EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 12, 2005

The Honorable Calvin K. Y. Say, Speaker
and Members of the House of Representatives
Twenty-Third State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear Mr. Speaker and Members of the House:

Re: Senate Bill No. 2708 SD2 HD1 CD1

On July 11, 2006, Senate Bill No. 2708, entitled "A Bill for an Act Relating to School Facilities" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

This bill extends through July 30, 2007 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 was supposed to issue a report to the 2006 Legislature but will now report to the 2007 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.

While I continue to recognize the importance of this issue and the need to have a consistent, statewide process in place, this bill raises a number of concerns similar to Act 246 of 2005. First, the measure only addresses impact fees imposed by, or collected for, the benefit of the Department of Education. 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 continues 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 Hawaii Public Housing Authority, the Hawaii Housing Finance and Development Corporation, the Department

of Health, the county housing and planning/permitting departments, and the Office of the Governor.

There remains an issue of the appropriateness of placing this Working Group in the Office of the Auditor. The Legislative Auditor has not had experience in dealing with developer impact fees and fair-share contributions. Apparently she has had to contract out this work. Furthermore, the Auditor did not explain how the initial $150,000 was spent by the Working Group and why an additional $25,000 is necessary for this effort.

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 the original bill not addressed in this measure.

I support the exploration of a comprehensive statewide evaluation to examine impact fees in a transparent, fair, and equitable manner. This work is being 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.

For the foregoing reasons, I allowed Senate Bill No. 2708 to become law as Act 315 effective July 11, 206 without my signature.

Sincerely,

LINDA LINGLE