



§103-50, Hawaii Revised Statutes An Overview of the Legislative History and Implementation

**Disability and Communication Access Board
1010 Richards Street, Room 118
Honolulu, HI 96813**

Updated November 2018

TABLE OF CONTENTS

	Page
Introduction	1
The Early, Non-Regulatory Years (Pre-1989)	1
○ Act 3 (1965 Legislature)	
○ Act 260 (1969 Legislature)	
○ Administrative Structure (Pre-1989)	
The Beginning of a Structure in State Government and the Formative Years (1989 to 1999)	3
○ Act 382 (1989 Legislature)	
○ The Americans with Disabilities Act, P.L. 101-336 (1991)	
○ Act 308 (1993 Legislature)	
○ House Concurrent Resolution 314 (1994 Legislature)	
○ Hawaii Administrative Rules, Title 11, Chapter 217 (1995, new)	
○ Act 163 (1996 Legislature)	
○ Governor's Directives of 1997 and 1998	
The Formal Review Process (1999 to present)	8
○ Act 282 (1999 Legislature)	
○ Hawaii Administrative Rules Title 11, Chapter 216 (2000, new) Title 11, Chapter 217 (2000, amended)	
○ Act 42 (2002 Legislature)	
○ Hawaii Administrative Rules Title 11, Chapter 216 (2003, amended) Title 11, Chapter 217 (2003, amended)	
○ Act 277 (2012 Legislature)	
○ Hawaii Administrative Rules Title 11, Chapter 216 (2013, amended) Title 11, Chapter 217 (2013, repealed)	
○ Act 45 (2015 Legislature)	

INTRODUCTION

Ensuring that government buildings, facilities, and sites in the State of Hawaii are designed and constructed so as to be accessible to and usable by people with disabilities is not only required by law, but also a critical social policy. This paper provides a historical context of efforts to achieve such facility access in the State of Hawaii.¹ This summary emphasizes Hawaii state law, rules, and policies, specifically §103-50, Hawaii Revised Statutes (HRS).

THE EARLY, NON-REGULATORY YEARS (PRE-1989)

Act 3 (1965 Legislature)

The portion of state law that has come to be known as §103-50, HRS was initially enacted into law in 1965 via Act 3, “An Act Relating to Construction of Government Buildings and Facilities”, pre-dating any federal laws relating to access for persons with disabilities. A new section of the Revised Laws of Hawaii 1955 was created to establish a minimum standard for access to government facilities:

Section 9-57. Building design to consider needs of handicapped. Notwithstanding the provisions of any law to the contrary, all plans and specifications for the construction of public buildings and facilities by the State or any political subdivision thereof subject to the provisions of chapter 9 Revised Laws of Hawaii 1955, as amended, shall include facilities for the physically handicapped to the extent deemed feasible by the contracting officer of the State or such political subdivision. Such facilities, insofar as feasible, shall conform to the latest issue of the “American Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped” as approved by the American Standards Association, Inc. (A117.1).^{2,3}

The prevailing design standard in 1965 was set by the American Standards Association and was known as ANSI A117.1, a standard developed by private industry and often incorporated in part in various building codes and other state laws. ANSI was the most appropriate design standard to reference.

Although state law mandated conformance to this standard, there was no review process or enforcement. Furthermore, the inclusion of the words “insofar as feasible” made the law nearly useless due to the discretion of the contracting officer of the state or counties.

¹ This paper only discusses access to buildings, facilities, and sites of state and county government. It does not address the private sector building codes except in the section regarding “Issues for Consideration in 2009”.

² Section 2, Act 3-1965.

³ The predecessor to the current Hawaii Revised Statutes was the Revised Laws of Hawaii 1955; hence the numbering system of Section 9-57 does not conform to the current §103-50, Hawaii Revised Statutes. The designation of Section 9-57 was set after Act 3 was passed.

Act 260 (1969 Legislature)

In 1969, the Legislature amended the law via Act 260, “A Bill for an Act Relating to Architectural and Highway Crossing Barriers to the Physically Handicapped and Amending Section 9-57 of the Revised Laws of Hawaii 1955”. The primary change in the law was to remove the language “insofar as feasible” and to remove the discretion given to state and county agencies. However, there was still no review process, nor enforcement. Section 9-57 was amended to read as follows:

Section 9-57. Building design to consider needs of handicapped. Notwithstanding the provisions of any law to the contrary, all plans and specifications for the construction of public buildings and facilities by the State or any political subdivision thereof subject to this chapter shall be prepared so the buildings and facilities are accessible and usable by the physically handicapped. The buildings and facilities shall conform to the latest issue of the “American Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped” as approved by the American Standards Association, Inc. (A117.1).^{4,5}

Although not codified into statute, the Act also stated that “the state highway safety coordinator, under his authority dealing with highway design, construction, and maintenance and his authority dealing with pedestrian safety, shall provide that appropriate facilities be constructed at certain street locations for the use of physically handicapped persons.”⁶ Senate Committee Report 918-1969 and House Committee Reports 153-1969 and 628-1969 also clarified legislative intent that exterior sites, such as curb cuts, were included in the parameters of the law.

Administrative Structure (Pre-1989)

Section 9-57 Revised Laws of Hawaii and §103-50, HRS had no review process or enforcement authority. Although the Commission on the Handicapped had been in existence since 1977,⁷ there was no staff assigned to review plans other than on a consultative basis if and when a state or county agency asked for technical assistance. Hawaii had a law on the books but with “no teeth” for more than twenty (20) years.

⁴ Section 1, Act 260-1969.

⁵ The Revised Laws of Hawaii 1955 were re-codified by Act 16 of the 1968 Legislature. The renumbering by the Revisor of Statutes in the current Hawaii Revised Statutes was post-Act 260 and resulted in this section becoming §103-50, Hawaii Revised Statutes.

⁶ Section 2, Act 260-1969.

⁷ The Commission on the Handicapped was established in statute, §348E, Hawaii Revised Statutes by Act 204 of the 1977 Legislature.

THE BEGINNING OF A STRUCTURE IN STATE GOVERNMENT AND THE FORMATIVE YEARS (1989 to 1999)

Although a law and design standard had been on the books since 1965 for over twenty (20) years, the absence of any review process prior to construction resulted in inaccessible buildings being designed and constructed. The year 1989 marked the beginning of establishing a structure in state government, a structure that lasted for approximately ten (10) years from 1989 to 1999.

Act 382 (1989 Legislature)

In 1989 the State made significant strides in establishing a structure to put some 'teeth' into the very weak statute. Act 382, "An Act Relating to Handicapped Access", made three (3) major changes in the law:

- (1) Changed the design standard in §103-50, HRS to the Uniform Federal Accessibility Standards (UFAS);
- (2) Established a review process within the Commission on Persons with Disabilities;⁸
- (3) Created the Architectural Access Committee under §103-50.5, HRS.

The changes in §103-50, HRS were prompted by the recognition that the previous design standard, ANSI, while upgraded periodically, had been superceded in the public sector by the Uniform Federal Accessibility Standards (UFAS), adopted by four (4) federal standard setting agencies in 1984. ANSI was still used in the private sector and was the basis for the model building codes, but the federal government had adopted and referenced UFAS for compliance purposes under both the federal Architectural Barriers Act and Section 504 of the Rehabilitation Act.

Act 382-1989 added statutory language requiring that all agencies subject to this section seek advice and recommendation from the Commission on Persons with Disabilities on any construction plans. Hawaii was, in fact, one of the first states in the nation to create a review process within state government under the auspices of the Commission. Section 103-50, HRS was amended to read as follows:

- §103-50. Building design to consider needs of handicapped. (a) Notwithstanding any law to the contrary, all plans and specifications for the construction of public buildings and facilities by the State or any political subdivision thereof subject to this chapter shall be prepared so the buildings and facilities are accessible to and usable by the physically handicapped. The buildings and facilities shall conform to the Uniform Federal Accessibility Standards, 41 C.F.R §101-19.6, Appendix A.
- (b) All agencies subject to this section shall seek advice and recommendation from the commission on the handicapped on any construction plans.⁹

⁸ Commission on the Handicapped was renamed the Commission on Persons with Disabilities in Act 187-1989, then was later disbanded and merged into the Disability and Communication Access Board.

⁹ Section 2, Act 382-1989.

It should be noted that the Legislature debated but decided against having the review process of the Commission be a required 'approval' similar to other permitting agencies. The prevailing sentiment was that another approval function (similar to the Fire Code, Elevator Code, Building Code, Sanitation Code) would be cumbersome and possibly could unnecessarily delay construction projects. Thus, the mandate in statute was for agencies to seek 'advice and recommendation' rather than 'review and approval', similar to the role of an environmental impact statement, which would not be binding on the department. The document reviews of the Commission thus contained a statement that "final authority for compliance rests with the Department or Agency overseeing the project."

Separate from the review process given to the Commission on Persons with Disabilities under §103-50, HRS, Act 382-1989 also created an Architectural Access Committee under §103-50.5, HRS, with the authority to vary specific requirements in the federal design guidelines, as well as to establish guidelines not covered in UFAS. The Legislature chose to create a separate body to insulate the document review process from the standard setting and granting variances. It was intended that such a Committee would function much like a building board of appeals at the state level for accessibility issues raised in the state and county construction process. Hence, a three (3) person, Governor-appointed Committee was created. The Legislature understood the uniqueness of Hawaii's built environment and intended to provide an administrative mechanism for agencies of the state and county to depart from the guidelines, if appropriate, without compromising accessibility. At the same time the Legislature was advised that the UFAS was not as comprehensive as needed in Hawaii. Specific areas noted were residential projects (affecting state and county low and moderate income projects) and children's facilities. Thus, the Legislature gave the Architectural Access Committee the authority to set guidelines, pursuant to a public hearing process, to exceed UFAS.

§103-50.5 Architectural access committee. (a) There is established within the department of health for administrative purposes, an architectural access committee to be composed of three members to be appointed by the governor for staggered terms of four years without the advice and consent of the senate. The members shall have a special interest or knowledge concerning design standards for persons with disabilities.

(b) The committee shall have the authority to vary specific requirements of section 103-50 when the variance will ensure an alternate design that provides equal access for persons with disabilities; and to establish guidelines for design specifications not covered in the Uniform Federal Accessibility Standards ...¹⁰

The Americans with Disabilities Act, P.L. 101-336 (1991)

Close on the heels of Act 382-1989 at the state level was the passage of the landmark Americans with Disabilities Act (ADA) on July 26, 1990 as federal Public Law 101-336. The ADA revolutionized disability rights in America with the creation of a national civil rights law. The ADA directed the U.S. Access Board, then known as the Architectural and Transportation Barriers Compliance Board, to promulgate a new

¹⁰ Section 1, Act 382-1989. Other portions of the Act not noted here authorized staffing, funding, and rulemaking authority.

design guideline for access for people with disabilities within a year of passage of the ADA. On July 26, 1991 the U.S. Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG). For privately-owned places of public accommodation and commercial facilities covered under Title III of the ADA, the U.S. Department of Justice on July 26, 1991 made ADAAG the minimum enforceable standard. For state and local government entities, covered under Title II of the ADA, the U.S. Department of Justice gave state and local government entities the option of following either UFAS or ADAAG.

Act 308 (1993 Legislature)

The passage of the ADA and the subsequent adoption of the ADAAG at the federal level prompted the Legislature to replace UFAS with ADAAG in state law. In Act 308, “An Act Relating to Persons with Disabilities”, the Legislature found that the ADA Accessibility Guidelines, as the singular standard, will ensure that privately-owned places of public accommodation, and state and county government facilities are accessible to persons with disabilities by requiring planners, designers, and contractors to design and construct accessible features conforming to a uniform standard.¹¹ Although state and county governments had the discretion of choosing between UFAS and ADAAG at the federal level, the Legislature took away the choice by selecting ADAAG.

The Legislature also found that projects that were not formally constructed by the state or county were not subject to §103-50, HRS. Creative funding and lack of funding by state and local government resulted in projects constructed by volunteers (e.g., school projects or playgrounds constructed by parent student teacher associations, park projects constructed by civic groups) or by private entities as a condition of permit (e.g., public rights-of-way constructed by businesses adjacent to their property, affordable housing projects by private housing developers) and later turned over to the state or county. The Legislature wanted to ensure that those projects would not become government liabilities for lack of compliance when the state or county assumed control. Hence, the Legislature added wording to include projects constructed “on behalf of the State or any county.” The Legislature was presented with anecdotal evidence of such non-compliant projects but did not have comprehensive data as to the magnitude of such projects. Thus, the Legislature also amended §103-50, HRS, to require an annual report of donated facilities.

§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 county, or on behalf of the State or any county subject to this chapter shall be prepared so the buildings and facilities are accessible to and usable by persons with disabilities. The buildings and facilities shall conform to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R, Pt. 1191.

(b) The comptroller and the director of finance shall provide the legislature with an annual report of the number of types of buildings or facilities donated or being donated to the State or counties during the year, and the costs, if any, of bringing those

¹¹ Section 1, Act 308-1993.

buildings or facilities into compliance with the guidelines. The report shall be submitted to each house of the legislature no later than twenty days before the convening of each regular legislative session.

(c) All agencies subject to this section shall seek advice and recommendations from the commission on persons with disabilities on any construction plans.¹²

Act 308-1993 also made a similar reference in §103-50.5, HRS, the enabling legislation of the Architectural Access Committee, to reference ADAAG instead of UFAS. Recognizing that ADAAG was a more complex and comprehensive code, the Legislature also increased the membership of the Committee from three to five (3 to 5) members.

§103-50.5. Architectural access committee. (a) There is established within the department of health for administrative purposes, an architectural access committee to be composed of five members to be appointed by the governor for staggered terms of four years without the advice and consent of the senate. The members shall have a special interest or knowledge concerning design standards for persons with disabilities.

(b) The committee shall have the authority to vary specific requirements of section 103-50 when the variance will ensure an alternate design that provides equal access for persons with disabilities; and to establish guidelines for design specifications not covered in the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt.1191.¹³

House Concurrent Resolution 314, HD2, SD1 (1994 Legislature)

House Concurrent Resolution 314, HD2, SD1 requested the Department of Health to assess and propose enforcement procedures for state and county compliance with UFAS and ADAAG as it relates to the design and construction of buildings and facilities. The study examined the structure of the Commission and the Architectural Access Committee and made recommendations to improve compliance and enforcement, primarily by granting greater statutory authority to the Commission in the review process.

Hawaii Administrative Rules, Title 11, Chapter 217 (1995)

Administrative rules were issued on July 28, 1995 as Hawaii Administrative Rules, Title 11, Chapter 217 by the Architectural Access Committee, pursuant to the public hearing process under Chapter 91, to govern the process for promulgating design standards, issuing variances, and rendering interpretive opinions.

Act 163 (1996 Legislature)

The Legislature made several non-substantive changes to both §103-50, HRS, and §103-50.5, HRS, in Act 163, "An Act Relating to Persons with Disabilities". The changes included a reference to ADAAG "as adopted and amended by the architectural access committee" to clarify that the review process of the Commission would include,

¹² Section 2, Act 308-1993.

¹³ Section 3, Act 308-1993.

not only ADAAG, but any amendments by the Architectural Access Committee. While this was already a longstanding practice, the Department of the Attorney General suggested language clarity to validate the Commission's document reviews to guidelines adopted by the Architectural Access Committee that exceeded ADAAG. By this time, the Architectural Access Committee had already adopted a residential housing guideline and a children's design guideline, and clear reference was needed to continue the practice of using those guidelines in the Commission's document review process. The Act also clarified rulemaking responsibilities for both the Commission on Persons with Disabilities and the Architectural Access Committee.

Moreover, the Legislature deleted the requirement in §103-50, HRS, for the Comptroller and the Director of Finance to submit an annual report of donated buildings and facilities. The data was not routinely collected, nor was a report ever provided to the Legislature, and thus the requirement was considered superfluous to the intent of the law.

Governor's Directives of 1997 and 1998

In 1997 and 1998, then-Governor Benjamin Cayetano issued a series of Administrative Directives relating to the implementation of the ADA in state government. Governor's Administrative Directive 97-01, issued August 28, 1997, set forth responsibilities for "Coordination and Implementation of the Americans with Disabilities Act in State Government". This general directive was subsequently followed by Governor's Administrative Directive No. 98-02, issued March 19, 1998 specific to facility access. The two (2) directives accomplished the following:

- (1) Reiterated the statutory requirement in §103-50, HRS, and §103-50.5, HRS, and the roles of the Commission on Persons with Disabilities and the Architectural Access Committee that all new construction and alterations of buildings and facilities by the State or on behalf of the State shall be fully accessible to and usable by people with disabilities.
- (2) Directed each department or agency overseeing construction to appoint a representative or liaison to the Commission to ensure that all construction documents and master plans are submitted for review.
- (3) Required the establishment of policies and procedures for existing office space to ensure program access for all state services.
- (4) Required the establishment of policies and procedures for private facilities leased by the State to ensure program access.
- (5) Required the State as a lessor to set forth requirements for access when leasing state facilities to a lessee.

THE FORMAL REVIEW PROCESS (1999 to present)

Act 282 (1999 Legislature)

In 1999, the Legislature made a major overhaul to the statutes by repealing the statutory basis for both the Commission on Persons with Disabilities (§348E, HRS) and the Architectural Access Committee (§103-50.5, HRS) via Act 282, “An Act Relating to Persons with Disabilities”. In their stead, the Legislature created the Disability and Communication Access Board (§348F, HRS) and consolidated the appointed board and functions of both organizations.¹⁴ The prior function of construction document reviews by the Commission on Persons with Disabilities and the prior functions of standard setting, issuance of variances and interpretive opinions were transferred to the new Board under Act 282.¹⁵

In the enabling legislation of the Disability and Communication Access Board, the duties of the new Board clearly assumed all responsibility for §103-50, HRS:

§348F-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 103-50.¹⁶

In addition to the organizational changes, Act 282-1999 made substantive changes in the statutes relating to facility access as follows:

- (1) Replaced the terms “buildings and facilities” with “buildings, facilities, and sites” in recognition of the increasing amount of state and county construction in outdoor settings and to make statutory language more consistent with building industry language;
- (2) Replaced the term “variance” with “site specific alternate design”. The prior term had inferred a waiver or exemption from the guideline, neither of which is permitted under federal law. An “alternate design or solution which provides equal or greater access” is permitted; thus, the language was clarified to reflect the more appropriate and less confusing terminology;
- (3) Clarified that the document review conducted by the Disability and Communication Access Board is to occur on plans prior to the commencement of construction.

¹⁴ The Legislature also repealed the Hawaii State Coordinating Council on Deafness and integrated its functions into the newly formed Disability and Communication Access Board.

¹⁵ Section 8 of Act 282-1999 repealed the Architectural Access Committee; Section 10 of Act 282-1999 repealed the Commission on Persons with Disabilities; Section 11 of Act 282-1999 transferred the rights, powers, and duties of both repealed agencies to the new Disability and Communication Access Board.

¹⁶ Section 2 of Act 282-1999.

Section 103-50, HRS, was significantly overhauled and §103-50.5, HRS was repealed.

§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, facilities, and sites shall be prepared so that the buildings, facilities, and sites are accessible to and usable by persons with disabilities. The buildings, facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. part 1191, as adopted and amended by the disability and communication access board under chapter 348F.

(b) All state and county agencies subject to this section shall seek advice and recommendations from the 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, facilities, and sites, 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.¹⁷

Hawaii Administrative Rules, Title 11, Chapters 216 and 217 (2000)

The Disability and Communication Access Board adopted new administrative rules on September 5, 2000 as Hawaii Administrative Rules (HAR) Title 11, Chapter 216, to reflect its document review process and to reference the ADAAG. At the same time on September 5, 2000, it amended HAR Title 11, Chapter 217 to reflect the Disability and Communication Access Board, rather than the Architectural Access Committee, and to also reference the ADAAG instead of UFAS.

Act 42 (2002 Legislature)

The 2002 Legislature amended §103-50, HRS via Act 42, “An Act Relating to Persons with Disabilities”. The major change was to add the Federal Fair Housing Accessibility Guidelines (FFHAG) to the ADAAG as the state standard for §103-50, HRS. A secondary minor change clarified that §103-50, HRS, only applied to projects using federal funds when the funds are administered by the state or county.

§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, facilities, and sites shall be prepared so that the buildings, facilities, and sites are accessible to and usable by persons with disabilities.

¹⁷ Section 3 of Act 282-1999.

The buildings, facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191, and the requirements of the Federal Fair Housing Amendments Act of 1988, as established in Title 24 Code of Federal Regulations, Part 100, Subpart D, as adopted and amended by the disability and communication access board under chapter 348F.

(b) All state and county agencies subject to this section shall seek advice and recommendation from the 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, facilities, and sites, 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, Title 36 Code of Federal Regulations 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 state or county funds or federal funds administered by the State or county; (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.

Hawaii Administrative Rules, Title 11, Chapters 216 and 217 (2003)

On September 20, 2003, the Disability and Communication Access Board amended both HAR Title 11, Chapters 216 and 217 to add the FFHAG to its review process.

Act 277 (2012 Legislature)

The 2012 Legislature amended §103-50, HRS via Act 277 with a major change that required the Disability and Communication Access Board to charge a fee for its function of reviewing plans and specifications for accessibility. This change was made at the initiation of the Disability and Communication Access Board to create a revenue stream that was tied to the construction budget similar to other fees such as building fees, EIS reviews, etc., rather than the general fund. Monies collected would be deposited into the Disability and Communication Access Board's special fund to pay for the cost of the review function.

Section 103-50, HRS was amended as follows:

(e) The disability and communication access board shall charge a review fee for services rendered pursuant to section 348F-3. The review fee shall be four-tenths of one per cent for the first \$500,000 of the estimated construction cost plus two-tenths of one per cent of the estimated construction costs greater than \$500,000 up to and including \$2,000,000 plus two one-hundredths of one per cent of the estimated construction costs over \$2,000,000 except as follows:

(1) The minimum review fee for plans and specifications subject to accessibility guidelines under this section shall be \$200;

- (2) The disability and communication access board may limit the maximum review fee for plans and specifications of infrastructure projects or projects managed by private nonprofit entities to \$3,000; and
- (3) There shall be a \$50 review for projects with plans and specifications that do not reflect any elements subject to accessibility guidelines under this section.
- (f) All moneys collected as review fees shall be deposited into the disability and communication access board special fund established under section 348F-7.
- (g) The disability and communication access board shall report to the legislature annually no later than twenty days prior to the convening of each regular session regarding the revenues collected under this section. The report shall include a summary of the number and types of plans reviewed and the amount of review fees collected from each state or county department or agency.
- (h) For the purposes of this section:
“Infrastructure” or “infrastructure project” includes water, drainage, sewer, waste disposal and waste treatment systems, roads, and street lighting and projects relating to that infrastructure. Projects with significant work to accessible elements and spaces shall not be considered infrastructure projects.

Hawaii Administrative Rules, Title 11, Chapters 216 and 217 (2013)

The Disability and Communication Access Board amended HAR Title 11, Chapter 216 to incorporate changes in Act 277 that authorized the Board to charge a review fee. At the same time, the Disability and Communication Access Board transferred provisions from HAR Title 11, Chapter 217 to HAR Title 11, Chapter 216 and repealed HAR Title 11, Chapter 217. Transfer of the provisions consolidated the rules and eliminated redundancies in the rules that govern the Board’s facility access practices and procedures. In addition, procedures for site surveys for architectural barrier removal and procedures for projects subject to other laws were repealed to remove practices and procedures that were deemed unnecessary. In addition, the rules were amended to harmonize practices and procedures with accessibility guidelines adopted by the Disability and Communication Access Board and improve consistency with federal accessibility guidelines and standards. The rules were signed by the Governor on November 14, 2013 and became effective on November 25, 2013.

Act 45 (2015 Legislature)

The 2015 Legislature amended HRS §103-50 via Act 45 to clarify the definition of “public buildings, facilities, and sites.” The issue in question was a reference to structures built on state or county lands. The definition was so broad as to include private homes or agricultural structures not originally intended to be covered nor with any accessibility requirements. Thus, the definition was clarified to reference those structures otherwise required to be accessible under the ADA.

HRS §103-50 was amended to read as follows:

“Public buildings, facilities, and sites” means buildings, facilities, sites, and the infrastructure thereof that:

- (1) Are designed, constructed, purchased, or leased with the use of any state or county funds or federal funds administered by the State or a county;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public;
- (3) Are places of public accommodation or commercial facilities under the Americans with Disabilities Act, title 28 Code of Federal Regulations part 36, and are constructed on state or county lands; or
- (4) Are constructed on lands that will be transferred to the State or a county upon completion of construction.”