

JAN 24 2013

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# A BILL FOR AN ACT

RELATING TO TRANSFER OF DEVELOPMENT RIGHTS.

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

1           SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                   **"PART           .   TRANSFER OF DEVELOPMENT RIGHTS**

5           **§205-A Definitions.** As used in this part:

6           "Development rights" means the rights permitted to a lot,  
7 parcel, or area of land under a zoning ordinance respecting  
8 permissible use, area, density, bulk, or height of improvements  
9 executed thereon. Development rights may be calculated and  
10 allocated in accordance with such factors as area, floor area,  
11 floor area ratios, density, height limitations, or any other  
12 criteria that will effectively quantify a value for the  
13 development right in a reasonable and uniform manner that will  
14 carry out the objectives of this part.

15           "Receiving district" means one or more designated districts  
16 or areas of land to which development rights generated from one  
17 or more sending districts may be transferred and in which



1 increased development is permitted to occur by reason of such  
2 transfer.

3 "Sending district" means one or more designated districts  
4 or areas of land in which development rights may be designated  
5 for use in one or more receiving districts.

6 "Transfer of development rights" means the process by which  
7 development rights are transferred from one lot, parcel, or area  
8 of land in any sending district to another lot, parcel, or area  
9 of land in one or more receiving districts.

10 **§205-B Transfer of development right program.** (a) The  
11 commission is authorized to establish a transfer of development  
12 rights program and provide for transfer of development rights  
13 subject to the conditions in this part.

14 (b) The purpose of providing for transfer of development  
15 rights shall be: to protect the natural, scenic, or  
16 agricultural qualities of open lands; to enhance sites and areas  
17 of special character or special historical, cultural, aesthetic  
18 or economic interest or value; and to enable and encourage  
19 flexibility of design and careful management of land in  
20 recognition of land as a basic and valuable natural resource.

21 **§205-C Requirements.** Transfer of development rights shall  
22 be subject to the following:



- 1           (1) Transfer of development rights and the sending and  
2           receiving districts shall be established in accordance  
3           with a well-considered plan prepared by the  
4           commission;
- 5           (2) The sending district from which transfer of  
6           development rights may be authorized shall consist of  
7           natural, scenic, recreational, agricultural, or open  
8           land or sites of special historical, cultural,  
9           aesthetic, or economic values sought to be protected;
- 10          (3) Every receiving district, to which transfer of  
11          development rights may be authorized, shall contain  
12          adequate resources, environmental quality, and public  
13          facilities including adequate transportation, water  
14          supply, waste disposal, and fire protection such that  
15          there will be no damaging consequences and the  
16          increased development is compatible with the  
17          development otherwise permitted within the district;
- 18          (4) Sending and receiving districts shall be designated  
19          and mapped with specificity, and the procedure for  
20          transfer of development rights shall be specified;
- 21          (5) The receiving and sending districts need not be  
22          coterminous with zoning districts;



- 1           (6) Development rights shall be transferred reflecting the  
2           normal market in land, including sales between owners  
3           of property in sending and receiving districts;
- 4           (7) A development right that is transferred shall be  
5           deemed to be an interest in real property and inure to  
6           the benefit of the transferee and the transferee's  
7           heirs, successors, and assigns;
- 8           (8) The burden upon land within a sending district from  
9           which development rights have been transferred shall  
10          be documented by an instrument duly executed by the  
11          grantor in the form of a conservation easement, the  
12          burden upon such land shall be enforceable by any  
13          person or entity granted enforcement rights by the  
14          terms of the instrument, and all provisions of law  
15          applicable to easements shall apply with respect to  
16          conservation easements hereunder;
- 17          (9) Any development right which has been transferred by a  
18          conservation easement shall be evidenced by a  
19          certificate of development right which shall be issued  
20          by the commission to the transferee in a form suitable  
21          for recording in the bureau of conveyances;



1           (10) Where two or more receiving or sending districts are  
2                    affected, a transfer of development rights may not  
3                    unreasonably transfer the tax burden between the  
4                    taxpayers of such districts;

5           (11) Within one year after a development right is  
6                    transferred, the assessed valuation placed on the  
7                    affected properties for real property tax purposes  
8                    shall be adjusted to reflect the transfer;

9           (12) Prior to designating sending or receiving districts,  
10                   the commission shall prepare a generic environmental  
11                   impact statement pursuant to chapter 343, which shall  
12                   be amended from time to time if there are material  
13                   changes in circumstances; and

14           (13) Prior to designating sending or receiving districts,  
15                   the commission shall evaluate the impact of transfer  
16                   of development rights upon the potential development  
17                   of low or moderate income housing lost in sending  
18                   districts and gained in receiving districts and shall  
19                   find either that there is approximate equivalence  
20                   between potential low or moderate housing units lost  
21                   in the sending district and gained in the receiving  
22                   districts or that reasonable action will be taken to



1           compensate for any negative impact upon the  
2           availability or potential development of low or  
3           moderate income housing caused by the transfer of  
4           development rights.

5           **§205-D Development rights bank.** The commission may  
6           establish a development rights bank or such other account in  
7           which development rights may be retained and sold in the best  
8           interest of the State. The commission shall be authorized to  
9           accept gifts, donations, bequests, or other development rights  
10          for deposit within the bank.

11          **§205-E Processing fee.** The commission shall establish a  
12          processing fee for the transferrable development rights program.  
13          The fee shall be collected by the commission and deposited in  
14          the conservation stewardship fund.

15          **§205-F Conservation stewardship fund; established.** There  
16          is established in the treasury of the State the conservation  
17          stewardship fund to be administered by the commission and into  
18          which shall be deposited:

- 19           (1) All moneys appropriated by the legislature;  
20           (2) Appropriations from the environmental response  
21           revolving fund established by section 128D-2;  
22           (3) Moneys received as fees charged by the commission; and



1           (4) Moneys otherwise received by the commission.

2           The commission may expend moneys in the fund for the  
3 purposes of this part, including the administration of the  
4 transfer of development rights program.

5           **§205-G Rules.** The commission shall adopt rules pursuant  
6 to chapter 91 to administer the transfer of development rights  
7 program and to effectuate the purposes of this part.

8           **§205-H Transfer of development rights by counties.**

9 Nothing in this part shall be construed to invalidate any  
10 provision for transfer of development rights adopted by any  
11 county."

12           SECTION 2. Section 128D-2, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14           "(b) Moneys from the fund shall be expended by the  
15 department for response actions and preparedness, including  
16 removal and remedial actions, consistent with this chapter;  
17 provided that the revenues generated by the environmental  
18 response, energy, and food security tax deposited into the  
19 environmental response revolving fund:

20           (1) Shall be used:



- 1 (A) For oil spill planning, prevention, preparedness,  
2 education, research, training, removal, and  
3 remediation; [~~and~~]
- 4 (B) For direct support for county used oil recycling  
5 programs; and
- 6 (C) For deposit into the conservation stewardship  
7 fund, established by section 205-F, as may be  
8 appropriated by the legislature; and
- 9 (2) May also be used to support environmental protection  
10 and natural resource protection programs, including  
11 energy conservation and alternative energy  
12 development, and to address concerns related to air  
13 quality, global warming, clean water, polluted runoff,  
14 solid and hazardous waste, drinking water, and  
15 underground storage tanks, including support for the  
16 underground storage tank program of the department and  
17 funding for the acquisition by the State of a soil  
18 remediation site and facility."

19 SECTION 3. There is appropriated out of the environmental  
20 response revolving fund the sum of \$160,000 or so much thereof  
21 as may be necessary for fiscal year 2013-2014 to be deposited





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1 into the conservation stewardship program established by section  
2 205-F.

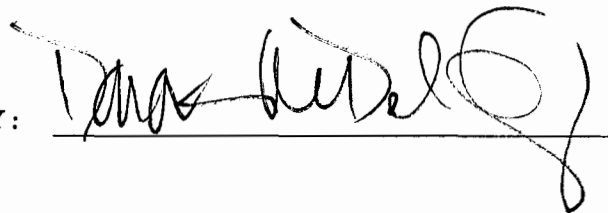
3 SECTION 4. There is appropriated out of the conservation  
4 stewardship fund the sum of \$160,000 or so much thereof as may  
5 be necessary for fiscal year 2013-2014 for the creation and  
6 administration of the transfer of development rights program.

7 The sums appropriated shall be expended by the land use  
8 commission for the purposes of this Act.

9 SECTION 5. This Act shall take effect upon its approval;  
10 provided that sections 3 and 4 shall take effect on July 1,  
11 2013.

12

INTRODUCED BY:



# S.B. NO. 919

**Report Title:**

Conservation; Transfer of Development Rights; Land Use Commission; Zoning; Environmental Response Revolving Fund; Appropriation

**Description:**

Allows the land use commission to establish a transfer of development rights program. Specifies certain requirements for transfer of development rights. Allows the creation of a transfer of development rights credit bank. Establishes the conservation stewardship fund. Requires the commission to adopt rules. Appropriates funds from the environmental response revolving fund.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

