



University of Hawai'i at Mānoa

Environmental Center

A Unit of Water Resources Research Center
Crawford 317 • 2550 Campus Road • Honolulu, Hawai'i 96822
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

RL:01265

HB 386 RELATING TO THE ENVIRONMENT

House Committee on
Energy and Environmental Protection

Public Hearing - February 25, 1995
9:00 A.M., Room 1310 SOT

By
John T. Harrison, Environmental Center
Peter Rappa, Sea Grant
Andrew Tomlinson, Environmental Center

HB 386 would establish a new chapter in the Hawaii Revised Statutes requiring the department of health to publish written policy and guidance statements relating to implementation of environmental statutes.

Our statement on this bill does not constitute an institutional position of the University of Hawaii.

An informed citizenry is prerequisite to rational public self-government. Uninformed or misinformed public opinion at best ignores injustice, and at worst endorses tyranny.

Under Chapter 91, HRS (often referred to as the Hawaii Administrative Procedures Act, or HAPA) all agencies are required to "adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency" (Section 91-2(2), HRS). In addition, Sections 91-6 and 91-7 provide, respectively, for petition by any interested person for adoption of rules, and for judicial review of the validity of rules.

We suggest that, strictly construed, HAPA already provides for the requirements which this measure proposes. We further suggest that a separate chapter applying solely to the department of health would overlook the requirement under HAPA that all agencies provide policy guidance for public benefit.

At the federal level, agency guidelines often are promulgated internally for the purpose of clarifying policies and procedures. Such guidelines are immensely helpful, providing both general public information and interpretive clarity useful in the course of judicial proceedings. Particularly in view of the latter application, interpretive policy guidelines must be carefully prepared, reviewed, and evaluated as to form and content before adoption. We believe this is the intent of the existing HAPA provisions. Hence, we would suggest that the purposes of this measure might more effectively be achieved through legislative resolution rather than provision for a new statute.