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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. 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  utilizing the student generation rates developed in the Ewa case  
15  study in establishing a uniform statewide approach for school  
16  land dedication or construction impact fee requirements.



1           The purpose of this Act is to implement the working group's  
2 recommendation for implementing a new method for financing new  
3 or expanding existing department of education educational  
4 facilities.

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

8                               **"PART     .     SCHOOL IMPACT FEES**

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



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

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

10           "County" means the city and county of Honolulu, the county  
11 of Hawaii, the county of Kauai, and the county of Maui.

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

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

19           "Fee in lieu" means the fee determined pursuant to section  
20 302A-F.

21           "Greenfield school impact district" means a largely  
22 undeveloped, formerly agricultural area where anticipated growth



1 will create the need for new schools within the next ten years  
2 that will be located within the area and will primarily serve  
3 new housing units within the area.

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

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

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

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

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

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



1 "Single-family" means a detached dwelling unit not  
2 connected to any other dwelling unit, or a detached building  
3 containing two dwelling units.

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

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

18 (c) The following shall be exempt from this section:

19 (1) Any form of housing permanently dedicated exclusively  
20 for senior citizens, defined as fifty-five years of  
21 age or over, with the necessary covenants or  
22 declarations of restrictions recorded on the property;



- 1           (2) All nonresidential developments; and
- 2           (3) Any development with an executed developer agreement
- 3                 with the department for the contribution of school
- 4                 sites or payment of fees for school land or school
- 5                 construction.

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

18           (b) Prior to the designation of a greenfield school impact  
19 district, the department shall prepare a written analysis that  
20 contains the following:

- 21           (1) A map and legend description of the boundaries of the
- 22                 area;



1           (2) A finding that existing residential development in the  
2           area is insignificant, and in no event greater than  
3           one per cent of the anticipated number of dwelling  
4           units at build-out of the area;

5           (3) Analysis to support the need for the construction of  
6           an elementary school in the area within the next ten  
7           years, based on anticipated development in the area.

8           Analysis to support the ultimate need for a high  
9           school to be located within the area to primarily  
10          serve the anticipated housing in the area; and

11          (4) Analysis to determine the average value per acre of  
12          improved land in the area suitable for school  
13          construction, after typical subdivision improvements  
14          such as roads, drainage, and utilities.

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

18               (1) A map and legal description of the boundaries of the  
19               area, which will include one or more high school  
20               complexes;



- 1           (2) Analysis to support the need to construct or expand
- 2                 school facilities in the area within the next ten
- 3                 years to accommodate projected growth in the area;
- 4           (3) Analysis to support the conclusion that sixty-five per
- 5                 cent of the student generation rates by housing type
- 6                 derived for the Ewa area in the Hawaii School Impact
- 7                 Fee Study does not over-estimate the impact of the
- 8                 type of development anticipated in the area. If the
- 9                 analysis determines that student generation rates are
- 10                falling for existing housing units in the area, the
- 11                analysis of student generation rates for new housing
- 12                should reflect the net effect of growth, after
- 13                accounting for capacity likely to be freed up by
- 14                declining enrollment from existing housing; and
- 15           (4) Analysis to determine the average value per acre of
- 16                improved land in the area suitable for school
- 17                construction, after typical subdivision improvements
- 18                such as roads, drainage, and utilities.

19           **§302A-E School land or fee in lieu required.** The

20 procedure for determining whether the dedication of land is

21 required or a payment of a fee in lieu is required for a new

22 school facility shall be as follows:



- 1           (1) At the time of filing an application for any  
2                 residential subdivision containing fifty or more acres  
3                 of land, the owner or developer of the property, as a  
4                 part of the filing, shall designate the area proposed  
5                 to be dedicated for a school on the plat submitted;
- 6           (2) When land is proposed to be dedicated for the purpose  
7                 of providing a school site, it shall be land that is  
8                 usable by the department for that purpose. The  
9                 department shall have the final determination as to  
10                whether a particular piece of land is usable;
- 11          (3) Within sixty days of the completion of an application  
12                 for a residential subdivision containing fifty or more  
13                 acres, the department, as part of the approval, shall  
14                 determine whether to require dedication of land, the  
15                 payment of a fee in lieu thereof, or a combination of  
16                 both. Only payment of a fee in lieu shall be required  
17                 in subdivisions containing less than fifty acres;
- 18          (4) When dedication is required, the land shall be  
19                 conveyed to the State prior to final subdivision  
20                 approval;



1 (5) When the payment of a fee in lieu is required, the fee  
2 in lieu shall be paid prior to final subdivision  
3 approval;

4 (6) Whether the department determines to require land  
5 dedication or the payment of a fee in lieu, or a  
6 combination of both, shall be guided by the following  
7 criteria:

8 (A) The topography, geology, access, and location of  
9 the land in the development available for  
10 dedication;

11 (B) The size and shape of the development and the  
12 land available for dedication; and

13 (C) The location of existing or proposed schooling  
14 facilities; and

15 (7) The determination of the department as to whether land  
16 shall be dedicated or whether a fee in lieu shall be  
17 paid, or a combination of both, shall be final and  
18 exclusive.

19 **§302A-F Determination of the amount of land or the fee in**

20 **lieu.** (a) The size of the tract of land to be dedicated by the  
21 developer shall be determined based on the following ratios,  
22 which represent just over eighty-two per cent of the



1 requirements calculated for the Ewa area in the Hawaii School  
2 Impact Fee Study:

3 (1) 0.01086 acres per single-family detached dwelling  
4 unit; and

5 (2) 0.00714 acres per multi-family dwelling unit.

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

8 Acres of land calculated according to subsection (a)  
9 times the average cost per acre of land of the  
10 subdivision determined pursuant to subsection (c).

11 (c) In determining the average cost per acre, the  
12 following shall apply:

13 (1) The fee in lieu of land dedication for residential  
14 subdivisions of fifty acres or more shall be based on  
15 the value of the improved land, after typical  
16 subdivision improvements such as roads, drainage, and  
17 utilities. A M.A.I. appraiser who is selected and  
18 paid for by the developer shall determine the value of  
19 the land. If the department does not agree with the  
20 developer's appraisal, the department may engage  
21 another M.A.I. appraiser at its own expense, and the  
22 value shall be an amount equal to the average of the



1 two appraisals. If either party does not accept the  
 2 average of the two appraisals, a third appraisal shall  
 3 be obtained, with the cost of the third appraisal  
 4 being shared equally by the department and the  
 5 developer. The first two appraisers shall select the  
 6 third appraiser, and the third appraisal shall be  
 7 binding on both parties; and

8 (2) Residential subdivisions of less than fifty acres  
 9 shall pay a standard fee in lieu based on an average  
 10 land value determined for the area pursuant to section  
 11 302A-D(b)(6) and subsection (b). At least every three  
 12 years, the department shall prepare an analysis to  
 13 update the appropriate average land value and shall  
 14 submit the analysis to the board with a recommendation  
 15 to update the average cost per acre.

16 **§302A-G Impact fee calculation.** (a) The State shall be  
 17 divided into the following twenty-six geographically limited  
 18 cost districts:

| 19 | Cost District | School District | Cost Factor |
|----|---------------|-----------------|-------------|
| 20 | Honolulu      | Honolulu        | 1.00        |
| 21 | Ewa           | Leeward/Central | 1.00        |
| 22 | Wahiawa       | Central         | 1.05        |



|    |              |          |      |
|----|--------------|----------|------|
| 1  | Waialua      | Central  | 1.10 |
| 2  | Koolaupoko   | Windward | 1.00 |
| 3  | Koolauloa    | Windward | 1.10 |
| 4  | Waianae      | Leeward  | 1.10 |
| 5  | Hilo         | Hawaii   | 1.15 |
| 6  | Puna         | Hawaii   | 1.20 |
| 7  | Kona         | Hawaii   | 1.20 |
| 8  | Hamakua      | Hawaii   | 1.20 |
| 9  | South Kohala | Hawaii   | 1.20 |
| 10 | North Kohala | Hawaii   | 1.25 |
| 11 | Pohakuloa    | Hawaii   | 1.25 |
| 12 | Kau          | Hawaii   | 1.30 |
| 13 | Wailuku      | Maui     | 1.15 |
| 14 | Makawao      | Maui     | 1.25 |
| 15 | Lahaina      | Maui     | 1.30 |
| 16 | Hana         | Maui     | 1.35 |
| 17 | Molokai      | Molokai  | 1.30 |
| 18 | Lanai        | Lanai    | 1.35 |
| 19 | Lihue        | Kauai    | 1.15 |
| 20 | Koloa        | Kauai    | 1.20 |
| 21 | Kawaihau     | Kauai    | 1.20 |
| 22 | Waimea       | Kauai    | 1.25 |



1 Hanalei Kauai 1.25

2 (b) In every school impact district where school impact  
3 fees are imposed pursuant to section 302A-D, fees shall be  
4 assessed at percentage of the base fee amounts set for the  
5 in subsection (c).

6 (c) Phasing schedule:

7 (1) For building permits issued within the first six  
8 months of the designation of a school impact district,  
9 the fees shall be assessed at twenty-five per cent of  
10 the ultimate amount;

11 (2) For building permits issued within the second six  
12 months of the designation of a school impact district,  
13 the fees shall be assessed at fifty per cent of the  
14 ultimate amount;

15 (3) For building permits issued within the second year of  
16 the designation of a school impact district, the fees  
17 shall be assessed at seventy-five per cent of the  
18 ultimate amount; and

19 (4) For building permits issued more than two years after  
20 the designation of a school impact district, the fees  
21 shall be assessed at one hundred per cent of the  
22 ultimate amount.



1 (d) The impact fees shall be the percentage specified in  
 2 subsection (b) times the percentage specified in subsection (c)  
 3 times the following base fees per dwelling unit for the cost  
 4 district in which the school impact district is located:

| 5 Cost District | Cost Factor | Single-Family | Multi-Family |
|-----------------|-------------|---------------|--------------|
| 6 Honolulu      | 1.00        | \$20,683      | \$14,230     |
| 7 Ewa           | 1.00        | \$20,683      | \$14,230     |
| 8 Wahiawa       | 1.05        | \$21,717      | \$14,942     |
| 9 Waialua       | 1.10        | \$22,751      | \$15,653     |
| 10 Koolaupoko   | 1.00        | \$20,683      | \$14,230     |
| 11 Koolauloa    | 1.10        | \$22,751      | \$15,653     |
| 12 Waianae      | 1.10        | \$22,751      | \$15,653     |
| 13 Hilo         | 1.15        | \$23,785      | \$16,364     |
| 14 Puna         | 1.20        | \$24,820      | \$17,076     |
| 15 Kona         | 1.20        | \$24,820      | \$17,076     |
| 16 Hamakua      | 1.20        | \$24,820      | \$17,076     |
| 17 South Kohala | 1.20        | \$24,820      | \$17,076     |
| 18 North Kohala | 1.25        | \$25,854      | \$17,778     |
| 19 Pohakuloa    | 1.25        | \$25,854      | \$17,778     |
| 20 Kau          | 1.30        | \$26,888      | \$18,499     |
| 21 Wailuku      | 1.15        | 23,785        | \$16,364     |
| 22 Makawao      | 1.25        | \$25,854      | \$17,788     |



|   |          |      |          |          |
|---|----------|------|----------|----------|
| 1 | Lahaina  | 1.30 | \$26,888 | \$18,499 |
| 2 | Hana     | 1.35 | \$27,922 | \$19,211 |
| 3 | Molokai  | 1.30 | \$26,888 | \$18,499 |
| 4 | Lanai    | 1.35 | \$27,922 | \$19,211 |
| 5 | Lihue    | 1.15 | \$23,785 | \$16,364 |
| 6 | Koloa    | 1.20 | \$24,820 | \$17,076 |
| 7 | Kawaihau | 1.20 | \$24,820 | \$17,076 |
| 8 | Waimea   | 1.25 | \$25,854 | \$17,788 |
| 9 | Hanalei  | 1.25 | \$25,854 | \$17,788 |

10           **§302A-H Accounting and expenditure requirements.** (a)

11 Each designated school impact district shall be a separate  
 12 benefit district. Fees in lieu of school land dedication  
 13 collected within each school impact district shall be spent only  
 14 for the acquisition of school sites within the same school  
 15 impact district. School impact fees collected within each  
 16 school impact district shall be spent only for the expansion of  
 17 existing school or construction or new schools located within  
 18 the same school impact district.

19           (b) Land dedicated by the developer shall be used only as  
 20 a site for the construction of a new school or for the expansion  
 21 of existing school facilities. If the land is sold, the



1 proceeds shall be used to acquire land for school facilities in  
2 the same school impact district.

3 (c) Fee in lieu funds shall only be used for the  
4 acquisition of land for school purposes. Funds may be used for  
5 expenses related to acquiring a piece of land, including but not  
6 limited to surveying, appraisals, and legal fees. Fee in lieu  
7 funds shall not be used for the maintenance or operation of  
8 existing schools in the district, construction costs, including  
9 architectural, permitting, or financing costs, or administrative  
10 expenses.

11 (d) Impact fees shall be used only for the costs of school  
12 construction that expands the student capacity of existing  
13 schools or adds student capacity in new schools. School impact  
14 fees may not be used to replace an existing school located  
15 within the same school impact district, either on the same site  
16 or on a different site. In the event of closure, demolition, or  
17 conversion of an existing permanent department facility within a  
18 school impact district that has the effect of reducing student  
19 capacity, an amount of new student capacity in permanent  
20 buildings equivalent to the lost capacity shall be funded with  
21 non-school impact fee revenue. Eligible construction costs  
22 include but are not limited to planning, engineering,



1 architectural, permitting, financing, and administrative  
2 expenses, and any other capital equipment expenses pertaining to  
3 educational facilities. Impact fee funds shall not be expended  
4 for:

- 5 (1) Any costs related to the acquisition of land;
- 6 (2) The maintenance or operation of existing schools in  
7 the district; or
- 8 (3) On portable buildings.

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

13 **§302A-I Refunds.** If the fee in lieu or impact fee is not  
14 expended within ten years of the date of collection, the  
15 department shall refund to the developer, or the developer's  
16 successor in the title, the amount of fees in lieu paid and any  
17 interest accrued thereon. Application for a refund shall be  
18 submitted to the department within one year of the date on which  
19 the right to claim arises. Any unclaimed refund shall be  
20 retained and expended as provided in this part.

21 **§302A-J Credits for land dedication or fees in lieu.** (a)  
22 Any person subject to the land dedication or fee in lieu



1 requirements pursuant to this part may apply for credit for any  
2 similar dedication or payment accepted and received by the  
3 department for the same subdivision subject to this section.

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

6 (c) Credits for contributions prior to the effective date  
7 of this Act shall be based on the present value; provided that  
8 the credit amount shall not exceed the value of the dedication  
9 or fee in lieu required under this part.

10 (d) If a dedication is proposed by a developer after the  
11 effective date of this section, is acceptable to the department,  
12 and exceeds the dedication requirements for the subdivision, the  
13 department shall execute with the developer an agreement to  
14 provide reimbursement for the excess land dedication from the  
15 fees in lieu collected from other developers within the same  
16 benefit district.

17 **§302A-K Credits for impact fees.** (a) Any applicant  
18 subject to the school impact fee requirements pursuant to this  
19 part may apply for credit for any similar contribution, payment,  
20 or construction of public school facilities accepted and  
21 received by the department for the same subdivision subject to  
22 this part. No credit shall be authorized against the impact



1 fees for dedication of land or payment of a fee in lieu of land  
2 dedication.

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



1 contributions prior to the effective date of this Act shall not  
2 exceed the value of the impact fee required under this section.

3 (c) A credit may be applied only against school impact  
4 fees that would otherwise be due for building permits issued  
5 within the subdivision for which the payment or contribution was  
6 required as a condition of development approval. The department  
7 shall maintain an accounting of the amount of the credit  
8 applicable to the subdivision and shall reduce the amount of the  
9 credit by the amount of the school impact fees that would  
10 otherwise be due for each building permit issued in the  
11 subdivision. After the credit balance is exhausted, no  
12 additional credits shall be applied to subsequent building  
13 permits issued within the subdivision.

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



# H.B. NO. 1506

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

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

6

INTRODUCED BY: BTali B/R  
JAN 23 2007



**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 utilizing the student generation rates developed in the Ewa case study in establishing a uniform statewide approach for school land dedication or construction impact fee requirements.

