

ACT 246

S.B. NO. 1814

A Bill for an Act Relating to Impact Fees.

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

SECTION 1. As residential development continues to proceed in the State of Hawaii at a steady pace to accommodate the growth of kamaaina families and the influx of newcomers, it becomes increasingly important that adequate infrastructure be developed to service this new construction. While this includes such obvious elements as roads, water, sewage, telephone, cable television and internet, and electricity, it also includes what is arguably the most important element, especially as regards the future – school facilities.

To date, fair share contributions have been collected by the department of education from individual development firms to defray a portion of the costs their new developments will have on the department of education. These resources, often in the form of cash and donated real estate, have traditionally been used to either improve and expand existing school facilities or to build altogether new facilities.

Both parties, the department of education (DOE) and the development community, would like to achieve a greater level of predictability to these arrangements. To this end, several impact fee measures were introduced during the 2004 and 2005 legislative sessions. It is the consensus of the stakeholders at this time, however, that more information needs to be gathered and more planning done to arrive at an equitable solution satisfactory to all concerned parties.

In 2001, the local planning organization Group 70, Inc. and Duncan Associates prepared a report entitled “School Fair Share Contribution Study” which examined the existing department of education practice of assessing fair share contributions. Another report completed in 1992 entitled “Impact Fees in Hawaii: Implementing the State Law”, provided some insight into the use of impact fees for public facilities. These reports can serve as a basis upon which to build; however, they both need to be updated and in certain instances expanded.

The purpose of this Act is to establish a school impact fee working group to prepare the scope of work for:

- (1) An updated overview of alternative financing methods for construction of new and expanding existing educational facilities, including analysis of how school districts accommodate growth in student population and redistribution of student population;
- (2) A needs assessment study using Central Oahu as the case study; and
- (3) Development of specific recommendations, based on the research and needs assessment, to implement methods for financing new or expanding existing department of education educational facilities, which may include but not be limited to proposed:
 - (A) Legislation;
 - (B) County ordinances; and
 - (C) Agency and commission rules and regulations.

SECTION 2. (a) There is established a school impact fee working group (working group), which shall be administratively attached to the office of the auditor. The working group may advise the office of the auditor in the negotiation and execution of a contract or contracts with one or more consultants, for-profit and non-profit organizations, private entities, corporations, or any combination thereof to:

- (1) Facilitate the operation and administration of the working group;
- (2) Facilitate information gathering, synthesis, and dissemination among key stakeholders;
- (3) Draft meeting minutes;
- (4) Conduct research;
- (5) Draft the report to be submitted to the legislature;
- (6) Draft any proposed legislation, county ordinances, and agency and commission rules and regulations; and
- (7) Perform any other such functions as may be deemed necessary by the working group.

The auditor shall have the primary responsibility for overseeing the work of and administering the contract or contracts of any consultant or consultants hired by the working group. Chapter 103D shall not apply to any contract or contracts negotiated or executed under this Act.

(b) The working group shall be composed of:

- (1) The president of the senate or the president's designee;
- (2) The speaker of the house of representatives or the speaker's designee;
- (3) Mayor of the city and county of Honolulu or the mayor's designee;
- (4) The superintendent of education or the superintendent's designee;
- (5) The executive director of the land use commission or the executive director's designee;
- (6) The president of the Hawaii state association of counties or the president's designee;
- (7) A department of education employee or consultant whose primary area of responsibility is repair and maintenance, capital improvement projects, land use planning, or any other relevant field, to be appointed by the superintendent of education;
- (8) A principal or complex area superintendent to be appointed by the superintendent of education;
- (9) The executive director of the Land Use Research Foundation or the executive director's designee; and
- (10) One member of the development community to be designated by the executive director of the Land Use Research Foundation.

(c) The working group shall:

- (1) Examine the background of the salient issues, which shall include but not necessarily be limited to an investigation and evaluation of:
 - (A) The 2001 Group 70, Inc. and Duncan Associates report entitled "School Fair Share Contribution Study" and its relevancy today;
 - (B) The 1992 study entitled "Impact Fees in Hawaii: Implementing the State Law," and its relevancy today;
 - (C) The differing school facility infrastructure needs posed by:
 - (i) Infill and new development;
 - (ii) Condominium, duplex, detached single-family homes, and other types of construction; and
 - (iii) The varied market prices targeted by differing types of developments;
 - (D) Various funding mechanisms and other best practices utilized by other jurisdictions nation-wide;

- (E) Current practices engaged in by the department of education to assess and collect fair-share contributions and any other relevant means of resource acquisition;
 - (F) Potential means of funding, including:
 - (i) Impact fees assessed through calculations of proportionate shares of overall development costs; and
 - (ii) Any other means as may be deemed appropriate by the working group; and
 - (G) How to improve the department of education projections for future facilities to be better aligned with various county plans and priorities;
- (2) Conduct a case study, using central Oahu, on how these issues and proposals may affect a specific, contiguous geographic area that is slated for ongoing, complex, and varied development which will probably result in the need for increased department of education facility capacity. The case study shall include a "needs assessment" which shall at a minimum include the following:
- (A) Developing service and facility standards;
 - (B) Identifying and projecting needs for capital facility capacity;
 - (C) Defining current deficiencies or excess capacity in existing capital facilities;
 - (D) Separating the capital costs of new growth and development from existing capital needs;
 - (E) Estimating capital costs on a per-unit-of-demand;
 - (F) Apportioning the capital costs of new development to various types of land use;
 - (G) Calculating credits for past and future tax payments toward capital facility capacity; and
 - (H) Developing legislation, ordinances, and rules or regulations containing policies and procedures for impact fee assessment, collection, administration and appeals; and
- (3) Provide the legislature, counties, and other interested public and private entities with measurable, specific deliverables which may include but not necessarily be limited to:
- (A) New or revised statutes;
 - (B) New or revised ordinances;
 - (C) New or revised department of education procedures for consideration and possible approval by the board of education.

SECTION 3. The working group shall submit its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2006.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2005-2006, for the operation of the working group.

The sum appropriated shall be expended by the state auditor which shall oversee and administer any consultant contracts as may be executed on behalf of the working group for the purposes of this Act.

SECTION 5. This Act shall take effect on upon approval, provided that section 4 shall take effect July 1, 2005; and provided further that this Act shall be repealed on July 30, 2006.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)