SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONDUCT A STUDY ON SURROGACY AND GESTATIONAL CARRIER AGREEMENTS.

WHEREAS, modern technology allows a woman to carry and give birth to a child as a surrogate or gestational carrier following the artificial insemination of an egg or the implantation of an already fertilized egg; and

WHEREAS, surrogacy is a contractual relationship between two or more consenting adults in which a woman agrees to act as the surrogate or gestational carrier for the child of another person; and

WHEREAS, while surrogacy does occur in Hawaii, it is not regulated; and

WHEREAS, in light of the fact that the Hawaii Revised Statutes do not make specific reference to surrogacy or gestational carrier agreements, there may be ambiguity regarding the issue of legal custody in such agreements; and

WHEREAS, thirteen other states have enacted laws regarding surrogacy or gestational carrier agreements; and

WHEREAS, in some states, children born as the result of surrogacy agreements are considered the legal children of the surrogates until the intended parents obtain court orders regarding custody; and

WHEREAS, in other states, the intended parents are automatically the legal parents of children born as the result of surrogacy agreements; and
WHEREAS, some states prohibit surrogacy altogether because policymakers have determined that compensation for the carrying of a child is the sale of a person; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017, the House of Representatives concurring, that the Department of the Attorney General is requested to conduct a study on surrogacy and gestational carrier agreements; and

BE IT FURTHER RESOLVED that the Attorney General is requested, at minimum, to determine whether:

(1) Hawaii law currently authorizes individuals, regardless of marital status or gender, to enter into surrogacy and gestational carrier agreements;

(2) Financial consideration paid to a surrogate or gestational carrier makes a surrogacy or gestational carrier agreement impermissible under the Constitution of the United States or other applicable law; and

(3) The Hawaii Revised Statutes should be amended to specifically address surrogacy and gestational carrier agreements, and, if so:

(A) Whether the amendments to the Hawaii Revised Statutes should be modeled after the laws or regulations of one or more other states, and, if so, which state or states;

(B) What is the best way to protect the rights of surrogates, gestational carriers, intended parents, and children; and

(C) Whose name or names should appear on the birth certificate as the parent or parents of a child born as a result of a surrogacy or gestational carrier agreement; and

BE IT FURTHER RESOLVED that the Department of the Attorney General is requested to prepare a report that includes findings
and recommendations, including any proposed legislation, and submit the report to the Legislature no later than thirty days before the convening of the Regular Session of 2018; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Attorney General and the Governor.

OFFERED BY: [Signature]
By Request