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To: Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
House Committee on Finance

From: Serafin Colmenares Jr.
Executive Director, Office of Language Access

Date: February 22, 2013, 1:30 p.m.
State Capitol, Room 329

Re: Testimony on H.B. 266 H.D.1
Relating to Language Access

The Office of Language Access (“OLA”) appreciates the opportunity to testify on H.B. 266 H.D.1 Relating to Language Access. My name is Serafin Colmenares, Jr. and I am the Executive Director of OLA. **OLA strongly supports H.B. 266 H.D.1 with a few amendments** to ensure adequate funding to our office to execute these new duties.

H.B. 266 H.D.1 would create and provide appropriations for a Language Access Resource Center and a pilot multi-lingual website project within OLA to better serve the LEP population and assist state and state-funded agencies in complying with applicable federal and state language access laws. The original effective date of this bill was July 1, 2013, but has been changed to July 1, 2050 to encourage further discussion. If this committee supports an effective date of July 1, 2013, as originally intended, we ask that adequate appropriations also be made for fiscal years 2013-2014 and 2014-2015.

SUGGESTED AMENDMENTS

Page 10, lines 10-12: "Section 5. There is appropriated out of the general revenues of the State of Hawaii the sum of **\$400,000** or so much thereof as may be necessary **annually** for fiscal ~~[year]~~ **years 2013-2014 and** 2014-2015 to . . ."

Page 10, lines 20-22: "Section 6. There is appropriated out of the general revenues of the State

of Hawaii the sum of **\$190,000** or so much thereof as may be necessary **annually** for fiscal ~~[year]~~ **years 2013-2014 and** 2014-2015 to . . ."

BACKGROUND

According to the United Census Bureau, American Community Survey Public Use Microdata Sample (PUMS) in 2009-2011 almost 24% of Hawaii's population speaks a language other than English at home; and approximately 151,187 residents of Hawaii are limited English proficient (LEP). According to the Immigration Policy Center of the American Immigration Council, approximately 18% of Hawaii's residents are foreign born, while 14% of Hawaii's children with immigrant parents are LEP.

Language barriers have prevented our LEP population from fully benefiting from essential government and government-funded services. These barriers have also prevented them from fully participating in and contributing to our community and living up to their potential.

To address this, the federal government, through Title VI of the 1964 Civil Rights Act, and President Clinton's Executive Order 13166, all federal agencies are directed to ensure that all programs receiving federal funds provide meaningful access to LEP persons. In 2006, the Hawaii State Legislature passed Act 290, (later re-codified by Act 201 Session Laws Hawaii 2012 into Hawaii Revised Statutes (H.R.S.) § 321C) which mirrored federal law, requiring that all state agencies and state-funded programs also provide meaningful access to services for LEP persons.

Over the years, since the inception of Hawaii's Language Access law and our office, OLA has identified three major challenges to agency compliance: (1) there is no comprehensive and centralized system or structure in Hawaii to identify qualified language interpreters and translators; (2) Hawaii has a dearth of competent language interpreters and translators available to assist LEP individuals – especially in certain languages; and (3) state agencies do not have multilingual websites that can help LEP persons access needed information in their own language.

As a point of fact, our office regularly receives calls from agencies and the public for information and referrals for available and qualified interpreters and translators – a function which we consistently serve but is not in our current legislative charge.

H.B 266 H.D.1, with technical amendments and adequate funding, would create a Language Access Resource Center that would (1) maintain a publicly available roster of interpreters and translators with their qualifications and credentials; (2) train agencies on how to obtain and utilize their services; (3) support interpreter and translator recruitment and retention; (4) assist in their training; and (5) work toward identifying, creating, and promoting a testing and certifying process for them. This bill would also enable OLA to administer a pilot project to test the utility and feasibility of establishing a multilingual website.

This bill would benefit agencies, interpreters, translators, and the LEP population alike since it addresses the problem of supply and demand of interpreters; increases and improves the number and quality of language service providers; and provides Hawaii's LEP population a better means to access state and state-funded services.

A language access resource center and multilingual website will also enable the state to provide better customer service and promote equity and citizen participation in government services and programs.

Moreover, since many of our state and state-funded agencies also receive federal funding, this bill would assist them in complying with *both* federal and state language access law.

When our office was established in 2007, we had a staff of six, including myself as Executive Director. In 2009, budget cuts eliminated all of OLA's support staff and the office was left to function with my position alone. In 2012, two staff positions were restored; however, our ability to fully execute the current statutory duties of the office is still severely compromised. While OLA wholly supports H.B 266 H.D.1, with amendments, we ask the legislature to ensure that adequate funding be provided so that this office can not only fulfill its current statutory obligations, but also those presented by this bill.

ADDRESSING STAKEHOLDER CONCERN

In its testimony on the original draft of this bill, the Hawaii Interpreter Action Network (HIAN), through Alohalani Boido, its President, raised a few concerns and suggested a number of amendments.

State Liability

HIAN previously testified that state liability is one of its chief concerns and as a principal rationale for its suggested amendments. We note that Hawaii's Language Access law does not authorize a private cause of action. Although a number of administrative complaint processes have been instituted within federal and state agencies, a private party does not have the right to sue, in court, the State of Hawaii (or OLA) for its failure to provide language access services – let alone legally challenge the *quality* of those services. This is supported by relatively recent federal case law, Alexander v. Sandoval, 532 U.S. 275 (2001).

Types of Interpreter-Translator Credentials Listed on Roster

HIAN seeks to include amendments to ensure that only certain credentials are provided on the publicly available roster of interpreters and translators by limiting this to “certifications” and “licenses.” While this will certainly benefit those language service providers who are able to obtain such certifications and licenses in their respective languages, and who can therefore justifiably charge more for their services, there are several providers who cannot obtain such credentials because certification and licensure do not exist in their language. This is particularly true for some languages of lesser diffusion for which services are in high demand in this state.

Much also depends on the agencies' resources, and the degree of expertise needed for a given job. Agencies could benefit greatly from knowing about other relevant qualifications. For example, a trained interpreter with credentials in housing counseling and familiar with that area

of government service may be more desirable to certain agencies than someone who may charge more because they have a health care interpreter certification.

We therefore prefer the current language so the more nuanced policy decisions can be made over time by the Office of Language Access, in consultation with agencies and the Language Access Advisory Council, which includes representatives from the interpreter and translator professions. Our support for this bill partially rests in our hope that the roster will be able to help agencies link up with the provider that is best suited for the job – not only to a limited scope of providers.

We also stress that OLA's role in producing a publicly available roster would merely be to fill a demonstrated need for information – to bridge the gap between supply and demand and assist those seeking language services and give them the ability to connect with those who can provide it. OLA is not charged with verifying or authenticating the information that interpreters and translators provide. To make this clear, OLA intends to include on the roster a disclaimer stating that it is not legally responsible for the representations made by the language service providers and reflected on the roster; nor for the quality of their services. Whether it's necessary to amend this bill to include language to this effect in statute, we defer to the wisdom of the legislature.

It is important to understand that under this bill, OLA would not only be publishing a roster, but would also train agencies on how to effectively obtain and utilize the services of interpreters and translators; as well as provide, coordinate and publicize further training opportunities for the interpreters and translators. Many of HIAN's concerns would be addressed through these other functions.

Identifying or Creating a Process to Test and Certify Interpreters and Translators

HIAN also seeks to make more "precise" the language relating to the eventual testing and certification process the language access resource center would undergo. OLA believes the current language is preferable as it is general enough to allow OLA the latitude and flexibility to consider what process would work best for the state. While HIAN's vision may certainly correspond with the eventual process that OLA identifies or creates, HIAN's language may be too restrictive.

Many of the terms they suggest are also ambiguous. If used, the terms "scientifically valid" and "legally defensible" would have to be agreed upon and defined in statute. The legislature must determine what scientific standards should apply. Moreover, since there is no private cause of action for violations of language access, there is no need for a "legally defensible" process. The current language presumes that these decisions will be made over time – which would take research, discussion, and collaboration, as is intended.

Thank you for the opportunity to provide this testimony.

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RANDY BALDEMOR
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TRANSFORMATION

KEONE KALI
DEPUTY CHIEF INFORMATION
OFFICER – OPERATIONS

TESTIMONY OF
SANJEEV "SONNY" BHAGOWALIA, CHIEF INFORMATION OFFICER
TO THE

HOUSE COMMITTEE ON FINANCE
Friday, February 22, 2013
1:30 p.m.
Conference Room 308

WRITTEN TESTIMONY ONLY

H.B. 266, H.D. 1

RELATING TO LANGUAGE ACCESS

Chair Luke, Vice Chairs Nishimoto and Johanson and members of the committee, thank you for the opportunity to testify on H.B. 266, H.D. 1.

The Office of Information Management and Technology (OIMT) offers comments on H.B. 266, H.D. 1

Internationalization of website content controls and interfaces, which includes multiple language translation is an emerging best practice for government and technology. Open source technology exists to support internationalization measures, such as Google Translate. Although the accuracy of the translation is automated, it may not be as contextually accurate as human translation. Nevertheless, it is a step in the right direction. The State will benefit from internationalization of its outward facing communications.

OIMT respectfully requests that language be included in the measure to require the multilingual pilot website be developed in consultation with the CIO to ensure that it is compatible with the State's information technology infrastructure, leverages technology solutions to maximize staff efforts, meets current technology standards, including providing the proper Unicode language support, and provides the proper checks and balances to manage the cultural sensitivities and expectations of the website.

Thank you for the opportunity to testify on this matter.

Hawaii Interpreter Action Network
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TO: Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto and Rep. Aaron Ling Johanson, Vice-Chairs
Members, House Committee on Finance

FROM: M. Alohalani Boido, M. A., President, Hawaii Interpreter Action Network
Hawaii Judiciary Certified Court Interpreter (Tier 4)
Tel.: 946-2558, E-mail: boido@hawaii.edu

HEARING: Feb. 22, 2013, 1:30 p.m., Conf. Rm. 308

RE: **SUPPORT with amendments, HB 266 HD 1, Relating to Language Access**

Hawaii Interpreter Action Network (HIAN) is dedicated to representing Hawaii's interpreters. We work to elevate professional standards of competence and ethics, and to improve working conditions. If reworded, HB 266 HD 1 Section 3(8)(A) has the potential to be a major step forward. At present, it is regressive, deceptive, and harmful.

HIAN suggests that Section (3)(8) be amended as follows:

(A) Maintain a publicly available roster of language interpreters and translators, listing any certifications and/or licenses ~~their qualifications and credentials~~;

(E) Work toward official statewide recognition of nationally and internationally recognized professional credentials for bilinguals, interpreters, and translators, and to develop and cooperate in the development of scientifically valid, legally defensible, performance-based, objective, criterion-referenced¹ certification examinations for bilinguals, interpreters and translators to ensure the quality and accuracy of their services.”

The idea of **publishing a roster of unscreened, alleged bilinguals is appalling. No government entity in the USA publishes a roster of interpreters and translators *unless* the people on the roster have first met objective, test-based standards.** That is the only responsible road. Self-report of ability and credentials is unreliable. We don't let a person drive a car unless they've passed a written test of knowledge and a test of driving skill. Interpreting and translating for government entities and medical care can and should be the same way.

It is quick and easy to make a very big mess. Cleaning it up later will be costly in time, effort, and money. It is unlikely that the damage done to Limited-English Proficient (LEP) individuals will ever be undone. Section 3(8)(A) opens the door for OLA to put the weight of government approval behind misleading and deceptive “qualifications and credentials.” Through that open door will come every fake, flake, fraud, and fast operator who wants to make a buck off the needs of our LEP population and tourists.

The Legislature already made plain that it does not support lists of unscreened, untested language service providers when it put pressure on the Judiciary to implement a certification program. Prior to the certification program's implementation in 2007, the

¹ “Criterion-referenced” means graded on a standard, not on a curve.

Judiciary essentially had an unscreened list. The current program forced out many incompetents, as well as a number of toxic, unscrupulous individuals. OLA's proposal will let them all back in.

The “twin professions” of interpretation² and translation only recognize those credentials based on passing a performance test of the skills necessary to carry out the tasks according to a minimum standard. Most of these credentials are called “certifications.”³

The nationally recognized certifications are:

1. Tests administered by a state, national, or international entity, such as US federal or state courts, the U. S. Dept. of State, the United Nations, European Parliament, etc.
2. Tests administered by a nationally recognized professional organization, such as the American Translators Association (ATA)⁴ or the National Association of Judiciary Interpreters and Translators (NAJIT)⁵ for spoken languages, or RID or state certifications for ASL. Now, for spoken language healthcare interpreters, we have the Certification Commission for Healthcare Interpreters (CCHI)⁶ or the National Board of Certification for Medical Interpreters (NBCMI).⁷ Both the CCHI and NBCMI tests have been approved by the National Commission for Certifying Agencies.⁸

We are concerned that people will be offering as credentials a bunch of stuff that is not based on passing a performance-based test, or where the standard for passing a test is extremely low, and therefore insufficient to merit confidence. Some people will be offering falsified “credentials” as well. OLA at present does not plan to verify credentials.

Some of the languages we need in Hawaii do not have certification tests in interpretation and/or translation available at present. However, there are tests to evaluate:

1. Written and/or oral proficiency in English (a minimum standard for virtually all)⁹, and
2. Written and/or oral proficiency in the Language Other Than English (LOTE).¹⁰
3. There are companies which offer low-level proficiency testing for interpreters and translators.¹¹

To be placed on a public roster, a person should at a minimum:

² The current standard for interpretation services (under revision):

http://www.saludycultura.uji.es/archivos/ASTM_F2089-Stand_Guide_Lang_Interp_Services_%28EEUU%29.pdf. For sale: <http://www.astm.org/Standards/F2089.htm>. ASTM International Standard F2575-06: Standard Guide for Quality Assurance in Translation, also available.

³ There are also credentials that need some cloaking to protect the interpreter or translator. These are the result of training and testing by the U. S. Dept. of Defense, the FBI, etc. There are probably quite a few of these professionals in Hawaii, formerly employed in surveillance.

⁴ http://www.atanet.org/certification/aboutcert_overview.php

⁵ <http://www.najit.org/>

⁶ <http://www.healthcareinterpretercertification.org/>

⁷ <http://www.certifiedmedicalinterpreters.org/>

⁸ <http://www.credentialingexcellence.org/ncca>

⁹ There are limited circumstances where an interpreter or translator does not need to know English—when working as part of a relay team. Relays are used for situations where a person may speak a language of extremely limited diffusion, such as an indigenous language of the Americas. The first interpreter might work from the indigenous language to Spanish, and the second interpreter from Spanish to English. In Hawaii, one interpreter might work from Tahitian to French, and another from French to English.

¹⁰ Some testing agencies: ALTA <http://www.altalang.com/language-testing/government.html>, <http://www.altalang.com/language-testing/qualified-bilingual-staff.html>; LTI <http://www.languagetesting.com/>; Versant <http://www.versanttest.com/>.

¹¹ The Hawaii Judiciary is already using the tests given by one of these companies. <http://www.lionbridge.com/>

- Hold a nationally recognized certification or license, or
- Go through training on ethics, procedure, and skills,¹² and
- Pass a written and/or oral proficiency test in English and the LOTE,¹³ and¹⁴
- Pass a written test on the applicable Code of Ethics, and
- Pass a criminal history background check.
- Healthcare interpreters should have a current, negative TB test.

Placement on a public roster must be based on passing tests. Anything less is irresponsible.

Performance-based certification examinations already exist in a number of language pairs, and should be recognized by the State of Hawaii. If and when Hawaii creates its own tests, these tests must ensure the quality and accuracy of interpretation and translation services. That is why we specify the types of examinations to be developed, that is, “scientifically valid, legally defensible, performance-based, objective, criterion-referenced...”

We added “cooperate in the development of” because, for Languages of Lesser Diffusion with large populations in Hawaii, i.e. Micronesian and some others, Hawaii could pool resources with other states to develop examinations in those languages. The Hawaii Judiciary already did this for the oral exams in Chuukese and Marshallese.

About the “...dearth of competent language interpreters and translators available...”—should I laugh or weep? This bill as currently worded will only make things worse.

Most people need to earn a living. Hawaii is a near-perfect storm of practices that make it virtually impossible for a competent interpreter or translator to earn a living.¹⁵ Publishing a deceptive roster of unscreened, untested, alleged bilinguals, interpreters, and translators will only make things far, far worse. Nor will Hawaii’s LEP residents and tourists be well served.

For years I have watched helplessly as ethical, competent practitioners have been driven to take work in other fields. They will not come back—they have told me so. Hawaii does have people with the potential to develop into competent practitioners. They just don’t have any financial incentives to do so. Why should an ethical, competent person have to compete on equal terms with non-professionals? We don’t allow this in other professions.

Pass this bill as currently worded, and you will be throwing away another generation of talent. OLA’s list will flood Hawaii with unscreened people. That would be a giant step backwards after the progress made by the Judiciary’s certification program.

We are attaching supplemental materials on testing *for information purposes only*. They come from a specific company. We are not recommending for or against this company.

We ask you to support HB 266 HD 1, with our proposed amendments. Thank you.

¹² The Hawaii Judiciary certification program requires 16 hours of training. Nationally there is agreement that healthcare interpreters should have a *minimum* of 40 hours of training.

¹³ For a few languages, a test of proficiency in the LOTE may not yet be available. However, these can and should be developed for languages in significant demand in Hawaii.

¹⁴ Written proficiency for translators, oral proficiency for interpreters.

¹⁵ The only thing that stops it from being a perfect storm is that after years of HIAN’s lobbying, with strong support from the immigrant advocacy community here, and a push from the Legislature, the Hawaii Judiciary *finally* implemented a certification program in 2007. That was 10 years after obtaining access to the necessary tests.



Description of Test Types

Speaking and Listening (Live): For this test, the candidate is connected via telephone to a live evaluator who is a native speaker of the target language. After verifying the candidate's identity, the evaluator will conduct the test, which consists of a series of questions that are designed to elicit the full range of the candidate's ability to use the target language verbally, and to identify what the candidate can do with the language (through performance of various tasks such as giving a description, talking about a hypothetical event, providing an opinion, etc.), as well as how well the candidate uses and controls the language in terms of its mechanics (ex: grammatical structures, vocabulary). At the end of the test, the candidate is instructed to hang up. The evaluator scores the performance based on the subcategories of communication, comprehension, grammar and vocabulary, and an overall score is assigned on the ILR scale. This score along with comments is sent to you or your administrator the following business day. The cost of the test is \$60.

Speaking and Listening (IVR): In 2007, ALTA launched a project to deliver its assessments via an automated, interactive voice response (IVR) system. This system was aimed at expanding our clients' availability to oral language testing services to a 24x7 basis and reducing clients' scheduling time. The IVR system of assessments allows clients to register their candidates through an online system, and generate access codes for their candidates to enter when calling for their test. By entering this access code, candidates are able to access test content, which is delivered automatically. The questions follow the same delivery format as in ALTA's current system of oral assessments conducted live with an evaluator. One question is selected at random from a pool of similar questions, focusing on a particular linguistic task (e.g. narrating in the past tense), and the recorded question is played for the candidate. The candidate is given a specific period of time to respond to the question posed, and the response is digitally recorded. This sequence continues for the remainder of the test, or until all questions have been delivered to the candidate. The candidate is instructed to hang up the phone, at which point the file containing the questions and the responses is sent to a human evaluator for scoring. The evaluator scores the candidate's performance according to the ILR performance scale. The results are returned to the client the following business day. The cost of the test is \$50.

Writing Proficiency: This test is downloaded from the testing portal along with proctoring instructions. It must be administered on site. The test consists of five requests for a written response in the target language. The written test requires the candidate to demonstrate what he or she can do with the language in its written form through the performance of various tasks (writing a letter, giving an opinion, describing a rule or procedure), as well as how well he or she uses and controls the language (ex: grammatical structures, spelling/character selection). The candidate simply writes his or her response to each question in the space provided. At the end of the test, it is collected and sent back to ALTA for scoring. The evaluator scores the writing based on expression, understanding of the given topics, grammar, vocabulary and spelling, and an overall score is assigned. This score along with comments is sent to you or your administrator within two business days. The cost of the test is \$60.

Multiple Level Reading Test: Reading comprehension tests are available through our online application, and consist of a selection of passages, each followed by a series of questions about the passage in a multiple-choice format. The Level 8-10 reading comprehension test developed by ALTA consists of 8 passages and 25 multiple-choice questions. Each question adheres to an objective that targets a specific reading skill: understanding the main idea of a text, understanding a stated detail, understanding an implied detail, or making an inference. ALTA's development team determined these objectives by performing a close reading of the ILR reading skill-level



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descriptors and honing a list of the important knowledge, skills, and abilities for each of the levels on the test. The candidate simply reads the passages and marks his or her selection for each question. When finished, the candidate clicks the "Submit" button at the bottom of the screen to record his or her answers. The system automatically scores the test on a percentage basis (number of correct answers out of total possible correct) and assigns a corresponding ILR or ALTA performance level. The administrator can immediately view the candidate's score and interpret performance based on the overall score for the test. The cost of this test is \$30.

Translation Test: This test is downloaded from the testing portal along with proctoring instructions.. The tests consist of 2 passages, which the candidate must translate into the target language within the allotted timeframe (no more that one hour). The translations, along with the time taken to complete the tests, are sent to ALTA for scoring. Performance is judged based on accuracy, grammar, spelling (or character selection), expression and speed, and an overall score is assigned. This score along with comments is sent to you or your administrator within two business days. The cost of the test is \$60.

Interpretation Test: ALTA's interpretation test is customized for the client. It is administered via telephone and consists of a consecutive interpretation dialogue. The roles of the speakers are played by the native English-speaking evaluator and native Target Language-speaking evaluator, respectively. The candidate listens to each segment of dialogue and provides the interpretation after each (each segment is 40 words or less). The English evaluator scores the English responses and the Target Language evaluator scores the Target Language responses according to a set of objective and subjective scoring criteria. Objective criteria include a selection of scoring units that the candidate must render correctly to score a point. Subjective criteria include overall language use and accuracy. At the end of the test, the candidate is scored according to the overall percentage of objective units correct and the holistic performance. This score along with comments is sent to you or your administrator the following business day. The cost of this test is \$100 per candidate.



Quality Assurance and Reliability

Reliability is the extent to which a test is repeatable and yields consistent scores. All measurement procedures have the potential for error, so the aim is to minimize it. In the language testing market where tests are performed and evaluated by independent raters, the testing providers have to concern themselves with inter-rater reliability, or the degree to which two evaluators would rate a candidate's performance the same.

To maintain a high inter-rater reliability, ALTA follows several steps. First, training is implemented. Each of ALTA's evaluators is trained using an extensive library of recorded audio sessions of real evaluations from ALTA's archive of oral language evaluations. Potential evaluators are trained on ALTA's scoring criteria, and are then required to rate actual evaluations. Scores (subcategory and overall) are reviewed against the original scores and discrepancies are discussed and resolved. The evaluator continues this training until scoring is provided accurately and consistency.

Once the evaluator has successfully completed this training, he or she is approved to administer and rate live evaluations. During the initial period, 100% of his or her evaluations are pulled for score reviews using an independent evaluator to collect inter-rater reliability data and to ensure accuracy. Once the accuracy has been established, ALTA moves to its standard quality assurance process. Ongoing training is also offered to ALTA's evaluators. These standardization, or "norming," sessions are designed to ensure that raters continue to interpret the scoring criteria the same, and that their scoring does not become stricter or more lenient over time.

To maintain the highest quality assurance, ALTA has a specific review procedure to monitor our evaluator's reliability, to collect inter-rater reliability data, and to ensure that the criteria are being applied consistently. ALTA also implements this review procedure on a case-by-case basis for the following reasons:

1. The scores in each subcategory (Communication, Comprehension, Grammar and Vocabulary) are not consistent with the overall score.
2. The evaluator was trained recently.
3. The scores appear out of range for a particular client (e.g. a low score for a client whose candidates typically score high).
4. To cross-match between languages: a candidate should be fluent in at least one language.
5. The candidate's score was borderline for that client's passing level.
6. There has been a radical change in a candidate's scores versus those received in a previous test.
7. The evaluator is on watch for any internal reason.
8. To ensure that evaluators perform the tests with professionalism and according to our test administration requirements.



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Any time differences between the score reviews and the initial evaluator's scores are found, these differences are resolved and a revised score is sent to the client. Reviews also allow ALTA to recognize opportunities for training or improvements, and implement them accordingly.

Due to its quality assurance process, ALTA maintains an average inter-rater reliability of 0.86 and above, where a 0 = no correlation and 1= a perfect correlation. A correlation of 0.70 and higher is considered an acceptable standard in the industry. By continuously monitoring its raters' performance, ALTA's reliability exceeds industry standards.



CONGRESS OF VISAYAN ORGANIZATIONS

99-1325 Aiea Heights Drive, Aiea, Hawaii 96701

To: Rep. Sylvia Luke, Chair
Rep. Scott Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
House Committee on Finance

From: Jane Clement, President

Date: February 22, 2013, 1:30 p.m.
State Capitol, Room 308

Re: Testimony on H.B. No. 266 HD1
Relating to Language Access

Thank you for the opportunity to submit testimony in support of H.B. No. 266 SD1, Relating to Language Access.

My name is Jane Clement and I am the president of the Congress of Visayan Organizations (COVO), the umbrella of Visayan organizations in the state of Hawaii. COVO strongly supports this bill, which would establish a language access resource center and a multilingual website in the Office of Language Access.

COVO has been very supportive of any opportunity that would promote and enhance language access in the State of Hawaii. We believe that establishing a language access resource center will not only lead to the growth and development of a badly-needed pool of qualified interpreters in the State but will also address the interpreter needs of State and state-funded agencies and Hawaii's more than 151,000 limited English proficient (LEP) population in general.

The establishment of a multilingual website will also enable LEP individuals to access information about government services and programs electronically and in their own language.

These twin proposals will lead to better customer service, promote equal access, and bring about greater participation by the LEP population in government services and programs.

We strongly urge the members of the committees to pass this bill.



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Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 266 Relating to Language Access
House Committee on Finance
Scheduled for Hearing Friday, February 22, 2013, 1:30 P.M., Room 308

Hawai'i Appleseed Center for Law and Economic Justice is a nonprofit, 501(c)(3) law firm created to advocate on behalf of low income individuals and families in Hawai'i on civil legal issues of statewide importance. Our core mission is to help our clients gain access to the resources, services, and fair treatment that they need to realize their opportunities for self-achievement and economic security.

I am testifying in strong support of HB266 providing for the Office of Language Access to oversee a new Language Access Resource Center and appropriating funding for the project.

To comply with Title VI, federally funded agencies are required to take affirmative steps to rectify language deficiencies that may prevent limited English proficiency (LEP) individuals from meaningful access to services. In HRS 321C, Hawai'i has also codified a State Language Access Act that mirrors Federal Title VI provisions. State funded agencies must take "reasonable steps to ensure meaningful access to services, programs and activities by limited English proficient persons." Denying limited English proficiency individuals access to state and federal funding programs and services by failing to provide appropriate oral and written language services is unlawful national origin and ancestry discrimination prohibited by federal and state law.

Despite these legal prohibitions, LEP individuals report numerous incidents of being denied oral and written language services when applying for benefits, applying for drivers' licenses, requesting public housing lease information, seeking tax information and to pay tax debts, responding to court notices, paying parking fines, inquiring about fishing regulations, and attempting to access many state agencies.

In their 2009 report (no longer available online due to website upgrades), the state Office of Language Access (OLA) graded each state agency on their compliance to language access laws. The report criticized state agencies, finding many did not even have a language access plan, the most basic of requirements under the law. Though this audit of compliance was possible in 2009, we believe that due to budget cuts and loss of staff, OLA has not been able to undertake such a complete audit. Unfortunately, while OLA may provide some technical assistance, they do not provide oral and written language services or resources in other languages. Written materials in other languages and other resources are largely left up to each agency or division to create and manage on their own. State agencies may or may not share these resources with the public.

Through Uniform Information Practice Act requests, our staff requested information on the LEP population serviced by many state agencies and their expenditures related to providing oral or written language services to these individuals. As a case study, we compared LEP data. We found the following information alarming and indicative of the need for further resources devoted to LEP access to compliance.

-State agencies do not reliably collect or report data on the LEP population accessing services and are unable to reliably assess legal thresholds required for civil rights compliance.

Under most state agency language access plans, the agency is required to maintain a reporting system designed to obtain key information about the LEP populations encounter. This also allows the state to access LEP population and their own compliance under Title VI of the Civil Rights Act and state Language Access Law. Reliable data ensures that agencies do not discriminate in their provisions of services LEP individual. To report

data, most state agencies currently use the Language Access Reporting Tool, a simple Excel spreadsheet developed by the Hawai'i Office of Language Access (OLA) to assist state agencies in monitoring the utilization of their agency by LEP individuals. This tool is submitted to Office of Language Access (OLA) quarterly. Each state agency self reports their interactions or 'encounters' with LEP individuals on the tool, noting the number of LEP interactions and the translation or interpretation services provided. As mentioned, through UIPA requested, our agency requested the Language Access Reporting Tool data for all DHS agencies since its implementation and start of its use around 2007. LEJ also asked for comparative Language Access Reporting Tool data from 2009 from other state agencies. The information LEJ received shows serious inconsistencies and inaccuracies in its use among state agencies. If OLA was able to provide resources, training and had a funded agency, then would be able to access data on the tool and provide support and resources to assist agencies in compliance.

-State agencies encountering a large number of LEP individuals do not necessarily expend funds to provide language services for these individuals. Some agencies may bear a large burden for language services compared to others

Just by looking at the reporting tool data for our small case study, LEJ noticed that some agencies may devote more resources to language services, while others ignore them. There is a need for a centralized system to support the divisions. Otherwise, the disparities will persist. For example, for the data we requested, HPHA reported the second highest number of encounters of LEP individuals out of the ten DHS divisions. HPHA expenditures on language services, however, ranked near the bottom, at eighth. Comparatively, divisions that experienced similar high level of LEP encounters spent much more on providing language services like oral translation. BESSDOB reported \$79,988.84 in expenditures to service one thousand nine hundred and eleven LEP individuals; HPHA reported only \$2,376.18 spent on services for 1466 LEP individuals. These inconsistencies illustrate the need to maximize resources by allowing all divisions to rely on a centralized agency. Creating, funding, and prioritizing an OLA resource center will help maintain consistent and efficient expenditures on language services and combat duplication.

-The Judiciary has born a large burden creating language resources, to the detriment of other programs.

Many people who believe we have adequate interpretation and LEP services may refer to the interpreter certification. The State Judiciary through the Office on Equality and Access to the Courts has created a state interpreter training, certification and registration program for court interpreters. This program has collaborated with other states, spending valuable resources to create testing and certification materials for languages encountered in Hawaii for which national tests did not exist. Those who have completed the Judiciary program are listed on a publically available interpreter list is used by all state agencies, private attorneys, and anyone to access qualifications and find information to communicate with an interpreter, this is not a resource center. The program is hugely lauded, and should be. However, this program is a result of a commitment of one agency to provide their own qualifications and a list for interpreters, it does not establish that the Judiciary is providing LEP individuals the services and access required under law. Currently, though interpretation services are available for criminal court actions, LEP individuals note that they are denied access to court mandated classes and community service programs required as a judgment in a case.

Without the language access resource center, state agencies will continue to fall short on their obligations under federal civil rights statutes, as well as our own state Language Access Act. Without adequate resources to assist the LEP population, not only does a vulnerable part of our population remain unserved, but agencies out of compliance may be vulnerable to civil rights complaints and further court action. It is important that the legislature is proactive in moving to provide meaningful access to all of Hawaii's residents and fulfill our commitments under the law.



CATHOLIC CHARITIES HAWAII

TO: Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair
Committee on Finance

FROM: Melba Bantay, Program Director
General Immigration Services

DATE: Friday, February 22, 2013, 1:30 p.m.

RE: **IN SUPPORT of HB 266, HD1, RELATING TO LANGUAGE ACCESS**

My name is Melba Bantay, Program Director of Catholic Charities Hawai'i's General Immigration Services. **Catholic Charities Hawai'i strongly supports House Bill 266, HD1.**

Catholic Charities Hawai'i has been providing services to immigrants and refugees for more than 30 years and has witnessed the struggles that our newly arrived neighbors go through to understand and navigate our system of government so that they can access the resources that they need. Language – the ability to speak, read and comprehend English is a major hurdle that many immigrants and refugees must overcome in order to successfully transition to life in Hawai'i.

Having a pool of qualified interpreters and translators would enable both public and private organizations to provide the necessary language access for available resources and services. In addition, having information available via website in multiple languages will support newly arrived immigrants and refugees to adjust successfully in our community.

Immigrants and refugees have been important contributing members of Hawai'i communities for more than 100 years. We cannot forget their sacrifices as workers in our plantations, when agriculture was our state's main industry. Today, immigrants and refugees continue to be a reliable workforce in Hawai'i hotels, restaurants, and other businesses that support our tourism industry. It is only right and just that these hard-working brothers and sisters of ours be provided the support they need to realize their dreams - to find new beginnings and provide better futures for themselves and their families. House Bill 266, HD1 will provide them that opportunity.

I ask for your support of House Bill 266, HD1. If you have any questions, please feel free to contact me at 527-4711 or via email at me mbantay@catholiccharitieshawaii.org. Thank you for this opportunity to testify.



FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 21, 2013 8:19 AM
To: FINTestimony
Cc: tabraham08@gmail.com
Subject: *Submitted testimony for HB266 on Feb 22, 2013 13:30PM*

HB266

Submitted on: 2/21/2013

Testimony for FIN on Feb 22, 2013 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 21, 2013 7:24 AM
To: FINTestimony
Cc: jlee16@gmail.com
Subject: *Submitted testimony for HB266 on Feb 22, 2013 13:30PM*

HB266

Submitted on: 2/21/2013

Testimony for FIN on Feb 22, 2013 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Jenny Lee	Individual	Support	No

Comments:

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FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 3:52 PM
To: FINTestimony
Cc: mestralynne@aol.com
Subject: *Submitted testimony for HB266 on Feb 22, 2013 13:30PM*

HB266

Submitted on: 2/20/2013

Testimony for FIN on Feb 22, 2013 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Lynne Gutierrez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 10:56 PM
To: FINTestimony
Cc: aurelioagcaoili@yahoo.com
Subject: Submitted testimony for HB266 on Feb 22, 2013 13:30PM

HB266

Submitted on: 2/20/2013

Testimony for FIN on Feb 22, 2013 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Aurelio Agcaoili	Individual	Support	No

Comments: HB 266 will make it certain that we are serious in delivering language access to all our peoples in this state. This is the right way to go to celebrate our diversity and our various communities; it demonstrates our being mindful of our responsibilities to each other. Language access is a serious business as it is our contract to do good to everyone particularly the LEP persons.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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FINTestimony

From: Wayne Tanaka [wctanaka@gmail.com]
Sent: Wednesday, February 20, 2013 6:20 PM
To: FINTestimony
Subject: TESTIMONY for HB266HD1 (Friday, Feb. 22 FIN hearing)

Aloha e Chair Sylvia Luke, Vice Chair Scott Nishimoto, Vice Chair Aaron Ling Johanson, and members of the House Committee on Finance,

Thank you very much for hearing this measure, and for providing me with the opportunity to testify in **STRONG SUPPORT** of HB266 HD1

Language access laws are nothing new; however, their substantive implementation has been long delayed. It should be noted that under both federal and state law, recipients of state and federal funds are required to take steps ensuring language access for members of the population they serve. Unfortunately, as a former employee under the Department of Land and Natural Resources for 3 years, I witnessed first-hand how the failure to follow through on developing and implementing a language access plan, as required by state law, has:

1. Harmed our environment, by the failure to disseminate environmental protection laws in any language other than English;
2. Led to injustice, by the imposition of criminal records on individuals who had no notice of natural resource laws that they were caught violating; and
3. Resulted in the ongoing exclusion of many members of our community, residents like you and I, who simply were not able to participate in important planning processes for our natural and cultural resources.

I believe that this ongoing failure to address language access issues continues to further jeopardize the receipt of federal funds by not just the DLNR, but many other state agencies. Based on the nonresponsiveness of the DLNR civil rights compliance officer to my repeated concerns throughout the past 3 years, I believe that these problems are prevalent throughout the executive branch of our state government. I speak in support of this measure which will provide one step forward in meaningfully providing the substantive access to justice and civic participation that our laws purportedly assured many years ago that they would provide.

Promoting language access in general will:

1. Enrich our community, by allowing our multicultural communities to more fully contribute to our values, cultural awareness, and shared experiences;
2. Strengthen our economy, by providing jobs for interpreters as well as enabling their clients to contribute to our community with their full potential; and
3. Make Hawai'i a safer and more wholesome place to live, by ensuring that linguistically isolated and otherwise easily exploitable community members can know about and access the legal protections and services that our laws and policies seek to provide.

Accordingly I would like to voice my **STRONG SUPPORT** for this measure. Mahalo nui for the opportunity to testify.

Wayne Tanaka
Pauoa, Hawai'i