

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 1172

Chapter 474, Laws of 2009

61st Legislature
2009 Regular Session

REGIONAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

EFFECTIVE DATE: 07/26/09

Passed by the House April 22, 2009
Yeas 66 Nays 30

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2009
Yeas 25 Nays 19

BRAD OWEN

President of the Senate

Approved May 14, 2009, 8:12 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1172** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 18, 2009

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1172

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House General Government Appropriations (originally sponsored by Representatives Simpson, Nelson, and Rolfes; by request of Department of Community, Trade, and Economic Development)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to the implementation of a regional transfer of
2 development rights program; amending RCW 43.362.005 and 43.362.010; and
3 adding new sections to chapter 43.362 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.362.005 and 2007 c 482 s 1 are each amended to read
6 as follows:

7 (1) The legislature finds that current concern over the rapid and
8 increasing loss of rural, agricultural, and forested land has led to
9 the exploration of creative approaches to preserving these important
10 lands(~~(. The legislature finds also)~~), and that the creation of a
11 regional transfer of development rights marketplace will assist in
12 ~~((slowing the conversion of))~~ conserving these lands.

13 ~~((The legislature further finds that transferring))~~ (2) A transfer
14 of development rights is a market-based ~~((technique))~~ exchange
15 mechanism that encourages the voluntary transfer of ~~((growth))~~
16 development rights from ~~((places where a community would like to see~~
17 ~~less development, referred to as sending areas, to places where a~~
18 ~~community would like to see more development, referred to as receiving~~
19 ~~areas. Under this technique))~~ sending areas with lower population

1 densities to receiving areas with higher population densities. When
2 development rights are transferred through a transfer of development
3 rights exchange, permanent deed restrictions are placed on the sending
4 area properties to ensure that the land will be used only for approved
5 activities ((such as)), activities that may include farming, forest
6 management, conservation, or passive recreation. ((Also under this
7 technique)) Additionally, in a transfer of development rights exchange,
8 the costs of purchasing the recorded development restrictions are borne
9 by the developers who receive the transferred right in the form of a
10 building credit or bonus.

11 (3) The legislature further finds that a successful transfer of
12 development rights program must consider housing affordable to all
13 economic segments of the population, and economic development programs
14 and policies in designated receiving areas. Counties, cities, and
15 towns that decide to participate in the regional transfer of
16 development rights program for central Puget Sound are encouraged to
17 adopt comprehensive plan policies and development regulations to
18 implement the program that do not compete or conflict with
19 comprehensive plan policies and development regulations that require or
20 encourage affordable housing. Participating cities and towns are also
21 encouraged to use the development of receiving areas to maximize
22 opportunities for economic development that supports the creation or
23 retention of jobs.

24 (4) Participation in a regional transfer of development rights
25 program by counties, cities, and towns should be as simple as possible.

26 (5) Accordingly, the legislature has determined that it is good
27 public policy to build upon existing transfer of development rights
28 programs, pilot projects, and private initiatives that foster effective
29 use of transferred development rights through the creation of a market-
30 based program that focuses on the central Puget Sound region. A
31 regional transfer of development rights program in the central Puget
32 Sound should be voluntary, incentive-driven, and separate, but
33 compatible with existing local transfer of development rights programs.

34 **Sec. 2.** RCW 43.362.010 and 2007 c 482 s 2 are each amended to read
35 as follows:

36 The definitions in this section apply throughout this chapter
37 unless the context clearly requires otherwise.

1 (1) "Receiving area ratio" means the number or character of
2 development rights that are assigned to a development right for use in
3 a receiving area. Development rights in a receiving area may be used
4 at the discretion of the receiving area jurisdiction, including but not
5 limited to additional residential density, additional building height,
6 additional commercial floor area, or to meet regulatory requirements.

7 (2) "Sending area ratio" means the number of development rights
8 that a sending area landowner can sell per acre.

9 (3) "By-right permitting" means that project applications for
10 permits that use transferable development rights would be subject to
11 administrative review. Administrative review allows a local planning
12 official to approve a project without noticed public hearings.

13 (4) "Department" means the department of community, trade, and
14 economic development.

15 ~~((+2))~~ (5) "Nongovernmental entities" includes nonprofit or
16 membership organizations with experience or expertise in transferring
17 development rights.

18 ~~((+3))~~ (6) "Receiving areas" are lands within and designated by a
19 city or town in which transferable development rights from the regional
20 program established by this chapter may be used.

21 (7) "Regional transfer of development rights program" or "regional
22 program" means the regional transfer of development rights program
23 established by section 3 of this act in central Puget Sound, including
24 King, Pierce, Kitsap, and Snohomish counties and the cities and towns
25 within these counties.

26 (8) "Sending area" includes those lands that meet conservation
27 criteria as described in section 4 of this act.

28 (9) "Transferable development right" means a right to develop one
29 or more residential units in a sending area that can be sold and
30 transferred for use consistent with a receiving ratio adopted for
31 development in a designated receiving area consistent with the regional
32 program.

33 (10) "Transfer of development rights" includes methods for
34 protecting land from development by voluntarily removing the
35 development rights from a sending area and transferring them to a
36 receiving area for the purpose of increasing development density or
37 intensity in the receiving area.

1 NEW SECTION. **Sec. 3.** (1) Subject to the availability of funds
2 appropriated for this specific purpose or another source of funding
3 made available for this specific purpose, the department shall
4 establish a regional transfer of development rights program in central
5 Puget Sound, including King, Kitsap, Snohomish, and Pierce counties and
6 the cities and towns within these counties. The program must be guided
7 by the Puget Sound regional council's multicounty planning policies
8 adopted under RCW 36.70A.210(7).

9 (2) The purpose of the program is to foster voluntary county, city,
10 and town participation in the program so that interjurisdictional
11 transfers occur between the counties, cities, and towns, including
12 transfers from counties to cities and towns in other counties. Private
13 transactions between buyers and sellers of transferable development
14 rights are allowed and encouraged under this program. In fulfilling
15 the requirements of this chapter, the department shall work with the
16 Puget Sound regional council to implement a regional program.

17 (3) The department shall encourage participation by the cities,
18 towns, and counties in the regional program. The regional program
19 shall not be implemented in a manner that negatively impacts existing
20 local programs. The department shall encourage and work to enhance the
21 efforts in any of these counties, cities, or towns to develop local
22 transfer of development rights programs or enhance existing programs.

23 (4) Subject to the availability of funds appropriated for this
24 specific purpose or another source of funding made available for this
25 specific purpose, the department shall do the following to implement a
26 regional transfer of development rights program in central Puget Sound:

27 (a) Serve as the central coordinator for state government in the
28 implementation of sections 3 through 7 of this act.

29 (b) Offer technical assistance to cities, towns, and counties
30 planning for participation in the regional transfer of development
31 rights program. The department's technical assistance shall:

32 (i) Include written guidance for local development and
33 implementation of the regional transfer of development rights program;

34 (ii) Include guidance for and encourage permitting or environmental
35 review incentives for developers to participate. Activities may
36 include, but are not limited to, provision for by-right permitting,
37 substantial environmental review of a subarea plan for the receiving

1 area that includes the use of transferable development rights, adoption
2 of a categorical exemption for infill under RCW 43.21C.229 for a
3 receiving area, or adoption of a planned action under RCW 43.21C.240;

4 (iii) Provide guidance to counties, cities, and towns to negotiate
5 receiving area ratios and foster private transactions;

6 (iv) Provide guidance and encourage planning for receiving areas
7 that do not compete or conflict with comprehensive plan policies and
8 development regulations that require or encourage affordable housing;
9 and

10 (v) Provide guidance and encourage planning for receiving areas
11 that maximizes opportunities for economic development through the
12 creation or retention of jobs.

13 (c) Work with counties, cities, and towns to inform elected
14 officials, planning commissions, and the public regarding the regional
15 transfer of development rights program. The information provided by
16 the department shall discuss the importance of preserving farmland and
17 farming, and forest land and forestry, to cities and towns and the
18 local economy.

19 (d) Based on information provided by the counties, cities, and
20 towns, post on a web site information regarding transfer of development
21 rights transactions and a list of interested buyers and sellers of
22 transferable development rights.

23 (e) Coordinate with and provide resources to state and local
24 agencies and stakeholders to provide public outreach.

25 NEW SECTION. **Sec. 4.** (1) Counties shall use the following
26 criteria to guide the designation of sending areas for participation in
27 the regional transfer of development rights program:

28 (a) Land designated as agricultural or forest land of long-term
29 commercial significance;

30 (b) Land designated rural that is being farmed or managed for
31 forestry;

32 (c) Land whose conservation meets other state and regionally
33 adopted priorities; and

34 (d) Land that is in current use as a manufactured/mobile home park
35 as defined in chapter 59.20 RCW.

36 Nothing in these criteria limits a county's authority to designate

1 additional lands as a sending area for conservation under a local
2 county transfer of development rights program.

3 (2) Upon purchase of a transferable development right from land
4 designated rural that is being farmed or managed for forestry, a county
5 must include the land from which the right was purchased in any
6 programs it administers for conservation of agricultural land or forest
7 land.

8 (3) The designation of receiving areas is limited to incorporated
9 cities or towns. Prior to designating a receiving area, a city or town
10 should have adequate infrastructure planned and funding identified for
11 development in the receiving area at densities or intensities
12 consistent with what can be achieved under the local transfer of
13 development rights program. Nothing in this subsection limits a
14 city's, town's, or county's authority to designate additional lands for
15 a receiving area under a local intrajurisdictional transfer of
16 development rights program that is not part of the regional program.

17 (4) Cities and towns participating in the regional transfer of
18 development rights program shall have discretion to determine which
19 sending areas they receive development rights from to be used in their
20 designated receiving areas.

21 (5) Designation of sending and receiving areas should include a
22 process for public outreach consistent with the public participation
23 requirements in chapter 36.70A RCW.

24 NEW SECTION. **Sec. 5.** (1) To facilitate participation, the
25 department shall develop and adopt by rule terms and conditions of an
26 interlocal agreement for transfers of development rights between
27 counties, cities, and towns. Counties, cities, and towns participating
28 in the regional program have the option of adopting the rule by
29 reference to transfer development rights across jurisdictional
30 boundaries as an alternative to entering into an interlocal agreement
31 under chapter 39.34 RCW.

32 (2) This section and the rules adopted under this section shall be
33 deemed to provide an alternative method for the implementation of a
34 regional transfer of development rights program, and shall not be
35 construed as imposing any additional condition upon the exercise of any
36 other powers vested in municipalities.

1 (3) Nothing in this section prohibits a county, city, or town from
2 entering into an interlocal agreement under chapter 39.34 RCW to
3 transfer development rights under the regional program.

4 NEW SECTION. **Sec. 6.** (1) Counties, cities, and towns that choose
5 to participate in the regional transfer of development rights program
6 must:

7 (a) Enter into an interlocal agreement or adopt a resolution
8 adopting by reference the provisions in the department rule authorized
9 in section 5 of this act; and

10 (b) Adopt transfer of development rights policies or implement
11 development regulations that:

12 (i) Comply with chapter 36.70A RCW;

13 (ii) Designate sending or receiving areas consistent with sections
14 3 through 7 of this act; and

15 (iii) Adopt a sending or receiving area ratio in cooperation with
16 the sending or receiving jurisdiction.

17 (2) Cities and towns that choose to participate in the regional
18 transfer of development rights program are encouraged to provide
19 permitting or environmental review incentives for developers to
20 participate. Such incentives may include, but are not limited to,
21 provision for by-right permitting, substantial environmental review of
22 a subarea plan for the receiving area that includes the use of
23 transferable development rights, adoption of a categorical exemption
24 for infill under RCW 43.21C.229 for a receiving area, or adoption of a
25 planned action under RCW 43.21C.240.

26 NEW SECTION. **Sec. 7.** The department will develop quantitative and
27 qualitative performance measures for monitoring the regional transfer
28 of development rights program. The performance measures may address
29 conservation of land and creation of compact communities, as well as
30 other measures identified by the department. The department may
31 require cities, towns, and counties to report on these performance
32 measures biannually. The department shall compile any performance
33 measure information that has been reported by the counties, cities, and
34 towns and post it on a web site.

1 NEW SECTION. **Sec. 8.** Sections 3 through 7 of this act are each
2 added to chapter 43.362 RCW.

Passed by the House April 22, 2009.

Passed by the Senate April 17, 2009.

Approved by the Governor May 14, 2009.

Filed in Office of Secretary of State May 18, 2009.