

MAR 0 6 2020

SENATE CONCURRENT RESOLUTION

REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONDUCT A
MODIFIED APPEAL RESOLUTION PILOT PROJECT.

1 WHEREAS, the Office of Information Practices is responsible
2 for ensuring that state and county agencies comply with public
3 records and open meetings laws; and
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5 WHEREAS, the Office of Information Practices may informally
6 resolve public questions, complaints, and appeals under the
7 Uniform Information Practices Act and Sunshine Law in less than
8 six months; and
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10 WHEREAS, some public appeals require a formal, enforceable
11 ruling, which are generally prepared on a first-come, first-
12 served basis, and, due to the Office of Information Practices'
13 backlog, can take up to two years or more to complete; and
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15 WHEREAS, H.R. No. 104, Regular Session of 2019 (H.R.
16 No. 104), requested that the Office of Information Practices
17 conduct an alternative appeal resolution pilot program to
18 determine if it can resolve some of the formal cases more
19 quickly; and
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21 WHEREAS, in response to H.R. No. 104, the Office of
22 Information Practices conducted a five-month alternative appeal
23 resolution pilot program in which it prepared "short, informal,
24 unenforceable guidance" within two weeks of receiving the
25 agency's final response for the files randomly assigned to the
26 alternative appeal resolution track; and
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28 WHEREAS, the Office of Information Practices reported to
29 the Legislature certain cases that were appropriate for
30 preliminary inclination; and
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32 WHEREAS, the report noted that the experimental approach
33 was most effective for appeals that did not present complex



1 facts or raise any novel legal issues and that nearly one-third
2 of cases were resolved through preliminary inclination; and
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4 WHEREAS, in the remaining two-thirds of appeals the parties
5 declined to accept preliminary inclinations and instead
6 requested formal opinions; however, most of the parties did not
7 provide additional documents, information, or facts to support
8 an alternative conclusion; now, therefore,
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10 BE IT RESOLVED by the Senate of the Thirtieth Legislature
11 of the State of Hawaii, Regular Session of 2020, the House of
12 Representatives concurring, that the Office of Information
13 Practices is requested to conduct a three-year modified
14 resolution pilot project to target and select incoming public
15 appeals under the Uniform Information Practices Act and the
16 Sunshine Law that do not present novel issues of law or complex
17 facts and are therefore best suited for expedited processing;
18 and
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20 BE IT FURTHER RESOLVED that the Office of Information
21 Practices is requested to handle informal and formal cases in a
22 traditional manner and issue preliminary inclinations for cases
23 where the facts are not complex and the legal issues have
24 previously been decided or have similarities to other decisions,
25 albeit no direct precedent; and
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27 BE IT FURTHER RESOLVED that the Office of Information
28 Practices is requested to provide that when a party declines to
29 accept a preliminary inclination, the party may request a formal
30 opinion, but shall be required to provide additional
31 documentation, written facts, or information or written response
32 to the preliminary inclination within thirty days of the
33 request, and if the party fails to provide information that
34 would materially change the Office of Information Practice's
35 analysis, the preliminary inclination shall be issued as an
36 abbreviated final, formal resolution; and
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38 BE IT FURTHER RESOLVED that the party requesting a formal
39 opinion should retain their right under existing law to appeal
40 the decision to the court; and
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1 BE IT FURTHER RESOLVED that the Office of Information
2 Practices is requested to submit a report of its findings and
3 recommendations to the Legislature, including the number of
4 cases resolved informally, formally, and by preliminary
5 inclination, and the overall impact on its case load, no later
6 than twenty days prior to the convening of the Regular Session
7 of 2021; and

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9 BE IT FURTHER RESOLVED that certified copies of this
10 Concurrent Resolution be transmitted to the Governor and
11 Director of Information Practices.

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OFFERED BY:



