



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 1, 2011

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

House Bill 756, HD2 - Relating to Building Design for Persons with Disabilities

The Disability and Communication Access Board (DCAB) strongly supports House Bill 756, HD2. 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:

- Amend Sections 4 and 6 to read as noted below. We do not wish the fee schedule to be placed into statute and then repealed on July 1, 2012. Instead, we wish for the fee to remain until such time as the administrative rules are finalized and the fee schedule is incorporated.

"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.

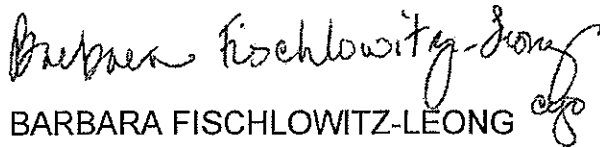
In addition, there shall be a \$3,000 maximum plan review fee, charged at the discretion of the disability and communication access board, for infrastructure projects and projects managed by private non-profit entities.”

“SECTION 6. This Act shall take effect on January 1, 2012.”

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

NEIL ABERCROMBIE
GOVERNOR



BRUCE A. COPPA
Comptroller

RYAN OKAHARA
Deputy Comptroller

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

TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
March 1, 2011

H.B. 756, H.D. 2

RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on H.B. 756, H.D. 2.

The Department of Accounting and General Services (DAGS) supports H.B. 756, H.D. 2, 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 testify on this matter.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

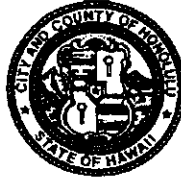
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Web site: www.honolulu.gov

PETER B. CARLISLE
MAYOR

COLLINS D LAM, P.E.
DIRECTOR

LORI M. KAHIKINA, P.E.
DEPUTY DIRECTOR



February 28, 2011

The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 756 HD2, Relating to Building Design for Persons with Disabilities

The Department of Design and Construction (DDC) respectfully recommends revisions to HB756 HD2 to improve the fairness of the proposed Disability Communication Access Board (DCAB) fee structure. The proposed fee structure, presented in Section 4 of the bill, is based on estimated (total) construction costs. However, the DCAB only reviews project components related to the Americans with Disabilities Act (ADA). As a result, the proposed fee structure unfairly penalizes high-cost projects with only minor components related to ADA compliance. The majority of DDC projects have only small components related to compliance with ADA requirements. For example, the recent Sand Island Wastewater Treatment Plant Primary Expansion Phase 1, Odor Control Systems and Gravity Thickener Modifications project was awarded at \$67.9 million; however, the total cost of the ADA-related components of the project was approximately \$1.0 million. Based on the total project cost, the DCAB fee would be \$17,000, which does not reflect the fact that only approximately 1.5 percent of the total project cost was associated with ADA requirements. As illustrated by this example, the proposed fee structure would unfairly overcharge large projects with small ADA-related components compared to smaller projects with major ADA-related components.

To make the proposed fee structure more fair, DDC respectfully recommends that HB756 HD2 be amended so that the fees for DCAB review will be based on a project's ADA-related construction costs rather than total construction costs. Accordingly, the first sentence of Section 4 should be revised to read: "For the purposes of section 2 of this Act, the plan review fees shall be based on a project's estimated ADA-related construction costs as follows:..."

Alternatively, a simpler approach that would eliminate the need to estimate ADA-related construction costs would be to apply the \$3,000 maximum plan review fee that is proposed for rights-of-way projects and projects managed by private non-profit entities to all construction projects funded under the Sanitation category in the City and County of Honolulu's budget

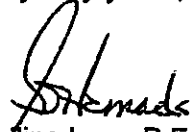
The Honorable Marcus R. Oshiro, Chair
and Members
Committee on Finance
February 28, 2011
Page 2

ordinance. Sanitation category projects include improvements at wastewater treatment plants, wastewater pump stations, solid waste landfills, and similar facilities. These projects typically have very large construction costs with very small ADA-related components. This revision could be accomplished by revising the last sentence of Section 4 to read, "~~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, and projects listed in the Sanitation category of the City and County of Honolulu's budget ordinance." This stipulation could be extended to similar budget ordinance categories for other counties.

Also, please note that the phrase, "In addition," at the beginning of the last sentence of Section 4 is confusing and misleading and should be eliminated, because it can be interpreted as indicating that the "\$3,000 maximum plan review fee" is charged in addition to the tabulated fees based on project cost. This is inconsistent with the fact sheet attached to the DCAB testimony of February 14, 2011 to the House Committee on Water, Land, and Ocean Resources (enclosed herewith).

Thank you for the opportunity to testify.

Very truly yours,


for Collins Lam, P.E.
Director

CDL:WB:hm

Enclosure



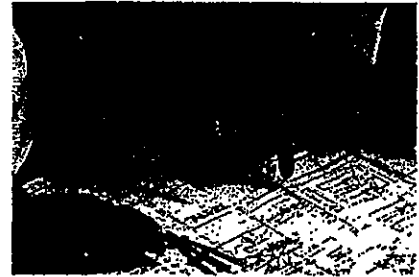
DISABILITY AND COMMUNICATION ACCESS BOARD

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Facility Access Overview of Plan Reviews, Proposed Fee, and Other Services

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, Honolulu International Airport Temporary Commuter Terminal Facility, 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 \$10,000,000 over \$10,000,000

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

- 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 \$484,271 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
\$20,000,000	\$5,000	\$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.



BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

March 1, 2011

Representative Marcus Oshiro, Chair
Committee on Finance
State Capitol, Room 308
Honolulu, HI 96813

RE: HB756, HD2, "Relating to Building Design for Persons with Disabilities"

Dear Chair Oshiro and Members of the Committee on Finance:

I am Karen Nakamura, Executive Vice President & Chief Executive Officer of 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 HB756, HD2 "Relating to Building Design for Persons with Disabilities" With due respect to the Disability and Communications Access Board and their 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 hire design and legal consultants to assure compliance with all applicable Federal, State and County laws. One member states 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.

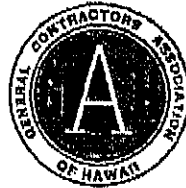
If it is the will of this Legislature to move this bill forward, we would request that it be amended to insert **a time limit for automatic approval if a decision isn't made within 30 days and that there be standards of performance included in the bill.** While we understand that this bill is designed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

Therefore, we cannot support HB756, HD1 "Relating to Building Design for Persons with Disabilities".

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

Karen I. Nakamura
Chief Executive Officer
BIA-Hawaii

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 1, 2011

TO: THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR AND MEMBERS OF THE COMMITTEE ON FINANCE

SUBJECT: H.B. 756, HD2 RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES.

NOTICE OF HEARING

DATE: Tuesday, March 01, 2011
TIME: 3:00 P.M.
PLACE: Conference Room 308

Dear Chair Oshiro and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms, **opposes** H.B.756, HD2 Relating to Building Design for Persons with Disabilities.

The Disability and Communications Access Board (DCAB) is mandated to review all plans for state and county projects for compliance with the Americans with Disabilities Act (ADA) where public access is required or allowed and if H.B. 756 HD2 is enacted, the building community will face increases in the cost of projects and additional delays where a review is required.

Our members usually hire design and legal consultants to assure compliance with all applicable Federal, State and County laws. We believe that these consultants provide the necessary expertise and experience to prevent any needless delays in the review and permitting process. We believe that giving the DCAB the ability to charge fees for their services would duplicate the fees contractors pay to the design and legal professionals for their work to comply with ADA requirements.

The GCA **opposes** the passage of HB756, HD2 "Relating to Building Design for Persons with Disabilities".

Thank you for the opportunity to present testimony on this measure.



AWA & ASSOCIATES LLC

February 28, 2011

Representative Marcos R. Oshiro, Chair
Committee on Finance
State Capitol, Room 306
Honolulu, HI 96813

Subject: H.B. No. 756, HD2

Please accept this testimony in support of H.B. 756, Relating to Building Design for Persons with Disabilities.

I have been a part of the architectural profession since 1971 and a registered architect, licensed to practice in the State of Hawaii since 1976. During my 40 years in the profession, I have witnessed the growth in awareness, by the general public as well as the design profession, of the need to carefully design for the physically disabled.

As design professionals, we all recognize the importance of proper accessibility design. But as simple as this need may appear, the rules and regulations that guide this design process can be extremely complex and subject to many interpretations. Opponents may argue that a design professional's fee should assure ADA compliance. Should it also then assure building code compliance and, therefore, not required a fee for a building permit?

The Disability and Communication Access Board (DCAB) provides needed assistance to the design profession in ensuring that the design intent of accessibility design guidelines is met. DCAB's staff of knowledgeable professionals provide an invaluable service in reviewing construction documents, providing interpretive opinions and approving alternative design requests all pursuant to State law. The process not only serves the needs of the community but mitigates potential costly claims against the State and County governments that are subject to ADA statutes.

To continue this service requires needed funding which can be successfully obtained with the passage of H.B. 756.

Sincerely,

Ronald K. Awa, AIA

Testimony of
Dean T. Aoki
Architect

Committee on Finance
Tuesday, March 1, 2011 at 3:00 P.M.

House Bill 756, HD 2
Relating to Building Design for Persons with Disabilities

Aloha Members of the Committee on Finance:

Thank you for this opportunity to SUPPORT House Bill 756, HD2 which proposes to establish an accessible building design special account 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 the past nineteen years, I have seen the benefit of the Disability and Communication Access Board .Facility Access Unit reviews and opinions since its inception. The Facility Access Unit plays a key role to ensure maximum compliance with the requirements of the Americans with Disabilities Act design standards for all 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 in order to forward opinions a seek clarifications on the guideline requirements and interpretations.

TO: House Committee on Finance
Tuesday, Mar 1, 2011 at 3:00 p.m.
Conference Room 308

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

SUBJ: HB 756, HD2 - RELATING TO BUILDING DESIGN FOR
PERSONS WITH DISABILITIES

Rep. Marcus R. Oshiro, Chair, Committee on Finance
Rep. Marilyn B. Lee, Vice Chair, Committee on Finance
Members of the House Committee on Finance
Kirby L. Shaw – Individual with a mobility disability
Tuesday, Mar. 1, 2011

Support for HB 756, HD2 - Relating to Building Design for Persons with Disabilities

Dear Members of the Finance 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, HD2 - 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

FINTestimony

From: mailinglist@capitol.hawaii.gov
sent: Monday, February 28, 2011 10:38 AM
To: FINTestimony
Cc: cmurakami@pacarchitects.com
Subject: Testimony for HB756 on 3/1/2011 3:00:00 PM

Testimony for FIN 3/1/2011 3:00:00 PM HB756

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Clifford Murakami, AIA
Organization: Individual
Address:
Phone:
E-mail: cmurakami@pacarchitects.com
Submitted on: 2/28/2011

Comments:

It is unfortunate that one state agency needs to charge a fee to another state agency as well as to the Counties, to perform duties mandated by law. However, for whatever the circumstances, it is imperative that the Disability and Communications Access Board remain a functioning agency of the state. If taking money from another agency is its only means of staying operational, then so be it.