

SB733

kim2 - Arline

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 9:01 AM
To: WAM Testimony
Cc: salvado@lurf.org
Subject: Testimony for SB733 on 2/25/2009 9:00:00 AM
Attachments: SB 733 DOE School Impact Fees LURF (WAM) 090225 SD2.doc; SB733-PROPOSED SD2 by LURF 090225 (WAM) rev.doc

Follow Up Flag: Follow up
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Testimony for WAM 2/25/2009 9:00:00 AM SB733

Conference room: 211
Testifier position: oppose
Testifier will be present: No
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Submitted on: 2/25/2009

Comments:
Aloha WAM Committee Clerk:

Please accept this late testimony. We will contact you to discuss.

Thank you.





Via Capitol Website

February 25, 2009

Senate Committee on Ways and Means
Hearing Date: Wednesday, February 25, 2009, 9:00 AM in CR 211

Testimony in Opposition to SB 733 SD1 – Relating to Education
PROPOSED SD2
("Clarification" and changes to School Impact Fee Law)

Honorable Chair Donna Mercado Kim, Vice-Chair Shan Tsutsui and
WAM 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.

LURF appreciates this opportunity to **provide our comments** and testify and is **in opposition** to the current version of SB 733 SD1, which purports to clarify the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

LURF's Position. Although SB 733 was well-intentioned, LURF must respectfully **oppose SB 733**. LURF has met with the Department of Education (DOE) and stakeholder Ho'okuleana LLC to discuss specific objections to the original version of SB 733, and concerns raised by the Chamber of Commerce of Hawaii. The DOE was very helpful, and we resolved many questions. Nevertheless, LURF and Ho'okuleana still have the following unresolved concerns, with the current SD1 version, which adopted DOE's proposed amendments. However, DOE will be continuing to work with LURF and other stakeholders to address our concerns. In the meantime, LURF respectfully **requests this Committee to consider the Proposed SD2 version for adoption.**

Summary of LURF's Objections to SD1 (Proposed by DOE). We understand that the current SD1 version is DOE's version, however, the SD1 includes major changes to the original intent, process and application of Act 245 (2007) Relating to School Impact Fees. A summary of our objections to SD1 are as follows:

- **General Comment: A Needs Assessment should be done for each School Impact District, based on the legal nexus and proportionality test.** The current law and proposed bill presume an impact every time there is a development, i.e.

“302A-1601 Findings. New residential developments within identified school impact districts create additional demand for public school facilities., As such, once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities ...”

While DOE and the bill suggest the issue will be “studied” – the presumption (and specific language) note all new developments must pay an impact fee. The bill should state that the need must be identified, and not presume that any new development creates the need. We would recommend that language should be added which requires a needs assessment, or some other analysis prior to the presumption that an impact fee is due. Likewise, perhaps language should be added that specifies the criteria for the impact fee (i.e. rational nexus, proportionality, timing, etc.)

- **Objection to the deletion of “The analysis shall also consider enrollment at existing school facilities, in and around the school impact district...” It is crucial that** the analysis should consider enrollment at existing school facilities, in and around the school impact district, and the statute should include this. DOE agrees that the analysis should include this, but deleted it because they feel it is obvious and need not be stated in the statute. **§302A-1605(a), pg 13.**
 - Section 8, page 9 – Keep line in subsection (a)(1) which reads “The analysis shall also consider . . . the school impact district;
- **Objection to the deletion of provisions allowing the transfer of credits, and new provisions that prohibit the transfer of credits.** The ability of a developer to be able to transfer any excess credits to another project was a major consideration in the original Act 245.
 - Nevertheless, DOE deleted the existing provision: “Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.” This provision should be retained in the law. §302A-1606(d), pg 23.
 - Section 9, page 14, keep struck through subsection (d) and add some technical changes, which will read “(d) The developer or owner of new residential developments of greater than fifty . . . any other development of the State.”
 - DOE changed the original intent by adding the following provision: “A credit received...may be applied to the land component impact fee requirement for any future development by the same owner in the same school impact district, or with the written approval of the owner of the credit, to any future development by a different owner in the same school impact district.” The Committee should **reject this revision.** **§302A-1610(b), pg 23.**
 - Delete proposed new language of SD1, Subsection(b) which says “[~~(b) A credit received pursuant to subsection (a) . . . by a different owner in the same school impact district.]”~~

- **Objection to the addition of: “If the only improvements needed in a school impact district involve the expansion of existing school facilities.....” §302A-1607(g), pg 31.** DOE’s revisions set up a “one or the other” situation – the revision assumes that it will only be a new school or an expansion, and never both. There may be situations where a new project may require a new elementary school and also expansions of a middle or high school. **This revision should be rejected.**
 - Delete proposed new language of SD1, Subsection (g) which says, “[~~(g)~~If the only improvements needed in a school impact district involve . . . building component cost per student substituted . . . applicable to the expansion of existing school facilities.]”

- **Objection to provisions which would prohibit credits for the private construction of private school facilities.** Act 245 included the following language which could be interpreted to allow credits for building private school facilities which could reduce the enrollment impacts at existing area schools: “If private construction of school facilities is proposed by the developer...if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide reimbursement for the excess credit from the impact fee.....” **§302A-1611, Section 13, page 22-23.**
 - The new provision which provides that “Any owner of a development subject to other construction cost component impact fee requirements pursuant to this subpart, shall receive credit for any private construction or monetary contribution toward the construction of public school facilities.....For purposes of this section, the private construction of school facilities is a “public work” pursuant to chapter 104.” **§302A-1611(a), pg 38-39. These revisions should be rejected.**
 - Keep first paragraph, subsection (c), which says, “If private construction of school facilities is . . . the total impact fees that . . . is a “public work” pursuant to chapter 104.”

- **Before imposing impact fees, the DOE and State should look at using state lands for schools.**

We respectfully request that the Senate Committee on Ways and Means consider the attached LURF proposed SD2 and amendments noted above. As we mentioned, since the current version of SB 733 SD1 (DOE version) does not address the concerns of LURF and other stakeholders, we have attached LURF’s SD2 version for your consideration.

Thank you for the opportunity to provide our comments in **opposition to SB 733 SD1, and we hope that your committee will consider LURF’s proposed SD2.**