

July 13, 2005

The Honorable Robert Bunda, President  
and Members of the Senate  
Twenty-Third State Legislature  
State Capitol, Room 003  
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: Senate Bill No. 1814 SD2 HD2 CD1

On July 12, 2005, Senate Bill No. 1814, entitled "Relating to Impact Fees" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This bill creates an impact fee working group that will assess the impacts of new housing developments on the Department of Education and examine the current method of imposing and collecting impact fees. The working group will issue a report to the 2006 Legislature.

Impact fees are a method by which State and County departments assess developers a monetary fee, or land donation, to minimize the effects the development will have on the various public services, such as transportation, roads, public schools, and sewage/water systems. There currently is no statewide process of fairly assessing these fees. Random fees are assessed at both the State and County level, with little predictability or proof that the impact fees are put to use in the community of the development and are actually needed.

While I recognize the importance of this issue and the need to have a consistent, statewide process in place, this bill raises a number of concerns. First, the measure only addresses impact fees imposed by, or collected for, the benefit of the Department of Education. As previously mentioned, there are other State and County functions that are affected by a new development, such as roadways and sanitation systems. This measure only takes into account the effect of a development on the public school system. My Administration supports developing an impact fee assessment process that addresses the full array of potential impacts on public services.

Second, this measure creates a working group that does not allow input and membership from other State or County departments that may be directly affected by the outcomes of the working group, such as the Department of Transportation, the Housing and Community Development Corporation of Hawaii, the Department of Health, the county housing and planning/permitting departments, and the Office of the Governor.

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The appropriateness of placing this working group in the Office of the Auditor must also be questioned. My Administration is not aware of any previous experience the Legislative Auditor has in dealing with developer impact fees and fair-share contributions.

Finally, the working group is tasked with reviewing two reports on impact fees and conducting research on the various needs and possible impacts development has on public education. They are also charged with conducting a case study, using Central Oahu, which will include a needs assessment. The minimum criteria for the needs assessment are outlined in the measure. However, there are vital elements missing from this needs assessment evaluation. A needs assessment should provide a clear, rationale nexus between the development and the impact fee assessed; a fair share proportion to be assessed on the developer, not a disproportionate assessment; predictability in the amount of the fee or land requested; a dedication of the funds/land assessed to be used directly in the community where the development is located; and an agreement that if the funds are not used within a reasonable amount of time, the monies should be refunded to the developer. None of these items are included in the needs assessment described in Senate Bill 1814.

I support the exploration of a comprehensive statewide evaluation to examine impact fees in a transparent, fair, and equitable manner. This work will be carried out by my Administration and does not require statutory authority. Regrettably, this bill is not comprehensive enough in either the membership of the working group or the tasks assigned to produce a meaningful product.

Therefore, I allowed Senate Bill No. 1814 SD2 HD2 CD1 to become law as Act 246 effective July 12, 2005 without my signature.

Sincerely,

LINDA LINGLE