

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHIMOTO
SUPERINTENDENT

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

Date: 03/18/2021

Time: 09:15 AM

Location: 423 Via Videoconference

Committee: House Housing

Department: Education

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

Title of Bill: SB 0468, SD1 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 7/1/2050. (SD1)

Department's Position:

The Hawaii State Department of Education (Department) offers testimony in support of SB 468, SD 1, and provides 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 provides to aid the Department's expenditure of school impact fees is greatly appreciated.

Constitutional parameters require the school impact fee program to 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 may not appear to have a direct impact on student enrollment, which would result in the need for additional facilities, the Department believes that the repeal of this exemption may not satisfy the nexus requirement and could possibly implicate legal issues.

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



March 16, 2021

Representative Nadine K. Nakamura, Chair
Representative Troy N. Hashimoto, Vice-Chair
House Committee on Housing

Strong Opposition to SB 468, SD1 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 7/1/2050. [SD1])

**HSG Hearing: Thursday, March 18, 2021, 9:15 a.m.,
VIA VIDEOCONFERENCE in Conference Room 423**

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, because it is contrary to the spirit, intent, and specific requirements of the School Impact Fee law.**

SB 468, SD1. 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**, and respectfully urges that your Committee defer and hold this bill.

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, SD1

INTRODUCED BY: Senate Committees on Ways and Means and Judiciary

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: 7/1/2050.

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 3/16/2021



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

March 17, 2021

The Honorable Representative Nadine Nakamura, Chair
The Honorable Representative Troy Hashimoto, Vice Chair
House Committee on Housing

RE: **SB 468 SD1- Relating to School Impact Fees.**
Hearing date: Thursday, March 18, 2021 at 9:15 A.M.

Aloha Chair Nakamura, and Members of the Committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii to provide testimony in **OPPOSITION** to SB 468, SD1. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

SB 468, SD1 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. The measure 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.

Non-residential projects should not be subject to school impact fees as those projects do not add demand on the public school systems. Prior to further increasing funding to the Department of Education (the "**DOE**") there should be a third party audit of the department made available to the public. An audit would evaluate whether the funding already provided to the DOE could be spent more efficiently to meet the State's educational goals. Prior to allocating additional taxpayer funds, the legislature should conduct the audit to create more transparency and greater accountability for the department. An audit may encourage greater economic efficiency within the DOE in a time which the State begins to recover from the impacts of the pandemic. Furthermore, expanding school impact fees to encompass non-residential projects is illogical and will only further increase the cost of living here in Hawaii.

Mahalo for your consideration,

Catherine Camp, President
NAIOP Hawaii