

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO IMPACT FEES.

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

1 SECTION 1. The purpose of this Act is to clarify county  
2 authority to assess impact fees and provide the authority to  
3 transfer funds to the State for state highway projects.

4 SECTION 2. Section 46-142, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) Except for any ordinance governing impact fees  
7 enacted before July 1, 1993, impact fees may be imposed only for  
8 those types of public facility capital improvements specifically  
9 identified in a county comprehensive plan [~~or~~], a facility needs  
10 assessment study[-], or for state capital improvement projects.

11 The plan or study shall specify the service standards for each  
12 type of facility subject to an impact fee; provided that the  
13 standards shall apply equally to existing and new public  
14 facilities."

15 SECTION 3. Section 46-143, Hawaii Revised Statutes, is  
16 amended by amending subsection (d) to read as follows:

17 "(d) An impact fee shall be substantially related to the  
18 needs arising from the development and shall not exceed a



1 proportionate share of the costs incurred or to be incurred in  
2 accommodating the development. The following [~~seven~~] factors  
3 [~~shall~~] may be considered [~~in determining a proportionate share~~  
4 ~~of public facility capital improvement costs:~~] when enacting or  
5 adopting impact fees:

- 6 (1) The level of public facility capital improvements  
7 required to appropriately serve a development, based  
8 on a needs assessment study that identifies:
  - 9 (A) Deficiencies in existing public facilities;
  - 10 (B) The means, other than impact fees, by which  
11 existing deficiencies will be eliminated within a  
12 reasonable period of time; and
  - 13 (C) Additional demands anticipated to be placed on  
14 specified public facilities by a development;
- 15 (2) The availability of other funding for public facility  
16 capital improvements, including but not limited to  
17 user charges, taxes, bonds, intergovernmental  
18 transfers, and special taxation or assessments;
- 19 (3) The cost of existing public facility capital  
20 improvements;
- 21 (4) The methods by which existing public facility capital  
22 improvements were financed;



1 (5) The extent to which a developer required to pay impact  
 2 fees has contributed in the previous five years to the  
 3 cost of existing public facility capital improvements  
 4 and received no reasonable benefit therefrom, and any  
 5 credits that may be due to a development because of  
 6 [~~such~~] the contributions;

7 (6) The extent to which a developer required to pay impact  
 8 fees over the next twenty years may reasonably be  
 9 anticipated to contribute to the cost of existing  
 10 public facility capital improvements through user  
 11 fees, debt service payments, or other payments, and  
 12 any credits that may accrue to a development because  
 13 of future payments; and

14 (7) The extent to which a developer is required to pay  
 15 impact fees as a condition precedent to the  
 16 development of non-site related public facility  
 17 capital improvements [~~, and any offsets payable to a~~  
 18 ~~developer because of this provision]."~~

19 SECTION 4. Section 46-144, Hawaii Revised Statutes, is  
 20 amended to read as follows:

21 **"§46-144 Collection and expenditure of impact fees.**

22 Collection and expenditure of impact fees assessed, imposed,



1 levied, and collected for development shall be reasonably  
2 related to the benefits accruing to the development. To  
3 determine whether the fees are reasonably related, the impact  
4 fee ordinance or board rule shall provide that:

5 (1) Upon collection, the fees shall be deposited in a  
6 special trust fund or interest-bearing account. The  
7 portion that constitutes recoupment may be transferred  
8 to any appropriate fund;

9 (2) Collection and expenditure shall be localized to  
10 provide a reasonable benefit to the development. A  
11 county or board shall establish geographically limited  
12 benefit zones for this purpose; provided that zones  
13 shall not be required if a reasonable benefit can be  
14 otherwise derived. Benefit zones shall be appropriate  
15 to the particular public facility and the county or  
16 board. A county or board shall explain in writing and  
17 disclose at a public hearing reasons for establishing  
18 or not establishing benefit zones;

19 (3) Except for recoupment, impact fees shall not be  
20 collected from a developer [~~until approval of a needs~~  
21 ~~assessment study that sets out planned expenditures~~  
22 ~~bearing~~] unless:



1           (A) The types of public facility capital improvements  
2           are specifically identified in a county  
3           comprehensive plan, an approved facility needs  
4           assessment study, or for approved state capital  
5           improvement projects; and

6           (B) The planned expenditures bear a substantial  
7           relationship to the needs or anticipated needs  
8           created by the development;

9           (4) Impact fees shall be expended for public facilities of  
10          the type for which they are collected and of  
11          reasonable benefit to the development; [~~and~~]

12          (5) Impact fees assessed for roads and highways may be  
13          transferred to the State for state highway projects  
14          that would reasonably benefit the development; and

15          [~~(5)~~] (6) Within six years of the date of collection, the  
16          impact fees shall be expended or encumbered for the  
17          construction of public facility capital improvements  
18          that are consistent with the needs assessment study  
19          and of reasonable benefit to the development."

20          SECTION 5. Statutory material to be repealed is bracketed  
21          and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval,  
2 provided that section 3 shall take effect retroactive to  
3 October 1, 2002.

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INTRODUCED BY: 

By Request



**Report Title:**

Impact Fees

**Description:**

Authorizes impact fee imposition on capital improvements for state CIPs. Deletes offsets payable to a developer from factors considered in adopting impact fees. Authorizes the transfer of impact fees assessed for roads and highways to the State for highway projects reasonably benefiting a development.

