HB 512
RELATING TO THE ENVIRONMENT

House Committee on
Energy and Environmental Protection

Public Hearing - February 1, 1995
8:30 A.M., Room 1310 SOT

By
John T. Harrison, Environmental Center
George Curtis, UH Hilo
John Barkai, School of Law
Peter Rappa, Sea Grant
Suzanne Tiapula, School of Law

HB 512 would establish an environmental mediation commission to oversee the process of alternative dispute resolution which would be required of all litigants in environmental cases prior to court involvement.

Our statement on this bill does not constitute an institutional position of the University of Hawai'i.

The Environmental Center's review of the state EIS system in 1991 recommended that some form of mediation be required when disagreements remained following final determinations made pursuant to Chapter 343, HRS. However, the present measure significantly broadens to requirement to include applicability to all environmental disputes. While we agree in principle with the application of required mediation, we have the following concerns:

1. Other than convening mediation, the role of the commission is not clear. In addition, the composition of the commission would be likely to be problematic, as there is no voice for Native Hawaiian interests or for the scientific perspective, and all neighbor island concerns are represented by a single individual. We suspect that such a monolithic view of outer island issues is not likely to be effective, and we question the credibility of a deliberative body so construed. It would seem more effective to simply increase the resource allocation to a group such as the ADR program of the judiciary which already is knowledgeable in the field of mediation.

2. We cannot discern a model for this design of a mediation structure and process. The concept of mediation implies voluntary participation and compliance with agreed settlements, yet decisions of the committee are given the power of law. Our reviewers note that binding decisions are not mediation. What are the legal implications of these decisions? Do they involve findings of fact, and what, if any, of the facts brought before the commission are subject to appeal?

While we agree with the concept of mediation in environmental disputes, we suggest that it would be better to allow the courts to exercise the option to direct litigants to mediation through the offices of a professional organization such as the Center for Alternative Dispute Resolution.