



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/05/2021

Time: 03:00 PM

Location: 229

Committee: Senate Education

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 0468 RELATING TO SCHOOL IMPACT FEES.

Purpose of Bill: Repeals the school impact fee exemptions for nonresidential development and housing subject to the transient accommodations tax when seeking development in a designated school impact district requiring county subdivision approval, county building permit, or condominium property regime approval of the project.

Department's Position:

The Hawaii State Department of Education (Department) offers the following comments on SB 468.

Hawaii's school impact fee law, Hawaii Revised Statute Sections 1601-1612, plays a vital role in the development of new school facilities in designated areas where the construction of new housing directly increases student enrollment.

The Department appreciates the legislature's support to increase revenues generated through the collection of impact fees by repealing the current exemptions on nonresidential development and housing subject to the transient accommodation tax. However, there are concerns that this action may have constitutional implications that render the Department's authority to collect these fees unenforceable.

To meet constitutional requirements of its authority, the school impact fee program must demonstrate a direct link or nexus between a proposed development and the resulting need for new facilities. The Department believes that nonresidential development and housing subject to the transient accommodation tax may not satisfy the required nexus.

Thank you for this opportunity to provide testimony on SB 468.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.

TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Repeal School Impact Fee Exemptions

BILL NUMBER: SB 468; HB 367

INTRODUCED BY: SB by KEITH-AGARAN, KEOHOKALO, Kanuha, Kidani; HB by SAIKI

EXECUTIVE SUMMARY: Repeals the school impact fee exemptions for nonresidential development and housing subject to the transient accommodations tax when seeking development in a designated school impact district requiring county subdivision approval, county building permit, or condominium property regime approval of the project.

SYNOPSIS: Amends HRS section 302A-1603 to delete the existing exemptions for housing that is or will be paying the transient accommodations tax, and for all nonresidential development.:

EFFECTIVE DATE: 7/1/2021.

STAFF COMMENTS: The Hawaii Revised Statutes contains twelve sections relating to “school impact fees,” starting with section 302A-1601. The law states, in part, “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.”

Builders of large projects within school impact districts are required to provide land for school facilities depending on the numbers of students expected in their projects and the amount of available classroom space in existing area schools. Smaller developers and individual home owner-builders are required to pay a fee instead of land, when their project is too small to entertain a school site. All home builders or buyers must pay a construction cost fee.

Once an impact fee district is established, the Department of Education is authorized to collect 10% of estimated school construction costs and 100% of estimated land acquisition costs from each residential development planned within the district.

The Board of Education (BOE) used this authority to establish impact fee districts in Central Maui and West Maui in 2010, and in Leeward Oahu in 2012. It approved another district in West Hawaii in 2009, but apparently the Big Island county government didn’t want to cooperate and that district remains an open issue.

The theory behind this law is that high growth will mean more children, and more schools are required to educate them.

With that background, the exemptions in section 302A-1603 make more sense. If a particular development is not going to house children who are going to use our public schools, it doesn't make sense for that development to pay the school impact fee.

The bill proposes to eliminate these exemptions, which is not consistent with the theory of the impact fee, making the bill look like a pure money grab.

If the Committee desires to go forward with eliminating the exemptions, consideration then must be given to rewriting the legislative findings in section 302A-1601 and the formulas for determining the impact fee in land or in cash, in sections 302A-1606 and -1607. Under the present formula, for example, if a large shopping center is planned with no residential units, the school land area requirement in section 302A-1606(b) will be zero because the incremental number of single-family units and the incremental number of multi-family units will both be zero. Eliminating the exemption, therefore, might not accomplish much unless additional structural changes are made to the tax.

In addition, the accounting and expenditure requirements in section 302A-1608 restrict the expenditure of impact fees for construction of new or expanded schools. The fees are not to be used to replace existing schools, or to maintain or operate existing schools. If the intent is for the additional funds generated to be used to shore up existing facilities, wholesale changes to this section are required.

Digested 2/2/2021