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SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 03/23/2021

**Time:** 02:00 PM

**Location:** 309 Via Videoconference

**Committee:** House Education

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** SB 0468, SD1, HD1 RELATING TO SCHOOL IMPACT FEES.

**Purpose of Bill:** Repeals the school impact fee exemptions for nonresidential development and housing subject to the transient accommodations tax when seeking development in a designated school impact district requiring county subdivision approval, county building permit, or condominium property regime approval of the project. Allows construction cost component impact fees to be used to improve or renovate existing structures for school use. Repeals the requirement that an expenditure plan for all collected impact fees be incorporated into the department of education's annual budget process. Effective 12/1/2050. (HD1)

**Department's Position:**

The Hawaii State Department of Education (Department) offers testimony in support of SB 468, SD1, HD 1 with comments.

Hawaii's school impact fee law, Hawaii Revised Statute Sections 1601-1612, plays a vital role in the development of new school facilities in designated areas where the construction of new housing directly increases student enrollment. Any statutory flexibility the Legislature can provide in the Department's expenditure of school impact fee would be greatly appreciated.

To meet the federal constitutional requirements of its authority, however, the school impact fee program must demonstrate a direct link or nexus between a proposed development and the resulting need for new facilities. Since nonresidential development and housing subject to the transient accommodations tax do not have an impact on student enrollment which results in the need for additional facilities, the

Department believes that the repeal of this exemption will not satisfy the required nexus and could possibly implicate legal issues.

Thank you for this opportunity to provide testimony on SB 468, SD 1, HD 1.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Repeal School Impact Fee Exemptions

BILL NUMBER: SB 468, HD1

INTRODUCED BY: House Committee on Housing

EXECUTIVE SUMMARY: Repeals the school impact fee exemptions for nonresidential development and housing subject to the transient accommodations tax when seeking development in a designated school impact district requiring county subdivision approval, county building permit, or condominium property regime approval of the project. Allows Construction cost component impact fees to be used to improve or renovate existing structures for school use. Repeals the requirement that an expenditure plan for all collected impact fees be incorporated into the department of education's annual budget process.

SYNOPSIS: Amends HRS section 302A-1603 to delete the existing exemptions for housing that is or will be paying the transient accommodations tax, and for all nonresidential development.:

Amends HRS section 302A-1608 to authorize construction cost component impact fees to be used to improve or renovate existing structures for school use.

Also amends HRS section 302A-1608 to repeal the requirement that an expenditure plan for all collected impact fees be incorporated into the department of education's annual budget process.

EFFECTIVE DATE: 12/1/2050.

STAFF COMMENTS: The Hawaii Revised Statutes contains twelve sections relating to “school impact fees,” starting with section 302A-1601. The law states, in part, “New residential developments within identified school impact districts create additional demand for public school facilities. As such, once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities.”

Builders of large projects within school impact districts are required to provide land for school facilities depending on the numbers of students expected in their projects and the amount of available classroom space in existing area schools. Smaller developers and individual home owner-builders are required to pay a fee instead of land, when their project is too small to entertain a school site. All home builders or buyers must pay a construction cost fee.

Once an impact fee district is established, the Department of Education is authorized to collect 10% of estimated school construction costs and 100% of estimated land acquisition costs from each residential development planned within the district.

The Board of Education (BOE) used this authority to establish impact fee districts in Central Maui and West Maui in 2010, and in Leeward Oahu in 2012. It approved another district in

West Hawaii in 2009, but apparently the Big Island county government didn't want to cooperate and that district remains an open issue.

The theory behind this law is that high growth will mean more children, and more schools are required to educate them.

With that background, the exemptions in section 302A-1603 make more sense. If a particular development is not going to house children who are going to use our public schools, it doesn't make sense for that development to pay the school impact fee.

The bill proposes to eliminate these exemptions, which is not consistent with the theory of the impact fee, making the bill look like a pure money grab.

If the Committee desires to go forward with eliminating the exemptions, consideration then must be given to rewriting the legislative findings in section 302A-1601 and the formulas for determining the impact fee in land or in cash, in sections 302A-1606 and -1607. Under the present formula, for example, if a large shopping center is planned with no residential units, the school land area requirement in section 302A-1606(b) will be zero because the incremental number of single-family units and the incremental number of multi-family units will both be zero. Eliminating the exemption, therefore, might not accomplish much unless additional structural changes are made to the tax.

In addition, the accounting and expenditure requirements in section 302A-1608 presently restrict the expenditure of impact fees for construction of new or expanded schools. The fees are not to be used to replace existing schools, or to maintain or operate existing schools. If the intent is for the additional funds generated to be used to shore up existing facilities, wholesale changes to this section are required. In that respect, the proposed amendment to section 302A-1608(h) of the bill seems self-contradictory, because the bill as amended would allow improvement or renovation of existing structures for school use while prohibiting replacement of an existing school even if the replacement is on the same site.

Digested 3/20/2021



March 22, 2021

Representative Justin H. Woodson, Chair  
Representative Jeanne Kapela, Vice-Chair  
House Committee on Education

**Strong Opposition to SB 468, SD1, HD1, RELATING TO SCHOOL IMPACT FEES (Repeals the school impact fee exemptions for nonresidential development and housing subject to the transient accommodations tax when seeking development in a designated school impact district requiring county subdivision approval, county building permit, or condominium property regime approval of the project. Allows Construction cost component impact fees to be used to improve or renovate existing structures for school use. Repeals the requirement that an expenditure plan for all collected impact fees be incorporated into the department of education's annual budget process. Effective 12/1/2050. [HD1])**

**EDN Hearing: Tuesday, March 23, 2021, 2:00 p.m.,  
VIA VIDEOCONFERENCE in Conference Room 309**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to research, educate and advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF is very familiar with the School Impact Fee law (Sections 302A-1601 – 1611, Hawaii Revised Statutes), because we worked closely with the State Department of Education (DOE) and Senator Norman Sakamoto to draft and pass the law.

LURF appreciates the opportunity to provide testimony in **strong opposition to SB 468, SD1, HD1, because it is contrary to the spirit, intent, and specific requirements of the School Impact Fee law.**

**SB 468, SD1, HD1.** This measure:

- Repeals the school impact fee exemptions for nonresidential development and housing subject to the transient accommodations tax when seeking development in a designated school impact district requiring county subdivision approval, county building permit, or condominium property regime approval of the project;
- Allows Construction cost component impact fees to be used to improve or renovate existing structures for school use; and
- Repeals the requirement that an expenditure plan for all collected impact fees be incorporated into the department of education's annual budget process.

**LURF's Position.** The School Impact Fee Law is based on and requires a direct legal nexus or justification between the number students generated by a residential project, and the imposition of school impact fees to fund new school facilities.

Nonresidential developments and housing subject to the transient accommodations tax do not generate school-aged students, thus, it will be impossible for those projects to establish the student generation rate that is required to implement the school impact fee.

Because nonresidential developments and housing that is subject to the transient accommodations tax do not generate school-aged students, there is no legal nexus or justification to impose school impact fees on said projects.

For the reasons stated above, LURF is **strongly opposed to SB 468, SD1, HD1**, and respectfully urges that your Committee defer and hold this bill.