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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 225M, 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           **§225M-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 assigned for  
5 use in one or more receiving districts.

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

10 **§225M-B Transfer of development right program.** (a) The  
11 office of planning is authorized to establish a transfer of  
12 development rights program and to provide for the transfer of  
13 development rights subject to the conditions in this part.

14 (b) The purpose of providing for the transfer of  
15 development 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 **§225M-C Requirements.** Transfer of development rights  
22 shall 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 office of  
4 planning;
- 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 office of planning to the transferee in a form  
21          suitable 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 office of planning shall prepare a generic
- 11            environmental impact statement pursuant to chapter
- 12            343, which shall be amended from time to time if there
- 13            are material changes in circumstances; and
  
- 14       (13) Prior to designating sending or receiving districts,
- 15            the office of planning shall evaluate the impact of
- 16            transfer of development rights upon the potential
- 17            development of low or moderate income housing lost in
- 18            sending districts and gained in receiving districts
- 19            and shall find either that there is approximate
- 20            equivalence between potential low or moderate housing
- 21            units lost in the sending district and gained in the
- 22            receiving districts or that reasonable action will be

1 taken to 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 **§225M-D Development rights bank.** The office of planning  
6 may 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 office of planning shall be  
9 authorized to accept gifts, donations, bequests, or other  
10 development rights for deposit within the bank.

11 **§225M-E Processing fee.** The office of planning shall  
12 establish a processing fee for the transfer of development  
13 rights program. The fee shall be collected by the office of  
14 planning and deposited in the conservation stewardship fund.

15 **§225M-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 office of planning  
18 and into 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;



1 (3) Moneys received as fees charged by the office of  
2 planning; and

3 (4) Moneys otherwise received by the office of planning.

4 The office of planning may expend moneys in the fund for  
5 the purposes of this part, including the administration of the  
6 transfer of development rights program.

7 **§225M-G Rules.** The office of planning shall adopt rules  
8 pursuant to chapter 91 to administer the transfer of development  
9 rights program and to effectuate the purposes of this part.

10 **§225M-H Transfer of development rights by counties.**

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

14 SECTION 2. Chapter 225M, Hawaii Revised Statutes, is  
15 amended by designating sections 225M-1 to 225M-7 as part I,  
16 entitled "General Provisions".

17 SECTION 3. Section 128D-2, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) Moneys from the fund shall be expended by the  
20 department for response actions and preparedness, including  
21 removal and remedial actions, consistent with this chapter;  
22 provided that the revenues generated by the environmental

1 response, energy, and food security tax deposited into the  
2 environmental response revolving fund:

3 (1) Shall be used:

4 (A) For oil spill planning, prevention, preparedness,  
5 education, research, training, removal, and  
6 remediation; [~~and~~]

7 (B) For direct support for county used oil recycling  
8 programs; and

9 (C) For deposit into the conservation stewardship  
10 fund, established by section 225M-F, as may be  
11 appropriated by the legislature; and

12 (2) May also be used to support environmental protection  
13 and natural resource protection programs, including  
14 energy conservation and alternative energy  
15 development, and to address concerns related to air  
16 quality, global warming, clean water, polluted runoff,  
17 solid and hazardous waste, drinking water, and  
18 underground storage tanks, including support for the  
19 underground storage tank program of the department of  
20 health and funding for the acquisition by the State of  
21 a soil remediation site and facility."





1 SECTION 4. There is appropriated out of the environmental  
2 response revolving fund the sum of \$160,000 or so much thereof  
3 as may be necessary for fiscal year 2013-2014 to be deposited  
4 into the conservation stewardship fund established by section  
5 225M-F.

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

10 The sums appropriated shall be expended by the office of  
11 planning for the purposes of this Act.

12 SECTION 6. This Act shall take effect on July 1, 2020;  
13 provided that sections 4 and 5 shall take effect on July 1,  
14 2013.



**Report Title:**

Transfer of Development Rights; Office of Planning

**Description:**

Allows the Office of Planning to establish a transfer of development rights program including a transfer of development rights credit bank. Establishes the conservation stewardship fund. Appropriates funds from the environmental response revolving fund. Effective July 1, 2020. (HB1016 HD1)

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

