

SB733

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Written Testimony of
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Before the
SENATE COMMITTEE ON EDUCATION AND HOUSING
Monday, February 2, 2009
Room 225, State Capitol

In consideration of
S.B. 733 RELATING TO EDUCATION

Chair Sakamoto, Vice Chair Kidani, and members of the Committee, thank you for the opportunity to provide written testimony in opposition to Senate Bill 733, Relating to Education.

This bill raises serious concerns that I am compelled to share with you in my capacity as Chairperson of the Affordable Housing Regulatory Barriers Task Force. This statewide task force was convened by Governor Lingle in 2007 in response to an invitation from the United States Department of Housing and Urban Development to join the National Call to Action for Affordable Housing through Regulatory Reform. Task force members include representatives from the counties, business, labor, developers, architects, non-profit service providers, the State, and the Legislature. Our main duties were to identify barriers to affordable housing development and recommend administrative and legislative solutions, some of which are included in the Administration's legislative package.

One of the task force's conclusions was that impact fees, such as those in Senate Bill 733, contribute to the high cost of homes in Hawaii. Affordable housing developers are assessed impact fees which are passed on to the homeowner or renter, thereby increasing the overall cost of the home and pushing homeownership and affordable rental housing further out of reach of Hawaii's families. The task force recommends exempting affordable housing projects from impact and other similar fees in order to keep home prices from escalating. Senate Bill 733 works counter to this recommendation.

Attached for the Committee's review is an excerpt from the forthcoming Affordable Housing Regulatory Barriers Task Force Report stating its findings on impact fees.

Lastly, please note that in 2007, U.S. Census Bureau statistics showed that 45.7% of homeowners in Hawaii, the second highest in the country, were paying at least 30% of their income toward housing costs, almost ten percent above the national average of 36.9%. In addition, in 2008 only 1.7% of Hawaii workers could afford to purchase a median priced home. Impact fees contribute to these grave statistics.

It is recommended that the Committee defer Senate Bill 733 indefinitely in order to help Hawaii's families move one step closer to affordable housing opportunities. Thank you for the opportunity to provide testimony on this important issue.

**Excerpt from the forthcoming Affordable Housing
Regulatory Barriers Task Force Report:**

AFFORDABLE HOUSING REGULATORY BARRIER:

Exactions, impact fees, and connection fees are a regulatory burden to affordable housing and greatly increase the cost of an affordable unit for the renter or buyer.

DISCUSSION:

Task Force Members expressed concern that in addition to the absence of known exemptions for affordable housing projects, developers often are required to comply with exactions and impact fees that counties and the State place on the project as a condition of approval. Often times the state or county agencies will require developers to provide parks, schools, traffic lights, roadway or sidewalk improvements, and other infrastructure improvements because of the “impact” the proposed project will have on existing infrastructure and public resources. Members shared the belief that affordable housing units should not be paying for these exactions, as the application of additional fees are directly added to the unit/consumer, and end up raising the price of the “affordable” home.

RECOMMENDATION:

The task force recommends exempting affordable housing projects from impact and connection fees while providing incentives for affordable housing projects. Packaging these strategies will engage more affordable housing development in the State. While counties currently provide the opportunity for developers to apply for exemptions and waivers, the process is discretionary. Affordable housing projects should have more predictability and certainty with regards to what exemptions and waivers projects will receive.

POLICY STATEMENT:

Incentives for affordable housing development and the imposition of exactions, impact fees, or connection fees on affordable housing units will be waived.

Date: 02/02/2009

Committee: Senate Education and Housing

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent of Education

Title of Bill: SB 0733 RELATING TO EDUCATION.

Purpose of Bill: Clarifies the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

Department's Position: The Department of Education is in full support of S.B. 733. The bill reorganizes and clarifies the law establishing school impact fees so that the implementation of the fees is much easier to understand.

S.B. 733 will insert into law the actual formula for determining how much land a developer must provide. It will also eliminate a provision that permits credits for excess impact fees collected in one geographic area to be used in another area. The location shifting of credit is a violation of the legal test for legitimate impact fees. In addition, the bill clarifies definitions of terms, permits the updating of data, and puts the process of determining impact fees in a more logical and comprehensible order.

Finally, the DOE would like to offer amendments to be more precise about where impact fees can be spent. There are eight (8) references that could be interpreted as limiting impact fee spending to schools physically within the impact district. However there can be schools that serve the students in the impact district, but are not physically located within the boundaries of the district. For example, a high school could serve a high growth area and a low growth area and not actually be located within the high growth impact district. Such schools could experience enrollment growth that might necessitate expanding capacity using impact fees.

Our proposed amendments are attached.

Thank you for the opportunity to testify.

Report Title:
DOE; School Impact Fees

Description:
Clarifies the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 733

A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that, pursuant to Act 245, Session Laws of Hawaii 2007, in order to implement a program of school impact fees, certain amendments need to be made to the sections of law creating school impact districts, and the formulas and practices for providing land and collecting fees for new or expanded school facilities in areas expecting a large amount of residential growth.

For example, the original legislation is unclear regarding the formula for valuing land donations and it also permits the transfer of fees between designated

districts, which would not meet the legal test for school impact fees.

The purpose of this Act is to clarify the sections of law pertaining to school impact fees to facilitate the provision of land and collection of fees for public schools.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- Use of data reflecting recent conditions in impact fee calculations. (a) Every three years, beginning in 2010, the department shall concurrently update the following:

- (1) School site area averages provided in section 302A-1606(b);
- (2) Elementary, middle or intermediate, and high school permanent facility construction costs per student provided in section 302A-1607(b); and
- (3) Revenue credit per unit figures provided in section 302A-1607(e).

(b) Every three years following the initial determination pursuant to section 302A-1605, the department shall update the following:

- (1) Student generation rates for each established school impact district; and

(2) The statewide percentages of students in permanent structures and portable classrooms.

(c) Every three years beginning in 2010, the department shall, where appropriate, update the list of cost factors for the twenty-six geographically enumerated cost districts, as provided in section 302A-1607(c), by incorporating any changes to these cost factors that have been made by the department of accounting and general services.

(d) If any of the above data updates are not completed within the specified time, the current data shall be used until such time as the update is completed."

SECTION 3. Chapter 302A, part VI, subpart B, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"~~[+]~~B. ~~[+]~~ SCHOOL IMPACT FEES"

SECTION 4. Section 302A-1601, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~§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 ~~[will]~~ shall be required to

contribute toward the construction of new or expansion of existing public school facilities through:

- (1) The land requirement, either through ~~[an]~~ dedication of land or payment of a fee in lieu ~~[fee or actual acreage (unless land is not required in the school impact district)]~~, based on each new development's proportionate share of the need to provide additional public school sites; and
- (2) The construction cost requirement ~~[either]~~ through ~~[an in lieu]~~ a fee ~~[or actual construction]~~ based on ~~[the]~~ each new development's proportionate share of the need to construct additional public school facilities.

A study commissioned by the State has identified the land dedication requirement that is consistent with proportionate fair-share principles and the net capital cost of school facilities, excluding land costs, that is consistent with proportionate fair-share principles.

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay school construction cost impact fees proportionate to their impacts.

In determining proportionate share, new developments shall be charged for a level of service that is equal to, and no higher than, the current level of service being provided to existing residential areas.

This [†]subpart[†] establishes the methodology for developers to provide their proportionate share of the land and the construction cost of new or expanded school facilities needed to serve new residential developments, as [determined] provided in [section 302A-1607-] sections 302A-1606 and 302A-1607."

SECTION 5. Section 302A-1602, Hawaii Revised Statutes, is amended to read as follows:

"[†]§302A-1602[†] **Definitions.** As used in this [†]subpart[†], the following terms shall have the following meanings unless the context indicates otherwise:

"Acres[†] per student" means the [~~number of~~] area of land in acres required per student for a school site based on [~~design standards for schools-] the actual school site size and the design enrollment of schools constructed within approximately the last ten years.~~

"Construction cost" means the net cost to construct a school, including without limitation, planning, design, engineering, grading, permits, construction, and construction and project management, but not including the

cost to acquire land. [~~The intent of the school impact fee calculation is that new developments should not be charged for a higher level of service than is being provided to existing developments. A reasonable measure of the level of service is the percentage of classrooms that are in permanent structures, as opposed to portable buildings.~~]

"Construction cost component impact fee" means the share of the construction cost for the required new school, the expansion of existing school facilities that are attributable to a specific development, or both.

"Cost per student" means the [~~construction cost for a school per student (actual school construction cost divided by enrollment capacity).~~] average of actual school construction costs, expressed in current dollars, divided by the respective design enrollments, for schools constructed within approximately the last ten years.

[~~"Cost/unit" means the impact fee for school construction (land and construction).~~]

"County" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Department" means the department of education.

"Design enrollment" means the maximum number of students, or student capacity, a permanent school facility is designed to accommodate.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any residential development activity.

" Dwelling unit" or "unit" means a multi-family or single-family residential unit.

"Fee in lieu" means a fee that is paid in lieu of the dedication of land, as determined pursuant to section 302A-1606.

"Land component" means a fee simple property that is vacant, suitable for a school site, and improved [+]with infrastructure[+].

"Land component impact fee" means the share of the required school site area, the fair market value of the fee simple land area, or any combination thereof that is attributed to a specific development.

"Level of service" means the percentage of classrooms that are located in permanent structures, but not including classrooms located in portable buildings.

"Multi-family" means any dwelling unit other than a single family dwelling unit.

~~["Multi-family unit count" means the total multi-family dwelling units planned for a proposed development.]~~

"New residential development" means new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects. These projects include subdivisions and other forms of "lot only" developments (when the dwelling ~~[unit]~~ units will not be built by the developer), and ~~[include]~~ developments that include single-family and multi-family units, condominiums, and additional or accessory dwelling units as defined by each county~~[, and subdivisions.]~~.

"Owner" means the owner of record of real property or the owner's authorized agent.

"Proportionate share" means the pro rata share of the school impact fee attributed to the specific development based on the ~~[student generation rate from]~~ number of units in the project.

"Recent school ~~[construction]~~ site area averages" means the ~~[department's historical average acres required and enrollment capacity for elementary (K-5), middle (6-8), and high (9-12) schools. Based on existing school construction data, the historical average design standards are as follows:~~

	<u>Aeres/school</u>	<u>Enrollment/school</u>	
<u>Aeres/student</u>			
Elem.	12.5 acres	800 students	.0156 acres
Middle	16.5 acres	1,500 students	.0110 acres
High	49 acres	1,600 students	.0306

aeres] average land area provided per student for elementary (K-5), middle or intermediate (6-8), and high (9-12) schools that have been constructed within approximately the last ten years.

"Revenue credit" means the present value of future state general tax revenues under chapter 237 that will be generated by ~~[the]~~ a new [residential] dwelling unit and used to fund capacity- expanding school capital ~~[facilities]~~ improvements and pay for outstanding debt on ~~[existing facilities.]~~ past capacity-expanding improvements.

"School facilities" means the facilities owned or operated by the department, or the facilities included in the department of education capital budget or capital facilities plan.

"School impact district" means a geographic area designated by the board where anticipated ~~[growth]~~ new residential development will create the need for one or more new schools or the expansion of one or more existing

schools that are or will be located within the area, or will primarily serve new ~~[housing]~~ dwelling units within the area.

~~["School impact fee: construction cost component" means ten per cent of the construction cost associated with the construction of a new school or expansion of an existing school facility.~~

~~"School impact fee: land component" means the pro rata share of the fair market value of the fee simple land or acreage attributed to the specific development based on the student generation rate from the project.]~~

"Single-family" means a detached dwelling unit not connected to any other dwelling unit, or a detached building containing two dwelling units.

~~["Single-family unit count" means the total single-family units planned for a proposed development.]~~

"Student generation rate" means the average number of public school students ~~[generated by]~~ living in each multi-family and single-family unit when a residential development has matured and enrollment per unit no longer fluctuates ~~[7]~~ significantly, or ~~[achieves]~~ has substantially achieved a steady state."

SECTION 6. Section 302A-1603, Hawaii Revised Statutes, is amended to read as follows:

"~~+~~§302A-1603~~+~~ Applicability and exemptions. (a)

Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

- (1) A county subdivision approval;
- (2) A county building permit; or
- (3) A condominium property regime approval for the project,

shall be required to fulfill the land dedication or fee in lieu requirement and ~~vertical~~ construction cost component impact fee requirement of the department.

(b) The following shall be exempt from this section:

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing ~~which~~ that is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any development with an ~~executed~~ education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction~~-~~; provided that the education contribution agreement or other like document was executed prior to July 1, 2009."

SECTION 7. Section 302A-1604, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§302A-1604[+]~~ **Designation of school impact districts.** (a) The board shall designate a school impact district [~~for school impact fees~~] only after holding at least one public hearing in the area proposed for the school impact district. The written analysis, prepared in accordance with subsection (b), shall be made available to the public at least thirty days prior to the public hearing. Notice of the public hearing shall be made as provided in section 1-28.5. The notice shall include a map of the proposed school impact district and the date, time, and place of the public hearing.

(b) Prior to the designation of a school impact district, the department shall prepare a written analysis that contains the following:

- (1) A map and legend describing the boundaries of the proposed school impact district area, which may range from one school to one or more high school complexes; and
- (2) Analysis to support the need to construct new or expand existing school facilities in, or serving the proposed school impact district area within the next twenty-five years to accommodate projected growth in the area based on various

state and county land use, demographics, growth, density, and other applicable projections and plans."

SECTION 8. Section 302A-1605, Hawaii Revised Statutes, is amended to read as follows:

"~~{~~§302A-1605~~}~~ **Impact fee analysis.** (a) Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, the following:

- (1) An analysis to determine appropriate student generation rates by housing type (multi-family [~~unit count and single family unit count~~] for new developments in the area. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district,] and single-family) for all new developments in the school impact district area. This will provide the basis for determining the steady state enrollment generated by new residential developments that will need to be accommodated;
- ~~{~~(2) ~~Student generation rates, based on full build-out of the development when student generation rates are anticipated to be in a steady state mode (permanent facility),~~
- ~~{~~(3) ~~Analysis of the initial development period, when student enrollments are anticipated to peak (to determine capacity of facilities),~~
- (2) An analysis to estimate the number of students generated by all new developments in the school impact district area at the point in time when the total enrollment from these

developments is anticipated to peak. This will provide the basis for determining the maximum enrollment generated by new residential developments that will need to be accommodated in both permanent facilities and portable buildings;

- [~~44~~] (3) An analysis to identify the current statewide levels of service, as measured by the percentages of existing statewide student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent [structures, as opposed to] structures, and in portable [buildings, in surrounding high school complexes,] buildings;
- [~~5~~] ~~Calculation of the current statewide level of service, which shall be the ratio of current student capacity at all school levels to the current enrollment at all school levels;~~
- [~~6~~] ~~An analysis of proposed redistricting, listing the advantages and disadvantages by making more efficient use of existing underutilized assets;~~
- [~~7~~] ~~An analysis of appropriate school land area and enrollment capacity, which may include nontraditional (i.e., mid-rise or high-rise structures) facilities to accommodate the need for public school facilities in high-growth areas within existing urban developments; and~~
- [~~8~~] ~~An analysis to identify the percentages of existing student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, and the percentages that are located~~

~~in portable buildings in surrounding high school complexes.]~~

(4) An analysis, including but not limited to, the advantages and disadvantages of the potential for making more efficient use of existing or underutilized assets in the school impact district through school redistricting; and

(5) An analysis, including but not limited to, the advantages and disadvantages of potential changes to statewide school site areas and design enrollment standards that may be appropriate for application in the particular school impact district. This may include, for example, non-traditional facilities such as mid-rise or high-rise structures in existing urban areas where new residential development is expected to generate the need for new school construction.

(b) The analyses specified in subsections (a)(1) and (3) shall be periodically updated pursuant to section 302A-_____."

SECTION 9. Section 302A-1606, Hawaii Revised Statutes, is amended to read as follows:

"[+]§302A-1606[+] Impact fee[+]; land component[-]; determining the amount of land or fee in lieu. (a) The school land area requirements for new [school facilities shall be determined based on the recent school construction averages.] residential developments in a school impact district shall be based on the student generation rates established pursuant to section 302A-1605(a)(1), recent

school land area averages as specified in subsection (b),
and the number of dwelling units in the development.

(b) Recent school land area averages for the 1997-
2007 school construction period are as follows:

- (1) Elementary schools: 0.0156 acre per student;
- (2) Middle and intermediate schools: 0.0110 acre per
student; and
- (3) High schools: 0.0306 acre per student.

These averages shall be periodically updated pursuant to
the provisions of section 302A- .

(c) The following formula shall be used to determine
the total school land area requirement for each individual
development in a school impact district:

Elementary school student generation rate per
single-family unit (x) number of single-family
units (x) recent average elementary school site
area per student;

plus (+)

Elementary school student generation rate per
multi-family unit (x) number of multi-family
units (x) recent average elementary school site
area per student;

plus (+)

Middle or intermediate school student
generation rate per single-family unit

(x) number of single-family units (x)
recent average middle or intermediate
school site area per student;

plus (+)

Middle or intermediate school student
generation rate per multi-family unit
(x) number of multi-family units (x)
recent average middle or intermediate
school site area per student;

plus (+)

High school student generation rate per
single-family unit (x) number of
single-family units (x) recent average
high school site area per student;

plus (+)

High school student generation rate per multi-
family unit (x) number of multi-family units
(x) recent average high school site area per
student;

equals (=)

Total school land requirement.

~~[(b)]~~ (d) The procedure for determining whether the dedication of land ~~[is required]~~ or a payment of a fee in lieu is required ~~[for a new school facility]~~ to satisfy the land component impact fee shall be as follows:

- (1) A new residential development [~~of greater than or equal to fifty units, shall include a written agreement, prior to the issuance of a building permit, between the owner or developer of the property and the department,~~] with fifty or more units shall include a written agreement between the owner or developer of the property and the department, executed prior to final subdivision approval, under which the owner or developer has:
- (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or
 - (B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication[+].
- (2) New residential developments [~~of~~] with less than fifty units shall include a written agreement[-] between the owner or the developer of the property and the department, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment for the fee in lieu [~~prior to the issuance of the building permit,~~].
- (3) Prior to approval of any [~~subdivision,~~] change of zoning, subdivision, or any other approval for a:
- (A) Residential development [~~equal to or greater than fifty~~] with fifty or more units; or
 - (B) Condominium property regime development of fifty or more units [~~or more~~],

the department shall notify the approving agency of its determination on whether ~~[to require the dedication of land, the payment of]~~ it will require the development to dedicate land, pay a fee in lieu thereof, or a combination of both[+] for the provision of new school facilities.

~~[(4) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land,~~

~~(5) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement,~~

~~(6) Whether the department determines to require land dedication or the payment of a fee in lieu, shall be guided by the following criteria:]~~

(4) The department's determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:

- (A) The topography, geology, access, value, and location of the land available for dedication;
- (B) The size and shape of the land available for dedication;
- (C) The location of existing or proposed schooling facilities; and
- (D) The availability of infrastructure~~[+and]~~.

~~[(7)]~~ (5) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final.

(6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land.

(7) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement.

~~[(e)]~~ (e) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the department does not agree with the developer's appraisal, the department may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and

the developer, and the third appraisal shall be binding on both parties.

~~[(d) The developer or owner of new residential developments of greater than fifty units shall either pay the in lieu fee based on the land value as determined in subsection (c) or convey appropriate acreage as determined in subsection (b). When conveying the fee simple interest for the new or expanded school facility, the developers shall be credited the difference between the fair market fee simple value of the property and the developers' proportionate share of the value of the land as determined in subsection (c) against any impact fees for construction. Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.~~

~~(e)] (f)~~ The dollar amount of the fee in lieu shall be determined using the following formula:

Acres of land [~~calculated according~~] subject to the fee in lieu as determined pursuant to subsection [~~(b)] (d)~~ multiplied by the value per acre of land determined pursuant to subsection [~~(e)] (e)~~."

SECTION 10. Section 302A-1607, Hawaii Revised Statutes, is amended to read as follows:

"~~{}~~§302A-1607~~{}~~ Impact fee~~{}~~; construction cost component~~{}~~; determining the ~~[cost per unit,]~~ amount of the fee. (a) The construction cost component of the school impact ~~[fees shall be calculated using the following factors:]~~ fee requirement for new residential developments in a school impact district shall be based on the student generation rates established pursuant to section 302A-1605(a)(1), recent public school construction costs per student as provided in subsection (b), the statewide percentages of students in permanent school facilities within the school impact district as determined pursuant to section 302A-1605(a)(3), the cost factors for the twenty-six geographically limited cost districts as provided in subsection (c), and the number of single-family and multi-family dwelling units in the development.

- ~~{1}~~ For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news-record construction cost index;
- ~~{2}~~ For expansion of existing school facilities, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of whatever components are required to

~~expand the school using the Honolulu assessment district in 2006 as the base;~~

~~(3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropriate cost factor in subsection (c). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review; and~~

~~(4) Student generation rates, as defined in section 302A-1602-~~

~~(b) The student generation rate for each school type (elementary, middle or intermediate, and high school) shall be multiplied by the cost per student for each school type (elementary, middle or intermediate, and high school) to determine the cost/unit in the development.]~~

(b) The construction cost component impact fee shall be based on recent public school construction costs. The 1997 to 2007 period school construction costs per student, adjusted for both the year 2007 and for the Honolulu assessment district, are as follows:

- (1) Elementary schools: \$35,357 per student;
- (2) Middle and intermediate schools: \$36,097 per student; and
- (3) High schools: \$64,780 per student.

The costs per student for other assessment districts shall be determined by multiplying the Honolulu assessment district costs per student by the applicable cost factor in

subsection (c). These costs per student shall be updated at least every three years, pursuant to the provisions in section 302A- .

(c) The State shall be divided into the following twenty-six geographically limited cost districts[+], and the cost factors listed for each cost district shall be applied to the calculation of school construction costs per unit pursuant to subsection (d):

Cost District	School District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30

Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

~~[(d) At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.]~~

~~(e) The construction cost component of the impact fees per dwelling unit shall be ten per cent of the amounts calculated according to the following formula:~~

~~Cost per dwelling unit from [{}subsection (b){}] minus any amount by which the revenue credit per dwelling unit from~~

~~subsection (d) exceeds ninety per cent of the per unit construction cost.]~~

(d) The school construction costs per unit for single-family and multi-family housing shall be calculated separately for each school impact district using the formula provided below. Student generation rates are as determined in section 302A-1605(a)(1), costs per student are as determined in subsection (b), statewide percentages of students in permanent buildings are as determined in section 302A-1605(a)(3), and cost district factors are as provided in subsection (c). The formula, to be determined separately for single-family and multi-family units, is as follows:

Elementary school student generation rate per unit (x) elementary school cost per student (x) statewide percentage of existing elementary school students in permanent buildings (x) cost district factor;

plus (+)

Middle or intermediate school student generation rate per unit (x) middle or intermediate school cost per student (x) statewide percentage of existing middle school students in permanent buildings (x) cost district factor;

plus (+)

High school student generation rate per unit (x)
high school cost per student (x) statewide
percentage of existing high school students in
permanent buildings (x) cost district factor;
equals (=)

School construction cost per unit.

(e) School construction costs used in the
determination of impact fees shall be reduced by any
portion of the revenue credit per unit that exceeds ninety
per cent of the school construction costs per unit. Where
revenue credits per unit are less than ninety per cent of
school construction costs per unit, no credit shall be
given. The revenue credit per unit figures that are to be
used in determining the amount of any such revenue credit
shall be as follows:

(1) Single-family dwelling unit: \$2,786; and

(2) Multi-family dwelling unit: \$1,428.

These revenue credit figures shall be updated at least
every three years, pursuant to the provisions in section
302A- .

(f) The construction cost component impact fee for
each residential development in a school impact district
shall be ten per cent of the school construction costs
attributable to that development, as calculated according
to the following formula:

Cost per single-family unit from subsection (d)

(-) cost reduction per single-family unit from
subsection (e), if applicable (x) number of
single-family units (x) 0.10;

plus (+)

Cost per multi-family unit from
subsection (d) (-) cost reduction per
multi-family unit from subsection (e),
if applicable (x) number of multi-
family units (x) 0.10;

equals (=)

Construction cost component impact fee.

(g) If the only improvements needed in schools
serving a school impact district involve the expansion of
existing school facilities, the cost per student for
elementary, middle or intermediate, and high school shall
be based on an approximate ten-year average of recent
construction costs for building components required to
expand the existing school. The department shall conduct
an analysis to determine the recent average construction
cost per student for the required building components when
applicable. The formula outlined in subsections (d), (e),
and (f), with the building component cost per student
substituted for the school cost per student, shall be used
to determine part or all of a development's construction

(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities[-] servicing the school impact district.

(c) If the land is [~~never~~] not used for [~~the~~] a school facility[-] within twenty years of its dedication, it shall be returned to the developer, or the developer's successor in interest.

(d) Once used[-] for school facilities, all or part of the land may be later sold[-, with the proceeds]; provided that the school facilities located thereon are determined to no longer be needed. Proceeds from this sale shall be used to acquire land for school facilities or to construct needed school facilities servicing the same school impact district.

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[~~e~~] (e) Fee in lieu funds may be used for [~~expenses related to acquiring a piece of land,~~] school site land acquisition and related expenses, including but not limited to surveying, appraisals, and legal fees. Fee in lieu funds may be used for construction costs where the department determines that there is no foreseeable future need for acquiring additional land for a new school site or an existing school site expansion that serves the school impact district. Such funds shall not be used for the

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maintenance or operation of existing schools in the district, [~~construction costs, including architectural, permitting, or financing costs,~~] or for administrative expenses.

~~[(d) Impact fees for the construction cost component shall be used only for the costs of new school facilities that expands the student capacity of existing schools or adds student capacity in new schools. School impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site.]~~

(f) Construction cost component impact fees may be used for the construction of new school facilities, including school site land acquisition where the department determines that there is a greater need.

(g) If construction cost component impact fees are used for construction, the fees shall be used for the costs of new school facilities that expand the student capacity of existing schools or add student capacity in new schools. Eligible construction costs include but are not limited to planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.

(h) Construction cost component impact fees shall not be expended for:

- (1) The maintenance or operation of existing schools in the district;
- (2) Portable or temporary facilities; or
- (3) The replacement of an existing school located within the same school impact district, either on the same site or on a different site.

~~[In the event of] (i) If the closure, demolition, or conversion of an existing permanent department facility within a school impact district [that] has the effect of reducing student capacity, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall not be funded with [non-school] school impact fee revenue. [Eligible construction costs include but are not limited to planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities. Impact fees for the construction cost component shall not be expended for:~~

- ~~(1) Any costs related to the acquisition of land;~~
- ~~(2) The maintenance or operation of existing schools in the district; or~~
- ~~(3) Portable or temporary facilities.~~

~~(e) Impact fees and fees]~~ (j) Fees in lieu of land dedication, proceeds from the sale of all or part of an existing school site that has been dedicated by a developer pursuant to the requirements of this subpart, and construction cost component impact fees shall be expended or encumbered within twenty years of the date of collection. Fees shall be considered spent or encumbered on a first-in, first-out basis. An expenditure plan for ~~the~~ all collected impact fees shall be incorporated into the annual budget process of the department and subject to legislative approval of the budget."

SECTION 12. Section 302A-1609, Hawaii Revised Statutes, is amended to read as follows:

"~~§~~§302A-1609~~]~~ Refunds~~[-]~~ of fees. If ~~the~~ a fee in lieu of land dedication or a construction cost component impact fee is not expended within twenty years of the date of collection, the department shall either:

(1) Refund to the developer, or the developer's successor in interest, the amount of the fee in lieu paid and any interest accrued thereon; or

(2) Recommit part or all of the fees for another twenty-year period for construction of new schools serving the school impact district, as authorized by the developer or the developer's successor."

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SECTION 13. Section 302A-1610, Hawaii Revised Statutes, is amended to read as follows:

"~~{}~~§302A-1610~~{}~~ Credits for excess land

dedication. (a) Any ~~[person]~~ owner of a development subject to the land ~~[dedication]~~ component impact fee requirements pursuant to this ~~{}~~subpart~~{}~~ ~~may apply for credit against any similar dedication or payment accepted and received by the department for the project.~~ who dedicates more land for school facilities than is required for that development shall receive credit for the excess dedicated land area.

(b) A credit received pursuant to subsection (a) 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.

~~{}~~ (c) Any credit provided for under this section shall be based on the value~~{}~~ determined in the manner provided under section 302A-1606.

~~{}~~ ~~(e) Excess credits for land contributions prior to July 3, 2007 shall be based on the value~~{}~~~~

(d) Credits for land dedications made prior to the July 1, 2009 that are in excess of a developer's

requirement under this subpart shall be based on the determined value of the excess dedication; provided that the credit amount shall not exceed the value of the dedication or fee in lieu required under this [f]subpart[+].

(e) In addition to or instead of applying such credits to future developments, the department may execute with an owner of credits an agreement to provide for partial or full reimbursement from the school impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the fee revenues available in the account for that school impact district."

SECTION 14. Section 302A-1611, Hawaii Revised Statutes, is amended to read as follows:

"[f]§302A-1611[+] Credits for excess contributions or advance payment of required construction cost component impact fees. (a) Any [~~applicant subject to the school~~] owner of a development subject to the construction cost component impact fee requirements pursuant to this [f]subpart[+] ~~may apply for~~ shall receive credit for any [~~similar contribution, payment, or~~] private construction or monetary contribution toward the construction of public school facilities that is accepted and received by the

department [~~No credit shall be authorized against the impact fees in lieu of land dedication.~~] for the development, and is in excess of the impact fee required under this subpart for that development. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104.

(b) Any excess contribution credit pursuant to subsection (a) may be applied to the construction cost 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.

(c) In addition to or instead of applying the credits to future developments, the department may execute with an owner of the credits an agreement to provide for partial or full reimbursement from the impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the impact fee revenues available in the account for that school impact district.

~~[(b) A credit may be applied only against school impact fees that would otherwise be due for new residential~~

~~developments for which the payment or contribution was agreed to in a written educational contribution agreement.]~~

(d) Any owner of a development shall receive credit for any part of its required construction cost component impact fee that, with the approval of the department, is paid in advance of the time specified in the written agreement executed in accordance with section 302A-1607(i). The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the ~~[school]~~ impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.

~~[(e) If private construction of school facilities is proposed by a developer after July 3, 2007, 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 fees collected from other developers within the same benefit~~

~~district. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104.]"~~

SECTION 15. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on July 1, 2009.

INTRODUCED BY: _____



February 2, 2009

Senator Norman Sakamoto, Chair
COMMITTEE ON EDUCATION AND HOUSING
Conference Room 225
State Capitol
415 South Beretania Street

Senator Sakamoto:

Subject: Senate Bill No. 733 Relating to Education

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii is opposed S.B. No. 733 as proposed.

We understand that the purpose of this Act is to clarify the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

Several of our members participated on the Working Group you established to develop the legislation that resulted in Act 245, Session Laws of Hawaii 2007 being passed.

The underlying intent of the Act 245 was to:

1. Identify areas of projected growth;
2. Provide a transparent methodology for calculating school impact fees for single and multi family units;
3. Disclose the fact that communities generate a higher number of students initially when young families populate a community and overtime, the student enrollment decreases toward a "steady-state" situation. Schools in these areas need to accommodate the high initial student generation and lower long-term student generation numbers;
4. Recognize that the overall student enrollment in public schools has not changed significantly over the last 30 years. It has remained at approximately 175,000 annually; however, the location or distribution of the student population has changed over time. As new schools are needed in high growth areas, what should be done with under-utilized schools in older communities;
5. Apply the new impact fee law to a specific high growth area on a trial or pilot basis in order to determine where clarification is needed in the new law.

We understand that the DOE has identified the West Hawaii region as the area of high growth for the application of Act 245. We also understand that one or more community meetings were held in West Hawaii in November 2008.

We are not aware of the outcome of these meetings and what specific clarification to Act 245 is being proposed now as a result of these meetings.

We believe that it is premature to amend Act 245 until such time as the implementation of the Act has been fully vetted through a pilot project or trail application as was envisioned when Act 245 was enacted.

Without the background or justification of what the specific problems are in Act 245, it is difficult for us to properly assess the proposed changes to Act 245.

Lacking the background or justification, all we can do is provide comments to specific sections of the bill.

The example referred in Section 1 of the bill is not correct as the transfer of fees between designated districts was not the intent of Act 245 as it would be illegal. The intent was to provide a credit to developer who provided more land for the school sites than would be required in the impact fee calculations. For example, if the DOE required 10 acres but the student generation for one developer would result in the land contribution of only 8 acres, the developer may provide the DOE with the entire 10 acre site provided they get a credit on the additional 2 acres that may be applied at a different project site.

Section 302A, page 2 refers to Section 302A-1606(b) which is essentially the 10 year average for school sizes. Section 302A-1606 (b) on page 17 identifies the years as 1997 to 2007. Should be changed to wording that refers to the immediate 10 year period to avoid having to come in every 3 years to change the 10 year term in the statute.

Page 6, Construction cost component impact fee defines construction of new schools and expansion of existing schools. These two cost items could be entirely different as the construction cost for a new, Greenfield type of development would be substantially different from an in-fill development that required a multiple level development to accommodate student enrollment projections. Blending the two costs may result in imbalance when the formula is applied to a specific project. Is the thought to have two separate categories of construction cost and application or is it simply applied as a blended average?

Page 8 and 9 Recent School site area averages deletes the student enrollment capacities and school sizes from the statutes. There is no explanation as to why this is being done as one of the underlying goals of the impact fee law was to provide "transparency" to the process so the public and developers know and understand what the DOE standards are for student enrollment and school sizes. This also provides some insight into the expected level of service the DOE is providing as the standard needs to be applied to "EXISTING" as well as new schools. The expectation is that any student in Hawaii's public school system should at a minimum be provided with the same type of learning environment no matter what public school they attend. Please explain the need to remove the school acreage requirements and enrollment standards from Act 245.

Page 9 Revenue Credit, please explain what the problem is that warranted the proposed language changes to Act 245.

Page 10, School Impact fee, this section is being deleted; however, the intent of the legislation was to establish the public policy for how much of the new school construction should be passed on to new developments. The policy decision from the legislature was that this contribution should be 10%. Why is this section of Act 245 being deleted? Please explain.

Page 12, Designation of school impact districts. Is there any status report or discussion of what work has been done on the designation of impact districts and how this process resulted in the need for changes to Act 245? Please explain.

Page 13, has any analysis been done on the designated school impact districts? If so, where is the analysis? If not, why are changes being proposed to Act 245 if no analysis has been done on the designated school impact districts?

Page 13, why are the changes being made to section 8 of the bill deleting entire provisions and inserting entirely different language which seems to rephrase the sections that are being deleted. Of the eight (8) items listed in Section 8, the proposed revisions reduce the overall items to five (5) with not explanation of why the reduction is needed or desired. Without an explanation of what is being proposed and why, it is difficult to understand the proposed changes.

Page 17, 302A-1606 (b) lists the 10 year period as 1997 to 2007, this should be changed to refer to the immediate preceding 10 years to avoid the need to amend the statutes each time the averages change.

Page 23, the entire section (d) regarding credits is being deleted. Please explain how a developer may get a credit for providing more land than would be required in the impact fee calculation, or is it the intend to disallow this type of credit and require DOE to purchase land from the same or different developer to achieve the desired school size? Please explain.

Page 25 item 2 is being deleted. How are the construction costs for new school construction and infill or expansion of existing schools going to be handled? Is the intent to come up with one blended or average construction cost for the combined new and expansion school projects? Please explain.

Page 26, (b) lists the 10 year period as 1997 to 2007, this should be changed to refer to the immediate preceding 10 years to avoid the need to amend the statutes each time the averages change.

Page 28, (c) this section is being deleted; however, the intent of the legislation was to establish the public policy for how much of the new school construction should be passed on to new developments. The policy decision from the legislature was that this contribution should be 10%. Why is this section of Act 245 being deleted? Please explain.

Page 32 and 33, Accounting and expenditure requirements, item (d) proposes to allow that the sale of lands acquired and used for public school purposes if in the future the

site is no longer needed for school purposes. This section has been expanded to allow that the proceeds from the land sale can be used to construct new facilities. We question the wisdom of this type of co-mingling of land and improvement assets. Lands held and used for public schools could be viewed as a “trust” meaning that the lands should be managed from the standpoint of being permanent. Allowing the land asset to be reduced over time by converting its value from land (real estate) to vertical construction costs would in the long term, diminish the trust asset. More discussion is needed on the long-term implications of this type of decision as it could be viewed as undermining the long-term interest of preserving our educational land assets.

Page 35, item (h) (3) prohibits the use of construction cost impact fees for redevelopment of an existing school site either at the existing location or different site in the same district. Please explain the rationale for taking this position which would appear to severely restrict the DOE’s ability to reposition its school assets over time especially in situations where Transit Oriented Development will be occurring. School sites in existing urban areas represent some of the largest parcels under single ownership in the urban core. Limiting flexibility in funding and redevelopment would appear to be a strategic mistake at this time. Please explain.

Page 38, item (d) why is this section required as it relates to agreements executed prior to July 1, 2009.

Page 40, item (c) why is this entire section being deleted? It removes any flexibility to allow a private developer to assist in the construction of a school facility. It is unclear why this section is being removed. Please explain.

As stated earlier, our comments are limited to specific sections of the bill and may not reflect all our concerns because of our inability to determine why the specific changes are being proposed.

We cannot support SB No. 733 as proposed.

Thank you for the opportunity to provide comments.



February 2, 2009

Senator Norman Sakamoto, Chair
COMMITTEE ON EDUCATION AND HOUSING
Conference Room 225
State Capitol
415 South Beretania Street

Senator Sakamoto:

Subject: Senate Bill No. 733 Relating to Education

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is opposed S.B. No. 733 as proposed.

We understand that the purpose of this Act is to clarify the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

Several of our members participated on the Working Group you established to develop the legislation that resulted in Act 245, Session Laws of Hawaii 2007 being passed.

The underlying intend of the Act 245 was to:

1. Identify areas of projected growth;
2. Provide a transparent methodology for calculating school impact fees for single and multi family units;
3. Disclose the fact that communities generate a higher number of students initially when young families populate a community and overtime, the student enrollment decreases toward a "steady-state" situation. Schools in these areas need to accommodate the high initial student generation and lower long-term student generation numbers;
4. Recognize that the overall student enrollment in public schools has not changed significantly over the last 30 years. It has remained at approximately 175,000 annually; however, the location or distribution of the student population has changed

- over time. As new schools are needed in high growth areas, what should be done with under-utilized schools in older communities;
5. Apply the new impact fee law to a specific high growth area on a trial or pilot basis in order to determine where clarification is needed in the new law.

We understand that the DOE has identified the West Hawaii region as the area of high growth for the application of Act 245. We also understand that one or more community meetings were held in West Hawaii in November 2008.

We are not aware of the outcome of these meetings and what specific clarification to Act 245 is being proposed now as a result of these meetings.

We believe that it is premature to amend Act 245 until such time as the implementation of the Act has been fully vetted through a pilot project or trail application as was envisioned when Act 245 was enacted.

Without the background or justification of what the specific problems are in Act 245, it is difficult for us to properly assess the proposed changes to Act 245. As such, we cannot support SB No. 733 as proposed.

Thank you for the opportunity to provide comments.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 2, 2009

Senate Committee on Education Senate Bill No. 733 Relating to Education

Honorable Norman Sakamoto, Chair
Senate Committee on Education and Housing
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: SB 733 “Relating to Education”

Chair Sakamoto and Members of the Committee on Education:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is opposed S.B. No. 733 as proposed.

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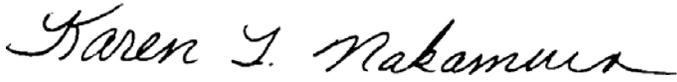
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We cannot support SB No. 733 as proposed.

Thank you for the opportunity to provide comments.


Executive Vice President and Chief Executive Officer
BIA-Hawaii



VIA Capitol Website

February 2, 2009

Senate Committee on Education and Housing
Hearing Date: Monday, February 02, 2009, 1:15 p.m. in CR 225

**Testimony in Opposition to SB 733 - Relating to Education
(Clarification of School Impact Fee Districts)**

The Honorable Chair Norman Sakamoto, Vice-Chair Michelle Kidani and Senate
Education and Housing Committee Members:

My name is Dave 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 Hawai'i's significant natural and cultural resources and public health and safety.

We appreciate the opportunity to provide our testimony **in opposition to SB 733** which calls for a clarification of the law to determine school impact fees for financing new or expanding existing Department of education (DOE) schools or facilities. The School impact fee law was established by **Act 245 (2007), and was based on input, coordination and discussion among various stakeholders**, including LURF. Recent efforts by the DOE to establish an impact fee policy for West Hawaii, have raised numerous concerns and issues from the community, as well as by DOE personnel. Now this bill proposes to make other changes in the implementation of Act 245. We believe that **more discussion is necessary among the public stakeholders, DOE, State, and its departments** about the effectiveness of impact fees and its overall need or lack thereof, and the issues sought to be clarified by SB 733. Thus, we respectfully request this Committee to **hold SB 733**.

Background. The State of Hawaii, Department of Education has approximately the same number of students today (+/-180,000) as they did 30 years ago. Today, the student population is spread across 285 public schools state-wide (K thru 12). The difference today from 30 years ago is that the distribution of the student population has been dispersed across the state. This creates situations where existing assets (school sites) are underutilized and provides opportunities to reposition these real estate assets

for future needs. This could involve redevelopment of the site for a new school, allowing for mixed use with a redeveloped school and possibly teacher housing, or provide for new revenue sources based on long term leasing of the property. The legislature passed Act 245, Session Laws of Hawaii 2007, adopting the concept of impact fees. However, in order to implement a program of school impact fees, it was understood that the DOE and stakeholders would work together on a pilot project.

SB 733. SB 733 states that the purpose of the bill is to “clarify” the sections of law pertaining to school impact fees to facilitate the provision of land and collection of fees for public school.

LURF’s Position. We appreciate the opportunity to provide our testimony **in opposition to SB 733.** We are requesting that this Committee **hold SB 733,** to allow more discussion and consensus among the public stakeholders, the DOE, State and its departments. As noted above, our position is based on the fact that the original impact fee law, Act 245, was crafted based on input from public stakeholders, and that the same practice should be applied to SB 733. We also oppose the approval of SB 733, based on problems and issues raised relating to DOE’s recent attempts to move toward implementation of impact fees in West Hawaii, and DOE’s failure to validate the collection of impact fees in West Hawaii.

The following are some examples of the difficulty the DOE has had in connecting impact fees with the community it supposed to serve in West Hawaii. Despite a record of declining school enrollment, DOE is planning for **34 new DOE schools in West Hawaii within the next 10 years, and substantial impact fees, which would increase the cost of a home for new homeowners.** Among other things, DOE’s West Hawaii proposal raised the following issues:

- **More information is necessary to determine the potential backlash of impact fees. A study should be conducted to carefully collect, review and analyze data, alternatives and have more community input before increasing housing costs on new homeowners.** A recent Fact Sheet provided by the Department of Education (“DOE”), confirms that new homeowners who purchase affordable, single family homes on the outer edge of urban growth will be hit the hardest by the proposed impact fees! This is totally inconsistent with the need to build more affordable housing that members of the workforce can afford. Before imposing such impact fees – which will have a detrimental impact on the working residents of Hawaii – the State of Hawaii with the Department of Education should be obligated to:
 - Provide a true, in-depth analysis, including statistical data, analysis, trends and assumptions, and make that information available for public review;
 - Instead of merely reporting the enrollment figures, an in-depth review and analysis of the potential for making more efficient use of existing facilities within the proposed school impact district, including issues relating to the underutilization of schools (schools with less enrollment than capacity) and over-capacity schools should be conducted;
 - Also a study could be done to conduct an in-depth review and analysis of the impact of changing school size and design standards within particular school impact districts, including school district boundary adjustments, consolidation and closure of schools;

- A list of proposed new schools and expansion of existing public school facilities, realistic timetables for construction and the detailed costs of such new facilities should be identified;
 - Stakeholders should engage in a real commitment to seek community input, by holding more meetings with the residents of potentially affected areas.
- **There are no need for schools where impact fees are being collected. Recently, DOE proposed an impact fee district for West Hawaii to build more new schools, when the facts show that public school student enrollment is declining.** It is our understanding that a recent study by Ho'okuleana LLC of the statistical long-term and short-term trends based on demographics and population changes, new residential construction and public school enrollment show that even with an increasing population and new residential construction - public school enrollment in West Hawaii is declining.
- **No Written Analysis of the Need for More Schools.** The DOE has provided a "Fact Sheet" with projections of additional residential development and conclusions, but **DOE has not prepared a "Written Analysis" to support the need for a school impact district and has not made an Analysis available to the public, as required by §302A-D(a) and (b).** The DOE Fact Sheet merely states its projections for new residential units and follows it with conclusions that the public schools in the area will exceed capacity over a 25 year period. There is no analysis, data, or factual evidence that DOE's projections and conclusions are based on an analysis of long-term and short-term statistics and trends for the West Hawaii area, based on:
 - demographics and population changes;
 - recent residential construction and projections based on various state and county land use, growth, density and other applicable plans; and
 - any justifiable correlation showing an increase in public school enrollment.
- **There is no proven a "rational nexus" or a "proportionate nexus" to justify impact fees – For example, facts show that increasing population and residential construction in West Hawaii does not result in increased public school enrollment.** Prior to implementing an impact fee, the law requires the DOE to prove that a "rational nexus" exists between the increasing population and residential construction in West Hawaii and increased public school enrollment, which will create a need for new or expanded public school facilities. After proving that a "rational nexus" exists the DOE must also prove that the proposed impact fees present a "proportionate nexus" between the impact fees and the student demand by the new residential development. It is our understanding that a recent study by Ho'okuleana LLC (which did include an analysis of the statistical long-term and short-term trends based on demographics and population changes, new residential construction based on various state and county land use, growth, density and other applicable plans, and public school enrollment) - - shows that there is no apparent correlation between the increasing population, new residential construction and public school enrollment.

- **DOE's Fact Sheets do not include facts, analysis, or proposals regarding whether costly construction of new schools can be avoided, because several West Hawaii public schools have less enrollment than capacity and there is room in existing schools to accommodate increases in public school enrollment.** It is also our understanding that the Ho'okuleana study shows that a number of schools in the proposed West Hawaii school impact district are currently under-utilized, having less enrollment than their capacity, and that some of the schools in the district with excess capacity also allow Geographic Exceptions (students living outside of the school district) which increase enrollment. This important information and data is not provided or analyzed in DOE's Fact Sheets.
- **DOE's Fact Sheets do not include facts, analysis or proposals regarding whether the DOE can prudently adjust school district boundaries to accommodate additional students and avoid costly construction of new schools and impact fees on new owners of affordable homes.** One possible alternative to the issue of increasing enrollments would be to adjust school complex district boundaries to deal with the problems of underutilized schools (with less enrollment than capacity) and schools that are over-capacity. As noted in the Ho'okuleana, LLC study, such boundary changes could serve to maximize the utilization of school facilities. The DOE Fact Sheets does not address the issue or provide any data, proposals or analysis relating to adjusting school district boundaries, or the consolidation or closure of underutilized schools.
- **DOE's Fact Sheets do not include facts, analysis or proposals relating to the powers granted by the Admissions Act and State Constitution to use public lands to support public schools – both the use of the land for schools sites and to create "Public Educational Land Trusts" which can generate revenue from public lands to support the construction and operation of new public schools.** In 1959, when Hawaii was admitted into the United States, the "ceded lands" were transferred to the newly created State of Hawaii, subject to the trust provisions set forth in Section 5(f) of the Admissions Act. Hawaii Admission Act, Pub. L, No. 86-3, 73 Stat. 4, 6 (1959). Section 5(f) provides:

"The lands granted to the State of Hawaii by subsection (b) of this section . . . together with the proceeds from the sale or other disposition of any such land and the income there from, shall be held by the State as a public trust for the: [1] **Support of the public schools** and other public educational institutions;..... Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of the said State shall provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States." [Emphasis added]

Article X, Section 1, of the Hawaii Constitution, states that **the State shall provide for the establishment, support and control of a statewide system of public schools** free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefore. [Emphasis added]

Impact fees are only a short-term answer to funding Hawaii's schools. In light of the current economic crisis being faced by the State of Hawaii, we would respectfully recommend that - before trying to clarify the law for determining whether impact fees would be able to finance new or expand existing schools – State educational departments must consider the creation of a "Public Educational Land Trust," which is consistent with the authority granted by the Admissions Act and Hawaii State Constitution. If created, a Public Educational Land Trust would allow state agencies the ability to use State lands and revenues generated from State lands to support the construction and operation of public schools.

Land trusts are usually very rigid and cumbersome; however, most of the land grant states (i.e. the 26 states west of the Mississippi) employ such land trusts, as they were required to set aside lands for the "Common School Funds" as a condition of being admitted into the United States. These states presently manage the Common School Funds which are lands that are used for one of two purposes: 1) School Sites; or 2) Generate revenues which are used solely by the public schools. School lands were granted by Congress to those states at the time each new state joined the Union and the land grants were originally made for a single, explicitly stated purpose: to support common schools and similar public institutions.

The granted lands, in combination with the revenues and permanent funds they produce, are generally viewed as a "trust." Hence, trust land managers approach their management responsibilities under the same array of rules and enforcement mechanisms that surround any trustee. The corpus of the trust is determined by its value and comprised of the land and money (permanent fund).

It is possible, that with public and legislative support, such land trusts could be established in Hawaii. The use of State lands for new public school sites and the use of State lands and existing public school sites to generate revenue for DOE construction and operation of public schools are major issues and alternatives that should be addressed by a DOE Analysis – prior to imposing costly impact fees on new affordable home buyers.

Conclusion. We respectfully request that this Committee **hold** SB 733, until there is discussion and a consensus among the public stakeholders, DOE, the state and its departments. As noted earlier, the School impact fee law was established by Act 245 (2007), and was based on input, coordination and discussion among various stakeholders, including LURF. Recent efforts by the DOE to establish an impact fee policy for West Hawaii, have raised numerous concerns and issues from the community, as well as by DOE personnel. Now this bill proposes to make other changes in the implementation of Act 245. We believe that more discussion is necessary among the public stakeholders, DOE, State, and its departments and stakeholders about the effectiveness of impact fees, its overall need or lack thereof, and the other issues raised in this bill.

We appreciate the opportunity to provide comments on this matter. Should you have any questions, please feel free to contact us at (808) 521-4717 or via e-mail at darakawa@lurf.org.