

JAN 18 2013

S.B. NO. 711

A BILL FOR AN ACT

RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.

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

1 SECTION 1. The legislature finds that transfer of
2 development rights would provide the Hawaii community
3 development authority with a very effective and flexible
4 technique for land use control. Transfer of development rights
5 is a legal procedure designed to preserve or protect natural or
6 man-made property resources for the public's benefit. Transfer
7 of development rights results from a recognition that land
8 ownership has two distinct components, in that the right to
9 develop land is an independent aspect of land ownership.

10 Transfer of development rights can be used to ensure that
11 the open space requirements of the county's planning goals are
12 met without causing a financial burden to landowners or
13 restricting needed development. A well thought out and
14 administered transfer of development rights program ultimately
15 generates development that is more cost-effective and efficient.
16 The use of transfer of development rights can reduce the
17 prospect of litigation over preservation policies, avoid the use
18 of state funds to purchase land while helping to ensure



1 preservation goals, and allow a municipality to increase its tax
2 base without accepting less land preservation than desired.

3 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is
4 amended by adding three new sections to part II to be
5 appropriately designated and to read as follows:

6 "§206E-A Definitions. As used in this part:

7 "Development rights" shall have the same meaning as in
8 section 46-162.

9 "Receiving district" means the Kakaako community
10 development district.

11 "Sending district" shall have the same meaning as in
12 section 46-162.

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

15 §206E-B Zoning rules; established by transfer of
16 development rights only. (a) Notwithstanding section 206E-7,
17 the authority shall establish rules relating to the zoning of
18 land within the Kakaako district only by the use of transfer of
19 development rights in accordance with this section.

20 (b) Transfer of development rights to the Kakaako district
21 shall be subject to the following conditions:



- 1 (1) Transfer of development rights shall be made in
2 accordance with the purposes stated in section
3 206E-31;
- 4 (2) A sending district shall contain natural, scenic,
5 recreational, agricultural, forest, or open land or
6 sites of special historical, cultural, aesthetic, or
7 economic values sought to be protected;
- 8 (3) The authority shall evaluate the effects of potential
9 increased development in the Kakaako district that may
10 result from the transfer of development rights
11 provisions and require:
 - 12 (A) That the Kakaako district contains adequate
13 resources; environmental quality; and public
14 facilities, including transportation, water
15 supply, waste disposal, and fire protection, to
16 support the transfer of development rights;
 - 17 (B) That there is approximate equivalence between
18 potential low and moderate housing units lost in
19 the sending district and gained in the Kakaako
20 district or that reasonable action will be taken
21 to compensate for any negative impact upon the
22 availability or potential development of low or



1 moderate income housing caused by the transfer of
2 development rights;
3 (C) There will be no significant environmentally
4 damaging consequences; and
5 (D) Increased development is compatible with the
6 development currently existing in the Kakaako
7 district;
8 (4) An environmental impact statement shall be prepared by
9 the authority pursuant to section 343-6. The
10 environmental impact statement shall be amended if
11 there are material changes in circumstances;
12 (5) The agreement and procedure for transfer of
13 development rights shall be specified in writing;
14 (6) The burden upon land within a sending district from
15 which development rights have been transferred shall
16 be documented by an instrument duly executed by the
17 grantor in the form of a conservation easement which
18 shall be enforceable by the Kakaako district in
19 addition to any other person or entity granted
20 enforcement rights by the terms of the instrument.
21 All provisions of law applicable to such conservation
22 easements shall apply with respect to conservation



1 easements hereunder. Any development right that has
2 been transferred by conservation easement shall be
3 evidenced by a certificate of development right in a
4 form suitable for recording; and

5 (7) Development rights shall be transferred reflecting the
6 normal market in land, including but not limited to
7 sales between owners of property in sending districts
8 and the Kakaako district.

9 (c) Within one year after a development right is
10 transferred, the assessed valuation placed on the affected
11 properties for real property tax purposes shall be adjusted to
12 reflect the transfer. A development right that is transferred
13 shall be deemed to be an interest in real property and the
14 rights evidenced thereby shall inure to the benefit of the
15 Kakaako district.

16 (d) The authority may establish a development rights bank
17 or such other account in which development rights may be
18 retained and sold in the best interest of the Kakaako district.
19 The authority shall be authorized to accept for deposit within
20 the bank gifts, donations, bequests or other development rights.



1 (e) The authority shall adopt rules pursuant to chapter 91
2 for the amendment of transfer of development rights pursuant to
3 this section.

4 §206E-C Transfer of development rights; authorization for
5 sending district. In addition to existing powers and authority
6 to regulate by planning or zoning, a town board is hereby
7 empowered to provide for transfer of development rights to the
8 Kakaako district subject to the conditions in section 206E-B and
9 upon such other conditions as the town board deems necessary and
10 appropriate that are consistent with the purposes of this
11 section. The purpose of providing for transfer of development
12 rights shall be to protect the natural, scenic, or agricultural
13 qualities of open lands, to enhance sites and areas of special
14 character or special historical, cultural, aesthetic, or
15 economic interest or value, and to enable and encourage
16 flexibility of design and careful management of land in
17 recognition of land as a basic and valuable natural resource."

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 4. New statutory material is underscored.

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S.B. NO. 111

1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

David L. ...

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Report Title:

Hawaii Community Development Authority; Kakaako Community Development District; Transfer of Development Rights

Description:

Requires the Hawaii community development authority to establish zoning rules within the Kakaako community development district only by the use of transfer of development rights. Specifies procedures and requirements for the transfer of development rights to the Kakaako community development district. Authorizes a town to use transfer of development rights.

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