



## 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 15, 2011

### TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH

#### Senate Bill 150, SD2 - Relating to Building Design for Persons with Disabilities

The Disability and Communication Access Board (DCAB) strongly supports Senate Bill 150, SD2 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 and the proposed bill.

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 amendments:

1. On page 3, lines 15-16 change "Moneys collected pursuant to this section..." to "Moneys collected pursuant to section 103-50(e)".
2. On page 6, Section 4, we propose the figures for the interim fee schedule be inserted as follows:

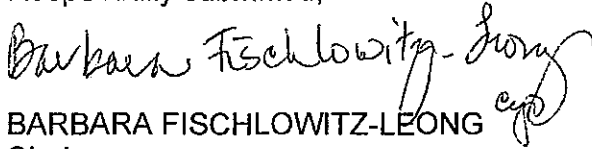
<u>"Construction Costs</u>	<u>Fees</u>
(1) No application	\$50
(2) Up to \$100,000	\$200
(3) \$100,001 to \$500,000	\$500
(4) \$500,001 to \$1,000,000	\$1,000
(5) \$1,000,001 to \$2,500,000	\$2,000
(6) \$2,500,001 to \$5,000,000	\$3,000
(7) \$5,000,001 to \$10,000,000	\$4,000
(8) More than \$10,000,000	\$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."

3. On page 7, Section 6, change the effective date to January 1, 2012.

Thank you for the opportunity to testify.

Respectfully submitted,



BARBARA FISCHLOWITZ-LEONG  
Chairperson  
Legislative Committee



FRANCINE WAI  
Executive Director



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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, DNLR, 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.



**DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU**

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DEPUTY DIRECTOR



March 14, 2011

The Honorable Ryan I. Yamane, Chair  
and Members  
Committee on Health  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

**Subject: Senate Bill No. 150 SD2, Relating to Building Design for Persons with Disabilities**

The Department of Design and Construction (DDC) respectfully recommends consideration of the fairness of the proposed Disability Communication Access Board (DCAB) fee structure proposed by SB150 SD2. 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 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 SB150 SD2 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, Section 4 should be revised to indicate that: "... 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 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 ordinance.

The Honorable Ryan I. Yamane, Chair  
and Members  
Committee on Health  
March 14, 2011  
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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 \$ \_\_\_\_\_ 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 "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

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March 14, 2011

Email: HLTtestimony@Capitol.hawaii.gov

**Subject: Senate Bill No. 150 (SB150, SD2) / 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 SB150, SD2). 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) and the Fair Housing Accessibility Guidelines. In the past I have been able assisted in accessibility design issues by the DCAB staff and consider them an invaluable resource.

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

## **morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 13, 2011 12:22 PM  
**To:** HLTtestimony  
**Cc:** swartzg001@hawaii.rr.com  
**Subject:** Testimony for SB150 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB150

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: gregory swartz  
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E-mail: [swartzg001@hawaii.rr.com](mailto:swartzg001@hawaii.rr.com)  
Submitted on: 3/13/2011

**Comments:**

I support this bill as long as the initial fees are set high enough to fund the program. I understand the concerns of the City's DDC that some projects have a large overall cost but minimal ADA-related elements and thus, basing the fee on overall costs may be inappropriate. But setting a maximum fee for public right-of-way projects seems to overlook the fact that some right-of-way projects may have large ADA-related work. I also have no idea what "projects managed by private non-profit entities" is trying to address, but I can guess. Perhaps, instead of a maximum fee, the DCAB should be able to waive fees in part where there is minimal ADA[related elements involved in a project. This bill should go into effect soon.