

# HOUSE BILL REPORT

## 2SHB 1172

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### As Passed House:

March 11, 2009

**Title:** An act relating to the implementation of a regional transfer of development rights program.

**Brief Description:** Implementing a transfer of development rights program.

**Sponsors:** House Committee on General Government Appropriations (originally sponsored by Representatives Simpson, Nelson and Rolfes; by request of Department of Community, Trade and Economic Development).

### Brief History:

#### Committee Activity:

Local Government & Housing: 1/21/09, 2/2/09 [DPS];

General Government Appropriations: 2/25/09, 2/26/09 [DP2S(w/o sub LGH)].

#### Floor Activity

Passed House: 3/11/09, 62-35.

### Brief Summary of Second Substitute Bill

- Requires, subject to the availability of funds, the Department of Community, Trade and Economic Development (DCTED) to establish a regional transfer of development rights program in the central Puget Sound region.
- Establishes related administrative, rule-making, and performance monitoring requirements for the DCTED.
- Establishes requirements for jurisdictions and areas that participate in the program.
- Includes applicable definitions and legislative findings.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Uptegrove, White and Williams.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Short.

**Staff:** Ethan Moreno (786-7386)

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government & Housing. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

**Minority Report:** Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong and Short.

**Staff:** Steve Smith (786-7178)

### **Background:**

#### Transfer of Development Rights.

A transfer of development rights (TDR) occurs when a qualifying land owner, through a permanent deed restriction, severs potential development rights from a property and transfers them to a recipient for use on a different property. In TDR transactions, transferred rights are generally shifted from sending areas with lower population densities to receiving areas with higher population densities. The monetary values associated with transferred rights constitute compensation to a land owner for development that may have otherwise occurred on the transferring property.

Programs for transferring development rights may be used to preserve natural and historic spaces, encourage infill, and for other purposes.

In 2007 the Legislature directed the Department of Community, Trade and Economic Development (DCTED) to fund a process to develop a regional TDR program that comports with the Growth Management Act. In addition to specifying numerous requirements for the DCTED, the Legislature specified that the TDR program must encourage King, Kitsap, Pierce, and Snohomish counties, and the cities within, to participate in the development and implementation of regional frameworks and mechanisms that make TDR programs viable and successful.

#### Growth Management Act.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, fully plan under the Act.

The DCTED is charged with providing technical and financial assistance to jurisdictions implementing the GMA.

Among other requirements, the legislative authority of each county that fully plans under the GMA must adopt a county-wide planning policy (CPP) in cooperation with the cities located wholly or partially within the county. A CPP is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive land use plans are developed and adopted. County-wide planning policies must include specified planning provisions. Examples include:

- policies to implement requirements for urban growth areas designated under the GMA;
- policies for siting public capital facilities of a county-wide or statewide nature; and
- policies for county-wide transportation facilities and strategies.

Additionally, multicounty planning policies must be adopted by two or more counties, each with a population of 450,000 or more, with contiguous urban areas and may be adopted by other counties.

#### Puget Sound Regional Council.

The Puget Sound Regional Council (PSRC) is an association of cities, towns, counties, ports, and state agencies that serves as a forum for developing policies and making decisions about regional growth and transportation issues in the four-county central Puget Sound region. Membership of the PSRC includes King, Kitsap, Pierce, and Snohomish counties, 72 cities and towns, four port districts, and transit agencies and tribes within the region. Two state agencies, the Department of Transportation and the Transportation Commission, are also members of the PSRC.

#### Interlocal Agreements.

Interlocal agreements allow two or more public agencies, subject to statutory requirements, to enter into agreements to jointly exercise powers, privileges or authorities exercised or capable of being exercised singularly.

#### **Summary of Second Substitute Bill:**

##### Establishment and Administration of Regional TDR Program.

Subject to the availability of specific funding, the DCTED must establish a regional TDR program (regional program or program) in central Puget Sound, including King, Kitsap, Snohomish, and Pierce counties and the cities and towns within those counties. The purpose of the program is to foster voluntary county, city, and town participation in the program, participation that will result in interjurisdictional transfers of rights between the jurisdictions. Additionally, private transactions between buyers and sellers of transferable development rights are allowed and encouraged under the program. The program must be guided by the

PSRC's multicounty planning policies, and the DCTED must work with the PSRC to implement the program's provisions.

Administrative requirements for the program are specified for the DCTED. For example, the DCTED must encourage participation in the regional program by cities, towns, and counties, and the program must not be implemented in a manner that negatively impacts existing local programs. The DCTED must also encourage and work to enhance the efforts in any of these jurisdictions to develop local TDR programs or enhance existing programs.

If specific funding is available, additional administrative requirements for the program are mandated for the DCTED, including:

- serving as the central coordinator for state government in the implementation of program provisions and requirements;
- offering specific and multi-faceted technical assistance to cities, towns, and counties; and
- working with counties, cities, and towns to inform elected officials, planning commissions, and the public regarding the program.

#### Adoption of Agency Rules/Interlocal Agreements.

The DCTED must develop and adopt by rule terms and conditions of an interlocal agreement for transfers of development rights between counties, cities, and towns. Counties, cities, and towns participating in the regional program may enter into an interlocal agreement to transfer development rights, or may adopt the agency rule, by reference, to transfer development rights across jurisdictional boundaries.

#### Requirements for Sending and Receiving Areas.

Counties must use specified criteria to guide the designation of sending areas for participation in the regional program. Sending area land:

- must be designated as agricultural or forest land of long-term commercial significance;
- must be designated as rural and must be farmed or managed for forestry; and
- must, if conserved, meet other state and regionally adopted priorities.

Upon purchase of a transferable development right from a qualifying area, a county must include the land from which the right was purchased in any programs it administers for the conservation of agricultural land or forest land.

Receiving areas in the program must be within incorporated cities or towns. Prior to designating a receiving area, a city or town should have adequate infrastructure planned and funding identified for development in the receiving area at densities or intensities that are consistent with what can be achieved under the local TDR program.

Cities and towns participating in the regional program may determine which sending area development rights are used in their designated receiving areas. Additionally, the

designation of sending and receiving areas should include a process for public outreach that is consistent with the public participation requirements of the GMA.

#### Requirements for Program Participation.

Counties, cities, and towns that choose to participate in the regional program must:

- enter into an interlocal agreement or adopt a resolution adopting, by reference, the provisions in the relevant DCTED rule;
- adopt TDR policies or implement development regulations that comply with the GMA and with sending and receiving area requirements; and
- adopt a sending or receiving area ratio, terms defined in the bill, in cooperation with the sending or receiving jurisdiction.

Cities and towns participating in the regional program are also encouraged to provide permitting or environmental review incentives for developers.

#### Performance Measures.

The DCTED must develop quantitative and qualitative performance measures for monitoring the regional program. The performance measures may address conservation of land, the creation of compact communities, and other measures identified by the DCTED. The DCTED may require cities, towns, and counties to report on these performance measures biannually. The DCTED must compile any performance measure information reported by jurisdictions and must post the information on a website.

#### Definitions and Legislative Findings.

Definitions and legislative findings pertaining to transferring development rights and the regional program are specified.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony (Local Government & Housing):**

(In support of substitute bill) Two years ago, the Legislature recognized that rural, farm, and forest lands were being lost and that local governments needed tools to slow the conversions of these lands. The creation of a regional TDR program will be another tool to slow these land conversions. Participation in the program is voluntary and participating cities will be able to flexibly implement the program. The Land Use and Climate Change Advisory Committee and others support TDR programs. This bill is a conservative first effort and the Governor's support of the bill is contingent upon receiving non-state funds. An

Environmental Protection Agency grant is being sought to fund the regional program proposed in the bill.

Being responsive to citizens requires a broad examination of conservation and environmental issues that considers housing and employment. This bill is mindful of broad issues and connections. One-hundred year floods are becoming more common, and the weather cannot be changed, but upland development patterns can be modified. The TDR mechanism is an economically fair way to address issues associated with development patterns. This bill represents a great opportunity. A regional TDR program should be established to prepare for coming growth.

A TDR program is a market-based tool that can be used to support and protect rural and forest lands. This bill is an important step in helping to keep Washington green as it grows. In these economic times, jurisdictions need additional tools to direct growth to cities. Programs such as the one proposed in the bill that also include technical support are helpful.

Jurisdictions are willing to accept additional density to preserve rural areas. Taking density from unincorporated areas is a complex process. This bill lacks incentives for cities. Cities that accept TDRs must have proper incentives to encourage transfers. King County has had a TDR program since 2000: it has protected 135,000 acres of land. It is hoped that this bill will allow jurisdictions that neighbor King County to promote TDR programs and foster interjurisdictional transactions.

Realtors support TDR programs, as they are a tool that can be used to foster economic development. The wording of the bill should be carefully developed: proper directives are critical to the working of the program and caution needs to be taken to avoid creating unmet expectations. Proper wording must also ensure that the bill does not create a net loss of housing. Market-driven programs are preferable to market-based programs. Careful thought should go into the bill and its implementation.

(With concerns) Concerns exist about the definition of "downzone." Downzoning in receiving areas should be prohibited.

(Opposed) This legislation is premature and may be a solution looking for a problem. King, Kitsap and other counties already have TDR programs. Comprehensive plan updates take two years, and this bill doesn't anticipate how slowly local governments react to planning requirements. It is more profitable for a land owner to sell his or her property than to sell a development right. The bill would prohibit the transfer of rights to unincorporated areas within urban growth areas: these areas could accommodate growth. Where is the evidence of a rapid loss of agricultural, rural and forested lands? Where is the money for this program going to come from? Taxpayers will have to pay the costs of implementing this unnecessary bill.

**Staff Summary of Public Testimony (General Government Appropriations):**

(In support) Section 3 clarifies that the bill will only proceed if funding is provided for this specific purpose. Currently the fiscal impact is \$214,000, and the CTED did apply last week for that amount to the Environmental Protection Agency, the Partnership with Puget Sound

Regional Council, Cascade Land Conservancy, and King, Pierce and Snohomish counties. This bill will create an innovative partnership to implement a regional TDR program in the four counties. The program is voluntary for counties and cities. If the funding is granted, it should begin in October of 2009 and go through 2011 based on the federal fiscal year. Quick passage of this bill would send the message that there is added value in TDR programs and would demonstrate the state's willingness to support TDR programs.

(Opposed) TDR programs are intellectually appealing by promising to move development rights to urban areas where urban density is desired; however, land owners are paid less-than market value for their development rights, and because these transactions are between two individuals, tax deductions that are normally available for the sale of easements or development rights through purchase of development rights or to land trusts, are not available to them; therefore, the rural landowners market is usually excluded. Because these programs create a new property right, they tend to raise the value of conservation lands, which is exactly the opposite effect of traditional rural preservation techniques. TDR systems typically results in preservation of properties that are marginal or poorly suited for long-term conservation.

**Persons Testifying** (Local Government & Housing): (In support) Heather Ballash, Department of Community, Trade, and Economic Development; Sean Gaffney, Pierce County; Gene Duvernoy, Cascade Land Conservancy; Dave Williams, Association of Washington Cities; Darren Greve, King County; Jeanette McKague, Washington Realtors; Van Collins, Associated General Contractors; and Bonnie Bunning, Department of Natural Resources.

(With concerns) Greg Hanon, National Association of Industrial and Office Properties.

(Opposed) Jeff Sax, Building Industry Association of Washington; and William M. Palmer, WM Palmer Consultants.

**Persons Testifying** (General Government Appropriations): (In supports) Heather Ballash, Department of Community, Trade and Economic Development.

(Opposed) Mary Heinrich, AG Prospects.

**Persons Signed In To Testify But Not Testifying** (Local Government & Housing): None.

**Persons Signed In To Testify But Not Testifying** (General Government Appropriations): None.