

**Senate File 430 - Reprinted**

SENATE FILE 430  
BY COMMITTEE ON STATE  
GOVERNMENT

(SUCCESSOR TO SF 246)

(As Amended and Passed by the Senate March 14, 2011)

**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 fee and effective date  
4 provisions.

5 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, or official, employee, agency, or  
13 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 — executive**  
18 **director.**

19 1. An Iowa public information board is created consisting  
20 of the citizens' aide or the citizens' aide designee and the  
21 following six members appointed by the governor:

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

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

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

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

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

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

32 2. Appointments to the board shall not be subject to  
33 sections 69.16 and 69.16A if a good faith effort has been made  
34 to nominate and appoint qualified persons through a fair and  
35 unbiased selection process.

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

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

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

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

11 7. The board shall meet at least quarterly and at the call  
12 of the chairperson.

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

14 Board members appointed by the governor shall be paid a per  
15 diem as specified in section 7E.6 and shall be reimbursed for  
16 actual and necessary expenses incurred while on official board  
17 business. Such per diem and expenses shall be paid from funds  
18 appropriated to the board.

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

20 1. An aggrieved person, any taxpayer to or citizen of  
21 this state, the attorney general, or any county attorney may  
22 seek enforcement of the requirements of chapters 21 and 22 by  
23 electing either to file an action pursuant to section 17A.19,  
24 21.6, or 22.10, whichever is applicable, or in the alternative,  
25 to file a timely complaint with the board.

26 2. If more than one person seeks enforcement of chapter 21  
27 or 22 with respect to the same incident involving an alleged  
28 violation, and one or more of such persons elects to do so by  
29 filing an action under section 17A.19, 21.6, or 22.10, and one  
30 or more of such persons elects to do so by filing a timely  
31 complaint with the board, the court in which the action was  
32 filed shall dismiss the action without prejudice, authorizing  
33 the complainant to file a complaint with respect to the same  
34 incident with the board without regard to the timeliness of  
35 the filing of the complaint at the time the action in court is

1 dismissed.

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

10 Sec. 8. NEW SECTION. 23.6 Board powers and duties.

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

12 1. Employ no more than two employees to execute its  
13 authority, including an attorney to prosecute respondents in  
14 proceedings before the board and to represent the board in  
15 proceedings before a court. Notwithstanding section 8A.412,  
16 all of the board's employees, except for the executive director  
17 and attorneys, shall be employed subject to the merit system  
18 provisions of chapter 8A, subchapter IV.

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

23 3. Issue, consistent with the requirements of section  
24 17A.9, declaratory orders with the force of law determining  
25 the applicability of chapter 21 or 22 to specified fact  
26 situations and issue informal advice to any person concerning  
27 the applicability of chapters 21 and 22.

28 4. Receive complaints alleging violations of chapter 21  
29 or 22, seek resolution of such complaints through informal  
30 assistance or through mediation and settlement, formally  
31 investigate such complaints, decide after such an investigation  
32 whether there is probable cause to believe a violation of  
33 chapter 21 or 22 has occurred, and if probable cause has been  
34 found prosecute the respondent before the board in a contested  
35 case proceeding conducted according to the provisions of

1 chapter 17A.

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

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

13 7. Issue subpoenas enforceable in court for the purpose of  
14 investigating complaints and to facilitate the prosecution and  
15 conduct of contested cases before the board.

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

26 9. Represent itself in judicial proceedings to enforce or  
27 defend its orders and rules through attorneys on its own staff,  
28 through the office of the attorney general, or through other  
29 attorneys retained by the board, at its option.

30 10. Make training opportunities available to lawful  
31 custodians, governmental bodies, government bodies, and other  
32 persons subject to the requirements of chapters 21 and 22  
33 and require, in its discretion, appropriate persons who have  
34 responsibilities in relation to chapters 21 and 22 to receive  
35 periodic training approved by the board.

1 11. Disseminate information calculated to inform members  
2 of the public about the public's right to access government  
3 information in this state including procedures to facilitate  
4 this access and including information relating to the  
5 obligations of governmental bodies under chapter 21 and lawful  
6 custodians under chapter 22 and other laws dealing with this  
7 subject.

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

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

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

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

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

32 3. The board may charge a complaint filing fee not to  
33 exceed fifty dollars. This fee may be waived by the executive  
34 director if imposition of the fee would constitute an economic  
35 hardship for the complainant. If paid, a filing fee shall be



1 refunded if a complaint is established as meritorious.

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

3 Upon receipt of a complaint alleging a violation of chapter  
4 21 or 22, the board shall do either of the following:

5 1. Determine that, on its face, the complaint is within  
6 the board's jurisdiction, appears legally sufficient, and  
7 could have merit. In such a case the board shall accept  
8 the complaint, and shall notify the parties of that fact in  
9 writing.

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

18 Sec. 11. NEW SECTION. 23.9 Informal assistance — mediation  
19 and settlement.

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

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

31 3. Mediation shall be conducted as an informal,  
32 nonadversarial process and in a manner calculated to help  
33 the parties reach a mutually acceptable and voluntary  
34 settlement agreement. The mediator shall assist the parties in  
35 identifying issues and shall foster joint problem solving and

1 the exploration of settlement alternatives.

2 Sec. 12. NEW SECTION. 23.10 Enforcement.

3 1. If any party declines mediation or settlement or if  
4 mediation or settlement fails to resolve the matter to the  
5 satisfaction of all parties, the board shall initiate a formal  
6 investigation concerning the facts and circumstances set forth  
7 in the complaint. The board shall, after an appropriate  
8 investigation, make a determination as to whether the complaint  
9 is within the board's jurisdiction and whether there is  
10 probable cause to believe that the facts and circumstances  
11 alleged in the complaint constitute a violation of chapter 21  
12 or 22.

13 2. If the board finds the complaint is outside the board's  
14 jurisdiction or there is no probable cause to believe there  
15 has been a violation of chapter 21 or 22, the board shall  
16 issue a written order explaining the reasons for the board's  
17 conclusions and dismissing the complaint, and shall transmit  
18 a copy to the complainant and to the party against whom the  
19 complaint was filed.

20 3. a. If the board finds the complaint is within the  
21 board's jurisdiction and there is probable cause to believe  
22 there has been a violation of chapter 21 or 22, the board  
23 shall issue a written order to that effect and shall commence  
24 a contested case proceeding under chapter 17A against  
25 the respondent. An attorney selected by the director of  
26 the board shall prosecute the respondent in the contested  
27 case proceeding. At the termination of the contested case  
28 proceeding the board shall, by a majority vote of its members,  
29 render a final decision as to the merits of the complaint. If  
30 the board finds that the complaint has merit, the board may  
31 issue any appropriate order to ensure enforcement of chapter 21  
32 or 22 including but not limited to an order requiring specified  
33 action or prohibiting specified action and any appropriate  
34 order to remedy any failure of the respondent to observe any  
35 provision of those chapters.

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

4     (1) Require the respondent to pay damages as provided for  
5 in section 21.6 or 22.10, whichever is applicable, to the  
6 extent that provision would make such damages payable if the  
7 complainant had sought to enforce a violation in court instead  
8 of through the board.

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

12     *c.* The board shall not have the authority to remove a person  
13 from public office for a violation of chapter 21 or 22. The  
14 board may file an action under chapter 21 or 22 to remove a  
15 person from office for violations that would subject a person  
16 to removal under those chapters.

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

20     Sec. 13. NEW SECTION. **23.11 Defenses in a contested case**  
21 **proceeding.**

22     A respondent may defend against a proceeding before the  
23 board charging a violation of chapter 21 or 22 on the ground  
24 that if such a violation occurred it was only harmless error or  
25 that clear and convincing evidence demonstrated that grounds  
26 existed to justify a court to issue an injunction against  
27 disclosure pursuant to section 22.8.

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

29     The board shall not have jurisdiction over the judicial  
30 or legislative branches of state government or any entity,  
31 officer, or employee of those branches, or over the governor  
32 or the office of the governor.

33     Sec. 15. Section 455K.4, subsection 4, Code 2011, is amended  
34 to read as follows:

35     4. Information that is disclosed under subsection 2,

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

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

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

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

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

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

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