



The Judiciary, State of Hawaii

Testimony to the House Committee on Water and Land

Representative Cindy Evans, Chair

Representative Nicole E. Lowen, Vice Chair

Monday, February 11, 2013, 8:30 a.m.

State Capitol, Conference Room 325

by

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WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 106, H.D. 1, Relating to Geothermal Resources.

Purpose: Repeals Act 97, SLH 2012, relating to geothermal resources which differentiates between "geothermal resources exploration" and "geothermal resources development." Designates "geothermal resources exploration" and "geothermal resources development" as permissible uses in all state land use districts and certain conservation district zones in accordance with chapter 205, HRS. Enacts geothermal resource subzones, designation of areas as geothermal resources subzones, and exploratory wells, which were repealed by Act 97. Effective July 1, 2025.

Judiciary's Position:

The Judiciary takes no position on the merits of this bill. However, one of the main focuses of the Center for Alternative Dispute Resolution is mediation, and in the past we have been told it is useful when we provide technical advice. This testimony relates only to the sections of the bill referring to mediation.

On pages 5 (lines 7 - 10) and 7 (lines 7 - 10), the mediator is required to "submit a written recommendation to the county authority . . .". Additionally, page 10 (lines 5 - 6) also refers to written recommendations to be submitted by the mediator. Generally mediators do not submit recommendations because mediators do not make decisions for the parties. In fact, providing recommendations is prohibited under the Uniform Mediation Act (UMA)(unless agreed to in



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writing by the parties), which has been introduced via Senate Bill No. 966 and House Bill No. 418. Should either of these bills be signed in to law and the UMA adopted, provisions included in House Bill No. 106, H.D. 1, and the UMA will be in contravention of each other. The Judiciary notes that Senate Bill No. 966 passed out unamended from the Senate Committee on Judiciary and Labor on February 8, 2013.

There are at least two ways to address this. One is to delete the above-mentioned sentences on pages 5, 7 and 10. The other is to call the process “dispute resolution” instead of “mediation.” This second approach was used in Act 48, SLH 2011 (mortgage foreclosure dispute resolution).

Thank you for the opportunity to testify on House Bill No. 106, H. D. 1.