

Date of Hearing: March 25, 2009

Committee: House Finance

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title of Bill: S.B. No. 1343, S.D.2 (SSCR638), Relating to Fees and Other Assessments

Purpose: Removes administrative agencies' authority to establish fees and replaces administratively established fees with statutory fees.

Department's Position: The bill has been amended to exclude Sections 16 and 17 in S.B. 1343, Relating to Fees and Other Assessments that sought to set statutory fees for the After-School Plus (A+) Program. The Department of Education (Department) concurs with S.B. 1343, S.D.2 as it is currently written; the Department defers to other administrative agencies referenced in the bill.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
March 25, 2009 at 3:00pm

by

Howard Todo

Vice President for Budget & Finance/CFO, University of Hawaii

SB 1343 SD2 – RELATING TO FEES AND OTHER ASSESSMENTS

Chair Oshiro, Vice Chair Lee and Members of the Committee:

The University of Hawaii opposes sections 15 through 18 of the bill which would replace administratively established fees with statutory fees and remove our authority to establish fees for certain special and revolving funds.

These special and revolving funds include numerous programs, facilities and services such as many different noncredit educational programs with differing costs, use of various university facilities by outside organizations, food services, transportation services, counseling and guidance, laboratory animal services and many others. Each semester, the demand and need for courses, programs and services at the University changes. The necessity to establish and revise fees related to the many programs and services only through statute would be impractical and unwieldy and would likely result in fees that are not commensurate with costs and expenses.

Thank you for the opportunity to submit this testimony.

LINDA LINGLE
GOVERNOR



RODNEY K. HARAGA
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Deputy Directors
BRUCE Y. MATSUI
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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 25, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

COMMITTEE ON FINANCE

SENATE BILL NO. 1343, S.D. 2
RELATING TO FEES AND OTHER ASSESSMENTS

The Department of Transportation (DOT) opposes the bill which removes DOT's authority to establish fees and replaces administratively established fees with statutory fees.

The changes to Chapter 261 proposed in the bill will interfere with the DOT's ability to ensure the State Airports operate on a self-supporting basis and remain in compliance with the grant assurances given by the State to the federal government.

The bill takes a one size fits all circumstances approach which fails to realize the complex mixture of uses, tenants, customers and regulations which make up the airports system.

For example, the DOT has agreements with certain airlines that require those airlines to underwrite any economic shortfall in the operations of the airport system. Historically, operators who signed such an agreement paid lower fees than those that did not. The bill establishes a single fee, which removes any incentive for airlines to sign such an agreement, and thereby weakens the financial structure of the airport system.

During times of consistency and surety in the aviation industry, having the legislature establish the fees to be paid by the airlines and other airport tenants might have been workable. However, in today's world, an airline or multiple airlines can disappear virtually over night.

Legislatures are deliberative bodies, designed to listen to all sides and attempt to reach a consensus before enacting measures into law. This form does not lend itself to reacting to rapidly changing situations. As such it is ill-suited to be the body that determines the amount of money a dynamic entity like the airports system needs each year to be self-sustaining.



LINDA LINGLE
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TO THE HOUSE COMMITTEE ON
FINANCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

Wednesday, March 25, 2009
3:00 p.m.

**TESTIMONY ON SENATE BILL NO. 1343, S.D. 2
RELATING TO FEES AND OTHER ASSESSMENTS**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, MARILYN B. LEE, VICE
CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify **in opposition** to Senate Bill No. 1343, S.D. 2, Relating to Fees and Other Assessments. My name is Lawrence M. Reifurth, and I am the Department's Director. Senate Bill No. 1343, S.D. 2, proposes to codify the fees assessed by the Department and a handful of other state departments and agencies and, in so doing, removes the authority of the Department and those other agencies from setting fees pursuant to chapter 91 rulemaking.

The Department appreciates the context in which this measure arises. We understand the State's current financial situation, and the reduced number of

options that decision makers have after the Supreme Court's ruling in the *Hawai'i Insurers Council v. Lingle* case.

The Department nevertheless opposes this bill on the following grounds:

- (1) As a matter of principle, and for as long as our customers are charged fees for departmental services on top of taxes already paid, the Department opposes the transfer of its funds to the general fund;
 - (2) Establishing fees and assessments via statute, rather than by rule, reduces the Department's flexibility and, hence, our ability to respond to changing economic circumstances; and
 - (3) The bill takes a one-size-fits-all approach in setting fees for vastly different programs and activities, which does not reflect the costs and value of services rendered, resulting in an inequitable situation where some fee payers will be subsidizing other fee payers.
- (1) The Department opposes the transfer of monies from the Compliance Resolution Fund to the general fund.**

The genesis of this bill appears to rest in a legislative reaction to the Supreme Court's decision in *HIC v. Lingle*, where the Court held that the Legislature had violated the separation of powers doctrine. Presumably, this proposal reflects the Legislature's interest in avoiding the separation of powers problem if, in the future, it again wishes to transfer special funds of the sort addressed in the *HIC* case. As such, the proposal here appears to reflect a legislative determination that it may need to again transfer funds from the

Department's Compliance Resolution Fund ("CRF") and other special funds to the general fund, and that it wishes to position itself to be able to do so without running afoul of the separation of powers doctrine.

Without understating, or failing to appreciate the severity of the State's current financial condition, the Department has a long-standing objection to the practice of transferring money from the CRF to the general fund which it restates here. The CRF has become the financing vehicle by which the Department has been assured of sufficient funds and its customers are thereby assured of sufficient service. The CRF amounts to an implicit promise to the Department's customers, including hundreds of thousands of licensees and hundreds of thousands of business registrants, that if they paid more for the Department's services (including an amount for protection against those among them who violated the laws) in the form of fees (on top of the taxes that they already paid), that those monies would be segregated from the general fund, and put to their exclusive use.

To the extent that this proposal presages or makes possible the future transfer of additional CRF funds to the general fund, the Department objects. In addition, the Department objects to the extent that any future transfer of funds would leave the Department in a position that it is not able to fulfill its promise to its customers related to improved service.

- (2) Determining the amount of a fee or assessment by statute, rather than by rule, reduces the Department's flexibility and, hence, our ability to respond to changing economic circumstances.**

Addressing the proposal on its own merits, and without regard to its apparent underlying intent, the Department nevertheless objects to restricting the flexibility inherent in allowing fees or assessments to be set by rule. The Department's fees authorized and assessed under section 26-9(o), HRS, which are expressly affected by this proposal, are a case in point.

When the CRF was established, section 26-9(o), HRS, set a single fee to apply for all licenses and renewals at \$10 (ten dollars). The Legislature subsequently amended the law to provide the Department with the ability to determine and assess fees by rule. While the Department could, conceivably, approach the Legislature every time that it determined that cost changes required a change in any one of the hundreds of fees set under the authority of section 26-9(o), the Legislature, too, appears to have valued the flexibility associated with setting fees via the rulemaking process. In fact, in its committee report¹ on H.B. No. 2511-82, which was enacted as Act 60², Session Laws of Hawaii 1982, the House Committee on Consumer Protection and Commerce indicated that it added a provision to allow the Director to "adjust the amount of the assessed fee when necessary to reflect the status of the fund and to **avoid statutory revision every time an adjustment is necessary.**" (emphasis added) In addition to increased flexibility, the rulemaking process provides multiple levels of review and significant opportunity for public involvement.

¹ Stand. Com. Rep. No. 303-82, 1982.

(3) One-size-fits-all approach to setting fees will result in an inequitable situation where some fee payers will be subsidizing other fee payers.

Currently, the Department, to the greatest extent practical, sets its fees at a level that maintains a reasonable relationship between the revenues derived from the fees and the cost or value of services rendered. Additionally, since 2003, the Legislature has expressed an interest in how the Department's expenditures are aligned with its special fund revenue collections, and has required reports on that issue, including a discussion on the Department's plans to lower fees to appropriate levels. The Department has submitted those reports to the Legislature.

However, the bill would create a one-size-fits-all fee for every person (e.g., accountants, cemetery operators, contractors, doctors, escrow companies, insurance producers, money transmitters, nursing home administrators, etc.) licensed by the Department. The bill amends section 26-9(o), HRS, by establishing a single fee to be applied to every person issued a license, permit, certificate, or registration by the Department. The bill also establishes a single annual fee.

The proposal does not consider the differences in costs associated with the various licensing programs. This will result in an inequitable situation where some licensees will be paying much more than what it costs for the Department to administer their licensing programs and other licensees paying much less than the costs associated with administering their licensing programs.

² Act 60, SLH 1982, established a special fund for compliance resolution. By way of Act 322, SLH 1993, the special fund was named the Compliance Resolution Fund.

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Based on the foregoing, the Department respectfully urges the Committee to hold the bill. Thank you for the opportunity to comment on the Department's concerns with regard to Senate Bill No. 1343, S.D. 2.

Linda Lingle
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
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IN REPLY REFER TO

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON FINANCE

March 25, 2009 3:00 p.m.
Room 308, State Capitol

In consideration of
S.B. 1343, S.D. 2
RELATING TO FEES AND OTHER ASSESSMENTS.

The Hawaii Housing Finance and Development Corporation (HHFDC) **opposes** S.B. 1343, S.D. 2 as it applies to its own authority to establish and revise fees and charges via administrative rulemaking pursuant to Chapter 91, Hawaii Revised Statutes. As a special-funded agency, the ability to establish and revise fees and service charges through the administrative rulemaking process will ensure that administrative expenses are covered and a larger portion of the HHFDC's special funds are devoted to housing finance and development assistance..

We would prefer to maintain the authority to set our own service fee schedule via administrative rulemaking processes. However, if it is the Committee's intent to mandate that such fees be established by the Legislature, we respectfully suggest that the attached schedule of fees be implemented.

Thank you for the opportunity to testify.

**Hawaii Housing Finance and Development Corporation
Proposed Program Fee Schedule**

Program	Application Fee	Loan/ Origination Fee and Interest	Administrative Fee	Compliance Monitoring Fee
Low Income Housing Tax Credit (201H-15, HRS)	\$1,500	n/a	10% of first year's federal credit amount reserved (one-time)	\$25 per unit for all units within each project per year (annual)
General Excise Tax Exemptions (201H-36, HRS)	Review and certification of eligible housing project and claimant: \$200; Subsequent applications for certification of claimants: \$100; Annual certification of rental income: \$120	n/a	n/a	n/a
Hula Mae Multi-Family (201H-100, HRS)	\$500	n/a	\$50,000 payable at bond issuance (one-time) and 1/8% (.125%) of the permanent Multi-Family loan amount (annual administrative fee)**	\$35* * Note: if a project utilizes more than one financing program, additional compliance monitoring fees of \$15 for each additional program also apply.
Taxable Mortgage Securities Program (201H-144, HRS)	n/a (Note: Program is not active due to continuance of the Hula Mae Single Family Program)	n/a	n/a	n/a
Rental Assistance Revolving Fund (201H-123, HRS)	\$500	<u>Origination Fee:</u> 2% of loan amount <u>Interest:</u> 5% per annum	n/a	\$35* * Note: if a project utilizes more than one financing program, additional compliance monitoring fees of \$15 for each additional program also apply.
Rental Housing Trust Fund (201H-202, HRS)	\$500	<u>Interest:</u> Variable depending on project needs.	n/a	\$35* * Note: if a project utilizes more than one financing program, additional compliance monitoring fees of \$15 for each additional program also apply.

** Reduced from 1/8% of the original bond issue amount.