
SUBSTITUTE SENATE BILL 5165

State of Washington

61st Legislature

2009 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Jarrett, Swecker, Marr, Shin, Kilmer, Kline, Sheldon, and Haugen; by request of Department of Community, Trade, and Economic Development)

READ FIRST TIME 02/10/09.

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 The legislature further finds that additional counties may, in the
35 future, benefit from participation in a regional transfer of
36 development rights program. Therefore, the regional transfer of
37 development rights program should be established for the central Puget

1 Sound as the first phase of a program that can be expanded to other
2 counties, replicated in other regions, or, at a future date, expanded
3 statewide.

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

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

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

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

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

22 ~~((+2))~~ (5) "Nongovernmental entities" includes nonprofit or
23 membership organizations with experience or expertise in transferring
24 development rights.

25 ~~((+3))~~ (6) "Receiving areas" are lands within and designated by a
26 city or town in which transferable development rights from the regional
27 program established by this chapter may be used.

28 (7) "Regional transfer of development rights program" or "regional
29 program" means the regional transfer of development rights program
30 established by section 3 of this act in central Puget Sound, including
31 King, Pierce, Kitsap, and Snohomish counties and the cities and towns
32 within these counties.

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

35 (9) "Transferable development right" means a right to develop one
36 or more residential units in a sending area that can be sold and

1 transferred for use consistent with a receiving ratio adopted for
2 development in a designated receiving area consistent with the regional
3 program.

4 (10) "Transfer of development rights" includes methods for
5 protecting land from development by voluntarily removing the
6 development rights from a sending area and transferring them to a
7 receiving area for the purpose of increasing development density or
8 intensity in the receiving area.

9 NEW SECTION. **Sec. 3.** (1) Subject to the availability of funds
10 appropriated for this specific purpose or another source of funding
11 made available for this specific purpose, the department shall
12 establish a regional transfer of development rights program in central
13 Puget Sound, including King, Kitsap, Snohomish, and Pierce counties and
14 the cities and towns within these counties. The program must be guided
15 by the Puget Sound regional council's multicounty planning policies
16 adopted under RCW 36.70A.210(7). The regional transfer of development
17 rights program in the central Puget Sound is established as the first
18 phase of a program that can be expanded to other counties, replicated
19 in other regions, or expanded statewide in the future with sufficient
20 funding.

21 (2) The purpose of the program is to foster voluntary county, city,
22 and town participation in the program so that interjurisdictional
23 transfers occur between the counties, cities, and towns, including
24 transfers from counties to cities and towns in other counties. Private
25 transactions between buyers and sellers of transferable development
26 rights are allowed and encouraged under this program. In fulfilling
27 the requirements of this chapter, the department shall work with the
28 Puget Sound regional council to implement a regional program.

29 (3) The department shall encourage participation by the cities,
30 towns, and counties in the regional program. The regional program
31 shall not be implemented in a manner that negatively impacts existing
32 local programs. The department shall encourage and work to enhance the
33 efforts in any of these counties, cities, or towns to develop local
34 transfer of development rights programs or enhance existing programs.

35 (4) Subject to the availability of funds appropriated for this
36 specific purpose or another source of funding made available for this

1 specific purpose, the department shall do the following to implement a
2 regional transfer of development rights program in central Puget Sound:

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

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

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

10 (ii) Include guidance for and encourage permitting or environmental
11 review incentives for developers to participate. Activities may
12 include, but are not limited to, provision for by-right permitting,
13 substantial environmental review of a subarea plan for the receiving
14 area that includes the use of transferable development rights, adoption
15 of a categorical exemption for infill under RCW 43.21C.229 for a
16 receiving area, or adoption of a planned action under RCW 43.21C.240;

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

19 (iv) Provide guidance and encourage planning for receiving areas
20 that do not compete or conflict with comprehensive plan policies and
21 development regulations that require or encourage affordable housing;
22 and

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

26 (c) Work with counties, cities, and towns to inform elected
27 officials, planning commissions, and the public regarding the regional
28 transfer of development rights program. The information provided by
29 the department shall discuss the importance of preserving farmland and
30 farming, and forest land and forestry, to cities and towns and the
31 local economy.

32 (d) Based on information provided by the counties, cities, and
33 towns, post on a web site information regarding transfer of development
34 rights transactions and a list of interested buyers and sellers of
35 transferable development rights.

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

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

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

6 (b) Land designated rural that is being farmed or managed for
7 forestry; and

8 (c) Land whose conservation meets other state and regionally
9 adopted priorities.

10 Nothing in these criteria limits a county's authority to designate
11 additional lands as a sending area for conservation under a local
12 county transfer of development rights program.

13 (2) Upon purchase of a transferable development right from land
14 designated rural that is being farmed or managed for forestry, a county
15 must include the land from which the right was purchased in any
16 programs it administers for conservation of agricultural land or forest
17 land.

18 (3) The designation of receiving areas is limited to incorporated
19 cities or towns. Prior to designating a receiving area, a city or town
20 should have adequate infrastructure planned and funding identified for
21 development in the receiving area at densities or intensities
22 consistent with what can be achieved under the local transfer of
23 development rights program. Nothing in this subsection limits a
24 city's, town's, or county's authority to designate additional lands for
25 a receiving area under a local intrajurisdictional transfer of
26 development rights program that is not part of the regional program.

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

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

34 NEW SECTION. **Sec. 5.** (1) To facilitate participation, the
35 department shall develop and adopt by rule terms and conditions of an
36 interlocal agreement for transfers of development rights between
37 counties, cities, and towns. Counties, cities, and towns participating

1 in the regional program have the option of adopting the rule by
2 reference to transfer development rights across jurisdictional
3 boundaries as an alternative to entering into an interlocal agreement
4 under chapter 39.34 RCW.

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

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

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

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

19 (b) Adopt transfer of development rights policies or implement
20 development regulations that:

21 (i) Comply with chapter 36.70A RCW;

22 (ii) Designate sending or receiving areas consistent with sections
23 3 through 7 of this act; and

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

26 (2) Cities and towns that choose to participate in the regional
27 transfer of development rights program are encouraged to provide
28 permitting or environmental review incentives for developers to
29 participate. Such incentives may include, but are not limited to,
30 provision for by-right permitting, substantial environmental review of
31 a subarea plan for the receiving area that includes the use of
32 transferable development rights, adoption of a categorical exemption
33 for infill under RCW 43.21C.229 for a receiving area, or adoption of a
34 planned action under RCW 43.21C.240.

35 NEW SECTION. **Sec. 7.** The department will develop quantitative and
36 qualitative performance measures for monitoring the regional transfer

1 of development rights program. The performance measures may address
2 conservation of land and creation of compact communities, as well as
3 other measures identified by the department. The department may
4 require cities, towns, and counties to report on these performance
5 measures biannually. The department shall compile any performance
6 measure information that has been reported by the counties, cities, and
7 towns and post it on a web site.

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

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