

JAN 19 2007

A BILL FOR AN ACT

RELATING TO SCHOOL IMPACT FEES.

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

1 SECTION 1. The legislature finds that, pursuant to Act
2 246, Session Laws of Hawaii 2005, the school impact fee working
3 group was tasked with analyzing salient issues, including "fair
4 share" practices and enrollment projections by the department of
5 education, alternative funding mechanisms and best practices
6 utilized by other jurisdictions nationwide, and different
7 infrastructure needs imposed by different types of development,
8 including infill. The working group was also asked to submit
9 proposed legislation or procedures for implementing its
10 recommendations on determining school impact fees within
11 identified school impact districts.

12 In its report to the legislature entitled Hawaii School
13 Impact Fee Study (December 2006), the working group recommended
14 that each school impact district determine the appropriate
15 student generation rates for the area.

16 The purpose of this Act is to implement the working group's
17 recommendation for implementing a new method for financing new



1 or expanding existing department of education educational
2 facilities.

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

6 "PART . SCHOOL IMPACT FEES

7 §302A-A Findings. New residential subdivisions within
8 identified school impact districts create additional demand for
9 public school facilities and a need for more land on which to
10 construct school facilities. New residential subdivisions
11 should provide land or pay fees in lieu of land dedication prior
12 to the subdivisions' approvals proportionate to their impacts.
13 New residential developments should pay a school impact fee that
14 is proportionate to their impact on the need to construct
15 additional facilities prior to issuance of building permits. A
16 study commissioned by the State has identified the land
17 dedication requirement that is consistent with proportionate
18 fair-share principles and the net capital cost of school
19 facilities, excluding land costs, that is consistent with
20 proportionate fair-share principles.

21 The State determines that new residential subdivisions
22 within designated school impact districts shall provide land for



1 schools or pay a fee in lieu of land proportionate to their
2 impacts. The State also determines that new residential
3 developments within designated school impact districts shall pay
4 school impact fees proportionate to their impacts.

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

8 "County" means the city and county of Honolulu, the county
9 of Hawaii, the county of Kauai, and the county of Maui.

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

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

17 "Fee in lieu" means a fee determined pursuant to section
18 302-F.

19 "Greenfield school impact district" means a largely
20 undeveloped, formerly agricultural area where anticipated growth
21 will create the need for new schools within the next ten years



1 that will be located within the area and will primarily serve
2 new housing units within the area.

3 "Hawaii school impact fee study" means the study prepared
4 by Group 701 International and Duncan Associates for the school
5 impact fee working group in 2006, or a subsequent similar
6 report.

7 "Multi-family" means any dwelling unit other than a
8 single-family unit.

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

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

14 "School facilities" means the facilities owned or operated
15 by the department, or the facilities included in the department
16 of education capital budget or capital facilities plan.

17 "School impact district" means a geographic area designated
18 by the board as either a greenfield school impact district or a
19 non-greenfield school impact district.

20 "Single-family" means a detached dwelling unit not
21 connected to any other dwelling unit, or a detached building
22 containing two dwelling units.



1 §302A-C Applicability and exemptions. (a) Except as
2 provided in subsection (c), any person who seeks to develop
3 residential land by applying to a county for the issuance of a
4 subdivision approval within a designated school impact district
5 shall be required to dedicate land suitable for school
6 facilities or pay a fee in lieu of dedicating that land to the
7 department before final subdivision approval.

8 (b) Except as provided in subsection (c), any person who
9 seeks to develop residential land within a designated school
10 impact district by applying to any county for a building permit
11 shall be required to pay a school impact fee. Assessment of
12 impact fees shall be a condition precedent to the issuance of a
13 building permit and shall be paid in full to the department
14 before issuance of the permit.

15 (c) 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 developments; and
21 (3) Any development with an executed developer agreement
22 with the department for the contribution of school



1 sites or payment of fees for school land or school
2 construction.

3 §302A-D Designation of school impact districts and
4 greenfield school impact districts. (a) The board shall
5 designate a school impact district for school impact fees only
6 after holding a public hearing. A written analysis prepared by
7 the department supporting the designation of the school impact
8 district, as required herein, shall be made available to the
9 public at least thirty days prior to the public hearing. Notice
10 of the public hearing shall be posted in a newspaper of general
11 circulation in the area proposed for designation at least two
12 weeks prior to the public hearing. The notice shall include a
13 map of the proposed school impact district and the date, time,
14 and place of the public hearing.

15 (b) Prior to the designation of a greenfield school impact
16 district, the department shall prepare a written analysis that
17 contains the following:

- 18 (1) A map and legend description of the boundaries of the
19 area;
- 20 (2) A finding that existing residential development in the
21 area is insignificant, and in no event greater than

- 1 one per cent of the anticipated number of dwelling
2 units at build-out of the area;
- 3 (3) Analysis to support the need for the construction of
4 an elementary school in the area within the next ten
5 years, based on anticipated development in the area.
6 Analysis to support the ultimate need for a high
7 school to be located within the area to primarily
8 serve the anticipated housing in the area;
- 9 (4) Analysis to identify the percentages of existing
10 student stations at the elementary school, middle
11 school, and high school levels that are located in
12 permanent structures, as opposed to portable
13 buildings, in surrounding high school complexes;
- 14 (5) Analysis to support appropriate student generation
15 rates by housing type and grade level that are
16 representative of the type of development anticipated
17 in the area; and
- 18 (6) Analysis to determine the average value per acre of
19 improved land in the area suitable for school
20 construction, after typical subdivision improvements
21 such as roads, drainage, and utilities.



1 (c) Prior to the designation of a non-greenfield school
2 impact district, the department shall prepare a written analysis
3 that contains the following:

4 (1) A map and legal description of the boundaries of the
5 area, which will include one or more high school
6 complexes;

7 (2) Analysis to support the need to construct or expand
8 school facilities in the area within the next ten
9 years to accommodate projected growth in the area;

10 (3) Analysis to determine appropriate student generation
11 rates by housing type and grade level that are
12 representative of the type of development anticipated
13 in the area. If the analysis determines that student
14 generation rates are falling for existing housing
15 units in the area, the student generation rates for
16 new housing should reflect the net effect of growth,
17 after accounting for capacity likely to be freed up by
18 declining enrollment from existing housing;

19 (4) Analysis to identify the percentages of existing
20 student stations at the elementary school, middle
21 school, and high school levels that are located in



- 1 permanent structures, as opposed to portable
- 2 buildings;
- 3 (5) Calculation of the current level of service in the
- 4 area, which shall be the ratio of current student
- 5 capacity at all grade levels to the current enrollment
- 6 at all grade levels; provided that the ratio shall not
- 7 exceed one; and
- 8 (6) Analysis to determine the average value per acre of
- 9 improved land in the area suitable for school
- 10 construction, after typical subdivision improvements
- 11 such as roads, drainage, and utilities.

12 §302A-E School land or fee in lieu required. The
13 procedure for determining whether the dedication of land is
14 required or a payment of a fee in lieu is required for a new
15 school facility shall be as follows:

- 16 (1) At the time of filing an application for any
- 17 residential subdivision containing fifty or more acres
- 18 of land, the owner or developer of the property, as a
- 19 part of the filing, shall designate the area proposed
- 20 to be dedicated for a school on the plat submitted;
- 21 (2) When land is proposed to be dedicated for the purpose
- 22 of providing a school site, it shall be land that is

- 1 usable by the department for that purpose. The
2 department shall have the final determination as to
3 whether a particular piece of land is usable;
- 4 (3) Within sixty days of the completion of an application
5 for a residential subdivision containing fifty or more
6 acres, the department, as part of the approval, shall
7 determine whether to require dedication of land, the
8 payment of a fee in lieu thereof, or a combination of
9 both. Only payment of a fee in-lieu shall be required
10 in subdivisions containing less than fifty acres;
- 11 (4) When dedication is required, the land shall be
12 conveyed to the State prior to final subdivision
13 approval;
- 14 (5) When the payment of a fee in lieu is required, the fee
15 in lieu shall be paid prior to final subdivision
16 approval;
- 17 (6) Whether the department determines to require land
18 dedication or the payment of a fee in lieu, or a
19 combination of both, shall be guided by the following
20 criteria:



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

4 (B) The size and shape of the development and the
5 land available for dedication; and

6 (C) The location of existing or proposed schooling
7 facilities; and

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

12 §302A-F Determination of the amount of land or the fee in

13 lieu. (a) The size of the tract of land to be dedicated by the
14 developer shall be determined using the following formula:

15 (Elementary school student generation rate per unit x
16 0.1056 acres/student + x middle school student
17 generation rate per unit x 0.0110 acres/student + high
18 school student generation rate per unit x 0.0306
19 acres/student) x number of dwelling units provided for
20 on the subdivision plat.

21 (b) The dollar amount of the fee in lieu shall be
22 determined using the following formula:



1 Acres of land calculated according to subsection (a)
2 times the average cost per acre of land of the
3 subdivision determined pursuant to subsection (c).

4 (c) In determining the average cost per acre, the
5 following shall apply:

6 (1) The fee in lieu of land dedication for residential
7 subdivisions of fifty acres or more shall be based on
8 the value of the improved land, after typical
9 subdivision improvements such as roads, drainage, and
10 utilities. A M.A.I. appraiser who is selected and
11 paid for by the developer shall determine the value of
12 the land. If the department does not agree with the
13 developer's appraisal, the department may engage
14 another M.A.I. appraiser at its own expense, and the
15 value shall be an amount equal to the average of the
16 two appraisals. If either party does not accept the
17 average of the two appraisals, a third appraisal shall
18 be obtained, with the cost of the third appraisal
19 being shared equally by the department and the
20 developer. The first two appraisers shall select the
21 third appraiser, and the third appraisal shall be
22 binding on both parties; and

1 (2) Residential subdivisions of less than fifty acres
2 shall pay a standard fee in lieu based on an average
3 land value determined for the area pursuant to section
4 302A-D(b)(6) and subsection (b). At least every three
5 years, the department shall prepare an analysis to
6 update the appropriate average land value and shall
7 submit the analysis to the board with a recommendation
8 to update the average cost per acre.

9 §302A-G Impact fee calculation. (a) The State shall be
10 divided into the following twenty-six geographically limited
11 cost districts:

12	Cost District	School District	Cost Factor
13	Honolulu	Honolulu	1.00
14	Ewa	Leeward/Central	1.00
15	Wahiawa	Central	1.05
16	Waialua	Central	1.10
17	Koolaupoko	Windward	1.00
18	Koolauloa	Windward	1.10
19	Waianae	Leeward	1.10
20	Hilo	Hawaii	1.15
21	Puna	Hawaii	1.20
22	Kona	Hawaii	1.20



1	Hamakua	Hawaii	1.20
2	South Kohala	Hawaii	1.20
3	North Kohala	Hawaii	1.25
4	Pohakuloa	Hawaii	1.25
5	Kau	Hawaii	1.30
6	Wailuku	Maui	1.15
7	Makawao	Maui	1.25
8	Lahaina	Maui	1.30
9	Hana	Maui	1.35
10	Molokai	Molokai	1.30
11	Lanai	Lanai	1.35
12	Lihue	Kauai	1.15
13	Koloa	Kauai	1.20
14	Kawaihau	Kauai	1.20
15	Waimea	Kauai	1.25
16	Hanalei	Kauai	1.25

17 (b) School impact fees shall be based on the following
18 costs per student in the Honolulu assessment district. The cost
19 per student in other assessment districts shall be the cost per
20 student in the Honolulu assessment district multiplied by the
21 appropriate cost factor in subsection (a). At least every three
22 years, the department shall update the costs per student in the



1 Honolulu assessment district and present the written analysis to
2 the board for review. Upon approval by the board, the updated
3 costs per student shall replace the costs shown below:

4 (1) Elementary school costs per student in the Honolulu
5 assessment district is \$33,230;

6 (2) Middle school costs per student in the Honolulu
7 assessment district is \$32,717; and

8 (3) High school costs per student in the Honolulu
9 assessment district is \$58,904.

10 (c) The costs per dwelling unit for single family detached
11 and multi-family housing in each designated school impact
12 district shall be calculated according to the following formula,
13 where the costs per student are determined in subsection (b) and
14 the student generation rates, percentages of student stations in
15 permanent buildings, and current level of service are determined
16 in subsection (b). In greenfield school impact areas, the
17 current level service shall be one:

18 (Elementary school student generation rate per unit
19 times elementary school costs per student times the
20 percentage of existing elementary school student
21 stations in permanent buildings

22 +



1 Middle school student generation rate per unit times
2 middle school costs per student times the percentage
3 of existing middle school student stations in
4 permanent buildings
5 +
6 High school student generation rate per unit times
7 high school costs per student times the percentage of
8 existing high school student stations in permanent
9 buildings)
10 x
11 The current level of service.

12 (d) The following revenue credit shall be utilized on the
13 effective date of this Act. At least every three years, and
14 concurrent with any update of the costs per student, the
15 department shall update the revenue credits and present the
16 written analysis to the board for review. Upon approval by the
17 board, the updated revenue credits shall replace the following:

- 18 (1) Single family detached dwelling unit: \$2,786; and
- 19 (2) Multi-family dwelling unit: \$1,428.

20 (e) The impact fees per dwelling unit shall be per
21 cent of the amounts calculated according to the following
22 formula:



1 Cost per dwelling unit from subsection (c) minus
2 revenue credit per dwelling unit from subsection (d).
3 **§302A-H Accounting and expenditure requirements.** (a)
4 Each designated school impact district shall be a separate
5 benefit district. Fees in lieu of school land dedication
6 collected within each school impact district shall be spent only
7 for the acquisition of school sites within the same school
8 impact district. School impact fees collected within each
9 school impact district shall be spent only for the expansion of
10 existing school or construction or new schools located within
11 the same school impact district.

12 (b) Land dedicated by the developer shall be used only as
13 a site for the construction of a new school or for the expansion
14 of existing school facilities. If the land is sold, the
15 proceeds shall be used to acquire land for school facilities in
16 the same school impact district.

17 (c) Fee in lieu funds shall only be used for the
18 acquisition of land for school purposes. Funds may be used for
19 expenses related to acquiring a piece of land, including but not
20 limited to surveying, appraisals, and legal fees. Fee in lieu
21 funds shall not be used for the maintenance or operation of
22 existing schools in the district, construction costs, including



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

3 (d) Impact fees shall be used only for the costs of school
4 construction that expands the student capacity of existing
5 schools or adds student capacity in new schools. School impact
6 fees may not be used to replace an existing school located
7 within the same school impact district, either on the same site
8 or on a different site. In the event of closure, demolition, or
9 conversion of an existing permanent department facility within a
10 school impact district that has the effect of reducing student
11 capacity, an amount of new student capacity in permanent
12 buildings equivalent to the lost capacity shall be funded with
13 non-school impact fee revenue. Eligible construction costs
14 include but are not limited to planning, engineering,
15 architectural, permitting, financing, and administrative
16 expenses, and any other capital equipment expenses pertaining to
17 educational facilities. Impact fee funds shall not be expended
18 for:

- 19 (1) Any costs related to the acquisition of land;
20 (2) The maintenance or operation of existing schools in
21 the district; or
22 (3) On portable buildings.



1 (e) Impact fee and fees in lieu shall be expended or
2 encumbered within ten years of the date of collection. Fees
3 shall be considered spent or encumbered on a first-in, first-out
4 basis.

5 **§302A-I Refunds.** If the fee in lieu or impact fee is not
6 expended within ten years of the date of collection, the
7 department shall refund to the developer, or the developer's
8 successor in the title, the amount of fees in lieu paid and any
9 interest accrued thereon. Application for a refund shall be
10 submitted to the department within one year of the date on which
11 the right to claim arises. Any unclaimed refund shall be
12 retained and expended as provided in this part.

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

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

20 (c) Credits for contributions prior to the effective date
21 of this Act shall be based on the present value; provided that



1 the credit amount shall not exceed the value of the dedication
2 or fee in lieu required under this part.

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

10 §302A-K Credits for impact fees. (a) Any applicant
11 subject to the school impact fee requirements pursuant to this
12 part may apply for credit for any similar contribution, payment,
13 or construction of public school facilities accepted and
14 received by the department for the same subdivision subject to
15 this part. No credit shall be authorized against the impact
16 fees for dedication of land or payment of a fee in lieu of land
17 dedication.

18 (b) Credits for contributions, payments, or construction
19 made prior to the effective date of this Act shall be provided
20 if the subdivision for which the contribution, payment, or
21 construction was made has not been completed. The current owner
22 of the property for which the contribution, payment, or



1 construction was made as a condition of development approval
2 shall file an application for credit within one year of the
3 effective date of this Act. If the application is not made
4 within one year of the effective date of this Act, no credit
5 shall be provided. The application for credit shall be
6 submitted and reviewed as provided in this part. The amount of
7 the credit for a contribution, payment, or construction made
8 prior to the effective date of this Act shall be the current
9 value of the contribution, payment, or construction, less the
10 total amount of school impact fees that would have been owed for
11 the building permits already issued for the project had those
12 permits been subject to the fees specified in section 302A-G.
13 The current value shall be determined using the Engineering
14 News-Record Construction Cost Index, or an equivalent index if
15 that index is discontinued. Credits for payments or
16 contributions prior to the effective date of this Act shall not
17 exceed the value of the impact fee required under this section.

18 (c) A credit may be applied only against school impact
19 fees that would otherwise be due for building permits issued
20 within the subdivision for which the payment or contribution was
21 required as a condition of development approval. The department
22 shall maintain an accounting of the amount of the credit



1 applicable to the subdivision and shall reduce the amount of the
2 credit by the amount of the school impact fees that would
3 otherwise be due for each building permit issued in the
4 subdivision. After the credit balance is exhausted, no
5 additional credits shall be applied to subsequent building
6 permits issued within the subdivision.

7 (d) If private construction of school facilities is
8 proposed by a developer after the effective date of this Act,
9 the proposed construction is acceptable to the department, and
10 the value of the proposed construction exceeds the total impact
11 fees that would be due from the development, the department
12 shall execute with the developer an agreement to provide
13 reimbursement for the excess credit from the impact fees
14 collected from other developers within the same benefit
15 district."

16 SECTION 3. In codifying the new sections added by
17 section 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 4. This Act shall take effect upon its approval.

21

INTRODUCED BY:

Norman Sakomfo



Report Title:

School Impact Fees; New Schools or Facilities

Description:

Establishes a new part for determining school impact fees for financing new or expanding existing department of education schools or facilities by requiring each school impact district to determine the appropriate student generation rates for the area.

