

TESTIMONY

HB2553, HD2

**HTH
Committee Hearing
03-16-2012**

NEIL ABERCROMBIE
GOVERNOR



LATE

DEAN H. SEKI
Acting Comptroller

JAN S. GOUVEIA
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DEAN H. SEKI, ACTING COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
HEALTH
ON
March 16, 2012

H.B. 2553, H.D. 2

RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES

Chair Green and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2553, H.D. 2.

The Department of Accounting and General Services (DAGS) supports the intent of H.B. 2553, H.D. 2 and offers the following comments.

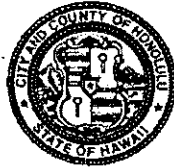
While DAGS supports a review fee, we do not agree with the proposed fees indicated on page 4, lines 13 to 21. The proposed fees are excessive for smaller projects and we instead would support a review fee as proposed by the Administration in the original version of this bill or fees within a similar range. DAGS does support a maximum fee cap of \$20,000 as reflected in the current bill draft.

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

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR



LORI M.K. KAHIKINA, P.E.
DIRECTOR

CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

March 14, 2012

The Honorable Josh Green, M.D., Chair
and Members
Senate Committee on Health
State Capitol
Honolulu, Hawaii 96813

Dear Chair Green and Members:

Subject: House Bill No. 2553 HD2 Relating to Building Design for Persons with Disabilities

The Department of Design and Construction (DDC) respectfully **opposes** SB 2553 HD2, which proposes to charge fees for review of plans by the Disability Communication Access Board (DCAB).

The proposed fees would cost DDC an estimated average of at least \$300,000 per year. This estimate is based on the fee structure proposed in the bill and on DDC's projects over the past three fiscal years. This additional cost to taxpayers would reduce the number of projects that DDC would be able to construct each year, such as improvements to roads, parks, sewer systems, and other public facilities.

It is our understanding that DCAB is currently funded from the State general fund. This is appropriate, as DCAB review of our project plans is not optional, but is legally required by Hawaii Revised Statutes, Chapter 103-50. DDC requires design compliance with the Americans with Disabilities Act, as applicable, and pays our staff and design consultants to comply with the requirements. The proposed fees would effectively create an additional and substantial tax on the City's capital improvement projects and negatively impact our capital improvement program by increasing project costs.

Although DDC previously submitted testimony suggesting revisions to SB 2553 to improve the fairness of the proposed fee structure, further consideration of the bill's impact on our operations has resulted in a decision to oppose the bill. Paying the proposed fees for DCAB to review of our plans when this review is legally mandated, would be detrimental to DDC's mission of executing our many capital improvement projects as expeditiously and efficiently as possible. For this reason, we respectfully **oppose** SB 2553 HD2.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

March 16, 2012

TESTIMONY TO THE SENATE COMMITTEE ON HEALTH

House Bill 2553, HD2 – Relating to Building Design for Persons with Disabilities

The Disability and Communication Access Board (DCAB) supports House Bill 2553, HD2 Relating to Building Design for Persons with Disabilities with amendments. This bill will permit our office to assess a review fee for the service of conducting a plan review to ensure that buildings, facilities, and sites meet the requirements of §103-50, Hawaii Revised Statutes (HRS). Fees would be deposited into an existing special fund.

DCAB is the State agency responsible for the overall coordination and administration of §103-50, HRS. This review process ensures that government buildings, facilities, and sites meet the design requirements of the Americans with Disabilities Act and the Federal Fair Housing Act for access to persons with disabilities. A DCAB review is the State's best risk management strategy to avoid design and construction errors that will result in legal costs and reconstruction to remedy noncompliance with the proposed emphasis on infusing \$300-\$500 million into the public works industry to kick start the economy, ensuring access will be even more critical.

This bill would shift the program's cost from general funds to the CIP budget where it more appropriately belongs.

We have recommended changes to HD2 as follows:

- (1) The fee schedule in HD2 is excessively high and much higher than what was proposed in the Administration's bill. It is not our intention to generate a profit but to only cover expenses of the Facility Access Unit. We recommend replacing the wording on page 4, line 13, to page 5, line 11 with:

(e) The disability and communication access board shall charge a review fee for services rendered. The review fee shall be four-tenths of one percent (0.4%) for the first \$500,000 of the estimated construction cost plus two-tenths of one percent (0.2%) of the estimated construction cost greater than \$500,000 up to and including \$2,000,000 plus two one-hundredths of one percent (0.02%) of the excess of the estimated construction costs over \$2,000,000, except as follows:

- (1) the minimum review fee for plans and specifications subject to accessibility guidelines under this section shall be \$200;*
- (2) the disability and communication access board in its discretion may limit the fee for plans and specifications of infrastructure projects and projects managed by private non-profit entities to \$3,000; and*
- (3) there shall be a \$50 fee for projects for which the plans and specifications do not reflect any elements subject to accessibility guidelines under this section.*

- Modify the definition of "Infrastructure" on page 6, lines 3 to 4 with:

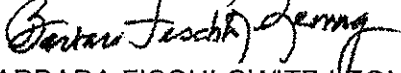
Projects with significant work to [publicly] accessible elements and spaces are not infrastructure projects.

- Amend Section 4:

This section provides for a sunset date of December 31, 2017. We do not support this bill if there is a sunset date, as the program will then cease to exist. This bill should take effect on January 1, 2013.

Thank you for the opportunity to provide testimony.

Respectfully submitted,



BARBARA FISCHLOWITZ-LEONG
Chairperson



FRANCINE WAI
Executive Director

Green4 - Mailene

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 14, 2012 5:06 PM
To: HTHTestimony
Cc: Tlenzer@hawaii.rr.com
Subject: Testimony for HB2553 on 3/16/2012 1:30:00 PM

Testimony for HTH 3/16/2012 1:30:00 PM HB2553

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Anthony Lenzer, Ph.D
Organization: Policy Advisory Board for Elder Affairs
E-mail: Tlenzer@hawaii.rr.com
Submitted on: 3/14/2012

Comments:

Chair Green and Members of the Committee:

I am testifying today on behalf of the Policy Advisory Board for Elder Affairs (PABEA), which advises the Executive Office on Aging (EOA), and advocates on behalf of Hawaii's older citizens. My testimony reflects only the views of the Board.

PABEA strongly supports HB 2553, with the modifications proposed by the Disability and Communications Access Board (DCAB). Each year, the DCAB staff reviews the plans for a large number of public (state and local) construction projects to assure that they are in compliance with applicable federal and state laws concerning access for persons with disabilities. This is a critical function, to assure that such projects do not have to bear the legal and reconstruction costs of failure to comply with such laws. Currently, the costs of compliance reviews is borne by the General Fund, which supports DCAB staff. HB HB 2553 would set up a schedule of review fees, to be deposited in an existing DCAB special fund. This would shift the cost of compliance reviews from general funds to the CIP budget, where it more appropriately belongs. And, even with an apparent improvement in the State's economy, savings to the general funds would be a welcome development.

Regarding amendments, we agree with the DCAB recommendation that the fee schedule in the Administration bill is more appropriate than that proposed in HD 2. The principle, which we support, is that the fees should cover the cost of the program, without generating a profit.

Thank you for the opportunity to testify on this measure.



NEXT DESIGN

Testimony of
Michael S. Okamoto
Principal, Next Design LLC

Before the
Senate Committee on Health
Friday, March 16, 2012 at 1:30 P.M.

In Consideration of
House Bill 2553, HD 2
Relating to Building Design for Persons with Disabilities

Aloha Chair Green, Vice Chair Nishihara and Members of the Committee:

Thank you for the opportunity to testify in favor of House Bill 2553, HD 1, which proposes to establish an accessible building design special fund for the Disability and Communication Access board, and also enables the Disability and Communication Access Board to charge a fee for the review of projects as required by Section 103-50 of the Hawaii Revised Statutes.

As a member of the design community for over fifteen years, I have seen the benefit of the Disability and Communication Access Board - Facility Access Unit reviews and opinions since its inception. Projects by architects and engineers are designed to comply with the 2010 ADA Standards for Accessible Design; however, these are minimum guidelines and are subject to some interpretation of its guidelines. The Facility Access Unit plays a key role to ensure maximum compliance with the 2010 ADA Standards for Accessible Design for all public projects in the State of Hawaii. The Facility Access Unit also maintains a strong and consistent dialog with the United States Access Board and United States Department of Justice in order to forward opinions and seek clarifications on the 2010 ADA Standards for Accessible Design.

As the Disability and Communication Access Board - Facility Access Unit is currently funded through general budget of the Disability and Communication Access Board; it is subject to the challenges of the department's annual budget. House Bill 2553, HD 2 proposes that funding for the Disability and Communication Access Board - Facility Access Unit come from separate fees which are assessed based upon the estimated construction cost of a project. This will afford the department greater flexibility so that they may adapt to the increasing or decreasing construction climate.

I would recommend that the HD2 be changed as follows:

Amend Section 4 to eliminate the sunset date of December 31, 2017.

I apologize for not being able to testify in person, but I ask that you pass House Bill 2553, HD 2.

1132 Bishop Street, Suite 145
Honolulu, Hawaii 96813
Tel: 808.440.2780
Fax: 808.440.2790

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Testimony to the Senate Committee on Health

Friday, March 16, 2012

1:30 p.m.

Capitol, Room 229

RE: HB 2553 HD1, Relating to Building Design for Persons with Disabilities

Dear Chair Green, M.D., Vice-Chair Nishihara, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii **opposes** HB 2553 HD2, Relating to Building Design for Persons with Disabilities.” With all due respect to the Disability and Communications Access Board (DCAB), and their proposed mandate to review all plans for state and county projects for compliance with the Americans with Disabilities Act (ADA), the building community will face increases in the cost of their projects and can anticipate delays. This may be the start of any number of additional fees that will be charged for governmental services.

Many of our members already hire design and legal consultants to assure compliance with all applicable Federal, State, and County laws. One of our members has said that in most instances, their consultants retain ADA consultants to assure compliance for their design. We believe that these consultants provide the expertise and experience to prevent any needless delays in the review and permitting process. To our understanding, there is only one code, the Federal ADA Code, with which to comply. This is why we believe that the fee schedule proposed by DCAB is unwarranted. We believe that giving the DCAB the ability to charge fees for their services and the magnitude of the fees would be duplicative of the fees our contractors pay to the design and legal professionals for their work to comply with ADA requirements.

If it is the will of this Legislature to move this bill forward, we would request that it be amended to insert **a time limit for automatic approval if a decision isn't made within 30 days and that there be standards of performance included in the bill.** While we understand that this bill is designed to generate funds to pay for the staffing of the DCAB and to offset general fund expenditures, in the end, it is the homeowner who must pay additional funds for this effort.

For the foregoing reasons, BIA-Hawaii is **opposed** to HB 2553 HD1.

Thank you for the opportunity to share with you our views.

Kirby L. Shaw
425 Ena Road, #706-A • Honolulu, HI 96815 • 944-0828

March 16, 2012

TESTIMONY TO THE SENATE COMMITTEE ON HEALTH

HB 2553, HD2 - Relating to Building Design for Persons with Disabilities

Dear Members of the Committee on Health

I have a physical disability that requires use of a power wheelchair. Accessibility to public buildings and facilities is important to me because it allows me to do business with the State and counties. For persons with physical disabilities, accessibility involves sidewalks, curb ramps at intersections, building entrance and interior space ingress and egress, hardware on doors, restroom stalls, lavatories, transaction counters, and parking. Accessibility for persons with vision and hearing disabilities involves many other features without which public buildings and facilities would not be navigable or safe.

To ensure said accessibility, the Disability and Communication Access Board (DCAB) (1) consistently applies its expert understanding of the accessibility design requirements of the Americans with Disabilities Act and the Fair Housing Act to required construction plan reviews, and (2) provides competent technical consultation for design professionals.

I strongly support HB 2553, HD2, with an amendment to Section 4. That is, Section 4 must be amended by removing the sunset language because it creates uncertainty about the program's existence. Creating uncertainty contradicts the essential purpose of the bill, which is to remove the DCAB unit that conducts plan reviews from the uncertainties of the budget process by requiring DCAB to charge reasonable fees to cover the costs of the required plan reviews.

For the reasons stated above, **I ask the committee to support HB 2553, HD2.** Thank you for considering my testimony. Please contact me if you have any questions. Mahalo nui.

Sincerely,

/s/
KIRBY L. SHAW

Green4 - Mailene

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 9:16 AM
To: HTHTestimony
Cc: lkakatsu@hawaii.rr.com
Subject: Testimony for HB2553 on 3/16/2012 1:30:00 PM

Testimony for HTH 3/16/2012 1:30:00 PM HB2553

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Lynn Murakami-Akatsuka
Organization: Individual
E-mail: lkakatsu@hawaii.rr.com
Submitted on: 3/15/2012

Comments:

I support HB 2553, HD2 but defer to the Disability and Communication Access Board's testimony regarding the revision of the fee schedule, revision of the definition of the infrastructure, and deletion of the sunset date.

Testimony of
Dean T. Aoki
Architect

Committee on Health
Friday, March 16, 2012 at 1:30 p.m.

House Bill No. 2553, House Draft 2 (HB 2553, HD2)
Relating to Building Design for Persons with Disabilities

Aloha Members of the Committee on Health:

Thank you for this opportunity to **SUPPORT** HB 2553, HD2 which proposes to require the Disability and Communication Access Board to charge fees to defray expenses of reviewing construction plans to ensure compliance with state and federal laws relating to accessibility and establishes a fee schedule:

I suggest restoring the inflated fee schedule in HD2 to the original proposed fee schedule. Please keep in mind that these fees are coming from other State Departments and not from the private business sector. Establishing a higher fee schedule will have an affect on Department's budgets.

As a member of the design community for the past twenty (20) years, I have witnessed and benefited from the Disability and Communication Access Board Facility Access Unit's reviews, comments, and trainings. The Facility Access Unit plays a key role to ensure compliance to the requirements of the Americans with Disabilities Act standards for Title II projects in the State of Hawaii. The Facility Access Unit also maintains a strong and consistent dialog with the United States Access Board and United States Department of Justice Civil Rights Division to seek their intent, interpretations and clarifications on the standards.

LATE



Alan Shintani inc.
GENERAL CONTRACTOR BC 13068

March 16, 2012

Senator Josh Green, M.D., Chair
Senator Clarence Nishihara, Vice-Chair
Senate Committee on Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: HB 2553 HD2, Relating to Building Design for Persons with Disabilities

Dear Chair Green, M.D., Vice-Chair Nishihara, and Members of the Committee:

Alan Shintani, Inc. opposes HB 2553 HD2, Relating to Building Design for Persons with Disabilities. With all due respect to the Disability and Communications Access Board (DCAB), and their proposed mandate to review all plans for state and county projects for compliance with the Americans with Disabilities Act (ADA), the building community will not only face increased costs, but also delays. There may also be additional charges that will be incurred for governmental services.

Many of our members already hire design and legal consultants to assure compliance with all applicable Federal, State, and County laws. One of our members has said that in most instances, their consultants retain ADA consultants to assure compliance for their design. We believe that these consultants provide the expertise and experience to prevent any needless delays in the review and permitting process. To our understanding, there is only one code, the Federal ADA Code, with which to comply. This is why we believe that the fee schedule proposed by DCAB is unwarranted. We believe that giving the DCAB the ability to charge fees for their services and the magnitude of the fees would be duplicative of the fees our contractors already pay to design and legal professionals for their work to comply with ADA requirements.

If it is the will of this Legislature to move this bill forward, we would request that it be amended to insert **a time limit for automatic approval if a decision isn't made within 30 days and that there be standards of performance included in the bill.** While we understand that this bill is designed to generate funds to pay for the staffing of the DCAB and to offset general fund expenditures, in the end, **it is the homeowner who will be paying the additional costs for this effort.**

For the foregoing reasons, Alan Shintani, Inc. is **opposed** to HB 2553 HD2.

Thank you for the opportunity to share with you our views.

Sincerely,

President
Alan Shintani, Inc.