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# HOUSE CONCURRENT RESOLUTION

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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.

1 WHEREAS, the 1988 Legislature recognized, when enacting the  
2 Uniform Information Practices Act (Modified), chapter 92F,  
3 Hawaii Revised Statutes (UIPA), that there would be gray areas  
4 and unanticipated cases arising in the implementation of the  
5 UIPA that should be left to the Office of Information Practices  
6 (OIP) and courts to balance competing interests to determine  
7 whether disclosure would be required, and the UIPA's exceptions  
8 were crafted to allow for the development of such a common law;  
9 and

10  
11 WHEREAS, federal courts created the deliberative process  
12 privilege (DPP) in the 1950s to encourage and allow for frank  
13 and candid agency deliberations as a means to promote more  
14 effective government decision-making; and

15  
16 WHEREAS, based on the federal Freedom of Information Act  
17 (FOIA), relevant state and federal caselaw, and the UIPA's own  
18 legislative history, for nearly 30 years, the OIP recognized the  
19 DPP as a form of the UIPA's exception to disclosure for records  
20 whose disclosure would frustrate a legitimate government  
21 function, section 92F-13(3), Hawaii Revised Statutes; and

22  
23 WHEREAS, the federal DPP has been the subject of  
24 significant criticism for abuse by agencies and consequent  
25 efforts by Congress to identify "language that will ensure that  
26 the executive agencies administering FOIA will strike the  
27 appropriate balance between privacy that is absolutely necessary  
28 for candid conversations in the development of effective public  
29 policy and transparency that is necessary and expected in a  
30 government by the people and for the people"; and  
31



1 WHEREAS, other jurisdictions across the country utilize a  
2 wide spectrum of approaches to transparency for agency  
3 deliberations; and  
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5 WHEREAS, this body believes that in order to reach sound  
6 decisions on the various questions that come before them,  
7 agencies in some instances need their employees and officers to  
8 fully and frankly discuss proposed policies or tentative  
9 decisions at an internal level, outside the glare of publicity,  
10 and with the freedom to express views or editorial changes that  
11 may not be incorporated into the final decision; and  
12

13 WHEREAS, this body would like interested stakeholders to  
14 consider whether there is consensus on the appropriate balance  
15 between transparency and deliberative process for effective  
16 agency decision-making in Hawaii, and to recommend a new  
17 statutory standard that balances the various agency and public  
18 interests; now, therefore,  
19

20 BE IT RESOLVED by the House of Representatives of the  
21 Thirty-first Legislature of the State of Hawaii, Regular Session  
22 of 2022, the Senate concurring, that the Office of Information  
23 Practices is requested to convene a working group to develop a  
24 consensus on language for a new UIPA exception for agency  
25 records that are deliberative and pre-decisional which  
26 reasonably balances the public's interest in disclosure against  
27 the potential harm to the agency's ability to fully consider and  
28 make sound and informed decisions; and  
29

30 BE IT FURTHER RESOLVED that the working group is requested  
31 to gather and consider information from interested and affected  
32 parties as well as examine the law and practices in Hawaii and  
33 in the application of similar exceptions in other jurisdictions,  
34 with the goal of developing a consensus on language for the new  
35 UIPA exception; and  
36

37 BE IT FURTHER RESOLVED that the working group is requested  
38 to include seven members consisting of three individuals  
39 representing public interest groups; three individuals  
40 representing government agencies subject to the UIPA; and the  
41 Director of the Office of Information Practices or the

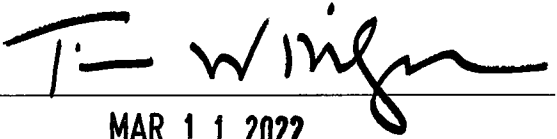


1 Director's designee, who shall appoint the members and serve as  
2 the working group convener; and  
3

4 BE IT FURTHER RESOLVED that the Director of the Office of  
5 Information Practices is requested to report the findings and  
6 any recommendations of the working group to the Legislature no  
7 later than twenty days prior to the convening of the Regular  
8 Session of 2023; and  
9

10 BE IT FURTHER RESOLVED that certified copies of this  
11 Concurrent Resolution be transmitted to the Governor, Director  
12 of the Office of Information Practices, Executive Director for  
13 the Civil Beat Law Center for the Public Interest, President of  
14 the League of Women Voters of Hawaii, and the Executive Director  
15 of Common Cause Hawaii.  
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OFFERED BY:

  
MAR 11 2022

