



Via Capitol Website

February 13, 2009

**Senate Committee on Education and Housing  
Hearing Date: Friday, February 13, 2009, 1:15 p.m. in CR 225**

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

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

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

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

**LURF's Position.** LURF has met with the Department of Education (DOE) and stakeholder Ho'okuleana LLC to discuss specific objections to SB 733. The DOE was very helpful, and we resolved many questions. Nevertheless, LURF and Ho'okuleana still have the following unresolved concerns. We understand that DOE has a SD1 version, and they provided us with a summary of their SD1. We would reserve comment on the SD1, until we are able to view all of the changes in redlined/Ramseyer format text. Our comments and concerns are as follows:

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

"302A-1601 Findings. New residential developments within identified school impact districts create additional demand for public school facilities., As such,

once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities ...”

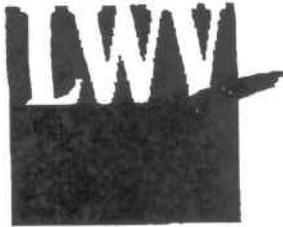
While DOE and the bill suggest the issue will be “studied” – the presumption (and specific language) note all new developments must pay an impact fee. The bill should state that the need must be identified, and not presume that any new development creates the need. We would recommend that language should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

- **Objection to the deletion of “The analysis shall also consider enrollment at existing school facilities, in and around the school impact district...” It is crucial that** the analysis should consider enrollment at existing school facilities, in and around the school impact district, and the statute should include this. DOE agrees that the analysis should include this, but deleted it because they feel it is obvious and need not be stated in the statute. **§302A-1605(a), pg 13.**
- **Objection to the deletion of provisions allowing the transfer of credits, and new provisions that prohibit the transfer of credits.** The ability of a developer to be able to transfer any excess credits to another project was a major consideration in the original Act 245.
  - Nevertheless, DOE deleted the existing provision: “Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.” This provision should be retained in the law. §302A-1606(d), pg 23.
  - DOE changed the original intent by adding the following provision: “A credit received...may be applied to the land component impact fee requirement for any future development by the same owner in the same school impact district, or with the written approval of the owner of the credit, to any future development by a different woner in the same school impact district.” The Committee should **reject this revision.** **§302A-1610(b), pg 37.**
- **Objection to the addition of: “If the only improvements needed in a school impact district involve the expansion of existing school facilities.....” §302A-1607(g), pg 31.** DOE’s revisions set up a “one or the other” situation – the revision assumes that it will only be a new school or an expansion, and never both. There may be situations where a new project may require a new elementary school and also expansions of a middle or high school. **This revision should be rejected.**
- **Objection to provisions which would prohibit credits for the private construction of private school facilities.** Act 245 included the following language which could be interpreted to allow credits for building private school facilities which could reduce the enrollment impacts at existing area schools: “If private construction of school facilities is proposed by the developer...if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide

reimbursement for the excess credit from the impact fee.....” **§302A-1611, page 38-39.**

- The new provision which provides that “Any owner of a development subject to other construction cost component impact fee requirements pursuant to this subpart, shall receive credit for any private construction or monetary contribution toward the construction of public school facilities.....For purposes of this section, the private construction of school facilities is a “public work” pursuant to chapter 104.” **§302A-1611(a), pg 38-39. These revisions should be rejected.**
- **Before imposing impact fees, the DOE and State should look at using state lands for schools.**

Thank you for the opportunity to provide our comments in **opposition to SB 733.**



LEAGUE OF  
WOMEN VOTERS  
OF HAWAII

L A T E

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February 18, 2009

Honorable Norman Sakamoto  
Chair, Committee on Education and Housing  
Room 230  
State Capitol

Re: Senate Bill 733 Relating to Housing

Dear Senator Sakamoto and Members of the Committee:

The League of Women Voters of Hawaii supports any and all legislation that will enable us to retain and enlarge the stock of affordable shelter in Hawaii. This includes building new units and subsidizing existing units. We are particularly supportive of units that can be retained indefinitely and made available to new occupants. As an island state we will never have the luxury of a wide range of choices in kinds of housing available. It is therefore urgent that we enlarge our stock and retain what we have for future generations.

Although the State may be in tough financial circumstances, this is not the time to make out poorest citizens bear the heaviest burden. We specifically urge you continue to allocate conveyance tax receipts to the rental housing trust fund at the highest level and for the longest period possible. We also support issuing general purpose bonds for the planning, development, and construction of affordable housing.

Thank you for this opportunity to testify.

Jacqueline Parnell, President  
League of Women Voters of Hawaii