

MAR 0 6 2020

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



1 than twenty days prior to the convening of the Regular Session  
2 of 2021; and

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4 BE IT FURTHER RESOLVED that certified copies of this  
5 Resolution be transmitted to the Governor and Director of  
6 Information Practices.

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OFFERED BY:

A handwritten signature in black ink, appearing to read "James T. ...", is written over a horizontal line.

