



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

H.B. NO. 2397, H.D. 1, RELATING TO SCHOOL FACILITIES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 4, 2026 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Anne T. Horiuchi, Deputy Attorney General or
Randall M. Wat, Deputy Attorney General

Chair Todd and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The bill transfers school impact fees from the Kalihi-Ala Moana school impact district (KAM District) to the School Impact Fees subaccount of the School Facilities Special Fund for the acquisition and renovation of one or more buildings in the downtown Honolulu area to develop and expand pre-kindergarten and charter school capacity.

Under section 302A-1608, Hawaii Revised Statutes (HRS), school impact fees collected within a school impact district must be expended within that same district. Because the proposed project is located in downtown Honolulu, the expenditure initially appears to satisfy the statute's geographic spending limitation.

However, school impact fees are also subject to constitutional limitations under the Takings Clause of the United States Constitution. See U.S. Const. amend. V; U.S. Const. amend. XIV. Under *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), a land use exaction must bear an "essential nexus" and "rough proportionality" to the development's impacts. These standards apply to monetary impact fees, as clarified in *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612 (2013), and were recently affirmed to apply to legislatively enacted exactions in *Sheetz v. County of El Dorado, California*, 601 U.S. 267, 279 (2024).

Section 302A-1601, HRS, reflects these constitutional principles. It provides that "new residential developments within identified school impact districts create additional demand for public school facilities," and that developers must contribute toward the construction of new or the expansion of existing public school facilities through land dedication or in-lieu fees, based on their proportionate share of the need for additional public school sites. Fees must reflect the impacts of new developments and not exceed the level of service provided to existing developments. See section 302A-1601, HRS.

Pre-kindergarten and charter schools often serve students from a broad geographic area. If the project serves students who are not reasonably connected to development within the KAM District, the required nexus and proportionality between the fee and the development impacts may be weakened, creating constitutional risk.

While enrollment of out-of-district students would not automatically violate constitutional requirements, the use of district-specific impact fees must remain demonstrably tied to demand generated within that district. If the Legislature does not intend to exclude outside students entirely, the pre-kindergarten and charter school capacity funded by these fees should nonetheless prioritize in-district students and be administered in a manner that maintains compliance with nexus and proportionality requirements.

To address this issue, the Department recommends adding a new section to the bill that reads as follows:

SECTION . The funds appropriated and expended under this Act shall be used to serve students residing within the Kalihi-Ala Moana school impact district. Students residing outside the district may be enrolled only to the extent that space is available and in a manner consistent with the purpose of the fees under section 302A-1601, Hawaii Revised Statutes. The expending agency shall administer these funds in accordance with applicable law, ensuring that in-district students are prioritized and that expenditures remain aligned with the impacts generated within the district.

Thank you for the opportunity to provide comments on this bill.

JOSH GREEN, M.D.
GOVERNOR



RIKI FUJITANI
EXECUTIVE DIRECTOR



Hawai'i School Facilities Authority

2759 S. KING STREET, ROOM H201
HONOLULU, HAWAII 96826

House Committee on Finance

March 4, 2026

10:00 AM

Hawai'i State Capitol, Room 308

House Bill 2397, House Draft 1, Relating to School Facilities

Dear Chair Todd, Vice Chair Takenouchi, and Members of the Committee:

The Hawai'i School Facilities Authority (SFA) **supports** House Bill 2397, House Draft 1, which would authorize the transfer of school impact fees from the Kalihi-Ala Moana school impact district to the school impact fees subaccount of the School Facilities Special Fund for the acquisition and renovation of one or more buildings in the downtown Honolulu area to develop and expand pre-kindergarten and public charter school capacity.

The SFA recognizes the continuing demand for early learning facilities and permanent space for public charter schools. Expanding pre-kindergarten and charter school capacity is an important component of addressing statewide educational needs and increasing access to educational opportunities. The downtown Honolulu area presents unique challenges related to site availability, cost, and development constraints, making the adaptive reuse of existing buildings a practical and efficient strategy.

We recommend broadening the possibilities for a project that fits the bill's description to also allow for the acquisition and development of land. Whether acquiring and renovating an existing building or acquiring and developing land for the proposed project is a better approach will depend on the available opportunities. Therefore, we ask for some flexibility.

Specifically, we request Section 3 of the measure to state, in pertinent part, “There is appropriated out of the school impact fees subaccount of the school facilities special fund the sum of \$15,237,019 or so much thereof as may be necessary for fiscal year 2026-2027 to acquire and renovate one or more buildings **or acquire land and construct a new building** in the [~~downtown-Honolulu-area~~] **96813 ZIP code** to develop and expand pre-kindergarten and charter school capacity.” (Page 2, Lines 15-20) (Underlined, bolded language recommended for addition. Bracketed and stricken language recommended for removal.)

Sincerely,

Riki Fujitani
Executive Director