

ACT 346

H.B. NO. 43

A Bill for an Act Relating to Alternative Dispute Resolution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. One of the fundamental obligations of a just society is the equitable resolution of complex disputes that affect the general public interest. Above and beyond their impact on the determinations of government and the day-to-day work of government agencies, public conflicts have diverse characteristics. Some affect large numbers of people and the allocation of public resources such as land, water, and energy. Still others involve decisions about the use of public facilities and the resources, both human and financial, of state and local government.

In Hawaii, many public disputes remain unresolved, are resolved only after much divisiveness, or result in expensive and protracted litigation. Were appropriate settlement processes more readily available, however, many contested matters affecting the public interest could be resolved more efficiently and with less divisiveness. In the past decade, both in Hawaii and across the United States, mediation, neutral fact-finding, and negotiated consensus-building have been shown to be valuable settlement processes that can facilitate the equitable resolution of such disputes.

The legislature thus finds a persistent and growing need for less costly, faster, more inventive, and more satisfying methods of dispute resolution that do not sacrifice fairness and justice. The legislature further desires to broaden the use of these methods and to make them more readily available.

The purpose of this Act is to provide government agencies with additional technical resources in the area of alternative dispute resolution and to assist the people of the State in voluntarily resolving their disputes with greater efficiency and satisfaction.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER CENTER FOR ALTERNATIVE DISPUTE RESOLUTION

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Alternative dispute resolution” or “ADR” means methods, procedures, or techniques that are used to resolve differences voluntarily and that do not require a traditional and formal adjudicatory trial or contested hearing. These methods include, but are not limited to, mediation, contractual arbitration, fact-finding, consensus-building, and neutral-expert evaluation.

“Board” means the board of advisors of the center for alternative dispute resolution.

“Center” means the center for alternative dispute resolution.

“Government agencies” means the offices, departments, branches, and other subdivisions of state and county governments.

§ -2 **Establishment of the center for alternative dispute resolution.** (a) There is established within the judiciary the center for alternative dispute resolution. The center shall facilitate the effective, timely, and voluntary resolution of disputes. Through these resolutions, it shall help reduce public and private costs of litigation and increase satisfaction with the justice system. The center shall accomplish its purposes by:

- (1) Providing, where feasible and agreed to by the parties, the consultative resources and technical assistance needed to achieve voluntary resolutions for cases that affect the public interest or the work of state and county agencies. These cases shall include but not be limited to:
 - (A) Public disputes involving actual or threatened court actions over the allocation or management of public resources or the siting of public facilities;
 - (B) Complex litigation cases in which a court or a regulatory or administrative agency has determined that the dispute involves multiple parties or formidable technical, procedural, or factual issues, or both;
 - (C) Policy roundtables in which the center, at the request of an executive, legislative, or judicial decision-maker, convenes and chairs advisory discussions on matters pertaining to standards or rules; and
 - (D) Other cases directly referred by judges, legislators, agency heads, or appointed government officials.
- (2) Promoting in a systematic manner the appropriate use of ADR; and
- (3) Disseminating to government agencies and to the community at large up-to-date information on the methods and applications of ADR.

(b) The center shall be organized, guided, and administratively maintained by the chief justice or the chief justice's designee. The chief justice shall appoint a director of the center. The director may hire staff necessary to accomplish the purposes of this chapter, including but not limited to an assistant director and a program specialist. The director, assistant director, and program specialist shall have substantial experience, training, and education in the methodologies of ADR. Employees of the center shall be exempt from chapters 76 and 77, shall not be considered civil service employees, but shall be entitled to any employee benefit plan normally inuring to civil service employees.

§ -3 **Board of advisors.** (a) A board of advisors of the center for alternative dispute resolution, consisting of nine members, shall be appointed by the chief justice. The board shall:

- (1) Foster greater understanding of the center and its purpose by government agencies and by the general public;
- (2) Assist the center in disseminating information about the uses, applications, and advantages of ADR; and
- (3) Strengthen the acceptance and utilization of ADR by government agencies and the public.

(b) The board of advisors shall include two representatives from the executive branch, two from the legal community, two from the Hawaii state association of counties, and three from the public at large. The board shall meet from time to time to review the center's work and to advise the chief justice and staff of the center regarding the use of ADR methods for matters involving or affecting government agencies and the general public. The board of advisors may add ex officio members as they deem beneficial or desirable to help achieve the center's purposes. All members of the board shall serve without pay.

§ -4 **Annual report.** The center shall submit a report on its activities to the legislature at least twenty days prior to the convening of each regular legislative session."

SECTION 3. This Act shall not be construed to affect the extent of the State's sovereign immunity.

SECTION 4. This Act shall take effect on July 1, 1989; provided that this Act shall be repealed on June 30, 1991.

(Approved June 16, 1989.)