



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 6, 2009

TESTIMONY TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

House Bill 1480 – Relating to Discriminatory Practices

The Disability and Communication Access Board (DCAB) is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. The Board's mission is to advocate and promote full inclusion, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

DCAB's supports the intent of House Bill 1480 which conforms State law to the recently passed ADA Amendments Act (signed September 25, 2008 by President Bush). DCAB also supported the changes in the federal law. All language proposed in House Bill 1480 is directly from and consistent with federal law.

Thank you for the opportunity to provide testimony on this important matter.

Respectfully submitted,

CHARLES W. FLEMING
Chairperson

FRANCINE WAI
Executive Director

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LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR
HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 6, 2009

MEMORANDUM

TO: The Honorable Karl Rhoads, Chair
House Committee on Labor & Public Employment

FROM: Lillian B. Koller, Director

SUBJECT: **H.B. 1480 - RELATING TO DISCRIMINATORY PRACTICES**

Hearing: Friday, February 6 2009; 8:30 a.m.
Conference Room 309, State Capitol

PURPOSE: The purpose of H.B. 1480 is to amend the definition of disability for the Department of Labor and Industrial Relations. It amends and adds certain definitions to broaden protections against employment disability discrimination in the State.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) defers this bill to the Department of Labor and Industrial Relations for any effect it would have on labor laws. DHS would have a concern if this measure was intended to affect programs under chapter 346, HRS.

Thank you for the opportunity to provide comments on this bill.



HAWAI`I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 6, 2009
Rm. 309, 8:30 a.m.

To: The Honorable Karl Rhoads, Chair
Members of the House Committee on Labor and Public Employment

From: Coral Wong Pietsch, Chair
and Commissioners of the Hawai`i Civil Rights Commission

Re: H.B. No. 1480

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.

Under H.R.S. Chapter 378, persons with a disability are protected against employment discrimination. In 1994 the HCRC promulgated regulations that defined "disability" and various elements involved in that definition. These regulations are found in H.S.R. § 12-46-181 through -193. Some of these laws provided stronger protections than those under federal law, which is allowed pursuant to California Federal Sav. and Loan Ass'n v. Guerra, 479 U.S. 272 (1987). Accordingly, federal law is a "floor" beneath which protections against discrimination cannot drop.

In 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA) to correct several U.S. Supreme Court decisions that interpreted the definition of "disability" inconsistently with

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legislative intent. Congress then directed the EEOC to promulgate new federal regulations to conform the act. Pursuant to the ADAAA, certain federal law definitions such as an impairment that "substantially limits" a major life activity, as well as "being regarded as having such an impairment" are broader than current state regulations.

The HCRC supports the intent of HB 1480 to conform state law protections to the ADAAA. However, the HCRC feels that the amended definitions should be made in its administrative rules, and not within H.R.S. Chapter 378, since that statute does conform to Title VII and is not inconsistent with the ADAAA. Therefore, the HCRC urges this committee to amend HB 1480 to state: 1) its intent that the state law definition of "disability" found in section 378-1, where it differs from a stronger provision of the federal law as amended by the ADAAA, shall be minimally construed to conform with the amended federal law; 2) that the administrative rules of the civil rights commission shall incorporate these changes; and 3) that the civil rights commission shall adopt administrative rules pursuant to chapter 91 necessary to effectuate the purposes of this act.

Attached please find proposed language to that effect.

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proposed amendments to HB 1480:

SECTION 2. It is the intent of the legislature that the section 378-1 definition of "disability" shall be minimally construed to conform to federal law as amended by the ADA. Where current rules differ from stronger provisions of the federal law as amended by the ADA, the rules shall be amended to minimally conform to the stronger federal law provisions.

SECTION 3. The civil rights commission shall adopt rules pursuant to chapter 91, as necessary, to effectuate the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

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