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# A BILL FOR AN ACT

RELATING TO COMMUNITY PLANNING.

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

1           SECTION 1. The legislature finds that agriculture has a  
2 long and valuable history in Hawaii and continues to be an  
3 important industry generating \$1,900,000,000 and 42,000 jobs.  
4 With the decline of the sugar industry, agricultural lands have  
5 been increasingly used by small farms growing diversified  
6 agricultural products which have gained recognition in foreign  
7 and domestic markets. Despite the importance of agriculture, in  
8 the last twenty years the State has developed nearly 3,300 acres  
9 of prime farmland, increasing the price of remaining land and  
10 creating financial hardships for farmers. Article XI, section  
11 3, of the Hawaii State Constitution requires the State to  
12 conserve and protect agricultural lands and increase self-  
13 sufficiency and directs the legislature to provide standards and  
14 criteria to meet these requirements. Yet, the State needs a  
15 strategic community-oriented criterion to protect our unspoiled  
16 landscapes and farming lands, preserve the beauty of the  
17 islands, and secure its unique agricultural business.



1           The increased development of farmland is partially the  
2 result of the addition of substantial numbers, at least 100,000  
3 on average, to the Hawaii resident population each decade from  
4 1960 to 2000. For each decade between 2000 and 2030, the  
5 population is expected to increase by 140,000, with  
6 approximately 59,000 of that growth being in the neighbor island  
7 counties.

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



1           Concurrently, changes need to be made to provide  
2 opportunities to preserve or increase the number of affordable  
3 housing facilities within transit-oriented development zones and  
4 improve facilities for the care of children and the elderly.  
5 Family-oriented support services for children and elders,  
6 including child care and elder care so that families can use  
7 mass transit while meeting the needs of their family members.  
8 Focusing on such redevelopment and reinvestment will provide  
9 communities in which future generations can grow up in a safe  
10 and healthy environment by reducing traffic congestion,  
11 greenhouse gases, and use of fossil fuels.

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



1 consistency in maintaining building facades of historical  
2 buildings in the area or community. Encouraging the development  
3 of infrastructure that allows for a preferred choice of walking,  
4 biking, or the use of public transportation will help  
5 accommodate the State's growing population.

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

12 Furthermore, to prevent urban sprawl from destroying our  
13 agricultural lands, a viable option would be to focus growth  
14 along the transit corridors and through the county development  
15 or sustainable communities plans for Ewa, Central Oahu, and the  
16 Primary Urban Center.

17 The purpose of this Act is to establish planning districts,  
18 create a comprehensive application process to apply for  
19 residential and commercial qualified projects, and establish the  
20 transit-oriented or main-street redevelopment district program.



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

4 "PART . PLANNING DISTRICTS

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

21 The purpose of this part is to facilitate commercial and  
22 residential development of an exceptional level of quality on



1 land adjacent to public transportation stations and centers by  
2 creating a process and reduced up-front costs that will, in  
3 turn, act as catalytic projects for neighborhood reinvestment.

4 **§46-B Definitions.** As used in this part, unless the  
5 context otherwise requires:

6 "Action" or "action taken" means approval, approval with  
7 modification, or disapproval.

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

12 "Legislative body" means the legislative body of the county  
13 to which a qualified developer submits an application for final  
14 approval of a qualified project.

15 "Main-street redevelopment project" means a project  
16 designed to promote, preserve, restore, and revitalize the  
17 culture, history, architecture, and economic viability of a  
18 small town or community.

19 "Planning agency" or "agency" means the planning agency of  
20 a county to which a qualified developer submits an application  
21 for a qualified project.



1 "Program" means the transit-oriented or main-street  
2 redevelopment district program pursuant to section 46-D, as  
3 established by the county.

4 "Qualified developer" means a person, landowner,  
5 corporation, organization, partnership, association, or other  
6 legal entity that is:

- 7 (1) Licensed to do business in the State; and
- 8 (2) Bonded and in good standing in an amount to be  
9 determined by the respective legislative body.

10 "Qualified project" or "project" means a project as defined  
11 by the county that is located wholly within a planning district  
12 and promotes public transit ridership.

13 "Transit-oriented development" or "transit-oriented  
14 redevelopment" means land use projects of relatively intense  
15 concentration involving a mixture of uses that depend upon and  
16 support transit ridership.

17 **§46-C Planning districts.** The county may establish  
18 planning districts contained within the urban district that  
19 shall consist of:

- 20 (1) A main-street redevelopment project that is:
  - 21 (A) Approved by the respective county legislative  
22 body in which the project is situated; and



1 (B) Eligible as a community financed project or  
 2 business improvement district; or  
 3 (2) A transit-oriented development within a radius, as  
 4 specified by a county with a population of five  
 5 hundred thousand or more pursuant to rule, of a:  
 6 (A) Bus transit station or center, as designated by  
 7 the county to achieve density and ridership  
 8 goals, located within the county development or  
 9 sustainable communities plans for Ewa, Central  
 10 Oahu, and the Primary Urban Center that has  
 11 existing infrastructure, public utilities, and  
 12 roadways or is within a developed community; or  
 13 (B) Rail transit station, as designated by the county  
 14 to achieve density and ridership goals, located  
 15 at east Kapolei, the University of Hawaii West  
 16 Oahu, West Loch, Waipahu, Leeward Community  
 17 College, or Pearl Highlands;  
 18 provided that the designation of a planning district shall not  
 19 change the land use classification of the parcel.

20 **§46-D Transit-oriented or main-street redevelopment**  
 21 **district program.** (a) A county that establishes a planning





1 district shall establish a transit-oriented or main-street  
2 redevelopment district program. The program shall include:

- 3 (1) Guidelines for community-based planning for transit-  
4 oriented or main-street redevelopment districts;
- 5 (2) Strategies for infrastructure upgrades to support  
6 development and redevelopment;
- 7 (3) Minimum mixed use design and site plan guidelines;
- 8 (4) Guidelines for complete streets programs; and
- 9 (5) Strategies to promote public transit ridership.

10 (b) In developing the program, the county may establish  
11 minimum eligibility criteria for qualified projects, including:

- 12 (1) Minimum and maximum project sizes;
- 13 (2) Requiring a mix of commercial and residential uses;
- 14 (3) Establishing workforce and affordable housing  
15 requirements;
- 16 (4) Proposing parking ratios below any existing required  
17 ratio and a maximum cap on the total number of parking  
18 spaces, proposing a centralized public or private  
19 parking structure, or proposing a transportation plan  
20 with innovative parking solutions;



1 (5) Creating street level activities, including early  
2 evening hour activities and retail and public  
3 gathering areas; and

4 (6) Providing community benefits, including off-site open  
5 space, on-site social services space, and major off-  
6 site infrastructure upgrades.

7 (c) A county or county agency participating in the program  
8 shall adopt rules or regulations as necessary for the purposes  
9 of this section, including:

10 (1) Criteria for granting exemptions pursuant to sections  
11 46-F and 46-G;

12 (2) Considerations, upon submission of an application for  
13 a qualified project to the planning agency, regarding  
14 the existing use of lands, including zoning, location,  
15 and future impacts; and

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

18 **§46-E Requirements of contractor.** Prior to performing any  
19 work on a qualified project, contractors or subcontractors shall  
20 be pre-qualified by demonstrating at least three years of  
21 experience in Hawaii on similar projects. The pre-qualification



1 process shall be established by the legislative body of the  
2 county in which the project is situated.

3 **§46-F State incentives; exemptions.** Subject to rules  
4 adopted pursuant to sections 46-D and 46-J, qualified projects  
5 in established planning districts shall be exempt from all state  
6 fees associated with land development; provided that approval  
7 for the exemption is granted by the state agency that would  
8 otherwise receive the fee.

9 **§46-G County incentives; exemptions.** Subject to rules  
10 adopted pursuant to sections 46-D and 46-J, qualified projects  
11 in a planning district that are approved by the legislative body  
12 shall receive exemptions from the zone change process and  
13 compliance with zoning standards. Additionally, a county may  
14 adopt any other incentives that it deems appropriate to be  
15 granted to qualified projects.

16 **§46-H Qualified projects; application by developer;**  
17 **review.** (a) A qualified developer may submit to a planning  
18 agency an application for approval of a qualified project within  
19 a planning district. The application, excluding an application  
20 for a main-street redevelopment project, shall include a transit  
21 ridership study that demonstrates the need for development by  
22 determining the size of the service population, transportation



1 demands, and other factors that will achieve desired transit  
2 ridership goals and overall land use density, as determined by  
3 the planning agency; provided that the overall land use density  
4 shall be consistent with existing county general plans and state  
5 plans.

6 (b) The planning agency shall review the application and  
7 secure any additional information that the planning agency deems  
8 necessary for the purpose of taking action. The planning agency  
9 shall take action within forty-five days of the application  
10 being deemed complete; provided that the time to take action may  
11 be extended up to ten days for good cause. No later than fifty-  
12 five days of the application being deemed complete, the planning  
13 agency shall notify the developer of the action taken.

14 (c) If the planning agency approves the application, with  
15 or without modifications, the planning agency shall forward the  
16 application with its recommendation to the legislative body.  
17 The legislative body shall have forty-five days from the date of  
18 receipt of the planning agency's recommendation to approve,  
19 approve with modifications, or disapprove the application by  
20 resolution.

21 **§46-I Floor area ratio transfer.** (a) There is  
22 established a discretionary review process to be conducted by



1 the county legislative body, subject to the recommendation of  
2 the county planning director, for the transfer of floor area  
3 within a planning district from sending sites to a receiving  
4 site within a planning district established pursuant to section  
5 46-C(2)(B). The purpose of this process is to encourage the  
6 transfer of floor area to properties with lot dimensions that  
7 allow for additional floor area while complying with the  
8 building envelope requirements and building height requirements  
9 set forth in a county land use ordinance.

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

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

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



1 (1) A project agreement, including any accompanying permit  
2 approval request, improvement permit, development  
3 permit, conditional use permit, variance, and master  
4 plan permit; and

5 (2) A proposal to create, convey, and redeem floor area  
6 ratio transfer credits on forms prescribed by the  
7 director of the planning agency that contain the  
8 following information:

9 (A) Particular to a sending site:

10 (i) A cover letter identifying the landowner's  
11 name, mailing address, and contact  
12 information and briefly explaining what the  
13 landowner seeks to accomplish;

14 (ii) A certificate of title demonstrating  
15 ownership of the proposed sending site and  
16 receiving site;

17 (iii) A draft covenant that provides the  
18 protections and restrictions on the proposed  
19 property;

20 (iv) A baseline documentation report that  
21 establishes the current condition of the  
22 proposed sending site that contains, at a



1 minimum, a general location map, legal  
2 description and sketch of parcel boundaries,  
3 and documentation (such as maps, written  
4 summaries, and photographs) of existing  
5 conditions that relate to the proposed  
6 easement restrictions as well as the  
7 proposed rights to be retained by the  
8 landowner; and

9 (v) An affidavit signed by the landowner and  
10 preparer of the submittal, attesting to the  
11 accuracy of the information contained in the  
12 baseline documentation report; and

13 (B) Particular to a receiving site, plans, diagrams,  
14 and supporting text that clearly identify and  
15 illustrate the location and extent of proposed  
16 floor area transfer.

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



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

4 (1) Receiving site allows for additional floor area while  
5 complying with the building envelope requirements and  
6 the land use ordinance; and

7 (2) Creation, conveyance, and redemption of floor area  
8 ratio transfer credits enable the subject lots to  
9 fulfill the development objectives of the county  
10 general or development plans.

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

13 (1) Floor area ratio transfer credits shall not be created  
14 or redeemed in conjunction with a variance approval to  
15 exceed any maximum building height or building  
16 footprint, or reduce any setback specified in the  
17 county land use ordinance;

18 (2) No more than fifty per cent of the maximum permitted  
19 floor area ratio shall be transferred from any sending  
20 site; provided that contiguous lots may transfer one  
21 hundred per cent of the maximum permitted floor area  
22 ratio; and





1 (3) Floor area ratio transfer credits shall be created and  
2 redeemed concurrently. No floor area ratio transfer  
3 credit may be reserved for future conveyance to a  
4 sending site.

5 (h) To establish floor area ratio transfer credits, the  
6 sending site landowner shall record a covenant running with the  
7 land over the sending site consistent with this section. The  
8 covenant shall:

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

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

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

14 (i) The director of the planning agency shall maintain a  
15 register of all floor area ratio transfer credits both created  
16 and redeemed pursuant to this section and shall update this  
17 register annually.

18 **§46-J Adoption of rules.** A planning agency may adopt  
19 rules pursuant to chapter 91 that are necessary to effectuate  
20 the purposes of this part, including rules to specify materials  
21 that shall be necessary components of a complete application."



1 SECTION 3. The office of planning may establish two  
2 temporary positions, subject to chapters 76 and 89, Hawaii  
3 Revised Statutes; provided that funding for the positions shall  
4 be provided by the Honolulu authority for rapid transportation  
5 to carry out the purposes of this Act.

6 SECTION 4. There is appropriated out of funds to be  
7 provided by the Honolulu authority for rapid transportation the  
8 sum of \$250,000 or so much thereof as may be necessary for  
9 fiscal year 2012-2013 for two temporary positions in the office  
10 of planning.

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

13 SECTION 5. In codifying the new sections added by section  
14 2 of this Act, the revisor of statutes shall substitute  
15 appropriate section numbers for the letters used in designating  
16 the new sections in this Act.

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



**1** SECTION 7. This Act shall take effect on July 1, 2012.



**Report Title:**

Hawaii Community Development Authority; State-wide Planning; Appropriation

**Description:**

Establishes planning districts and creates a process for developers to apply for residential and commercial qualified projects. Establishes the transit-oriented or main-street redevelopment district program. Authorizes state and county incentives for qualified projects. Establishes a discretionary review process for the transfer of floor area within certain planning districts. Authorizes the office of planning to hire two temporary positions to be funded by the Honolulu authority for rapid transportation, if funds are available. (CD1)

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