

**LATE**



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Via Capitol Website

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**Senate Committee on Energy and Environment  
Hearing Date: Tuesday, February 17, 2009, 2:45 PM in CR 225**

**Testimony in Opposition to SB 526 – Relating to Zoning**

(Directing Counties to adopt zoning ordinances mandating installation of rooftop landscaping on all commercial, hotel, multi-family, industrial, or other mixed use district with a commercial component.)

Dear Chair Gabbard, Vice-Chair J. Kalani English and ENE Committee Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

While LURF and its members support the general intent of this bill, which is to utilize unusable rooftop areas that may help reduce the amount of pollutants and dust particles in the air and water, we must respectfully testify **in strong opposition to the current version of SB 526**, based on, among other things, the following:

- **If landscaped rooftops are so important that it will be mandated on all new private construction - - the State should "set the example" – Why doesn't the state mandate landscaped roofs for all of its new and existing government buildings?**
- **Lack of data and information to support mandatory landscaped rooftops;**
- **The State public benefits fee administrator should do a study of landscaped rooftops and make recommendations;**
- **Landscaped rooftops should be voluntary and tax credits and other incentives should be provided;**
- **Mandates drive up development costs, which are passed on to homebuyers and other consumers; and**
- **Unfunded mandates directed at counties may be unenforceable.**

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**SB 526.** The purpose of this bill is to direct each county to adopt zoning ordinances requiring all new structures to maintain a portion of its roof top as a landscaped area providing a social amenity or aesthetic asset. This bill adds a new section to HRS, Chapter 46 which will require the following:

**"§46-A Roof top landscaping.** (a) Each county shall adopt ordinances to require a developer obtaining a building permit for a structure in a commercial, hotel, multi-family, industrial, or other mixed use district with a commercial component, to develop at least \_\_\_\_\_ per cent of the roof top of the structure as a landscaped amenity.

(b) The permitted uses of the landscaped portion of the roof top may include, in the following order of priority:

(1) Commercial agricultural operations;

(2) Produce gardens for cultivation by residents or users of the structure;

(3) An aesthetic amenity;

(4) Garden or playground for use by the structure's residents or users;

(5) An amenity for use in conjunction with the operation of a pre-school, school, or senior facility; or

(6) Other similar use.

(c) The owner of the structure shall be responsible for maintaining the required roof top landscaping for the life of the structure.

(d) These ordinances shall be adopted within twenty-four months of the effective date of this Act; provided that the ordinances shall provide that any structures that received a building permit after the effective date of this Act that would have been required to comply with the ordinance, had it been in effect at the effective date of this Act, shall be required to retro-fit the structure to comply with the ordinance."

The proposed bill requires the Counties to adopt and enforce rules, ordinances, and guidelines to take all reasonable actions to implement this new chapter. The bill's effective date is July 1, 2009 and requires that the proposed ordinances be adopted within 24 months of the effective date of this bill. This bill is applicable to all developers obtaining a building permit for a any commercial, hotel, multi-family, industrial, or other mixed use district with a commercial component.

**LURF's Position.** While we agree that we, as a community, should work to improve energy efficiency and find creative ways to reduce pollution, we believe that the choice of landscaping rooftops should be governed by individual homeowners or their community associations and business property owners, and not mandated by the government. Many condominiums and commercial buildings already have rooftop parks or areas designated or landscaped for residents to enjoy, however, these buildings made a choice to do so. The choice should remain theirs. The grounds for our objections include, among other things, the following:

- **If landscaped rooftops are so important that it will be mandated on all new private construction - - the State should "set the example" – Why doesn't the state mandate landscaped roofs for all of its new and existing government buildings?**

- **Lack of data and information to support mandatory landscaped rooftops.** LURF and its members have strong reservations about mandating landscaped rooftops for all new multi-family, hotel, and industrial construction because there is no data regarding up front costs and long-term maintenance costs, as compared to other possible energy-saving alternatives.
- **The State public benefits fee administrator should do a study of landscaped rooftops and make recommendations.** Instead of mandatory legislation, it would be beneficial to allow the State Public Benefits Fee Administrator to work with the various stakeholders to do an analysis and study and present a report to the public and industry for voluntary implementation.
- **Landscaped rooftops should be voluntary and tax credits and other incentives should be provided.** If, after review of available data and information, it is determined that landscaped roofs are found to be a viable energy-saving alternative, the legislature can implement tax and other incentives to induce such landscaped rooftops. Instead of mandatory legislation, the legislature should encourage existing and new residential and commercial buildings to landscape their rooftops, which would result in a cost-neutral incentive for new homebuyers and commercial, resort, and industrial developers. Providing up front credits and incentives to developers can effectively counteract the increased costs of installation of requiring landscaped rooftops and the lifetime maintenance costs.
- **Mandates drive up development costs, which are passed on to homebuyers and other consumers.** Further mandates, such as SB 526, will deter building and drive up costs. “If it ain’t broke, don’t try to fix it.” The present system of rebates and incentives are working, there is no need for any additional regulation or increased costs to new homeowners and building owners; individual homeowner and business choices such as installing roof top landscaping should be left to homeowners, homeowner associations, or businesses, rather than mandated by the government. A very serious impact of this bill is that it would increase the sales price and up front costs of new housing for homebuyers and the development costs of commercial, hotel and industrial buildings.
- **Unfunded mandates directed at counties are unenforceable.** SB 526 would require all counties to establish rules to require a developer obtaining a building permit for structures including, any commercial, hotel, multi-family, industrial or other mixed use district with a commercial component, to develop a certain percentage of the rooftop as a landscaped amenity. Such a state law that requires the counties to establish and enforce rules, based on a state initiative or policy, could be an “unfunded mandate,” which the counties could refuse to implement, and thus, unenforceable.

Based on the above, we respectfully request that **SB 526 be held.**

Thank you for the opportunity to testify on this matter.