

ACT 235

H.B. NO. 1339

A Bill for an Act Relating to Water Supply Boards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 46-141, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Board” means the board of water supply or water board of any county.”

2. By amending the definition of “impact fees” to read:

““Impact fees” means the charges imposed upon a developer by a county or board to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.”

SECTION 2. Section 46-142, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [The counties are authorized to assess, impose, levy, and collect impact fees for any development within their jurisdictions; provided that no impact fees may be assessed, imposed, or collected under this part unless the county enacts appropriate impact fee ordinances and adopts rules to effectuate the imposition and collection of the fees.]~~

Impact fees may be assessed, imposed, levied, and collected by:

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

(2) Any board for any development, or portion thereof, involving water supply or service;

provided that the county enacts appropriate impact fee ordinances or the board adopts rules to effectuate the imposition and collection of the fees within their respective jurisdictions.”

SECTION 3. Section 46-143, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) A county council or board considering the enactment or adoption of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.”

2. By amending subsections (c) and (d) to read:

“(c) The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred by the county[-] or board.

(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred by the county or the board in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

- (1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
 - (A) Deficiencies in existing public facilities;
 - (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
 - (C) Additional demands anticipated to be placed on specified public facilities by a development;
- (2) The availability of other funding for public facility capital improvements, including[-] but not limited to[-] user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
- (3) The cost of existing public facility capital improvements;
- (4) The methods by which existing public facility capital improvements were financed;
- (5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;
- (6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and
- (7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.”

SECTION 4. Section 46-144, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§46-144~~]]~~ **Collection and expenditure of impact fees.** Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. ~~[In order to]~~

To determine whether the fees are reasonably related, the impact fee ordinance or board rule shall provide that:

- (1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;
- (2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county or board shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county[-] or board. A county or board shall explain in writing and disclose at a public hearing reasons for establishing or not establishing benefit zones;
- (3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;
- (4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and
- (5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development.”

SECTION 5. Section 46-145, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If impact fees are not expended or encumbered within the period established in section 46-144, the county or the board shall refund to the developer or the developer’s successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county or the board within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the special trust fund or interest bearing account and be expended as provided in section 46-144.

(b) If a county or board seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county or board shall give public notice of termination and availability of refunds at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to ~~[the]~~:

- (1) The county’s general fund and expended for any public purpose not involving water supply or service as determined by the county council[-]; or
- (2) The board’s general fund and expended for any public purpose involving water supply or service as determined by the board.”

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

SECTION 7. This Act shall take effect upon its approval.

(Approved June 13, 2001.)