

ORIGINAL

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CONFERENCE COMMITTEE REPORT NO.

17

Honolulu, Hawaii

APR 21

, 1989

RE: S.B. No. 1799  
S.D. 1  
H.D. 1  
C.D. 1

Honorable Richard S. H. Wong  
President of the Senate  
Fifteenth State Legislature  
Regular Session of 1989  
State of Hawaii

Honorable Daniel J. Kihano  
Speaker, House of Representatives  
Fifteenth State Legislature  
Regular Session of 1989  
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1799, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE UNIFORM INFORMATION PRACTICES ACT (MODIFIED),"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to amend Chapter 92F, Hawaii Revised Statutes (HRS), the Uniform Information Practices Act (Modified), to ensure its smooth implementation when it takes effect on July 1, 1989.

Your Committee has made the following amendments to the bill:

- (1) Two new sections in the original bill were consolidated and restructured into one new section in Part II of Chapter 92F, HRS, which clarifies that when an agency denies a person access to a government record, the person may appeal the denial to the Office of



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Information Practices (OIP) as an alternative and optional method of appeal but without prejudice to the person's right to appeal directly to circuit court. Exhaustion of administrative remedies is not required before appealing a denial of access to government records to the court.

- (2) A proposed new section in Part III of Chapter 92F, HRS, will clarify that for an individual who is denied access to that individual's own personal record, appeal to the OIP is also an alternative to appealing to circuit court. The section was amended to make consistent the alternative appeal methods for access denied to individuals as to their own personal records, under Part III of Chapter 92F, HRS, and the alternative appeal methods for access denied as to government records about others, under Part II of Chapter 92F, HRS.
- (3) The bill was amended to remove the proposed statutory provisions of a ninety-day time limitation for the filing of an appeal to the OIP concerning denial of access to a government record. The bill was also amended to set, instead of the previously proposed time limitation of ninety days, a limitation of two years, within which a person can bring a civil action to compel disclosure of a government record after a denial of a request for access. This time limitation, as amended, is consistent with the two-year limitation, established in Part III of Chapter 92F, HRS, and further clarified in the bill, within which an individual can bring a civil action to compel disclosure of that individual's own personal record after a denial of a request for access.
- (4) The House draft of the bill had added a codified time schedule for the progressive completion by all agencies of their respective public records reports required under Chapter 92F, HRS. The bill was amended to remove the time schedule from the statutory provision and to make the time schedule a provision in the session laws.



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This amendment would eliminate the need to later repeal a codified time schedule at some time after the agencies' full completion of their public records reports. Your Committee retained in the bill the requirement that each government agency supplement or amend its public records report annually.

- (5) The bill was also amended to remove recommendation of criminal prosecution from the functions of the OIP and to make the effective date of the act on July 1, 1989, when the remaining Chapter 92F, HRS, goes into effect. The bill was also amended to make technical and nonsubstantive changes for purposes of clarity, style and form.

The bill retains the provisions clarifying the OIP's rulemaking authority and the OIP's placement within the Department of the Attorney General for administrative purposes only. The OIP's rulemaking authority, as clarified in this bill, would ensure uniformity in the rules which all agencies will follow, without the need for all agencies to hold separate administrative hearings on rules adoption. The bill also clarifies that administrative review by the OIP on an agency denial of access is an informal dispute resolution procedure and is exempt from the contested case requirements of Chapter 91, HRS.

Your Committee wishes to emphasize that while a person has a right to bring a civil action in circuit court to appeal a denial of access to a government record, a government agency dissatisfied with an administrative ruling by the OIP does not have the right to bring an action in circuit court to contest the OIP ruling. The legislative intent for expediency and uniformity in providing access to government records would be frustrated by agencies suing each other.

Your Committee on Conference is in accord with the intent and purpose of S.B. No. 1799, S.D. 1, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1799, S.D. 1, H.D. 1. C.D. 1.



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Respectfully submitted,


MANAGERS ON THE PART OF THE  
HOUSE

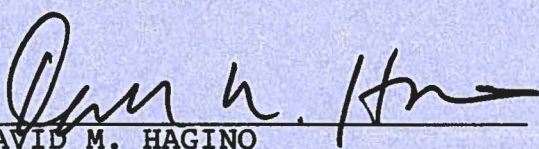
  
WAYNE METCALE, Chairman

MANAGERS ON THE PART OF THE  
SENATE

  
RUSSELL BLAIR, Chairman

EXCUSED  
ANNELLE AMARAL


  
JAMES AKI

  
DAVID M. HAGINO

  
MARY-JANE MCMURDO

  
KENNETH T. HIRAKI

EXCUSED  
MARY GEORGE

  
WHITNEY T. ANDERSON