

JAN 23 2009

A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The legislature finds that Hawaii is
2 experiencing the rapid loss of its rural lands. Rural lands not
3 only provide a livelihood for those engaged in agriculture and
4 ranching, but also provide scenic, historical, recreational,
5 cultural, natural, and archaeological resources that residents
6 and visitors depend upon.

7 The legislature further finds that it is important to
8 promote the protection of rural landscapes throughout Hawaii.
9 This can be accomplished by establishing a state transfer of
10 development rights program to complement and work in conjunction
11 with transfer of development rights systems established by the
12 counties under part IX, chapter 46, Hawaii Revised Statutes.
13 Simply, transfer of development rights programs allow landowners
14 to sever development rights from properties in government-
15 designated low-density areas and sell them to purchasers who
16 wish to increase the density of development in areas that the
17 government has designated as higher-density. The state transfer



1 of development rights program would supplement existing
2 incentives and programs that are designed to preserve low-
3 density lands, such as tax credits for landowners or moneys for
4 the purchase of conservation easements.

5 The legislature further finds that transfer of development
6 rights programs have existed for over a decade and have been
7 successfully implemented in other states, including Maryland,
8 New Jersey, Colorado, and Washington. The program would allow
9 the State and the counties to join efforts to preserve rural
10 lands and valuable resources for future generations.

11 The purpose of this Act is to establish a state transfer of
12 development rights program to preserve rural lands in the State.

13 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 "PART . TRANSFER OF DEVELOPMENT

17 RIGHTS RPOGRAM

18 §205-A Purpose. The purpose of this part is to establish
19 a state transfer of development rights or credits program,
20 including the establishment of a transfer of development rights
21 bank, which shall empower the State to purchase and sell
22 development credits and to permit the use of development credits



1 for development on state lands as appropriate. The State has a
2 substantial interest in planned development and the preservation
3 of agricultural, rural, and open lands. The establishment of a
4 statewide transfer of development rights program serves the
5 public interest by enabling development credits from rural lands
6 to be used to promote the development of new communities
7 consistent with county land use plans and to enhance community
8 development in existing communities.

9 **§205-B Definitions.** As used in this chapter, unless the
10 context requires otherwise:

11 "Commission" means the land use commission.

12 "Conservation easement" shall have the same meaning as in
13 section 198-1.

14 "Development rights" shall have the same meaning as in
15 section 46-162.

16 "Receiving district" shall have the same meaning as in
17 section 46-162.

18 "Receiving parcel" means a parcel of land in a receiving
19 district that acquires development rights by means of a transfer
20 of development rights, allowing the owner of the parcel to add
21 the development rights to those already existing for the parcel



1 or receive other benefits instead of using the additional
2 development rights.

3 "Sending district" shall have the same meaning as in
4 section 46-162.

5 "Sending parcel" means a parcel of land in the sending
6 district from which the parcel owner conveys development rights
7 of the parcel.

8 "Transfer of development rights" shall have the same
9 meaning as in section 46-162.

10 "Transferable development credit" means a transferable
11 development right created pursuant to this part or pursuant to a
12 county ordinance establishing a county transfer of development
13 rights program.

14 "Transferee" means a person or legal entity that owns
15 property in a receiving district and purchases development
16 rights.

17 **§205-C Establishment of Hawaii transfer of development**
18 **rights program.** (a) The Hawaii transfer of development rights
19 program is established. The land use commission shall
20 administer the state transfer of development rights program.

21 (b) The commission shall adopt rules pursuant to chapter
22 91 to establish the framework, policies, and standards for the



1 state program for the transfer of rights from sending parcels to
2 receiving parcels owned by the State, including but not limited
3 to the determination or valuation of development rights, the
4 issuance of transferable development rights certificates or
5 credits, the process and instruments of transfer, and the use of
6 transferable development rights or credits at a receiving parcel
7 under state jurisdiction. The commission shall consult with the
8 transfer of development rights executive board established under
9 section 205-F in the adoption of rules under this section.

10 **§205-D Identification of sending and receiving districts.**

11 (a) Each county shall identify in the appropriate county
12 general plan or county development or community plans the land
13 areas within the county's jurisdiction to be designated as
14 sending and receiving districts for transfer of development
15 rights. The county shall adopt policies and standards pursuant
16 to section 46-163 for the administration of a county transfer of
17 development rights program, to include the purchase or transfer
18 of development rights. The county shall consult with the
19 commission and other state agencies for the purposes of this
20 section.

21 (b) The commission shall consult with other state
22 departments, the office of Hawaiian affairs, and the counties to



1 identify and designate state lands that are appropriate for
2 designation as receiving districts or receiving parcels for the
3 transfer of development rights. If a county has not established
4 a county transfer of development rights program the commission
5 shall consult with the county to ensure that the State's program
6 plans are consistent with the county's plans for development.

7 **§205-E Right to transfer development rights.** (a) Each
8 transferor shall have the right to sever all or a portion of the
9 rights to develop from a parcel in a sending district and to
10 sell, trade, or barter all or a portion of those rights to a
11 transferee or the transferable development rights bank
12 consistent with the purposes of this part.

13 (b) All rights transferred under this part are
14 extinguished upon transfer.

15 **§205-F Hawaii transferable development rights bank,**
16 **established; executive board, established; Hawaii transfer of**
17 **development rights special fund, established.** (a) There is
18 established in the state executive branch a public body
19 corporate and politic to be known as the Hawaii transfer of
20 development rights bank. The bank shall facilitate the
21 effectiveness of the state transfer of development rights



1 program through the purchase and sale of development rights and
2 conservation easements. The bank shall have the power to:

- 3 (1) Purchase and sell or convey development rights;
- 4 (2) Hold certificates of transferable development credits
5 issued by a county transfer of development rights
6 program;
- 7 (3) Recommend locations to a state agency for which the
8 State should acquire development rights by
9 condemnation;
- 10 (4) Hold indefinitely any development rights if possessed
11 for conservation or other purposes;
- 12 (5) Receive donations of development rights from any
13 person or entity; and
- 14 (6) Receive proceeds from the sale of development rights,
15 grants, donations, or funds from any other source.

16 (b) The transfer of development rights bank shall be
17 governed by an executive board consisting of five ex officio
18 voting members, or their designees, as follows: the executive
19 officer of the commission, who shall serve as chairperson, the
20 chairpersons of the boards of agriculture and land and natural
21 resources, the director of the department of commerce and
22 consumer affairs, and the director of the office of planning;



1 and four ex officio nonvoting members, consisting of the
2 director of each county planning department, or the director's
3 designee.

4 (c) The commission shall administer the transfer of
5 development rights bank and execute purchases of development
6 rights and conservation easements and sales of development
7 rights in a timely manner consistent with the policies
8 established by the executive board. The commission's
9 responsibilities shall include:

- 10 (1) Managing the Hawaii transfer of development rights
11 bank special fund;
- 12 (2) Authorizing and monitoring expenditures;
- 13 (3) Keeping records of the dates, amounts, and locations
14 of development rights purchases, sales, and
15 conservation easement purchases;
- 16 (4) Executing development rights purchases, sales, and
17 conservation easements;
- 18 (5) Establishing and maintaining a registry of
19 transferable development credits issued and held by
20 the bank; and



1 (6) Providing annual summary reports of the transfer of
2 development rights bank activity for the bank's
3 executive board and the legislature.

4 (d) The executive board shall also advise the commission
5 on other aspects of the transfer of development rights program
6 to ensure its effectiveness in achieving the program's goals
7 statewide.

8 (e) There is created in the state treasury the Hawaii
9 transfer of development rights bank special fund, into which
10 shall be deposited:

11 (1) All proceeds from the sale of transferable
12 development rights or credits;

13 (2) All revenues from any taxes or fees, which are
14 enacted to provide a funding source for the purchase
15 of transferable development rights;

16 (3) Funds from county, federal, or private funding
17 sources and other state funding sources, including
18 grants from the land conservation fund pursuant to
19 section 173A-9; and

20 (4) Appropriations made by the legislature to the fund.

21 Moneys in the Hawaii transfer of development rights bank
22 special fund shall be used to purchase the development rights

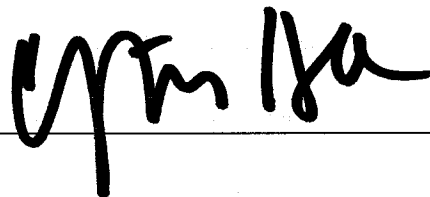


1 of qualified sending parcels or the conservation easement of a
2 parcel that qualifies as a sending parcel. All unexpended and
3 unencumbered moneys remaining in the Hawaii transfer of
4 development rights bank special fund at the close of each
5 fiscal year shall be retained in the special fund. All
6 interest earned on the deposit of moneys in the fund shall
7 become a part of the fund. Appropriations or authorizations
8 from the fund shall be expended by the commission. The
9 executive officer of the commission shall prepare and submit an
10 annual report to the executive board, the governor, and the
11 legislature on the use of the Hawaii transfer of development
12 rights bank special fund. The report shall describe
13 expenditures made from the fund."

14 SECTION 3. In codifying the section added by section 2 of
15 this Act, the revisor of statutes shall substitute appropriate
16 section numbers for the letters used in designating the new
17 sections in this Act.

18 SECTION 4. This Act shall take effect upon its approval.
19

INTRODUCED BY: _____



Report Title:

Land Use; Rural Lands; Transfer of Development Rights Program

Description:

Establishes a state transfer of development rights program to preserve rural lands.

