

S-5349

1 Amend House File 2531, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 46, after line 5 by inserting:

4 <DIVISION
5 IOWA PUBLIC INFORMATION BOARD

6 <Sec. _____. Section 21.6, subsection 3, paragraph d,
7 Code 2009, is amended to read as follows:

8 d. Shall issue an order removing a member of a
9 governmental body from office if that member has
10 engaged in a prior violation of this chapter for which
11 damages were assessed against the member during the
12 member's term. In making this determination, the court
13 shall recognize violations for which damages were
14 assessed by the Iowa public information board created
15 in section 23.3.

16 Sec. _____. Section 22.10, subsection 3, paragraph d,
17 Code 2009, is amended to read as follows:

18 d. Shall issue an order removing a person from
19 office if that person has engaged in a prior violation
20 of this chapter for which damages were assessed against
21 the person during the person's term. In making this
22 determination, the court shall recognize violations
23 for which damages were assessed by the Iowa public
24 information board created in section 23.3.

25 Sec. _____. **NEW SECTION. 23.1 Citation and purpose.**

26 This chapter may be cited as the "*Iowa Public*
27 *Information Board Act*". The purpose of this chapter
28 is to provide an alternative means by which to secure
29 compliance with and enforcement of the requirements of
30 chapters 21 and 22 through the provision by the Iowa
31 public information board to all interested parties of
32 an efficient, informal, and cost-effective process for
33 resolving disputes.

34 Sec. _____. **NEW SECTION. 23.2 Definitions.**

35 1. "*Board*" means the Iowa public information board
36 created in section 23.3.

37 2. "*Complainant*" means a person who files a
38 complaint with the board.

39 3. "*Complaint*" means a written and signed document
40 filed with the board alleging a violation of chapter
41 21 or 22.

42 4. "*Custodian*" means a government body, government
43 official, or government employee designated as the
44 lawful custodian of a government record pursuant to
45 section 22.1.

46 5. "*Government body*" means the same as defined in
47 section 22.1.

48 6. "*Person*" means an individual, partnership,
49 association, corporation, legal representative,
50 trustee, receiver, custodian, government body, or

1 official, employee, agency, or political subdivision of
2 this state.

3 7. "Respondent" means any agency or other unit
4 of state or local government, custodian, government
5 official, or government employee who is the subject of
6 a complaint.

7 Sec. ____ . NEW SECTION. 23.3 **Board appointed.**

8 1. An Iowa public information board is created
9 consisting of five members appointed by the governor,
10 subject to confirmation by the senate. Membership
11 shall be balanced as to political affiliation as
12 provided in section 69.16 and gender as provided in
13 section 69.16A. Members appointed to the board shall
14 serve staggered, four-year terms, beginning and ending
15 as provided by section 69.19. A quorum shall consist
16 of three members.

17 2. A vacancy on the board shall be filled by the
18 governor by appointment for the unexpired part of the
19 term. A board member may be removed from office by the
20 governor for good cause. The board shall select one
21 of its members to serve as chair and shall employ a
22 director who shall serve as the executive officer of
23 the board.

24 Sec. ____ . NEW SECTION. 23.4 **Compensation and
25 expenses.**

26 Board members shall be paid a per diem as specified
27 in section 7E.6 and shall be reimbursed for actual and
28 necessary expenses incurred while on official board
29 business. Per diem and expenses shall be paid from
30 funds appropriated to the board.

31 Sec. ____ . NEW SECTION. 23.5 **Election of remedies.**

32 1. An aggrieved person, any taxpayer to or citizen
33 of this state, the attorney general, or any county
34 attorney may seek enforcement of the requirements of
35 chapters 21 and 22 by electing either to file an action
36 pursuant to section 17A.19, 21.6, or 22.10, whichever
37 is applicable, or in the alternative, to file a timely
38 complaint with the board.

39 2. If more than one person seeks enforcement of
40 chapter 21 or 22 with respect to the same incident
41 involving an alleged violation, and one or more of
42 such persons elects to do so by filing an action under
43 section 17A.19, 21.6, or 22.10 and one or more of such
44 persons elects to do so by filing a timely complaint
45 with the board, the court in which the action was filed
46 shall dismiss the action without prejudice, authorizing
47 the complainant to file a complaint with respect to
48 the same incident with the board without regard to the
49 timeliness of the filing of the complaint at the time
50 the action in court is dismissed.

1 3. If a person files an action pursuant to section
2 22.8 seeking to enjoin the inspection of a public
3 record, the respondent or person requesting access to
4 the record which is the subject of the request for
5 injunction may remove the proceeding to the board for
6 its determination by filing, within thirty days of the
7 commencement of the judicial proceeding, a complaint
8 with the board alleging a violation of chapter 22 in
9 regard to the same matter.

10 Sec. ____ . NEW SECTION. 23.6 Board powers and
11 duties.

12 The board shall have all of the following powers and
13 duties:

14 1. Employ such employees as are necessary to
15 execute its authority, including administrative law
16 judges, and attorneys to prosecute respondents in
17 proceedings before the board and to represent the board
18 in proceedings before a court. Notwithstanding section
19 8A.412, all of the board's employees, except for the
20 executive director and attorneys, shall be employed
21 subject to the merit system provisions of chapter 8A,
22 subchapter IV.

23 2. Adopt rules with the force of law pursuant to
24 chapter 17A calculated to implement, enforce, and
25 interpret the requirements of chapters 21 and 22 and to
26 implement any authority delegated to the board by this
27 chapter.

28 3. Issue, consistent with the requirements of
29 section 17A.9, declaratory orders with the force of law
30 determining the applicability of chapter 21 or 22 to
31 specified fact situations and issue informal advice to
32 any person concerning the applicability of chapters 21
33 and 22.

34 4. Receive complaints alleging violations of
35 chapter 21 or 22, seek resolution of such complaints
36 through informal assistance or through mediation and
37 settlement, formally investigate such complaints,
38 decide after such an investigation whether there is
39 probable cause to believe a violation of chapter 21
40 or 22 has occurred, and if probable cause has been
41 found prosecute the respondent before the board in a
42 contested case proceeding conducted according to the
43 provisions of chapter 17A.

44 5. Request and receive from a government body
45 assistance and information as necessary in the
46 performance of its duties. The board may examine
47 a record of a government body that is the subject
48 matter of a complaint, including any record that is
49 confidential by law. Confidential records provided
50 to the board by a governmental body shall continue

1 to maintain their confidential status. Any member or
2 employee of the board is subject to the same policies
3 and penalties regarding the confidentiality of the
4 document as an employee of the government body.

5 6. Issue subpoenas enforceable in court for the
6 purpose of investigating complaints and to facilitate
7 the prosecution and conduct of contested cases before
8 the board.

9 7. After appropriate board proceedings, issue
10 orders with the force of law, determining whether there
11 has been a violation of chapter 21 or 22, requiring
12 compliance with specified provisions of those chapters,
13 imposing civil penalties equivalent to and to the same
14 extent as those provided for in section 21.6 or 22.10,
15 as applicable, on a respondent who has been found in
16 violation of chapter 21 or 22, and imposing any other
17 appropriate remedies calculated to declare, terminate,
18 or remediate any violation of those chapters.

19 8. Represent itself in judicial proceedings
20 to enforce or defend its orders and rules through
21 attorneys on its own staff, through the office of the
22 attorney general, or through other attorneys retained
23 by the board, at its option.

24 9. Make training opportunities available to lawful
25 custodians, government bodies, and other persons
26 subject to the requirements of chapters 21 and 22 and
27 require, in its discretion, appropriate persons who
28 have responsibilities in relation to chapters 21 and 22
29 to receive periodic training approved by the board.

30 10. Disseminate information calculated to inform
31 members of the public about the public's right to
32 access government information in this state including
33 procedures to facilitate this access and including
34 information relating to the obligations of government
35 bodies under chapter 21 and lawful custodians under
36 chapter 22 and other laws dealing with this subject.

37 11. Prepare and transmit to the governor and to the
38 general assembly, at least annually, reports describing
39 complaints received, board proceedings, investigations,
40 hearings conducted, decisions rendered, and other work
41 performed by the board.

42 12. Make recommendations to the governor and the
43 general assembly by proposing legislation relating
44 to issues involving public access to meetings of a
45 governmental body and to records of a government body
46 including but not limited to recommendations relating
47 to the following issues:

- 48 a. The categorization of government records.
- 49 b. Public employment applications.
- 50 c. Information unduly invading personal privacy

1 including personal information on mailing lists and
2 opt-in provisions relating to such lists and personal
3 information in confidential personnel records of a
4 government body.

5 *d.* Tentative, preliminary, or draft material.

6 *e.* Serial meetings of less than a majority of a
7 governmental body.

8 *f.* Definitions of what constitutes a governmental
9 body for purposes of chapter 21 and what constitutes a
10 government body for purposes of chapter 22.

11 13. Aid the general assembly in evaluating the
12 impact of legislation affecting public access to
13 government information.

14 14. Conduct public hearings, conferences,
15 workshops, and other meetings as necessary to address
16 problems and suggest solutions concerning access to
17 government information and proceedings.

18 15. Review the collection, maintenance, and use of
19 government records by lawful custodians to ensure that
20 confidential records and information are handled to
21 adequately protect personal privacy interests.

22 Sec. _____. NEW SECTION. 23.7 Filing of complaints
23 with the board.

24 1. The board shall adopt rules with the force
25 of law and pursuant to chapter 17A providing for the
26 timing, form, content, and means by which any aggrieved
27 person, any taxpayer to or citizen of this state,
28 the attorney general, or any county attorney may file
29 a complaint with the board alleging a violation of
30 chapter 21 or 22. The complaint must be filed within
31 sixty days from the time the alleged violation occurred
32 or the complainant could have become aware of the
33 violation with reasonable diligence. All complaints
34 filed with the board shall be public records.

35 2. All board proceedings in response to the filing
36 of a complaint shall be conducted as expeditiously as
37 possible.

38 3. The board shall not charge a complainant any
39 fee in relation to the filing of a complaint, the
40 processing of a complaint, or any board proceeding or
41 judicial proceeding resulting from the filing of a
42 complaint.

43 Sec. _____. NEW SECTION. 23.8 Initial processing of
44 complaint.

45 Upon receipt of a complaint alleging a violation
46 of chapter 21 or 22, the board shall do either of the
47 following:

48 1. Determine that, on its face, the complaint
49 is within the board's jurisdiction, appears legally
50 sufficient, and could have merit. In such a case the

1 board shall accept the complaint, and shall notify the
2 parties of that fact in writing.

3 2. Determine that, on its face, the complaint is
4 outside its jurisdiction, is legally insufficient, is
5 frivolous, is without merit, involves harmless error,
6 or relates to a specific incident that has previously
7 been finally disposed of on its merits by the board or
8 a court. In such a case the board shall decline to
9 accept the complaint. If the board refuses to accept a
10 complaint, the board shall provide the complainant with
11 a written order explaining its reasons for the action.

12 Sec. ____ . NEW SECTION. 23.9 Informal assistance —
13 mediation and settlement.

14 1. After accepting a complaint, the board shall
15 promptly work with the parties through its employees
16 to reach an informal, expeditious resolution of the
17 complaint. If an informal resolution satisfactory to
18 the parties cannot be reached, the board or the board's
19 designee shall offer the parties an opportunity to
20 resolve the dispute through mediation and settlement.

21 2. The mediation and settlement process shall
22 enable the complainant to attempt to resolve the
23 dispute with the aid of a neutral mediator employed and
24 selected by the board, in its discretion, from either
25 its own staff or an outside source.

26 3. Mediation shall be conducted as an informal,
27 nonadversarial process and in a manner calculated
28 to help the parties reach a mutually acceptable and
29 voluntary settlement agreement. The mediator shall
30 assist the parties in identifying issues and shall
31 foster joint problem solving and the exploration of
32 settlement alternatives.

33 Sec. ____ . NEW SECTION. 23.10 Enforcement.

34 1. If any party declines mediation or settlement or
35 if mediation or settlement fails to resolve the matter
36 to the satisfaction of all parties, the board shall
37 initiate a formal investigation concerning the facts
38 and circumstances set forth in the complaint. The
39 board shall, after an appropriate investigation, make
40 a determination as to whether the complaint is within
41 the board's jurisdiction and whether there is probable
42 cause to believe that the facts and circumstances
43 alleged in the complaint constitute a violation of
44 chapter 21 or 22.

45 2. If the board finds the complaint is outside the
46 board's jurisdiction or there is no probable cause to
47 believe there has been a violation of chapter 21 or 22,
48 the board shall issue a written order explaining the
49 reasons for the board's conclusions and dismissing the
50 complaint, and shall transmit a copy to the complainant

1 and to the party against whom the complaint was filed.

2 3. a. If the board finds the complaint is within
3 the board's jurisdiction and there is probable cause
4 to believe there has been a violation of chapter 21
5 or 22, the board shall issue a written order to that
6 effect and shall commence a contested case proceeding
7 under chapter 17A against the respondent. An attorney
8 selected by the director of the board shall prosecute
9 the respondent in the contested case proceeding. At
10 the termination of the contested case proceeding the
11 board shall, by a majority vote of its members, render
12 a final decision as to the merits of the complaint. If
13 the board finds that the complaint has merit, the board
14 may issue any appropriate order to ensure enforcement
15 of chapter 21 or 22 including but not limited to
16 an order requiring specified action or prohibiting
17 specified action and any appropriate order to remedy
18 any failure of the respondent to observe any provision
19 of those chapters.

20 b. If the board determines, by a majority vote of
21 its members, that the respondent has violated chapter
22 21 or 22, the board may also do any or all of the
23 following:

24 (1) Require the respondent to pay damages as
25 provided for in section 21.6 or 22.10, whichever is
26 applicable, to the extent that provision would make
27 such damages payable if the complainant had sought to
28 enforce a violation in court instead of through the
29 board.

30 (2) Void any action taken in violation of chapter
31 21 if a court would be authorized to do so in similar
32 circumstances pursuant to section 21.6.

33 c. The board shall not have the authority to remove
34 a person from public office for a violation of chapter
35 21 or 22. The board may file an action under chapter
36 21 or 22 to remove a person from office for violations
37 that would subject a person to removal under those
38 chapters.

39 d. A final board order resulting from such
40 proceedings may be enforced by the board in court
41 and is subject to judicial review pursuant to section
42 17A.19.

43 Sec. ____ . **NEW SECTION. 23.11 Defenses in a**
44 **contested case proceeding.**

45 A respondent may defend against a proceeding before
46 the board charging a violation of chapter 21 or 22
47 on the ground that if such a violation occurred it
48 was only harmless error or that clear and convincing
49 evidence demonstrated that grounds existed to justify
50 a court to issue an injunction against disclosure

1 pursuant to section 22.8.

2 Sec. _____. NEW SECTION. 23.12 Jurisdiction.

3 The board shall not have jurisdiction over the
4 judicial or legislative branches of state government or
5 any entity, officer, or employee of those branches, or
6 over the governor or the office of the governor.

7 Sec. _____. IOWA PUBLIC INFORMATION BOARD —
8 TRANSITION PROVISIONS.

9 1. The initial members of the Iowa public
10 information board established pursuant to this Act
11 shall be appointed by September 1, 2010.

12 2. Notwithstanding any provision of this Act to the
13 contrary, the director of the board and employees of
14 the board shall not be hired prior to July 1, 2011.

15 3. Prior to January 15, 2011, the board shall
16 submit a report to the governor and the general
17 assembly. The report shall include a job description
18 for the executive director of the board, goals for
19 board operations, and performance measures to measure
20 achievement of the board's goals.

21 4. Implementation of the Iowa public information
22 board is limited to the extent of the funding
23 available. The legislative services agency shall
24 provide transitional administrative support to the
25 board for the fiscal year beginning July 1, 2010, and
26 ending June 30, 2011.

27 Sec. _____. EFFECTIVE DATE. Except for the section
28 of this Act establishing transition provisions for the
29 Iowa public information board, this division of this
30 Act takes effect July 1, 2011.>

31 2. By renumbering as necessary.

PAM JOCHUM

DARYL BEALL