



Via Capitol Website

March 16, 2009

House Committee on Education
Hearing Date: Monday, March 16, 2009, 2:00 p.m. in CR 309

Testimony in Opposition to SB 733 SD2 – Relating to Education
and LURF’s PROPOSED HD1
(Changes to Act 245 (2007) School Impact Fee Law)

Honorable Chair Roy M. Takumi, Vice Chair Dr. Lyla Berg; and
House Education Committee Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF’s missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources and public health and safety.

LURF appreciates this opportunity to **provide our comments** and testify and is **in opposition** to the current version of SB 733 SD2, which purports to clarify the law for determining school impact fees for financing new or expanding existing DOE schools or facilities, but it actually makes some major changes to the intent, process and application of Act 245 (2007), the State’s school impact fee law.

LURF’s Position. Although SB 733 SD2 may have been well-intentioned, LURF must respectfully **oppose SB 733 SD2**. LURF has met with the Department of Education (DOE) and stakeholder Ho’okuleana LLC to discuss specific objections to the original version of SB 733, and concerns raised by the Chamber of Commerce of Hawaii, Ho’okuleana, Hawaii Leeward Planning Conference and LURF. The DOE was very helpful, and we resolved several issues. Nevertheless, LURF and some of the other stakeholders still have major concerns with the current SD2 version, which adopts DOE’s proposed amendments. LURF and the other stakeholders are continuing to work with DOE to address the concerns of all parties. Under the circumstances, LURF would respectfully request the following:

- o First, that SB 733, SD2 be **held**, because it makes some major changes to the original legislation; and DOE should go thru the process with an initial pilot project (West Hawaii) first, then we can talk about revisions to the law;

- Or in the alternative, that this Committee consider **LURF's proposed HD1** version of the bill for adoption, which includes minor technical revisions (moving sections, clarifications that DOE proposed), but does not include DOE's revisions which we believe would change the intent and operation of the original legislation. We have attached our Proposed HD1 version of the bill that we are asking EDN to consider; or
- Or, **defer to allow the stakeholders to engage in further review and discussion** - as DOE, LURF and the other stakeholders are meeting to discuss portions of the bill we can mutually agree on, and also our differences.

Summary of LURF's Objections to SD2 (Proposed by DOE). We understand that the current SD2 version is DOE's version, however, the SD2 includes major changes to the original intent, process and application of Act 245 (2007) Relating to School Impact Fees. A summary of our objections to SD2 are as follows:

- **General Comment: A Needs Assessment should be done for each School Impact District, based on the legal nexus and proportionality test.** The current law and proposed bill presume an impact every time there is a development, i.e.

“302A-1601 Findings. New residential developments within identified school impact districts create additional demand for public school facilities., As such, once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities ...”

While DOE and the bill suggest the issue will be “studied” – the presumption (and specific language) note all new developments must pay an impact fee. The bill should state that the need must be identified, and not presume that any new development creates the need. We would recommend that language should be added which requires a needs assessment, or some other analysis prior to the presumption that an impact fee is due. Likewise, perhaps language should be added that specifies the criteria for the impact fee (i.e. rational nexus, proportionality, timing, etc.)

- **Objection to the deletion of “The analysis shall also consider enrollment at existing school facilities, in and around the school impact district...”** It is crucial that the analysis should consider enrollment at existing school facilities, in and around the school impact district, and the statute should include this. DOE agrees that the analysis should include this, but deleted it because they feel it is obvious and need not be stated in the statute. **§302A-1605(a), pg 9.**
 - Section 8, page 9 – Keep line in subsection (a)(1) which reads “The analysis shall also consider . . . the school impact district;
- **Objection to the deletion of provisions allowing the transfer of credits, and new provisions that prohibit the transfer of credits.** The ability of a developer to be able to transfer any excess credits to another project was a major consideration in the original Act 245.
 - Nevertheless, DOE deleted the existing provision: “Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.” This provision should be retained in the law. §302A-1606(d), pg 14.

- Section 9, page 14, keep struck through subsection (d) and add some technical changes, which will read “(d) The developer or owner of new residential developments of greater than fifty . . . any other development of the State.”
- DOE changed the original intent by adding the following provision: “A credit received...may be applied to the land component impact fee requirement for any future 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 development by a different owner in the same school impact district.” The Committee should **reject this revision. §302A-1610(b), pg 23.**
- **Objection to the addition of: “If the only improvements needed in a school impact district involve the expansion of existing school facilities.....” §302A-1607(g), pg 25.** DOE’s revisions set up a “one or the other” situation – the revision assumes that it will only be a new school or an expansion, and never both. There may be situations where a new project may require a new elementary school and also expansions of a middle or high school. This **revision should be rejected.**
 - Delete proposed new language of SD2, Subsection (g) which says, “[~~(g) If the only improvements needed in a school impact district involve . . . building component cost per student substituted . . . applicable to the expansion of existing school facilities.~~]
- **Objection to provisions which would prohibit credits for the private construction of private school facilities.** Act 245 included the following language which could be interpreted to allow credits for building private school facilities which could reduce the enrollment impacts at existing area schools: “If private construction of school facilities is proposed by the developer...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 fee.....” **§302A-1611, Section 13, page 23-24.**
 - The new provision which provides that “Any owner of a development subject to other construction cost component impact fee requirements pursuant to this subpart, shall receive credit for any private construction or monetary contribution toward the construction of public school facilities.....For purposes of this section, the private construction of school facilities is a “public work” pursuant to chapter 104.” **§302A-1611(a), pg 23-24. These revisions should be rejected.**
 - Keep first paragraph, subsection (c), which says, “If private construction of school facilities is . . . the total impact fees that . . . is a “public work” pursuant to chapter 104.” Section 14, p. 25.
- **Before imposing impact fees, the DOE and State should look at using state lands for schools.**

Conclusion. We respectfully request that the House Committee on Education:

- **Hold SB 733, SD2**, because it makes some major changes to the original legislation; and DOE should go thru the process with an initial pilot project (West Hawaii) first, then we can talk about revisions to the law;
- Or in the alternative, that this Committee **consider LURF's proposed HD1 version of the bill for adoption**, which includes minor technical revisions (moving sections, clarifications that DOE proposed), but does not include DOE's revisions which we believe would change the intent and operation of the original legislation. We have attached our Proposed HD1 version of the bill that we are asking EDN to consider; or
- Or, **defer this measure, to allow the stakeholders to engage in further review and discussion** - as DOE, LURF and the other stakeholders are meeting to discuss portions of the bill we can mutually agree on, and also our differences.

Thank you for the opportunity to provide our comments in **opposition to SB 733 SD2**.

LATE TESTIMONY

S.B. NO. 733 SD2
Proposed
HD1
LURF

Report Title:

DOE; School Impact Fees

Description:

Clarifies the law for determining school impact fees for financing new or expanding existing DOE schools or facilities.

HD1

A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1 SECTION 1. Pursuant to Act 245, Session Laws of Hawaii
2 2007, the Department of Education is going through the process
3 of identifying a school impact district in West Hawaii in order
4 to implement school impact fees. This process is consistent
5 with what was envisioned by the Act 245, which provided for a
6 general methodology and approach for identifying need areas and
7 calculating appropriate school impact fees for new residential
8 developments. However, based on the department's proposals for
9 West Hawaii, the legislature finds that_in order to implement a
10 program of school impact fees that is consistent with the
11 original intent, methodology and approach of Act 245, certain
12 minor amendments need to be made to the sections of law creating
13 school impact districts, and the formulas and practices for
14 providing land and collecting fees for new or expanded school
15 facilities in areas expecting a large amount of residential
16 growth.

1 The purpose of this Act is to clarify the sections of
2 law pertaining to school impact fees to facilitate the provision
3 of land and collection of fees for public schools.

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

7 "§302A- Use of data reflecting recent conditions in
8 impact fee calculations. (a) Every three years, beginning in
9 2010, the department shall concurrently update the following:

10 (1) School site area averages provided in section
11 302A-1606(b);

12 (2) Elementary, middle or intermediate, and high school
13 permanent facility construction costs per student
14 provided in section 302A-1607(b); and

15 (3) Revenue credit per unit figures provided in section
16 302A-1607(e).

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

20 (1) Student generation rates for each established school
21 impact district; and

1 (2) The statewide percentages of students in permanent
2 structures and portable classrooms.

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

9 (d) If any of the above data updates are not completed
10 within the specified time, the current data shall be used until
11 such time as the update is completed."

12 SECTION 3. Chapter 302A, part VI, subpart B, Hawaii
13 Revised Statutes, is amended by amending its title to read as
14 follows:

15 "~~+~~B.~~+~~ SCHOOL IMPACT FEES"

16 SECTION 4. Section 302A-1601, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~+~~**\$302A-1601**~~+~~ **Findings.** New residential developments
19 within identified school impact districts may create additional
20 demand for public school facilities. As such, once school
21 impact districts are identified, and based on a showing of such
22 additional demand, new residential developments ~~[will]~~ shall be

1 required to contribute toward the construction of new or
2 expansion of existing public school facilities through:

3 (1) The land requirement, either through an in lieu fee or
4 actual acreage (unless land is not required in the
5 school impact district), based on each new
6 development's proportionate share of the need to
7 provide additional public school sites; and

8 (2) The construction cost requirement either through an in
9 lieu or actual construction based on [~~the~~] each new
10 development's proportionate share of the need to
11 construct additional facilities.

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

17 The State determines that new residential developments
18 within designated school impact districts shall provide land for
19 schools or pay a fee in lieu of land proportionate to the
20 impacts of the new residential development on existing school
21 facilities. The State also determines that new residential
22 developments within designated school impact districts shall

1 also pay school construction cost impact fees proportionate to
2 their impacts.

3 In determining school impact fees, construction cost and
4 proportionate share, the intent of the school impact fee
5 calculations are that new developments should not be charged for
6 a higher level of service than is being provided to existing
7 developments. A reasonable measure of the level of service is
8 the percentage of classrooms that are being utilized by students
9 in permanent structures, as opposed to portable buildings.

10 This [+]subpart[+] establishes the methodology for
11 developers to provide their proportionate share of the land and
12 the construction cost of new or expanded school facilities
13 needed to serve new residential developments, as determined in
14 [~~section 302A-1607.~~] sections 302A-1606 and 302A-1607."

15 SECTION 5. Section 302A-1602, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§302A-1602[+] **Definitions.** As used in this
18 [+]subpart[+], the following terms shall have the following
19 meanings unless the context indicates otherwise:

20 "Acres[+] per student" means the [~~number of~~] area of land
21 in acres required per student for a school site based on design
22 standards for schools, which may include the actual school site

1 size and the design enrollment of schools constructed within
2 approximately the last ten years.

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

13 "Construction cost component impact fee" means ten per cent
14 of the share of the construction cost for the required new
15 school, the expansion of existing school facilities that are
16 attributable to a specific development, or both.

17 "Cost per student" means the [~~construction cost for a~~
18 ~~school per student (actual school construction cost divided by~~
19 ~~enrollment capacity).] average of actual school construction
20 costs, expressed in current dollars, divided by the respective
21 design enrollments, for schools constructed within approximately
22 the last ten years.~~

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

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

5 "Department" means the department of education.

6 "Design enrollment" means the maximum number of students,
7 or student capacity, a permanent school facility is designed to
8 accommodate.

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

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

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

17 "Land component" means a fee simple property that is
18 vacant, suitable for a school site, and improved [+]with
19 infrastructure[+].

20 "Land component impact fee" means the share of the required
21 school site area, the fair market value of the fee simple land
22 area, or any combination thereof that is attributed to a

1 specific development based on the student generation rate from
2 the project.

3 "Level of service" means the percentage of classrooms that
4 are located in permanent structures, but not including
5 classrooms located in portable buildings.

6 "Multi-family" means any dwelling unit other than a single
7 family dwelling unit.

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

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

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

21 "Proportionate share" means the pro rata share of the
22 school impact fee attributed to the specific development based

1 on the student generation rate from and number of units in the
2 project.

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

	[acres] <u>Land Area</u> /school	Enrollment/school	[acres] <u>Land Area</u> /student
9 Elem.	12.5 acres	800 students	.0156 acres
10 Middle	16.5 acres	1,500 students	.0110 acres
11 High	49 acres	1,600 students	.0306 acres

12 "Revenue credit" means the state general tax revenues under
13 chapter 237 that will be generated by [~~the~~] a new [~~residential~~]
14 dwelling unit and used to fund school capital facilities and pay
15 for outstanding debt on existing facilities.

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

19 "School impact district" means a geographic area designated
20 by the board where anticipated [~~growth~~] new residential
21 development will create the need for one or more new schools or
22 the expansion of one or more existing schools that are or will

1 be located within the area and will primarily serve new
2 [~~housing~~] dwelling units within the area.

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

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

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

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

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

21 SECTION 6. Section 302A-1603, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "~~[+]~~**S302A-1603**~~[+]~~ **Applicability and exemptions.** (a)

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

5 (1) A county subdivision approval;

6 (2) A county building permit; or

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

9 shall be required to fulfill the land dedication or fee in lieu
10 requirement and vertical construction cost component impact fee
11 requirement of the department.

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

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

16 (2) Any form of housing [~~which~~] that is or will be paying
17 the transient accommodations tax under chapter 237D;

18 (3) All nonresidential development; and

19 (4) Any development with an executed education
20 contribution agreement or other like document with the
21 department for the contribution of school sites or

1 payment of fees for school land or school
2 construction.

3 SECTION 7. Section 302A-1604, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"~~[+]§302A-1604[+]~~ Designation of school impact districts.**

6 (a) The board shall designate a school impact district for
7 school impact fees only after holding at least one public
8 hearing in the area proposed for the school impact district.

9 The written analysis, prepared in accordance with subsection

10 (b), shall be made available to the public at least thirty days
11 prior to the public hearing. Notice of the public hearing shall
12 be made as provided in section 1-28.5. The notice shall include
13 a map of the proposed school impact district and the date, time,
14 and place of the public hearing.

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

18 (1) A map and legend describing the boundaries of the
19 proposed school impact district area, which may range
20 from one school to one or more high school complexes
21 as well as maps and legends describing surrounding
22 districts and school enrollments at existing school

1 facilities in and around the school impact district;

2 and

3 (2) Analysis to support the need to construct new or
4 expand existing school facilities in the proposed
5 school impact district area within the next twenty-
6 five years to accommodate projected growth in the area
7 based on various state and county land use,
8 demographics, growth, density, and other applicable
9 historical data projections and plans."

10 SECTION 8. Section 302A-1605, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~{}~~**\$302A-1605**~~{}~~ **Impact fee analysis.** (a) Upon
13 designation of a school impact district, the department shall
14 prepare an impact fee analysis that shall include, at a minimum,
15 the following:

16 (1) An analysis to determine appropriate student
17 generation rates by housing type (multi-family [~~unit~~
18 ~~count and single-family unit count~~) for new
19 developments in the area. and single-family) for all
20 new developments in the school impact district area.
21 This will provide the basis for determining the steady
22 state enrollment generated by new residential

1 developments that will need to be accommodated. The
2 analysis shall also consider enrollment at existing
3 school facilities, in and around the school impact
4 district;

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

9 ~~(3) Analysis of the initial development period, when~~
10 ~~student enrollments are anticipated to peak (to~~
11 ~~determine capacity of facilities);]~~

12 (3) An analysis to estimate the number of students
13 generated by all new developments in the school impact
14 district area at the point in time when the total
15 enrollment from these developments is anticipated to
16 peak. This information is not required for or related
17 to the determination of the impact fee, however, this
18 will provide the basis for determining the maximum
19 enrollment generated by new residential developments
20 that will need to be accommodated in both permanent
21 facilities and portable buildings;

- 1 (4) An analysis to identify the percentages of existing
2 statewide student enrollment at the elementary school,
3 middle or intermediate school, and high school levels
4 that are located in permanent structures, as opposed
5 portable buildings, in surrounding high school
6 complexes;
- 7 (5) Calculation of the current statewide level of service,
8 which shall be the ratio of current student capacity
9 at all school levels to the current enrollment at all
10 school levels;
- 11 (6) An analysis, including but not limited to, of proposed
12 redistricting, listing the advantages and
13 disadvantages by making more efficient use of existing
14 underutilized assets;
- 15 (7) An analysis of appropriate school land area, other
16 state lands, and enrollment capacity, which may
17 include nontraditional (i.e., mid-rise or high-rise
18 structures) facilities to accommodate the need for
19 public school facilities in high growth areas and/or
20 within existing urban developments; and
- 21 ~~(8) An analysis to identify the percentages of existing~~
22 ~~student enrollment at the elementary school, middle or~~

1 ~~intermediate school, and high school levels that are~~
2 ~~located in permanent structures, and the percentages~~
3 ~~that are located in portable buildings in surrounding~~
4 ~~high school complexes.]~~

5 (8) The analyses specified in subsections (1) and (2)

6 above shall be periodically updated for each school
7 impact district pursuant to the provisions in Section
8 302A-1608

9 (9) An analysis, including but not limited to, the

10 advantages and disadvantages of the potential for
11 making more efficient use of existing or underutilized
12 assets in the school impact district through school
13 redistricting; and

14 (10) An analysis, including but not limited to, the

15 advantages and disadvantages of potential changes to
16 statewide school site areas and design enrollment
17 standards that may be appropriate for application in
18 the particular school impact district. This may
19 include, for example, non-traditional facilities such
20 as mid-rise or high-rise structures in existing urban
21 areas where new residential development is expected to
22 generate the need for new school construction.

1 Elementary school student generation rate
2 per multi-family unit (x) number of multi-
3 family units (x) recent average elementary
4 school site area per student;

5 plus (+)

6 Middle or intermediate school student
7 generation rate per single-family unit (x)
8 number of single-family units (x) recent
9 average middle or intermediate school site
10 area per student;

11 plus (+)

12 Middle or intermediate school student
13 generation rate per multi-family unit (x)
14 number of multi-family units (x) recent
15 average middle or intermediate school site
16 area per student;

17 plus (+)

18 High school student generation rate per
19 single-family unit (x) number of single-
20 family units (x) recent average high school
21 site area per student;

22 plus (+)

- 1 (B) Agreed to pay to the department, at a time
2 specified in the agreement, a fee in lieu of land
3 dedication~~[+]~~.
- 4 (2) New residential developments ~~[of]~~ with less than fifty
5 units shall include a written agreement~~[+]~~ between the
6 owner or the developer of the property and the
7 department, executed prior to the issuance of the
8 building permit, under which the owner or developer
9 has agreed to a time specified for payment for the fee
10 in lieu ~~[prior to the issuance of the building~~
11 ~~permit+]~~.
- 12 (3) Prior to approval of any ~~[subdivision+]~~ change of
13 zoning, subdivision, or any other approval for a:
14 (A) Residential development ~~[equal to or greater than~~
15 ~~fifty]~~ with fifty or more units; or
16 (B) Condominium property regime development of fifty
17 or more units ~~[or more]~~,
- 18 the department shall notify the approving agency of
19 its determination on whether ~~[to require the~~
20 ~~dedication of land, the payment of]~~ it will require
21 the development to dedicate land, pay a fee in lieu

1 thereof, or a combination of both[+] for the provision
2 of new school facilities.

3 ~~[-(4) When land dedication is required, the land shall be~~
4 ~~conveyed to the State upon completion of the~~
5 ~~subdivision improvements and any offsite~~
6 ~~infrastructure necessary to serve the land;~~

7 ~~-(5) When the payment of a fee in lieu is required, the fee~~
8 ~~in lieu shall be paid based on the terms contained in~~
9 ~~the written agreement;~~

10 ~~-(6) Whether the department determines to require land~~
11 ~~dedication or the payment of a fee in lieu, shall be~~
12 ~~guided by the following criteria:]~~

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

17 (A) The topography, geology, access, value, and
18 location of the land available for dedication;

19 (B) The size and shape of the land available for
20 dedication;

21 (C) The location of existing or proposed schooling
22 facilities; and

1 (D) The availability of infrastructure [~~and~~].
2 [~~(7)~~] (5) The determination of the department as to whether
3 lands shall be dedicated or whether a fee in lieu
4 shall be paid, or a combination of both, shall be
5 final.

6 (6) When land dedication is required, the land shall be
7 conveyed to the State upon completion of the
8 subdivision improvements and any offsite
9 infrastructure necessary to serve the land.

10 (7) When the payment of a fee in lieu is required, the fee
11 in lieu shall be paid based on the terms contained in
12 the written agreement.

13 [~~(e)~~] (d) In determining the value per acre for any new
14 residential development, the fee simple value of the land
15 identified for the new or expanded school facility shall be
16 based on the appraised fair market value of improved, vacant
17 land, zoned for residential use, and serviced by roads,
18 utilities, and drainage. An appraiser, licensed pursuant to
19 chapter 466K, who is selected and paid for by the developer,
20 shall determine the value of the land. If the department does
21 not agree with the developer's appraisal, the department may
22 engage another licensed appraiser at its own expense, and

1 resolve, through negotiation between the two appraisers, a fair
2 market value. If neither party agrees, the first two appraisers
3 shall select the third appraiser, with the cost of the third
4 appraisal being shared equally by the department and the
5 developer, and the third appraisal shall be binding on both
6 parties.

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

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

21 Acres of land [~~calculated according~~] subject to the fee in
22 lieu as determined pursuant to subsection [~~b~~](d)

1 multiplied by the value per acre of land determined pursuant
2 to subsection ~~[(e)]~~ (e)."

3 SECTION 10. Section 302A-1607, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[\$302A-1607]~~ **Impact fee**~~[-];~~ **construction cost**
6 **component**~~[-];~~ **determining the** ~~[cost per unit.]~~ **amount of the**

7 **fee.** (a) The construction cost component of the school impact
8 fees shall be calculated using the following factors:

- 9 (1) For new school construction, the cost per student for
10 each school type (elementary, middle or intermediate,
11 and high school) is based on the ten-year average
12 construction of a new school facility using the
13 Honolulu assessment district in 2006 as the base.
14 Costs for construction completed earlier than 2006
15 shall be escalated to 2006 using the engineering news-
16 record construction cost index;
- 17 (2) For expansion of existing school facilities, the cost
18 per student for each school type (elementary, middle
19 or intermediate, and high school) is based on the ten-
20 year average construction of whatever components are
21 required to expand the school using the Honolulu
22 assessment district in 2006 as the base;

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

9 (4) Student generation rates, as defined in section
10 302A-1602.

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

16 (c) The construction cost component impact fee shall be
17 based on recent public school construction costs. The 1997 to
18 2007 period school construction costs per student, adjusted for
19 both the year 2007 and for the Honolulu assessment district, are
20 as follows:

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

- 1 (2) Middle and intermediate schools: \$36,097 per student;
 2 and
 3 (3) High schools: \$64,780 per student.

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

9 [~~e~~] (d) The State shall be divided into the following
 10 twenty-six geographically limited cost districts[+], and the
 11 cost factors listed for each cost district shall be applied to
 12 the calculation of school construction costs per unit pursuant
 13 to subsection (d):

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

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

1 reviewed and calculated recognizing that the impact fee shall be
2 set at one hundred per cent of the fair market value of the land
3 and ten per cent of the total school construction cost.

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

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

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

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

1 SECTION 11. Section 302A-1608, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[+]§302A-1608[+]~~ **Accounting and expenditure requirements.**

4 (a) Each designated school impact district shall be a separate
5 benefit district. Fees collected within each school impact
6 district shall be spent only within the same school impact
7 district for the purposes collected.

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

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

16 (d) Once used~~[+]~~ for school facilities, all or part of the
17 land may be later sold. ~~[+ with the proceeds]~~ Proceeds from this
18 sale shall be used to acquire land for school facilities in the
19 same school impact district.

20 ~~[+e]~~ (e) Fee in lieu funds may be used for ~~[expenses~~
21 ~~related to acquiring a piece of land,+]~~ school site land
22 acquisition and related expenses, including but not limited to

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

5 (d) Impact fees for the construction cost component shall
6 be used only for the costs of new school facilities that expands
7 the student capacity of existing schools or adds student
8 capacity in new schools. School impact fees may not be used to
9 replace an existing school located within the same school impact
10 district, either on the same site or on a different site.

11 (g) If construction cost component impact fees shall be
12 used for the costs of new school facilities that expand the
13 student capacity of existing schools or add student capacity in
14 new schools. Eligible construction costs include but are not
15 limited to planning, engineering, architectural, permitting,
16 financing, and administrative expenses, and any other capital
17 equipment expenses pertaining to educational facilities.

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

20 (1) The maintenance or operation of existing schools in
21 the district; or

22 (2) Portable or temporary facilities.

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

12 (1) ~~Any costs related to the acquisition of land;~~
13 (2) ~~The maintenance or operation of existing schools in~~
14 ~~the district; or~~

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

16 (e) ~~Impact fees and fees~~] (j) Fees in lieu of land
17 dedication, proceeds from the sale of all or part of an existing
18 school site that has been dedicated by a developer pursuant to
19 the requirements of this subpart, and construction cost
20 component impact fees shall be expended or encumbered within
21 twenty years of the date of collection. Fees shall be
22 considered spent or encumbered on a first-in, first-out basis.

1 An expenditure plan for [~~the~~] all collected impact fees shall be
2 incorporated into the annual budget process of the department
3 and subject to legislative approval of the budget."

4 SECTION 12. Section 302A-1609, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~[+]§302A-1609[+]~~ **Refunds~~[-]~~ of fees.** If [~~the~~] a fee in
7 lieu of land dedication or a construction cost component impact
8 fee is not expended within twenty years of the date of
9 collection, the department shall either:

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

13 (2) Recommit part or all of the fees for another twenty-
14 year period for construction of new schools in the school impact
15 district, as authorized by the developer or the developer's
16 successor."

17 SECTION 13. Section 302A-1610, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "~~[+]§302A-1610[+]~~ **Credits for excess land dedication.** (a)

20 Any [~~person~~] owner of a development subject to the land
21 [~~dedication~~] component impact fee requirements pursuant to this
22 [~~+]subpart~~] may apply for credit, who dedicates more land for

1 school facilities than is required for that development, shall
2 receive credit for the excess dedicated land area, against any
3 similar dedication or payment accepted and received by the
4 department for the project.

5 (b) Any credit provided for under this section shall be
6 based on the value[7] determined in the manner provided under
7 section 302A-1606.

8 (c) Excess credits for land dedications made prior to [~~the~~
9 ~~effective date of this Act~~] July 1, 2009 that are in excess of a
10 developer's requirement under this subpart shall be based on the
11 determined value of the excess dedication; provided that the
12 credit amount shall not exceed the value of the dedication or
13 fee in lieu required under this [+]subpart[+].

14 (d) In addition to, or instead of applying such credits to
15 future developments, the department may execute with an owner of
16 credits an agreement to provide for partial or full
17 reimbursement from the school impact fee payments collected from
18 other developers within the same school impact district. The
19 reimbursements shall not exceed the amount of the fee revenues
20 available in the account for that school impact district."

21 SECTION 14. Section 302A-1611, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "[+]§302A-1611[+] Credits for excess contributions or
2 advance payment of required construction cost component impact
3 fees. (a) Any owner of a development subject to the
4 construction cost component impact fee requirements pursuant to
5 this [subpart] shall receive for credit for any similar
6 contribution, payment, or construction of public school
7 facilities that is accepted and received by the department for
8 the development and is in excess of the impact fee required
9 under this subpart for that development. No credit shall be
10 authorized against the impact fees in lieu of land dedication.
11 (b) A credit may be applied only against school impact
12 fees that would otherwise be due for new residential
13 developments for which the payment or contribution was agreed to
14 in a written educational contribution agreement.
15 (c) Such excess contribution credit may be applied to the
16 construction cost component impact fee requirement for any
17 future development by the same owner in the same school impact
18 district, or with the written approval of the owner of the
19 credit, to any future development by a different owner in the
20 same school impact district.
21 (d) In addition to, or instead of applying the credits to
22 future developments, the department may execute with an owner of

1 the credits an agreement to provide for partial or full
2 reimbursement from the impact fee payments collected from other
3 developers within the same school impact district. The
4 reimbursements shall not exceed the amount of the impact fee
5 revenues available in the account for that school impact
6 district.

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

19 (f) ~~+(e)~~ If private construction of school facilities is
20 proposed by a developer after [~~the effective date of this Act~~]
21 July 1, 2009, if the proposed construction is acceptable to the
22 department, and if the value of the proposed construction

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

8 SECTION 15. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun, before its effective date.

11 SECTION 16. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 17. This Act shall take effect on July 1, 2009.

14

INTRODUCED BY: _____