

NEIL ABERCROMBIE
GOVERNOR



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Comptroller

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Deputy Comptroller

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

WRITTEN TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
WATER, LAND, & OCEAN RESOURCES
ON
February 14, 2011

H.B. 756, H.D. 1

RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES

Chair Chang and members of the Committee, thank you for the opportunity to submit written comments on H.B. 756, H.D. 1.

The Department of Accounting and General Services (DAGS) supports H.B. 756, H.D. 1, for the following reasons:

1. The fees are not a direct additional cost to the state or the general public. The fees are just another means of funding for the DCAB Facility Access Unit staff which is currently funded through the general fund. Fees would come from our project funds which probably is more appropriate anyway.
2. It should be noted that only State and County projects are required by law HRS 103-50 to send plans for review and this does not affect private sector projects except for private developments having public rights of way, and private sector landlords who design tenant

improvements for State agencies leasing commercial office lease space. If DCAB is not funded, all State and County projects will not be able to comply with this law.

3. Without continued funding, DCAB's design review unit could cease to exist. This will have a very significant negative impact as their expertise, reviews, advice, training, keeping up with changes to ADA, and informing the design community would be lost. The negative result of this, are costly lawsuits and change orders. DCAB has saved the State and Counties millions of dollars.
4. The State Building Code Council has recently adopted the 2006 International Building Code with the exception of Chapter 11 – Accessibility. The reason for not adopting Chapter 11 is that the State and County will rely on DCAB. Counties have historically stayed away from ADA reviews on for building permits because there is a huge potential liability and they have relied on DCAB in the past.
5. ADA requirements for projects are more than just ramps and parking stalls. They include items for which many design professionals have limited expertise such as visual fire alarms for the deaf, telecommunication systems for the deaf, Braille signage, tactile and detectable warnings for blind persons, accessible furniture and equipment, etc. It at times can get very complex and interpretations and guidance is needed from credible sources that are consistent across all government projects. DCAB provides this credibility and consistency for all State and County projects and protects us from potential costly law suits and change orders.

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



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 14, 2011

TESTIMONY TO THE HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

House Bill 756, HD1 - Relating to Building Design for Persons with Disabilities

The Disability and Communication Access Board (DCAB) strongly supports House Bill 756, HD1 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. Attached to our testimony is a fact sheet explaining the pertinent data for the program.

DCAB is the State agency responsible for the overall coordination and administration of §103-50, Hawaii Revised Statutes. 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. The DCAB review is the State's best risk management strategy to avoid design and construction errors that will result in costly legal costs and reconstruction to remedy noncompliance.

The program currently is one hundred percent general funded and operates with 5.5 staff. This bill will shift the cost of the program from the general fund to the costs of design and construction. As with any other cost related to construction, this is the most appropriate method to pay for building design, construction, and compliance costs.

We request the following changes:

- Page 4, line 16, change "Monies collected pursuant to Section 348F-7..." to "Monies collected pursuant to Section 103-50..."
- Delete Section 2, renumber Sections 3 and 4 as Sections 2 and 3, and add a new Section to read as noted below. We do not wish the fee schedule to be placed into statute, as we plan to place the schedule into our existing administrative rules.

"Section 4. For the purposes of Section 3 of this Act and until the disability and communication access board adopts rules pursuant to chapter 91, Hawaii Revised Statutes, to supersede the fees specified in this section, the fees shall be based on estimated construction costs as follows:

Construction Costs

- (1) No application
- (2) Up to \$100,000
- (3) \$100,001 to \$500,000
- (4) \$500,001 to \$1,000,000
- (5) \$1,000,001 to \$2,500,000
- (6) \$2,500,001 to \$5,000,000
- (7) \$5,000,001 to \$10,000,000
- (8) More than \$10,000,000

Fees

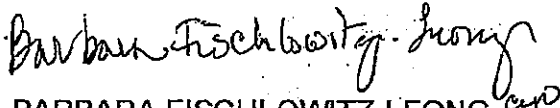
- \$50
 \$200
 \$500
 \$1,000
 \$2,000
 \$3,000
 \$4,000
 \$5,000 and \$1,000 more for each additional \$5,000,000 or portion thereof.

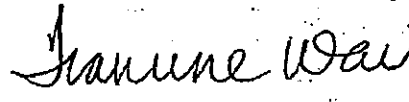
In addition, there shall be a \$3,000 maximum plan review fee, charged at the discretion of the disability and communication access board, for public rights-of-way projects and projects managed by private non-profit entities."

Should this bill pass, DCAB commits to reducing the cost of the program in its general fund appropriation in the subsequent fiscal year beginning July 1, 2012. We ask that you not make any adjustments this year, as program expenses will not be moved to, nor charged against, the Special Fund until July 1, 2012.

Thank you for the opportunity to testify.

Respectfully submitted,


 BARBARA FISCHLOWITZ-LEONG
 Chairperson
 Legislative Committee


 FRANCINE WAI
 Executive Director



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
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Facility Access Overview of Plan Reviews, Proposed Fee, and Other Services SB150, HB756

Plan Reviews

- Hawaii Revised Statutes, Section 103-50 and Hawaii Administrative Rules, Title 11, Chapter 216 and 217 requires all plans and specifications of State and county projects to be submitted to the Disability and Communication Access Board (DCAB) for a plan review to the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Fair Housing Accessibility Guidelines.
- DCAB conducted 883 plan reviews in fiscal year 2009-2010.
 - State agencies who submit plans include, but are not limited to, DAGS, DOE, DOT, DNL, and UH.
 - Examples of plans and specifications reviewed include, but are not limited to, Maui Regional Public Safety Complex, Waimea High School Architectural Barrier Removal, and University of Hawaii at Manoa Campus Center Renovation and Expansion.
- Effective January 1, 2011, DCAB will review plans and specifications of State and County projects for compliance with the 2004 ADAAG, which is consistent the Department of Justice's ADA regulations revised in 2010. The prior standard was the 1991 ADAAG.
- DCAB's plan review is required advice and recommendations, not an approval. DCAB does not enforce the ADA or Fair Housing Act. However, state law is equivalent to federal law. DCAB's plan review is seen as both good faith effort as well as substantial equivalency should a complaint be filed. In addition, DCAB's plan review minimizes costly redesign and reconstruction to remove architectural barriers.



Proposed Plan Review Fee

- Legislation proposes the following plan review fee schedule effective January 1, 2012. The fee will sunset when HAR 11-216 and 217 is amended through the public hearing process to address rules and procedures for a permanent review fee.

Estimated Construction Cost	Proposed Plan Review Fee
No application	\$50
Less than \$100,000	\$200
\$100,000 to \$500,000	\$500
\$500,001 to \$1,000,000	\$1,000
\$1,000,001 to \$2,500,000	\$2,000
\$2,500,001 to \$5,000,000	\$3,000
\$5,000,001 to \$10,000,000	\$4,000
More than \$10,000,000	\$5,000 + \$1,000 for each \$5,000,000 over \$10,000,000

*\$3,000 maximum plan review fee for public rights-of-way projects and projects managed by private non-profit entities.

Revised 2/11/2011

- The proposed plan review fee will only apply to State or county projects covered under HRS §103-50. Private projects that are not covered under HRS §103-50 are not required to be submitted to DCAB for a plan review; therefore, will not be subject to the proposed plan review fee.
- Projects with "no application" to the accessibility guidelines, such as reroofing, will be charged a \$50 plan review fee regardless of the project's estimated construction cost.
- The plan review fee must be provided with the first submittal of plans and specifications. No additional plan review fee will be charged when plans and specifications are revised and resubmitted for plan review, unless the project has significant design or scoping changes.
- 5.5 positions, filled by design professionals, conduct DCAB's plan reviews and provide other facility access services. The cost to fund the 5.5 positions with the special fund is \$492,127 per year (fiscal year 2011 dollars). Based on plans and specifications submitted to DCAB in calendar year 2010, the proposed plan review fee schedule is estimated to generate \$550,000 per year.
- Starting January 1, 2012, the plan review fee will be deposited into DCAB's special fund. DCAB's facility access program will remain general funded until June 30, 2012. The six-month overlap will help maintain a positive balance within the special fund. DCAB will adjust its budget for the fiscal year beginning July 1, 2012 by reducing its general fund by 5.5 positions and approximately \$323,000 per year and creating 6.0 positions in the special fund.
- California has a state agency that reviews plans and specifications for facility access compliance, similar to DCAB. DCAB's proposed plan review fee is considerably less than California's access compliance plan review fee, as shown in the comparison chart below.

Estimated Construction Cost	Proposed DCAB Plan Review Fee	California Access Compliance Plan Review Fee	Honolulu Building Permit Fee (does not include any accessibility review)
No application	\$50	Not applicable	Not applicable
\$90,000	\$200	\$400	\$1,430
\$500,000	\$500	\$2,000	\$5,160
\$1,000,000	\$1,000	\$3,000	\$7,415
\$2,000,000	\$2,000	\$5,000	\$11,915
\$5,000,000	\$3,000	\$5,600	\$23,915
\$10,000,000	\$4,000	\$6,600	\$43,915
\$15,000,000	\$5,000	\$7,600	\$63,915
\$20,000,000	\$6,000	\$8,600	\$83,915

Other Facility Access Services

- In addition to plan reviews, DCAB provides the following facility access services:
 - Issue design specifications, site specific alternate designs, and interpretive opinions.
 - Review State and county master plans, such as the Statewide Pedestrian Master Plan.
 - Provide consultation and technical assistance via fax/phone/email to design professionals.
 - Conduct and coordinate training, such as the annual Disability Access Conference.
 - Prepare and distribute an Access E-Bulletin.
 - Sponsor the annual Accessible Design Awards.
 - Provide facility access policy guidance to the State and counties.
 - Review federal, state, and local building codes/guidelines.



Revised 2/11/2011

February 12, 2011

Email: WLOtestimony@capitol.hawaii.gov,

Email copy: Mele Carroll, repcarroll@Capitol.hawaii.gov

Subject: **HB 756, HD 1 / Relating to Building Design for Persons with Disabilities:**

Honorable Representatives:

It has come to my attention that the State House Committee on Water, Land, and Ocean Resources will be reviewing HB756 HD1 which will allow the Disability and Communication Access Board to charge fees to defray expenses of reviewing construction plans to ensure compliance with law and establishes an Accessible Building Design Special Account for plan review fees and cost of compliance with ADA design requirements.

As an architect on Maui for the past 38 years, and working on numerous state and county projects for many years, I have had all of these projects reviewed by DCAB (since their existence) for compliance with the ADAAG, UFAS, and other accessibility regulations since DCAB was created by the State. Lately this has included the recently completed University of Hawaii- Maui College Nursing Classroom project and various repair and maintenance projects for the college and the Maui County Parks Department which will bring their facilities into compliance with the ADAAG.

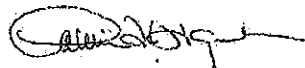
The County of Maui Building Division requires the review and a final document letter from DCAB for their approval of the building permits for all state and county projects pursuant to HRS 103-50. This statute requires DCAB's review for designs of all state and county projects and those that are on government lands or funded by the county and state including many non-profit organization projects such as the Boys and Girls Club of Maui clubhouses (which I designed).

Although this added an additional step in the building permit process, it has provided an effective means for the state and counties (and their consultants) to have a more consistent interpretation of all the accessibility laws which would apply to the affected projects. This consistency not only provided more credibility to the interpretations, it also provided more protection for both government and their consultants from liability suits. As consultants, we have so many different codes, standard, regulations, etc. to follow, it has been a blessing to have an agency such as DCAB to assist us in providing for accessible design. They have been able to respond to questions of interpretations of the guidelines and standards and have gone as far as to publish "interpretative opinions" which have helped consultants in their designs. They are willing to meet with us to review questions of interpretation on any applicable projects. They have also taken a pro-active approach to their work by providing for annual conference with workshops (with nationally recognized consultants and federal government speakers) for the ADA and have a newsletter on their website which keeps the design professionals in tune with the laws and the latest interpretations. As a new version of the ADAAG is being adopted, their willingness to educate us through several workshops has been very important. In the past couple of years, DCAB's funding has been reduced significantly almost to the point of losing the technical review section. In order for them to survive and be self-sustaining, plan review fees are essential.

It is for these reasons, that I humbly request your support of this bill to provide for DCAB to charge plan review fees and the establishment of a special fund for this purpose.

Any questions, please contact me at this email address.

Thank you for your consideration,



Calvin S. Higuchi AIA

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February 11, 2011

Email: WLOtestimony@capitol.hawaii.gov

Subject: **HB 756, HD 1 / Relating to Building Design for Persons with Disabilities:**

Dear Sirs,

I am a licensed architect and have been a resident of Maui for the past 26 years. I am a Past President of both the American Institute of Architects (AIA) Maui Chapter and the AIA Hawaii State Council. For the past eight years I served as a member of the State Disability and Communication Access Board (DCAB) Board of Directors.

I am writing in support of HB 756, HD 1. This legislation will allow DCAB to charge a fee to defray the expenses for reviewing construction plans for State construction projects. This will ensure compliance with the American with Disabilities Act Accessibility Guidelines (ADA). It is my understanding that the fees to be charged for DCAB are less than the building permit and plan check fees which are already being paid for County review of construction projects and will support several positions in the DCAB office.

None of the County Building Departments currently review for ADA for any projects. The potential for damages accruing to the State for expensive change orders or even more expensive lawsuits filed after unreviewed projects are completed incorrectly puts the State in real jeopardy. The DCAB related legislation is well thought out and will in the end cost the State virtually nothing. In turn it will provide peace of mind for the design and construction industries as well as the State of Hawaii.

Sincerely,

Marie Kimmey AIA ME

TO: House Committee on Water, Land, & Ocean Resources
Monday, Feb 14, 2010 at 9:00 a.m.
Conference Room 325

FROM: Kirby L. Shaw
425 Ena Road, #706-A, Honolulu, HI 96815
kirby@hawaiiantel.net, 944-0828

SUBJ: HB 756, HD1 - RELATING TO BUILDING DESIGN FOR
PERSONS WITH DISABILITIES

Rep. Jerry L. Chang, Chair, Committee on Water, Land, & Ocean Resources
Rep. Sharon E. Har, Vice Chair, Committee on Water, Land, & Ocean Resources
Members of the House Committee on Water, Land, & Ocean Resources
Kirby L. Shaw – Individual with a mobility disability
Monday, Feb. 14, 2011

Support for HB 756, HD1 - Relating to Building Design for Persons with Disabilities

Dear Members of the Water, Land, & Ocean Resources Committee,

My name is Kirby Shaw. I am an individual with a disability who uses a power wheelchair. Access to public buildings and facilities is important to me because I would not otherwise be able to conduct business with the State and counties. For me and others similarly situated, 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. In addition, accessibility for persons with vision and hearing disabilities involves a host of other features without which public buildings and facilities would not be accessible or safe.

Therefore, it is tremendously important for the State to have an agency (1) that is competent in its understanding of the accessibility design requirements of the Americans with Disabilities Act and the Fair Housing Amendments Act, (2) that consistently applies the standards when conducting plan reviews, and (3) that provides continuity with regard to expertise and institutional memory for the purpose of providing technical consultation to design professionals. Fortunately, we have such an agency – the Disability and Communication Access Board (DCAB).

I am writing to express strong support for HB 756, HD1 - Relating to Building Design for Persons with Disabilities. The bill is important because it will require DCAB to charge reasonable fees based on a logical scale to cover the costs of plan reviews. This is significant because it will remove the DCAB unit responsible for plan reviews from the uncertainties of the budgeting process and allow DCAB to provide the uninterrupted competence, consistency, and continuity noted above. Lastly, public buildings and facilities will be accessible to persons with disabilities into the future because the Legislature recognized the significance of the measure.

Therefore, **I urge the committee to support this bill.** Thank you for considering my testimony. Please contact me by mail, e-mail, or phone if you have any questions. Mahalo nui.

Sincerely,

/s/
KIRBY L. SHAW

har3 - Megan

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 13, 2011 4:20 PM
To: WLOtestimony
Cc: Tlenzer@hawaii.rr.com
Subject: Testimony for HB756 on 2/14/2011 9:00:00 AM

Testimony for WLO 2/14/2011 9:00:00 AM HB756

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Anthony Lenzer, Ph.D.
Organization:
Address:
Phone:
E-mail: Tlenzer@hawaii.rr.com
Submitted on: 2/13/2011

Comments:
Chairman Chang and Members of the Water, Land, and Ocean Resources Committee

My name is Anthony Lenzer. I am a retired University of Hawaii professor and former director of the Center on a Aging at the University of Hawaii at Manoa. I'm currently a board member for several senior advocacy organizations, as well as a member of the Disability Communication and Access Board. (DCAB). I am testifying today on behalf of the Board in strong support of House Bill 756.

The main purpose of this bill is to create a fee schedule and to allow to collect fees to defray the costs of reviewing plans of public buildings, facilities, and sites to assure that such buildings will be in compliance with applicable laws regarding access for persons with disabilities. DCAB now reviews 900-1000 such plans annually, and does not charge for this valuable service. This DCAB staff review is especially useful, in that it frequently uncovers design flaws which are not compatible with ADA specifications. This can result in added costs for the constructing agency, either in redrafting plans or retrofitting facilities.

I might add that, given the state's current budget problems, it is highly desirable that state agencies be enabled to reduce some of their expenses by charging fees for services.

I hope you will support this desirable legislation and thank you for the opportunity to testify on this matter.