

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO HOUSING.

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

1           SECTION 1. The senate and house of representatives of the  
2 twenty-third legislature of the State of Hawaii, regular session  
3 of 2005, enacted Act 196, Relating to Housing, and section 35 of  
4 that act established the joint legislative housing and homeless  
5 task force to further identify near-term solutions to Hawaii's  
6 affordable housing and homeless problem. The task force issued  
7 its report with findings and recommendations in January 2006.  
8 The task force recommended in general that the State: (1)  
9 leverage more sources of financing for affordable housing; (2)  
10 make available more public land for the development of  
11 affordable housing; (3) streamline government approvals and  
12 permitting of affordable housing projects; (4) build more  
13 offsite infrastructure to serve affordable housing; (5)  
14 appropriate additional funds for transitional housing, shelters,  
15 and services for the homeless population; and (6) preserve and  
16 maintain the existing public housing stock.

17           The specific recommendations of the task force for land  
18 availability for affordable housing include enacting an



1 inclusionary zoning enabling statute for ordinances that may be  
2 adopted by the counties, applicable to all residential and  
3 nonresidential development, requiring uniform assessment of  
4 affordable housing unit percentages or in-lieu fees. The task  
5 force found that mandatory housing unit dedications  
6 (inclusionary zoning) or linkage fees (impact fees) for  
7 affordable housing will pass constitutional muster if there is  
8 an essential nexus between the exaction, the impact of the  
9 development, and the public purpose to be served by the  
10 imposition. However, Hawaii lacks legislated standards by which  
11 the burden of providing affordable housing can be uniformly and  
12 fairly distributed among private developers.

13 The purpose of this Act is to implement the recommendations  
14 of the task force with regard to requiring uniform assessment of  
15 affordable housing exactions.

16 SECTION 2. Section 46-141, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§46-141 Definitions.** As used in this part, unless the  
19 context requires otherwise:

20 "Affordable housing capital improvement costs" means costs  
21 of land acquisition, construction, planning and engineering,  
22 administration, and legal and financial consulting fees



1 associated with construction, expansion, or improvement of  
2 affordable housing as defined by any county.

3 "Board" means the board of water supply or water board of  
4 any county.

5 "Capital improvements" means the acquisition of real  
6 property, improvements to expand capacity and serviceability of  
7 existing public facilities and affordable housing, and the  
8 development of new public facilities and affordable housing.

9 "Comprehensive plan" means a coordinated land use plan for  
10 the development of public facilities or affordable housing  
11 within the jurisdiction of a county based on existing and  
12 anticipated needs, showing existing and proposed developments,  
13 stating principles to which future development should conform,  
14 such as the county's general plans, development plans, or  
15 community plans, and the manner in which development should be  
16 controlled. In the case of the city and county of Honolulu,  
17 public facility maps shall be equivalent to the comprehensive  
18 plan required in this part.

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



1 "Credits" means the present value of past or future  
2 payments or contributions, including, but not limited to, the  
3 dedication of land or construction of a public facility or  
4 affordable housing made by a developer toward the cost of  
5 existing or future public facility or affordable housing capital  
6 improvements, except for contributions or payments made under a  
7 development agreement pursuant to section 46-123.

8 "Developer" means a person, corporation, organization,  
9 partnership, association, or other legal entity constructing,  
10 erecting, enlarging, altering, or engaging in any development  
11 activity.

12 "Development" means any artificial change to real property  
13 that requires a grading or building permit as appropriate,  
14 including, but not limited to, construction, expansion,  
15 enlargement, alteration, or erection of buildings or structures.

16 "Discount rate" means the interest rate, expressed in terms  
17 of an annual percentage, that is used to adjust past or future  
18 financial or monetary payments to present value.

19 "Impact fees" means the charges imposed upon a developer by  
20 a county or board to fund all or a portion of the public  
21 facility or affordable housing capital improvement costs  
22 required by the development from which it is collected, or to



1 recoup the cost of existing public facility or affordable  
2 housing capital improvements made in anticipation of the needs  
3 of a development.

4 "Needs assessment study" means a study required under an  
5 impact fee ordinance that determines the need for a public  
6 facility or affordable housing, the cost of development, and the  
7 level of service standards, and that projects future public  
8 facility or affordable housing capital improvement needs;  
9 provided that the study shall take into consideration and  
10 incorporate any relevant county general plan, development plan,  
11 or community plan.

12 "Non-site related improvements" means land dedications or  
13 the provision of public facility or affordable housing capital  
14 improvements that are not for the exclusive use or benefit of a  
15 development and are not site-related improvements.

16 "Offset" means a reduction in impact fees designed to  
17 fairly reflect the value of non-site related public facility or  
18 affordable housing capital improvements provided by a developer  
19 pursuant to county land use provisions.

20 "Present value" means the value of past or future payments  
21 adjusted to a base period by a discount rate.



1 "Proportionate share" means the portion of total public  
2 facility or affordable housing capital improvement costs that is  
3 reasonably attributable to a development, less:

4 (1) Any credits for past or future payments, adjusted to  
5 present value, for public facility or affordable  
6 housing capital improvement costs made or reasonably  
7 anticipated to be contributed by a developer in the  
8 form of user fees, debt service payments, taxes, or  
9 other payments; or

10 (2) Offsets for non-site related public facility or  
11 affordable housing capital improvements provided by a  
12 developer pursuant to county land use provisions.

13 "Public facility capital improvement costs" means costs of  
14 land acquisition, construction, planning and engineering,  
15 administration, and legal and financial consulting fees  
16 associated with construction, expansion, or improvement of a  
17 public facility. Public facility capital improvement costs do  
18 not include expenditures for [~~required affordable housing,~~]  
19 routine and periodic maintenance, personnel, training, or other  
20 operating costs.

21 "Reasonable benefit" means a benefit received by a  
22 development from a public facility capital improvement or



1 affordable housing that is greater than the benefit afforded the  
2 general public in the jurisdiction imposing the impact fees.  
3 Incidental benefit to other developments shall not negate a  
4 "reasonable" benefit to a development.

5 "Recoupment" means the proportionate share of the public  
6 facility or affordable housing capital improvement costs of  
7 excess capacity in existing capital facilities or affordable  
8 housing where excess capacity has been provided in anticipation  
9 of the needs of a development.

10 "Site-related improvements" means land dedications or the  
11 provision of public facility or affordable housing capital  
12 improvements for the exclusive use or benefit of a development  
13 or for the provision of safe and adequate public facilities or  
14 affordable housing related to a particular development."

15 SECTION 3. Section 46-142, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§46-142 Authority to impose impact fees; enactment of**  
18 **ordinances required.** (a) Impact fees may be assessed, imposed,  
19 levied, and collected by:

20 (1) Any county for any development, or portion thereof,  
21 not involving water supply or service; or



1           (2) Any board for any development, or portion thereof,  
2                   involving water supply or service;  
3 provided that the county enacts appropriate impact fee  
4 ordinances or the board adopts rules to effectuate the  
5 imposition and collection of the fees within their respective  
6 jurisdictions.

7           (b) Except for any ordinance governing impact fees enacted  
8 before [~~July 1, 1993,~~] the effective date of this Act, impact  
9 fees may be imposed only for those types of public facility or  
10 affordable housing capital improvements specifically identified  
11 in a county comprehensive plan or a facility needs assessment  
12 study. The plan or study shall specify the service standards  
13 for each type of facility or affordable housing subject to an  
14 impact fee; provided that the standards shall apply equally to  
15 existing and new public facilities or affordable housing."

16           SECTION 4. Section 46-143, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "**§46-143 Impact fee calculation.** (a) A county council or  
19 board considering the enactment or adoption of impact fees shall  
20 first approve a needs assessment study that shall identify the  
21 kinds of public facilities or affordable housing for which the  
22 fees shall be imposed. The study shall be prepared by [~~an~~] a





1 planner, engineer, architect, or other qualified professional  
2 and shall identify service standard levels, project public  
3 facility or affordable housing capital improvement needs, and  
4 differentiate between existing and future needs.

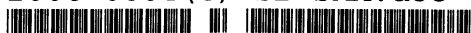
5 (b) The data sources and methodology upon which needs  
6 assessments and impact fees are based shall be set forth in the  
7 needs assessment study.

8 (c) The pro rata amount of each impact fee shall be based  
9 upon the development and actual capital cost of public facility  
10 or affordable housing expansion, or a reasonable estimate  
11 thereof, to be incurred.

12 (d) An impact fee for public facilities shall be  
13 substantially related to the needs arising from the development  
14 and shall not exceed a proportionate share of the costs incurred  
15 or to be incurred in accommodating the development. The  
16 following seven factors shall be considered in determining a  
17 proportionate share of public facility capital improvement  
18 costs:

19 (1) The level of public facility capital improvements  
20 required to appropriately serve a development, based  
21 on a needs assessment study that identifies:

22 (A) Deficiencies in existing public facilities;



- 1           (B) The means, other than impact fees, by which  
2           existing deficiencies will be eliminated within a  
3           reasonable period of time; and
- 4           (C) Additional demands anticipated to be placed on  
5           specified public facilities by a development;
- 6       (2) The availability of other funding for public facility  
7       capital improvements, including but not limited to  
8       user charges, taxes, bonds, intergovernmental  
9       transfers, and special taxation or assessments;
- 10       (3) The cost of existing public facility capital  
11       improvements;
- 12       (4) The methods by which existing public facility capital  
13       improvements were financed;
- 14       (5) The extent to which a developer required to pay impact  
15       fees has contributed in the previous five years to the  
16       cost of existing public facility capital improvements  
17       and received no reasonable benefit therefrom, and any  
18       credits that may be due to a development because of  
19       such contributions;
- 20       (6) The extent to which a developer required to pay impact  
21       fees over the next twenty years may reasonably be  
22       anticipated to contribute to the cost of existing



1 public facility capital improvements through user  
2 fees, debt service payments, or other payments, and  
3 any credits that may accrue to a development because  
4 of future payments; and

5 (7) The extent to which a developer is required to pay  
6 impact fees as a condition precedent to the  
7 development of non-site related public facility  
8 capital improvements, and any offsets payable to a  
9 developer because of this provision.

10 (e) An impact fee for affordable housing shall be  
11 substantially related to the needs arising from the development  
12 and shall not exceed a proportionate share of the costs incurred  
13 or to be incurred in accommodating the development. The  
14 following four factors shall be considered in the process of  
15 determining a proportionate share of affordable housing capital  
16 improvement costs:

17 (1) A clear policy that establishes the legitimate  
18 governmental purpose;

19 (2) No ad hoc land use bargain at issue;

20 (3) A modest burden on the developer offset by significant  
21 benefits to the developer; and



1        (4) A process to reduce, adjust, or waive the exaction  
2            upon appeal.

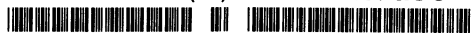
3        [~~e~~] (f) The impact fee ordinance shall contain a  
4 provision setting forth the process by which a developer may  
5 contest the amount of the impact fee assessed."

6        SECTION 5. Section 46-144, Hawaii Revised Statutes, is  
7 amended to read as follows:

8        **"§46-144 Collection and expenditure of impact fees.**  
9 Collection and expenditure of impact fees assessed, imposed,  
10 levied, and collected for development shall be reasonably  
11 related to the benefits accruing to the development. To  
12 determine whether the fees are reasonably related, the impact  
13 fee ordinance or board rule shall provide that:

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

18        (2) Collection and expenditure shall be localized to  
19 provide a reasonable benefit to the development. A  
20 county or board shall establish geographically limited  
21 benefit zones for this purpose; provided that zones  
22 shall not be required if a reasonable benefit can be



1 otherwise derived. Benefit zones shall be appropriate  
2 to the particular public facility or affordable  
3 housing requirement and the county or board. A county  
4 or board shall explain in writing and disclose at a  
5 public hearing reasons for establishing or not  
6 establishing benefit zones;

7 (3) Except for recoupment, impact fees shall not be  
8 collected from a developer until approval of a needs  
9 assessment study that sets out planned expenditures  
10 bearing a substantial relationship to the needs or  
11 anticipated needs created by the development;

12 (4) Impact fees shall be expended for public facilities or  
13 affordable housing of the type for which they are  
14 collected and of reasonable benefit to the  
15 development; and

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



1 SECTION 6. Section 46-148, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~f~~]**§46-148**[~~t~~] **Transitions.** Any county requiring impact  
4 fees or imposing development exactions, in order to fund public  
5 facilities or affordable housing, shall incorporate fee  
6 requirements into their broader system of development and land  
7 use regulations in such a manner that developments, either  
8 collectively or individually, are not required to pay or  
9 otherwise contribute more than a proportionate share of public  
10 facility or affordable housing capital improvements.  
11 Development contributions or payments made under a development  
12 agreement, pursuant to section 46-123, are exempted from this  
13 requirement."

14 SECTION 7. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Affordable Housing; Zoning; Impact Fees

**Description:**

Amends part VIII of chapter 46 relating to impact fees to require uniform assessment of affordable housing exactions.

