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# A BILL FOR AN ACT

RELATING TO SCHOOL IMPACT FEES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that, pursuant to Act  
2   246, Session Laws of Hawaii 2005, the school impact fee working  
3   group was tasked with analyzing salient issues, including "fair  
4   share" practices and enrollment projections by the department of  
5   education, alternative funding mechanisms and best practices  
6   used by other jurisdictions nationwide, and different  
7   infrastructure needs imposed by different types of development,  
8   including infill. The working group was also asked to submit  
9   proposed legislation or procedures for implementing its  
10   recommendations on determining school impact fees within  
11   identified school impact districts.

12           The purpose of this Act is to implement the working group's  
13   recommendation for implementing a new method for financing, in  
14   part, new or expanding existing department of education  
15   educational facilities in partnership with developers of  
16   residential properties.



1 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4 "PART . SCHOOL IMPACT FEES

5 **§302A-A Findings.** New residential subdivisions within  
6 identified school impact districts create additional demand for  
7 public school facilities and a need for more land on which to  
8 construct school facilities. New residential subdivisions  
9 should:

- 10 (1) Provide land or pay fees in lieu of land dedication
- 11 proportionate to their impacts; and
- 12 (2) Pay upon issuance of building permits a school impact
- 13 fee that is proportionate to their impact on the need
- 14 to construct additional facilities.

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

20 The State determines that new residential subdivisions  
21 within designated school impact districts shall provide land for  
22 schools or pay a fee in lieu of land proportionate to their



1 impacts. The State also determines that new residential  
2 developments within designated school impact districts shall  
3 also pay school impact fees proportionate to their impacts.  
4 This part shall require developers to provide some of the land  
5 for new schools and a portion of the cost of building new  
6 classrooms needed to serve new residential developments, as  
7 determined in section 302A-G.

8 **§302A-B Definitions.** As used in this part, the following  
9 terms shall have the following meanings unless the context  
10 indicates otherwise:

11 "County" means the city and county of Honolulu, the county  
12 of Hawaii, the county of Kauai, and the county of Maui.

13 "Developer" means a person, corporation, organization,  
14 partnership, association, or other legal entity constructing,  
15 erecting, enlarging, altering, or engaging in any residential  
16 development activity.

17 "Dwelling unit" means a room or rooms connected together,  
18 constituting an independent housekeeping unit for a family  
19 containing a single kitchen.

20 "Fee in lieu" means a fee determined pursuant to section  
21 302A-F.



1 "Greenfield school impact district" means a largely  
2 undeveloped area where anticipated growth will create the need  
3 for one or more new schools that will be located within the area  
4 and will primarily serve new housing units within the area.

5 "Multi-family" means any dwelling unit other than a  
6 single-family unit.

7 "Owner" means the owner of record of real property or the  
8 owner's agent.

9 "Plat" means the map or drawing on which the subdivider's  
10 plan of subdivision is presented and that the subdivider submits  
11 for approval.

12 "School facilities" means the facilities owned or operated  
13 by the department, or the facilities included in the  
14 department's capital budget or capital facilities plan.

15 "School impact district" means a geographic area designated  
16 by the board as either a greenfield school impact district or a  
17 non-greenfield school impact district.

18 "Single-family" means a detached dwelling unit not  
19 connected to any other dwelling unit, or a detached building  
20 containing two dwelling units.

21 **§302A-C Applicability and exemptions.** (a) Except as  
22 provided in subsection (c), any person who seeks to develop



1 residential projects by applying to a county for the issuance of  
2 a subdivision approval or by recording a condominium property  
3 regime for other than a conversion of existing residential units  
4 within a designated school impact district shall be required to  
5 agree before final subdivision approval or before recordation of  
6 a condominium property regime for other than a conversion of  
7 existing residential units to dedicate land suitable for school  
8 facilities or pay a fee in lieu of dedicating that land to the  
9 department.

10 (b) Except as provided in subsection (c), any person who  
11 seeks to build a residential unit within a designated school  
12 impact district by applying to any county for a building permit  
13 shall be required to pay a school impact fee to the department  
14 before issuance of the building permit.

15 (c) The following shall be exempt from this section:

16 (1) Any form of housing permanently dedicated exclusively  
17 for senior citizens, defined as fifty-five years of  
18 age or over, with the necessary covenants or

19 declarations of restrictions recorded on the property;

20 (2) All nonresidential developments;

21 (3) Any development with a developer agreement with the  
22 department executed prior to the effective date of



1           this part for the contribution of school sites or  
2           payment of fees for school land or school  
3           construction; and

4           (4) A single residence to be built on a single lot created  
5           prior to the effective date of this part.

6           **§302A-D Designation of school impact districts and**

7 **greenfield school impact districts.** (a) The board shall  
8 designate a school impact district for school impact fees only  
9 after holding a public hearing. A written analysis prepared by  
10 the department supporting the designation of the school impact  
11 district, as required herein, shall be made available to the  
12 public at least thirty days prior to the public hearing. Notice  
13 of the public hearing shall be made as provided in section  
14 1-28.5. The notice shall include a map of the proposed school  
15 impact district and the date, time, and place of the public  
16 hearing.

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

20           (1) A map and legend describing the boundaries of the  
21           area;



- 1 (2) A finding that existing residential development in the  
2 area is insignificant relative to the anticipated  
3 number of dwelling units at build-out of the area;
- 4 (3) Analysis to support the need for the construction of  
5 one or more schools in the area, based on anticipated  
6 development in the area;
- 7 (4) Analysis to identify the percentages of existing  
8 student enrollment at the elementary school, middle or  
9 intermediate school, and high school levels that are  
10 located in permanent structures, and the percentages  
11 that are located in portable buildings, in immediately  
12 adjacent high school complexes;
- 13 (5) Analysis to support appropriate student generation  
14 rates (the expected average number of students per  
15 dwelling unit) by school level (elementary, middle,  
16 intermediate, or high school) that are representative  
17 of the type of development anticipated in the area;  
18 and
- 19 (6) Analysis to determine the average value per acre of  
20 improved land in the area zoned for residential  
21 development and sized and suitable for school



1 construction, after typical subdivision improvements  
2 such as roads, drainage, and utilities.

3 (c) Prior to the designation of a non-greenfield school  
4 impact district, the department shall prepare a written analysis  
5 that contains the following:

6 (1) A map of the boundaries of the area;

7 (2) Analysis to support the need to construct or expand  
8 school facilities in the area to accommodate projected  
9 growth in the area;

10 (3) Analysis to determine appropriate student generation  
11 rates by school level that are representative of the  
12 type of development anticipated in the proposed school  
13 impact district. If the analysis determines that  
14 student generation rates are falling for existing  
15 housing units in the proposed school impact district,  
16 the student generation rates for new housing should  
17 reflect the net effect of growth, after accounting for  
18 capacity likely to be freed up by declining enrollment  
19 from existing housing;

20 (4) Analysis to identify the percentages of existing  
21 student enrollment at the elementary school, middle or  
22 intermediate school, and high school levels that are





1 located in permanent structures, and the percentages  
2 that are located in portable buildings; and

3 (5) Analysis to determine the average value per acre of  
4 improved land in the area zoned for residential use  
5 and sized and suitable for school construction, after  
6 typical subdivision improvements such as roads,  
7 drainage, and utilities.

8 **§302A-E School land or fee in lieu required.** The  
9 procedure for determining whether the dedication of land is  
10 required or a payment of a fee in lieu is required for a new  
11 school facility shall be as follows:

12 (1) The filing of an application for any residential  
13 subdivision or recording of a condominium property  
14 regime shall include an agreement between the owner or  
15 developer of the property and the department, under  
16 which the owner or developer has:

17 (A) Agreed to designate an area to be dedicated for  
18 one or more schools; or

19 (B) Agreed to pay to the department a fee in lieu of  
20 land dedication;

21 (2) When land is proposed to be dedicated for the purpose  
22 of providing a school site, it shall meet the



1 requirements of the department and the department of  
2 land and natural resources.

3 The department shall have the final determination as to whether  
4 a particular piece of land is usable;

5 (3) Within sixty days of the completion of an application  
6 for a residential subdivision or recording a  
7 condominium property regime, the department shall  
8 determine whether to require dedication of land, the  
9 payment of a fee in lieu thereof, or a combination of  
10 both. Only payment of a fee in-lieu shall be required  
11 in subdivisions containing less than fifty acres;

12 (4) When dedication is required, the land shall be  
13 conveyed to the State upon completion of the  
14 subdivision improvements and any offsite  
15 infrastructure necessary to serve the land;

16 (5) When the payment of a fee in lieu is required, the fee  
17 in lieu shall be paid upon final subdivision approval  
18 or recording a condominium property regime, and the  
19 amount of the fee in lieu shall be escalated from the  
20 date it was determined to the date it is paid using  
21 the Engineering News-Record Construction Cost Index,  
22 or an equivalent index if that index is discontinued;



1 (6) Whether the department determines to require land  
2 dedication or the payment of a fee in lieu, or a  
3 combination of both, shall be guided by the following  
4 criteria:

5 (A) The topography, geology, access, and location of  
6 the land in the development available for  
7 dedication;

8 (B) The size and shape of the development and the  
9 land available for dedication; and

10 (C) The location of existing or proposed schooling  
11 facilities;

12 and

13 (7) The determination of the department as to whether land  
14 shall be dedicated or whether a fee in lieu shall be  
15 paid, or a combination of both, shall be final and  
16 exclusive.

17 **§302A-F Determination of the amount of land or the fee in**

18 **lieu.** (a) The size of the tract of land to be dedicated by the  
19 developer shall be determined using the following formula:

20 (Elementary school student generation rate per unit x

21 0.0218 acres/student + x middle or intermediate school

22 student generation rate per unit x 0.0300



1        acres/student + high school student generation rate  
2        per unit x 0.0500 acres/student) x the number of  
3        dwelling units provided for on the subdivision plat.

4        (b) The dollar amount of the fee in lieu shall be  
5        determined using the following formula:

6        Acres of land calculated according to subsection (a)  
7        times the average value per acre of land of the  
8        subdivision determined pursuant to subsection (c).

9        (c) In determining the average value per acre, the  
10       following shall apply:

11       (1) The fee in lieu of land dedication for residential  
12       subdivisions of fifty acres or more shall be based on  
13       the value of the improved land, as if contained in a  
14       single parcel, zoned for residential use, suitable for  
15       school construction, and serviced by roads, utilities,  
16       and drainage. An appraiser, licensed pursuant to  
17       chapter 466K, who is selected and paid for by the  
18       developer shall determine the value of the land. If  
19       the department does not agree with the developer's  
20       appraisal, the department may engage another licensed  
21       appraiser at its own expense, and the value shall be  
22       an amount equal to the average of the two appraisals.



1 If either party does not accept the average of the two  
2 appraisals, a third appraisal shall be obtained, with  
3 the cost of the third appraisal being shared equally  
4 by the department and the developer. The first two  
5 appraisers shall select the third appraiser, and the  
6 third appraisal shall be binding on both parties; and

7 (2) Residential subdivisions of less than fifty acres  
8 shall pay a standard fee in lieu based on subsection  
9 (b) but using an average land value determined for the  
10 area pursuant to section 302A-D(b)(6). At least every  
11 three years, the department shall prepare an analysis  
12 to update the appropriate average land value and shall  
13 submit the analysis to the board with a recommendation  
14 to update the average value per acre.

15 (d) If the department desires a parcel larger than the  
16 size the developer is required to dedicate, the department shall  
17 pay the developer, upon conveyance of the parcel, a per-acre  
18 amount for the excess acreage at the per acre value determined  
19 in subsection (c).

20 **§302A-G Impact fee calculation.** (a) The State shall be  
21 divided into the following twenty-six geographically limited  
22 cost districts:



1	Cost District	School District	Cost Factor
2	Honolulu	Honolulu	1.00
3	Ewa	Leeward/Central	1.00
4	Wahiawa	Central	1.05
5	Waialua	Central	1.10
6	Koolaupoko	Windward	1.00
7	Koolauloa	Windward	1.10
8	Waianae	Leeward	1.10
9	Hilo	Hawaii	1.15
10	Puna	Hawaii	1.20
11	Kona	Hawaii	1.20
12	Hamakua	Hawaii	1.20
13	South Kohala	Hawaii	1.20
14	North Kohala	Hawaii	1.25
15	Pohakuloa	Hawaii	1.25
16	Kau	Hawaii	1.30
17	Wailuku	Maui	1.15
18	Makawao	Maui	1.25
19	Lahaina	Maui	1.30
20	Hana	Maui	1.35
21	Molokai	Molokai	1.30
22	Lanai	Lanai	1.35



1	Lihue	Kauai	1.15
2	Koloa	Kauai	1.20
3	Kawaihau	Kauai	1.20
4	Waimea	Kauai	1.25
5	Hanalei	Kauai	1.25

6 (b) School impact fees shall be based on the following  
7 cost per student of:

8 (1) New permanent classroom construction; and

9 (2) New portable classroom construction,

10 both in the Honolulu assessment district in 2006, as determined  
11 by the department based on the most recent school construction  
12 undertaken by the department. The cost per student in other  
13 assessment districts shall be the cost per student in the  
14 Honolulu assessment district multiplied by the appropriate cost  
15 factor in subsection (a). At least every three years, the  
16 department shall update the cost per student of new permanent  
17 classroom and new portable classroom construction, assuming  
18 twenty-five students per classroom in an eight-classroom  
19 building with appurtenant restrooms for permanent classrooms and  
20 twenty-five students per portable classroom, in the Honolulu  
21 assessment district and present the written analysis to the  
22 board for review. Upon approval by the board, the updated costs



1 per student shall replace the costs applicable to permanent and  
2 portable classroom buildings built in 2006.

3 (c) At least every three years, the department shall  
4 update the student generation rates for housing within the  
5 school impact fee district and present the written analysis to  
6 the board for review. Upon approval by the board, the updated  
7 student generation rates shall replace the initially established  
8 student generation rates for each district.

9 (d) The school impact fee per dwelling unit for single  
10 family detached and multi-family housing in each designated  
11 school impact district shall be calculated according to the  
12 following formula, where the costs per student for permanent and  
13 portable classrooms are determined in subsection (b) and the  
14 student generation rates and percentages of students located in  
15 permanent and portable buildings are determined in section  
16 302A-D(b) and (c):

17 (1) Cost per student for permanent classrooms x percentage  
18 of elementary students in permanent classrooms x  
19 elementary student generation rate;  
20 Plus  
21 Cost per student for portable classrooms x  
22 percentage of elementary students in





1 portable classrooms x elementary student  
2 generation rate; plus  
3 (2) Cost per student for permanent classrooms x percentage  
4 of middle or intermediate students in permanent  
5 classrooms x middle or intermediate student generation  
6 rate;  
7 Plus  
8 Cost per student for portable classrooms x  
9 percentage of middle or intermediate  
10 students in portable classrooms x middle or  
11 intermediate student generation rate; plus  
12 (3) Cost per student for permanent classrooms x percentage  
13 of high school students in permanent classrooms x high  
14 school student generation rate;  
15 Plus  
16 Cost per student for portable classrooms x  
17 percentage of high school students in  
18 portable classrooms x high school student  
19 generation rate.

20 **§302A-H Revenue credit.** The revenue credit in this  
21 section shall be used on the effective date of this Act. At  
22 least every three years, and concurrent with any update of the



1 costs per student, the department shall update the revenue  
2 credits and present the written analysis to the board for  
3 review. The calculation of revenue credits shall be made in the  
4 manner used to determine revenue credits in the Hawaii school  
5 impact fee study. Upon approval by the board, the updated  
6 revenue credits shall replace the following:

- 7 (1) Single-family detached dwelling unit: \$2,786; and  
8 (2) Multi family dwelling unit: \$1,428.

9 **§302A-I Universal discount credit.** The impact fees per  
10 dwelling unit shall be per cent of the amounts  
11 calculated according to the following formula:

12 Cost per dwelling unit from subsection 302A-G(d) minus  
13 revenue credit per dwelling unit from subsection 302A-  
14 H.

15 **§302A-J Written confirmation.** No county shall issue a  
16 residential building permit in a school impact district until it  
17 has received written confirmation from the department that the  
18 permit applicant has paid the department the school impact fee  
19 for the dwelling unit. The amount of the fee shall be increased  
20 from the date it was determined to the date it is paid using the  
21 Engineering News-Record Construction Cost Index, or an  
22 equivalent index if that index is discontinued.



1           **§302A-K Accounting and expenditure requirements.** (a)

2 Each designated school impact district shall be a separate  
3 benefit district. Fees in lieu of school land dedication  
4 collected within each school impact district shall be spent  
5 within the same school impact district. School impact fees  
6 collected within each school impact district shall be spent  
7 within the same school impact district.

8           (b) Land dedicated by the developer shall be used only as  
9 a site for the construction of one or more new schools or for  
10 the expansion of existing school facilities.

11           **§302A-L Refunds.** If the fee in lieu or impact fee is not  
12 expended within twenty years of the date of collection, the  
13 department shall refund to the developer, or the developer's  
14 successor in the title, the amount of the fee in lieu paid and  
15 any interest accrued thereon calculated at the rate paid by the  
16 State on a twenty-year bond sold on the date closest to the date  
17 the fee in lieu was paid. Application for a refund shall be  
18 submitted to the department within one year of the date on which  
19 the right to claim arises. Any unclaimed refund shall be  
20 retained and expended as provided in this part.

21           **§302A-M Credits for land dedication or fees in lieu.** (a)

22 Any person subject to the land dedication or fee in lieu



1 requirements pursuant to this part may apply for credit for any  
2 similar dedication or payment accepted and received by the  
3 department for the same subdivision subject to this section.

4 (b) Any credit provided for under this section shall be  
5 based on the current value, determined in the manner provided  
6 under section 302A-F(c), of the dedication or the amount of the  
7 payment, escalated to the present using the Engineering News-  
8 Record Construction Cost Index or an equivalent index if that  
9 index is discontinued.

10 (c) Credits for contributions prior to the effective date  
11 of this Act shall be based on the present value; provided that  
12 the credit amount shall not exceed the value of the dedication  
13 or fee in lieu required under this part.

14 **§302A-N Credits for impact fees.** (a) Any applicant  
15 subject to the school impact fee requirements pursuant to this  
16 part may apply for credit for any similar contribution, payment,  
17 or construction of public school facilities accepted and  
18 received by the department for the same subdivision subject to  
19 this part. No credit shall be authorized against the impact  
20 fees for dedication of land or payment of a fee in lieu of land  
21 dedication.



1 (b) Credits for contributions, payments, or construction  
2 made prior to the effective date of this Act shall be provided  
3 if the subdivision for which the contribution, payment, or  
4 construction was made has not been completed. The current owner  
5 of the property for which the contribution, payment, or  
6 construction was made as a condition of development approval  
7 shall file an application for credit within one year of the  
8 effective date of this Act. If the application is not made  
9 within one year of the effective date of this Act, no credit  
10 shall be provided. The application for credit shall be  
11 submitted and reviewed as provided in this part. The amount of  
12 the credit for a contribution, payment, or construction made  
13 prior to the effective date of this Act shall be the current  
14 value of the contribution, payment, or construction, less the  
15 total amount of school impact fees that would have been owed for  
16 the building permits already issued for the project had those  
17 permits been subject to the fees specified in section 302A-G.  
18 The current value shall be determined using the Engineering  
19 News-Record Construction Cost Index, or an equivalent index if  
20 that index is discontinued. Credits for payments or  
21 contributions prior to the effective date of this Act shall not  
22 exceed the value of the impact fee required under this section.



1 (c) A credit may be applied only against school impact  
2 fees that would otherwise be due for building permits issued  
3 within the subdivision for which the payment or contribution was  
4 required as a condition of development approval. The department  
5 shall maintain an accounting of the amount of the credit  
6 applicable to the subdivision and shall reduce the amount of the  
7 credit by the amount of the school impact fees that would  
8 otherwise be due for each building permit issued in the  
9 subdivision. After the credit balance is exhausted, no  
10 additional credits shall be applied to subsequent building  
11 permits issued within the subdivision.

12 (d) If private construction of school facilities is  
13 proposed by a developer after the effective date of this Act,  
14 the proposed construction is acceptable to the department, and  
15 the value of the proposed construction exceeds the total impact  
16 fees that would be due from the development, the department  
17 shall execute with the developer an agreement to provide  
18 reimbursement for the excess construction costs."

19 SECTION 3. In codifying the new sections added by  
20 section 2 of this Act, the revisor of statutes shall substitute  
21 appropriate section numbers for the letters used in designating  
22 the new sections in this Act.



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



**Report Title:**

School Impact Fees; New Schools or Facilities

**Description:**

Establishes a process for determining and assessing school impact fees for financing new or expanding existing Department of Education schools or facilities when new residential subdivisions are planned. (SB696 HD1)

