

**Date:** 02/09/2009

**Committee:** House Education

**Department:** Education

**Person Testifying:** Patricia Hamamoto, Superintendent of Education

**Title of Bill:** HB 1431 RELATING TO EDUCATION.

**Purpose of Bill:** Clarifies and better organizes the statutory provisions for school impact fees.

**Department's Position:** The Department of Education is in full support of H.B. 1431. The bill reorganizes and clarifies the law establishing school impact fees so that the implementation of the fees is much easier to understand.

H.B. 1431 will insert into law the actual formula for determining how much land a developer must provide. It will also eliminate a provision that permits credits for excess impact fees collected in one geographic area to be used in another area. The location shifting of credit is a violation of the legal test for legitimate impact fees. In addition, the bill clarifies definitions of terms, permits the updating of data, and puts the process of determining impact fees in a more logical and comprehensible order.

Finally, the DOE would like to offer amendments to be more precise about where impact fees can be spent. There are eight (8) references that could be interpreted as limiting impact fee spending to schools physically within the impact district. However there can be schools that serve the students in the impact district, but are not physically located within the boundaries of the district. For example, a high school could serve a high growth area and a low growth area and not actually be located within the high growth impact district. Such schools could experience enrollment growth that might necessitate expanding capacity using impact fees.

Our proposed amendments are attached.

Thank you for the opportunity to testify.

**Report Title:**

School Impact Fees

**Description:**

Clarifies and better organizes the statutory provisions for school impact fees.

HOUSE OF REPRESENTATIVES  
TWENTY-FIFTH LEGISLATURE, 2009

**H.B. NO.**

1431  
DOE  
proposed  
HD1

STATE OF HAWAII

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## A BILL FOR AN ACT

RELATING TO EDUCATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. A new method of financing in part, new or expanding existing Department of Education educational facilities in partnership with developers of new residential development, was established through Act 245, Session Laws of Hawaii 2007. The legislature finds that, to effectively implement this program of school impact fees, certain statutory amendments must be made regarding the designation of school impact districts and the formulas and practices of acquiring land and collecting fees for new or expanded public school facilities in areas in which considerable residential growth is expected.

The current law is also unclear regarding the formula for calculating land donations and permits the transfer of fees between designated districts, which does not meet the legal test for impact fees.

The purpose of this Act is to clarify and better organize the statutory provisions for school impact fees.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by amending part VI, subpart B, to read as follows:

"[+]B.[+] SCHOOL IMPACT FEES

[+]§302A-1601[+] **Findings.** New residential developments within [identified] designated school impact districts create additional demand for [public] school facilities. As such, once [identified,] school impact districts are designated, new residential developments will be required to contribute toward the construction of new or expansion of existing [public] school facilities through:

- (1) The land requirement, either through [an] dedication of land or payment of a fee in lieu [fee or actual acreage (unless land is not required in the school impact district)], based on each development's proportionate share of the need to provide additional school sites; and
- (2) The construction cost requirement [either] through [an in lieu] a fee [or actual

~~construction~~] based on [~~the~~] each development's  
proportionate share of the need to construct  
additional school facilities.

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

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay [~~school~~] construction cost component impact fees proportionate to their impacts.

In determining proportionate share, it is the intent that new residential developments be charged for a level of service that is equal to, and no higher than, the current level of service being provided to existing residential areas.

This [+]subpart[+] establishes the methodology for developers to provide their proportionate share of the land and the construction cost of new or expanded school

facilities needed to serve new residential developments, as ~~[determined]~~ provided in ~~[section]~~ sections 302A-1606 and 302A-1607.

~~[†]~~**§302A-1602**~~[†]~~ **Definitions.** As used in this ~~[†]~~subpart~~[†]~~, the following terms shall have the following meanings unless the context indicates otherwise:

~~["Acres/student"]~~ "Acres per student" means the ~~[number of]~~ area of land in acres required per student for a school site based on ~~[design standards for schools.]~~ the actual school site size and the design enrollment of schools constructed within approximately the last ten years.

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

"Construction cost component impact fee" means the share of the construction cost of required new or expansion

of existing school facilities or both that is attributable to a specific new residential development.

"Cost per student" means the average construction cost for ~~[a school per student (actual school construction cost)]~~ schools constructed within approximately the last ten years, expressed in current dollars, divided by [enrollment capacity]-] their respective design enrollments.

~~["Cost/unit" means the impact fee for school construction (land and construction)-.]~~

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

"Design enrollment" means the maximum number of students or the student capacity that a school's permanent facilities are intended to accommodate.

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

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

"Fee in lieu" means a fee that is paid in lieu of the dedication of land, as determined pursuant to section 302A-1606.

"Land component" means a fee simple property that is vacant and suitable for a school site, and improved [←]with infrastructure[→].

"Land component impact fee" means the share of the required school site area, the fair market value of the fee simple land area, or any combination thereof that is attributed to a specific new residential development.

"Level of service" means the percentage of classrooms that are in permanent structures, as opposed to portable buildings.

"Multi-family" means any dwelling unit other than a single\_ family dwelling unit.

~~["Multi-family unit count" means the total multi-family dwelling units planned for a proposed development.]~~

"New residential development" means new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects. These projects include subdivisions and other forms of "lot only" developments (when the dwelling [unit] units will not be built by the developer), and [~~include~~] developments that include single-family and multi-family units, condominiums, and additional or accessory dwelling units as defined by each county[~~, and subdivisions~~].

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

"Proportionate share" means the pro rata share of the school impact fee attributed to the specific new residential development based on the ~~[student generation rate from]~~ number of units in the project.

"Recent school ~~[construction averages]~~ site area average" means the ~~[department's historical]~~ average ~~[acres required and enrollment capacity]~~ land area provided per student for elementary (K-5), middle or intermediate (6-8), and high (9-12) schools~~[-]~~ that have been constructed within approximately the last ten years. ~~[Based on existing school construction data, the historical average design standards are as follows:~~

	<u>Acres/school</u>	<u>Enrollment/school</u>	
<u>Acres/student</u>			
Elem.	<del>12.5 acres</del>	<del>800 students</del>	<del>.0156 acres</del>
Middle	<del>16.5 acres</del>	<del>1,500 students</del>	<del>.0110 acres</del>
High	<del>49 acres</del>	<del>1,600 students</del>	<del>.0306</del>

acres]

"Revenue credit" means the present value of future state general tax revenues under chapter 237 that will be generated by ~~[the]~~ a new [residential] dwelling unit and used to fund capacity-expanding school capital ~~[facilities]~~

improvements and pay for outstanding debt on ~~[existing facilities.]~~ past capacity-expanding improvements.

"School ~~[facilities"]~~ facility" means ~~[the facilities]~~ a facility owned or operated by the department, or ~~[the facilities]~~ a facility included in the ~~[department of education]~~ department's capital budget or capital facilities plan.

"School impact district" means a geographic area designated by the board where anticipated ~~[growth]~~ new residential developments will create the need for one or more new schools or the expansion of one or more existing schools that are or will be located within the area ~~[and]~~ or will primarily serve new [housing] dwelling units within the area.

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

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

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

~~["Single-family unit count" means the total single-family units planned for a proposed development.]~~

"Student generation rate" means the average number of public school students ~~[generated by]~~ living in each multi-family and single-family unit when a residential development has matured and enrollment per unit no longer fluctuates~~[r]~~ significantly, or ~~[achieves]~~ has substantially achieved a steady state.

~~[f]~~ **§302A-1603** ~~[f]~~ **Applicability and exemptions.** (a)

Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

- (1) A county subdivision approval;
- (2) A county building permit; or
- (3) A condominium property regime approval for the project,

shall be required to fulfill the land dedication or fee in lieu requirement and ~~[vertical]~~ construction impact fee requirement of the department.

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

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing which is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any new residential development with an ~~executed~~ education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction~~[+]~~ that was executed prior to the effective date of this Act.

~~[+]~~ **§302A-1604** ~~[+]~~ **Designation of school impact**

**districts.** (a) The board shall designate a school impact district ~~[for school impact fees]~~ only after holding at least one public hearing in the area proposed for the school impact district. The written analysis, prepared in accordance with subsection (b), shall be made available to the public at least thirty days prior to the public hearing. Notice of the public hearing shall be made as provided in section 1-28.5. The notice shall include a map

of the proposed school impact district and the date, time, and place of the public hearing.

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

- (1) A map and legend describing the boundaries of the school impact district area, which may range from one school to one or more high school complexes; and
- (2) Analysis to support the need to construct new or expand existing school facilities in, or serving the school impact district area within the next twenty-five years to accommodate projected growth in the area based on various state and county land use, demographics, growth, density, and other applicable projections and plans.

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[+]§302A-1605[+] **Impact fee analysis.** (a) Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, the following:

- (1) An analysis to determine appropriate student generation rates by housing type (multi-family [~~unit count~~] and single-family [~~unit count~~]) for all new residential developments in the school

impact district area [~~The analysis shall also consider enrollment at existing school facilities, in and around the school impact district,~~], which shall provide the basis for determining the steady student enrollment generated by new residential developments that will need to be accommodated;

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

~~(3) Analysis of the initial development period,~~

(2) An analysis to estimate the number of students generated by all new residential developments in the school impact district area at the point in time when the total student [enrollments are] enrollment from these developments is anticipated to peak [to determine capacity of facilities], which shall provide the basis for determining the maximum enrollment generated by new residential developments that will need to be accommodated in both permanent facilities and portable classrooms;

~~[(4)]~~ (3) An analysis to identify the current statewide levels of service, as measured by the percentages of existing statewide student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures~~[, as opposed to] and in portable buildings~~~~[, in surrounding high school complexes]~~

~~-(5)~~ Calculation of the ~~current statewide level of service, which shall be the ratio of current student capacity at all school levels to the current enrollment at all school levels~~

~~-(6)]~~;

(4) An analysis, including the advantages and disadvantages, of [proposed] the potential for making more efficient use of existing underused assets in the school impact district through school redistricting~~[, listing the advantages and disadvantages by making more efficient use of existing underutilized assets]~~; and

~~[(7)]~~ (5) An analysis ~~[of appropriate school land]~~, including the advantages and disadvantages, or potential changes to statewide school site area and design enrollment ~~[capacity, which]~~ standards

that may be appropriate for application in the school impact district, which may include, for example, nontraditional [~~(i.e., mid-rise or high-rise structures)~~] facilities [~~to accommodate the need for public school facilities in high-growth areas within existing urban developments; and~~ such as mid-rise or high-rise structures in existing urban areas where new residential development is expected to generate the need for new school construction.

~~[(8) An analysis to identify the percentages of existing student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, and the percentages that are located in portable buildings in surrounding high school complexes.]~~

(b) The analyses specified in paragraphs (1) and (3) above shall be periodically updated pursuant to the provisions of section 302A-1607.5.

**[+]§302A-1606[+] Impact fee: land component - determining the amount of land or fee in lieu. (a) The school land area requirements for new [school facilities] residential developments in a school impact district shall**

be ~~[determined]~~ based on the ~~[recent school construction averages]~~ student generation rates established pursuant to paragraph 302A-1605(a)(1), recent school site area averages as specified in subsection (b), and the number of dwelling units in the development.

(b) Recent school site area averages for the 1997-2007 school construction period are as follows:

- (1) Elementary schools: 0.0156 acre per student;
- (2) Middle and intermediate schools: 0.0110 acre per student; and
- (3) High schools: 0.0306 acre per student.

These averages shall be periodically updated pursuant to the provisions of section 302A-1607.5.

(c) The following formula shall be used to determine the total school land area requirement for each individual new residential development in a school impact district:

(elementary school student generation rate per single-family unit) x (number of single-family units)  
x (recent school site area average for elementary schools)  
+  
(elementary school student generation rate per multi-family unit) x (number of multi-family units) x

(recent school site area average for elementary schools)

+

(middle or intermediate school student generation rate per single-family unit) x (number of single-family units) x (recent school site area average for middle or intermediate schools)

+

(middle or intermediate school student generation rate per multi-family unit) x (number of multi-family units) x (recent school site area average for middle or intermediate schools)

+

(high school student generation rate per single-family unit) x (number of single-family units) x (recent school site area average for high schools)

+

(high school student generation rate per multi-family unit) x (number of multi-family units) x (recent school site area average for high schools)

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total school land area requirement.

~~(b)~~ (d) The procedure for determining whether the dedication of land ~~is required~~ or a payment of a fee in

lieu is required [~~for a new school facility~~] to satisfy the land component impact fee shall be as follows:

- (1) A new residential development [~~of greater than or equal to~~] with fifty or more units[7] shall include a written agreement[7] between the owner or developer of the property and the department, executed prior to [the issuance of a building permit, between the owner or developer of the property and the department,] final subdivision approval, under which the owner or developer has:
  - (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or
  - (B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication;
- (2) New residential developments [~~of~~] with less than fifty units shall include a written agreement[7] between the owner or the developer of the property and the department, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment [~~for~~] of the fee in lieu [~~prior to the issuance of the building permit~~];

- (3) Prior to approval of any ~~[subdivision,]~~ change of zoning, subdivision, or any other approval for a:
- (A) ~~[Residential]~~ New residential development ~~[equal to or greater than]~~ with fifty or more units; or
- (B) Condominium property regime development of fifty or more units ~~[or more]~~, the department shall notify the approving agency of its determination on whether ~~[to]~~ it will require the ~~[dedication of]~~ development to dedicate land, ~~[the payment of]~~ pay a fee in lieu ~~[thereof,]~~, or a combination of both~~[,]~~ for the provision of new school facilities;
- ~~-(4) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land;~~
- ~~-(5) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement;~~
- ~~-(6) Whether the department determines to require land dedication or the payment of a fee in lieu, shall be guided by the following criteria:~~

- ~~(A) The topography, geology, access, value, and location of the land available for dedication;~~
- ~~(B) The size and shape of the land available for dedication;~~
- ~~(C) The location of existing or proposed schooling facilities; and~~
- ~~(D) The availability of infrastructure; and~~
- ~~(7) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final.]~~

(4) The department's determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:

- (A) The topography, geology, access, value, and location of the land available for dedication;
- (B) The size and shape of the land available for dedication;
- (C) The location of existing or proposed schooling facilities; and
- (D) The availability of infrastructure;

- (5) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final;
- (6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land; and
- (7) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement.

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

shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and the developer, and the third appraisal shall be binding on both parties.

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

~~(e)]~~ (f) The dollar amount of the fee in lieu shall be determined using the following formula:

Acres of land [~~calculated according~~] subject to the fee in lieu as determined pursuant to subsection ~~[(b)]~~ (d) multiplied by the value per acre of land determined pursuant to subsection ~~[(e)]~~ (e).

[+]§302A-1607[+] Impact fee: construction cost component - determining the ~~[cost per unit.]~~ amount of the fee. (a) The construction cost component of the school

impact ~~[fees shall be calculated using the following factors:]~~

- ~~(1) For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news record construction cost index;]~~

fee requirement for new residential developments in a school impact district shall be based on:

- (1) The student generation rates established pursuant to paragraph 302A-1605(a) (1);
- (2) Recent public school construction costs per student as provided in subsection (b);
- (3) The statewide percentages of students in permanent school facilities within the school impact district as determined pursuant to paragraph 302A-1605(a) (3);

(4) The cost factors for the twenty-six geographically limited cost districts as provided in subsection (c); and

(5) The number of single-family and multi-family dwelling units in the development.

(b) The construction cost component impact fee shall be based on recent public school construction costs. The 1997-2007 period school construction costs per student, adjusted for both the year 2007 and for the Honolulu assessment district, are as follows:

(1) Elementary schools: \$35,357 per student;

(2) Middle and intermediate schools: \$36,097 per student; and

(3) High schools: \$64,780 per student.

The costs per student for other assessment districts shall be determined by multiplying the Honolulu assessment district costs per student by the applicable cost factor in subsection (c). These costs per student shall be updated at least every three years, pursuant to the provisions in section 302A-1607.5.

(c) The state shall be divided into twenty-six geographically limited cost districts identified below, and the cost factors listed below for each cost district shall

be applied to the calculation of school construction costs  
per unit pursuant to subsection (d):

<u>Cost District</u>	<u>School District</u>	<u>Cost Factor</u>
<u>Honolulu</u>	<u>Honolulu</u>	<u>1.00</u>
<u>Ewa</u>	<u>Leeward/Central</u>	<u>1.00</u>
<u>Wahiawa</u>	<u>Central</u>	<u>1.05</u>
<u>Waialua</u>	<u>Central</u>	<u>1.10</u>
<u>Koolaupoko</u>	<u>Windward</u>	<u>1.00</u>
<u>Koolauloa</u>	<u>Windward</u>	<u>1.00</u>
<u>Waianae</u>	<u>Leeward</u>	<u>1.10</u>
<u>Hilo</u>	<u>Hawaii</u>	<u>1.15</u>
<u>Puna</u>	<u>Hawaii</u>	<u>1.20</u>
<u>Kona</u>	<u>Hawaii</u>	<u>1.20</u>
<u>Hamakua</u>	<u>Hawaii</u>	<u>1.20</u>
<u>South Kohala</u>	<u>Hawaii</u>	<u>1.20</u>
<u>North Kohala</u>	<u>Hawaii</u>	<u>1.25</u>
<u>Pohakuloa</u>	<u>Hawaii</u>	<u>1.25</u>
<u>Kau</u>	<u>Hawaii</u>	<u>1.30</u>
<u>Wailuku</u>	<u>Maui</u>	<u>1.15</u>
<u>Makawao</u>	<u>Maui</u>	<u>1.25</u>
<u>Lahaina</u>	<u>Maui</u>	<u>1.30</u>
<u>Hana</u>	<u>Maui</u>	<u>1.35</u>
<u>Molokai</u>	<u>Molokai</u>	<u>1.30</u>
<u>Lanai</u>	<u>Lanai</u>	<u>1.35</u>

<u>Lihue</u>	<u>Kauai</u>	<u>1.15</u>
<u>Koloa</u>	<u>Kauai</u>	<u>1.20</u>
<u>Kawaihau</u>	<u>Kauai</u>	<u>1.20</u>
<u>Waimea</u>	<u>Kauai</u>	<u>1.25</u>
<u>Hanalei</u>	<u>Kauai</u>	<u>1.25</u>

(d) The school construction costs per unit for single-family and multi-family housing shall be calculated separately for each school impact district using the formula provided below and based on:

- (1) Student generation rates are as determined in paragraph 302A-1605(a) (1);
- (2) Costs per student are as determined in subsection (b);
- (3) Statewide percentages of students in permanent buildings are as determined in paragraph 302A-1605(a) (3); and
- (4) Cost district factors are as provided in subsection (c).

The formula, to be determined separately for single-family and multi-family units, is as follows:

$$\begin{aligned}
 & \underline{(\text{elementary school student generation rate per unit})} \times \\
 & \underline{(\text{elementary school cost per student})} \times \underline{(\text{statewide} \\
 & \underline{\text{percentage of existing elementary school students in} \\
 & \underline{\text{permanent buildings})} \times \underline{(\text{cost district factor})} \\
 & + \\
 & \underline{(\text{middle or intermediate school student generation rate} \\
 & \underline{\text{per unit})} \times \underline{(\text{middle or intermediate school cost per} \\
 & \underline{\text{student})} \times \underline{(\text{statewide percentage of existing middle or} \\
 & \underline{\text{intermediate school students in permanent buildings})} \times \\
 & \underline{(\text{cost district factor})}
 \end{aligned}$$

+

(high school student generation rate per unit) x (high school cost per student) x (statewide percentage of existing high school students in permanent buildings) x (cost district factor)

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school construction cost per unit.

(e) School construction costs used in the determination of impact fees shall be reduced by any portion of the revenue credit per unit that exceeds ninety per cent of the school construction costs per unit. Where revenue credits per unit are less than ninety per cent of school construction costs per unit, no credit shall be given. The revenue credit per unit figures that are to be used in determining the amount of any such revenue credit shall be as follows:

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

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

(f) The construction cost component impact fee for each new residential development in a school impact district shall be ten per cent of the school construction costs attributable to that development, as calculated according to the following formula:

(cost per single-family unit from subsection (d)) -  
(cost reduction per single-family unit from subsection  
(e), if applicable) x (number of single-family units)  
x 0.10;  
+  
(cost per multi-family unit from subsection (d)) -  
(cost reduction per multi-family unit from subsection  
(e), if applicable) x (number of multi-family units) x  
0.10  
=  
construction cost component impact fee.

~~(2) Fee~~ (g) If the only improvements needed in  
schools serving a school impact district involve the  
expansion of existing school facilities, the cost per  
student for each school type (elementary, middle or  
intermediate, and high school) ~~is~~ shall be based on the  
~~ten-year average~~ construction ~~of costs~~ costs averaged  
over the preceding ten years for whatever ~~components~~  
building components are required to expand the existing  
school ~~[using the Honolulu assessment district in 2006 as~~  
~~the base]~~. The department shall conduct an analysis to  
determine the average construction costs over the preceding  
ten years per student for the required building components  
at such time as this subsection becomes applicable.

All or a portion of the new residential development's construction cost component impact fee for expansion of existing school facilities shall be determined pursuant to subsections (d), (e), and (f) by substituting the cost of the existing school facility requiring expansion on a per student basis for the school construction cost on a per student basis where applicable.

~~[(3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropriate cost factor in subsection (c). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review, and~~

~~(4) Student generation rates, as defined in section 302A-1602.~~

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

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

<del>Cost District</del>	<del>School District</del>	<del>Cost Factor</del>
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koelaupoko	Windward	1.00
Koelaupoko	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

~~(d) At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.~~

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

~~Cost per dwelling unit from [subsection (b)]  
minus any amount by which the revenue credit per  
dwelling unit from subsection (d) exceeds ninety  
per cent of the per unit construction cost.~~

~~(f)]~~ (h) The amount of the fee shall be [increased]  
adjusted from the date it was determined to the date it is  
paid using the engineering news-record construction cost  
index, or an equivalent index if that index is  
discontinued.

~~[(g) Any new residential development shall be  
required to obtain a]~~ (i) A written agreement shall be  
executed between the owner or developer of the property and  
the department~~[7]~~ prior to the issuance of a building  
permit, under which the owner or developer has agreed to a  
time specified for payment~~[7 for]~~ of its ~~[school impact  
fee]~~ construction cost component ~~[prior to the issuance of  
the building permit.]~~ impact fee.

**§302A-1607.5 Use of data reflecting recent conditions  
in impact fee calculations.** (a) Every three years,  
beginning in 2010, the department shall concurrently update  
the following:

- (1) School site area averages provided in section  
302A-1606(b);

- (2) Elementary, middle or intermediate, and high school school facility construction costs per student provided in section 302A-1607(b); and
- (3) Revenue credit per unit figures provided in section 302A-1607(e).

(b) Every three years following their initial determination pursuant to section 302A-1605, the department shall update the following:

- (1) Student generation rates for each established school impact district; and
- (2) The statewide percentages of students in permanent structures and portable classrooms.

(c) Every three years beginning in 2010, the department shall, where appropriate, update the list of cost factors for the twenty-six geographically enumerated cost districts, as provided in section 302A-1607(c), by incorporating any changes to these cost factors that have been made by the department of accounting and general services.

(d) In the event any of the above data updates are not completed within the specified time, the current data shall be used until such time as the update is completed.

~~§~~302A-1608 ~~§~~ Accounting and expenditure

requirements. (a) Schools serving ~~E~~each designated

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school impact district shall be a separate benefit district. Fees collected within each school impact district shall be spent only [within] on schools serving the same school impact district ~~[for the purposes collected]~~.

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(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities~~[+]~~ servicing the school impact district.

(c) If the land is ~~[never]~~ not used for ~~[the]~~ a school facility~~[+]~~ within twenty years of its dedication, it shall be returned to the developer, or the developer's successor in interest.

(d) Once used~~[+]~~ for school facilities, all or part of the land may later be sold~~[, with the proceeds]~~ in the event that the school facilities located thereon are no longer needed. Proceeds from this sale shall only be used to acquire land for or construct other school facilities ~~[+]~~ servicing the same school impact district.

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~~[-e)]~~ (e) Fee in lieu funds may be used for school site land acquisition and related expenses ~~[related to acquiring a piece of land]~~, including ~~[but not limited to]~~ surveying, appraisals, and legal fees. Fee in lieu funds may also be used for construction costs where the

department determines that there is no foreseeable future need for acquiring additional land for a new school site or an existing school site expansion ~~in~~ that serves the school impact district. Such funds shall not be used for the maintenance or operation of existing schools in the district, ~~[construction costs, including architectural, permitting, or financing costs,~~ or for administrative expenses.

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~~[-(d) Impact]~~ (f) Construction cost component impact fees [for the construction cost component] shall generally be used for the construction of new school facilities. However, they may be used for school site land acquisition where the department determines that there is a greater need.

(g) When used for construction, such funds shall be used only for the costs of new school facilities that ~~[expands]~~ expand the student capacity of existing schools or ~~[adds]~~ add student capacity in new schools. ~~[School impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site.] Eligible construction costs include planning, engineering, architectural, permitting, financing, and administrative~~

expenses, and any other capital equipment expenses pertaining to educational facilities.

(h) Construction cost component impact fees shall not be expended for:

- (1) The maintenance or operation of existing schools in the district;
- (2) Portable or temporary facilities; or
- (3) The replacement of an existing school located within the same school impact district, either on the same site or on a different site.

(i) In the event of closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall be funded with [non-school] other than school impact fee [revenue.] revenues. [Eligible construction costs include but are not limited to planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities. Impact fees for the construction cost component shall not be expended for:

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

~~(2) The maintenance or operation of existing schools  
in the district; or~~

~~(3) Portable or temporary facilities.~~

~~(e) Impact fees and fees]~~ (j) Fees in lieu of land  
dedication, proceeds from the sale of all or part of an  
existing school site that had been dedicated by a developer  
pursuant to the requirements of this subpart, and  
construction cost component impact fees shall be expended  
or encumbered within twenty years of the date of  
collection. Fees shall be considered spent or encumbered  
on a first-in, first-out basis. An expenditure plan for  
[the] all collected impact fees shall be incorporated into  
the annual budget process of the department and subject to  
legislative approval of the budget.

[+]§302A-1609[+] Refunds[-] of Fees. If [the] a fee  
in lieu of land dedication or a construction cost component  
impact fee is not expended within twenty years of the date  
of collection, the department shall either:

- (1) Refund to the developer, or the developer's  
successor in interest, the amount of the fee [~~in~~  
~~lieu~~] paid and any interest accrued thereon; or
- (2) Recommit a portion or all of the fees for another  
twenty-year period for construction of new  
schools [~~in~~] servicing the school impact district,

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as authorized by the developer or the developer's successor.

[+]§302A-1610[+] **Credits for excess land dedication.**

(a) Any ~~[person]~~ owner of a new residential development subject to the land ~~[dedication]~~ component impact fee requirements pursuant to this ~~[+]subpart[+] may apply for credit against any similar dedication or payment accepted and received by the department for the project.] who dedicates more land for school facilities than is required for that development shall receive credit for the excess dedicated land area.~~

(b) The credit may be applied to the land component impact fee requirement for any future new residential development by the same owner in the same school impact district, or with written approval of the owner of the credit, to any future new residential development by a different owner in the same school impact district.

~~[(b)]~~ (c) Any credit provided for under this section shall be based on the value~~[r]~~ determined in the manner provided under section 302A-1606.

~~[(c) Excess credits]~~ (d) Credits for land ~~[contributions]~~ dedications made prior to ~~[July 3, 2007]~~ the effective date of this Act that are in excess of a developer's requirement under this subpart shall be based

on the determined value[+] of the excess dedication,  
provided that the credit amount shall not exceed the value  
of the dedication or fee in lieu required under this  
[+]subpart[+].

(e) In addition to or instead of applying such  
credits to future new residential developments, the  
department may execute with an owner of such credits an  
agreement to provide for partial or full reimbursement from  
the school impact fee payments collected from other  
developers within the same school impact district. Such  
reimbursements shall not exceed the amount of the fee  
revenues available in the account for that school impact  
district.

**[+]§302A-1611[+] Credits for excess contributions and  
advance payment of required construction cost component  
impact fees.** (a) Any [applicant] owner of a new  
residential development subject to the [school]  
construction cost component impact fee requirements  
pursuant to this [subpart] ~~may apply for~~ shall receive  
credit for any [similar] private construction or monetary  
contribution~~, payment, or~~ toward the construction of  
[public] school facilities that is accepted and received by  
the department~~[-]~~ for the development and is in excess of  
the impact fee required under this subpart for that

development. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104. ~~[No credit shall be authorized against the impact fees in lieu of land dedication.]~~

(b) ~~[A credit may be applied only against school impact fees that would otherwise be due for new residential developments for which the payment or contribution was agreed to in a written educational contribution agreement.]~~ Any excess contribution credit may be applied to the construction cost component impact fee requirement for any future new residential development by the same owner in the same school impact district, or with the written approval of the owner of the credit, to any future new residential development by a different owner in the same school impact district.

(c) In addition to or instead of applying the excess contribution credit to future new residential developments, the department may execute with an owner of the credit an agreement to provide for partial or full reimbursement from the impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the impact fee revenues available in the account for that school impact district.

(d) Any owner of a new residential development shall receive credit for any part of its required construction cost component impact fee that, with the approval of the department, is paid in advance of the time specified in the written agreement executed in accordance with the provisions of section 302A-1607(i). The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the [~~school~~] impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.

~~[(e) If private construction of school facilities is proposed by a developer after July 3, 2007, if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide reimbursement for the excess credit from the impact fees collected from other developers within the same benefit district. For the purposes of this section, the private~~

~~construction of school facilities is a "public work"  
pursuant to chapter 104.]"~~

SECTION 3. Statutory material to be repealed is  
bracketed and stricken. New statutory material is  
underscored.

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

INTRODUCED BY: \_\_\_\_\_



HOUSE COMMITTEE ON EDUCATION

February 9, 2009  
Conference Room 309  
2:00 p.m.  
State Capitol

Subject: House Bill No. 1431 Relating to Education

Chair Takumi and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

**The Chamber of Commerce of Hawaii is opposed H.B. No. 1431 as proposed.**

We understand that the purpose of this Act is to clarify the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

Several of our members participated on the Working Group that was established by the Legislature to develop the legislation that resulted in Act 245, Session Laws of Hawaii 2007 being passed.

The underlying intend of the Act 245 was to:

1. Identify areas of projected growth;
2. Provide a transparent methodology for calculating school impact fees for single and multi family units;
3. Disclose the fact that communities generate a higher number of students initially when young families populate a community and overtime, the student enrollment decreases toward a "steady-state" situation. Schools in these areas need to accommodate the high initial student generation and lower long-term student generation numbers;
4. Recognize that the overall student enrollment in public schools has not changed significantly over the last 30 years. It has remained at approximately 175,000 annually; however, the location or distribution of the student population has changed over time. As new schools are needed in high growth areas, what should be done with under-utilized schools in older communities;

5. Apply the new impact fee law to a specific high growth area on a trial or pilot basis in order to determine where clarification is needed in the new law.

We understand that the DOE has identified the West Hawaii region as the area of high growth for the application of Act 245. We also understand that one or more community meetings were held in West Hawaii in November 2008.

We are not aware of the outcome of these meetings and what specific clarification to Act 245 is being proposed now as a result of these meetings.

We believe that it is premature to amend Act 245 until such time as the implementation of the Act has been fully vetted through a pilot project or trail application as was envisioned when Act 245 was enacted.

Without the background or justification of what the specific problems are in Act 245, it is difficult for us to properly assess the proposed changes to Act 245.

Lacking the background or justification, all we can do is provide comments to specific sections of the bill.

The example referred in Section 1 of the bill is not correct as the transfer of fees between designated districts was not the intent of Act 245 as it would be illegal. The intent was to provide a credit to developer who provided more land for the school sites than would be required in the impact fee calculations. For example, if the DOE required 10 acres but the student generation for one developer would result in the land contribution of only 8 acres, the developer may provide the DOE with the entire 10 acre site provided they get a credit on the additional 2 acres that may be applied at a different project site.

Section 302A, page 2 refers to Section 302A-1606(b) which is essentially the 10 year average for school sizes. Section 302A-1606 (b) on page 17 identifies the years as 1997 to 2007. Should be changed to wording that refers to the immediate 10 year period to avoid having to come in every 3 years to change the 10 year term in the statute.

Page 6, Construction cost component impact fee defines construction of new schools and expansion of existing schools. These two cost items could be entirely different as the construction cost for a new, Greenfield type of development would be substantially different from an in-fill development that required a multiple level development to accommodate student enrollment projections. Blending the two costs may result in imbalance when the formula is applied to a specific project. Is the thought to have two separate categories of construction cost and application or is it simply applied as a blended average?

Page 8 and 9 Recent School site area averages deletes the student enrollment capacities and school sizes from the statutes. There is no explanation as to why this is being done as one of the underlying goals of the impact fee law was to provide "transparency" to the process so the public and developers know and understand what the DOE standards are for student enrollment and school sizes. This also provides some insight into the expected level of service the DOE is providing as the standard needs to be applied to "EXISTING" as well as new schools. The expectation is that any student in Hawaii's public school system should at a minimum be provided with the same type of learning

environment no matter what public school they attend. Please explain the need to remove the school acreage requirements and enrollment standards from Act 245.

Page 9 Revenue Credit, please explain what the problem is that warranted the proposed language changes to Act 245.

Page 10, School Impact fee, this section is being deleted; however, the intent of the legislation was to establish the public policy for how much of the new school construction should be passed on to new developments. The policy decision from the legislature was that this contribution should be 10%. Why is this section of Act 245 being deleted? Please explain.

Page 12, Designation of school impact districts. Is there any status report or discussion of what work has been done on the designation of impact districts and how this process resulted in the need for changes to Act 245? Please explain.

Page 13, has any analysis been done on the designated school impact districts? If so, where is the analysis? If not, why are changes being proposed to Act 245 if no analysis has been done on the designated school impact districts?

Page 13, why are the changes being made to section 8 of the bill deleting entire provisions and inserting entirely different language which seems to rephrase the sections that are being deleted. Of the eight (8) items listed in Section 8, the proposed revisions reduce the overall items to five (5) with not explanation of why the reduction is needed or desired. Without an explanation of what is being proposed and why, it is difficult to understand the proposed changes.

Page 17, 302A-1606 (b) lists the 10 year period as 1997 to 2007, this should be changed to refer to the immediate preceding 10 years to avoid the need to amend the statutes each time the averages change.

Page 23, the entire section (d) regarding credits is being deleted. Please explain how a developer may get a credit for providing more land than would be required in the impact fee calculation, or is it the intend to disallow this type of credit and require DOE to purchase land from the same or different developer to achieve the desired school size? Please explain.

Page 25 item 2 is being deleted. How are the construction costs for new school construction and infill or expansion of existing schools going to be handled? Is the intent to come up with one blended or average construction cost for the combined new and expansion school projects? Please explain.

Page 26, (b) lists the 10 year period as 1997 to 2007, this should be changed to refer to the immediate preceding 10 years to avoid the need to amend the statutes each time the averages change.

Page 28, (c) this section is being deleted; however, the intent of the legislation was to establish the public policy for how much of the new school construction should be passed on to new developments. The policy decision from the legislature was that this contribution should be 10%. Why is this section of Act 245 being deleted? Please explain.

Page 32 and 33, Accounting and expenditure requirements, item (d) proposes to allow that the sale of lands acquired and used for public school purposes if in the future the site is no longer needed for school purposes. This section has been expanded to allow that the proceeds from the land sale can be used to construct new facilities. We question the wisdom of this type of co-mingling of land and improvement assets. Lands held and used for public schools could be viewed as a "trust" meaning that the lands should be managed from the standpoint of being permanent. Allowing the land asset to be reduced over time by converting its value from land (real estate) to vertical construction costs would in the long term, diminish the trust asset. More discussion is needed on the long-term implications of this type of decision as it could be viewed as undermining the long-term interest of preserving our educational land assets.

Page 35, item (h) (3) prohibits the use of construction cost impact fees for redevelopment of an existing school site either at the existing location or different site in the same district. Please explain the rationale for taking this position which would appear to severely restrict the DOE's ability to reposition its school assets over time especially in situation where Transit Orient Development will be occurring. School sites in existing urban areas represent some of the largest parcel under single ownership in the urban core. Limiting flexibility in funding and redevelopment would appear to be a strategic mistake as this time. Please explain.

Page 38, item (d) why is this section required as it relates to agreements executed prior to July 1, 2009.

Page 40, item (c) why is this entire section being deleted? It removes any flexibility to allow a private developer to assist in the construction of a school facility. It is unclear why this section is being removed. Please explain.

As stated earlier, our comments are limited to specific sections of the bill and may not reflect all our concerns because of our inability to determine why the specific changes are being proposed.

We cannot support SB No. 733 as proposed.

Thank you for the opportunity to provide comments.



February 9, 2009

Representative Roy Takumi, Chair  
COMMITTEE ON EDUCATION  
Conference Room 309  
State Capitol  
415 South Beretania Street

Representative Takumi:

Subject: House Bill No. 1431 Relating to Education

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is opposed H.B. No. 1431 as proposed.

We understand that the purpose of this Act is to clarify the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

Several of our members participated on the Working Group you established to develop the legislation that resulted in Act 245, Session Laws of Hawaii 2007 being passed.

The underlying intend of the Act 245 was to:

1. Identify areas of projected growth;
2. Provide a transparent methodology for calculating school impact fees for single and multi family units;
3. Disclose the fact that communities generate a higher number of students initially when young families populate a community and overtime, the student enrollment decreases toward a "steady-state" situation. Schools in these areas need to accommodate the high initial student generation and lower long-term student generation numbers;
4. Recognize that the overall student enrollment in public schools has not changed significantly over the last 30 years. It has remained at approximately 175,000 annually; however, the location or distribution of the student population has changed

- over time. As new schools are needed in high growth areas, what should be done with under-utilized schools in older communities;
5. Apply the new impact fee law to a specific high growth area on a trial or pilot basis in order to determine where clarification is needed in the new law.

We understand that the DOE has identified the West Hawaii region as the area of high growth for the application of Act 245. We also understand that one or more community meetings were held in West Hawaii in November 2008.

We are not aware of the outcome of these meetings and what specific clarification to Act 245 is being proposed now as a result of these meetings.

We believe that it is premature to amend Act 245 until such time as the implementation of the Act has been fully vetted through a pilot project or trail application as was envisioned when Act 245 was enacted.

Without the background or justification of what the specific problems are in Act 245, it is difficult for us to properly assess the proposed changes to Act 245. As such, we cannot support SB No. 733 as proposed.

Thank you for the opportunity to provide comments.

**BIA-HAWAII**  
BUILDING INDUSTRY ASSOCIATION

February 9, 2009

Representative Roy Takumi, Chair  
House Committee on Education  
415 South Beretania Street, Room 309  
Honolulu, Hawaii 96813

Representative Takumi:

**Subject: House Bill No. 1431 Relating to Education**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is opposed H.B. No. 1431 as proposed.

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Page 32 and 33, Accounting and expenditure requirements, item (d) proposes to allow that the sale of lands acquired and used for public school purposes if in the future the

site is no longer needed for school purposes. This section has been expanded to allow that the proceeds from the land sale can be used to construct new facilities. We question the wisdom of this type of co-mingling of land and improvement assets. Lands held and used for public schools could be viewed as a "trust" meaning that the lands should be managed from the standpoint of being permanent. Allowing the land asset to be reduced over time by converting its value from land (real estate) to vertical construction costs would in the long term, diminish the trust asset. More discussion is needed on the long-term implications of this type of decision as it could be viewed as undermining the long-term interest of preserving our educational land assets.

Page 35, item (h) (3) prohibits the use of construction cost impact fees for redevelopment of an existing school site either at the existing location or different site in the same district. Please explain the rationale for taking this position which would appear to severely restrict the DOE's ability to reposition its school assets over time especially in situation where Transit Orient Development will be occurring. School sites in existing urban areas represent some of the largest parcel under single ownership in the urban core. Limiting flexibility in funding and redevelopment would appear to be a strategic mistake at this time. Please explain.

Page 38, item (d) why is this section required as it relates to agreements executed prior to July 1, 2009.

Page 40, item (c) why is this entire section being deleted? It removes any flexibility to allow a private developer to assist in the construction of a school facility. It is unclear why this section is being removed. Please explain.

As stated earlier, our comments are limited to specific sections of the bill and may not reflect all our concerns because of our inability to determine why the specific changes are being proposed.

We cannot support SB No. 733 as proposed.

Thank you for the opportunity to provide comments.

  
Executive Vice President & Chief Executive Officer  
BIA-Hawaii