

ACT 155

H.B. NO. 2703

A Bill for an Act Relating to Impact Fees.

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

SECTION 1. The purpose of this Act is to clarify county authority to assess impact fees for state highway improvements. This Act also establishes a new special fund for the department of transportation to administer county impact fees assessed for state highway projects.

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . IMPACT FEES

§264-A Definitions. As used in this part, unless the context requires otherwise:

“Capital costs” means part or all of the cost for capital improvements. Capital costs may include costs to acquire right-of-way, plan, design, engineer, finance, and construct improvements including costs of management and consultant fees. Capital costs shall not include periodic maintenance and other operating costs.

“County” means a county having a population in excess of five hundred thousand.

“Department” means the department of transportation.

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

“Director” means the director of transportation.

“Impact fee” means an assessment on a development used to incrementally fund a fair share of the capital costs of public highway improvements reasonably needed to serve that development.

“State highway improvements” means capital improvements to the physical infrastructure of state highways.

§264-B Highway development special fund. (a) There is established in the state treasury the highway development special fund to be administered by the department, into which shall be deposited:

- (1) Transfers of county impact fees assessed under part VIII of chapter 46 and this part to pay for state highway improvements;
- (2) Interest from investment of deposits; and
- (3) Legislative and county appropriations.

(b) Moneys in the highway development special fund shall be used for the following purposes:

- (1) Capital costs of qualifying proposed state highway improvements;
- (2) Reevaluation of the need, geographic limitations, amount, and use of impact fees;
- (3) Transfers to reimburse other special funds for expenditures which otherwise might have been funded with moneys in the highway development special fund;
- (4) Transfers under sections 36-27 and 36-30;
- (5) Refunds under section 264-D; and
- (6) The department's costs to implement this part, including but not limited to costs to administer the highway development special fund.

(c) The department may establish accounts in the highway development special fund as necessary to implement this part and rules adopted by the department.

§264-C Authority to assess impact fees; needs assessment study. (a) A county may assess, impose, levy, collect, and transfer to the department impact fees for any development pursuant to ordinances adopted under section 46-142 and this part, and the department is authorized to receive those funds for state highway improvements.

(b) Prior to the assessment, imposition, levy, collection, or transfer to the department of impact fees pursuant to this section, the director shall approve a needs assessment study that shall identify the kinds of state highway improvements for which the fees shall be imposed by the county pursuant to part VIII of chapter 46.

§264-D Refund of impact fees to county. Upon the request of a county, the department shall refund impact fees transferred to the highway development special fund which have not been expended or encumbered for purposes established under this part within six years after collection under part VIII of chapter 46.

§264-E Adoption of rules. The department may adopt rules pursuant to chapter 91 to implement this part.

§264-F County ordinances and rules. Notwithstanding section 264-C, no county shall assess impact fees for state highway improvements without the director's consent.

§264-G Limitations on actions. A civil lawsuit contesting an action by the department or a county under this part or under part VIII of chapter 46 shall be filed within sixty calendar days after the date of the action."

SECTION 3. Section 46-143, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(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 or board~~].

(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 or the board~~] 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, inter-governmental 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.”

SECTION 4. Statutory material to be repealed is bracketed and stricken.

SECTION 5. The revisor of statutes shall substitute appropriate section numbers for the letters used to designate the new sections in section 2 of this Act.

SECTION 6. This Act shall take effect upon its approval, provided that sections 2 and 3 shall take effect retroactive to October 1, 2002.

(Approved June 30, 2004.)