



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

AGENDA

Disability and Communication Access Board General Meeting

Location: AAFES Building
919 Ala Moana Blvd., Fifth Floor Conference Room
Date: November 9, 2017
Time: 11:00 a.m. to 1:00 p.m.

- I. Call to Order
- II. Roll Call
- III. Approval of Meeting Minutes of September 14, 2017
- IV. Executive Director's Report
 - Office Move
 - Budget
- V. Old Business
 - A. State and County Motor Vehicle Weight Tax and Lift-Equipped Non-Commercial Vehicles - Update
 - B. ADA Coordination Update
- VI. New Business
 - A. ADA Education and Reform Act (refer to staff summary)
 - B. General Excise Tax on Vehicles Modified for Use by a Person with a Disability (refer to staff summary)
- VII. Committee Reports
 - A. Executive Committee (refer to minutes of September 14, 2017)
 - Budget for FY 2017-2018
 - B. Legislative Committee (No report)
 - C. Standing Committee on Communication Access
 - Hawaii Quality Assurance System – Update

- Hawaii Administrative Rules, Title 11, Chapter 218, “Communication Access Services for Deaf, Hard of Hearing, and Deaf-Blind”
- SCR 32 Working Group on American Sign Language (ASL) Interpreter Regulations - Update
- ASL Interpreter Continuing Education Unit Workshops
- 2018 Legislation on Open Captioning of Movies
- Other Communication Activities from the Plan of Action

D. Standing Committee on Facility Access

- Document Reviews – Update
- Interpretive Opinion DCAB 2017-02: Employee Accessible Parking
- Other Facility Access Activities from the Plan of Action

E. Standing Committee on Parking

- Statistics and Annual Report FY 2016-2017
- Parking Program Changes (Application Form, User Guide) – Update
- 2018 Legislation on Parking
- Legislative Informational Briefing on Parking Program Eligibility
- Outreach Efforts - Update
- Other Parking Activities from the Plan of Action

F. Special Parent Information Network

- Update of Activities for Informational Purposes Only

VIII. Open Forum

IX. Next Meeting: January 18, 2018

X. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact (808) 586-8121 (voice) or email at dcab@doh.hawaii.gov by November 3, 2017.



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MINUTES

Disability and Communication Access Board General Meeting

Location: AAFES Building
919 Ala Moana Blvd., Fifth Floor Conference Room
Date: November 9, 2017
Time: 11:00 a.m.

PRESENT: Bill Bow, Chairperson; Monty Anderson-Nitahara, Pauline Aughe, Rosanna Daniel-Kanetake, Scott Fleming, Nikki Kepoo, Marie Kimmey, Summer Kozai, Phyllis Meighen, Yolanda Phelan, Bryant Yabui, Board Members; Francine Wai, Debbie Jackson, Kristine Pagano, Kirby Shaw, Duane Buote, Bryan Mick, Colin Whited, Peggy Liang, Staff

ABSENT: Ed Chevy, Michael Okamoto, Misella Tomita, Board Members

SIGN LANGUAGE

INTERPRETERS: Mala Arkin and Darlene Baird

GUESTS: Barbara Fischlowitz-Leong, Dmitrii Russu, Puanani McBride

- I. The meeting was called to order at 11:15 a.m. by Chairperson Bill Bow.
- II. Minutes of the September 14, 2017 meeting were approved as circulated (M/S/P Phelan/Daniel-Kanetake).
- III. Executive Director's Report

Francine Wai noted that the office move is nearly completed, with only a few minor installation issues remaining. The entire building had an Open House on October 31, 2017 followed by a formal rededication of the building to Princess Victoria Kamamalu on November 1, 2017. She reminded members that future meetings will be held at the new office. Members should contact the office for a parking pass for Iolani Palace or seek reimbursement for parking at Alii Place.

Francine Wai also reported that DCAB's budget for the current fiscal year 2017-2018 has been revised. At the last Board meeting, she indicated that all Departments were imposed a 10% restriction (5% firm and 5% discretionary based on tax revenues). The restrictions were adjusted for DCAB to be a flat amount of \$50,000, which represents about a 6-7% restriction. Thus, the Executive Committee will report later on both the original budget and will be

meeting immediately after this meeting to discuss how to spend the new available monies.

IV. Old Business

A. State and County Motor Vehicle Weight Tax and Lift-Equipped Non-Commercial Vehicles – Update

Bryan Mick noted that at the last DCAB meeting, the Board voted to pursue and support legislation amending the definition of 'net weight' to exempt the weight of accessibility modifications to non-commercial vehicles. The motor vehicle weight tax is a combination of state tax and a county tax, each determined separately. Because the deadline for bills through the Administration has passed, DCAB cannot formally seek a bill through the Governor at the State level. However, bills can be introduced at the County level at any time. Staff has made preliminary contacts with the County to seek assistance in preparing a proposed ordinance at the County level.

B. ADA Coordination - Update

Debbie Jackson reported that she distributed an ADA Coordination Report by email to Board members. She highlighted that DCAB voted to send a letter to both the Counties of Maui and Hawaii to urge their appointment of an ADA Coordinator. Both Counties responded. The County of Maui has appointed Sandy Baz, an attorney, to the position and the County of Hawaii has appointed a person to begin December 1, 2017 but has not yet publicly released the name of the person. There were no other questions on the Report.

V. New Business

A. ADA Education and Reform Act

Debbie Jackson referred members to the staff summary that was sent to all the members. She noted that the bill was raised at the September 14, 2017 Board meeting as an introduction but no action was taken. Staff was asked to monitor the bill. The current staff summary provides an update on the proposed legislation with more information from national advocacy groups that are opposing the proposed bill. After discussion, the Board voted to support staff's recommendation to oppose the bill and ask our Congressional delegation to oppose the bill (M/S/P Kepoo/Meighen).

B. General Excise Tax on Vehicles Modified for Use by a Person with a Disability

Francine Wai stated that this topic is an extension of the prior discussion on the Motor Vehicle Weight Tax (under V. Old Business, Item A on the agenda). Board members were referred to the staff summary emailed to

all members. Bryan Mick explained that an exemption from the general excise (GE) tax for consumers is not done in Hawaii, given Hawaii's tax structure where we do not have a sales tax on consumer purchases. A GE tax is paid by a business, although typically passed on to the consumer. Hence, our tax code tries to assist consumers by providing a tax credit to offset the GE tax that is passed on to the consumer. The members agreed on the concept of a tax credit and discussed the amount of the tax credit recommended by staff. Members felt that the maximum amount should reflect the higher end of the spectrum of costs. Therefore, the Board voted to pursue and support state legislation to add an income tax credit of up to \$800 for retrofitting or purchasing a non-commercial vehicle equipped with a wheelchair lift or ramp and an income tax credit of up to \$5,000 for retrofitting or purchasing a non-commercial vehicle that is fully adaptable for use by a person with a disability (M/S/P Kepoo/Anderson-Nitahara).

VI. Committee Reports

A. Executive Committee

Chairperson Bill Bow referred members to the Expenditure Plan for FY 2017-2018 that were sent with the draft minutes of the September 14, 2017 Executive Committee meeting and then again yesterday for reference. The proposed Expenditure Plan for this year needs approval of the full Board. He reminded members that the Executive Committee will be meeting immediately after this meeting to discuss the additional monies available due to the revised restrictions. The revisions will be presented at the next Board meeting. The first Expenditure Plan was approved as reported in the Executive Committee minutes (M/S/P Kimmey/Phelan).

B. Legislative Committee

There was no Committee report.

C. Standing Committee on Communication Access

Nikki Kepoo reported in the absence of Chairperson Misella Tomita. With respect to the Hawaii Quality Assurance System (HQAS), there are currently thirty-one interpreters enrolled in the HQAS Continuing Education Program. Since the last Board meeting, the HQAS test performance of one HQAS Level IV interpreter was evaluated; they were issued an HQAS Level V credential. An HQAS test was administered on November 3, 2017 and evaluation results will be available soon.

The Committee is continuing to work on the administrative rules. The Committee will continue to wait until all the changes are made before asking for a full Board vote.

The Senate Concurrent Resolution (SCR) 32 Working Group, which was convened to examine the need for regulation of sign language interpreters and sign language interpreter referral agencies, held its second meeting. At this meeting, subgroups were formed to consider ways to gather data from specific stakeholder groups in the community. The Working Group's current focus is on identifying concerns or challenges that the community has encountered relating to the provision of interpreter services. Toward the end of December, an informational meeting will be held at the Legislature to discuss the progress of the Working Group.

The Communication Access Program set aside a small fund of \$1,600 to sponsor continuing education workshops for interpreters. Applications were due September 30, 2017. The Committee asked DCAB staff to review the applications and make a recommendation at the next Committee meeting on November 15, 2017.

At the previous Board meeting, it was announced that DCAB finalized the proposed bill and justification sheet for open captioning at movie theaters. Staff is still waiting for a decision on whether the measure will be included in the Governor's Administrative package.

D. Standing Committee on Facility Access

Marie Kimmey reported in the absence of Committee Chairperson Michael Okamoto. She reported that the Committee took up the issue of Interpretive Opinion 2017-2 as it relates to employee parking but took no action. Instead, the Committee will defer to the Program and Policy Development Unit working on amendments to the Hawaii Administrative Rules, Title 11, Chapter 219 on parking for persons with disabilities. The Committee will draft a recommendation to the Standing Committee on Parking regarding the suggested revisions to the parking rules.

The Committee also discussed topics for a potential spring 2018 Disability Access Conference. The Facility Access Unit will be working on arranging a location, date, and agenda before the next Board meeting.

The Facility Access Unit is also in the process of having a new database developed to create better efficiency within the document review process. The Committee discussed different options proposed by the database developer. The new system, when developed, will centralize records, eliminate duplicate entries, and be environmentally friendly by reducing the use of paper.

E. Standing Committee on Parking

Chairperson Pauline Aughe reported that the Standing Committee on Parking met earlier in the day. As of July 1, 2017, DCAB discontinued notification of permittees whose permits were about to expire. The renewal rate for September and October was 55%, the rate for the months

when DCAB provided direct notification of pending expirations was 58%. Therefore, there was no perceptible difference due to the discontinuation of the notices. In that two-month time period, 1,325 eligible permittees did not renew their permit and 2,534 people applied for their first permit, resulting in an overall net increase of 1,029 active permits.

Chairperson Pauline Aughe noted that the 'Users Guide' which has useful information for the permittees and is provided with every issued parking permit, was distributed to the counties.

State Senator Josh Green's office has not set a date for an information briefing which would cover among other topics, why DCAB opposes expanding parking permit eligibility to include people who are blind or visually impaired. Staff is continuing to work with Senator Green's office.

Staff is working on doing outreach directly to ophthalmologists. While technically they can certify someone for a parking permit as a medical doctor (M.D.), as a practical matter, none of the qualifying mobility conditions fall under their area of expertise. DCAB has discovered that some ophthalmologists assume low vision is a qualifying condition and therefore check the box for 'cannot walk without the assistance of another person' as the qualifying condition. Hopefully, this can be mitigated with educational efforts.

Finally, she noted that the parking locator app has been upgraded for Android by our contractor, which clears the way for staff to seek and train parking program liaisons in the four counties. The parking app functionality will be important as DCAB develops a role for our community parking liaisons.

F. Special Parent Information Network

Phyllis Meighen, liaison to the Special Parent Information Network (SPIN) Advisory Committee, reported that the SPIN Conference will be held on April 21, 2018 at the University of Hawaii Conference Center with sixteen workshops for parents and educators. The theme for the Conference is "Games." She indicated that a written report from the SPIN staff on SPIN and Special Education Advisory Council activities will be sent out with the minutes.

VII. Open Forum

Board member Nikki Kepoo asked if there exists a deaf bill of rights, specifically as it pertains to children who are deaf. No one was aware of such a policy in existence in the state. She indicated that she will be bringing up the issue to the Early Intervention Working Group and may seek DCAB involvement at a later date.

Board member Landa Phelan announced that the emergency preparedness training that she conducted in Saipan in the past is now part of ongoing their training. She said, however, that she was not aware of guidance on a potential nuclear attack. Debbie Jackson indicated that the Hawaii Emergency Management Agency has fact sheets on its web site on preparing for a nuclear attack.

VIII. Next Meeting

Chairperson Bill Bow reminded members that the next Board meeting on January 18, 2018 will be at the Kamamalu Building. Staff will provide members with a four-hour parking pass for Iolani Palace for the meeting. However, if parking is not available, people should park in Alii Place and save the parking receipt for reimbursement.

IX. The meeting was adjourned at 12:35 p.m.

NOTE: All votes were unanimous unless otherwise noted.

Respectfully submitted,



FRANCINE WAI



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Disability and Communication Access Board General Meeting ADA Coordination Update November 9, 2017

Since the last Board meeting on September 14, 2017, ADA Coordination activities included:

1. Technical assistance (TA) relating to programs and services provided by all DCAB staff (September and October 2017). Examples of significant TA to the following State ADA Coordinators or Departments are:

Situation/Department/Agency

Issue

University of Hawaii

Planning a trip for students to New Zealand and one student has a disability. What should they do to see if the person qualifies to go on the trip because they don't have a clear policy?
Require medical clearance from all applicants, and have an interview process to determine who meets eligibility criteria. Eligibility criteria cannot be based on a person's disability.

Business, Economic
Development and Tourism

How are other state agencies handling web site accessibility? Their department wants to have their web site accessible to everyone.
Suggested setting up something similar to a Self-Evaluation and Transition Plan that includes what needs to be done, how many web sites their department has, and establish a timetable for how they will accomplish having all of their web sites accessible and by when it will be completed. Begin developing the plan and working on creating and maintain their web sites in an accessible format as soon as possible.

Land and Natural Resources

A person with a disability using a service animal was approached by staff and asked the two questions permitted by DOJ regarding a service animal. Instead of answering the question, the person showed him a driver's license with a picture of the person with his service animal. Does the state issue driver's licenses with such pictures?
Driver's license pictures are only of the driver in the City and County of Honolulu. The license may have been issued from another state. Suggested that the next time this happens, the staff should take a picture of the license.

Stadium Authority

Currently having a problem with a customer with a service animal that is complaining about being harassed by various staff about his service animal. Is there a way they can tag the dog when it comes through the front gate so no other staff will approach him about the dog?
Individual needs to answer the two DOJ questions to the satisfaction of the Stadium Authority staff. Suggested that there

is a policy that once the person with a service animal is through the gate at the stadium, that staff inside the stadium does not approach the person with the service animal. If there is a problem with the service animal's behavior, the appropriate stadium staff be contacted to handle the situation. DCAB does not recommend identifying the dog with a special tag.

2. Hosted four ADA webinars:
 - Two webinars sponsored by the Pacific ADA Center on:
 - "Facebook Friends - Workplace Enemies"
 - "Reasonable Accommodation Update"
 - Two webinars sponsored by the U.S. Access Board on:
 - "Open Questions and Answers"
 - "Accessible Hospitals and Medical Care Facilities – A Refresher"
3. Maintained current information on the ADA Coordinators secured web site and DCAB's web site by ensuring a current list of ADA Coordinators was available.
4. Attended a County ADA Coordinators meeting via teleconference with coordinators from the County of Kauai, City and County of Honolulu, and DCAB.
5. Sent letters to the Counties of Hawaii and Maui to ask the respective Mayors to appoint new ADA Coordinators (per DCAB Board vote).
6. Conducted one training on television on "Issues Impacting Persons with Disabilities in Condominiums."
7. Two DCAB staff attended the Pacific ADA Conference in California (Francine Wai in San Francisco and Rodney Kanno in Los Angeles).
8. Provided technical assistance to the Hawaii Public Housing Authority, Libraries, Office of Enterprise Technology Services, Office of Planning, Senate, Judiciary, Departments of Business, Economic Development and Tourism, Health, Land and Natural Resources, Public Safety, Transportation, University of Hawaii at Manoa, and the Counties of Maui, and the City and County of Honolulu on various issues related to access to programs and services.
9. Provided technical assistance to the Department of Education on reasonable accommodations for applicants/employees with disabilities.
10. Provided technical assistance to one hundred forty-eight callers in September and October 2017 on issues related to the ADA.

Any questions regarding ADA Coordination activities should be directed to Debbie Jackson at 586-8121 or debbra.jackson@doh.hawaii.gov.



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STAFF SUMMARY FOR THE DISABILITY AND COMMUNICATION ACCESS BOARD GENERAL MEETING November 9, 2017

TOPIC: H.R. 620 - ADA Education and Reform Act of 2017

SUMMARY:

H.R. 620 was introduced by Representative Ted Poe from Texas in the 115th Congress. H.R. 620 was referred to the House Committee on Judiciary and then to the Judiciary Subcommittee on Constitution and Civil Justice in April. On May 11, 2017, a staff summary was submitted to the Board with no position taken related to this measure at the May General meeting.

The purpose of this bill is to amend the Americans with Disabilities Act (ADA), promote compliance through education, clarify requirements for demand letters, to provide for notice and cure period before beginning a lawsuit, and for other purposes. It requires the Disability Rights Section of the Department of Justice (DOJ) to develop a program to educate state and local governments and property owners on strategies for promoting access to public accommodations for persons with a disability. The program may include training for professionals to provide guidance of remediation for potential violations of the ADA.

This bill prohibits civil actions based on the failure to remove an architectural barrier to access into an existing public accommodation unless: (1) the aggrieved person has provided to the owners or operators a written notice specific enough to identify the barrier, and (2) the owners or operators fail to provide the person with a written description outlining improvements that will be made to improve the barrier or they fail to remove the barrier or make substantial progress after providing such a description. The aggrieved person's notice must specify: (1) the address of the property, (2) the specific ADA sections alleged to have been violated, (3) whether a request for assistance in removing an architectural barrier was made, and (4) whether the barrier was permanent or temporary.

The Judicial Conference of the United States must develop a model program to promote alternative dispute resolution mechanisms to resolve such claims. The model program should include an expedited method for determining relevant facts related to such barriers and steps to resolve accessibility issues before litigation.

The House Judiciary Subcommittee on Constitution and Civil Justice discussed the bill on September 7, 2017. No changes to the bill were made. No other action has been taken on the bill. The decision of the subcommittee needs to be reviewed and voted on by the full Judiciary Committee before it moves on.

ANALYSIS:

The ADA is already very carefully crafted to take the needs of business owners into account. Compliance is not burdensome. **But this bill would remove any reason for businesses to comply. Instead, they can take a "wait and see" attitude, and do nothing until they happen to be sued or sent a notice letter.**

The notification proposal included in this bill weakens the Title III of the ADA which is the basis of civil rights for people with disabilities attempting to access businesses such as stores, restaurants, hotels, etc. Doing so would undermine the principles of an inclusive society that we have all supported since the ADA was passed and turns people with disabilities into second-class citizens. It does not take into account real-life experiences of individuals with disabilities who cannot shop, transact personal business, or enjoy recreation that other Americans without disabilities take for granted.

This measure requires DOJ to provide education regarding the ADA. The DOJ and other federal agencies have already done extensive education with business owners and have information posted on various federal ADA web sites. The DOJ has an ADA hotline, federal agencies responsible for enforcement of the various titles of the ADA provide extensive technical assistance materials, and the DOJ has established ten federally-funded regional technical assistance ADA Centers that provide in depth resources and training in every state.

It also requires the Judicial Conference of the United States to develop a model mediation program for barrier removal, and the DOJ has already funded and supported a mediation program for many years. The ADA Mediation Program has been successful in providing an alternative to litigation by resolving issues between public accommodations and local community members with disabilities that meets everyone's needs and preserves rather than severs the relationship between parties. Over six thousand complaints were filed with DOJ and ninety percent of these ADA Title III cases were resolved. Approximately half of the resolved cases involved barrier removal issues.

Proponents of this bill support the notification requirements because they state that it is onerous for small businesses to understand specific access requirements set forth under the ADA and that there are frequent "drive-by lawsuits" by individuals who do not patronize the business who demand payments rather than access.

No other protected classes are subjected to requirements for notification or a six-month response period for the accused party as prescribed under this bill. The same provisions for civil rights for other protected classes should remain consistent to allow people with disabilities to enforce their rights for equal access.

This bill not only weakens the ADA, but duplicates education and mediation efforts what are already in place. By doing so, it is not consistent with DCAB's core value that persons with disabilities be accorded just and equal status, responsibility, and benefits in society and that we will ensure all activities conducted will provide equal access to persons with disabilities.

STAFF RECOMMENDATION:

Staff recommends that DCAB oppose H.R. 620 and send a letter to the Hawaii Congressional delegation and the Chair of the Judiciary Committee.



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STAFF SUMMARY FOR THE DISABILITY AND COMMUNICATION ACCESS BOARD GENERAL MEETING November 9, 2017

TOPIC: General Excise Tax on Vehicles Modified for Use by a Person with a Disability

SUMMARY:

People who retrofit or purchase a vehicle that has already been modified for use by a person with a disability pay the State General Excise Tax (GET), currently set at 4.5 percent on Oahu and 4.0 percent in the other three counties. Staff believes financial relief from the GET should be provided for people purchasing or retrofitting vehicles for use by a person with a disability.

ANALYSIS:

Hawaii is the only State to currently impose a GET in lieu of a traditional sales tax. Unlike a sales tax, the GET is assessed at every stage in a product's cycle (wholesale, retail, etc.) and is a tax on the business, not on the consumer. However, the seller has the option to collect an amount equal to its GET liability from the other party, including consumers, and most do so, which increases the final price of a product or service. Because of the GET being imposed in several different stages, it is very difficult to exempt certain types of services or products such as medicine or food staples from the GET and Hawaii does not do so. However, it is possible to give an income tax credit to help offset the GET impact. Hawaii has several Tax Credits to Promote Social Welfare, such as the Refundable Food Excise Tax Credit and the Tax Credit for Child Passenger Restraint Systems.

The cost for a vehicle wheelchair lift or ramp runs between \$10,000 to \$20,000, which translates into a GET of \$400 to \$800. A fully adapted vehicle (automatic wheelchair securement, foot steering, etc.) may cost up to \$80,000 in comparison to a non-modified vehicle. The GET for those modifications could result in a GET of up to \$3,200.

STAFF RECOMMENDATION:

Staff recommends that DCAB formally pursue and support State legislation to add an income tax credit of up to \$500 for retrofitting or purchasing a non-commercial vehicle equipped with a wheelchair lift or ramp and an income tax credit of up to \$3,000 for retrofitting or purchasing a non-commercial vehicle that is fully adaptable for use by a person with a disability.

SPIN Report for November 2017

HawaiiKidsCAN Educational Equity Symposium

HawaiiKidsCAN, a newly formed advocacy organization aimed at ensuring an equitable, high-quality education for every child in Hawaii, held an educational equity symposium on September 16th at the Impact Hub in Honolulu. SPIN staff Susan Rocco joined Martha Guinan and Steven Vannatta as part of the Special Education Advisory Council (SEAC) leadership team to offer a discussion group on inclusive education. Superintendent Kishimoto and a Hmong-American legislator from Minnesota were keynote speakers.

October 21, 2017 Footsteps to Transition Fair Results

After planning for ten months with the Department of Education (DOE) and nine other disability organizations, the Fair drew between 250-300 families and vendors to the Windward Community College for a half day of networking and presentations on preparing students with disabilities for post-secondary supports and services in education, employment, recreation and social opportunities. Next year's transition fair will be hosted by Central District DOE.

Pac Rim Conference

SPIN staff attended the Pacific Rim International Conference October 9-11 in Waikiki which drew about 1000 participants from around the globe. Of greatest interest to SPIN were presentations on school redesign, inclusive education, special education evidence-based practices, technology for all and transition to adult life.

Council for Exceptional Children (CEC)

Amanda Kaahanui's presentation on parent-school partnerships was well received at a CEC Conference September 23rd at the UH-West Oahu campus. CEC is an advocacy organization primarily made up of special educators at the school level and university level (both professors and pre-service students).