

# SENATE BILL REPORT

## SB 5165

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As of February 4, 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:** Senators Jarrett, Swecker, Marr, Shin, Kilmer, Kline, Sheldon and Haugen; by request of Department of Community, Trade and Economic Development.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/03/09.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Staff:** Sharon Swanson (786-7447)

**Background:** Transfer of Development Rights. A transfer of development rights (TDR) occurs when a qualifying landowner, 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 landowner 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 (CTED) to fund a process to develop a regional TDR program that comports with the Growth Management Act. In addition to specifying numerous requirements for CTED, 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) is the comprehensive land-use planning framework for county and city governments in Washington. Enacted in 1990

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and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA 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 GMA.

CTED 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 countywide framework from which county and city comprehensive land-use plans are developed and adopted. County-wide planning policies must include specified planning provisions.

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 services 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.

Inter-local Agreements. Inter-local 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:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Subject to the availability of funds, CTED 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 program is established as the first phase of a program that can be replicated in other regions or expanded statewide with sufficient funding. The stated purpose of the program is to foster voluntary county, city, and town participation in the program so that inter-jurisdictional transfers of rights will occur 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 CTED must work with the PSRC to implement the program's provisions.

Administrative requirements for the program are specified for CTED.

Administrative requirements for CTED to administer the program are specified, 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.

CTED must develop and adopt by rule terms and conditions of an inter-local agreement for transfers of development rights between counties, cities, and towns.

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.

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

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:** PRO: This legislation is a conservatively drafted first step to establish a program. The bill is necessary because local governments do need additional tools to slow the conversion of rural and natural resource lands. An advisory committee has worked for the last year and a half to come up with an advisory program. Counties and cities do need help with these programs and the state can provide that support. The bill is very clear that the state will not interfere with existing programs. The bill the committee heard today is a substitute that addresses concerns raised in the House of Representatives. This is a very market-based approach to a policy concern. There is no state money involved. This bill is very important to help keep Washington green. The technical

assistance that will come from the state will be essential to the development of local programs. The regional program has a great deal of options available that will appeal to buyers and sellers.

OTHER: Existing law already allows what this bill seeks to achieve. It is premature for the state to further insert itself into this process. Existing programs are still in their infancy. This bill adds more bureaucracy.

**Persons Testifying:** PRO: Senator Fred Jarrett, prime sponsor; Reid Shockey, Cascade Land Conservancy; Heather Ballash, Community, Trade, and Economic Development; Bonnie Bunning, Department of Natural Resources; Jeanette McKague, Washington Realtors; Brynn Brady, Pierce County.

OTHER: Julie Nichols, Building Industry Association of Washington.