

**ACT 282**

H.B. NO. 3787

A Bill for an Act Relating to Impact Fee Authorization.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that development and construction for residential, commercial, industrial, hotel, and other purposes have placed a significant burden upon existing public facilities. The legislature further finds that present and future development will place severe burdens upon existing public facilities, resulting in a substantial and detrimental impact upon the quality of life, health, and general welfare of our population. The legislature recognizes that in order to maintain an acceptable capacity of public services and to preserve the quality of life in the region, some counties have adopted impact fee ordinances that establish a system of financing the development of public facilities by assessing, on a pro rata basis, the reasonably anticipated costs of developments and improvements. The legislature finds that the imposition of an impact fee to provide for public facilities and services required by such development is both fair and reasonable.

In response to county interest in impact fee legislation, the legislature finds that there is a need to establish general guidelines and provisions for adoption of impact fee ordinances and assessment of impact fees.

The purpose of this Act is to set forth general guidelines for the adoption of impact fee ordinances and to establish uniform general provisions for county impact fee ordinances adopted after the effective date of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## "CHAPTER IMPACT FEES

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Capital improvements” means the acquisition of real property, improvements to expand capacity and serviceability of existing public facilities, and the development of new public facilities.

“Comprehensive plan” means a coordinated land use plan for the development of public facilities within the jurisdiction of a county based on existing and anticipated needs, showing existing and proposed developments, stating principles to which future development should conform, such as the county’s general plans, development plans, or community plans, and the manner in which development should be controlled. In the case of the city and county of Honolulu, public facility maps shall be equivalent to the comprehensive plan required in this chapter.

“County” or “counties” means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

“Credits” means the present value of past or future payments or contributions, including, but not limited to, the dedication of land or construction of a public facility made by a developer toward the cost of existing or future public facility capital improvements, except for contributions or payments made under a development agreement pursuant to section 46-123.

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

“Development” means any artificial change to real property that requires a grading or building permit as appropriate, including, but not limited to, construction, expansion, enlargement, alteration, or erection of buildings or structures.

“Discount rate” means the interest rate, expressed in terms of an annual percentage, that is used to adjust past or future financial or monetary payments to present value.

“Impact fees” means the charges imposed upon a developer by a county to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.

“Needs assessment study” means a study required under an impact fee ordinance that determines the need for a public facility, the cost of development, and the level of service standards, and that projects future public facility capital improvement needs; provided that the study shall take into consideration and incorporate any relevant county general plan, development plan, or community plan.

“Non-site related improvements” means land dedications or the provision of public facility capital improvements that are not for the exclusive use or benefit of a development and are not site-related improvements.

“Offset” means a reduction in impact fees designed to fairly reflect the value of non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

“Present value” means the value of past or future payments adjusted to a base period by a discount rate.

“Proportionate share” means the portion of total public facility capital improvement costs that is reasonably attributable to a development, less:

- (1) Any credits for past or future payments, adjusted to present value, for public facility capital improvement costs made or reasonably anticipated to be contributed by a developer in the form of user fees, debt service payments, taxes, or other payments; or
- (2) Offsets for non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

“Public facility capital improvement costs” means costs of land acquisition, construction, planning and engineering, administration, and legal and financial consulting fees associated with construction, expansion, or improvement of a public facility. Public facility capital improvement costs do not include expenditures for required affordable housing, routine and periodic maintenance, personnel, training, or other operating costs.

“Reasonable benefit” means a benefit received by a development from a public facility capital improvement that is greater than the benefit afforded the general public in the jurisdiction imposing the impact fees. Incidental benefit to other developments shall not negate a “reasonable” benefit to a development.

“Recoupment” means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

“Site-related improvements” means land dedications or the provision of public facility capital improvements for the exclusive use or benefit of a development or for the provision of safe and adequate public facilities related to a particular development.

**§ -2 Authority to impose impact fees.** (a) The counties are authorized to assess, impose, levy, and collect impact fees for any development within their jurisdictions and to enact impact fee ordinances and to adopt rules to effectuate imposition and collection.

(b) Except for any ordinance governing impact fees enacted before July 1, 1993, impact fees may be imposed only for those types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study. The plan or study shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities.

**§ -3 Impact fee calculation.** (a) A county council considering the enactment of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be set forth in the needs assessment study.

(c) The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred by the county.

(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred by the county in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

- (1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study

that identifies:

- (A) Deficiencies in existing public facilities;
  - (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
  - (C) Additional demands anticipated to be placed on specified public facilities by a development;
- (2) The availability of other funding for public facility capital improvements, including, but not limited to, user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
  - (3) The cost of existing public facility capital improvements;
  - (4) The methods by which existing public facility capital improvements were financed;
  - (5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;
  - (6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and
  - (7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.
- (e) The impact fee ordinance shall contain a provision setting forth the process by which a developer may contest the amount of the impact fee assessed.

**§ -4 Collection and expenditure of impact fees.** Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. In order to determine whether the fees are reasonably related, the impact fee ordinance shall provide that:

- (1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;
- (2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county. A county shall explain in writing and disclose at a public hearing reasons for establishing or not establishing benefit zones;
- (3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;
- (4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and

- (5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development.

§ -5 **Refund of impact fees.** (a) If impact fees are not expended or encumbered within the period established in section -4, the county shall refund to the developer or the developer's successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the special trust fund or interest bearing account and expended as provided in section -4.

(b) If a county seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county shall place a notice of termination and availability of refunds in a newspaper of general circulation at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to the county's general fund and expended for any public purpose as determined by the county council.

(c) Recoupment shall be exempt from subsections (a) and (b).

§ -6 **Time of assessment and collection of impact fees.** Assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be collected in full before or upon issuance of the permit.

§ -7 **Effect on existing ordinances.** This chapter shall not invalidate any impact fee ordinance existing on the effective date of this Act.

§ -8 **Transitions.** Any county requiring impact fees or imposing development exactions, in order to fund public facilities, shall incorporate fee requirements into their broader system of development and land use regulations in such a manner that developments, either collectively or individually, are not required to pay or otherwise contribute more than a proportionate share of public facility capital improvements. Development contributions or payments made under a development agreement, pursuant to section 46-123, are exempted from this requirement."

SECTION 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

(Approved June 19, 1992.)