

SENATE BILL REPORT

2SHB 1172

As Reported by Senate Committee On:
Government Operations & Elections, March 26, 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: Passed House: 3/11/09, 62-35.

Committee Activity: Government Operations & Elections: 3/26/09 [DP, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott, Pridemore and Swecker.

Minority Report: Do not pass.

Signed by Senator Benton.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach, Ranking Minority Member.

Staff: Sharon Swanson (786-7447)

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.

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.

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 Bill: Establishment and Administration of Regional TDR Program. Subject to the availability of specific funding, the DCTED must establish a regional TDR 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 inter-jurisdictional 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 TDRs 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: CON: There needs to be more flexibility in the current system. The TDR programs that are in existence haven't had time to work yet and now this bill seeks to add a much larger program with statewide implications. It makes more sense to let the smaller, local programs develop rather than creating such a far reaching program such as this.

Persons Testifying: CON: Julie Nichols, Building Industry Association of Washington.