

Senate File 430

S-3101

1 Amend Senate File 430 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting:

4 <Section 1. Section 21.6, subsection 3, paragraph  
5 a, Code 2011, is amended to read as follows:

6 a. Shall assess each member of the governmental  
7 body who participated in its violation damages in the  
8 amount of not more than five hundred dollars ~~nor~~ and  
9 not less than one hundred dollars. However, if a  
10 member of a governmental body knowingly participated  
11 in such a violation, damages shall be in the amount of  
12 not more than two thousand five hundred dollars and not  
13 less than one thousand dollars. These damages shall  
14 be paid by the court imposing it to the state of Iowa,  
15 if the body in question is a state governmental body,  
16 or to the local government involved if the body in  
17 question is a local governmental body. A member of a  
18 governmental body found to have violated this chapter  
19 shall not be assessed such damages if that member  
20 proves that the member did any of the following:

- 21 (1) Voted against the closed session.  
22 (2) Had good reason to believe and in good faith  
23 believed facts which, if true, would have indicated  
24 compliance with all the requirements of this chapter.  
25 (3) Reasonably relied upon a decision of a court,  
26 ~~or~~ a formal opinion of the Iowa public information  
27 board, the attorney general, or the attorney for the  
28 governmental body, given in writing, or as memorialized  
29 in the minutes of the meeting at which a formal oral  
30 opinion was given, or an advisory opinion of the Iowa  
31 public information board, the attorney general, or the  
32 attorney for the governmental body, given in writing.

33 Sec. 2. Section 22.10, subsection 3, paragraph b,  
34 Code 2011, is amended to read as follows:

35 b. Shall assess the persons who participated in  
36 its violation damages in the amount of not more than  
37 five hundred dollars ~~nor~~ and not less than one hundred  
38 dollars. However, if a member of a government body  
39 knowingly participated in such a violation, damages  
40 shall be in the amount of not more than two thousand  
41 five hundred dollars and not less than one thousand  
42 dollars. These damages shall be paid by the court  
43 imposing them to the state of Iowa if the body in  
44 question is a state government body, or to the local  
45 government involved if the body in question is a local  
46 government body. A person found to have violated this  
47 chapter shall not be assessed such damages if that  
48 person proves that the person either ~~voted~~ did any of  
49 the following:

- 50 (1) Voted against the action violating this

1 chapter, refused to participate in the action violating  
2 this chapter, or engaged in reasonable efforts under  
3 the circumstances to resist or prevent the action in  
4 violation of this chapter, ~~had.~~

5 (2) Had good reason to believe and in good faith  
6 believed facts which, if true, would have indicated  
7 compliance with the requirements of this chapter, ~~or~~  
8 reasonably.

9 (3) Reasonably relied upon a decision of a court  
10 ~~or an,~~ a formal opinion of the Iowa public information  
11 board, the attorney general, or the attorney for the  
12 government body, given in writing, or as memorialized  
13 in the minutes of the meeting at which a formal oral  
14 opinion was given, or an advisory opinion of the Iowa  
15 public information board, the attorney general, or the  
16 attorney for the government body, given in writing.

17 Sec. 3. NEW SECTION. 23.1 Citation and purpose.

18 This chapter may be cited as the "*Iowa Public*  
19 *Information Board Act*". The purpose of this chapter  
20 is to provide an alternative means by which to secure  
21 compliance with and enforcement of the requirements of  
22 chapters 21 and 22 through the provision by the Iowa  
23 public information board to all interested parties of  
24 an efficient, informal, and cost-effective process for  
25 resolving disputes.

26 Sec. 4. NEW SECTION. 23.2 Definitions.

27 1. "*Board*" means the Iowa public information board  
28 created in section 23.3.

29 2. "*Complainant*" means a person who files a  
30 complaint with the board.

31 3. "*Complaint*" means a written and signed document  
32 filed with the board alleging a violation of chapter  
33 21 or 22.

34 4. "*Custodian*" means a government body, government  
35 official, or government employee designated as the  
36 lawful custodian of a government record pursuant to  
37 section 22.1.

38 5. "*Government body*" means the same as defined in  
39 section 22.1.

40 6. "*Governmental body*" means the same as defined in  
41 section 21.2.

42 7. "*Person*" means an individual, partnership,  
43 association, corporation, legal representative,  
44 trustee, receiver, custodian, government body, or  
45 official, employee, agency, or political subdivision of  
46 this state.

47 8. "*Respondent*" means any agency or other unit  
48 of state or local government, custodian, government  
49 official, or government employee who is the subject of  
50 a complaint.

1     **Sec. 5. NEW SECTION. 23.3 Board appointed —**  
2 **executive director.**

3     1. An Iowa public information board is created  
4 consisting of the citizens' aide or the citizens' aide  
5 designee and the following six members appointed by the  
6 governor:

7     *a.* One member nominated by the Iowa broadcasters  
8 association.

9     *b.* One member nominated by the Iowa freedom of  
10 information council.

11     *c.* One member nominated by the Iowa newspaper  
12 association.

13     *d.* One member nominated by the Iowa league of  
14 cities.

15     *e.* One member nominated by the Iowa state  
16 association of counties.

17     *f.* One member nominated by the Iowa association of  
18 school boards.

19     2. Appointments to the board shall not be subject  
20 to sections 69.16 and 69.16A if a good faith effort has  
21 been made to nominate and appoint qualified persons  
22 through a fair and unbiased selection process.

23     3. Members appointed to the board shall serve  
24 staggered four-year terms beginning and ending as  
25 provided in section 69.19.

26     4. A quorum of the board shall consist of four  
27 members.

28     5. A vacancy on the board shall be filled by the  
29 governor, as provided in subsection 1.

30     6. The board shall select one of its members to  
31 serve as chairperson and shall employ a person who  
32 shall be an attorney admitted to practice law before  
33 the courts of this state to serve as the executive  
34 director of the board.

35     7. The board shall meet at least quarterly and at  
36 the call of the chairperson.

37     **Sec. 6. NEW SECTION. 23.4 Compensation and**  
38 **expenses.**

39     Board members appointed by the governor shall  
40 be paid a per diem as specified in section 7E.6 and  
41 shall be reimbursed for actual and necessary expenses  
42 incurred while on official board business. Such per  
43 diem and expenses shall be paid from funds appropriated  
44 to the board.

45     **Sec. 7. NEW SECTION. 23.5 Election of remedies.**

46     1. An aggrieved person, any taxpayer to or citizen  
47 of this state, the attorney general, or any county  
48 attorney may seek enforcement of the requirements of  
49 chapters 21 and 22 by electing either to file an action  
50 pursuant to section 17A.19, 21.6, or 22.10, whichever

1 is applicable, or in the alternative, to file a timely  
2 complaint with the board.

3 2. If more than one person seeks enforcement of  
4 chapter 21 or 22 with respect to the same incident  
5 involving an alleged violation, and one or more of  
6 such persons elects to do so by filing an action under  
7 section 17A.19, 21.6, or 22.10, and one or more of such  
8 persons elects to do so by filing a timely complaint  
9 with the board, the court in which the action was filed  
10 shall dismiss the action without prejudice, authorizing  
11 the complainant to file a complaint with respect to  
12 the same incident with the board without regard to the  
13 timeliness of the filing of the complaint at the time  
14 the action in court is dismissed.

15 3. If a person files an action pursuant to section  
16 22.8 seeking to enjoin the inspection of a public  
17 record, the respondent or person requesting access to  
18 the record which is the subject of the request for  
19 injunction may remove the proceeding to the board for  
20 its determination by filing, within thirty days of the  
21 commencement of the judicial proceeding, a complaint  
22 with the board alleging a violation of chapter 22 in  
23 regard to the same matter.

24 Sec. 8. NEW SECTION. **23.6 Board powers and duties.**  
25 The board shall have all of the following powers and  
26 duties:

27 1. Employ such employees as are necessary to  
28 execute its authority, including attorneys to prosecute  
29 respondents in proceedings before the board and to  
30 represent the board in proceedings before a court.  
31 Notwithstanding section 8A.412, all of the board's  
32 employees, except for the executive director and  
33 attorneys, shall be employed subject to the merit  
34 system provisions of chapter 8A, subchapter IV.

35 2. Adopt rules pursuant to chapter 17A calculated  
36 to implement, enforce, and interpret the requirements  
37 of chapters 21 and 22 and to implement any authority  
38 delegated to the board by this chapter.

39 3. Issue, consistent with the requirements of  
40 section 17A.9, declaratory orders with the force of law  
41 determining the applicability of chapter 21 or 22 to  
42 specified fact situations and issue informal advice to  
43 any person concerning the applicability of chapters 21  
44 and 22.

45 4. Receive complaints alleging violations of  
46 chapter 21 or 22, seek resolution of such complaints  
47 through informal assistance or through mediation and  
48 settlement, formally investigate such complaints,  
49 decide after such an investigation whether there is  
50 probable cause to believe a violation of chapter 21

1 or 22 has occurred, and if probable cause has been  
2 found prosecute the respondent before the board in a  
3 contested case proceeding conducted according to the  
4 provisions of chapter 17A.

5 5. Request and receive from a governmental body  
6 or a government body assistance and information as  
7 necessary in the performance of its duties.

8 6. The board may examine a record of a government  
9 body that is the subject matter of a complaint,  
10 including any record that is confidential by law.  
11 Confidential records provided to the board by a  
12 government body shall continue to maintain their  
13 confidential status. Any member or employee of the  
14 board is subject to the same policies and penalties  
15 regarding the confidentiality of the document as an  
16 employee of the government body.

17 7. Issue subpoenas enforceable in court for the  
18 purpose of investigating complaints and to facilitate  
19 the prosecution and conduct of contested cases before  
20 the board.

21 8. After appropriate board proceedings, issue  
22 orders with the force of law, determining whether there  
23 has been a violation of chapter 21 or 22, requiring  
24 compliance with specified provisions of those chapters,  
25 imposing civil penalties equivalent to and to the same  
26 extent as those provided for in section 21.6 or 22.10,  
27 as applicable, on a respondent who has been found in  
28 violation of chapter 21 or 22, and imposing any other  
29 appropriate remedies calculated to declare, terminate,  
30 or remediate any violation of those chapters.

31 9. Represent itself in judicial proceedings  
32 to enforce or defend its orders and rules through  
33 attorneys on its own staff, through the office of the  
34 attorney general, or through other attorneys retained  
35 by the board, at its option.

36 10. Make training opportunities available to lawful  
37 custodians, governmental bodies, government bodies, and  
38 other persons subject to the requirements of chapters  
39 21 and 22 and require, in its discretion, appropriate  
40 persons who have responsibilities in relation to  
41 chapters 21 and 22 to receive periodic training  
42 approved by the board.

43 11. Disseminate information calculated to inform  
44 members of the public about the public's right to  
45 access government information in this state including  
46 procedures to facilitate this access and including  
47 information relating to the obligations of governmental  
48 bodies under chapter 21 and lawful custodians under  
49 chapter 22 and other laws dealing with this subject.

50 12. Prepare and transmit to the governor and to the

1 general assembly, at least annually, reports describing  
2 complaints received, board proceedings, investigations,  
3 hearings conducted, decisions rendered, and other work  
4 performed by the board.

5 13. Make recommendations to the governor and  
6 the general assembly proposing legislation relating  
7 to public access to government information deemed  
8 desirable by the board in light of the policy of this  
9 state to provide as much public access as possible to  
10 government information as is consistent with the public  
11 interest.

12 **Sec. 9. NEW SECTION. 23.7 Filing of complaints**  
13 **with the board.**

14 1. The board shall adopt rules pursuant to chapter  
15 17A providing for the timing, form, content, and  
16 means by which any aggrieved person, any taxpayer to  
17 or citizen of this state, the attorney general, or  
18 any county attorney may file a complaint with the  
19 board alleging a violation of chapter 21 or 22. The  
20 complaint must be filed within sixty days from the time  
21 the alleged violation occurred or the complainant could  
22 have become aware of the violation with reasonable  
23 diligence. All complaints filed with the board shall  
24 be public records.

25 2. All board proceedings in response to the filing  
26 of a complaint shall be conducted as expeditiously as  
27 possible.

28 3. The board may charge a complaint filing fee not  
29 to exceed fifty dollars. This fee may be waived by  
30 the executive director if imposition of the fee would  
31 constitute an economic hardship for the complainant.  
32 If paid, a filing fee shall be refunded if a complaint  
33 is established as meritorious.

34 **Sec. 10. NEW SECTION. 23.8 Initial processing of**  
35 **complaint.**

36 Upon receipt of a complaint alleging a violation  
37 of chapter 21 or 22, the board shall do either of the  
38 following:

39 1. Determine that, on its face, the complaint  
40 is within the board's jurisdiction, appears legally  
41 sufficient, and could have merit. In such a case the  
42 board shall accept the complaint, and shall notify the  
43 parties of that fact in writing.

44 2. Determine that, on its face, the complaint is  
45 outside its jurisdiction, is legally insufficient, is  
46 frivolous, is without merit, involves harmless error,  
47 or relates to a specific incident that has previously  
48 been finally disposed of on its merits by the board or  
49 a court. In such a case the board shall decline to  
50 accept the complaint. If the board refuses to accept a

1 complaint, the board shall provide the complainant with  
2 a written order explaining its reasons for the action.

3 Sec. 11. NEW SECTION. 23.9 Informal assistance —  
4 mediation and settlement.

5 1. After accepting a complaint, the board shall  
6 promptly work with the parties through its employees  
7 to reach an informal, expeditious resolution of the  
8 complaint. If an informal resolution satisfactory to  
9 the parties cannot be reached, the board or the board's  
10 designee shall offer the parties an opportunity to  
11 resolve the dispute through mediation and settlement.

12 2. The mediation and settlement process shall  
13 enable the complainant to attempt to resolve the  
14 dispute with the aid of a neutral mediator employed and  
15 selected by the board, in its discretion, from either  
16 its own staff or an outside source.

17 3. Mediation shall be conducted as an informal,  
18 nonadversarial process and in a manner calculated  
19 to help the parties reach a mutually acceptable and  
20 voluntary settlement agreement. The mediator shall  
21 assist the parties in identifying issues and shall  
22 foster joint problem solving and the exploration of  
23 settlement alternatives.

24 Sec. 12. NEW SECTION. 23.10 Enforcement.

25 1. If any party declines mediation or settlement or  
26 if mediation or settlement fails to resolve the matter  
27 to the satisfaction of all parties, the board shall  
28 initiate a formal investigation concerning the facts  
29 and circumstances set forth in the complaint. The  
30 board shall, after an appropriate investigation, make  
31 a determination as to whether the complaint is within  
32 the board's jurisdiction and whether there is probable  
33 cause to believe that the facts and circumstances  
34 alleged in the complaint constitute a violation of  
35 chapter 21 or 22.

36 2. If the board finds the complaint is outside the  
37 board's jurisdiction or there is no probable cause to  
38 believe there has been a violation of chapter 21 or 22,  
39 the board shall issue a written order explaining the  
40 reasons for the board's conclusions and dismissing the  
41 complaint, and shall transmit a copy to the complainant  
42 and to the party against whom the complaint was filed.

43 3. a. If the board finds the complaint is within  
44 the board's jurisdiction and there is probable cause  
45 to believe there has been a violation of chapter 21  
46 or 22, the board shall issue a written order to that  
47 effect and shall commence a contested case proceeding  
48 under chapter 17A against the respondent. An attorney  
49 selected by the director of the board shall prosecute  
50 the respondent in the contested case proceeding. At

1 the termination of the contested case proceeding the  
2 board shall, by a majority vote of its members, render  
3 a final decision as to the merits of the complaint. If  
4 the board finds that the complaint has merit, the board  
5 may issue any appropriate order to ensure enforcement  
6 of chapter 21 or 22 including but not limited to  
7 an order requiring specified action or prohibiting  
8 specified action and any appropriate order to remedy  
9 any failure of the respondent to observe any provision  
10 of those chapters.

11 *b.* If the board determines, by a majority vote of  
12 its members, that the respondent has violated chapter  
13 21 or 22, the board may also do any or all of the  
14 following:

15 (1) Require the respondent to pay damages as  
16 provided for in section 21.6 or 22.10, whichever is  
17 applicable, to the extent that provision would make  
18 such damages payable if the complainant had sought to  
19 enforce a violation in court instead of through the  
20 board.

21 (2) Void any action taken in violation of chapter  
22 21 if a court would be authorized to do so in similar  
23 circumstances pursuant to section 21.6.

24 *c.* The board shall not have the authority to remove  
25 a person from public office for a violation of chapter  
26 21 or 22. The board may file an action under chapter  
27 21 or 22 to remove a person from office for violations  
28 that would subject a person to removal under those  
29 chapters.

30 *d.* A final board order resulting from such  
31 proceedings may be enforced by the board in court  
32 and is subject to judicial review pursuant to section  
33 17A.19.

34 **Sec. 13. NEW SECTION. 23.11 Defenses in a**  
35 **contested case proceeding.**

36 A respondent may defend against a proceeding before  
37 the board charging a violation of chapter 21 or 22  
38 on the ground that if such a violation occurred it  
39 was only harmless error or that clear and convincing  
40 evidence demonstrated that grounds existed to justify  
41 a court to issue an injunction against disclosure  
42 pursuant to section 22.8.

43 **Sec. 14. NEW SECTION. 23.12 Jurisdiction.**

44 The board shall not have jurisdiction over the  
45 judicial or legislative branches of state government or  
46 any entity, officer, or employee of those branches, or  
47 over the governor or the office of the governor.

48 **Sec. 15. Section 455K.4, subsection 4, Code 2011,**  
49 **is amended to read as follows:**

50 4. Information that is disclosed under subsection

1 2, paragraph "b", is confidential and is not subject to  
2 disclosure under chapter 22. ~~A governmental entity,  
3 governmental employee, or governmental official who  
4 discloses information in violation of this subsection  
5 is subject to the penalty provided in section 22.6.~~

6 Sec. 16. REPEAL. Section 22.6, Code 2011, is  
7 repealed.

8 Sec. 17. IOWA PUBLIC INFORMATION BOARD —  
9 TRANSITION PROVISIONS.

10 1. The initial members of the Iowa public  
11 information board established pursuant to this Act  
12 shall be appointed by September 1, 2011.

13 2. Notwithstanding any provision of this Act to the  
14 contrary, the director of the board and employees of  
15 the board shall not be hired prior to July 1, 2012.

16 3. Prior to July 1, 2012, the board shall meet  
17 as necessary to organize and prepare a report to be  
18 submitted to the governor and the general assembly.  
19 The report shall include a job description for the  
20 executive director of the board, goals for board  
21 operations, and performance measures to measure  
22 achievement of the board's goals.

23 Sec. 18. EFFECTIVE DATE. Except for the section  
24 of this Act establishing transition provisions for the  
25 Iowa public information board, this Act takes effect  
26 July 1, 2012.>

27 2. Title page, by striking lines 1 through 3 and  
28 inserting <An Act relating to violations of the open  
29 records and public meetings laws and the creation of  
30 the Iowa public information board, and including fee  
31 and effective date provisions.>

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