
A BILL FOR AN ACT

RELATING TO EDUCATION.

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 that the department of education determine each school impact
15 district appropriate student generation rate.

16 The purpose of this Act is to implement the working group's
17 recommendation for implementing a new method for financing, in
18 part, new or expanding existing department of education



1 educational facilities in partnership with developers of new
 2 residential developments. This Act reflects a general
 3 methodology and approach for identifying need areas and
 4 calculating appropriate school impact fees for new residential
 5 developments. It also recognizes the need for more detailed
 6 planning for implementation of this Act by the department of
 7 education, and recognition of how the methodology will be
 8 applied in new residential projects involving rezoned properties
 9 or parcels, current zoned parcels with or without buildings, and
 10 redevelopment projects.

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

14 "PART . SCHOOL IMPACT FEES

15 §302A-A Findings. New residential developments within
 16 identified school impact districts create additional demand for
 17 public school facilities. As such, once identified, new
 18 residential developments will be required to contribute toward
 19 the construction of new or expansion of existing public school
 20 facilities through:



1 (1) The land requirement, either through an in lieu fee or
2 actual acreage (unless land is not required in the
3 school impact district); and

4 (2) The construction requirement either through an in lieu
5 fee or actual construction based on the proportionate
6 share of the need to construct additional facilities.

7 A study commissioned by the State has identified the land
8 dedication requirement that is consistent with proportionate
9 fair-share principles and the net capital cost of school
10 facilities, excluding land costs, that is consistent with
11 proportionate fair-share principles.

12 The State determines that new residential developments
13 within designated school impact districts shall provide land for
14 schools or pay a fee in lieu of land proportionate to the
15 impacts of the new residential development on existing school
16 facilities. The State also determines that new residential
17 developments within designated school impact districts shall
18 also pay school impact fees proportionate to their impacts.

19 This part establishes the methodology for developers to provide
20 their proportionate share of the land and the construction cost
21 of new or expanded school facilities needed to serve new
22 residential developments, as determined in section 302A-G.



1 **§302A-B Definitions.** As used in this part, the following
2 terms shall have the following meanings unless the context
3 indicates otherwise:

4 "Acres/student" means the number of acres required per
5 student based on design standards for schools.

6 "Construction cost" means the net cost to construct a
7 school, including without limitation planning, design,
8 engineering, grading, permits, construction, and construction
9 and project management, but not including the cost to acquire
10 land. The intent of the school impact fee calculation is that
11 new developments should not be charged for a higher level of
12 service than is being provided to existing developments. A
13 reasonable measure of the level of service is the percentage of
14 classrooms that are in permanent structures, as opposed to
15 portable buildings.

16 "Cost per student" means the construction cost for a school
17 per student (actual school construction cost divided by
18 enrollment capacity).

19 "Cost/unit" means the impact fee for school construction
20 (land and construction).

21 "County" means the city and county of Honolulu, the county
22 of Hawaii, the county of Kauai, and the county of Maui.



1 "Developer" means a person, corporation, organization,
2 partnership, association, or other legal entity constructing,
3 erecting, enlarging, altering, or engaging in any residential
4 development activity.

5 "Dwelling unit" or "unit" means a multi-family or single-
6 family residential unit.

7 "Fee in lieu" means a fee determined pursuant to section
8 302A-F.

9 "Land component" means a fee simple property that is vacant
10 and improved (with infrastructure).

11 "Multi-family" means any dwelling unit other than a single
12 family dwelling unit.

13 "Multi-family unit count" means the total multi-family
14 dwelling units planned for a proposed development.

15 "New residential development" means new residential
16 projects involving rezoned properties or parcels, current zoned
17 parcels with or without buildings, and redevelopment projects.
18 These projects include "lot only" developments (when the
19 dwelling unit will not be built by the developer), and include
20 condominiums, additional dwelling units as defined by each
21 county, and subdivisions.



1 "Owner" means the owner of record of real property or the
2 owner's agent.

3 "Proportionate share" means the pro-rata share of the
4 school impact fee attributed to the specific development based
5 on the student generation rate from the project.

6 "Recent school construction averages" means the
7 department's historical average acres required and enrollment
8 capacity for elementary (K-5), middle (6-8), and high (9-12)
9 schools. Based on existing school construction data, the
10 historical average design standards are as follows:

	Acres/school	Enrollment/school	Acres/student
12 Elem.	12.5 acres	800 students	.0156 acres
13 Middle	16.5 acres	1,500 students	.0110 acres
14 High	49 acres	1,600 students	.0306 acres

15 "Revenue credit" means the state general tax revenues under
16 chapter 237 that will be generated by the new residential unit
17 and used to fund school capital facilities and pay for
18 outstanding debt on existing facilities.

19 "School facilities" means the facilities owned or operated
20 by the department, or the facilities included in the department
21 of education capital budget or capital facilities plan.



1 "School impact district" means a geographic area designated
2 by the board where anticipated growth will create the need for
3 one or more new schools or the expansion of one or more existing
4 schools that are or will be located within the area and will
5 primarily serve new housing units within the area.

6 "School impact fee: construction cost component" means ten
7 per cent of the construction cost associated with the
8 construction of a new school or expansion of an existing school
9 facility.

10 "School impact fee: land component" means the pro rata
11 share of the fair market value of the fee simple land or acreage
12 attributed to the specific development based on the student
13 generation rate from the project.

14 "Single-family" means a detached dwelling unit not
15 connected to any other dwelling unit, or a detached building
16 containing two dwelling units.

17 "Single-family unit count" means the total single-family
18 units planned for a proposed development.

19 "Student generation rate" means the number of students
20 generated by each multi-family and single-family unit when a
21 residential development has matured and enrollment no longer
22 fluctuates, or achieves a steady state.



1 **§302A-C Applicability and exemptions.** (a) Except as
2 provided in subsection (b), any person who seeks to develop a
3 new residential development within a designated school impact
4 district requiring:

5 (1) A county subdivision approval;

6 (2) A county building permit; or

7 (3) A condominium property regime approval for the
8 project,

9 shall be required to fulfill the land requirement and vertical
10 construction requirement of the department.

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

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

15 (2) Any form of housing which is or will be paying the
16 transient accommodation tax under chapter 237D;

17 (3) All nonresidential development; and

18 (4) Any development with an executed education
19 contribution agreement or other like document with the
20 department for the contribution of school sites or
21 payment of fees for school land or school
22 construction.



1 **§302A-D Designation of school impact districts.** (a) The
2 board shall designate a school impact district for school impact
3 fees only after holding at least one public hearing in the area
4 proposed for the school impact district. The written analysis,
5 prepared in accordance with subsection (b), shall be made
6 available to the public at least thirty days prior to the public
7 hearing. Notice of the public hearing shall be made as provided
8 in section 1-28.5. The notice shall include a map of the
9 proposed school impact district and the date, time, and place of
10 the public hearing.

11 (b) Prior to the designation of a school impact district,
12 the department shall prepare a written analysis that contains
13 the following:

14 (1) A map and legend describing the boundaries of the
15 area, which may range from one school to one or more
16 high school complexes; and

17 (2) Analysis to support the need to construct new or
18 expand existing school facilities in the area within
19 the next twenty-five years to accommodate projected
20 growth in the area based on various state and county
21 land use, demographics, growth, density, and other
22 applicable plans.



1 **§302A-E Impact fee analysis.** (a) Upon designation of a
2 school impact district, the department shall prepare an impact
3 fee analysis that shall include, at a minimum, the following:

4 (1) An analysis to determine appropriate student
5 generation rates by housing type (multi-family unit
6 count and single-family unit count) for new
7 developments in the area. The analysis shall also
8 consider enrollment at existing school facilities, in
9 and around the school impact district;

10 (2) Student generation rates, based on full build-out of
11 the development when student generation rates are
12 anticipated to be in a steady state mode (permanent
13 facility);

14 (3) Analysis of the initial development period, when
15 student enrollments are anticipated to peak (to
16 determine capacity of facilities);

17 (4) An analysis to identify the percentages of existing
18 statewide student enrollment at the elementary school,
19 middle or intermediate school, and high school levels
20 that are located in permanent structures, as opposed
21 to portable buildings, in surrounding high school
22 complexes;



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

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

14 (8) An analysis to identify the percentages of existing
15 student enrollment at the elementary school, middle or
16 intermediate school, and high school levels that are
17 located in permanent structures, and the percentages
18 that are located in portable buildings in surrounding
19 high school complexes.

20 **§302A-F Impact fee: land component-determining the amount**
21 **of land or fee in lieu.** (a) The area requirements for new



1 school facilities shall be determined based on the recent school
2 construction averages.

3 (b) The procedure for determining whether the dedication
4 of land is required or a payment of a fee in lieu is required
5 for a new school facility shall be as follows:

6 (1) A new residential development of greater than or equal
7 to fifty units, shall include a written agreement,
8 prior to the issuance of a building permit, between
9 the owner or developer of the property and the
10 department, under which the owner or developer has:

11 (A) Agreed to designate an area to be dedicated for
12 one or more schools for the development, subject
13 to approval by the department; or

14 (B) Agreed to pay to the department, at a time
15 specified in the agreement, a fee in lieu of land
16 dedication;

17 (2) New residential developments of less than fifty units
18 shall include a written agreement, between the owner
19 or the developer of the property and the department,
20 under which the owner or developer has agreed to a
21 time specified for payment for the fee in lieu prior
22 to the issuance of the building permit;



- 1 (3) Prior to approval of any subdivision, change of
2 zoning, or any other approval for a:
- 3 (A) Residential development equal to or greater than
4 fifty units; or
- 5 (B) Condominium property regime development of fifty
6 units or more,
- 7 the department shall notify the approving agency of
8 its determination on whether to require the dedication
9 of land, the payment of a fee in lieu thereof, or a
10 combination of both;
- 11 (4) When land dedication is required, the land shall be
12 conveyed to the State upon completion of the
13 subdivision improvements and any offsite
14 infrastructure necessary to serve the land;
- 15 (5) When the payment of a fee in lieu is required, the fee
16 in lieu shall be paid based on the terms contained in
17 the written agreement;
- 18 (6) Whether the department determines to require land
19 dedication or the payment of a fee in lieu, shall be
20 guided by the following criteria:
- 21 (A) The topography, geology, access, value, and
22 location of the land available for dedication;



1 (B) The size and shape of the land available for
2 dedication;

3 (C) The location of existing or proposed schooling
4 facilities; and

5 (D) The availability of infrastructure; and

6 (7) The determination of the department as to whether
7 lands shall be dedicated or whether a fee in lieu
8 shall be paid, or a combination of both, shall be
9 final.

10 (c) In determining the value per acre for any new
11 residential development, the fee simple value of the land
12 identified for the new or expanded school facility shall be
13 based on the appraised fair market value of improved, vacant
14 land, zoned for residential use, and serviced by roads,
15 utilities, and drainage. An appraiser, licensed pursuant to
16 chapter 466K, who is selected and paid for by the developer,
17 shall determine the value of the land. If the department does
18 not agree with the developer's appraisal, the department may
19 engage another licensed appraiser at its own expense, and
20 resolve, through negotiation between the two appraisers, a fair
21 market value. If neither party agrees, the first two appraisers
22 shall select the third appraiser, with the cost of the third



1 appraisal being shared equally by the department and the
2 developer, and the third appraisal shall be binding on both
3 parties.

4 (d) The developer or owner of new residential developments
5 of greater than fifty units shall either pay the in lieu fee
6 based on the land value as determined in subsection (c) or
7 convey appropriate acreage as determined in subsection (b).
8 When conveying the fee simple interest for the new or expanded
9 school facility, the developers shall be credited the difference
10 between the fair market fee simple value of the property and the
11 developers' proportionate share of the value of the land as
12 determined in subsection (c) against any impact fees for
13 construction. Any excess may be transferred and used as credit
14 against any future land or construction cost requirements on any
15 other development of the State.

16 (e) The dollar amount of the fee in lieu shall be
17 determined using the following formula:

18 Acres of land calculated according to subsection (b)
19 multiplied by the value per acre of land determined
20 pursuant to subsection (c).

21 **§302A-G Impact fee: construction cost component -**
22 **determining the cost per unit.** (a) The construction cost



1 component of the school impact fees shall be calculated using
2 the following factors:

- 3 (1) For new school construction, the cost per student for
4 each school type (elementary, middle or intermediate,
5 and high school) is based on the ten year average
6 construction of a new school facility using the
7 Honolulu assessment district in 2006 as the base.
8 Costs for construction completed earlier than 2006
9 shall be escalated to 2006 using the engineering news-
10 record construction cost index;
- 11 (2) For expansion of existing school facilities, the cost
12 per student for each school type (elementary, middle
13 or intermediate, and high school) is based on the ten
14 year average construction of whatever components are
15 required to expand the school using the Honolulu
16 assessment district in 2006 as the base;
- 17 (3) The cost per student in other assessment districts
18 shall be the cost per student in the Honolulu
19 assessment district multiplied by the appropriate cost
20 factor in subsection (c). At least every three years,
21 the department shall update the cost per student based
22 on the construction of a new permanent school



1 facility, and present the written analysis to the
 2 board for review; and

3 (4) Student generation rates, as defined in section
 4 302A-B.

5 (b) The student generation rate for each school type
 6 (elementary, middle or intermediate, and high school) shall be
 7 multiplied by the cost per student for each school type
 8 (elementary, middle or intermediate, and high school) to
 9 determine the cost/unit in the development.

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

12	Cost District	School District	Cost Factor
13	Honolulu	Honolulu	1.00
14	Ewa	Leeward/Central	1.00
15	Wahiawa	Central	1.05
16	Waialua	Central	1.10
17	Koolaupoko	Windward	1.00
18	Koolauloa	Windward	1.00
19	Waianae	Leeward	1.10
20	Hilo	Hawaii	1.15
21	Puna	Hawaii	1.20
22	Kona	Hawaii	1.20



1	Hamakua	Hawaii	1.20
2	South Kohala	Hawaii	1.20
3	North Kohala	Hawaii	1.25
4	Pohakuloa	Hawaii	1.25
5	Kau	Hawaii	1.30
6	Wailuku	Maui	1.15
7	Makawao	Maui	1.25
8	Lahaina	Maui	1.30
9	Hana	Maui	1.35
10	Molokai	Molokai	1.30
11	Lanai	Lanai	1.35
12	Lihue	Kauai	1.15
13	Koloa	Kauai	1.20
14	Kawaihau	Kauai	1.20
15	Waimea	Kauai	1.25
16	Hanalei	Kauai	1.25
17	(d) At least every three years, and concurrent with any		
18	update of the costs per student, the department shall update the		
19	revenue credits and present the written analysis to the board		
20	for review. The calculation of revenue credits shall be		
21	reviewed and calculated recognizing that the impact fee shall be		



1 set at one hundred per cent of the fair market value of the land
2 and ten per cent of the total school construction cost.

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

6 Cost per dwelling unit from section 302A-G(b) minus
7 any amount by which the revenue credit per dwelling
8 unit from subsection (d) exceeds ninety per cent of
9 the per unit construction cost.

10 (f) The amount of the fee shall be increased from the date
11 it was determined to the date it is paid using the engineering
12 news-record construction cost index, or an equivalent index if
13 that index is discontinued.

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

20 **§302A-H Accounting and expenditure requirements.** (a)

21 Each designated school impact district shall be a separate
22 benefit district. Fees collected within each school impact



1 district shall be spent only within the same school impact
2 district for the purposes collected.

3 (b) Land dedicated by the developer shall be used only as
4 a site for the construction of one or more new schools or for
5 the expansion of existing school facilities. If the land is
6 never used for the school facility, it shall be returned to the
7 developer, or the developer's successor in interest. Once used,
8 the land may be sold, with the proceeds used to acquire land for
9 school facilities in the same school impact district.

10 (c) Fee in lieu funds may be used for expenses related to
11 acquiring a piece of land, including but not limited to
12 surveying, appraisals, and legal fees. Fee in lieu funds shall
13 not be used for the maintenance or operation of existing schools
14 in the district, construction costs, including architectural,
15 permitting, or financing costs, or administrative expenses.

16 (d) Impact fees for the construction cost component shall
17 be used only for the costs of new school facilities that expands
18 the student capacity of existing schools or adds student
19 capacity in new schools. School impact fees may not be used to
20 replace an existing school located within the same school impact
21 district, either on the same site or on a different site. In
22 the event of closure, demolition, or conversion of an existing



1 permanent department facility within a school impact district
2 that has the effect of reducing student capacity, an amount of
3 new student capacity in permanent buildings equivalent to the
4 lost capacity shall be funded with non-school impact fee
5 revenue. Eligible construction costs include but are not
6 limited to planning, engineering, architectural, permitting,
7 financing, and administrative expenses, and any other capital
8 equipment expenses pertaining to educational facilities. Impact
9 fees for the construction cost component shall not be expended
10 for:

- 11 (1) Any costs related to the acquisition of land;
- 12 (2) The maintenance or operation of existing schools in
13 the district; or
- 14 (3) Portable or temporary facilities.
- 15 (e) Impact fees and fees in lieu shall be expended or
16 encumbered within twenty years of the date of collection. Fees
17 shall be considered spent or encumbered on a first-in, first-out
18 basis. An expenditure plan for the impact fees shall be
19 incorporated into the annual budget process of the department
20 and subject to legislative approval of the budget.



1 **§302A-I Refunds.** If the fee in lieu or impact fee is not
2 expended within twenty years of the date of collection, the
3 department shall either:

4 (1) Refund to the developer, or the developer's successor
5 in interest, the amount of the fee in lieu paid and
6 any interest accrued thereon; or

7 (2) Recommit the fees for another twenty-year period for
8 construction of new schools in the school impact
9 district, as authorized by the developer or the
10 developer's successor.

11 **§302A-J Credits for land dedication.** (a) Any person
12 subject to the land dedication requirements pursuant to this
13 part may apply for credit against any similar dedication or
14 payment accepted and received by the department for the project.

15 (b) Any credit provided for under this section shall be
16 based on the value, determined in the manner provided under
17 section 302A-F.

18 (c) Excess credits for land contributions prior to the
19 effective date of this Act shall be based on the value; provided
20 that the credit amount shall not exceed the value of the
21 dedication or fee in lieu required under this part.



1 **§302A-K Credits for impact fees.** (a) Any applicant
2 subject to the school impact fee requirements pursuant to this
3 part may apply for credit for any similar contribution, payment,
4 or construction of public school facilities accepted and
5 received by the department. No credit shall be authorized
6 against the impact fees in lieu of land dedication.

7 (b) A credit may be applied only against school impact
8 fees that would otherwise be due for new residential
9 developments for which the payment or contribution was agreed to
10 in a written educational contribution agreement. The department
11 shall maintain an accounting of the amount of the credit
12 applicable to the new residential development and shall reduce
13 the amount of the credit by the amount of the school impact fees
14 that would otherwise be due for each building permit issued for
15 the new residential development. After the credit balance is
16 exhausted, no additional credits shall be applied to subsequent
17 building permits issued within the new residential development.

18 (c) If private construction of school facilities is
19 proposed by a developer after the effective date of this Act, if
20 the proposed construction is acceptable to the department, and
21 if the value of the proposed construction exceeds the total
22 impact fees that would be due from the development, the



1 department shall execute with the developer an agreement to
2 provide reimbursement for the excess credit from the impact fees
3 collected from other developers within the same benefit
4 district. For the purposes of this section, the private
5 construction of school facilities is a "public work" pursuant to
6 chapter 104."

7 SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended
8 by adding a new section to be appropriately designated and to
9 read as follows:

10 "§46- School impact fees. No new residential
11 development in a designated school impact district under chapter
12 302A shall be issued a residential building permit or
13 condominium property regime building permit until the department
14 of education provides written confirmation that the permit
15 applicant has fulfilled its school impact fee requirements.
16 This section shall only apply to new dwelling units."

17 SECTION 4. **Implementation and interim procedures.**
18 Recognizing the need for more details to fully implement this
19 Act, and the fact that development is a continuous and ongoing
20 process, the legislature finds that implementation shall be as
21 follows:

22 (1) Within one year of the effective date of this Act:



- 1 (A) The department of education shall identify school
- 2 impact districts that shall include an assessment
- 3 of high growth areas and school facility
- 4 utilization throughout the State; and
- 5 (B) The department of education shall assess,
- 6 analyze, and develop an appropriate methodology
- 7 to determine future school facility needs in new,
- 8 build-out (existing parcels with or without
- 9 building), and in-fill developments;
- 10 (2) During this interim period, developers who do not have
- 11 an existing executed education contribution agreement
- 12 or other like document with the department of
- 13 education for the contribution of school sites or
- 14 payment of fees for school land or school construction
- 15 with the department may:
- 16 (A) Use the methodology outlined in this Act to
- 17 determine land and construction cost components
- 18 of the school impact fees for their developments
- 19 based on student generation rates appropriate for
- 20 their respective developments. These student
- 21 generation rates shall be based on a full build-
- 22 out and a reasonable expectation of permanent



1 school facilities needed to accommodate a
2 development at a steady state. These
3 calculations shall be made in coordination with
4 the department of education and subject to its
5 approval; and

6 (B) Assist the department of education with temporary
7 facility needs, separate and apart from impact
8 fees for permanent facilities;

9 and

10 (3) During the interim period, the department of education
11 shall assess other funding sources for the
12 construction of new schools and the expansion of
13 existing schools, such as a dedicated percentage of
14 the conveyance tax that would be applied to all real
15 estate sales transactions and the proceeds from which
16 may be deposited into a dedicated funding source for
17 public school construction.

18 SECTION 5. In codifying the new sections added by section
19 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 6. The department of education shall submit an
2 annual report to the legislature on the state of the
3 implementation of this Act no later than twenty days prior to
4 the convening of each regular session.

5 SECTION 7. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.



H.B. NO. 19
H.D. 2
S.D. 2
C.D. 1

Report Title:

DOE; School Impact Fees

Description:

Establishes a new law for determining school impact fees for financing new or expanding existing department of education schools or facilities by requiring each school impact district to determine the appropriate student generation rates for the area. (HB19 CD1)

