



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 14, 2023

TESTIMONY TO THE SENATE COMMITTEES ON HEALTH AND HUMAN SERVICES, AND ON TRANSPORTATION AND CULTURE AND THE ARTS

Senate Bill 384 – Relating to Access for Disabled Persons

The Disability and Communication Access Board (DCAB) strongly supports Senate Bill 384 – Relating to Access for Disabled Persons.

DCAB administers the statewide program on parking for persons with disabilities, which includes among other things, the issuance of disability parking permits through memorandums of agreement with the four counties. More than 100,000 Hawaii residents have an active disability parking permit.

DCAB often receives complaints from disability parking permittees about places of public accommodation that fail to comply with the federal Americans with Disabilities Act (ADA) and/or the State requirements for providing parking spaces reserved for persons with disabilities, including their number, location, design and signage.

Section §291-58, Hawaii Revised Statutes (HRS), provides a penalty of \$250 to \$500 per day for private entities that fail to comply with the ADA and State design, construction and signage requirements. Under §291-58, HRS, a private entity in violation for an entire year could face a penalty of between \$91,250 and \$182,500, which is excessive.

Section 291-58, HRS, has been in effect since July 1, 2002, but it has not been enforced. A likely explanation for non-enforcement is that this section does not designate a government authority to impose or collect a penalty for noncompliance.

Senate Bill 384 resolves the non-enforcement problem by authorizing, but not mandating, the counties to adopt ordinances to enforce the ADA and State requirements for the provision of reserved parking spaces for persons with disabilities, including their number, location, design and signage, and to establish penalties for violations. Senate Bill 384 provides that an official appointed by a county may enter private property to enforce the adopted ordinances. The counties are uniquely suited to enforce those requirements because they already inspect private entities for compliance with the building code and various other physical requirements.

Therefore, enforcing the ordinances adopted by the counties pursuant to this measure would be well within their purview. In fact, the enforcement mechanism of Senate Bill 384 is modeled after that of §291-73, HRS, which authorizes the counties to adopt ordinances to enforce the State law, §291-71, HRS, regarding the provision of parking spaces serving electric vehicle charging systems at places of public accommodation.

Lastly, DCAB proposes an amendment to Senate Bill 384 to clarify that an official appointed by a county may enter "places of public accommodation" as defined in §489-2, HRS, to enforce the adopted ordinances. The use of "places of public accommodation" is intended to make a distinction between that term and the term "private entities" to clarify that the statute does not apply to parking reserved for persons with disabilities at residential facilities and other buildings,

facilities and sites that are not places of public accommodation. Therefore, DCAB proposes the following amended wording:

SECTION 2. Section 291-58, Hawaii Revised Statutes, is amended to read as follows:

"[~~†~~]§291-58[] ~~Requirement to provide parking for persons with disabilities; penalty.~~ Beginning July 1, 2002, any public or private entity that provides a parking space reserved for persons with disabilities shall comply with this part and any administrative rules adopted under this part. A private entity that fails to comply with this section shall be fined not less than \$250 nor more than \$500 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect any penalty provided for in this section shall be considered a civil action.] **Ordinances to enforce authorized.** (a) Each county may adopt ordinances to:

- (1) Enforce the design and construction requirements of the Americans with Disabilities Act of 1990, as amended; this part; and any administrative rules adopted under this part, pertaining to the provision of parking spaces and access to parking spaces reserved for persons with disabilities, including but not limited to the number, location, design, and signage of these parking spaces; and
- (2) Establish penalties for failure to comply with the ordinances adopted pursuant to this section.

(b) An official appointed by a county may enter the property of [private entities] places of public accommodation to enforce any applicable ordinances adopted pursuant to this section.

"Place of public accommodation" has the same meaning as that provided in section 489-2."

Thank you for the opportunity to provide testimony.

Respectfully submitted,



KIRBY L. SHAW
Executive Director



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STATE COUNCIL
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February 14, 2023

The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Health and Human Services
and
The Honorable Senator Chris Lee, Chair
Senate Committee on Transportation and Culture and the Arts
The Thirty-Second Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Buenaventura, Senator Lee, and Committee Members:

SUBJECT: SB384 RELATING TO ACCESS FOR DISABLED PERSONS.

The Hawaii State Council on Developmental Disabilities **SUPPORTS SB384**, which authorizes each county to adopt ordinances to enforce the design, construction and signage requirements of the federal Americans with Disabilities Act of 1990, as amended; part III of chapter 291, Hawai'i Revised Statutes; and any administrative rules adopted under that part, including the establishment of penalties for failure to comply with the ordinance. Clarifies that an official appointed by a county may enter private property to enforce violations of the ordinances adopted by the county.

Designated accessible parking spaces enable people with mobility limitations, health conditions, or other challenges to have safe access to buildings and services in the community. Not only are these spaces needed to help many reach day-to-day businesses and services, but well-designed accessible parking spaces also provide accommodations that promote independence and active participation in the community. Safe and equitable access to parking can make the difference for someone when choosing to leave their home, work, or even where to live. Individuals with Intellectual/Developmental Disabilities (I/DD) may rely on accessible parking spaces to participate in the community and ensure independence. This measure ensures that their access is protected and enforced.

Thank you for the opportunity to submit testimony in **support of SB384**.

Sincerely,

Daintry Bartoldus
Executive Administrator

SB-384

Submitted on: 2/9/2023 9:36:14 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	Written Testimony Only

Comments:

Based on the premise of this bill- that it would strengthen enforcement of requirements to have sufficient accessible parking spaces in accordance with the law,- that is certainly a good thing. Accessible parking is obviously crucial to people with disabilities in order for them to have full integration into the day to day life in the community.

PETER L. FRITZ

T-MOBILE IP RELAY: (808) 568-0077

THE SENATE
THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2023

COMMITTEE ON HEALTH AND HUMAN SERVICES

COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

Testimony on S.B. 384
Hearing: February 14, 2023

RELATING TO ACCESS FOR DISABLED PERSONS.

Chairs San Buenaventura and Lee, Vice Chair Aquino and Inouye and members of the Committee, my name is Peter Fritz. I am an individual with a disability, an attorney, served in the past as member and chair of the Disability and Communication Access Board (DCAB) and the Rehabilitation Advisory Committee.

I **support the intent**, and request that the bill be amended to require DCAB to update its administrative rules to adopt the ADA standards for number, location, design, and signage of accessible parking spaces and to amend the bill to provide uniform penalties in the for violations of the ADA scoping requirements.

Allowing the counties to establish penalties for a failure to comply with the ADA is inconsistent with the legislative history of HRS 291.

Act 308 (SLH 1997) amended HRS 291, Part III primarily to establish consistency in the enforcement of monetary fines. The Legislature recognized that penalties for violations and requirements for signage and markings of parking spaces reserved for disabled persons were inconsistent among the various state and county agencies, and private property owners, and that this inconsistency caused confusion. There was a need and a desire for consistency for both public and private parking spaces reserved for disabled persons and Act 308 added a new section with a specified penalty. Uniform penalties will avoid confusion.

Uniformity is the reason that the State should promulgate administrative rules establishing the location, number, design

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and signage for parking requirements. Because the ADA is a federal law, the state cannot enforce the ADA, but must adopt ADA standards into state law. Requiring DCAB to revise the existing administrative rules to incorporate the ADA standards for location, number design and signage would provide a uniform standard for the counties to enforce and avoids confusion.

I respectfully ask the Committee to amend this measure to require DCAB to adopt ADA standards for number, location design and signage into its administrative rules and to amend this bill to provide a uniform penalty for violations.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Fritz", written over the typed name below it. The signature is stylized and cursive.

Peter L. Fritz

SB-384

Submitted on: 2/13/2023 3:13:38 PM

Testimony for HHS on 2/14/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
David Fukuzawa	Individual	Support	Written Testimony Only

Comments:

Dear Honorable Senators,

I am in support of this bill. As a disabled veteran of the US Navy, I am in support of this measure as it would definitely assist me and my mother-in-law who is wheelchair bound.

Thank you for your concern in this matter.

Sincerely,

David Fukuzawa