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# 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;
- 8           (3) The "School Fair Share Contribution Study"
- 9           commissioned by the department of education and the
- 10          department of accounting and general services,
- 11          prepared by Group 70 International and Duncan
- 12          Associates and issued in May 2001, has established a
- 13          land dedication requirement that is consistent with
- 14          proportionate fair share principles; and
- 15          (4) The School Impact Fee Working Group established by Act
- 16          246, Session Laws of Hawaii 2005, is charged with
- 17          examining alternative financing methods for
- 18          construction of educational facilities; conducting a



1 case study of central Oahu including a needs  
 2 assessment; and providing specific deliverables  
 3 including proposed legislation and new or revised  
 4 procedures.

5 The legislature determines that new residential  
 6 subdivisions should provide land for schools or pay a fee in  
 7 lieu of land proportionate to their impact on the requirement  
 8 for additional school facilities.

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

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

15 **"PART SCHOOL LAND DEDICATION**

16 **§302A- Definitions.** As used in this part, the following  
 17 terms shall have the following meanings, unless the context  
 18 indicates otherwise;

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

- 22 (1) Honolulu departmental school district;

- 1 (2) Central departmental school district;
- 2 (3) Windward departmental school district;
- 3 (4) Leeward departmental school district;
- 4 (5) Island of Hawaii;
- 5 (6) Island of Maui;
- 6 (7) Island of Molokai;
- 7 (8) Island of Lanai; and
- 8 (9) Island of Kauai.

9 "County" or "counties" means the city and county of  
10 Honolulu, the county of Hawaii, the county of Kauai, and the  
11 county of Maui.

12 "Developer" means a person, corporation, organization,  
13 partnership, association, or other legal entity constructing,  
14 erecting, enlarging, altering, or engaging in any development  
15 activity.

16 "Dwelling unit" means a room or rooms connected together,  
17 constituting an independent housekeeping unit for a family  
18 containing a single kitchen.

19 "Multifamily dwelling unit" means a duplex, townhouse,  
20 apartment, cooperative, or condominium dwelling unit.

21 "Owner" means the owner of record of real property or the  
22 owner's authorized agent.

1 "Plat" means the map or drawing on which the subdivider's  
2 plan of subdivision is presented and that the subdivider submits  
3 for approval.

4 "Residential development" means the development of any  
5 single-family or multifamily dwelling units.

6 "School facilities" means the facilities owned or operated  
7 by the department or the facilities included in the department's  
8 capital budget or capital facilities plan.

9 **§302A- Land dedication; exemptions.** (a) Except as  
10 provided in this section, any person who seeks to develop  
11 residential land by applying to a county for the issuance of a  
12 subdivision approval or for a building permit for a residential  
13 development shall be required to dedicate land for school  
14 facilities or pay a fee in lieu of dedicating that land.

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

- 16 (1) Any form of housing permanently dedicated exclusively  
17 for senior citizens, defined as fifty-five years of  
18 age or over, with the necessary covenants or  
19 declarations of restrictions recorded on the property;
- 20 (2) All nonresidential development; and
- 21 (3) Any residential development within the Honolulu,  
22 Windward, and Kauai benefit districts, until an

1 analysis has been prepared by the department that  
 2 demonstrates there will be a need to build or expand  
 3 school facilities over the next six-year period in  
 4 order to accommodate projected enrollment growth  
 5 within those benefit districts.

6 **§302A- Land or fee in lieu required.** (a) The procedure  
 7 for determining whether the dedication of land is required or a  
 8 payment of a fee in lieu is required for new schooling  
 9 facilities shall be as follows:

10 (1) At the time of filing an application for any  
 11 residential subdivision or building permit for a  
 12 multifamily development containing fifty or more acres  
 13 of land or multifamily dwelling units, the owner  
 14 or developer of the property, as a part of the filing,  
 15 shall designate the area proposed to be dedicated for  
 16 a school on the plat submitted, or if not in the plat,  
 17 to be located in the same benefit district the  
 18 residential development is located;

19 (2) When land is proposed to be dedicated for the purpose  
 20 of providing a school site, it shall be land that is  
 21 usable to the department for such purpose and the

1 department shall have the final determination as to  
2 whether a particular piece of land is usable;

3 (3) Within sixty days of the completion of an application  
4 for a residential subdivision containing fifty or more  
5 acres, or an application for a building permit for  
6 more than multifamily dwelling units, the  
7 department, as a part of the subdivision or building  
8 permit approval, shall determine whether to require a  
9 dedication of land, the payment of a fee in lieu of  
10 the land, or a combination of both. Only payment of a  
11 fee in lieu shall be required in subdivisions  
12 containing less than fifty acres or any multifamily  
13 development without land suitable for dedication;

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

17 (5) When the payment of a fee in lieu is required, the fee  
18 in lieu shall be paid to the State prior to final  
19 subdivision approval or building permit approval.

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

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

3 (2) The size and shape of the development and the land  
4 available for dedication; and

5 (3) The location of existing or proposed school  
6 facilities.

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

10 **§302A- Amount of land to be dedicated or fee in lieu;**

11 **appraisal.** (a) In the event that land is to be dedicated, the  
12 size of the tract of land to be dedicated by the developer shall  
13 be determined using the following formula:

14 (1) The dedication requirement for single-family detached,  
15 single-family attached, and duplex units shall be  
16 0.00899 acres multiplied by the number of dwelling  
17 units provided for on the subdivision plat;

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

1 (b) In the event of a payment of a fee in lieu, the dollar  
2 amount of the fee in lieu shall be determined using the  
3 following formulas:

4 (1) The formula used to determine the fee in lieu of land  
5 dedication for single-family detached, single-family  
6 attached, and duplex units shall be 0.00899 multiplied  
7 by the number of units provided for on the subdivision  
8 plat multiplied by the fair market value per acre of  
9 land of the subdivision, as determined pursuant to  
10 subsection (d).

11 (2) The formula used to determine the fee in lieu of land  
12 dedication for apartments, cooperatives, and  
13 condominium units shall be 0.00356 multiplied by the  
14 number of units provided for on the subdivision plat  
15 or building permit multiplied by the fair market value  
16 per acre of land of the subdivision, as determined  
17 pursuant to subsection (d).

18 (c) Residential subdivisions of less than fifty acres  
19 shall pay a standard fee in lieu based upon an average land  
20 value of \$100,000 per acre. The standard fee in lieu of land  
21 dedication per single-family detached, single-family attached,  
22 and duplex unit is \$899. The standard fee in lieu of land



1 dedication per apartment, cooperative, and condominium unit is  
2 \$356. At least every three years, the department shall prepare  
3 an analysis to update the appropriate average land value and  
4 shall submit the analysis to the legislature with a  
5 recommendation to update the standard fee in lieu established in  
6 this section.

7 (d) The fee in lieu of land dedication shall be based upon  
8 the fair market value of the improved land, after typical  
9 subdivision improvements such as roads, drainage and utilities.  
10 A real estate appraiser who is selected and compensated by the  
11 developer shall determine the fair market value of the land. If  
12 the department does not agree with the developer's appraisal,  
13 the department may engage another real estate appraiser at its  
14 own expense, and the value shall be an amount equal to the  
15 average of the two appraisals. If either party does not accept  
16 the average of the two appraisals, a third appraisal shall be  
17 obtained, with the cost of the third appraisal being shared  
18 equally by the department and the developer. The first two  
19 appraisers shall select the third appraiser, and the third  
20 appraisal shall be binding on both parties. All real estate  
21 appraisers used in this process shall be licensed pursuant to  
22 chapter 466K.

1           **§302A- Refund of fee in lieu.** If the fee in lieu is not  
 2 expended within six years of the date of collection, the  
 3 department shall refund to the developer or the developer's  
 4 successor in interest the amount of fees in lieu paid and any  
 5 interest accrued. Application for a refund shall be submitted  
 6 to the department within one year of the date that the right to  
 7 claim arises.

8           **§302A- Use of land; expenditure of fee in lieu.** (a)  
 9 Land dedicated by a developer, pursuant to this part, shall be  
 10 used only as a site for the construction of a new school or for  
 11 the expansion of existing school facilities within the benefit  
 12 district where the land was dedicated. If the land is sold, the  
 13 proceeds shall be used to reacquire land for school facilities  
 14 in the same benefit district.

15           (b) Fee in lieu funds shall only be used for the  
 16 acquisition of land for school purposes in the benefit district  
 17 where the fee in lieu was collected. Funds may be used for  
 18 expenses related to acquiring a piece of land, including but not  
 19 limited to surveying, appraisals, and associated legal fees.  
 20 Fee in lieu funds shall not be used for the maintenance or  
 21 operation of existing schools in the benefit district,

1 construction costs, including architectural, permitting or  
2 financing costs, or administrative expenses.

3       **§302A- Credits.** (a) Any person subject to the land  
4 dedication or fee in lieu requirements pursuant to this part may  
5 apply for credit for any similar dedication or payment accepted  
6 and received by the department for the same subdivision subject  
7 to this part.

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

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

14       (d) If a dedication is proposed by a developer after the  
15 effective date of this part that is acceptable to the department  
16 and it exceeds the dedication requirements for the residential  
17 development, the department shall execute with the developer an  
18 agreement to provide reimbursement for the excess land  
19 dedication from the fees in lieu collected from other developers  
20 within the same benefit district.

21       **§302A- Rules.** The department may adopt rules, pursuant



1 to chapter 91, to implement this part."

2 SECTION 3. This Act shall take effect on July 1, 2050.

**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 six years of collection. (SD1)

