

ACT 223

H.B. NO. 1436

A Bill for an Act Relating to Development Rights.

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

SECTION 1. The legislature finds that climate change is real. Rising sea levels throughout the State will erode beaches, damage habitats, and disrupt ecological processes and cause saline intrusion into freshwater ecosystems and groundwater, flooding or inundation of low-lying areas, and damage to private and public property and infrastructure.

The purpose of this Act is to expand the authority of the counties to regulate the transfer of development rights to help protect areas vulnerable to sea level rise, coastal erosion, storm surge, and flooding, thereby facilitating the potential movement of development away from at-risk areas to locations more appropriate for development.

SECTION 2. Section 46-161, Hawaii Revised Statutes, is amended to read as follows:

“~~[[[~~§46-161~~]]]~~ 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~~[-]; and~~
- (3) Protect from development lands that are vulnerable to impacts and hazards from sea level rise, coastal erosion, storm surge, and flooding associated with climate change.

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 the transfer of development rights from lands vulnerable to or adversely affected by sea level rise, coastal erosion, storm surge, or flooding to lands that are not at risk from these hazards would reduce property losses and result in long-term economic and fiscal benefits to communities and government. The legislature ~~[further]~~ also 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.”

SECTION 3. Section 46-163, Hawaii Revised Statutes, is amended to read as follows:

~~“[§46-163]~~ Conditions for the transfer of development rights. 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) Protect lands at risk from sea level rise, coastal erosion, storm surge, or flooding; and
- ~~[(3)]~~ (4) Enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

(Approved June 27, 2022.)