ACT 268

H.B. NO. 422

A Bill for an Act Relating to School Impact Fees.

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

SECTION 1. The legislature finds that school impact fees add to the cost of residential housing development, potentially adding thousands of dollars to each new unit of housing constructed in affected districts. These costs are passed on to renters and buyers, leading to higher rental and for-sale prices. In some cases, high impact fees can result in a project becoming financially untenable and the units are never built. This contributes to a scarce housing market, driving up the market price of housing.

The legislature further finds that auditor report no. 19-13 is the most comprehensive analysis of school impact fees to date. The report's summary of findings are as follows:

(1) The department of education's designation of school impact districts lacks well-defined policies and procedures and the district boundaries designated to date raise concerns as to whether constitutional "nexus" requirements have been adequately addressed;
(2) The department of education's calculation of fees has been inconsistent and at times based on questionable assumptions, and updates to formula factors as well as other requirements of the school impact fee law have not been met;
(3) Gaps, that is delays, between designation of school impact districts and collection of fees have resulted in loss of fee revenue; and
(4) The department of education cannot adequately account for fair share and school impact fee cash and land contributions.

In its report, the auditor also found that in twelve years following the enactment of the school impact fee law, the department of education collected only $5,342,886 in school impact fees. The auditor further found that this collection would not have been enough to build a single elementary school. For example, the auditor found that Hookele elementary school cost $55,000,000 to build and further found that the department estimated it would cost approximately $80,000,000 to build a single new elementary school. The auditor found that none of the school impact fees collected had been used for the construction of new schools and $17,600,340 of collected fees remain unused in a special fund.

The legislature also finds that as of January 1, 2025, $21,118,831.74 remains unused in a special fund.

The legislature further finds that school impact fees are a burden on aspiring homeowners and renters and the collection of these fees does not provide a clear benefit to the community.

The purpose of this Act is to reduce the cost of housing by:

(1) Eliminating the construction cost component of the school impact fee;
(2) Exempting additional projects from school impact fees, including certain affordable, government, and Hawaiian home lands developments and single-room dwellings;
(3) Requiring the school facilities authority to adopt rules governing the collection of impact fees;
(4) Increasing the minimum number of units in a development to trigger land dedication provisions of the land component impact fee; and
(5) Requiring the school facilities authority to report to the legislature on the benefits and impacts of this Act before its repeal.

SECTION 2. 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 shall be required to contribute toward the construction of new or expansion of existing public school facilities through[~~:~~

~~(1)~~ ~~The~~] 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 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~~] needed for new or expanded school facilities [~~needed~~] to serve new residential developments, as determined in [~~sections~~] section 302A-1606 [~~and 302A-1607, respectively~~]."

SECTION 3. Section 302A-1602, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

""Board" means the school facilities authority board established by section 302A-1704."

2. By deleting the definitions of "construction cost", "construction cost component impact fee", and "cost per student".

[""~~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.~~

~~"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 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.~~"]

3. By deleting the definition of "revenue credit".

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

SECTION 4. 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 construction cost component impact fee requirement~~] of the authority[~~, including all government housing projects and projects processed pursuant to sections 46-15.1 and 201H-38~~].

(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 that is or will be paying the transient accommodations tax under chapter 237D;
(3) All nonresidential development;
(4) Any development with an executed education contribution agreement or other like document with the agency for the contribution of school sites or payment of fees for school land or school construction; [~~and~~]
(5) Any housing project developed by the government;
(6) Any housing project processed pursuant to sections 46-15.1 and 201H-38;

(7) Any housing that meets the definition of affordable housing in sections 46-15.25 or 201H-57;
(8) Any housing that is a single-room dwelling;
(9) Any form of housing developed by the department of Hawaiian home lands for use by beneficiaries of the Hawaiian Homes Commission Act, 1920, as amended; and
[[~~(5)~~]] (10) Any form of development by the Hawaii community development authority pursuant to part XII of chapter 206E.

(c) The authority shall adopt rules in accordance with chapter 91 governing the collection of school impact fees."

SECTION 5. Section 302A-1606, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(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 with [~~fifty~~] one hundred or more units shall include a written agreement between the owner or developer of the property and the authority, 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 authority; or
 (B) Agreed to pay to the authority, at a time specified in the agreement, a fee in lieu of land dedication;

[~~(2) A new residential development with less than fifty units shall include a written agreement between the owner or the developer of the property and the authority, 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;~~

~~(3)~~] (2) Prior to approval of any change of zoning, subdivision, or any other approval for a:
 (A) Residential development with [~~fifty~~] one hundred or more units; or
 (B) Condominium property regime development of [~~fifty~~] one hundred or more units,

the authority shall notify the approving entity of its determination on whether 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)~~] (3) The authority'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;

[~~(5)~~] (4) The determination of the authority 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)~~] (5) 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)~~] (6) 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."

2. By amending subsection (e) to read:

"(e) The developer or owner of new residential developments of [~~fifty~~] one hundred or more units shall either pay the fee in lieu based on the land value as determined in subsection (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 (d) against any 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.~~]"

SECTION 6. 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~~] for land acquisition for school facilities in the same school impact district.

(e) Fee in lieu funds may be used for school site land acquisition and related expenses, including surveying, appraisals, and legal fees. With the exception of urban Honolulu, fee in lieu funds shall not be used for the maintenance or operation of existing schools in the district; [~~construction costs, including~~] planning, design, engineering, grading, construction, construction and project management, architectural, permitting, or financing costs; or for administrative expenses.

(f) Notwithstanding any other law to the contrary, fee in lieu funds from projects within a county-designated transit oriented development zone may also be used to purchase completed construction, construct new school facilities in new or existing school sites, improve or renovate existing structures for school use, or lease land or facilities for school use within a county-designated transit oriented development zone.

[~~[~~](g)[~~]~~] Notwithstanding subsection (e), in urban Honolulu, fee in lieu funds may be used to purchase completed construction, construct new school facilities, improve or renovate existing structures for school use, or lease land or facilities for school use.

[~~(h) Construction cost component impact fees shall be used only:~~

~~(1) For the costs of new school facilities that expand the student capacity of existing schools or adds student capacity in new schools; or~~

~~(2) To improve or renovate existing structures for school use.~~

~~Construction cost component impact fees shall 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.~~

~~[(i)] Eligible construction costs include planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.~~

~~(j) Construction cost component impact fees shall not be expended for the maintenance or operation of existing schools in the district.~~

~~[(k)] 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.~~

~~(l)~~] (h) 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.

[~~[(m)]~~] (i) As used in this section, "urban Honolulu" means the Kalihi to Ala Moana school impact district."

SECTION 7. Section 302A-1609, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1609 Refunds of fees. If a fee in lieu [~~or a construction cost component impact fee~~] is not expended within twenty years of the date of collection, the authority 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 8. Section 302A-1612, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1612 Use of data reflecting recent conditions in impact fee calculations. (a) Every three years beginning in 2010, the authority shall [~~concurrently~~] update the [~~following:~~

~~(1)~~ ~~School~~] 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 authority 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 authority 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)~~] (c) 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 9. Section 302A-1607, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 302A-1611, Hawaii Revised Statutes, is repealed.

SECTION 11. No later than December 15, 2026, the school facilities authority shall submit a report to the legislature on its findings, recommendations, and evaluation of the benefits and impacts of subpart B of part VI of chapter 302A, Hawaii Revised Statutes, as amended by this Act. The report shall include:
(1) The authority's efforts and progress in addressing the recommendations set forth in auditor's report no. 19-13;
(2) A thorough review of the currently established impact fee districts; and
(3) An assessment of the need for new school construction based on demographic projections over the next twenty-five years, as provided by the state land use commission.

SECTION 12. Notwithstanding any provision of this Act to the contrary, any existing educational contribution agreement or agreement that has been executed with the department of education or the school facilities authority pursuant to subpart B of part VI of chapter 302A, Hawaii Revised Statutes, prior to the effective date of this Act shall remain effective unless the parties to the agreement mutually agree to terminate or renegotiate the agreement.

SECTION 13. Statutory material to be repealed is bracketed and stricken.[1] New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval, and shall apply to new residential developments permitted or approved on or before June 30, 2029; provided that this Act shall be repealed on July 1, 2029, and sections 302A-1601, 302A-1602, 302A-1603, 302A-1606, 302A-1607, 302A-1608, 302A-1609, 302A-1611, and 302A-1612, Hawaii Revised Statutes, shall be reenacted in the form in which they read prior to the effective date of this Act.

(Approved July 2, 2025.)

Note

1. Edited pursuant to HRS §23G-16.5.