

## ACT 188

S.B. NO. 2828

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that to implement a program of school impact fees, established by Act 245, Session Laws of Hawaii 2007, certain amendments need to be made to the sections of law creating school impact districts and to the formulas and practices for providing land and collecting fees for new or expanded school facilities in areas expecting a large amount of residential growth.

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

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:

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

- (1) School site area averages, using the total school land requirement for each individual in a school impact district as calculated pursuant to section 302A-1606(b);
- (2) Elementary, middle or intermediate, and high school permanent facility construction costs per student, as provided under section 302A-1607; and
- (3) Revenue credit per unit figures provided pursuant to section 302A-1607(e).

(b) Every three years following the initial determinations made pursuant to section 302A-1604, the department shall update the following:

- (1) Student generation rates for each established school impact district; and
- (2) The statewide level of service.

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

(d) If any data update required by this section is not completed within the specified time, the most current data shall be used until the update is completed."

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

**"~~[[B.]] SCHOOL IMPACT FEES~~"**

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

**"~~[[§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 ~~[will]~~ shall be required to contribute toward the construction of new or expansion of existing public school facilities through:

- (1) The land requirement, either through an in lieu fee or actual acreage (unless land is not required in the school impact district)~~];~~, based on each new residential development's proportionate share of the need to provide additional public school sites; and
- (2) The construction requirement either through an in lieu fee or actual construction based on ~~[the]~~ each new residential development's proportionate share of the need to construct additional school facilities.

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

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay school construction cost component impact fees proportionate to their impacts.

In determining the amounts of land component impact fees and construction cost component impact fees, the intent of the school impact fee calculations is that new residential developments should not be charged for a higher level of service than is being charged to existing developments.

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

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

~~“[§302A-1602] Definitions.~~ As used in this ~~[subpart]~~, the following terms shall have the following meanings unless the context indicates otherwise:

~~“Acres/student”~~ “Land area per student” means the [number of] area of land in acres required per student for a school site based on design standards for schools[-], which may include the actual school site size and the design enrollment of schools constructed within approximately the last ten years.

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

“Construction cost component impact fee” means ten per cent of the share of the construction cost for the required new school, the expansion of existing school facilities that is attributable to a specific new residential development, or both.

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

~~“Cost/unit” means the impact fee for school construction (land and construction).]~~

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

“Design enrollment” means the maximum number of students, or student capacity, a permanent school facility is designed to accommodate.

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

~~“Dwelling unit” or “unit” means a multi-family or single-family residential unit.~~

“Fee in lieu” means a fee determined pursuant to section 302A-1606[-] that is paid in lieu of the dedication of land.

“Land component” means a fee simple property that is vacant, suitable for a school site, and improved ~~[[with infrastructure]-]~~ that is the total school area dedication requirement for a new residential development in a school impact district.

“Land component impact fee” means the land component, the fair market value of the land component, or any combination thereof that is attributed to a specific new residential development.

“Level of service” means the percentage of classrooms that are located in permanent structures, but not including classrooms located in portable buildings.

~~“Multi family”~~ “Multi-family unit” means any dwelling unit other than a single family dwelling unit.

~~“Multi family unit count” means the total multi family dwelling units planned for a proposed development.]~~

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

“Owner” means the owner of record of real property or the owner’s authorized agent.

“Proportionate share” means the pro rata share of the school impact fee attributed to the specific new residential development based on the [student generation rate from] number of units in the [project-] development.

“Recent school [econstruction] site area averages” means the department’s historical average acres [required and enrollment capacity] for new elementary (K-5), middle (6-8), and high (9-12) schools. Based on [existing school construction data,] historic schools constructed in the 1997 to 2007 period, the [historical average design standards] initial recent school site area averages are as follows:

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

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

“School facilities” means the facilities owned or operated by the department, or the facilities included in the department of education capital budget or capital facilities plan.

“School impact district” means a geographic area designated by the board where an anticipated [growth] new residential development will create the need for one or more new schools or the expansion of one or more existing schools that are or will be located within the area and will primarily serve new [housing] dwelling units within the area.

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

“School impact fee: land component” means the pro rata share of the fair market value of the fee simple land or acreage attributed to the specific development based on the student generation rate from the project.

“Single family”] “Single-family unit” means a detached dwelling unit not connected to any other dwelling unit, or a detached building containing two dwelling units.

“Single-family unit count” means the total single-family units planned for a proposed new residential development.

“Student generation rate” means the number of public school students generated by each multi-family and single-family unit when a residential development has matured and enrollment per unit no longer fluctuates~~;~~ significantly, or [achieves] has substantially achieved a steady state. The student generation rate for a school impact district shall be based on analysis of the existing number of residential units and public school students in an area, and the student generation rates of comparable projects and areas.”

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

**“[§302A-1603] Applicability and exemptions.** (a) Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

- (1) A county subdivision approval;
- (2) A county building permit; or
- (3) A condominium property regime approval for the project,

shall be required to fulfill the land component impact fee or fee in lieu requirement and ~~vertical~~ construction cost component impact fee requirement of the department~~[-]~~, including all government housing projects.

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

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing ~~which~~ that is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any development with an executed education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction.”

SECTION 7. Section 302A-1604, Hawaii Revised Statutes is amended by amending subsection (b) to read as follows:

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

- (1) A map and legend describing the boundaries of the proposed school impact district area, which may range from one school to one or more high school complexes[;], as well as maps and legends describing surrounding districts and school enrollments at existing school facilities in and around the school impact district; [and]
- (2) [Analysis to support the] The need to construct new or expand existing school facilities in the proposed school impact district area within the next twenty-five years to accommodate projected growth in the area based on various state and county land use, demographics, growth, density, and other applicable historical data projections and plans[-];
- (3) An analysis to determine appropriate student generation rates by dwelling unit type for all new residential developments in the school impact district area to provide the basis for determining the steady state enrollment generated by new residential developments that will need to be accommodated. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;
- (4) Student generation rates, based on full build-out of the developments when student generation rates are anticipated to be in a steady state mode;
- (5) An analysis to estimate the number of students generated by all new residential developments in the school impact district at the point in time when the total enrollment from these developments is anticipated to peak. This information is required for or related to the determination of the impact fee, and will provide the basis for deter-

mining the maximum enrollment generated by new residential developments that will need to be accommodated in both permanent facilities and portable buildings;

- (6) Calculation of the current statewide level of service;
- (7) An analysis of appropriate school land area, or other appropriate state lands, and enrollment capacity, which may include nontraditional (i.e., mid-rise or high-rise structures) facilities to accommodate the need for public school facilities in high-growth areas within existing urban developments;
- (8) A statewide classroom use report, which shall include the following:
  - (A) Current design enrollment per school (i.e., maximum number of students per classroom per school);
  - (B) Current total student enrollment per school; and
  - (C) Current number of classrooms not being used for active teaching; and
- (9) An analysis including the advantages and disadvantages of making more efficient use of existing or underused assets in the school impact district through school redistricting.

The analyses specified in paragraphs (3) and (6) shall be periodically updated pursuant to section 302A- (b)."

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

~~"[§302A-1605]~~ **Impact fee analysis.** Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, ~~[the following:~~

- ~~(1) An analysis to determine appropriate student generation rates by housing type (multi-family unit count and single-family unit count) for new developments in the area. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;~~
- ~~(2) Student generation rates, based on full build-out of the development when student generation rates are anticipated to be in a steady state mode (permanent facility);~~
- ~~(3) Analysis of the initial development period, when student enrollments are anticipated to peak (to determine capacity of facilities);~~
- ~~(4) An analysis to identify the percentages of existing statewide student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, as opposed to portable buildings, in surrounding high school complexes;~~
- ~~(5) Calculation of the current statewide level of service, which shall be the ratio of current student capacity at all school levels to the current enrollment at all school levels;~~
- ~~(6) An analysis of proposed redistricting, listing the advantages and disadvantages by making more efficient use of existing underutilized assets;~~
- ~~(7) An analysis of appropriate school land area and enrollment capacity, which may include nontraditional (i.e., mid rise or high rise structures) facilities to accommodate the need for public school~~

- facilities in high growth areas within existing urban developments; and
- (8) An analysis to identify the percentages of existing student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, and the percentages that are located in portable buildings in surrounding high school complexes.] an analysis including the advantages and disadvantages of potential changes to statewide school site areas and design enrollment standards that may be appropriate for application in the particular school impact district. This analysis may include, for example, non-traditional facilities such as mid-rise or high-rise structures in existing urban areas where new residential developments are expected to generate the need for new school construction.”

SECTION 9. Section 302A-1606, Hawaii Revised Statutes is amended to read as follows:

~~“[§302A-1606]] [Impact fee: land] Land component[-] impact fee; determining the amount of land or fee in lieu. (a) The school land area requirements for new [school facilities shall be determined based on the recent school construction averages.] residential developments in a school impact district shall be based on recent school site area averages, student generation rates, and the number of dwelling units in the new residential development.~~

(b) The following formula shall be used to determine the total school land area requirement for each individual new residential development in a school impact district:

Elementary school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per elementary school student;

plus (+)

Elementary school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per elementary school student;

plus (+)

Middle school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per middle school student;

plus (+)

Middle school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per middle school student;

plus (+)

High school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per high school student;

plus (+)

High school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per high school student;

equals (=)

Total school land requirement.

~~[(b)]~~ (c) The procedure for determining whether the dedication of land is required or a payment of a fee in lieu is required for a new school facility or to satisfy the land component impact fee shall be as follows:

- (1) A new residential development ~~[of greater than or equal to fifty units, shall include a written agreement, prior to the issuance of a building permit, between the owner or developer of the property and the department,]~~ with fifty or more units shall include a written agreement between the owner or developer of the property and the department, executed prior to issuance of a building permit, under which the owner or developer has:
  - (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or
  - (B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication;
- (2) ~~[New]~~ A new residential [developments of] development with less than fifty units shall include a written agreement[;] between the owner or the developer of the property and the department, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment for the fee in lieu [prior to the issuance of the building permit];
- (3) Prior to approval of any ~~[subdivision,]~~ change of zoning, subdivision, or any other approval for a:
  - (A) Residential development ~~[equal to or greater than fifty]~~ with fifty or more units; or
  - (B) Condominium property regime development of fifty or more units [or more],

the department shall notify the approving agency of its determination on whether [to require the dedication of land, the payment of] it will require the development to dedicate land, pay a fee in lieu thereof, or a combination of both[;] for the provision of new school facilities;

- ~~[(4)]~~ When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land;
- ~~(5)~~ When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement;
- ~~(6)~~ Whether the department determines to require land dedication or the payment of a fee in lieu, shall be guided by the following criteria:]
- (4) The department's determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:
  - (A) The topography, geology, access, value, and location of the land available for dedication;
  - (B) The size and shape of the land available for dedication;
  - (C) The location of existing or proposed schooling facilities; and
  - (D) The availability of infrastructure; ~~and~~
- ~~(7)]~~ (5) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final[;];
- (6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land; and



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

~~[(e)]~~ (d) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the department does not agree with the developer's appraisal, the department may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and the developer, and the third appraisal shall be binding on both parties.

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

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

Acres of land ~~[calculated according to]~~ subject to the fee in lieu, as determined under subsection ~~[(b)]~~ (c) multiplied by the value per acre of land determined pursuant to subsection ~~[(e)]~~ (d)."

SECTION 10. Section 302A-1607, Hawaii Revised Statutes is amended to re s follows:

~~“[H]§302A-1607[H] [Impact fee: construction] Construction cost component[-] impact fee; determining the [cost per unit.] amount of the fee. (a) The construction cost component [of the school] impact fees shall be calculated using the following factors:~~

- (1) For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) ~~[is]~~ shall be based on the ten-year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news-record construction cost index;
- (2) For expansion of existing school facilities, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of whatever components are required to expand the school using the Honolulu assessment district in 2006 as the base;
- (3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropriate cost factor in subsection ~~[(e)]~~ (d). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review; and

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

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

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

- (1) Elementary schools: \$35,357 per student;
- (2) Middle and intermediate schools: \$36,097 per student; and
- (3) High schools: \$64,780 per student.

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

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

Cost District	School District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

~~(e)] (e)~~ At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.

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

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

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

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

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

~~["§302A-1608"]~~ **Accounting and expenditure requirements.** (a) Each designated school impact district shall be a separate benefit district. Fees collected within each school impact district shall be spent only within the same school impact district for the purposes collected.

(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities. If the land is never used for the school facility, it shall be returned to the developer, or the developer's successor in interest. Once used, the land may be sold, with the proceeds used to acquire land for school facilities in the same school impact district.

(c) If the land is not used for a school facility within twenty years of its dedication, it shall be returned to the developer, or the developer's successor in interest.

(d) Once used for school facilities, all or part of the land may be later sold. Proceeds from the sale shall be used to acquire land for school facilities in the same school impact district.

~~[(e)]~~ (e) Fee in lieu funds may be used for ~~[expenses related to acquiring a piece of land,]~~ school site land acquisition and related expenses, including ~~[but not limited to]~~ surveying, appraisals, and legal fees. Fee in lieu funds shall not be used for the maintenance or operation of existing schools in the district, construction costs, including architectural, permitting, or financing costs, or for administrative expenses.

~~[(d)]~~ (f) ~~[Impact fees for the construction]~~ Construction cost component impact fees shall be used only for the costs of new school facilities that expands the student capacity of existing schools or adds student capacity in new schools. ~~[School]~~ Construction cost component impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site. ~~[In the event of closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall be funded with non-school impact fee revenue. Eligible construction costs include but are not limited to planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining~~

to educational facilities. Impact fees for the construction cost component shall not be expended for:

- (1) Any costs related to the acquisition of land;
- (2) The maintenance or operation of existing schools in the district; or
- (3) Portable or temporary facilities.
- (e) Impact fees and fees in lieu]
- (g) Eligible construction costs include planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.

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

- (1) The maintenance or operation of existing schools in the district; or
- (2) Portable or temporary facilities.

(i) If a closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity occurs, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall not be funded with school impact fees.

(j) Fees in lieu, proceeds from the sale of all or part of an existing school site that has been dedicated by a developer pursuant to the requirements of this subpart, and construction cost component impact fees shall be expended or encumbered within twenty years of the date of collection. Fees shall be considered spent or encumbered on a first-in, first-out basis. An expenditure plan for [the] all collected impact fees shall be incorporated into the annual budget process of the department and subject to legislative approval of the budget."

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

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

- (1) Refund to the developer, or the developer's successor in interest, the amount of the fee in lieu paid and any interest accrued thereon; or
- (2) Recommit part or all of the fees for another twenty-year period for construction of new schools in the school impact district, as authorized by the developer or the developer's successor."

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

"[§302A-1610] Credits for land dedication. (a) Any [person] owner of a development subject to the land [dedication] component impact fee requirements pursuant to this [subpart] may apply for credit against any similar dedication or payment accepted and received by the department for the project[-]; provided that any such owner who dedicates more land for school facilities than is required for the development shall receive credit for the excess dedicated land area.

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

(c) Excess credits for land contributions prior to [July 3, 2007] July 1, 2010, that are in excess of a developer's requirement under this subpart shall be based on the determined value[-] of the excess dedication; provided that the credit amount shall not exceed the value of the dedication or fee in lieu required under this [subpart].

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

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

**“[§302A-1611] Credits for excess contributions or advance payment of required construction cost component impact fees.** (a) Any [applicant] owner of a development subject to the [school] construction cost component impact fee requirements pursuant to this [subpart] may apply for shall receive credit for any similar contribution, payment, or construction of public school facilities accepted and received by the department~~[-]~~ for the portion of the development that is in excess of the impact fee required under this subpart for that development. No credit shall be authorized against the impact fees in lieu [of land dedication].

(b) A credit may be applied only against school impact fees that would otherwise be due for new residential developments for which the payment or contribution was agreed to in a written educational contribution agreement. [The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the school impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.]

(c) Excess contribution credit may be applied to the construction cost 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.

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

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

[~~(e)~~ (f) If private construction of school facilities is proposed by a developer after [July 3, 2007,] July 1, 2010, 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

## ACT 188

credit from the impact fees collected from other developers within the same benefit district. For the purposes of this section, the private construction of school facilities is a “public work” pursuant to chapter 104.”

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

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 17. This Act shall take effect on July 1, 2010.

(Approved July 5, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.