

JAN 24 2013

A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

PART I

1
2 SECTION 1. The increasing population puts pressure on the
3 State and counties to implement land use practices that
4 carefully regulate a balance of development while sustaining the
5 beauty and natural resources of the islands. Changes in state
6 and county land use practices need to be implemented to plan for
7 proper population growth; otherwise, new housing supply will
8 decrease and island-wide prices will increase. It costs
9 approximately \$300,000 to subsidize one affordable rental unit,
10 which, multiplied by the state shortage of 10,000 units,
11 requires \$3,000,000,000 of taxpayer subsidy and provides no
12 solution to the affordable housing shortage or expansion of
13 urban sprawl. On the island of Oahu, up to 4,000 new households
14 are created each year which requires the building of 100,000 new
15 homes over the next twenty-five years.

16 Concurrently, changes need to be made to provide
17 opportunities to preserve or increase the number of affordable
18 housing facilities within transit-oriented development zones and



1 improve facilities for the care of children and the elderly.
2 Family-oriented support services for children and elders,
3 including child care and elder care, are necessary to allow
4 families to use mass transit while meeting the needs of their
5 family members. Focusing on such redevelopment and reinvestment
6 will provide communities in which future generations can grow up
7 in a safe and healthy environment by reducing traffic
8 congestion, greenhouse gases, and the use of fossil fuels.

9 It is also important to encourage redevelopment and
10 reinvestment in the historic nature of towns and communities to
11 preserve Hawaii's heritage for future generations. Existing
12 land use practices increase urban sprawl and have discouraged
13 economic activity in main street settings by decreasing the
14 number of visitors to main street shops and vendors because
15 development is concentrated away from rather than in and around
16 main street settings. The counties must look at tools such as
17 transferring density rights, incentives for redevelopment,
18 revenue generating public-private partnerships, and economic
19 development strategies. Current land codes do not encourage
20 consistency in maintaining building facades of historical
21 buildings in the area or community. Encouraging the development
22 of infrastructure that allows for a preferred choice of walking,



1 biking, or using public transportation will help accommodate the
2 State's growing population.

3 Existing land use practices governed by statutes,
4 ordinances, permitting, development application processes, and
5 environmental infrastructure need to be reviewed to effectively
6 provide the necessary information and recommendations required
7 to plan for the reduction of urban sprawl and proper development
8 and redevelopment to accommodate population growth.

9 Furthermore, in order to prevent urban sprawl from destroying
10 our agricultural lands, one viable option is to focus growth
11 along the transit corridors and through the county development
12 or sustainable communities plans for Ewa, central Oahu, and the
13 primary urban center.

14 The purpose of this part is to establish smart growth
15 planning districts, create a comprehensive application process
16 to apply for mixed-use qualified projects, and establish the
17 transit-oriented redevelopment district program.

18 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
19 by adding a new part to be appropriately designated and to read
20 as follows:

21 **"PART A. SMART GROWTH PLANNING DISTRICTS**



1 **§46-A Findings and purpose.** The legislature finds that
2 successful planning for growth requires reducing sprawl and
3 creating urban developments in existing and new communities that
4 offer a high quality of life for a broad range of household
5 types. Further, well-designed and well-integrated higher-
6 density development can significantly reduce dependency on cars
7 and decrease traffic congestion and vehicle emissions. Benefits
8 are even greater when job locations and retail shopping
9 locations are incorporated with the housing. Mixed-use
10 neighborhoods make it easier for persons to park their cars in
11 one location where they may accomplish several tasks. This not
12 only reduces the number of car trips required but also reduces
13 overall parking needs for the community and our carbon imprint.
14 Infrastructure improvements are greatly needed to increase
15 safety and promote healthy lifestyle habits such as walking and
16 biking.

17 The purpose of this part is to facilitate smart growth
18 mixed use development of an exceptional level of quality on land
19 adjacent to public transportation stations and centers by
20 creating a process and reduced up-front costs that will, in
21 turn, act as catalytic projects for neighborhood reinvestment.



1 **§46-B Definitions.** As used in this part, unless the
2 context otherwise requires:

3 "Action" or "action taken" means approval, approval with
4 modification, or disapproval.

5 "Application" means the preliminary plans and
6 specifications for a qualified project and includes materials
7 such as plans, information, or specifications submitted to a
8 planning agency by a qualified developer.

9 "Legislative body" means the elected body of the county to
10 which a qualified developer submits an application for final
11 approval of a qualified project.

12 "Planning agency" or "agency" means the county agency to
13 which a qualified developer submits an application for a
14 qualified project.

15 "Planning district" means a smart growth planning district
16 established pursuant to section 46-C.

17 "Program" means the transit-oriented redevelopment district
18 program established pursuant to section 46-D.

19 "Qualified developer" means a person, landowner,
20 corporation, organization, partnership, association, or other
21 legal entity that is:

22 (1) Licensed to do business in the State; and



1 (2) In good standing and bonded in an amount to be
2 determined by the respective legislative body.

3 "Qualified project" or "project" means a project, as
4 defined by the county, that is located wholly within a planning
5 district and promotes public transit ridership.

6 "Transit-oriented development" or "transit-oriented
7 redevelopment" means land use projects of relatively intense
8 concentration involving a mixture of uses that depend upon and
9 support transit ridership.

10 **§46-C Smart growth planning districts.** The county may
11 establish smart growth planning districts contained within the
12 urban district that shall consist of a transit-oriented
13 development within a radius, as specified by a county with a
14 population of five hundred thousand or more pursuant to rule, of
15 the following:

16 (1) A bus transit station or center, as designated by the
17 county to achieve density and ridership goals, located
18 within the county development or sustainable
19 communities plans for Ewa, central Oahu, and the
20 Primary Urban Center that has existing infrastructure,
21 public utilities, and roadways; or



1 (2) A rail transit station, as designated by the county to
2 achieve density and ridership goals, located at east
3 Kapolei, the University of Hawaii West Oahu, West
4 Loch, Waipahu, Leeward community college, or Pearl
5 Highlands;

6 provided that the designation of a planning district shall not
7 change the land use classification of the parcel.

8 **§46-D Transit-oriented redevelopment district program.**

9 (a) A county that establishes a smart growth planning district
10 shall establish a transit-oriented redevelopment district
11 program. The program shall include:

- 12 (1) Guidelines for community-based planning for transit-
13 oriented redevelopment districts;
- 14 (2) Strategies for infrastructure upgrades to support
15 development and redevelopment;
- 16 (3) Minimum mixed-use design and site plan guidelines;
- 17 (4) Guidelines for complete streets programs; and
- 18 (5) Strategies to promote public transit ridership.

19 (b) In developing the program, the county may establish
20 minimum eligibility criteria for qualified projects, including
21 but not limited to:

- 22 (1) Minimum and maximum project sizes;



- 1 (2) Requiring a mix of commercial and residential uses;
- 2 (3) Establishing workforce and affordable housing
- 3 requirements;
- 4 (4) Parking requirements, including but not limited to: a
- 5 parking ratio below any required ratio; a cap on the
- 6 total number of parking spaces; the limitation or
- 7 elimination of parking stall requirements; a
- 8 centralized public or private parking structure; or a
- 9 transportation plan with innovative parking solutions;
- 10 (5) Creating street level activities, including early
- 11 evening activities and retail and public gathering
- 12 areas; and
- 13 (6) Providing community benefits, including off-site open
- 14 space, on-site social services space, and major off-
- 15 site infrastructure upgrades.
- 16 (c) A county or county agency participating in the program
- 17 shall adopt rules as necessary for the purposes of this section,
- 18 including but not limited to:
- 19 (1) Criteria for incentives pursuant to sections 46-F and
- 20 46-G;
- 21 (2) Considerations, upon submission of an application for
- 22 a qualified project to the planning agency, regarding



1 the existing use of lands, including zoning, location,
2 and future impacts; and

3 (3) Assurances for a fair and equitable application
4 process.

5 **§46-E Requirements of contractor.** Prior to performing any
6 work on a qualified project, contractors or subcontractors shall
7 be pre-qualified by demonstrating at least three years of
8 experience in Hawaii on similar projects. The pre-qualification
9 process shall be established by the legislative body of the
10 county in which the project is to be situated.

11 **§46-F State incentives.** Subject to rules adopted pursuant
12 to sections 46-D and 46-I, qualified projects in established
13 smart growth planning districts shall not be subject to sections
14 264-123 and 302A-1603(a).

15 **§46-G County incentives.** Subject to rules adopted
16 pursuant to sections 46-D and 46-I, qualified projects in a
17 smart growth planning district that are approved by the
18 legislative body shall not be subject to the zone change process
19 or inconsistent ordinances and rules relating to the use,
20 zoning, planning, and development of land and construction
21 thereon. Additionally, a county may adopt any other incentives



1 that it deems appropriate to be granted to qualified projects,
2 subject to applicable rules and statutes.

3 **§46-H Qualified projects; application by developer;**
4 **review.** (a) A qualified developer may submit to a planning
5 agency an application for approval of a qualified project within
6 a planning district. The qualified developer shall solicit
7 input from and consult with communities within the planning
8 district and give consideration to any local and environmental
9 interests affected by the activities of the project or planned
10 project. The application shall include a transit ridership
11 study that demonstrates the need for mixed-use development by
12 determining the size of the service population, transportation
13 demands, and other factors that will achieve desired transit
14 ridership goals and overall land use density, as determined by
15 the planning agency; provided that the overall land use density
16 shall be consistent with existing county general plans and state
17 plans.

18 (b) The planning agency shall review the application and
19 secure any additional information that the planning agency deems
20 necessary for the purpose of taking action. The planning agency
21 shall take action within forty-five days of the application
22 being deemed complete; provided that the time to take action may



1 be extended up to ten days for good cause. No later than fifty-
2 five days of the application being deemed complete, the planning
3 agency shall notify the developer of the action taken.

4 (c) If the planning agency approves the application, with
5 or without modifications, the planning agency shall forward the
6 application with its recommendation to the legislative body.

7 The legislative body shall have forty-five days from the date of
8 receipt of the planning agency's recommendation to approve,
9 approve with modifications, or disapprove the application by
10 resolution.

11 §46-I Adoption of rules. A planning agency may adopt
12 rules pursuant to chapter 91 that are necessary to effectuate
13 the purposes of this part, including rules to specify materials
14 that shall be necessary components of a complete application."

15 PART II

16 SECTION 3. The legislature finds that agriculture has a
17 long and valuable history in Hawaii and continues to be an
18 important industry, generating \$1,900,000,000 and 42,000 jobs.
19 With the decline of the sugar industry, agricultural lands have
20 been increasingly used by small farms growing diversified
21 agricultural products that have gained recognition in foreign
22 and domestic markets. Despite the importance of agriculture, in



1 the last twenty years the State has developed nearly 3,300 acres
2 of prime farmland, increasing the price of remaining land and
3 creating financial hardships for farmers. Article XI, section
4 3, of the Hawaii State Constitution requires the State to
5 conserve and protect agricultural lands and increase self-
6 sufficiency and directs the legislature to provide standards and
7 criteria to meet these requirements. To do so, the State needs
8 strategic community-oriented criteria to protect our unspoiled
9 landscapes and farming lands, preserve the natural beauty of the
10 islands, and secure its unique agricultural business.

11 The increased development of farmland is partially the
12 result of the addition of substantial numbers, at least 100,000
13 on average, to the Hawaii resident population each decade from
14 1960 to 2000. For each decade between 2000 and 2030, the
15 population is expected to increase by 140,000, with
16 approximately 59,000 of that growth being in the neighbor island
17 counties.

18 The purpose of this part is to allow for the floor area
19 from designated sending areas to be transferred to smart growth
20 planning districts.



1 SECTION 4. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to part A to be appropriately designated
3 and to read as follows:

4 "§46-J Floor area ratio transfer. (a) There is
5 established a discretionary review process to be conducted by
6 the county legislative body, subject to the recommendation of
7 the county planning director, for the transfer of floor area
8 within a planning district from sending sites to a receiving
9 site within a planning district established pursuant to section
10 46-C. The purpose of this process is to encourage the transfer
11 of floor area to properties with lot dimensions that allow for
12 additional floor area while complying with the building envelope
13 requirements and building height requirements set forth in a
14 county land use ordinance.

15 (b) The proposed creation and redemption of floor area
16 ratio transfers shall take place solely on a voluntary basis
17 between consenting parties. Landowners shall not be required to
18 create or convey floor area ratio transfers; provided that floor
19 area ratio transfers shall be created, conveyed, or redeemed in
20 accordance with this section to be recognized by a legislative
21 body.



1 (c) Floor area ratio transfers shall not involve an
2 existing public park or open space.

3 (d) All requests to create, convey, and redeem floor area
4 ratio transfer credits shall be accompanied by and occur in
5 conjunction with the following:

6 (1) A project agreement, including any accompanying permit
7 approval request, improvement permit, development
8 permit, conditional use permit, variance, and master
9 plan permit; and

10 (2) A proposal to create, convey, and redeem floor area
11 ratio transfer credits on forms prescribed by the
12 director of the planning agency that contain the
13 following information:

14 (A) Particular to a sending site:

15 (i) A cover letter identifying the landowner's
16 name, mailing address, and contact
17 information and briefly explaining what the
18 landowner seeks to accomplish;

19 (ii) A certificate of title demonstrating
20 ownership of the proposed sending site and
21 receiving site;



- 1 (iii) A draft covenant that provides the
2 protections and restrictions on the proposed
3 property;

- 4 (iv) A baseline documentation report that
5 establishes the current condition of the
6 proposed sending site that contains, at a
7 minimum, a general location map, legal
8 description and sketch of parcel boundaries,
9 and documentation (such as maps, written
10 summaries, and photographs) of existing
11 conditions that relate to the proposed
12 easement restrictions as well as the
13 proposed rights to be retained by the
14 landowner; and

- 15 (v) An affidavit signed by the landowner and
16 preparer of the submittal, attesting to the
17 accuracy of the information contained in the
18 baseline documentation report; and

- 19 (B) Particular to a receiving site, plans, diagrams,
20 and supporting text that clearly identify and
21 illustrate the location and extent of proposed
22 floor area transfer.



1 (e) The legislative body shall review and act upon all
2 applications for floor area ratio transfers to create, convey,
3 and redeem floor area ratio transfer credits after receiving a
4 recommendation from the respective county's director of the
5 planning agency.

6 (f) The legislative body shall make the following findings
7 of fact to approve an application to create, convey, and redeem
8 floor area ratio transfer credits:

9 (1) That the receiving site allows for additional floor
10 area while complying with the building envelope
11 requirements and the land use ordinance; and

12 (2) That the creation, conveyance, and redemption of floor
13 area ratio transfer credits enable the subject lots to
14 fulfill the development objectives of the county
15 general or development plans.

16 (g) The creation, conveyance, and redemption of floor area
17 ratio transfer credits shall be limited by the following:

18 (1) Floor area ratio transfer credits shall not be created
19 or redeemed in conjunction with a variance approval to
20 exceed any maximum building height or building
21 footprint, or reduce any setback specified in the
22 county land use ordinance;



1 (2) No more than fifty per cent of the maximum permitted
2 floor area ratio shall be transferred from any sending
3 site; provided that contiguous lots may transfer one
4 hundred per cent of the maximum permitted floor area
5 ratio; and

6 (3) Floor area ratio transfer credits shall be created and
7 redeemed concurrently. No floor area ratio transfer
8 credit may be reserved for future conveyance to a
9 sending site.

10 (h) To establish floor area ratio transfer credits, the
11 sending site landowner shall record a covenant running with the
12 land over the sending site consistent with this section. The
13 covenant shall:

14 (1) Run with the land on the sending site;

15 (2) Restrict the floor area ratio of the sending site to
16 the ratio established by the transfer; and

17 (3) Name the planning agency as an intended beneficiary
18 with the right to enforce the covenant.

19 (i) The director of the planning agency shall maintain a
20 register of all floor area ratio transfer credits both created
21 and redeemed pursuant to this section and shall update this
22 register annually."



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PART III

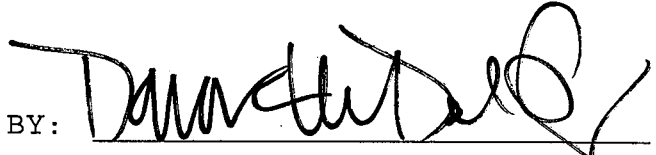
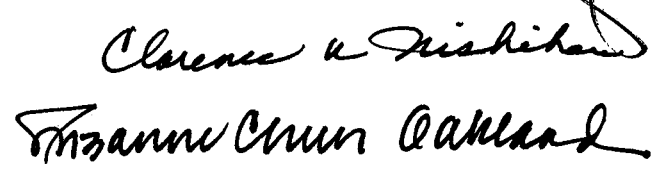
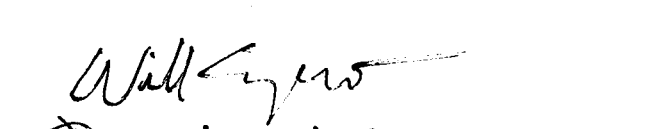

SECTION 5. In codifying the new part and sections added by sections 2 and 4 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new part and sections in this Act.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2013.

INTRODUCED BY:


Clarence A. Fishbein

Suzanne Chun Oakland

Will Sykes

Michelle Kahan



S.B. NO. 1304

Report Title:

Smart Growth Planning Districts; Mixed-Use Development

Description:

Authorizes counties to establish smart growth planning districts and transit-oriented redevelopment district programs. Creates a process for developers to apply for projects that promote public transit ridership and mixed-use development. Authorizes state and county incentives for qualified projects. Establishes a discretionary review process for the transfer of floor area within certain planning districts to preserve open space and agricultural lands.

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