



DISABILITY AND COMMUNICATION ACCESS BOARD

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

February 9, 2011

TESTIMONY TO THE HOUSE COMMITTEE ON TRANSPORTATION

House Bill 43 – Relating to Sidewalks

The Disability and Communication expresses concern regarding House Bill 43 Relating to Sidewalks, which regulates the use of electric personal assistive mobility devices. Specifically we have a concern with the proposed language on page 3, lines 5-8:

(g) No electric personal assistive mobility device shall be operated on sidewalks in a business district in any county, including the downtown Honolulu business district, except by law enforcement officers in carrying out their official duties.

The U.S. Department of Justice issued new final regulations under Titles II and III of the Americans with Disabilities Act, effective March 16, 2011. The final rules for Title II affecting state and local government state, in part:

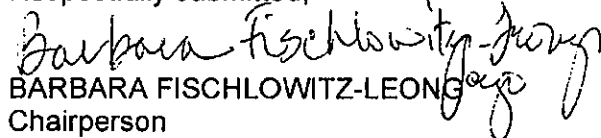
§35.137. Mobility devices (b)(1) Use of other power-driven mobility devices. A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individual with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted...

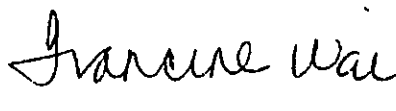
The regulations indicate that the public entity may regulate the type, size, weight, dimension, and speed of a device and may set criteria for different times of the day, week, month, or year. However, a total prohibition is not permitted.

We also note that there is no definition for an "electric personal assistive mobility device." The U.S. Department of Justice provides a definition for "other power-driven mobility device" as "any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices, such as the Segway PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair." While we are not necessarily recommending that the state adopt the federal language in statute, we advise that the state is bound to adhere to the federal law.

Thank you for the opportunity to provide comment.

Respectfully submitted,


BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee


FRANCINE WAI
Executive Director

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
850 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 788-8500 • FAX: (808) 788-5563 • INTERNET: www.honolulu.gov/hr

PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 9, 2011

The Honorable Joseph M. Souki, Chair
and Members of the Committee on Transportation
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Souki and Members:

Subject: House Bill No. 43, Relating to Sidewalks

The Equal Opportunity Office of the City & County of Honolulu, which is housed within the Department of Human Resources, expresses concern regarding House Bill No. 43 Relating to Sidewalks, which regulates the use of electric personal assistive mobility devices. Specifically of concern is proposed language which reads:

(g) No electric personal assistive mobility device shall be operated on sidewalks in a business district in any county, including the downtown Honolulu business district, except by law enforcement officers in carrying out their official duties."

The U.S. Department of Justice issued new final regulations under Titles II and III of the Americans with Disabilities Act, effective March 16, 2011. The final rules for Title II affecting state and local government includes, in part:

28 Code of Federal Regulations Part 35 at 35.137.

Mobility devices (b)(1) Use of other power-driven mobility devices.

A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted...

The Honorable Joseph M. Souki, Chair
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The regulations indicate that the public entity may regulate the type, size, weight, dimension, and speed of a device and may set criteria for different times of the day, week, month, or year. However, a total prohibition is not permitted.

We also note that there is no definition of an "electric personal assistive mobility device" in HRS Chapter 291C. The U.S. Department of Justice provides a definition of "other power-driven mobility device" as "any mobility device powered by batteries, fuel or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices, such as Segway PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair." While we are not necessarily recommending that the state adopt the federal language in statute, we urge that the state adhere to the federal law.

Thank you for the opportunity to testify.

Yours truly,



Noel T. Ono
Director