

SB2828



**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of  
**Linda L. Smith**  
Senior Policy Advisor to the Governor

Before the  
**SENATE COMMITTEE ON EDUCATION & HOUSING**

Friday, February 5, 2010, 1:40 p.m.  
State Capitol, Room 225

**S.B. 2828 RELATING TO EDUCATION**

Chair Sakamoto, Vice Chair Kidani, and members of the Committee:

The Administration has **concerns** with S.B. 2828 and proposes **amendments** to the measure (attached).

This bill makes clarifying amendments to the school impact fee law, Act 245 of 2007, which authorized the Department of Education (DOE) to assess an impact fee to residential housing developers in order to finance new or expand existing public school facilities.

First, the Administration is concerned that when impact fees are assessed to housing developers the cost is passed on to homeowners and renters. The price of housing in Hawaii is already among the highest in the nation and impact fees contribute to perpetuating the high cost of housing in the State. The Administration is opposed to assessing impact fees on affordable housing developers who provide an important resource for Hawaii residents. This bill, at a minimum, should provide an exemption for affordable housing developers.

Secondly, the Administration is concerned that the current information that is used by the DOE to determine the future educational needs of a community is inadequate. Accordingly, we propose amendments that would expand the scope of the DOE's analysis to ensure that educational resources and needs are properly assessed.

Thank you for the opportunity to provide testimony on this measure.

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# A BILL FOR AN ACT

RELATING TO SCHOOL IMPACT FEES.

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

1           SECTION 1.   Section 46-412.5, Hawaii Revised Statutes,  
2 shall be amended to read:  
3           "**§46-142.5 School impact districts; new building permit**  
4 **requirements.** New residential development in a designated  
5 school impact district under chapter 302A [~~shall~~]may be issued a  
6 residential building permit or condominium property regime  
7 building permit [~~until~~]when the department of education or a  
8 similar public education entity such as the charter school  
9 administrative office or the department of human services for  
10 pre-schools provides written confirmation that the permit  
11 applicant has fulfilled its school impact fee requirements.  
12 This section shall only apply to new dwelling units. This  
13 section shall not apply to residential developments exempt from  
14 school impact fees as provided in subsection 302A-1603(b)."

15           SECTION 2.   Section 302A-1603, Hawaii Revised Statutes,  
16 shall be amended to read:

17           "**§302A-1603 Applicability and exemptions.** (a) Except as  
18 provided in subsection (b), any person who seeks to develop a

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1 new residential development within a designated school impact  
2 district requiring:

3 (1) A county subdivision approval;

4 (2) A county building permit; or

5 (3) A condominium property regime approval for the  
6 project,

7 shall be required to fulfill the land requirement and  
8 vertical construction requirement of the department.

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

10 (1) Any form of housing permanently excluding school-  
11 aged children, with the necessary covenants or  
12 declarations of restrictions recorded on the property;

13 (2) Any form of housing which is or will be paying  
14 the transient accommodations tax under chapter 237D;

15 (3) All nonresidential development; [~~and~~]

16 (4) Any development with an executed education  
17 contribution agreement or other like document with the  
18 department for the contribution of school sites or  
19 payment of fees for school land or school  
20 construction[~~-~~]; and

1        (5) Any housing that has been designated as an  
2                    affordable housing development as defined in section  
3                    46- ."

4            SECTION 3. Section 302A-1604, Hawaii Revised Statutes, is  
5 amended to read:

6            "**§302A-1604 Designation of school impact districts.** (a)

7 The [~~board~~] state education commission shall designate a school  
8 impact district for school impact fees only after holding at  
9 least one public hearing in the area proposed for the school  
10 impact district. The written [~~analysis~~]needs assessment,  
11 prepared in accordance with subsection (b), shall be made  
12 available to the public at least thirty days prior to the public  
13 hearing. Notice of the public hearing shall be made as provided  
14 in section 1-28.5. The notice shall include a map of the  
15 proposed school impact district and the date, time, and place of  
16 the public hearing.

17            (b) Prior to the designation of a school impact district,  
18 the department, in consultation with state office of planning,  
19 the state land use commission, and planning, housing, and  
20 building agencies and entities within the applicable county,  
21 shall prepare a written needs assessment [~~analysis~~] that  
22 contains the following:

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1           (1) A map and legend describing the boundaries of the  
2           proposed school impact district and surrounding area,  
3           which may range from one school to one or more high  
4           school complexes; and

5           (2) An [A]analysis to support the need to construct new or  
6           expand existing school facilities in the area within  
7           the next twenty-five years to accommodate projected  
8           growth in the area based on various state and county  
9           land use, demographics, growth, density, and other  
10          applicable plans[-], which shall include, at a  
11          minimum, the following:

12          (a) Residential housing construction trends within  
13          and near the proposed school impact district;

14          (b) Analysis of long-term demographic and population  
15          changes based on statistical data from federal,  
16          state or county agencies, including any  
17          justifiable correlation showing a reasonable  
18          expectation for an increase in public school  
19          enrollment;

20          (c) A detailed analysis of historical trends in  
21          school enrollments by location, grade level and  
22          school for the prior twenty year period;

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1           (d) A list of the existing public school facilities,  
2           including public charter schools and public pre-  
3           schools within and near the proposed school  
4           impact district, including any capital  
5           improvement projects planned for those  
6           facilities; and

7           (e) A list of proposed new schools and expansion of  
8           existing public school facilities.

9           (c) The state education commission shall designate a school  
10          impact district provided that the needs assessment produces  
11          quantifiable evidence of a need for a new school or expansion of  
12          existing public school facilities in the proposed school impact  
13          district."

14           SECTION 4. 302A-1605, Hawaii Revised Statutes, is amended  
15          to read:

16           "**§302A-1605 Impact fee analysis.** Upon designation of a  
17          school impact district, the department shall prepare, in  
18          consultation with state office of planning, land use commission,  
19          and planning, housing, and building agencies within the  
20          applicable county, an impact fee analysis that shall include, at  
21          a minimum, the following:





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1           (5) Calculation of the current statewide level of service,  
2           which shall be the ratio of current student capacity  
3           at all school levels to the current enrollment at all  
4           school levels;

5           (6) A list of all school rooms not being used as  
6           classrooms in existing school facilities within the  
7           complex and a five-mile radius of the proposed  
8           development site;

9           ~~(6)~~(7) An analysis of proposed redistricting, listing  
10           the advantages and disadvantages by making more  
11           efficient use of existing underutilized assets;

12           ~~(7)~~(8) An analysis of appropriate school land area and  
13           enrollment capacity, which may include nontraditional  
14           (i.e., mid-rise or high-rise structures) facilities to  
15           accommodate the need for public school facilities in  
16           high growth areas within existing urban developments;  
17           and

18           ~~(8)~~(9) An analysis to identify the percentages of  
19           existing student enrollment at the pre-school,  
20           elementary school, middle or intermediate school, and  
21           high school levels that are located in permanent  
22           structures, and the percentages that are located in

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1 portable buildings in surrounding high school  
2 complexes.

3 The department shall make a copy of the completed impact  
4 fee analysis available for public viewing. The department shall  
5 bear the cost to conduct this study and shall not rely on the  
6 developer to undertake the analysis."

7 SECTION 5. Section 302A-1607, Hawaii Revised Statutes,  
8 shall be amended to read:

9 " §302A-1607] **Impact fee: construction cost component -**  
10 **determining the cost per unit.** (a) The construction cost  
11 component of the school impact fees shall be calculated using  
12 [~~the following factors:~~

13 ~~(1) For new school construction, the cost per student for~~  
14 ~~each school type (elementary, middle or intermediate,~~  
15 ~~and high school) is based on the ten-year average~~  
16 ~~construction of a new school facility using the~~  
17 ~~Honolulu assessment district in 2006 as the base.~~  
18 ~~Costs for construction completed earlier than 2006~~  
19 ~~shall be escalated to 2006 using the engineering news-~~  
20 ~~record construction cost index;]~~

21 (1) Bids provided by three licensed contracting firms  
22 capable of constructing the facility. The bids shall

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1           be compared to the ten-year average construction cost  
2           of a new school using the Honolulu assessment district  
3           in 2004 as the base;

4           (2) For expansion of existing school facilities, the cost  
5           per student for each school type (elementary, middle  
6           or intermediate, and high school) is based on the ten-  
7           year average construction of whatever components are  
8           required to expand the school using the Honolulu  
9           assessment district in [~~2006~~] 2004 as the base;

10          (3) The cost per student in other assessment districts  
11          shall be the cost per student in the Honolulu  
12          assessment district multiplied by the appropriate cost  
13          factor in subsection (c). At least every three years,  
14          the department shall update the cost per student based  
15          on the construction of a new permanent school  
16          facility, and present the written analysis to the  
17          [~~board~~] state education commission for review; and

18          (4) Student generation rates, as defined in section  
19          302A-1602.

20          (b) The student generation rate for each school type (pre-  
21          school, elementary, middle or intermediate, and high school)  
22          shall be multiplied by the cost per student for each school type

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1 (elementary, middle or intermediate, and high school) to  
 2 determine the cost/unit in the development.

3 (c) The State shall be divided into the following twenty-  
 4 six geographically limited cost districts:

| 5  | Cost District | School District | Cost Factor |
|----|---------------|-----------------|-------------|
| 6  | Honolulu      | Honolulu        | 1.00        |
| 7  | Ewa           | Leeward/Central | 1.00        |
| 8  | Wahiawa       | Central         | 1.05        |
| 9  | Waialua       | Central         | 1.10        |
| 10 | Koolaupoko    | Windward        | 1.00        |
| 11 | Koolauloa     | Windward        | 1.00        |
| 12 | Waianae       | Leeward         | 1.10        |
| 13 | Hilo          | Hawaii          | 1.15        |
| 14 | Puna          | Hawaii          | 1.20        |
| 15 | Kona          | Hawaii          | 1.20        |
| 16 | Hamakua       | Hawaii          | 1.20        |
| 17 | South Kohala  | Hawaii          | 1.20        |
| 18 | North Kohala  | Hawaii          | 1.25        |
| 19 | Pohakuloa     | Hawaii          | 1.25        |
| 20 | Kau           | Hawaii          | 1.30        |
| 21 | Wailuku       | Maui            | 1.15        |
| 22 | Makawao       | Maui            | 1.25        |

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|   |          |         |      |
|---|----------|---------|------|
| 1 | Lahaina  | Maui    | 1.30 |
| 2 | Hana     | Maui    | 1.35 |
| 3 | Molokai  | Molokai | 1.30 |
| 4 | Lanai    | Lanai   | 1.35 |
| 5 | Lihue    | Kauai   | 1.15 |
| 6 | Koloa    | Kauai   | 1.20 |
| 7 | Kawaihau | Kauai   | 1.20 |
| 8 | Waimea   | Kauai   | 1.25 |
| 9 | Hanalei  | Kauai   | 1.25 |

10           (d) At least every three years, and concurrent with any  
 11 update of the costs per student, the department shall update the  
 12 revenue credits and present the written analysis to the [~~board~~]  
 13 state education commission for review. The calculation of  
 14 revenue credits shall be reviewed and calculated recognizing  
 15 that the impact fee shall be set at [~~one hundred per cent of the~~  
 16 ~~fair market value of the land~~]the net present value of the land  
 17 under its current land use classification and ten per cent of  
 18 the total school construction cost.

19           (e) The construction cost component of the impact fees per  
 20 dwelling unit shall be ten per cent of the amounts calculated  
 21 according to the following formula:

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1           Cost per dwelling unit from [subsection (b)] minus any  
2 amount by which the revenue credit per dwelling unit from  
3 subsection (d) exceeds ninety per cent of the per unit  
4 construction cost.

5           (f) The amount of the fee shall be [~~increased from~~] set  
6 at the date it was determined[~~to the date it is paid using the~~  
7 ~~engineering news record construction cost index, or an~~  
8 ~~equivalent index if that index is discontinued~~].

9           (g) Any new residential development shall be required to  
10 obtain a written agreement between the owner or developer of the  
11 property and the department, under which the owner or developer  
12 has agreed to a time specified for payment, for its school  
13 impact fee construction cost component prior to the issuance of  
14 the building permit."

15           SECTION 6. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17           SECTION 7. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: \_\_\_\_\_

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## WRITTEN TESTIMONY ONLY

**Date:** 02/05/2010

**Committee:** Senate Education and Housing

**Department:** Education

**Person Testifying:** Kathryn Matayoshi, Interim Superintendent of Education

**Title of Bill:** SB 2828 RELATING TO EDUCATION.

**Purpose of Bill:** Clarifies the law for determining school impact fees for financing new or expanding existing department of education schools or facilities.

**Department's Position:** The Department of Education (DOE) does not support this bill. The DOE believes the legislation on school impact fees should not be amended at this stage, prior to the implementation of the fees in any location in the state.

The DOE is currently in the process of proposing and analyzing different school impact districts. If we determine that improvements should be made to the enabling legislation, we will have a better idea of what those changes should be once the fees are implemented.

Thank you for the opportunity to testify on this bill.