

# HOUSE BILL REPORT

## 2SHB 1636

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### As Passed Legislature

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

**Brief Description:** Creating a regional transfer of development rights program.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Simpson, B. Sullivan, Dunshee, Upthegrove, McCoy, Dickerson, P. Sullivan, Morrell, Sells and Rolfes).

**Brief History:**

**Committee Activity:**

Local Government: 1/30/07, 2/20/07 [DPS];  
Appropriations: 3/3/07, 3/5/07 [DP2S(w/o sub LG)].

**Floor Activity:**

Passed House: 3/9/07, 95-2.  
Senate Amended.  
Passed Senate: 4/9/07, 46-1.  
House Concurred.  
Passed House: 4/14/07, 91-2.  
Passed Legislature.

### Brief Summary of Second Substitute Bill

- Requires, subject to funding provisions, the Department of Community, Trade, and Economic Development (DCTED) to fund a process to develop a regional transfer of development rights (TDR) program in a four-county central Puget Sound region.
- Specifies related requirements for the DCTED and obligates the agency to establish and work with an advisory committee of stakeholders throughout the development process.
- Requires the DCTED to submit findings and recommendations pertaining to implementing a regional TDR program to the Governor and appropriate committees of the Legislature.

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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.*

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Simpson, Chair; Eddy, Vice Chair; Curtis, Ranking Minority Member; Schindler, Assistant Ranking Minority Member; B. Sullivan and Takko.

**Minority Report:** Do not pass. Signed by 1 member: Representative Ross.

**Staff:** Jessica Nowakowski (786-7291); Ethan Moreno (786-7386).

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## HOUSE COMMITTEE ON 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. Signed by 33 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Cody, Conway, Darneille, Dunn, Ericks, Fromhold, Grant, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, P. Sullivan and Walsh.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Kretz.

**Staff:** Charlie Gavigan (786-7340).

### **Background:**

#### *Transfer of Development Rights*

A transfer of development rights (TDR) occurs when a qualifying land owner severs potential development rights from a particular property and transfers them to a recipient for use on a different property. Transferred development rights are generally sent from areas with lower population densities to areas with higher population densities. Monetary values associated with transferred rights effectively constitute compensation to land owners 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. Though different in purpose, application, and oversight, 11 jurisdictions in Washington have active TDR programs. Of these programs, seven jurisdictions have had development transactions using transferred rights.

#### *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 (planning jurisdictions) 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, are planning jurisdictions.

The Department of Community, Trade, and Economic Development (DCTED) is charged with providing technical and financial assistance to jurisdictions implementing the GMA.

*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, 71 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.

**Summary of Second Substitute Bill:**

*TDR Program Establishment - General Requirements*

Subject to a specific appropriation, the DCTED must fund a process to develop a regional TDR program that comports with the GMA. 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. In filling its program development requirements, the DCTED must:

- encourage and embrace efforts in participating counties and cities to develop local TDR programs;
- work with the PSRC and its growth management policy board to develop a process that complies with specific requirements; and
- establish and work with a nine-member advisory committee comprised of stakeholders meeting specified criteria to develop a regional TDR marketplace that includes, but is not limited to, supporting strategies for financing infrastructure and conservation.

The TDR program developed by the DCTED must allow the agency to utilize the recommendations of interested local governments, nongovernmental entities, and the PSRC to develop recommendations and strategies for a regional TDR marketplace that represents the consensus of governmental and nongovernmental parties engaged in the process. However, if agreement between these parties cannot be reached, the DCTED must make recommendations to the Legislature that seek to balance the needs and interests of the governmental and nongovernmental parties.

The TDR program developed by the DCTED must also make recommendations in accordance with specific requirements. Recommendations made by the DCTED may be made through contracts with persons possessing relevant expertise and, must, in part:

- identify opportunities for cities, counties, and the state to achieve significant benefits through TDR programs, and the value in modifying criteria by which capital budget funds are allocated;

- address challenges to the creation of an efficient and transparent TDR market;
- compare the uses of a regional TDR program to other land conservation strategies intended to protect rural and resource lands and implement the GMA; and
- identify appropriate sending areas for the purpose of protecting the future growth and economic development needs of sending areas.

Requirements for the PSRC

The PSRC and its growth management policy board must develop policies to discourage, or prohibit if necessary, the transfer of development rights from a sending area if such a transfer would negatively impact the future economic viability of the sending area.

Reporting Requirements

Two separate reporting requirements and deadlines are specified. The DCTED must notify the Governor and the appropriate committees of the Legislature by December 1, 2007, of any recommended actions for advancing the purposes of the bill. Similarly, the DCTED must also notify the Governor and the appropriate committees of the Legislature of findings and legislative recommendations to implement a regional TDR program.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:** (Local Government)

(In support) Property values of resource lands in Washington are increasing significantly. Growth coming into the area needs to be accommodated and working landscapes, forests, and farm lands need to continue to provide jobs, timber flow, and crops. The Transfer of Development Rights (TDR) can accommodate these needs and allow property owners to be compensated and feel positive about the transaction. This bill fosters a regional market and allows land owners and developers to work together to maximize the conservation of land. Appropriate development and conservation can be expected because cities will be able to work together.

This bill builds off of previous work due to a budget proviso last year. There is more interest to use TDRs and this advances the discussion for cross-jurisdictional transfers so that TDRs are used more often.

The Growth Management Act (GMA) was supposed to slow sprawl, but this was only effective in rural areas. The GMA did not, however, increase densities enough in cities. Using TDRs to increase density in urban areas would extinguish the windfall. The old system of TDRs had no market and this bill is a great concept to do just that.

(With concerns) There is concern regarding the general concept of transfer of development rights. The development rights purchased in sending areas may never be used in receiving areas because of other communities not wanting the development. The receiving areas also

may not provide sufficient affordable housing. The Building Industry Association of Washington would not support a state mandated TDR program.

(Opposed) None.

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

(In support) With a small amount of state funding the Legislature has the chance to leverage the private marketplace for billions of dollars of conservation and to provide compensation and support to farmers, foresters and rural land owners. A robust transfer of development rights program is a valuable and creative tool to keep cities livable and to protect agricultural, forested, and rural lands. This legislation would provide a process to help identify what barriers there are to transfer of development rights so that there are willing buyers and sellers to support this land-use tool.

(Opposed) None.

**Persons Testifying:** (Local Government) (In support) Ken Miller, Family Forest Landowner; Gene Duvernoy, Cascade Land Conservancy; Eric Johnson; Washington Association of Counties; Bill Clarke, Trust for Public Land; Gayle Broadbent; Adams Cove Group; Jeanette McKague, Washington Realtors; Kaleen Cottingham, Futurewise; Bonnie Bunning, Washington Department of Natural Resources; Lisa Remlinger, Audubon Washington; and Dave Williams, Association of Washington Cities.

(With concerns) Andrew Cook, Building Industry Association of Washington.

**Persons Testifying:** (Appropriations) Michelle Connor, Cascade Land Conservancy; and Kaleen Cottingham, Futurewise.

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

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