

**Senate File 246 - Introduced**

SENATE FILE 246

BY JOCHUM

**A BILL FOR**

1 An Act relating to violations of the open records and  
2 public meetings laws and the creation of the Iowa public  
3 information board, and including effective date provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 21.6, subsection 3, paragraph a, Code  
2 2011, is amended to read as follows:

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

16 (1) Voted against the closed session.

17 (2) Had good reason to believe and in good faith believed  
18 facts which, if true, would have indicated compliance with all  
19 the requirements of this chapter.

20 (3) Reasonably relied upon a decision of a court, ~~or~~ a  
21 formal opinion of the Iowa public information board, the  
22 attorney general, or the attorney for the governmental body,  
23 given in writing, or as memorialized in the minutes of the  
24 meeting at which a formal oral opinion was given, or an  
25 advisory opinion of the Iowa public information board, the  
26 attorney general, or the attorney for the governmental body,  
27 given in writing.

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

30 b. Shall assess the persons who participated in its  
31 violation damages in the amount of not more than five hundred  
32 dollars ~~nor~~ and not less than one hundred dollars. However, if  
33 a member of a government body knowingly participated in such a  
34 violation, damages shall be in the amount of not more than two  
35 thousand five hundred dollars and not less than one thousand

1 dollars. These damages shall be paid by the court imposing  
2 them to the state of Iowa if the body in question is a state  
3 government body, or to the local government involved if the  
4 body in question is a local government body. A person found to  
5 have violated this chapter shall not be assessed such damages  
6 if that person proves that the person ~~either voted~~ did any of  
7 the following:

8 (1) Voted against the action violating this chapter,  
9 refused to participate in the action violating this chapter, or  
10 engaged in reasonable efforts under the circumstances to resist  
11 or prevent the action in violation of this chapter; ~~had.~~

12 (2) Had good reason to believe and in good faith believed  
13 facts which, if true, would have indicated compliance with the  
14 requirements of this chapter; ~~or reasonably.~~

15 (3) Reasonably relied upon a decision of a court ~~or an,~~  
16 a formal opinion of the Iowa public information board, the  
17 attorney general, or the attorney for the government body,  
18 given in writing, or as memorialized in the minutes of the  
19 meeting at which a formal oral opinion was given, or an  
20 advisory opinion of the Iowa public information board, the  
21 attorney general, or the attorney for the government body,  
22 given in writing.

23 Sec. 3. NEW SECTION. 23.1 **Citation and purpose.**

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

31 Sec. 4. NEW SECTION. 23.2 **Definitions.**

32 1. "*Board*" means the Iowa public information board created  
33 in section 23.3.

34 2. "*Complainant*" means a person who files a complaint with  
35 the board.

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

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

6 5. "*Government body*" means the same as defined in section  
7 22.1.

8 6. "*Governmental body*" means the same as defined in section  
9 21.2.

10 7. "*Person*" means an individual, partnership, association,  
11 corporation, legal representative, trustee, receiver,  
12 custodian, government body, governmental body, or official,  
13 employee, agency, or political subdivision of this state.

14 8. "*Respondent*" means any agency or other unit of state or  
15 local government, custodian, government official, or government  
16 employee who is the subject of a complaint.

17 Sec. 5. NEW SECTION. 23.3 **Board appointed.**

18 1. An Iowa public information board is created as an  
19 independent agency consisting of the following seven members  
20 appointed by the governor.

21 a. One member nominated by the Iowa broadcasters  
22 association.

23 b. One member nominated by the Iowa freedom of information  
24 council.

25 c. One member nominated by the Iowa newspaper association.

26 d. One member nominated by the Iowa league of cities.

27 e. One member nominated by the Iowa state association of  
28 counties.

29 f. One member nominated by the Iowa association of school  
30 boards.

31 g. The attorney general or the attorney general's designee.

32 2. Appointments to the board shall not be subject to  
33 sections 69.16 and 69.16A.

34 3. Members appointed to the board shall serve staggered  
35 terms.

1 4. A quorum of the board shall consist of four members.

2 5. A vacancy on the board shall be filled by the governor.

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

7 Sec. 6. NEW SECTION. 23.4 **Compensation and expenses.**

8 Board members shall be paid a per diem as specified in  
9 section 7E.6 and shall be reimbursed for actual and necessary  
10 expenses incurred while on official board business. Per diem  
11 and expenses shall be paid from funds appropriated to the  
12 board.

13 Sec. 7. NEW SECTION. 23.5 **Remedies.**

14 1. An aggrieved person or any taxpayer or citizen of this  
15 state may seek the assistance of the board in exercising rights  
16 under chapters 21 and 22, other than an action commenced  
17 pursuant to section 21.6 or 22.10, and request a formal opinion  
18 of the board interpreting the requirements of chapters 21 and  
19 22 by filing a complaint with the board.

20 2. If a person files an action pursuant to section 22.8  
21 seeking to enjoin the inspection of a public record, the  
22 respondent or person requesting access to the record which  
23 is the subject of the request for injunction may stay the  
24 proceeding for sixty days in order to obtain a formal opinion  
25 of the board concerning the merits of the action. In any such  
26 case, the court shall consider and address the formal opinion  
27 of the board in rendering its decision.

28 Sec. 8. NEW SECTION. 23.6 **Board powers and duties.**

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

30 1. Employ an executive director and an assistant to the  
31 executive director.

32 2. Adopt rules pursuant to chapter 17A to administer any  
33 power or duty of the board under this chapter.

34 3. Issue formal opinions interpreting the requirements of  
35 chapter 21 or 22 and applying the requirements to specified

1 fact situations, and issue informal advice to any person  
2 concerning the requirements and applicability of chapters 21  
3 and 22. Formal opinions shall be accorded recognition by the  
4 courts of this state as persuasive authority.

5 4. Receive complaints alleging violations of chapter 21  
6 or 22, seek resolution of such complaints through informal  
7 assistance or through mediation and settlement, formally  
8 investigate such complaints, find after formal investigation  
9 whether there is probable cause to believe a violation of  
10 chapter 21 or 22 has occurred, and if probable cause has  
11 been found, issue a formal opinion stating the basis for  
12 the finding. An opinion of the board issued pursuant to an  
13 investigation shall be admitted into evidence in any court  
14 proceeding dealing with the same matter.

15 5. Request and receive from a government body or a  
16 governmental body assistance and information as necessary  
17 in the performance of its duties. The board may examine a  
18 record of a government body or a governmental body that is  
19 the subject matter of a complaint, including any record that  
20 is confidential by law. Confidential records provided to  
21 the board by a government body or a governmental body shall  
22 continue to maintain their confidential status. Any member  
23 or employee of the board is subject to the same policies and  
24 penalties regarding the confidentiality of the document as an  
25 employee of the government body or the governmental body.

26 6. Issue subpoenas enforceable in court for the purpose of  
27 investigating complaints before the board.

28 7. Represent itself in judicial proceedings to enforce or  
29 defend its formal opinions through its executive director.

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

1 subject.

2 9. Make training opportunities available to lawful  
3 custodians, government bodies, governmental bodies, and other  
4 persons subject to the requirements of chapters 21 and 22  
5 and require all new employees who have responsibilities in  
6 relation to chapters 21 and 22 to receive training upon initial  
7 employment. The board shall require all employees to receive  
8 annual training thereafter subject to criteria established by  
9 the board.

10 10. Prepare and transmit to the governor and to the general  
11 assembly, at least annually, reports describing complaints  
12 received, board proceedings, investigations, opinions rendered,  
13 and other work performed by the board.

14 11. Make recommendations to the general assembly proposing  
15 legislation relating to public access to government information  
16 deemed desirable by the board in light of the policy of  
17 this state to provide as much public access as possible  
18 to government information as is consistent with the public  
19 interest.

20 Sec. 9. NEW SECTION. 23.7 Filing of complaints with the  
21 board.

22 1. All complaints filed with the board shall be public  
23 records.

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

26 3. The board shall charge a complaint filing fee not to  
27 exceed fifty dollars. This fee may be waived by the executive  
28 director when imposition of the fee would constitute an  
29 economic hardship for the complainant. The filing fee shall be  
30 returned at the direction of the board when the complaint has  
31 been established as meritorious.

32 Sec. 10. NEW SECTION. 23.8 Initial processing of complaint.

33 Upon receipt of a complaint alleging a violation of chapter  
34 21 or 22, the board shall do either of the following:

35 1. Determine that, on its face, the complaint is within

1 the board's jurisdiction, appears legally sufficient, and  
2 could have merit. In such a case, the board shall accept  
3 the complaint, and shall notify the parties of that fact in  
4 writing.

5 2. Determine that, on its face, the complaint is not within  
6 its jurisdiction, is legally insufficient, is frivolous,  
7 is without merit, involves harmless error, or relates to a  
8 specific incident that has previously been finally disposed of  
9 on its merits by the board or a court. In such a case, the  
10 board shall decline to accept the complaint. If the board  
11 declines to accept a complaint, the board shall provide the  
12 complainant with a written statement explaining its reasons for  
13 the action.

14 Sec. 11. NEW SECTION. 23.9 Informal assistance — mediation  
15 and settlement.

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

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

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

33 Sec. 12. NEW SECTION. 23.10 Enforcement.

34 1. If any party declines mediation or settlement or if  
35 mediation or settlement fails to resolve the matter to the



1 satisfaction of all parties, the board shall initiate an  
2 investigation concerning the facts and circumstances set forth  
3 in the complaint. The board shall, after an appropriate  
4 investigation, make a determination as to whether the complaint  
5 is within the board's jurisdiction and whether there is  
6 probable cause to believe that the facts and circumstances  
7 alleged in the complaint constitute a violation of chapter 21  
8 or 22.

9 2. If the board finds the complaint is not within the  
10 board's jurisdiction or there is no probable cause to believe  
11 there has been a violation of chapter 21 or 22, the board shall  
12 issue a written order explaining the reasons for the board's  
13 findings and dismissing the complaint, and shall transmit a  
14 copy to the complainant and to the party against whom the  
15 complaint was filed.

16 3. If the board finds the complaint is within the board's  
17 jurisdiction and there is probable cause to believe there has  
18 been a violation of chapter 21 or 22, the board shall issue  
19 a written opinion to that effect and refer the matter with  
20 recommendation to the attorney general.

21 Sec. 13. NEW SECTION. 23.11 Jurisdiction.

22 The board shall not have jurisdiction over the judicial  
23 or legislative branches of state government or any entity,  
24 officer, or employee of those branches.

25 Sec. 14. IOWA PUBLIC INFORMATION BOARD — TRANSITION  
26 PROVISIONS.

27 1. The initial members of the Iowa public information board  
28 created pursuant to this Act shall be appointed by August 1,  
29 2011.

30 2. Notwithstanding any provision of this Act to the  
31 contrary, the executive director of the board and the assistant  
32 to the executive director of the board shall not be hired prior  
33 to July 1, 2012.

34 3. Prior to January 1, 2012, the board shall submit a report  
35 to the governor and the general assembly. The report shall

1 include a job description for the executive director of the  
2 board, goals for board operations, and performance measures to  
3 measure achievement of the board's goals.

4 Sec. 15. EFFECTIVE DATE. Except for the sections of this  
5 Act establishing transition provisions for the Iowa public  
6 information board, this Act takes effect July 1, 2012.

7 EXPLANATION

8 This bill relates to violations of Iowa's open records  
9 (Code chapter 22) and public meetings (Code chapter 21) laws  
10 including the creation of the Iowa public information board,  
11 and includes effective date provisions.

12 The bill increases civil penalty damage amounts for  
13 violations of the open records and public meetings laws for  
14 each member of the government body or governmental body or each  
15 person who knowingly participated in the violation from not  
16 less than \$100 and not more than \$500 to not less than \$1,000  
17 and not more than \$2,500 subject to the existing defenses  
18 contained in Code sections 21.6 and 22.10. The bill retains  
19 the current civil penalty damage amounts for such violations  
20 for each member of the governmental body or each person who  
21 otherwise participated in the violation (\$100 to \$500). These  
22 changes also allow public bodies to rely on advice received  
23 from the Iowa public information board without penalty should  
24 they be subsequently found by a court to be in violation of  
25 Code chapter 21 or 22.

26 The bill creates the Iowa public information board as an  
27 independent agency to provide an alternative means by which to  
28 secure compliance with and enforcement of the requirements of  
29 Code chapters 21 and 22.

30 The board shall consist of seven members appointed by the  
31 governor to be comprised of members from the Iowa broadcasters  
32 association, the Iowa freedom of information council, the Iowa  
33 newspaper association, the Iowa league of cities, the Iowa  
34 state association of counties, the Iowa association of school  
35 boards, and the attorney general or the attorney general's

1 designee. Appointments to the board shall not be subject to  
2 the political and gender balance requirements in Code sections  
3 69.16 and 69.16A. The board shall select one of its members  
4 to serve as chairperson and shall hire a director who shall  
5 serve as the executive officer of the board. Board members  
6 shall be paid a per diem and shall be reimbursed for actual and  
7 necessary expenses incurred while on official board business.  
8 All per diem and expense moneys paid to board members shall be  
9 paid from funds appropriated to the board. The board shall not  
10 have jurisdiction over the judicial or legislative branches of  
11 state government or any entity, officer, or employee of those  
12 branches, but the bill does not alter the current applicability  
13 of Code chapters 21 and 22 and the enforcement mechanisms  
14 provided in both Code chapters for violations of those Code  
15 chapters.

16 The bill provides that any aggrieved person or any taxpayer  
17 to or citizen of the state of Iowa may seek to exercise their  
18 rights under Code chapters 21 and 22 by filing a timely  
19 complaint with the board. If a person files an action seeking  
20 to enjoin the inspection of a public record, the respondent or  
21 person requesting access to the record which is the subject of  
22 the request for injunction may stay the proceeding to bring the  
23 matter before the board for its formal opinion.

24 The bill provides that the board shall have the authority  
25 to execute its authority, adopt rules, interpret the  
26 requirements of Code chapters 21 and 22, implement any  
27 authority delegated to the board, and issue formal opinions  
28 to be accorded recognition by the courts of this state as  
29 persuasive authority. Such formal opinions issued pursuant to  
30 an investigation by the board shall be admitted into evidence  
31 in any court proceeding dealing with the same matter. The  
32 board shall also have the authority to issue informal advice to  
33 anyone concerning the requirements and applicability of Code  
34 chapters 21 and 22, receive complaints alleging violations  
35 of Code chapter 21 or 22, seek resolution of such complaints

1 through mediation and settlement, formally investigate such  
2 complaints, decide after such an investigation whether there is  
3 probable cause to believe a violation of Code chapter 21 or 22  
4 has occurred, and if probable cause has been found, the board  
5 shall issue a written opinion to that effect and refer the  
6 matter to the attorney general. The board shall also have the  
7 authority to issue subpoenas enforceable in court, represent  
8 itself in judicial proceedings, make training opportunities  
9 available, disseminate information to inform the public about  
10 the public's right to access government information, prepare  
11 and transmit reports to the governor and the general assembly,  
12 at least annually, describing complaints received, board  
13 investigations, opinions rendered, and other work performed by  
14 the board, and make recommendations to the general assembly  
15 concerning legislation relating to public information access.

16 All complaints filed with the board shall be public records.  
17 A filing fee of up to \$50 may be charged complainants, but the  
18 fee may be waived and shall be returned if the complaint is  
19 found to have merit.

20 The bill provides that upon receipt of a complaint, the  
21 board shall either make a determination that, on its face, the  
22 complaint is within the board's jurisdiction, appears legally  
23 sufficient, and could have merit, in which case the board shall  
24 accept the complaint, or make a determination that, on its  
25 face, the complaint is not within the board's jurisdiction, is  
26 legally insufficient, is frivolous, is without merit, involves  
27 harmless error, or relates to a specific incident that has  
28 previously been finally disposed of on its merits by the board  
29 or a court, in which case the board shall decline to accept the  
30 complaint. If the board declines to accept the complaint, the  
31 board shall provide the complainant with a written statement  
32 detailing the reasons for the denial.

33 After accepting a complaint, and upon the board's  
34 determination that the matter is unlikely to be resolved with  
35 the prompt informal assistance of a board employee, the board

1 shall offer the parties the opportunity to resolve the dispute  
2 through mediation and settlement which shall provide the  
3 complainant the opportunity to resolve the dispute with the aid  
4 of a neutral mediator employed or selected by the board.

5 If any party declines mediation or settlement or if  
6 mediation or settlement fails to resolve the matter to the  
7 satisfaction of all parties, the board shall initiate an  
8 investigation concerning the facts and circumstances set forth  
9 in the complaint. After investigation, the board shall make  
10 a determination as to whether the complaint is within the  
11 board's jurisdiction and whether there is probable cause to  
12 believe that the complaint states a violation of Code chapter  
13 21 or 22. If the board finds the complaint is not within the  
14 board's jurisdiction or there is not probable cause to believe  
15 there has been a violation, the board shall issue a written  
16 order explaining the reasons for the board's conclusions and  
17 dismissing the complaint. If the board finds the complaint is  
18 within the board's jurisdiction and there is probable cause  
19 to believe there has been a violation, the board shall issue  
20 a written opinion to that effect and refer the matter to the  
21 attorney general for enforcement action.

22 The bill provides that the initial members of the board  
23 shall be appointed by August 1, 2011, but the executive  
24 director and assistant to the executive director shall not be  
25 hired prior to July 1, 2012. The board shall submit prior to  
26 January 1, 2012, a report to include a job description for the  
27 executive director of the board, goals for board operations,  
28 and performance measures for the board.

29 Except as otherwise provided, the bill takes effect July 1,  
30 2012.