

STAND. COM. REP. NO. 3798

Honolulu, Hawaii

APR - 6 2022

RE: S.C.R. No. 192

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii

Sir:

Your Committee on Government Operations, to which was referred S.C.R. No. 192 entitled:

"SENATE CONCURRENT RESOLUTION REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL AGENCY RECORDS,"

begs leave to report as follows:

The purpose and intent of this measure is to request the Office of Information Practices to convene a working group to develop a consensus on language for a new exception to the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (UIPA), for agency records that are deliberative and pre-decisional which reasonably balances the public's interest in disclosure against the potential harm to the agency's ability to fully consider and make sound and informed decisions.

Your Committee received testimony in support of this measure from the Office of Information Practices, Department of Transportation, Department of Hawaiian Home Lands, Department of Defense, University of Hawai'i System, Department of Commerce and Consumer Affairs, Department of Taxation, Common Cause Hawaii, and Society of Professional Journalists Hawaii Chapter. Your Committee received comments on this measure from the Department of Agriculture, The Civil Beat Law Center for the Public Interest,



Grassroot Institute of Hawaii, and League of Women Voters of Hawaii.

Your Committee finds that in order to reach sound decisions on the various questions that come before them, agencies in some instances need their employees and officers to fully and frankly discuss proposed policies or tentative decisions at an internal level, outside the glare of publicity, and with the freedom to express views or editorial changes that may not be incorporated into the final decision. Your Committee recognizes that this pre-decisional shield must be tempered by transparency. Your Committee further finds that jurisdictions across the country utilize a wide spectrum of approaches to transparency for agency deliberations. Accordingly, this measure promotes sound and transparent decision-making by requesting the Office of Information Practices to convene a working group to build consensus language for a new UIPA exception for agency records that are deliberative and pre-decisional that reasonably balances the public's interest in disclosure against the potential harm to the agency's ability to fully consider and make sound and informed decisions.

Your Committee notes that the testimony of Common Cause Hawaii, Civil Beat Law Center for the Public Interest, League of Women Voters of Hawaii, and the Department of Transportation expressed willingness to participate in the working group. Your Committee therefore recommends the Office of Information Practices consider the inclusion of these groups in the working group.

Your Committee has amended this measure by:

- (1) Clarifying one of the working group's goals in response to concerns regarding the importance of the public's interest in transparency and disclosure;
- (2) Amending the title accordingly; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.



As affirmed by the record of votes of the members of your Committee on Government Operations that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 192, as amended herein, and recommends its adoption in the form attached hereto as S.C.R. No. 192, S.D. 1.

Respectfully submitted on behalf of the members of the Committee on Government Operations,


A handwritten signature in black ink, appearing to read 'Sharon Muriwaki', is written over a horizontal line.

SHARON MURIWAKI, Chair



