

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

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

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 each school impact district determine the appropriate
15 student generation rates for the area.

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

2007-2588 HB19 SD2 SMA.doc



1 educational facilities in partnership with developers of
2 residential properties.

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

6 "PART . SCHOOL IMPACT FEES

7 §302A-A Findings. New residential subdivisions within
8 identified school impact districts create additional demand for
9 public school facilities and a need for more land on which to
10 construct school facilities. New residential subdivisions
11 should:

- 12 (1) Provide land or pay fees in lieu of land dedication
13 proportionate to their impacts; and
14 (2) Pay upon issuance of building permits a school impact
15 fee that is proportionate to their impact on the need
16 to construct additional facilities.

17 A study commissioned by the State has identified the land
18 dedication requirement that is consistent with proportionate
19 fair-share principles and the net capital cost of school
20 facilities, excluding land costs, that is consistent with
21 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
 6 also pay school impact fees proportionate to their impacts.
 7 This part shall require developers to provide the land for new
 8 schools and per cent of the cost of building new
 9 classrooms needed to serve new residential developments, as
 10 determined in section 302A-G.

11 **§302A-B Definitions.** As used in this part, the following
 12 terms shall have the following meanings unless the context
 13 indicates otherwise:

14 "County" means the city and county of Honolulu, the county
 15 of Hawaii, the county of Kauai, and the county of Maui.

16 "Developer" means a person, corporation, organization,
 17 partnership, association, or other legal entity constructing,
 18 erecting, enlarging, altering, or engaging in any residential
 19 development activity.

20 "Dwelling unit" means a room or rooms connected together,
 21 constituting an independent housekeeping unit for a family
 22 containing a single kitchen.



1 "Fee in lieu" means a fee determined pursuant to section
2 302A-F.

3 "Greenfield school impact district" means a largely
4 undeveloped, formerly agricultural area where anticipated growth
5 will create the need for one or more new schools that will be
6 located within the area and will primarily serve new housing
7 units within the area.

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 projects by applying to a county for the issuance of
7 a subdivision approval or by recording a condominium property
8 regime for other than a conversion of existing residential units
9 within a designated school impact district shall be required to
10 agree before final subdivision approval or before recordation of
11 a condominium property regime for other than a conversion of
12 existing residential units to dedicate land suitable for school
13 facilities or pay a fee in lieu of dedicating that land to the
14 department.

15 (b) Except as provided in subsection (c), any person who
16 seeks to build a residential unit within a designated school
17 impact district by applying to any county for a building permit
18 shall be required to pay a school impact fee to the department
19 before issuance of the building permit.

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

21 (1) Any form of housing permanently dedicated exclusively
22 for senior citizens, defined as fifty-five years of



- 1 age or over, with the necessary covenants or
2 declarations of restrictions recorded on the property;
- 3 (2) All nonresidential developments;
- 4 (3) Any development with a developer agreement with the
5 department executed prior to the effective date of
6 this part for the contribution of school sites or
7 payment of fees for school land or school
8 construction; and
- 9 (4) A single residence to be built on a single lot created
10 prior to the effective date of this part.

11 **§302A-D Designation of school impact districts and**
12 **greenfield school impact districts.** (a) The board shall
13 designate a school impact district for school impact fees only
14 after holding a public hearing. A written analysis prepared by
15 the department supporting the designation of the school impact
16 district, as required herein, shall be made available to the
17 public at least thirty days prior to the public hearing. Notice
18 of the public hearing shall be made as provided in section
19 1-28.5. The notice shall include a map of the proposed school
20 impact district and the date, time, and place of the public
21 hearing.



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1 (b) Prior to the designation of a greenfield school impact
2 district, the department shall prepare a written analysis that
3 contains the following:

4 (1) A map and legend describing the boundaries of the
5 area;

6 (2) A finding that existing residential development in the
7 area is insignificant relative to the anticipated
8 number of dwelling units at build-out of the area;

9 (3) Analysis to support the need for the construction of
10 one or more schools in the area, based on anticipated
11 development in the area;

12 (4) Analysis to identify the percentages of existing
13 student enrollment at the elementary school, middle or
14 intermediate school, and high school levels that are
15 located in permanent structures, and the percentages
16 that are located in portable buildings, in surrounding
17 high school complexes;

18 (5) Analysis to support appropriate student generation
19 rates (the expected average number of students per
20 dwelling unit) by housing type and school level
21 (elementary, middle, intermediate, or high school)



1 that are representative of the type of development
2 anticipated in the area; and

3 (6) Analysis to determine the average value per acre of
4 improved land in the area zoned for residential
5 development and sized and suitable for school
6 construction, after typical subdivision improvements
7 such as roads, drainage, and utilities.

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

11 (1) A map and legal description of the boundaries of the
12 area, which will include one or more high school
13 complexes;

14 (2) Analysis to support the need to construct or expand
15 school facilities in the area within the next twenty-
16 five years to accommodate projected growth in the
17 area;

18 (3) Analysis to determine appropriate student generation
19 rates by housing type and school level that are
20 representative of the type of development anticipated
21 in the area. If the analysis determines that student
22 generation rates are falling for existing housing



1 units in the area, the student generation rates for
2 new housing should reflect the net effect of growth,
3 after accounting for capacity likely to be freed up by
4 declining enrollment from existing housing;

5 (4) Analysis to identify the percentages of existing
6 student enrollment at the elementary school, middle or
7 intermediate school, and high school levels that are
8 located in permanent structures, and the percentages
9 that are located in portable buildings;

10 (5) Calculation of the current level of service in the
11 area, which shall be the ratio of current student
12 capacity at all school levels to the current
13 enrollment at all school levels; and

14 (6) Analysis to determine the average value per acre of
15 improved land in the area zoned for residential use
16 and sized and suitable for school construction, after
17 typical subdivision improvements such as roads,
18 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) The filing an application for any residential
 2 subdivision containing fifty or more acres of land,
 3 shall include an agreement between the owner or
 4 developer of the property and the department, under
 5 which the owner or developer has:

6 (A) Agreed to designate an area to be dedicated for
 7 one or more schools on the plat submitted; or

8 (B) Agreed to pay to the department a fee in lieu of
 9 land dedication;

10 (2) When land is proposed to be dedicated for the purpose
 11 of providing a school site, it shall be land that is
 12 usable by the department for that purpose. As used in
 13 this paragraph "usable" means the land:

14 (A) Is in a zoning district in which a school can be
 15 built with no further land use approvals;

16 (B) Has at least two vehicular access points from a
 17 public road that will have the capacity to handle
 18 school-related traffic;

19 (C) Is relatively level;

20 (D) Has adequate water, power, telecommunication,
 21 sewer, and gas, if gas service is available,



1 services provided at the property line in a
 2 location convenient to the school; and
 3 (E) Is serviced by adequate off-site drainage
 4 facilities stubbed to the property line.

5 The department shall have the final determination as
 6 to whether a particular piece of land is usable;

7 (3) Within sixty days of the completion of an application
 8 for a residential subdivision containing fifty or more
 9 acres, the department shall determine whether to
 10 require dedication of land, the payment of a fee in
 11 lieu thereof, or a combination of both. Only payment
 12 of a fee in-lieu shall be required in subdivisions
 13 containing less than fifty acres;

14 (4) When dedication is required, the land shall be
 15 conveyed to the State upon completion of the
 16 subdivision improvements and any offsite
 17 infrastructure necessary to serve the land;

18 (5) When the payment of a fee in lieu is required, the fee
 19 in lieu shall be paid upon final subdivision approval,
 20 and the amount of the fee in lieu shall be escalated
 21 from the date it was determined to the date it is paid
 22 using the Engineering News-Record Construction Cost



- 1 Index, or an equivalent index if that index is
- 2 discontinued;
- 3 (6) Whether the department determines to require land
- 4 dedication or the payment of a fee in lieu, or a
- 5 combination of both, shall be guided by the following
- 6 criteria:
- 7 (A) The topography, geology, access, and location of
- 8 the land in the development available for
- 9 dedication;
- 10 (B) The size and shape of the development and the
- 11 land available for dedication; and
- 12 (C) The location of existing or proposed schooling
- 13 facilities; and
- 14 (7) The determination of the department as to whether land
- 15 shall be dedicated or whether a fee in lieu shall be
- 16 paid, or a combination of both, shall be final and
- 17 exclusive.

18 **§302A-F Determination of the amount of land or the fee in**

19 **lieu.** (a) The size of the tract of land to be dedicated by the

20 developer shall be determined using the following formula:

21 (Elementary school student generation rate per unit x

22 0.0218 acres/student + x middle or intermediate school



1 student generation rate per unit x 0.0300
2 acres/student + high school student generation rate
3 per unit x 0.0500 acres/student) x the number of
4 dwelling units provided for on the subdivision plat.

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

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

10 (c) In determining the average value per acre, the
11 following shall apply:

12 (1) The fee in lieu of land dedication for residential
13 subdivisions of fifty acres or more shall be based on
14 the value of the improved land, as if contained in a
15 single parcel, zoned for residential use, suitable for
16 school construction, and serviced by roads, utilities,
17 and drainage. An appraiser, licensed pursuant to
18 chapter 466K, who is selected and paid for by the
19 developer shall determine the value of the land. If
20 the department does not agree with the developer's
21 appraisal, the department may engage another licensed
22 appraiser at its own expense, and the value shall be



1 an amount equal to the average of the two appraisals.
 2 If either party does not accept the average of the two
 3 appraisals, a third appraisal shall be obtained, with
 4 the cost of the third appraisal being shared equally
 5 by the department and the developer. The first two
 6 appraisers shall select the third appraiser, and the
 7 third appraisal shall be 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 value per acre.

16 (d) If the department desires a parcel larger than the
 17 size the developer is required to dedicate, the department shall
 18 pay the developer, upon conveyance of the parcel, a per-acre
 19 amount for the excess acreage at the per acre value determined
 20 in subsection (c).



1 **§302A-G Impact fee calculation.** (a) The State shall be
2 divided into the following twenty-six geographically limited
3 cost districts:

4	Cost District	School District	Cost Factor
5	Honolulu	Honolulu	1.00
6	Ewa	Leeward/Central	1.00
7	Wahiawa	Central	1.05
8	Waialua	Central	1.10
9	Koolaupoko	Windward	1.00
10	Koolauloa	Windward	1.10
11	Waianae	Leeward	1.10
12	Hilo	Hawaii	1.15
13	Puna	Hawaii	1.20
14	Kona	Hawaii	1.20
15	Hamakua	Hawaii	1.20
16	South Kohala	Hawaii	1.20
17	North Kohala	Hawaii	1.25
18	Pohakuloa	Hawaii	1.25
19	Kau	Hawaii	1.30
20	Wailuku	Maui	1.15
21	Makawao	Maui	1.25
22	Lahaina	Maui	1.30



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1	Hana	Maui	1.35
2	Molokai	Molokai	1.30
3	Lanai	Lanai	1.35
4	Lihue	Kauai	1.15
5	Koloa	Kauai	1.20
6	Kawaihau	Kauai	1.20
7	Waimea	Kauai	1.25
8	Hanalei	Kauai	1.25

9 (b) School impact fees shall be based on the following
 10 cost per student of:

11 (1) New permanent classroom construction; and

12 (2) New portable classroom construction,

13 both in the Honolulu assessment district in 2006, as determined
 14 by the department based on the most recent school construction

15 undertaken by the department. The cost per student in other

16 assessment districts shall be the cost per student in the

17 Honolulu assessment district multiplied by the appropriate cost

18 factor in subsection (a). At least every three years, the

19 department shall update the cost per student of new permanent

20 classroom and new portable classroom construction, assuming

21 twenty-five students per classroom in an eight-classroom

22 building with appurtenant restrooms for permanent classrooms and



1 twenty-five students per portable classroom, in the Honolulu
2 assessment district and present the written analysis to the
3 board for review. Upon approval by the board, the updated costs
4 per student shall replace the costs applicable to permanent and
5 portable classroom buildings built in 2006.

6 (c) The school impact fee per dwelling unit for single
7 family detached and multi-family housing in each designated
8 school impact district shall be calculated according to the
9 following formula, where the costs per student for permanent and
10 portable classrooms are determined in subsection (b) and the
11 student generation rates and percentages of student stations in
12 permanent and portable buildings are determined in section
13 302A-D(b) and (c):

- 14 (1) If a new expanded elementary school will be needed:
- 15 Cost per student for permanent classrooms x
- 16 percentage of elementary students in
- 17 permanent classrooms x elementary student
- 18 generation rate
- 19 Plus
- 20 Cost per student for portable classrooms x
- 21 percentage of elementary students in



1 portable classrooms x elementary student
2 generation rate;

3 (2) If a new or expanded middle or intermediate school
4 will be needed:

5 Cost per student for permanent classrooms x
6 percentage of middle or intermediate
7 students in permanent classrooms x middle or
8 intermediate student generation rate

9 Plus

10 Cost per student for portable classrooms x
11 percentage of middle or intermediate
12 students in portable classrooms x middle or
13 intermediate student generation rate;

14 (3) If a new or expanded high school will be needed:

15 Cost per student for permanent classrooms x
16 percentage of high school students in
17 permanent classrooms x high school student
18 generation rate

19 Plus

20 Cost per student for portable classrooms x
21 percentage of high school students in



1 portable classrooms x high school student
2 generation rate.

3 (d) The following revenue credit shall be utilized on the
4 effective date of this Act. At least every three years, and
5 concurrent with any update of the costs per student, the
6 department shall update the revenue credits and present the
7 written analysis to the board for review. The calculation of
8 revenue credits shall be made in the manner used to determine
9 revenue credits in the Hawaii school impact fee study. Upon
10 approval by the board, the updated revenue credits shall replace
11 the following:

12 (1) Single family detached dwelling unit: \$2,786; and

13 (2) Multi-family dwelling unit: \$1,428.

14 (e) The impact fees per dwelling unit shall be per
15 cent of the amounts calculated according to the following
16 formula:

17 Cost per dwelling unit from subsection (c) minus
18 revenue credit per dwelling unit from subsection (d).

19 (f) No county shall issue a residential building permit in
20 a school impact district until it has received written
21 confirmation from the department that the permit applicant has
22 paid the department the school impact fee for the dwelling unit.



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1 The amount of the fee shall be increased from the date it was
2 determined to the date it is paid using the Engineering News-
3 Record Construction Cost Index, or an equivalent index if that
4 index is discontinued.

5 **§302A-H Accounting and expenditure requirements. (a)**

6 Each designated school impact district shall be a separate
7 benefit district. Fees in lieu of school land dedication
8 collected within each school impact district shall be spent only
9 for the acquisition of school sites within the same school
10 impact district. School impact fees collected within each
11 school impact district shall be spent only for the expansion of
12 existing schools or construction or new schools located within
13 the same school impact district.

14 (b) Land dedicated by the developer shall be used only as
15 a site for the construction of one or more new schools or for
16 the expansion of existing school facilities. If the land is
17 sold, the proceeds shall be used to acquire land for school
18 facilities in the same school impact district.

19 (c) Fee in lieu funds shall only be used for the
20 acquisition of land for school purposes. Funds may be used for
21 expenses related to acquiring a piece of land, including but not
22 limited to surveying, appraisals, and legal fees. Fee in lieu



1 funds shall not be used for the maintenance or operation of
2 existing schools in the district, construction costs, including
3 architectural, permitting, or financing costs, or administrative
4 expenses.

5 (d) Impact fees shall be used only for the costs of school
6 construction that expands the student capacity of existing
7 schools or adds student capacity in new schools. School impact
8 fees may not be used to replace an existing school located
9 within the same school impact district, either on the same site
10 or on a different site. In the event of closure, demolition, or
11 conversion of an existing permanent department facility within a
12 school impact district that has the effect of reducing student
13 capacity, an amount of new student capacity in permanent
14 buildings equivalent to the lost capacity shall be funded with
15 non-school impact fee revenue. Eligible construction costs
16 include but are not limited to planning, engineering,
17 architectural, permitting, financing, and administrative
18 expenses, and any other capital equipment expenses pertaining to
19 educational facilities. Impact fee funds shall not be expended
20 for:

21 (1) Any costs related to the acquisition of land; or



1 (2) The maintenance or operation of existing schools in
2 the district.

3 (e) Impact fee and fees in lieu shall be expended or
4 encumbered within twenty years of the date of collection. Fees
5 shall be considered spent or encumbered on a first-in, first-out
6 basis.

7 **§302A-I Refunds.** If the fee in lieu or impact fee is not
8 expended within twenty years of the date of collection, the
9 department shall refund to the developer, or the developer's
10 successor in the title, the amount of the fee in lieu paid and
11 any interest accrued thereon calculated at the rate paid by the
12 State on a twenty-year bond sold on the date closest to the date
13 the fee in lieu was paid. Application for a refund shall be
14 submitted to the department within one year of the date on which
15 the right to claim arises. Any unclaimed refund shall be
16 retained and expended as provided in this part.

17 **§302A-J Credits for land dedication or fees in lieu.** (a)
18 Any person subject to the land dedication or fee in lieu
19 requirements pursuant to this part may apply for credit for any
20 similar dedication or payment accepted and received by the
21 department for the same subdivision subject to this section.



1 (b) Any credit provided for under this section shall be
2 based on the current value, determined in the manner provided
3 under section 302A-F, of the dedication or the amount of the
4 payment, escalated to the present using the Engineering News-
5 Record Construction Cost Index or an equivalent index if that
6 index is discontinued.

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

11 **§302A-K Credits for impact fees.** (a) Any applicant
12 subject to the school impact fee requirements pursuant to this
13 part may apply for credit for any similar contribution, payment,
14 or construction of public school facilities accepted and
15 received by the department for the same subdivision subject to
16 this part. No credit shall be authorized against the impact
17 fees for dedication of land or payment of a fee in lieu of land
18 dedication.

19 (b) Credits for contributions, payments, or construction
20 made prior to the effective date of this Act shall be provided
21 if the subdivision for which the contribution, payment, or
22 construction was made has not been completed. The current owner



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

19 (c) A credit may be applied only against school impact
 20 fees that would otherwise be due for building permits issued
 21 within the subdivision for which the payment or contribution was
 22 required as a condition of development approval. The department



1 shall maintain an accounting of the amount of the credit
2 applicable to the subdivision and shall reduce the amount of the
3 credit by the amount of the school impact fees that would
4 otherwise be due for each building permit issued in the
5 subdivision. After the credit balance is exhausted, no
6 additional credits shall be applied to subsequent building
7 permits issued within the subdivision.

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

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

21 SECTION 4. This Act shall take effect on July 1, 2050.



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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 requiring each school impact district to determine the appropriate student generation rates for the area. (SD2)

