

ACT 282

S.B. NO. 1036

A Bill for an Act Relating to Persons with Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that when the commission on persons with disabilities, the Hawaii state coordinating council on deafness, and the architectural access committee were established by statute in 1978, 1987, and 1989, respectively, the State of Hawaii and the nation as a whole were on the verge of establishing laws to provide civil rights protections for persons with disabilities. This was successfully accomplished during the time span from 1974 to 1990 with the passage of the Rehabilitation Act and the Americans with Disabilities Act. During that period, many other federal civil rights laws were enacted or amended including the Individuals with Disabilities Education Act, formerly the Education for All Handicapped Children Act, the Federal Fair Housing Amendments Act, the Air Carrier Access Act, the Architectural Barriers Act, the Telecommunications Act, and the Uniform Systems for Handicapped Parking Act. Laws in the State of Hawaii were also enacted to mirror or exceed some of the same protections that were provided at the federal level. Throughout the nation, executive bodies such as "commissions," "councils," and "committees" were created primarily to advocate for the creation of laws. The legislature further finds that as the climate has shifted from creating laws to complying with laws, so must organizational structures change.

The purpose of this Act is to reorganize the commission on persons with disabilities, the Hawaii state coordinating council on deafness, and the architectural access committee to provide for more efficient coordination of state efforts to comply with disability access and civil rights laws through outreach and voluntary compliance by establishing the disability and communication access board. A reorganized structure will consolidate rulemaking responsibilities for facility accessibility guidelines, communication access guidelines, and handicapped parking rules, and will provide the administrative structure for other technical assistance and voluntary compliance functions. Current enforcement functions will not be affected.

This Act also acknowledges changes in functions that have resulted from the loss of thirty per cent funding over the past five years.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
DISABILITY AND COMMUNICATION ACCESS BOARD**

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Board" means the disability and communication access board.

"Members" means the members of the disability and communication access board.

§ -2 **Disability and communication access board.** There is established a disability and communication access board within the department of health for

administrative purposes, to be composed of seventeen members to be appointed by the governor for staggered terms pursuant to section 26-34. The members of the board shall include at least nine persons with various types of disabilities, or parents or guardians of persons with disabilities. Other members shall include individuals knowledgeable in areas for which the board has rulemaking authority. The members appointed shall include at least one resident from each of the counties of Honolulu, Hawaii, Maui, and Kauai.

The members shall serve without compensation, but shall be reimbursed their necessary and reasonable expenses incurred in the performance of their duties, including travel expenses.

§ **-3 Duties and functions of the board.** The board shall perform the following duties and functions:

- (1) Establish guidelines for the design of buildings and facilities by or on behalf of the State and counties in accordance with section 103-50;
- (2) Provide review and recommendations on all state and county plans for buildings and facilities, in accordance with section 103-50;
- (3) Establish guidelines for the utilization of communication access services provided for persons who are deaf, hard-of-hearing, or deaf-blind in state programs and activities. Guidelines include, but are not limited to, determining the qualifications of interpreters who may provide services, the amount of payment to interpreters, and the credentialing of interpreters who do not hold national certification via a state screening process;
- (4) Administer the statewide program for parking for disabled persons, in accordance with part III of chapter 291;
- (5) Serve as public advocate of persons with disabilities by providing advice and recommendations on matters relating to access for persons with disabilities, with emphasis on legislative matters, administrative rules, policies, and procedures of the state and county governments;
- (6) Review and assess the problems and needs relating to access for persons with disabilities in the State in order to provide recommendations in the improvement of laws and services;
- (7) Serve as the designated state agency to coordinate the efforts of the State to comply with the requirements of the Americans with Disabilities Act for access to services, employment, telecommunications, and facility and site design;
- (8) Provide technical assistance and guidance to, but not limited to, state and county entities in order to meet the requirements of state, federal, and county laws providing for access for persons with disabilities through public education programs and other voluntary compliance efforts; and
- (9) Administer funds allocated for its work, including disbursement and allocation of funds that may be available from public and private sources; provided that such disbursement and allocation shall be consistent with the specific requirements and purposes of this chapter.

§ **-4 Annual report.** The board shall report on its activities to the governor and the legislature at the end of each fiscal year, and may include recommendations consistent with the purposes of this chapter.

§ **-5 Staff.** The board may hire an executive director, who may hire staff to assist in the performance of the board's duties. The staff shall be hired without

regard to chapters 76 and 77; provided that the executive director and staff shall be eligible for participation in state employee benefit plans.

§ **-6 Rules.** The board may adopt rules pursuant to chapter 91, to implement this chapter, section 103-50, and part III of chapter 291.”

SECTION 3. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

“§103-50 Building design to consider needs of persons with disabilities. (a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings [and], facilities [by the State or any county, or on behalf of the State or any county subject to this chapter], and sites shall be prepared so that the buildings [and], facilities, and sites are accessible to and usable by persons with disabilities. The buildings [and], facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. [Pt.] part 1191, as adopted and amended by the [architectural access committee.] disability and communication access board under chapter

(b) All state and county agencies subject to this section shall seek advice and recommendations from the [commission on persons with disabilities] disability and communication access board on any construction plans[.] prior to commencing with construction.

(c) The disability and communication access board shall adopt rules pursuant to chapter 91 for the design of buildings and facilities by or on behalf of the State and counties to effectuate the purposes of this section, except that the board, without regard to chapter 91, instead, may adopt federal amendments to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. part 1191.

(d) The board may approve a site specific alternate design when an alternate design provides equal or greater access.

(e) For the purposes of this section, “public buildings, facilities, and sites” means buildings, facilities, and sites that:

- (1) Are designed, constructed, purchased, or leased with the use of any federal, state, or county funds;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public; or
- (3) Are constructed on state or county lands or lands that will be transferred to the state or a county.”

SECTION 4. Section 201G-344, Hawaii Revised Statutes, is amended to read as follows:

“[[§201G-344]] Rules. The corporation, in consultation with the [commission on persons with disabilities,] disability and communication access board, shall adopt rules in accordance with chapter 91 with respect to the administration of this program and the fund, including but not limited to rules concerning income eligibility, certification of medical necessity, and degree of physical disability.”

SECTION 5. Section 291-51, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Disability and communication access board” means the disability and communication access board established by chapter .”

SECTION 6. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

“§291-52 Issuance of removable windshield placard. Each county may issue one distinguishing placard to each disabled person who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold [at cost] to the counties at a rate negotiated by the [department of transportation.] disability and communication access board. The county may charge a fee to cover its costs.”

SECTION 7. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

“§291-56 Rules. The [department of transportation] disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance, renewal, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates, reciprocity, the replacement of lost or stolen placards, the design of the placard and special license plates, signage and marking of parking spaces, and penalties.”

SECTION 8. Section 103-50.5, Hawaii Revised Statutes, is repealed.

SECTION 9. Chapter 347D, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 348E, Hawaii Revised Statutes, is repealed.

SECTION 11. All rights, powers, functions, and duties of the commission on persons with disabilities, the Hawaii state coordinating council on deafness, and the architectural access committee are transferred to the disability and communication access board.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

SECTION 12. All rules, policies, procedures, guidelines, and other material adopted or developed by the commission on persons with disabilities, the Hawaii state coordinating council on deafness, the architectural access committee, or the department of transportation to implement provisions of the Hawaii Revised Statutes which are made applicable to the disability and communication access board by this Act, shall remain in full force and effect until amended or repealed by the disability and communication access board pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the commission on persons with disabilities, the Hawaii state coordinating council on deafness, the architectural access committee, or the department of transportation in those rules, policies, procedures, guidelines, and other material is amended to refer to the disability and communication access board as appropriate.

SECTION 13. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the commission on persons with disabilities, the Hawaii state coordinating council on deafness, the architectural access committee, or the department of transportation, relating to the functions

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transferred to the disability and communication access board shall be transferred with the functions to which they relate.

SECTION 14. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 2000; provided that sections 6 and 7 shall take effect on July 1, 2000.

(Approved July 6, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.