

HOUSE BILL REPORT

2SHB 1636

As Amended by the Senate

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.

Brief Summary of Second Substitute Bill

- Requires the Department of Community, Trade and Economic Development (DCTED) to fund and manage the process of creating a regional Transfer of Development Rights (TDR) program within the Puget Sound Region.
- Requires the DCTED to work with an advisory committee of stakeholders, the Puget Sound Regional Council, and Kitsap, King, Pierce, and Snohomish Counties throughout the process.
- Requires the DCTED to develop and present recommendations and strategies for implementing a regional TDR program to the Governor and appropriate committees of the Legislature.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

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).

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:

A Transfer of Development Rights (TDR) program allows land owners to sever potential development rights on a particular piece of property in order to profit from future development that may have otherwise occurred on that land. The TDR programs may be used to preserve natural and historic spaces, encourage infill, and for other similar conservation purposes. A TDR is the exchange of zoning privileges from areas with low population density, such as farmlands, to areas of high population density, such as downtown areas.

Though different in purpose, application, and oversight, 11 jurisdictions have active TDR programs in Washington. Of these programs, seven jurisdictions have had development transactions using TDRs, typically from rural to urban areas.

Summary of Second Substitute Bill:

The Department of Community, Trade and Economic Development (DCTED) is required to undergo a two-year process of creating a regional TDR program. The DCTED must work in conjunction with an advisory committee of specified stakeholders, the Puget Sound Regional Council, and Kitsap, King, Pierce, and Snohomish Counties to create final recommendations and implementation strategies. The findings and recommendations reported by the DCTED must consider the needs and interests of the interested parties, regardless of whether consensus is reached within the allotted time frame.

The DCTED must submit findings and recommendations to the Governor and the appropriate committees of the Legislature according to the following schedule:

- By December 1, 2007, a progress report will be due on the creation of a regional TDR program, identification of other candidate TDR areas, and proposals to modify grant criteria for local governments.
- By December 1, 2008, a final progress report will be due on the creation of a regional TDR program along with strategies to implement the findings and recommendations identified in the final report.

Recommendations of the DCTED must further identify opportunities for cities to achieve significant benefits through the use of a TDR program. Modifying existing state grant programs to provide incentives for the use of a TDR program by local governments is required to be considered as an option. The reports must also:

- address challenges to the creation of an efficient and transparent TDR bank, brokerage, or direct buyer-seller exchange;
- address issues of certainty to buyers and sellers concerning the long-term environmental effects and perceived inequalities in land values and permitting processes of a TDR program;
- address the means for assuring that appropriate land values are recognized and updated;
- address the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values;
- identify opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a TDR market; and
- compare the uses of a regional TDR program to other exiting land conservation strategies to protect rural and resource lands and implement the Growth Management Act.

EFFECT OF SENATE AMENDMENT(S):

Requires the Puget Sound Regional Council and its growth management policy board, in developing a process to create a regional TDR program, to develop policies to discourage, or prohibit if necessary, transfers of development rights that would negatively impact the future economic viability of the sending area. Expands the stakeholder advisory committee established by the DCTED to nine members by adding two representatives of the agricultural industry. Adds a new requirement for the DCTED specifying that TDR recommendations developed by the agency must identify appropriate sending areas for the purpose of protecting future growth and economic development needs of sending areas.

Appropriation: None.

Fiscal Note: Requested on March 2, 2007.

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.