

ACT 296

H.B. NO. 3138

A Bill for an Act Relating to the Counties.

Be It Enacted by the Legislature of the State of Hawaii:

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

“PART . TRANSFER OF DEVELOPMENT RIGHTS

§46- Findings and purpose. The legislature finds that there is a need to clarify the authority of the counties to exercise the power to transfer development rights within a comprehensive planning program to:

- (1) Protect the natural, scenic, recreational, and agricultural qualities of open lands including critical resource areas; and
- (2) Enhance sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value.

The legislature finds that transfer of development rights programs can help to ensure proper growth, while protecting open and distinctive areas and spaces of varied size and character, including many areas that have significant agricultural, ecological, scenic, historical, aesthetic, or economic value. These areas, if preserved and maintained in their present state, would constitute important physical, social, aesthetic, or economic assets to existing or impending urban and metropolitan development. The legislature further finds that transferring development rights is a useful technique to achieve community objectives. Properly utilized, the concept can be fully consistent with comprehensive planning requirements. The legislature further finds and declares that the concept, utilizing the normal market in land, can provide a mechanism of just compensation to owners of property to be protected or preserved.

§46- Definitions. As used in this part, unless the context clearly requires otherwise:

“Council” means the county council.

“Development rights” means the rights permitted for a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk, or height of improvements thereon. Development rights may be calculated and allocated in accordance with factors such as area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this part.

“Receiving district” means one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of this transfer.

“Sending district” means one or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

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

§46- Conditions for the transfer of development rights. (a)¹ In addition to any existing power, duty, and authority of the counties to regulate land uses by planning or zoning, the counties are hereby authorized to transfer and regulate the transfer of development rights, subject to the conditions set forth under this part, as well as planning laws, zoning laws, and any other conditions as the legislative body of each county deems necessary and appropriate. The purpose of providing for transfer of development rights shall be to:

- (1) Protect the natural, scenic, and agricultural qualities of open lands;
- (2) Enhance sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value; and
- (3) Enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.

§46- Procedures. Any county modifying its zoning ordinance or enacting a local law pursuant to this part shall follow the procedure for adopting and amending its ordinances.

§46- Other rights not affected. Nothing in this part shall be construed to invalidate any provision relating to the transference or purchase of development rights heretofore or hereafter adopted by any county.”

SECTION 2. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

Note

1. No subsection (b) designation.