



GOV. MSG. NO. **658**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 6, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB2152 HD1 SD1, without my approval, and with the statement of objections relating to the measure.

HB2152 HD1 SD1

A BILL FOR AN ACT
RELATING TO BUILDING DESIGN FOR PERSONS
WITH DISABILITIES.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2152

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2152, entitled "A Bill for an Act Relating to Building Design For Persons With Disabilities."

The purpose of House Bill No. 2152 is to allow the Disabilities and Communication Access Board ("DCAB") to charge fees for the review of construction plans and designs starting January 1, 2011, and to establish such fees in statute until DCAB revises the fees in rulemaking. Currently, DCAB does not charge a fee for its review services.

This bill is objectionable because it increases the cost of public projects, private and non-profit housing and commercial and industrial developments that impact public right of ways. This fee not only increases costs for taxpayers who ultimately finance public projects, but Hawaii residents who are seeking to build or remodel a structure or firms interested in undertaking projects that will create construction jobs. This bill is particularly ill-timed since the economy has not yet returned to full speed and my Administration is taking steps to control costs and fees that would hamper our economic recovery.

While it is understandable that the Disabilities and Communication Access Board would seek ways to address budget issues, the fiscal year 2010-2011 supplemental budget for the Executive Branch, which was signed into law as Act 180, appropriates \$323,820 in general funds for the 5.5 DCAB positions

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 2152
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that review construction plans and designs for ADA compliance. Further, even if this bill became law the fees imposed would be deposited into the general fund and would not accrue to the Board to handle the Americans with Disabilities Act review function.

For the foregoing reasons, I am returning House Bill No. 2152 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'Linda Lingle', is written over the printed name.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Hawaii law requires that all plans and
2 specifications for the construction of public buildings,
3 facilities, and sites be prepared so that the buildings,
4 facilities, and sites are accessible to and usable by persons
5 with disabilities. Section 103-50, Hawaii Revised Statutes,
6 requires that public buildings, facilities, and sites conform to
7 the Americans with Disabilities Act Accessibility Guidelines and
8 the Federal Fair Housing Amendments Act of 1988, which establish
9 the design standard for accessibility to persons with
10 disabilities.

11 The legislature established a mechanism for the review of
12 all plans and specifications for state and county buildings,
13 facilities, and sites, or buildings, facilities, and sites
14 funded with state or county funds by the disability and
15 communication access board to ensure that design and
16 construction efforts would be corrected prior to the
17 construction of the building, facility, or site. The disability
18 and communication access board reviews nine hundred to one



1 thousand plans each year on average. The review process has
2 been heretofore offered to the architectural and design
3 community at no charge.

4 The legislature finds that compliance with the statutory
5 design requirements to ensure accessibility is not consistent,
6 nor uniformly understood in the architectural, engineering, and
7 design community. The legislature further finds that the review
8 process by the disability and communication access board is a
9 valuable service that should be continued. The review process
10 ensures appropriate access to people with disabilities by
11 uncovering design flaws that are corrected prior to
12 construction, which prevents costly litigation and retrofits.

13 The legislature believes that the fees allowed to be
14 charged under this Act by the disability and communication
15 access board should be incorporated into the capitalization
16 costs of the projects. A reasonable fee schedule would generate
17 revenues sufficient to pay for the salaries of the staff
18 conducting the reviews. The fees provide a mechanism to defray
19 a portion or all of the costs of the review process, which would
20 continue to be funded through appropriation from the general
21 fund.

22 The purpose of this Act is to require the disability and



1 communication access board to charge a fee for the review,
2 similar to other fees that are charged for permits, as part of
3 the design and construction process.

4 SECTION 2. Section 103-50, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§103-50 Building design to consider needs of persons with**
7 **disabilities.** (a) Notwithstanding any other law to the
8 contrary, all plans and specifications for the construction of
9 public buildings, facilities, and sites shall be prepared so
10 that the buildings, facilities, and sites are accessible to and
11 usable by persons with disabilities. The buildings, facilities,
12 and sites shall conform to the Americans with Disabilities Act
13 Accessibility Guidelines, Title 36 Code of Federal Regulations
14 Part 1191, and the requirements of the Federal Fair Housing
15 Amendments Act of 1988, as established in Title 24 Code of
16 Federal Regulations Part 100, Subpart D, as adopted and amended
17 by the disability and communication access board under chapter
18 348F.

19 (b) All state and county agencies subject to this section
20 shall seek advice and recommendations from the disability and
21 communication access board on any construction plans prior to
22 commencing with construction.



1 (c) The disability and communication access board shall
2 adopt rules pursuant to chapter 91 for the design of buildings,
3 facilities, and sites, by or on behalf of the State and counties
4 to effectuate the purposes of this section, except that the
5 board, without regard to chapter 91, instead, may adopt federal
6 amendments to the Americans with Disabilities Act Accessibility
7 Guidelines, Title 36 Code of Federal Regulations Part 1191.

8 (d) The disability and communication access board may
9 approve a site specific alternate design when an alternate
10 design provides equal or greater access.

11 (e) The disability and communication access board shall
12 charge a fee for services rendered by the board in performing
13 its duties under this section; provided that the board shall
14 establish a fee schedule that includes reasonable tiered fees
15 based upon estimated construction costs, pursuant to rules
16 adopted under chapter 91.

17 The disability and communication access board shall report
18 to the legislature annually regarding the reviews conducted
19 under this section, including but not limited to a summary of
20 the number and types of plans reviewed and the fees collected
21 from each state or county department or agency.



1 [~~(e)~~] (f) For the purposes of this section, "public
2 buildings, facilities, and sites" means buildings, facilities,
3 and sites that:

4 (1) Are designed, constructed, purchased, or leased with
5 the use of any state or county funds or federal funds
6 administered by the State or a county;

7 (2) House state or county programs, services, or
8 activities that are intended to be accessed by the
9 general public; or

10 (3) Are constructed on state or county lands or lands that
11 will be transferred to the State or a county."

12 SECTION 3. For purposes of section 2 of this Act and until
13 the disability and communication access board adopts rules
14 pursuant to chapter 91, Hawaii Revised Statutes, to supersede
15 the fees specified in this section, the fees shall be based on
16 estimated construction costs as follows:

17	<u>Construction Costs</u>	<u>Fees</u>
18	(1) No application	\$50
19	(2) Up to \$100,000	\$200
20	(3) \$100,001 to \$500,000	\$500
21	(4) \$500,001 to \$1,000,000	\$1,250
22	(5) \$1,000,001 to \$5,000,000	\$2,500



- 1 (6) \$5,000,001 to \$10,000,000 \$3,000
- 2 (7) More than \$10,000,000 \$4,000 and \$1,000
- 3 more for each
- 4 additional
- 5 \$10,000,000 or
- 6 portion thereof.

7 In addition, there shall be a \$3,000 maximum plan review fee,
8 charged at the discretion of the disability and communication
9 access board, for public rights-of-way projects and projects
10 managed by private non-profit entities.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on January 1, 2011.

