
A BILL FOR AN ACT

RELATING TO SCHOOL FACILITIES.

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

- 1 SECTION 1. The legislature finds that:
- 2 (1) New residential developments create additional demand
3 for public school facilities and a need for more land
4 on which to construct school facilities;
- 5 (2) New residential developments should provide land or
6 pay a fee in lieu of land dedication proportionate to
7 their impact; and
- 8 (3) A study commissioned by the department of education
9 and the department of accounting and general services
10 has established a land dedication requirement that is
11 consistent with proportionate fair share principles.

12 The legislature determines that new residential
13 subdivisions should provide land for schools or pay a fee in
14 lieu of land proportionate to their impact on the requirement
15 for additional school facilities.

16 The purpose of this Act is to require new residential
17 developments to dedicate land or pay an in lieu fee for the
18 development of additional school facilities.



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

4 "PART . SCHOOL LAND DEDICATION

5 §302A- Definitions. As used in this part, the
6 following terms shall have the following meanings, unless the
7 context indicates otherwise;

8 "Benefit district" means any of the nine districts of the
9 State based on the State's island geography, school districts,
10 and high school attendance boundaries, as follows:

- 11 (1) Honolulu departmental school district;
- 12 (2) Central departmental school district;
- 13 (3) Windward departmental school district;
- 14 (4) Leeward departmental school district;
- 15 (5) Island of Hawaii;
- 16 (6) Island of Maui;
- 17 (7) Island of Molokai;
- 18 (8) Island of Lanai; and
- 19 (9) Island of Kauai.

20 "County" or "counties" means the city and county of
21 Honolulu, the county of Hawaii, the county of Kauai, and the
22 county of Maui.



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

5 "Dwelling unit" means a room or rooms connected together,
6 constituting an independent housekeeping unit for a family
7 containing a single kitchen.

8 "Multifamily dwelling unit" means a duplex, townhouse,
9 apartment, cooperative, or condominium dwelling unit.

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

12 "Plat" means the map or drawing on which the subdivider's
13 plan of subdivision is presented and that the subdivider submits
14 for approval.

15 "Residential development" means the development of any
16 single-family or multifamily dwelling units.

17 "School facilities" means the facilities owned or operated
18 by the department or the facilities included in the department's
19 capital budget or capital facilities plan.

20 **§302A- Land dedication; exemptions.** (a) Except as
21 provided in this section, any person who seeks to develop
22 residential land by applying to a county for the issuance of a



1 subdivision approval or for a building permit for a residential
2 development shall be required to dedicate land for school
3 facilities or pay a fee in lieu of dedicating that land.

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

5 (1) Any form of housing permanently dedicated exclusively
6 for senior citizens, defined as fifty-five years of
7 age or over, with the necessary covenants or
8 declarations of restrictions recorded on the property;

9 (2) All nonresidential development; and

10 (3) Any residential development within the Honolulu,
11 Windward, and Kauai benefit districts, until an
12 analysis has been prepared by the department that
13 demonstrates there will be a need to build or expand
14 school facilities over the next six-year period in
15 order to accommodate projected enrollment growth
16 within those benefit districts.

17 **§302A- Land or fee in lieu required.** (a) The
18 procedure for determining whether the dedication of land is
19 required or a payment of a fee in lieu is required for new
20 schooling facilities shall be as follows:

21 (1) At the time of filing an application for any
22 residential subdivision or building permit for a

1 multifamily development containing fifty or more acres
2 of land or multifamily dwelling units, the owner
3 or developer of the property, as a part of the filing,
4 shall designate the area proposed to be dedicated for
5 a school on the plat submitted, or if not in the plat,
6 to be located in the same benefit district the
7 residential development is located;

8 (2) When land is proposed to be dedicated for the purpose
9 of providing a school site, it shall be land that is
10 usable to the department for such purpose and the
11 department shall have the final determination as to
12 whether a particular piece of land is usable;

13 (3) Within sixty days of the completion of an application
14 for a residential subdivision containing fifty or more
15 acres, or an application for a building permit for
16 more than multifamily dwelling units, the
17 department, as a part of the subdivision or building
18 permit approval, shall determine whether to require a
19 dedication of land, the payment of a fee in lieu of
20 the land, or a combination of both. Only payment of a
21 fee in lieu shall be required in subdivisions



1 containing less than fifty acres or any multifamily
2 development without land suitable for dedication;

3 (4) When dedication is required, the land shall be
4 conveyed to the State prior to final subdivision
5 approval or building permit approval; and

6 (5) When the payment of a fee in lieu is required, the fee
7 in lieu shall be paid prior to final subdivision
8 approval or building permit approval.

9 (b) Whether the department determines to require land
10 dedication or the payment of a fee in lieu, or a combination of
11 both, it shall be guided by the following criteria:

12 (1) The topography, geology, access, and location of the
13 land in the development available for dedication;

14 (2) The size and shape of the development and the land
15 available for dedication; and

16 (3) The location of existing or proposed school
17 facilities.

18 (c) The determination of the department as to whether land
19 shall be dedicated, or whether a fee in lieu shall be paid, or a
20 combination of both, shall be final and exclusive.

21 **§302A- Amount of land to be dedicated or fee in lieu;**

22 **appraisal.** (a) In the event that land is to be dedicated, the



1 size of the tract of land to be dedicated by the developer shall
2 be determined using the following formula:

3 (1) The dedication requirement for single-family detached,
4 single-family attached, and duplex units shall be
5 0.00899 acres multiplied by the number of dwelling
6 units provided for on the subdivision plat;

7 (2) The dedication requirement for apartments,
8 cooperatives, and condominiums shall be 0.00356 acres
9 multiplied by the number of dwelling units provided
10 for on the subdivision plat or in the building permit.

11 (b) In the event of a payment of a fee in lieu, the dollar
12 amount of the fee in lieu shall be determined using the
13 following formulas:

14 (1) The formula used to determine the fee in lieu of land
15 dedication for single-family detached, single-family
16 attached, and duplex units shall be 0.00899 multiplied
17 by the number of units provided for on the subdivision
18 plat multiplied by the average cost per acre of land
19 of the subdivision, subject to the provisions of
20 subsection (d).

21 (2) The formula used to determine the fee in lieu of land
22 dedication for apartments, cooperatives, and



1 condominium units shall be 0.00356 multiplied by the
2 number of units provided for on the subdivision plat
3 or building permit multiplied by the average cost per
4 acre of land of the subdivision subject to the
5 provisions of subsection (d).

6 (c) Residential subdivisions of less than fifty acres
7 shall pay a standard fee in lieu based upon an average land
8 value of \$100,000 per acre. The standard fee in lieu of land
9 dedication per single-family detached, single-family attached,
10 and duplex unit is \$899. The standard fee in lieu of land
11 dedication per apartment, cooperative, and condominium unit is
12 \$356. At least every three years, the department shall prepare
13 an analysis to update the appropriate average land value and
14 shall submit the analysis to the legislature with a
15 recommendation to update the standard fee in lieu established in
16 this section.

17 (d) The fee in lieu of land dedication shall be based upon
18 the value of the improved land, after typical subdivision
19 improvements such as roads, drainage and utilities. A real
20 estate appraiser who is selected and compensated by the
21 developer shall determine the value of the land. If the
22 department does not agree with the developer's appraisal, the



1 department may engage another real estate appraiser at its own
2 expense, and the value shall be an amount equal to the average
3 of the two appraisals. If either party does not accept the
4 average of the two appraisals, a third appraisal shall be
5 obtained, with the cost of the third appraisal being shared
6 equally by the department and the developer. The first two
7 appraisers shall select the third appraiser, and the third
8 appraisal shall be binding on both parties. All real estate
9 appraisers used in this process shall be licensed pursuant to
10 chapter 466K.

11 **§302A- Refund of fee in lieu.** If the fee in lieu is
12 not expended within six years of the date of collection, the
13 department shall refund to the developer or the developer's
14 successor in interest the amount of fees in lieu paid and any
15 interest accrued. Application for a refund shall be submitted
16 to the department within one year of the date that the right to
17 claim arises.

18 **§302A- Use of land; expenditure of fee in lieu.** (a)
19 Land dedicated by a developer, pursuant to this part, shall be
20 used only as a site for the construction of a new school or for
21 the expansion of existing school facilities within the benefit
22 district where the land was dedicated. If the land is sold, the



1 proceeds shall be used to reacquire land for school facilities
2 in the same benefit district.

3 (b) Fee in lieu funds shall only be used for the
4 acquisition of land for school purposes in the benefit district
5 where the fee in lieu was collected. Funds may be used for
6 expenses related to acquiring a piece of land, including but not
7 limited to surveying, appraisals, and associated legal fees.
8 Fee in lieu funds shall not be used for the maintenance or
9 operation of existing schools in the benefit district,
10 construction costs, including architectural, permitting or
11 financing costs, or administrative expenses.

12 **§302A- Credits.** (a) Any person subject to the land
13 dedication or fee in lieu requirements pursuant to this part may
14 apply for credit for any similar dedication or payment accepted
15 and received by the department for the same subdivision subject
16 to this part.

17 (b) Any credit provided for under this section shall be
18 based upon the present value of the dedication or payment.

19 (c) Credits for contributions prior to the effective date
20 of this part shall be based upon the present value; provided
21 that the credited amount shall not exceed the value of the
22 dedication or fee in lieu required under this part.



1 (d) If a dedication is proposed by a developer after the
 2 effective date of this part that is acceptable to the department
 3 and it exceeds the dedication requirements for the residential
 4 development, the department shall execute with the developer an
 5 agreement to provide reimbursement for the excess land
 6 dedication from the fees in lieu collected from other developers
 7 within the same benefit district.

8 **302A- Rules.** The department may adopt rules, pursuant
 9 to chapter 91, to implement this part."

10 SECTION 3. This Act shall take effect upon its approval.

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SB. NO. 2702

Report Title:

Department of Education; Land Dedication

Description:

Requires new residential developments to dedicate land or pay an in lieu fee or a combination thereof for the development of new school facilities. Restricts use of land dedicated or fees collected for development of school facilities in the benefit district where land was dedicated or fees collected. Provides for refund of fees collected if not expended within 6 years of collection.

