



# **DISABILITY AND COMMUNICATION ACCESS BOARD**

## **Background and Statutory Base**

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## PART I

### DISABILITY AND COMMUNICATION ACCESS BOARD BACKGROUND AND STATUTORY BASIS

#### DISABILITY AND COMMUNICATION ACCESS BOARD (DCAB)

##### Creation of DCAB (Act 282, 1999 Legislature)

The Disability and Communication Access Board (DCAB) was created by Act 282-1999 and became effective on January 1, 2000. The creation of DCAB was the result of a reorganization of three predecessor agencies; the Commission on Persons with Disabilities (CPD), the Hawaii State Coordinating Council on Deafness (HSCCD), and the Architectural Access Committee (AAC). Act 282-1999 repealed Hawaii Revised Statutes (HRS) §§348E, 347D and 103-50.5, the respective statutory authorities for the CPD, HSCCD and the AAC.<sup>1</sup> Like its predecessors, DCAB was attached to the Department of Health for administrative purposes with a new statutory base, HRS §348F. (Background information on CPD, HSCCD, and AAC is included in Part II of this summary.)

The Legislature found that when the CPD, HSCCD, and AAC were established by statute in 1977, 1987, and 1989 respectively, the nation was in the midst of establishing major laws to provide civil rights protections for persons with disabilities. These protections were accomplished with the passage of the Architectural Barriers Act (1968), the Education of the Handicapped Act/Individuals with Disabilities Education Act (1970), the Rehabilitation Act (1973), the Air Carrier Access Act (1986), the Fair Housing Amendments Act (1988), the Uniform System for Handicapped Parking Act (1988), the Americans with Disabilities Act (1990), and the Telecommunications Act (1996), to name a few. Laws in the State of Hawaii were also enacted to mirror or exceed some of the protections provided in the federal laws. Nationwide, commissions, councils, and committees were established primarily to advocate for the creation of laws. As the laws were enacted in Hawaii, the Legislature found that the climate had shifted from creating laws to compliance with laws, which prompted an organizational change in Hawaii.<sup>2</sup>

Act 282-1999 reorganized DCAB's three predecessor agencies (CPD, HSCCD and AAC) to provide for more efficient coordination of State efforts to comply with disability access and civil rights laws. In 1999, the Legislature was faced with reduced funding and recognized that a consolidation of functions would be a more efficient use of fiscal resources for a small state such as Hawaii. As a result, the Legislature established DCAB as a new board with a new statutory base, HRS §348-F. The Legislature consolidated and reduced to seventeen board members of the CPD (9 members), the HSCCD (13 members), and the AAC (5 members) with few political turf issues, because the new DCAB was the collaborative result of the three agencies working together in support of Act 282-1999. Like the board members of its predecessor agencies, all DCAB Board members are Governor-appointed, statewide in representation, with a majority being persons with disabilities, or parents or guardians of persons with disabilities.

<sup>1</sup> Sections 10, 9, 8; respectively, of Act 282-1999

<sup>2</sup> Section 1 of Act 282-1999

Act 282-1999 added new functions to DCAB beyond those inherited from its three predecessor agencies. The first added function was the coordination of the statewide program on parking for persons with disabilities. This function was previously administered by the Hawaii Department of Transportation (HDOT) under HRS §291, Part III with little or no staff support. Thus, the Legislature determined that the new DCAB, functioning more akin to an administrative office on accessibility, would be better suited to carry out the responsibilities of the parking program that the HDOT no longer wanted.<sup>3</sup> The second added function was the credentialing of sign language interpreters who passed a screening test not previously administered by any other State agency.

Act 282-1999 set forth the functions of DCAB in HRS §348F-3 as follows:

- (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.<sup>4</sup>

The functions outlined in (1) and (4) above are semi-regulatory in nature.

<sup>3</sup> The State of Hawaii is the only state in the nation where the parking program for persons with disabilities is not housed in a State Department of Motor Vehicles (DMV). Hawaii does not have the equivalent of a State DMV.

<sup>4</sup> Section 2 of Act 282-1999

The responsibility for establishing design guidelines noted in (1) above formerly rested with the AAC. Act 282-1999 transferred this responsibility to DCAB with the simultaneous repeal of HRS §103-50.5.<sup>5</sup> The responsibility for document reviews noted in (2) above formerly rested with the CPD. Act 282-1999 also transferred this responsibility to DCAB with the simultaneous repeal of HRS §348E, the CPD's statute.<sup>6</sup> The design guidelines were later amended to include reference to the Fair Housing Act Accessibility Guidelines. DCAB formalized its design guidelines and review process in HAR, Title 11, Chapter 216, "Disability and Communication Access Board Rules of Practice and Procedure." The design guidelines as they existed in 1999 when DCAB was created included a reference to the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) as well as any guidelines or interpretive opinions that were adopted by the AAC.

The responsibility for establishing guidelines noted in (3) above for the use of communication access services (excluding the function of credentialing of sign language interpreters) formerly rested with HSCCD. Act 282-1999 transferred this responsibility to DCAB with the simultaneous repeal of HRS 347D, HSCCD's statute.<sup>7</sup> As noted earlier, Act 282-1999 added the function of establishing a process for the credentialing of sign language interpreters. DCAB formalized its communication access guidelines and credentialing procedures in Hawaii Administrative Rules (HAR), Title 11, Chapter 218, "Communication Access Services for Persons Who Are Deaf, Hard of Hearing, and Deaf-Blind."

As noted earlier, before Act 282-1999, the HDOT had administrative authority over the statewide program on parking for persons with disabilities. Act 282-1999 transferred this authority to DCAB by amending the parking statute, HRS §291, Part III, to remove all references to the HDOT and to replace them with references to DCAB.<sup>8</sup> DCAB formalized its policies and procedures for the administration of the statewide program on parking for persons with disabilities in HAR, Title 11, Chapter 219, "Parking for Persons with Disabilities."

The functions outlined in (5) to (8) above are either coordinating, advisory, or advocacy in nature.

#### Creation of a Special Fund (Act 192, 2001 Legislature)

The Legislature authorized DCAB, at its inception, to credential sign language interpreters who pass a screening test administered by DCAB. Although the startup costs were funded by DCAB in cooperation with other state agencies, there was no mechanism to support the ongoing costs of testing each applicant. In 2001, the Legislature responded through Act 192-2001 by adding HRS §§348F-7 and 348F-8 to create a special fund to retain fees charged to testing applicants to make the testing process self-supporting and to authorize DCAB to assess a fee for the testing and credentialing of American Sign Language interpreters.

§348F-7 Disability and communication access board special fund. (a) There is established the disability and communication access board special fund to be administered by the disability and communication access board. All moneys received by the disability and communication access board as application fees for credentialing of

<sup>5</sup> Section 8 and Section 11 of Act 282-1999

<sup>6</sup> Section 10 of Act 282-1999

<sup>7</sup> Section 9 of Act 282-1999

<sup>8</sup> Sections 6 and 7 of Act 282-1999

interpreters shall be deposited into this special fund shall. All interest earned or accrued on moneys deposited into this special fund shall become part of the special fund.

(b) Moneys in the disability and communication access board special fund shall be expended to cover all costs of administering this chapter including the costs of administering the program for the state credentialing of interpreters.

§348F-8 Fees. The board may establish fees, pursuant to chapter 91, for applicants seeking state credentialing of interpreters.<sup>9</sup>

Note: The fees received have never made the testing process self-supporting because of the small number of interpreters tested. While the fees cover the actual cost of a test, they do not cover staff time, or the training of evaluators and the development of related videos and materials. The Legislature provided an appropriation ceiling of \$10,000 for each year to carry out the purposes of the Special Fund.

#### Expansion of the Special Fund (Act 272 and Act 277, 2012 Legislature)

In 2012, the Legislature through Act 272-2012 amended HRS §348F-7 to broaden the purpose of the Disability and Communication Access Board Special Fund. The amendment allowed the deposit of all fees charged by DCAB, not only the fees received for interpreter credentialing. This change occurred simultaneously with the passage of Act 277-2012 that amended HRS §103-50 to give DCAB the authority to charge a fee for the review of plans and specifications for the design and construction of public buildings, facilities and sites.

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Note: There have been no changes to DCAB's statutory base in HRS §348F since 2012. However, HRS §291, Part III that references the role of DCAB in the management of statewide program on parking for persons with disabilities, and HRS §103-50 that references the DCAB review process for buildings, facilities, and sites, have been amended.

<sup>9</sup> Section 2 of Act 192-2001

## **PART II**

### **PREDECESSOR AGENCIES**

**GOVERNOR'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED (PRE-1977)**  
**COMMISSION ON THE HANDICAPPED (1977-1989)**  
**COMMISSION ON PERSONS WITH DISABILITIES (1989-1999)**  
**HAWAII STATE COORDINATING COUNCIL ON DEAFNESS (1987-1999)**  
**ARCHITECTURAL ACCESS COMMITTEE (1989-1999)**

#### **GOVERNOR'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED (PRE-1977)**

Prior to 1977, the State of Hawaii had a twenty-one member Governor's Committee on Employment of the Handicapped located within the Office of the Governor. The Committee was established as a state liaison to the President's Committee on Employment of People with Disabilities through Executive Order, but without a statutory basis. The Committee was advisory in nature with a purpose of promoting the hiring of individuals with disabilities. The Committee had two staff positions (an Executive Secretary and a Clerk/Steno). It should be noted that there were no significant disability-related civil rights laws at the time except for Section 504 of the Rehabilitation Act of 1973, and thus the function of the Committee was largely concerned with public education and awareness.

#### **COMMISSION ON THE HANDICAPPED (1977-1989)** **COMMISSION ON PERSONS WITH DISABILITIES (1989-1999)**

Establishment of the Commission (Act 204, 1977 Legislature)

In 1977, the Legislature determined that there was a need for a broad-based Commission to give a structure within state government for disability-related issues. Therefore, the Commission on the Handicapped was born via Act 204-1977 and codified at HRS §348E. The Commission was still advisory in nature, but the recent passage of Section 504 of the Rehabilitation Act of 1973, the first nationwide civil rights law for people with disabilities, resulted in a need to focus on more than just employment issues. Act 204-1977 simultaneously abolished the Governor's Committee on Employment of the Handicapped and transferred its members and two employees to the new Commission, but it kept the Commission within the Office of the Governor for administrative purposes.

The Commission consisted of twenty-one members appointed by the Governor, of which at least nine were required to be handicapped persons, or parents or guardians of handicapped persons, with representation from each of the four counties. Ex-officio members from six departments were also designated in statute. Major functions of the new Commission were as follows:

- (1) Serve as a central coordinative clearinghouse of public and private activities relating to the handicapped and as repository and disseminator of activities and information relating to the handicapped.
- (2) Review and assess the problems and needs, and the availability, of adequate services and resources for the handicapped in the State of Hawaii with regard

- but not limited to employment, education, health, social services, recreation, civil rights, public facilities, housing, vocational training and rehabilitation, and other matters pertinent to the well-being and independence of the handicapped.
- (3) Conduct research, studies, and other appropriate activities designed to provide additional information on the handicapped, with particular reference to specific needs of the handicapped, and to publicize the results thereof.
  - (4) Advise and make recommendations to the State and the counties on matters relating to the handicapped, and on matters which affect the handicapped, including legislative matters.
  - (5) Develop short- and long-term goals in fulfilling the needs of the handicapped, to be undertaken by the commission in facilitating the coordination of services and programs for the handicapped.
  - (6) Educate the public and the handicapped on the problems, needs, potentials, and rights of the handicapped through affirmative public education programs.
  - (7) Seek improvements in existing systems to recognize specific needs of the handicapped.
  - (8) Serve as public advocate of the handicapped.
  - (9) Seek and receive funds and other forms of assistance from public and private sources to be used in providing improved circumstances for the handicapped in Hawaii.
  - (10) Initiate and maintain contact with public and private, local and national organizations, agencies, and individuals generally engaging in activities relating to the handicapped, or otherwise interested in the general or specific well-being of the handicapped.
  - (11) Administer funds allocated for its work, including disbursement and allocation of funds which may be available from public and private sources; provided that such disbursement and allocation shall be consistent with specific requirements thereof, or in the absence of designated requirements, consistent with the purpose of this chapter. The commission may require, in its discretion, matching participation by the recipients of disbursements and allocations hereunder.<sup>10</sup>

#### Transfer to the Department of Health (Act 302, 1980 Legislature)

In 1980, Act 302-1980 divested the Office of the Governor from the oversight of boards and commissions. The legislation resulted in the transfer of the Commission on the Handicapped to the Department of Health for administrative purposes, but otherwise left the functions of the Commission intact.

#### Changes in Composition of the Commission (Act 200, 1984 Legislature and Act 339, 1987 Legislature)

Act 200-1984 made changes only to the composition of the Commission and left all powers, duties, and functions in place. It reduced the number of members from twenty-one to fifteen, added the Director of Transportation to the list of ex-officio members, and clarified membership with respect to quorum.

Act 339-1987 similarly made non-substantive changes with reference to the ex-officio status of the Department of Human Services.

<sup>10</sup> Section 2 of Act 204-1977

### Renaming the Commission (Act 187, 1989 Legislature)

Political correctness nationwide disfavored the term “handicapped” as a negative stereotype, derived from the act of “begging cap-in-hand.” The more politically correct term of “person with a disability” replaced the term “handicapped.” Thus, Act 187-1989 changed the name, and all corresponding references in HRS §348E from the “Commission on the Handicapped” to the “Commission on Persons with Disabilities.” Although the change was minor, it was a significant shift to what is referred to as “person first language” and a shift in the emphasis from the disability to the person.

### Document Review Function (Act 382, 1989 Legislature)

Act 382-1990 significantly expanded the functions of the Commission. Although Act 382-1990 did not amend the Commission’s statutory base, HRS §348E, it amended HRS §103-50 to require the Commission to review all plans for the new construction and alteration of buildings and facilities of the State and the counties. While HRS §103-50 already required plans and specifications to be designed so that buildings and facilities would be accessible to individuals with disabilities, there was no review function. This new requirement established a new function, within the Commission, and the addition of new staff positions with the expertise of architectural design.

### Reduction in Size (Act 96, 1995 Legislature)

Act 96-1995 made non-substantive changes to the Commission, but reduced the membership from fifteen to nine persons. The reduction was due, in part, to the creation of the AAC via Act 382-1989, to handle facility access and design issues. The smaller membership was still required to be a majority of persons with disabilities, or parents or guardians of persons with disabilities, with representation from all counties. Organizationally, the Commission operated as a Committee of the Whole with no subcommittees.

### Repeal of the Commission (Act 282, 1999 Legislature)

Act 282-1999, the law that created DCAB, also repealed the Commission. All the functions and staff formerly with the Commission were transferred to the new DCAB.

## **HAWAII STATE COORDINATING COUNCIL ON DEAFNESS (1987-1999)**

### Establishment of the Hawaii State Coordinating Council on Deafness (Act 289, 1987 Legislature)

In 1987, the Hawaii State Coordinating Council on Deafness (HSCCD) was established in statute, HRS §347D, via Act 289-1987, “A Bill for an Act Relating to the Hearing Impaired.”<sup>11</sup> Although the Council had existed informally within the Department of Social Services and Housing<sup>12</sup> in response to House Resolution No. 194 in 1980 to provide

<sup>11</sup> “Hearing-impaired” was the acceptable terminology in 1987; the preferred terminology is “deaf, hard of hearing, and deaf-blind.”

<sup>12</sup> The Department of Social Services and Housing was renamed the Department of Human Services in 1988.

better communication, coordination, and access to services, the Council operated without staff or funds. Members of the deaf and hard of hearing community sought more status and permanency by advocating for a statutory basis with an accompanying fiscal appropriation for the Council.

Act 289-1987 created a twenty-one member Council with a statutory base, HRS §357D. Membership was divided into three groups of seven members: State agencies, individuals who were hearing impaired or immediate family members of hearing impaired persons, and the general public who had an interest in hearing impaired persons. Act 289-1987 also provided an appropriation to enable the Council to hire two staff and nominal operating costs.

The duties of the Council were broadly defined as follows:

1. Compile information on the hearing impaired population;
2. Advocate for the hearing impaired population;
3. Develop and monitor programs for the hearing impaired population; and
4. Establish communication and coordination among agencies to improve access for the hearing impaired population.<sup>13</sup>

The Council was given a specific duty under HRS §347D-3 to establish guidelines for the utilization of sign language interpreter services in state programs and activities, including the qualification of persons who may receive the services, the qualifications of interpreters who may provide services, and the amount of payments to interpreters.

The Council was given a second specific responsibility under HRS §347D-4 to “coordinate the payment of interpreter services for hearing impaired persons when participating in state programs and activities that do not receive federal financial assistance.” The Council was, subject to legislative appropriation, able to pay for sign language interpreter services in select instances when a state agency was not otherwise required under federal law to pay for an interpreter, but a sign language interpreter was nonetheless needed. The initial appropriation was \$10,000.

#### Transfer from Department of Human Services to the Department of Health (Act 397, 1989 Legislature)

In 1989, Act 397-1989 transferred the HSCCD from the Department of Human Services to the Department of Health for administrative purposes. The reason for the transfer was to more closely align the Council with the CPD, a similar board, that was administratively attached to the Department of Health. All rights, powers, functions, and duties of the Council were appropriately transferred. The Executive Director of the Commission on Persons with Disabilities became the Administrator for the HSCCD and its two staff were co-located with the staff of the Commission.

In addition to the transfer, Act 397-1989 amended the section of the Council’s statute relating to the payment of interpreter services for state agencies not receiving federal financial assistance. The interpreter fund was broadened to include county agencies and to allow for payment of transportation costs and per diem, because the shortage of interpreters on the neighbor islands usually required that interpreters be flown from Oahu to provide

<sup>13</sup> Section 2 of Act 289-1987

services. The Legislature also increased the amount of the interpreter fund to pay for such costs.

#### Changes in the Interpreter Fund and Composition of the Council (Act 270, 1991 Legislature and Act 9, 1995 Legislature)

By 1991, with the passage of the Americans with Disabilities Act, all state and county agencies were required to pay for interpreter services when needed to provide effective communication, and they began to budget for such services. Therefore, the statute was amended via Act 270-1991 to allow the Council to pay, subject to legislative appropriations, the cost of interpreters for private, nonprofit organizations instead of state or county government entities.<sup>14</sup>

Act 270-1991 also specified that two of the seven public Council members had to be sign language interpreters, but it restricted their ability to interpret at Council meetings. Other changes included removing the designation of specific state agencies from Council membership and changing references from “hearing impaired” to “deaf, hard of hearing, and deaf-blind” in recognition of more politically correct terminology.

In 1995, Act 96-1995 reduced the Council’s membership from twenty-one to thirteen members with only a requirement that a majority of the members were deaf, hard of hearing, or deaf-blind.

#### Repeal of the Council (Act 282, 1999 Legislature)

Act 282-1999, the law that created DCAB, repealed HRS §347D, the Council’s statute. All staff (two persons) formerly with the Council were transferred to the new DCAB.

### **ARCHITECTURAL ACCESS COMMITTEE (1989-1999)**

#### Establishment of the Architectural Access Committee (Act 382, 1989 Legislature)

In 1989, Act 382-1989 established the Architectural Access Committee (AAC) in statute, HRS §103-50.5. When Act 382-1989 gave the Commission on Persons with Disabilities responsibility to review all plans and specifications for the construction and alteration of state and county buildings and facilities. It also established the AAC, whose purposes were to:

The functions of the AAC were as follows:

1. Vary the requirements of HRS §103-50 when an alternate design would provide equal or greater access; and
2. Establish design guidelines which exceed the requirements of the Americans with Disabilities Act Accessibility Guidelines.<sup>15</sup>

<sup>14</sup> Monies for payment of interpreter services lasted for approximately two years, at which time, the Council ceased all payments, even though HRS §347D-4 remained on the books until the Council was repealed.

<sup>15</sup> Section 1 of Act 382-1989

The function of setting standards was separated from the review function for independence. Hence a new Committee was established. Act 382-1989 required the new three member AAC to be design professionals knowledgeable in the field of accessibility for persons with disabilities.

An appropriation to the AAC allowed the hiring of two staff.

Change in Membership (Act 308, 1993 Legislature and Act 163, 1996 Legislature)

The AAC underwent very few changes during its existence. In 1993, Act 308-1993 increased the membership from three to five persons. In 1996, Act 163-1996 made minor, non-substantive changes to the AAC.

Repeal of the Committee (Act 282, 1999 Legislature)

Act 282-1999, the law that created DCAB, also repealed HRS §103-50.5, the AAC's statute. All staff (two persons) formerly with the AAC were transferred to the new DCAB.