



## DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813  
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**LATE**

February 1, 2018

TESTIMONY TO THE HOUSE COMMITTEE ON HOUSING

House Bill 2577 - Relating to Building Design for Persons with Disabilities

The Disability and Communication Access Board (DCAB) does not support House Bill 2577 as written. As written, the bill proposes to exempt any housing project developed by an eligible developer and subject to exemption from statutes, ordinances, charter provisions, and rules pursuant to §201H-38, Hawaii Revised Statutes (HRS), including housing projects for which the eligible developer has received state or county grants, subsidies, grants-in-aid, tax credits, or any other state or county funds for the construction of the project. This bill contains misinformation and, if enacted, would diminish access for people with disabilities in accessing affordable housing in Hawaii.

On page 1, lines 1 - 4 Section 1, the bill references DCAB as the state agency that reviews all state and county plans for building and facilities funded with public funds. To be accurate, §103-50, HRS, references buildings, facilities, and sites that are (1) designed, purchased, or constructed with state, county, or federal funds administered by the state or county, (2) house state or county programs, services or activities intended to be accessed by the public, (3) are places of public accommodation or commercial facilities under the Americans with Disabilities Act, or (4) are constructed on lands that will be transferred to the state or county upon completion of construction. Section 1, page 1, lines 8 – 11, also states that the Legislature notes that nothing in this Act is intended to exempt affordable housing developed by private developers from the requirements of the Federal Americans with Disabilities Act (ADA). To be accurate, the Federal ADA does not cover private residential housing that does not receive state or local government funds. However, the Federal Fair Housing Act is applicable and is not mentioned.

Section 2 references, among a list of projects, those that receive tax credits for construction. §103-50, HRS, does not require projects of the Hawaii Housing Finance and Development Corporation (HHFDC) to be reviewed by DCAB if tax credits are the only type of financial incentive, as determined years ago by the Deputy Attorney General. We have, however, a long-standing agreement of twenty years with HHFDC to review the projects as a matter of policy from HHFDC.

If HHFDC does not wish to continue with the arrangement, this can be a policy decision of HHFDC, although we would not advise such action. DCAB strongly believes that the absence of our review will compromise the accessibility of such projects. For illustrative purposes, I will note three projects that DCAB reviewed for HHFDC tax-funded projects with deficiencies:

- 1) Meheula Vista Phase I, 25 pages, 79 deficiencies, resubmitted 6 times before final review;

- 2) Kapolei Loft Apartments, 71 pages, 187 deficiencies, resubmitted 3 times before final review; and
- 3) Kapolei Mixed Use, Phase I, 32 pages, 80 deficiencies, re-submitted 3 times, not yet cleared for final review.

Without our review, these projects would likely not only proceed to construction with deficiencies, but incur expensive legal costs to fix as well.

If the issue is the timely processing of the review, we expedite all housing projects in this category, per request from the Office of the Governor. We start the review within a few days of a project being submitted to our office, at the expense of other projects that are pushed back in the examples noted above, a project may come into our office seven times until the deficiencies are corrected, which may give the perception that the review is a lengthy process.

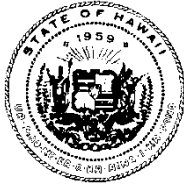
As we all know, affordable housing is a huge need in our state. The population of people with disabilities cannot be left out of the equation when the projects are designed and constructed. We support moving as quickly as possible, but not at the expense of people with disabilities.

Thank you for the opportunity to testify.

Respectfully submitted,



FRANCINE WAI  
Executive Director



**STATE OF HAWAII**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
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IN REPLY REFER TO:

Statement of  
**Craig K. Hirai**  
Hawaii Housing Finance and Development Corporation  
Before the

**HOUSE COMMITTEE ON HOUSING**

February 1, 2018 at 9:00 a.m.  
State Capitol, Room 423

In consideration of  
**H.B. 2577**  
**RELATING TO BUILDING DESIGN FOR PERSONS WITH DISABILITIES.**

HHFDC ***offers the following comments*** on H.B. 2577. Section 103-50, Hawaii Revised Statutes (HRS) requires public buildings, facilities, and sites to be accessible to and useable by persons with disabilities. State and county agencies that are subject to §103-50, HRS must seek advice and recommendations from the Disability and Communication Access Board (DCAB) on any construction plans prior to commencing with construction.

DCAB assists the HHFDC and State in complying with fair housing and accessibility laws. DCAB performs two levels of review:

1. For 4+ multifamily housing units, the units must be “useable” under Fair Housing
2. For public buildings (as defined in section 103-50, HRS), units must be fully accessible per Americans With Disabilities Act Accessibility Guidelines.

Thank you for the opportunity to testify.



January 30, 2018

Hawaii State House of Representatives  
Committee on Housing  
Rep. Tom Brower, Chair  
Rep. Nadine K. Nakamura, Vice Chair  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Hearing: February 1, 2018  
Time: 9:00AM, Room: 423  
Subject: HB 2577 DCAB Review Exemption

TESTIMONY IN SUPPORT

Chair Brower, Vice Chair Nakamura and members of the Committee:

Thank you for the opportunity to express our strong support of HB 2577 which would in effect exempt low income rental properties, proposed to be developed or undergoing major rehabilitation to preserve affordability, from review by the Disability and Communication Access Board (DCAB).

EAH Housing sees the main purpose of this bill as an effort to help developers like us deliver low income rental properties faster than is currently the case. The benefits of this bill include saving us the expense of paying for the DCAB review and allowing us to complete our projects in a more timely fashion. Reviews by DCAB are often time consuming and Hawaii Housing Finance and Development Corporation (HHFDC) will not award financing until the DCAB review is complete. However, the DCAB review is not an approval of the plans - should there be a non-compliance issue after the project is reviewed and complete, DCAB holds no liability. All the liability rests with the development team. Ultimately we and our development team, meaning the architect and contractor, are responsible for seeing that the project, when completed, is in compliance with all of the Federal Fair Housing Regulations.

We would also like to note that there is a third party inspection of the property by a firm hired by HHFDC to insure compliance with the Fair Housing Regulations and tenant income restrictions.

Passing of this bill will enable developers like EAH Housing to help the State in meeting its goal, established in Act 127 of 2016, of developing 22,500 affordable rental units by December 31, 2026.

EAH Housing thanks you for presenting HB 2577 and encourages the Committee's strong support.

Sincerely,

Kevin R. Carney, (PB), NAHP-E, RB-16444  
Vice President, Hawaii  
EAH Housing, RB-16985

**HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION**

**100 PAUAHI STREET, SUITE 204 • HILO, HAWAII 96720**

**LATE**

Testifier: Keith Kato, Executive Director *kk*  
Hawaii Island Community Development Corporation  
Committee: HOUSING  
Hearing Date/Time: February 1, 2018 9:00 a.m.  
Measure: HB2577

Testimony in Support of HB2577

The Hawaii Island Community Development Corporation (HICDC) is a 501(c)(3) tax exempt organization whose mission is to provide affordable housing for the residents of the County of Hawaii. HICDC has developed more than 300 self help homes and eight (8) senior rental projects (278 units) over the past several years. All of these homes are targeted for low and very low income residents.

We have used the Ch 201H-38 HRS exemption process several times to expedite approval of county zoning and State Land Use District designations. While this process has been very beneficial in expediting the development of affordable rentals it has been countered by the requirement that the plans must go through lengthy reviews by DCAB.

The DCAB review time, time spent responding to the DCAB comments, and waiting for the DCAB re-review stretches to months for each project. We have had to wait as long as six (6) months before receiving the final DCAB comments. Meanwhile the county will not issue the building permit, the construction financing will not close and construction cannot begin.

It should be noted that DCAB does not "approve" the plans but states that final responsibility rests with the State or County agency overseeing the project. In reality, the architect and owner are responsible for compliance with the ADA and Fair Housing requirements. To make sure that the project is in compliance the architects and civil engineers all go through training in the requirements and often contract with consultants for advice and review.

We fully intend to comply with the ADA requirements as required by federal law. What we seek is less delay in getting projects moving.

We do not question the intent of the current law to assure compliance with the ADA requirements but feel that similar results will be achieved even without the review by DCAB.

We support the adoption of HB2577.

**HB-2577**

Submitted on: 1/30/2018 7:48:04 PM

Testimony for HSG on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jean Tessmer		Oppose	Yes

Comments:

1. am opposed to this measure. DCAB protects our state from HUD lawsuits by reviewing all Housing projects including state and county that are covered by HUD's Fair Housing Act. For Your Information any housing development funded by the State or County or Federally is covered under the HUD Fair Housing Act under their Disabilities Rights Section and Design Standard. Not requiring a state agency (who by the way are most prone to fail to provide the poor, needy, and disabled with equal housing that can be used by a person with disability) to provide disability criteria design from the Fair Housing Act will end up costing our state millions in fines. HUD is very active pursuing litigation against State, Counties, What they are proposing is that they are willing to comply with federal law (although they mistakenly reference the ADA rather than Fair Housing in the bill) but they don't want to have to submit the project to DCAB for review. They are willing to assume the liability as developers, which think is foolish, not to mention will result in reduced accessibility.and developers including privately run AOAO's which are all covered under HUD's fair housing act. I think it would be a grave mistake to remove the Hawaii Housing Finance and Development Corporation housing projects from DCAB's review and approval process. DCAB is really helping to lower the States and Counties profile from disability rights lawsuits.

**HB-2577**

Submitted on: 1/31/2018 5:25:29 PM

Testimony for HSG on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ellen Godbey Carson		Support	No

Comments:

I am a member of Housing Now! and FACE (Faith Action for Community Equity). We seek more options for creating affordable housing for Hawaii's residents and workforce.

Please approve HB2577, which would exempt low income rental properties from additional delays and expenses associated with review by DCAB. Legal compliance with all Federal Fair Housing Regulations and related state laws would still be required, so developers would still be required to be in compliance with applicable housing standards. This is a win-win situation that should maximize the opportunity for success by developers who are committed to developing low income housing to meet Hawaii's housing needs.

Thank you.

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