



HAWAI'I CIVIL RIGHTS COMMISSION

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February 5, 2008

Rm. 016, 1:15 p.m.

To: The Honorable Suzanne Chun Oakland, Chair, and Members of the Senate
Committee on Human Services and Public Housing

From: Sara Banks, Acting Chair, and Commissioners of the Hawai'i Civil Rights
Commission

Re: S.B. No. 2395

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5. The Executive Director of the HCRC serves as an ex officio member of the Language Access Advisory Council.

S.B. No. 2395 clarifies definitions related to language access in HRS chapter 371, part II, requires all "covered entities" to submit language access plans to the Office of Language Access (OLA) and appoint a language access coordinator, expands the Language Access Advisory Council (Council) to include one member from each island, and clarifies that the HCRC Executive Director serves as an ex officio member of the Council. The HCRC supports the "housekeeping" provisions of the bill, including the amended definitions and constitution of the Council. However, the HCRC has strong concern over and opposes the proposed requirement that all "covered entities" submit language access plans to OLA and appoint a language access coordinator.

Under the current HRS chapter 371, part II, there is no authority for OLA to require non-profits to submit their plans to OLA for review.

It is clear that non-profits who receive state funds under POS or GIA are "covered entities" as defined under §371-32. As covered entities, they must comply with §371-33 and are obligated to provide oral and written language services under that section. Likewise, as a covered entity, they are required to establish their own language access plans under §371-34(a).

However, the additional obligations under paragraphs 371-34(b) and (c) expressly apply only to “state agencies.” The use of “covered entity” in 371-34(a) and “state agency” in (b) and (c) have to be given meaning. OLA has no authority to compel non-profit covered entities to file their plans pursuant to 371-34(b) and (c).

The proposal to impose submission requirements on non-profits inappropriately shifts emphasis away from the obligation of state agencies. To date, first steps have focused on development and submission of language access plans by state agencies, which is appropriate. However, compliance is not established by submission of the plans, but in the provision of services to LEP persons. The emphasis should not be on the “safe harbor” aspect of the language access law, but on the provision of services mandated under Title VI, E.O. 13166, and HRS chapter 371, part II. The focus of OLA should be on meaningful and effective implementation of language access in compliance with the law, vindicating the **rights** of LEP persons. State agencies can and should work with their non-profit service providers who receive state-funding, and can do so through RFP, GIA, and POS contractual requirements. It is not necessary to require every non-profit service provider to submit language access plans to OLA and appoint a language access coordinator, and it will likely burden these covered entities and strain OLA’s resources, which will be better used on its current mandate.

The HCRC supports all of the “housekeeping” provisions of the S.B. No. 2395, but opposes the provision that would require all “covered entities” to submit language plans to OLA and appoint a language access coordinator.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Senate Committee on Human Services and Public Housing

The Honorable Sen. Suzanne Chun Oakland, Chair

The Honorable Sen. Les Ihara, Jr., Vice Chair

Tuesday, February 5, 2008, 1:15 p.m.

State Capitol, Conference Room 016

by

Debi Tulang-De Silva

Project Director, Office on Equality and Access to the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2395, Relating To Language Access

Purpose: Clarifies definitions related to language access. Requires certain entities to file a language access plan and appoint a language access coordinator. Expands the language access advisory council from 11 to 15 members.

Judiciary's Position:

The Judiciary recommends passage of Senate Bill No. 2395 and offers the following information in support of the measure.

Pursuant to enactment of Act 290 and codified as part of HRS §371 in 2006, each state agency and covered entity must take reasonable steps to ensure meaningful access to services, programs, and activities funded and provided by the State by limited English proficient ("LEP") persons. The language contained in Act 290 mirrors federal civil rights legal language based on Title VI of the Civil Rights Act of 1964, which protects LEP persons against national origin discrimination. Act 290 establishes both the Office of Language Access ("OLA") and the Language Access Advisory Council ("Council") to direct this process of creating more meaningful language access for LEP persons in Hawaii.

Senate Bill No. 2395 essentially effects two changes: 1) it improves fundamental language in HRS 371 to be more clear and efficient; and 2) it establishes 4 new seats on the Council to better ensure representation of all 4 counties of Hawaii State. OLA and the Council have inherited the daunting mission of Act 290 and should be provided the adequate tools to achieve this mission. Passing Senate Bill No. 2395 better equips them to do so.

Thank you for the opportunity to testify on Senate Bill No. 2395.