOA and Fire Departments.
5. Members from each organization will present a one page written summary on November 21, 1988 relating to their agency's legal authority.
6. The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

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MARK INGOGLIA

Please Sign IN

17 NOV 1987

HAWAII STATE Emergency Response Commission

NAME	Address	Telephone
RON HIRANO for ED HIRATA	DOT	548-2055
Libert K. Lindgraf for Bill Pety	DLIR	548-7518
GEORGE BROSKY	OERC	548-6915
LCDR PHIL DYER	U.S. COAST GUARD	541-2068
Harold W. BARKS for	DIR-DLIR	548-4155
J. K. SIMS, M.D.	State DOT/EMS	735-5267
CARTER W. DAVIS	HONOLULU FIRE DEPT	422-0827
Jensen Uchida	DOH EPHSD	548-8837
NORMAN C. LAMB	STATE CIVIL DEFENSE	734-2161
THOMAS O. BATEY	" " "	" "
LARRY K. HAY	DOT / MVS	548-5755
STEVEN MURRAY	AMERICAN RED CROSS	734-2101
Wayne Iwaoka	DOA (for S. Peterson)	548-7124
ROY PRICE, SR.	STATE CIVIL DEFENSE	734-2161
TOM SMYTH	for R. Ulveling DBED	548-4608

PUBLIC AGENCY MEETINGS, RECORDS

92-1

CHAPTER 92  
PUBLIC AGENCY MEETINGS AND RECORDS

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PART I. MEETINGS

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and



conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

#### Hawaii Legal Reporter Citations

Openness in governmental discussions, deliberations, decisions, and actions. 79 HLR 79-0117; 79 HLR 79-0543.

#### §92-2 Definitions. As used in this part:

- (1) "Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.
- (2) "Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.
- (3) "Meeting" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration or oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

#### Cross References

Authorization for 50 per cent increase or decrease of fees, see §92-28.

Confidential, not open to public inspection:  
 Automobile licensing boards records, see §437-40.  
 Public assistance records, see §346-10.  
 Fees for copies of public records, see §92-21.

#### Attorney General Opinions

Transcript of agency hearing is a public record. Att. Gen. Op. 64-4.  
 Executive meeting to develop criteria for superintendent of education position may not be closed.  
 Att. Gen. Op. 75-11.

#### Case Notes

Certain police records not public records. 42 H. 14, (decided prior to enactment of section).

**§92-5 Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
  - (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
  - (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
  - (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
  - (5) To investigate proceedings regarding criminal misconduct; and
  - (6) To consider sensitive matters related to public safety or security.
- (b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). This part shall not apply to any chance meeting at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am imp L 1984, c 90, §1; am L 1985, c 278, §3]

#### Attorney General Opinions

Subsection (a)(1) is applicable only when a specific individual is involved. Att. Gen. Op. 75-11.

**§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.** (a) This part shall not apply:

- (1) To the judicial branch.
- (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
  - (A) Hawaii labor relations board, chapters 89 and 377;

## PUBLIC PROCEEDINGS

- (B) Labor and industrial relations appeals board, chapter 371;
- (C) Hawaii paroling authority, chapter 353;
- (D) Civil service commission, chapter 26;
- (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
- (F) Criminal injuries compensation commission, chapter 351; and
- (G) State ethics commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11]

## Case Notes

County planning commission's closed deliberations permissible under this section despite open meeting mandate of section 92-3. 64 H. 431, 643 P.2d 55.  
Adjudicatory functions include adoption of conclusions of law. 4 H. App. 633, 675 P.2d 784.

§92-7 Notice. (a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(c) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4]

§92-8 Emergency meetings. If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
- (4) Persons requesting notification are contacted by mail or telephone as soon as practicable. [L 1975, c 166, pt of §1]

§92-9 Minutes. (a) The board shall keep written minutes of all meet-

ings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) All or any part of a meeting of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1]

**§92-10 Legislative branch; applicability.** Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

**§92-11 Voidability.** Any final action taken in violation of sections 92-3 and 92-7 shall be voidable upon proof of wilful violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1]

#### Case Notes

Violation not wilful. 4 H. App. 633, 675 P.2d 784.

**§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. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.

(d) The proceedings for review shall not stay the enforcement of any



agency 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. [L 1975, c 166, pt of §1; am L 1985, c 278, §5]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

## PART II. BOARDS: QUORUM; GENERAL POWERS

### Note

The sections of this part are renumbered to eliminate duplication of the section numbers in Part I, as enacted by L 1975, c 166.

[§92-15] Boards and commissions; quorum; number of votes necessary to validate acts. Whenever the number of members necessary to constitute a quorum to do business, or the number of members necessary to validate any act, of any board or commission of the State or of any political subdivision thereof, is not specified in the law or ordinance creating the same or in any other law or ordinance, a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid; provided that due notice shall have been given to all members of the board or commission or a bona fide attempt shall have been made to give the notice to all members to whom it was reasonably practicable to give the notice. This section shall not invalidate any act of any board or commission performed prior to April 20, 1937, which, under the general law then in effect, would otherwise be valid. [L 1937, c 40, §1; RL 1945, §482; RL 1955, §7-26; HRS §92-11; ren §92-15]

### Case Notes

Where the required majority exists without the vote of the disqualified member, his participation will not invalidate the result. 63 H. 222, 624 P.2d 1353.

[§92-16] Power of boards to issue subpoenas, administer oaths, appoint masters, etc. (a) Any board (which term as used in this section means any board or commission of the State or of any political subdivision of the State) which is by law authorized or required to hold hearings for the purpose of receiving evidence, shall have the following powers, in addition to those provided for by any other law, in connection with the hearings:

- (1) To subpoena witnesses upon subpoena signed by the chairman, acting chairman, or any member, or executive secretary, or executive officer of or under the board who is so authorized by the board. The subpoenas shall be served in the same manner, and the witnesses

subpoenaed shall be entitled to the same witness fees, as in the case of a witness subpoenaed to testify before a circuit court. Any circuit court, upon the written application of any member of the board or of any master appointed by it as in this section provided, shall have power to enforce obedience to the subpoena by contempt proceedings.

(2) Through the chairman, acting chairman, or any member of the board, or through the executive secretary or executive officer of or under the board so authorized by the board, to administer oaths to witnesses and require the testimony of such witnesses on matters germane to the subject under inquiry at the hearing. Any party to the hearing upon request shall be allowed to be represented by counsel and be allowed reasonable rights of examination and cross-examination of witnesses. Any false swearing by a witness at the hearing upon any material issue or matter shall constitute perjury, and be punishable as such.

(3) To appoint, by written resolution adopted by vote of a majority of the board, a master or masters (who may, but need not be, a member or members of the board, or a disinterested attorney at law or other person, or a combination of any of them) to hold the hearing and take testimony upon the matters involved in the hearing and report to the board the master's or their findings and recommendations, together with a transcript of the hearing or a summary of the evidence and testimony taken thereat, and to adopt the findings and recommendations, in whole or in part, or otherwise act upon the report and transcript or summary, and, in the board's discretion, to hold further hearings and take further evidence and testimony in connection therewith, before taking final action thereon. Any master may be paid such reasonable compensation as shall be determined by the board, provided that no member of the board shall be eligible to receive any additional compensation for services as master.

(b) Subpoena fees, master's fees, and other expenses in connection with the hearings shall be payable out of any moneys appropriated or available for expenditure by the board for personal services or current expenses, or both. Any master so appointed shall have all of the powers which would be held and enjoyed by the board or the chairman or any member thereof in connection with the hearing. [L 1949, c 329; RL 1955, §7-27; HRS §92-12; am L 1973, c 31, pt of §21; ren §92-16; am imp L 1984, c 90, §1]

§92-17 Consumer complaints; procedures and remedies. (a) All boards as defined by section 92-2(1) established to license or regulate any profession, occupation, industry, or service, shall receive complaints from consumers and other persons claiming to be aggrieved by business practices related to their respective jurisdictions.

(b) Upon receipt of a written complaint or upon receipt of an investigation report generated by the board on its own motion or upon staff investigation which establishes an alleged violation of any provision of law or rule, the board or its authorized representative shall notify the licensee or person regulated of the charge against the licensee or person and conduct a hearing in conformity with chapter 91 if the matter cannot be settled informally. If the board finds that the charge constitutes a violation, the board may order one or more of the following remedies as appropriate relief:

## PUBLIC PROCEEDINGS

- (1) Refunding the money paid as fees for services;
- (2) Correcting the work done in providing services;
- (3) Revocation of the licensee's permit or license;
- (4) Suspension of the licensee's permit or license;
- (5) Imposition of a fine; and
- (6) Any other reasonable means to secure relief as determined by the board.

The board may also assess the licensee, as a penalty, any cost incurred in publishing the notice of hearing when service by registered or certified mail to the address listed on the licensee's record is unsuccessful.

(c) Notwithstanding any provision to the contrary:

(1) No license or permit shall be suspended by the board for a period exceeding two years.

(2) A person whose license or permit has been revoked by the board may not reapply for a license until the expiration of at least two years from the effective date of the revocation of the license or permit.

(3) A suspended license or permit shall be reinstated at the end of the suspension; provided that the suspension does not carry forward to the next license period and the person satisfies all licensing requirements and conditions contained in the order of the suspension. If a suspension carries forward to the next license period, the board shall not renew the suspended license or permit during the usual renewal period. At the end of the suspension period, a person whose license or permit was suspended may be reinstated upon filing a reinstatement form provided by the board and payment of the renewal fees, satisfaction of any other renewal requirements and fulfillment of conditions, if any, contained in the order of suspension. If the person fails to apply within thirty days after the end of the suspension, the person's license or permit shall be forfeited.

(d) The failure or refusal of the licensee to comply with any board order, including an order of license suspension, shall also constitute grounds for further disciplinary action, including a suspension or revocation of license, imposition of which shall be subject to chapter 91 and the procedural rules of the board. The board may also apply to any circuit court for injunctive relief to compel compliance with the board's order. Where appropriate, the board shall refer for prosecution to the proper authority any practice constituting a violation which is subject to criminal penalty.

(e) If the subject matter of the complaint does not come within its jurisdiction, or if it is found that the charge does not constitute a violation, the board shall notify and inform the complainant in writing with regard to the reasons for its inability to act upon the complaint.

(f) The complainant and the licensee or person regulated may agree to resolve the complaint through final and binding arbitration pursuant to the provisions of chapter 658. In the event of an agreement to arbitrate, the board may enter an order dismissing any proceeding instituted pursuant to subsection (b); provided that the order of dismissal may be conditioned upon prompt and complete compliance with the arbitrator's award. In the event that the licensee or person regulated fails to comply with the terms of the arbitrator's award, the board may reopen the proceeding and may, after a hearing in conformity with chapter 91, order one or more of the remedies set forth in subsection (b).

Notwithstanding any provision of chapter 658 to the contrary, an arbitration agreement entered into pursuant to this section shall be approved by

the board, and the parties shall agree on an arbitrator within five days after execution of the agreement. If the parties fail to agree on an arbitrator within the time above prescribed, the board may appoint an arbitrator from a list of arbitrators maintained for that purpose by the department of commerce and consumer affairs. [L 1974, c 117, §2; HRS §92-13; ren §92-17; am L 1977, c 94, §1; am L 1978, c 158, §1; am L 1982, c 174, §1 and c 204, §8; am L 1983, c 181, §1; am L 1984, c 45, §3; am imp L 1984, c 90, §1; am L 1985, c 45, §1]

### PART III. COPIES OF RECORDS; COST AND FEES

§92-21 Copies of records; other costs and fees. Except as otherwise provided by law, a copy of any public document or record, including any map, plan, diagram, photograph, or photostat, which is open to the inspection of the public shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy, which amount shall not be less than 25 cents per page, sheet, or fraction thereof. Such reproduction cost shall include, but shall not be limited to, labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All such fees shall be paid in by the public officer receiving or collecting the same to the state director of finance or county director of finance or to the agency or department by which the officer is employed as government realizations. [L 1921, c 96, §1; RL 1925, §166; am L 1929, c 166, pt of §1; am L 1931, c 178, §1; RL 1945, pt of §458; am L 1945, c 248, §1; am L 1949, c 345, §1; am L Sp 1949, c 23, §1; RL 1955, §7-1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §92-21; am L 1974, c 145, §2; am L 1976, c 212, §3]

#### Cross References

Court documents, see §607-5.

#### Case Notes

Records not otherwise open to the public are not opened by this section. 42 H. 14.

§92-22 Fees for the use of tax map tracings. The director of taxation may contract with any person or firm for the use and other disposition of tax map tracings, including copies or prints made therefrom, which have been prepared pursuant to section 246-9, under such terms and conditions as the director may deem necessary and proper. The director may charge a fee for such use and other disposition. The director may regulate the prices charged to the general public by the persons or firms using these tracings for copies or prints made therefrom.

For the purposes of this section, the director may, in the director's discretion, award the contract or contracts for such use and other disposition of these tax map tracings by calling for public bid.

All moneys received under this section shall be deposited to the general fund of the State. [L 1964, c 2, §1; Supp, §7-1.5; HRS §92-22; am L 1977, c 99, §1; am imp L 1984, c 90, §1]

§92-23 Fees charged for real property tax searches. (a) The director of taxation or the director's duly authorized representative may levy and collect a



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authority upon statute's amendment. Att.  
ve relief. 5 H. App. 419, 697 P.2d 43; 6  
denial of claim in agency's proposed  
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refusal to issue license or  
rovided by law, any person  
mission listed in section 26H-4  
omit a request for a contested  
of the date of the refusal or  
14, or any other applicable  
s final order. [L 1986, c 181,  
enforcement of the agency  
pursuant to section 92-17(g);  
ing criteria have been met;  
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result if a stay is not ordered;  
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der.

Law Journals and Reviews

Appellate Standards of Review in Hawaii. 7 UH L. Rev. 273. (See also 7 UH L. Rev. 449.)

Case Notes

Board's denial of a motion for reconsideration is a "final order". 67 H. 603, 699 P.2d 26.  
Police chief is a "person" with a standing to appeal civil service commission's ruling. 68 H. 432, 718 P.2d 1076.  
Apprenticeship committee was not "person aggrieved" by labor director's rejection of its recommendation; apprentice denied back wages and attorney's fees and costs upon reinstatement was "person aggrieved". 68 H. 605, 723 P.2d 753.  
Unincorporated association was "person aggrieved" by decision to grant special management area permit, but association did not participate in a "contested case". 69 H. 81, 734 P.2d 161.  
Judicial review of an agency determination must be confined to issues properly raised in the record of the administrative proceedings. 69 H. 135, 736 P.2d 1271.  
Standard used by appellate court when reviewing circuit court's review of agency decision. 4 H. App. 633, 675 P.2d 784, cert. denied 67 H. 3, 677 P.2d 965; 5 H. App. 59, 678 P.2d 576; 5 H. App. 325, 690 P.2d 28.  
Public employers directly affected by agency's order were "aggrieved persons" and their filing of amicus briefs with agency was sufficient "adversary participation"; standard used by appellate court when reviewing circuit court's review of agency decision. 5 H. App. 533, 704 P.2d 917.  
Does not require that all evidence before agency support its findings; sufficient if findings supported by reliable, probative, and substantial evidence. 6 H. App. 540, 735 P.2d 950.  
No "contested case" occurred even though there are situations where a public hearing may be considered a contested case because department rules established procedures for contested cases. 8 H. App. 16, 791 P.2d 1267.

§91-15 Appeals.

Case Notes

Defendants argued they lacked fair notice of illegal conduct because code book was never adopted pursuant to these sections. 824 F.2d 780.

CHAPTER 92  
PUBLIC AGENCY MEETINGS AND RECORDS

PART I. MEETINGS

SECTION

92-3 OPEN MEETINGS

PART II. BOARDS: QUORUM; GENERAL POWERS

92-17 CONSUMER COMPLAINTS; PROCEDURES AND REMEDIES

PART III. COPIES OF RECORDS; COSTS AND FEES

92-21 COPIES OF RECORDS; OTHER COSTS AND FEES

92-22, 23 REPEALED

92-24 DIRECTORS OF FINANCE AND COMMERCE AND CONSUMER AFFAIRS; FEES

92-26 FEES; EXEMPTION

92-28 STATE SERVICE FEES, INCREASE OR DECREASE OF

92-29 REPRODUCTION OF GOVERNMENT RECORDS ON FILM

PART V. PUBLIC RECORDS

92-50 TO 52 REPEALED

## PUBLIC PROCEEDINGS AND RECORDS

## PART I. MEETINGS

## Attorney General Opinions

Department of agriculture advisory committee on plants and animals subject to provisions of this part; subcommittees not subject to this part. Att. Gen. Op. 90-7.

## §92-1 Declaration of policy and intent.

## Attorney General Opinions

This section and sections 92-7 and 92-9 require commission to specify subject matter of items on public meeting agenda. Att. Gen. Op. 85-2.

Interpretation of "board" as excluding county council would be inconsistent with policy and intent of sunshine law. Att. Gen. Op. 86-5.

## §92-2 Definitions.

## Attorney General Opinions

Trustees of travel agency recovery fund comprise board subject to sunshine law. Att. Gen. Op. 85-14.  
Associated Students of University of Hawaii not a "board" subject to sunshine law. Att. Gen. Op. 85-18.

"Board" includes committees or subgroups of the board. Att. Gen. Op. 85-27.

County council is a "board". Att. Gen. Op. 86-5.

Agency's retreat would be a "meeting" subject to sunshine law. Att. Gen. Op. 86-19.

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

## Revision Note

Section reproduced to correct printing error.

## Attorney General Opinions

Sunshine law applies to meeting of standing or select committee of board of regents of University of Hawaii. Att. Gen. Op. 85-27.

Opportunity to present testimony, when it must be afforded; cannot delegate committee to hear testimony. Att. Gen. Op. 86-5.

## §92-5 Exceptions.

## Attorney General Opinions

Even if there is no quorum, meeting to discuss official business may be prohibited unless sunshine law followed. Att. Gen. Op. 85-27.

§92-7 Notice.

Attorney General Opinions

This section and sections 92-1 and 92-9 require commission to specify subject matter of items on public meeting agenda. Not sufficient to list broad categories of items. Att. Gen. Op. 85-2.

§92-9 Minutes.

Attorney General Opinions

This section and sections 92-1 and 92-7 require commission to specify subject matter of items on public meeting agenda; agency responsible to make its minutes available to public. Att. Gen. Op. 85-2.

**PART II. BOARDS; QUORUM; GENERAL POWERS**

[§92-15] Boards and commissions; quorum; number of votes necessary to validate acts.

Attorney General Opinions

"Concurrence" means affirmative vote, not abstention. Att. Gen. Op. 85-11.

§92-17 Consumer complaints; procedures and remedies. \*\*\*

(f) The complainant and the licensee or person regulated may agree to resolve the complaint through final and binding arbitration pursuant to chapter 658. In the event of an agreement to arbitrate, the board may enter an order dismissing any proceeding instituted pursuant to subsection (b); provided that the order of dismissal may be conditioned upon prompt and complete compliance with the arbitrator's award. In the event that the licensee or person regulated fails to comply with the terms of the arbitrator's award, the board may reopen the proceeding and may, after a hearing in conformity with chapter 91, order one or more of the remedies set forth in subsection (b).

Notwithstanding any provision of chapter 658 to the contrary, an arbitration agreement entered into pursuant to this section shall be approved by the board, and the parties shall agree on an arbitrator within five days after execution of the agreement. If the parties fail to agree on an arbitrator within the time above prescribed, the board may appoint an arbitrator from a list of arbitrators maintained for that purpose by the department of commerce and consumer affairs.

(g) A fine levied in a final order of a board or commission pursuant to subsection (b) shall be confirmed as a judgment by a circuit court in which the respondent resides or has property or in which the act complained of had occurred, by filing the board or commission's final order any time after thirty days after the issuance of that final order. The judgment issued thereon shall have the same force and effect and be enforceable and collectible as any other judgment issued in the circuit court. Nothing herein shall impair the right of the board or commission to apply to the circuit court for injunctive relief pursuant to subsection (d). [am L 1986, c 274, §2]

Revision Note

Only the subsections amended and added are compiled in this Supplement.

INFORMATION PRACTICES

92-71

[PART IV. NOTICE OF PUBLIC HEARINGS]

[§92-41] Publication of legal notices.

Attorney General Opinions

Notices must be published in a county newspaper and a newspaper with statewide circulation. Att. Gen. Op. 89-4.

PART V. PUBLIC RECORDS

§§92-50 to 52 REPEALED. L 1988, c 262, §3.

[PART VI. GENERAL PROVISIONS]

[§92-71] Political subdivision of the State; applicability.

Attorney General Opinions

Interpretation of "board" as excluding county council would be inconsistent with this section. Att. Gen. Op. 86-5.

CHAPTER 92E  
FAIR INFORMATION PRACTICE (CONFIDENTIALITY OF  
PERSONAL RECORD)

REPEALED. L 1988, c 262, §4.

[CHAPTER 92F]  
UNIFORM INFORMATION PRACTICES ACT (MODIFIED)

PART I. GENERAL PROVISIONS AND DEFINITIONS

SECTION

- 92F-1 SHORT TITLE
- 92F-2 PURPOSES; RULES OF CONSTRUCTION
- 92F-3 GENERAL DEFINITIONS

PART II. FREEDOM OF INFORMATION

- 92F-11 AFFIRMATIVE AGENCY DISCLOSURE RESPONSIBILITIES
- 92F-12 DISCLOSURE REQUIRED
- 92F-13 GOVERNMENT RECORDS; EXCEPTIONS TO GENERAL RULE
- 92F-14 CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY
- 92F-15 JUDICIAL ENFORCEMENT
- 92F-15.5 ALTERNATIVE METHOD TO APPEAL A DENIAL OF ACCESS
- 92F-16 IMMUNITY FROM LIABILITY
- 92F-17 CRIMINAL PENALTIES
- 92F-18 AGENCY IMPLEMENTATION
- 92F-19 LIMITATIONS ON DISCLOSURE OF GOVERNMENT RECORDS TO OTHER AGENCIES

PART III. DISCLOSURE OF PERSONAL RECORDS

- 92F-21 INDIVIDUAL'S ACCESS TO OWN PERSONAL RECORD
- 92F-21.5 REPEALED
- 92F-22 EXEMPTIONS AND LIMITATIONS ON INDIVIDUAL ACCESS
- 92F-23 ACCESS TO PERSONAL RECORD; INITIAL PROCEDURE
- 92F-24 RIGHT TO CORRECT PERSONAL RECORD; INITIAL PROCEDURE
- 92F-25 CORRECTION AND AMENDMENT; REVIEW PROCEDURES



92F-1

PUBLIC PROCEEDINGS AND RECORDS

- 92F-26 RULES
- 92F-27 CIVIL ACTIONS AND REMEDIES
- 92F-27.5 ALTERNATIVE METHOD TO APPEAL A DENIAL OF ACCESS
- 92F-28 ACCESS TO PERSONAL RECORDS BY ORDER IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS;  
ACCESS AS AUTHORIZED OR REQUIRED BY OTHER LAW

PART IV. OFFICE OF INFORMATION PRACTICES; DUTIES

- 92F-41 OFFICE OF INFORMATION PRACTICES
- 92F-42 POWERS AND DUTIES OF THE OFFICE OF INFORMATION PRACTICES

Cross References

Access/legislative information service, see chapter 21D.

PART I. GENERAL PROVISIONS AND DEFINITIONS

[§92F-1] Short title. This chapter shall be known and may be cited as the Uniform Information Practices Act (Modified). [L 1988, c 262, pt of §1]

[§92F-2] Purposes; rules of construction. In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of government agencies—shall be conducted as openly as possible.

The policy of conducting government business as openly as possible must be tempered by a recognition of the right of the people to privacy, as embodied in section 6 and section 7 of Article I of the Constitution of the State of Hawaii.

This chapter shall be applied and construed to promote its underlying purposes and policies, which are to:

- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records;
- (3) Enhance governmental accountability through a general policy of access to government records;
- (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and
- (5) Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy. [L 1988, c 262, pt of §1]

[§92F-3] General definitions. Unless the context otherwise requires, in this chapter:

“Agency” means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

“Government record” means information maintained by an agency in written, auditory, visual, electronic, or other physical form.

“Individual” means a natural person.

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

"Personal record" means any item, collection, or grouping of information about an individual that is maintained by an agency. It includes, but is not limited to, the individual's education, financial, medical, or employment history, or items that contain or make reference to the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. [L 1988, c 262, pt of §1]

## PART II. FREEDOM OF INFORMATION

**[§92F-11] Affirmative agency disclosure responsibilities.** (a) All government records are open to public inspection unless access is restricted or closed by law.

(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours.

(c) Unless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.

(d) Each agency shall assure reasonable access to facilities for duplicating records and for making memoranda or abstracts.

(e) Each agency may adopt rules, pursuant to chapter 91, to protect its records from theft, loss, defacement, alteration, or deterioration and to prevent manifestly excessive interference with the discharge of its other lawful responsibilities and functions. [L 1988, c 262, pt of §1]

**§92F-12 Disclosure required.** (a) Any provision to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;
- (3) Government purchasing information including all bid results except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll record on public works contracts;
- (10) Regarding contract hires and consultants employed by agencies; the contract itself, the amount of compensation, the duration of the contract, and the objectives of the contract;
- (11) Building permit information within the control of the agency;

PUBLIC PROCEEDINGS AND RECORDS

- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency which may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by chapters 76, 77, 297 or 304), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency, provided that this provision shall not require the creation of a roster of employees; except that this provision shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;
- (15) Information collected and maintained for the purpose of making information available to the general public; and
- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.
  - (b) Any provision to the contrary notwithstanding, each agency shall also disclose:
    - (1) Any government record, if the requesting person has the prior written consent of all individuals to whom the record refers;
    - (2) Government records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access;
    - (3) Government records pursuant to a showing of compelling circumstances affecting the health or safety of any individual;
    - (4) Government records requested pursuant to an order of a court;
    - (5) Government records pursuant to a subpoena from either house of the state legislature; and
    - (6) Information from the motor vehicle registration files, provided that the person requesting such files shall have a legitimate reason as determined by rules. [L 1988, c 262, pt of §1; am L 1989, c 160, §3; am L 1991, c 167, §1]

[§92F-13] Government records; exceptions to general rule. This chapter shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
- (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and
- (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records

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or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature. [L 1988, c 262, pt of §1]

**[§92F-14] Clearly unwarranted invasion of personal privacy.** (a) Disclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual.

(b) The following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
  - (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
  - (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
  - (4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except information relating to the status of any formal charges against the employee and disciplinary action taken or information disclosed under section 92F-12(a)(14);
  - (5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;
  - (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;
  - (7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except:
    - (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
    - (B) Information on the current place of employment and required insurance coverages of licensees; and
    - (C) The record of complaints including all dispositions; and
  - (8) Information comprising a personal recommendation or evaluation.
- [L 1988, c 262, pt of §1]

**§92F-15 Judicial enforcement.** (a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.

(b) In an action to compel disclosure the circuit court shall hear the matter de novo. Opinions and rulings of the office of information practices shall be admissible. The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

(c) The agency has the burden of proof to establish justification for non-disclosure.

(d) If the complainant prevails in an action brought under this section, the court shall assess against the agency reasonable attorney's fees and all other expenses reasonably incurred in the litigation.



(e) The circuit court in the judicial circuit in which the request for the record is made, where the requested record is maintained, or where the agency's headquarters are located shall have jurisdiction over an action brought under this section.

(f) Except as to cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way. [L 1988, c 262, pt of §1; am L 1989, c 192, §3]

**§92F-15.5 Alternative method to appeal a denial of access.** (a) When an agency denies a person access to a government record, the person may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the person's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the person and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the person of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-15(a). [L 1989, c 192, §1]

**[§92F-16] Immunity from liability.** Anyone participating in good faith in the disclosure or nondisclosure of a government record shall be immune from any liability, civil or criminal, that might otherwise be incurred, imposed or result from such acts or omissions. [L 1988, c 262, pt of §1]

**[§92F-17] Criminal penalties.** (a) An officer or employee of an agency who intentionally discloses or provides a copy of a government record, or any confidential information explicitly described by specific confidentiality statutes, to any person or agency with actual knowledge that disclosure is prohibited, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided for by law.

(b) A person who intentionally gains access to or obtains a copy of a government record by false pretense, bribery, or theft, with actual knowledge that access is prohibited, or who intentionally obtains any confidential information by false pretense, bribery, or theft, with actual knowledge that it is prohibited [by] a confidentiality statute, shall be guilty of a misdemeanor. [L 1988, c 262, pt of §1]

**§92F-18 Agency implementation.** (a) Each agency shall:

- (1) Issue instructions and guidelines necessary to effectuate this chapter; and
- (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of government records are informed of the requirements of this chapter.

(b) Each agency shall compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices on or before September 30, 1992. The public reports shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;

- (6) The categories of uses and disclosures made of the records;
  - (7) The agencies and categories of persons outside of the agency which routinely use the records;
  - (8) The records routinely used by the agency which are maintained by:
    - (A) Another agency; or
    - (B) A person other than an agency;
  - (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
  - (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
  - (11) The agency procedures whereby an individual may request access to records; and
  - (12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.
- (c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection. [L 1988, c 262, pt of §1; am L 1989, c 192, §4; am L 1991, c 167, §2]

Note

Filing requirements. L 1991, c 167, §3

**[§92F-19] Limitations on disclosure of government records to other agencies.** (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;
- (4) To the state archives for purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;
- (6) To the legislature or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction;
- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that received federal moneys;
- (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions; or
- (10) Otherwise subject to disclosure under this chapter.

92F-19 PUBLIC PROCEEDINGS AND RECORDS

(b) An agency receiving government records pursuant to subsection (a) shall be subject to the same restrictions on disclosure of the records as the originating agency. [L 1988, c 262, pt of §1]

PART III. DISCLOSURE OF PERSONAL RECORDS

Note

Part heading amended by L 1989, c 192, §5.

**[§92F-21] Individual's access to own personal record.** Each agency that maintains any accessible personal record shall make that record available to the individual to whom it pertains, in a reasonably prompt manner and in a reasonably intelligible form. Where necessary the agency shall provide a translation into common terms of any machine readable code or any code or abbreviation employed for internal agency use. [L 1988, c 262, pt of §1]

**§92F-21.5 REPEALED.** L 1990, c 250, §4.

**[§92F-22] Exemptions and limitations on individual access.** An agency is not required by this chapter to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
  - (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1;
  - (B) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports or informers, witnesses, and investigators; or
  - (C) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege. [L 1988, c 262, pt of §1]

**[§92F-23] Access to personal record; initial procedure.** Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten

working days following the date of the request unless the personal record requested is exempted under section 92F-22. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay. [L 1988, c 262, pt of §1]

**[§92F-24] Right to correct personal record; initial procedure.** (a) An individual has a right to have any factual error in that person's personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal. [L 1988, c 262, pt of §1]

**§92F-25. Correction and amendment; review procedures.** (a) Not later than thirty business days after receipt of a request for review of an agency refusal to allow correction or amendment of a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow correction or amendment of a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual's disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy. [L 1988, c 262, pt of §1; am L 1989, c 192, §6]

**§92F-26. Rules.** The office of information practices shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this part, which the agencies shall adopt, insofar as practicable, in order to ensure uniformity among state and county agencies. [L 1988, c 262, pt of §1; am L 1989, c 192, §7]

**§92F-27 Civil actions and remedies.** (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this part, and after appropriate administrative remedies under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this part, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$1,000; and



- (2) The costs of the action together with reasonable attorney's fees as determined by the court.
- (d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.
- (e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after notification of the agency denial, or where applicable, the date of receipt of the final determination of the office of information practices. [L 1988, c 262, pt of §1; am L 1989, c 192, §8]

**§92F-27.5 Alternative method to appeal a denial of access.** (a) When an agency denies an individual access to that individual's personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the individual's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the individual and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the individual of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-27. [L 1989, c 192, §2]

**[§92F-28] Access to personal records by order in judicial or administrative proceedings; access as authorized or required by other law.** Nothing in this part shall be construed to permit or require an agency to withhold or deny access to a personal record, or any information in a personal record:

- (1) When the agency is ordered to produce, disclose, or allow access to the record or information in the record, or when discovery of such record or information is allowed by prevailing rules of discovery or by subpoena, in any judicial or administrative proceeding; or
- (2) Where any statute, administrative rules, rule of court, judicial decision, or other law authorizes or allows an individual to gain access to a personal record or to any information in a personal record or requires that the individual be given such access. [L 1988, c 262, pt of §1]

#### PART IV. OFFICE OF INFORMATION PRACTICES; DUTIES

**§92F-41 Office of information practices.** (a) There shall be within the department of the attorney general, for administrative purposes only, an office of information practices.

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

(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 other personnel as are necessary, including but not limited to attorneys and clerical staff. None of the employees shall be subject to chapter 76 or 77. [L 1988, c 262, pt of §1; am L 1989, c 192, §9]

**§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 procedures for processing records; (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 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

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## PUBLIC PROCEEDINGS AND RECORDS

(17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter. [L 1988, c 262, pt of §1; am L 1989, c 192, §10]

## CHAPTER 93 GOVERNMENT PUBLICATIONS

### PART I. STATE PUBLICATIONS DISTRIBUTION CENTER

#### §93-2 Definitions.

#### Attorney General Opinions

"Publication" includes agency administrative rules. Att. Gen. Op. 85-15.

## CHAPTER 94 PUBLIC ARCHIVES; DISPOSAL OF RECORDS

### SECTION

#### 94-7 ACCESS TO RESTRICTED RECORDS IN THE STATE ARCHIVES

§94-7 Access to restricted records in the state archives. Historical records which are transferred to the state archives shall be retained for posterity and title shall vest in the state archives. All restrictions on access to government records which have been deposited in the state archives, whether confidential, classified, or private, shall be lifted and removed eighty years after the creation of the record. [L 1989, c 79, §1; am L 1991, c 145, §2]

## CHAPTER 95 DESTROYING OR DEFACING OFFICIAL NOTICES

REPEALED. L 1991, c 223, §3.

## CHAPTER 96 THE OMBUDSMAN

### SECTION

96-2 OMBUDSMAN; OFFICE ESTABLISHED, APPOINTMENT, TENURE, REMOVAL, QUALIFICATIONS, SALARY, VACANCY

96-3 ASSISTANCE, STAFF, DELEGATION, FUNDING

§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, salary, vacancy. The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years and thereafter until a successor shall have been appointed. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman within two years of the last day on which the person served as a member of the legislature, or while the person is a candidate for or holds any other state office, or while the person is engaged in any other occupation

§206M-2 Establishment of the high technology development corporation; purpose. (a) There is established the high technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the development corporation shall be to facilitate the growth and development of the commercial high technology industry in Hawaii. Its duties shall include, but not be limited to: developing industrial parks as high technology innovation centers and the developing of projects within or outside of industrial parks; providing support and services to Hawaii-based high technology companies; collecting and analyzing information on the state of commercial high technology activity in Hawaii; promoting and marketing Hawaii as a site for commercial high technology activity; and providing advice on policy and planning for technology-based economic development.

(b) The governing body of the development corporation shall consist of a board of directors having nine voting members. Seven of the members shall be appointed by the governor for staggered terms pursuant to section 26-34. Six of the appointed members shall be from the general public and selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, and telecommunications, and other high technology fields. The other appointed member shall be selected from the faculty of the University of Hawaii. All appointed members of the board shall continue in office until their respective successors have been appointed. The director of business, economic development, and tourism and the director of finance, or their designated representatives, shall serve as ex officio voting members of the board. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect such other officers as it deems necessary.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint a chief executive officer, who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77. The board shall set the salary and duties of the executive officer.

(e) The board shall appoint a management advisory committee for each industrial park and project governed by the board. Each committee shall have five members, who shall serve without compensation but may be reimbursed for expenses incurred in the performance of their duties. The members shall be drawn from fields of activity related to each project or park. [L 1983, c 152, pt of §2; am L 1987, c 336, §7; am L 1989, c 274, §2; am L 1990, c 293, §8; am L 1991, c 288, §1]

§206M-2.5 Meetings of the board. (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be harmful to the business interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be an addition to the exceptions listed in section 92-5, to enable the development corporation to respect the proprietary requirements of enterprises with which it has business dealings. [L 1989, c 274, pt of §1]



the applicant's claim of the use of the print, label, trademark, service mark, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, trademark, service mark, or trade name which is substantially identical with any registered print, label, trademark, service mark, or trade name or with the name of any corporation or partnership registered in accordance with chapters 415, 415A, 415B, 416, 418, and 425; provided further that the print, label, trademark, service mark, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

The registration of a print, label, trademark, service mark, or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in the form as the director may provide. Upon filing the application for renewal the applicant shall pay the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.

The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section. [L 1888, c 4, §4; RL 1925, §3576; am L 1925, c 174, pt of §1; am L Sp 1933, c 29, §1; RL 1935, §7452; RL 1945, §9287; RL 1955, §204-3; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; am L 1965, c 109, §1; HRS §482-3; am L 1980, c 26, §4; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1984, c 118, §7; am L 1987, c 22, §4; am L 1988, c 141, §54]

Note

Chapters 416 and 418, to which this section refers, are repealed.

**[CHAPTER 482B]  
TRADE SECRETS**

SECTION	
482B-1	SHORT TITLE
482B-2	DEFINITIONS
482B-3	INJUNCTIVE RELIEF
482B-4	DAMAGES
482B-5	ATTORNEY'S FEES
482B-6	PRESERVATION OF SECRECY
482B-7	STATUTE OF LIMITATIONS
482B-8	EFFECT ON OTHER LAW
482B-9	SEVERABILITY

**§482B-1 Short title.** This chapter may be cited as the Uniform Trades Secrets Act. [L 1989, c 221, pt of §1]

**§482B-2 Definitions.** As used in this chapter, unless the context requires otherwise:

"Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"Misappropriation" means:

## TRADE REGULATION AND PRACTICE

- (1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

- (A) Used improper means to acquire knowledge of the trade secret; or
- (B) At the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:
- (i) Derived from or through a person who had utilized improper means to acquire it;
  - (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
  - (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
- (C) Before a material change of the person's position, knew or has reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

"Trade secret" means information, including a formula, pattern, compilation, program device, method, technique, or process that:

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [L 1989, c 221, pt of §1]

[§482B-3] Injunctive relief. (a) Actual or threatened misappropriation may be enjoined. Upon application to a circuit court of the State, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable. The alleged wrongful user shall bear the burden of proof of exceptional circumstances.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. [L 1989, c 221, pt of §1]

[§482B-4] Damages. (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a). [L 1989, c 221, pt of §1]

[§482B-5] Attorney's fees. The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Wilful and malicious misappropriation exists. [L 1989, c 221, pt of §1]

[§482B-6] Preservation of secrecy. In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [L 1989, c 221, pt of §1]

[§482B-7] Statute of limitations. An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. [L 1989, c 221, pt of §1]

[§482B-8] Effect on other law. (a) Except as provided in subsection (b) this chapter displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

- (1) Contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) Other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) Criminal remedies, whether or not based upon misappropriation of a trade secret. [L 1989, c 221, pt of §1]

[§482B-9] Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1989, c 221, pt of §1]

Note

This chapter does not apply to misappropriation occurring prior to July 1, 1989. With respect to continuing misappropriation that began prior to July 1, 1989, this chapter also does not apply to the continuing misappropriation that occurs after July 1, 1989. L 1989, c 221, §2.

[CHAPTER 482D]  
GOLD AND SILVER STAMPING

SECTION

- 482D-1 DEFINITIONS  
482D-2 IMPORTATION OR MANUFACTURE OF FALSELY MARKED GOLD OR SILVER ARTICLES PROHIBITED  
482D-3 STANDARD OF FINENESS OF GOLD ARTICLES; DEVIATION