

House Bill 2081

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Agriculture and Natural Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes governmental units to implement systems for buying and selling transferable development credits to encourage landowners to voluntarily protect resource lands.

A BILL FOR AN ACT

1
2 Relating to transferable development credits; creating new provisions; amending section 11, chapter
3 424, Oregon Laws 2007; and repealing ORS 94.531.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) The Legislative Assembly finds that the purpose of sections 1 to 4 of this**
6 **2009 Act is to establish the framework, guidelines and incentives for establishment of**
7 **transferable development credit systems operable at the state, regional or local level.**

8 **(2) The Legislative Assembly declares that the objectives of sections 1 to 4 of this 2009**
9 **Act are to:**

10 **(a) Permanently protect farmland, forestland and sensitive natural areas through a vol-**
11 **untary process.**

12 **(b) Create incentives for conservation of natural resources by private landowners in or-**
13 **der to:**

14 **(A) Protect a land base for working farms, ranches, forests and woodlots;**

15 **(B) Protect wetlands, riparian areas, wildlife corridors and other important fish and**
16 **wildlife habitat;**

17 **(C) Reduce emission of greenhouse gases; and**

18 **(D) Improve the livability of Oregon cities.**

19 **(c) Benefit the owners of working farms, ranches and woodlots who voluntarily provide**
20 **stewardship of natural resources on their lands.**

21 **SECTION 2. As used in sections 1 to 4 of this 2009 Act:**

22 **(1) "Governmental unit" means a city, county, metropolitan service district or state**
23 **agency as defined in ORS 171.133.**

24 **(2) "Lot" has the meaning given that term in ORS 92.010.**

25 **(3) "Parcel" has the meaning given that term in ORS 92.010.**

26 **(4) "Receiving area" means a designated area of land to which a holder of development**
27 **credits generated from a sending area may transfer the development credits and in which**
28 **additional uses or development, not otherwise allowed, are allowed by reason of the transfer.**

29 **(5) "Resource land" means lands planned and zoned for farmland, forestland or mixed**
30 **farm and forestland, or lands that contain important habitat or other natural resource value.**

31 **(6) "Sending area" means a designated area of resource land from which development**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 credits generated from foregone development are transferable for use or development, not
2 otherwise allowed, to a receiving area.

3 (7) "Tract" has the meaning given that term in ORS 215.010.

4 (8) "Transferable development credit" means a severable development interest in real
5 property that can be transferred from a lot, parcel or tract in a sending area to a lot, parcel
6 or tract in a receiving area.

7 (9) "Transferable development credit system" means a land use planning tool that allows
8 the record owner of resource land to voluntarily sever and sell development interests from
9 a lot, parcel or tract in a sending area for purchase and use by a potential developer to de-
10 velop a lot, parcel or tract in a receiving area at a higher intensity than otherwise allowed.

11 (10) "Urban growth boundary" has the meaning given that term in ORS 195.060.

12 **SECTION 3.** (1) A transferable development credit system established under sections 1
13 to 4 of this 2009 Act shall offer:

14 (a) Incentives for an owner of resource land outside an urban growth boundary to vol-
15 untarily limit development on the resource land and accommodate foregone development on
16 lands within urban areas.

17 (b) Benefits to landowners by providing monetary compensation for limiting development.

18 (c) Benefits to developers by allowing increased development and development incentives.

19 (2) The governing body of a governmental unit, alone or in combination with the gov-
20 erning bodies of other governmental units by intergovernmental agreement under ORS
21 190.003 to 190.130, may establish a transferable development credit system.

22 (3) The governing body of a governmental unit shall design the system so that it allows:

23 (a) The record owner of a lot, parcel or tract in a sending area to voluntarily reduce the
24 development interests of the lot, parcel or tract by severing and selling development inter-
25 ests for use in a receiving area.

26 (b) A potential developer of a lot, parcel or tract in a receiving area to purchase
27 transferable development credits that allow a higher intensity use or development of the lot,
28 parcel or tract than otherwise allowed in the receiving area, in accordance with the system
29 formally adopted by the governing body.

30 (c) The governmental unit to determine the extent of use or development allowed based
31 on the transferable development credit generated from the severed and sold development
32 interests. The use and development allowed pursuant to a transferable development credit:

33 (A) May include development bonuses or incentives not otherwise allowed based on the
34 planning and zoning of the receiving area, including but not limited to exceptions to or
35 waivers of standard density, height or bulk limitations; and

36 (B) Must comply with the statewide land use planning goals adopted under ORS 197.225
37 and be compatible with the acknowledged comprehensive plan.

38 (d) The holder of a recorded mortgage encumbering a lot, parcel or tract, from which the
39 record owner proposes to sever development interests for transfer, to be given prior written
40 notice of the proposed transaction and to approve or disapprove the transaction.

41 (4) The governing body of a governmental unit may:

42 (a) Designate sending areas that are chosen strategically to achieve the requirements set
43 forth in this section and the objectives set forth in section 1 of this 2009 Act.

44 (b) Designate receiving areas that are chosen strategically to achieve the requirements
45 set forth in this section and the objectives set forth in section 1 of this 2009 Act.

1 (c) Provide development bonuses and incentives intended to stimulate the demand for the
2 purchase and sale of transferable development credits.

3 (d) Provide for the transfer of severable development interests between the jurisdictions
4 of governmental units for the purpose of allowing development pursuant to a transferable
5 development credit to occur in a jurisdiction that is different from the jurisdiction in which
6 the severable development interest arises.

7 (5) A sending area must be composed of land outside an urban growth boundary that is
8 zoned for farm use, forest use or mixed farm and forest use, and priority in choosing a
9 sending area must be given:

10 (a) If the land is farmland, to land with soil classes _____ to _____ as measured by
11 the Agricultural Capability Classification System in use by the United States Department of
12 Agriculture Natural Resources Conservation Service on the effective date of this 2009 Act.

13 (b) If the land is forestland, to land that has higher capability as measured by cubic foot
14 site and that contains sensitive natural habitat.

15 (c) To land subject to a compensable claim under ORS 195.300 to 195.336.

16 (6) A receiving area must be composed of land that is appropriate and suitable for de-
17 velopment and that is:

18 (a) Within an urban growth boundary;

19 (b) Adjacent to an urban growth boundary and likely to be brought within the urban
20 growth boundary at the next periodic review under ORS 197.628 to 197.650 or other legislative
21 review of the comprehensive plan or regional framework plan that concerns the urban
22 growth boundary; or

23 (c) Within an unincorporated community, as defined by rule of the Land Conservation
24 and Development Commission.

25 (7) The governing body of a governmental unit that operates a transferable development
26 credit system may, directly or indirectly through a contract with a nonprofit corporation,
27 establish a transferable development credit bank for the purposes of:

28 (a) Buying severable development interests from lots, parcels or tracts of resource land
29 in a sending area;

30 (b) Selling transferable development credits to potential developers of lots, parcels or
31 tracts in a receiving area;

32 (c) Entering into agreements or contracts and performing acts necessary, convenient or
33 desirable to achieve the requirements set forth in this section and the objectives set forth
34 in section 1 of this 2009 Act;

35 (d) Managing funds available for the purchase and sale of transferable development
36 credits;

37 (e) Authorizing and monitoring expenditures;

38 (f) Maintaining a registry of:

39 (A) The lots, parcels and tracts from which development interests have been severed;

40 (B) The lots, parcels and tracts to which transferable development credits have been
41 transferred; and

42 (C) The allowable level of use or development for each lot, parcel or tract following a
43 transaction;

44 (g) Maintaining records of the transactions, including dates, purchase amounts and lo-
45 cations of severed development interests and development pursuant to transferred develop-

1 **ment credits, that are sufficient to manage and evaluate the effectiveness of the system;**

2 **(h) Obtaining appraisals of development interests and transferable development credits**
 3 **as necessary and pricing transferable development credits for sale;**

4 **(i) Serving as a clearinghouse and information source for buyers and sellers of**
 5 **transferable development credits and marketing transferable development credits and bank**
 6 **services;**

7 **(j) Accepting donations of transferable development credits;**

8 **(k) Soliciting and receiving grant funds from any source for the implementation of**
 9 **sections 1 to 4 of this 2009 Act; and**

10 **(L) Providing periodic summary reports of activities of the bank.**

11 **SECTION 4. (1) State agencies as defined in ORS 171.133, including but not limited to the**
 12 **Department of Land Conservation and Development, the State Department of Agriculture,**
 13 **the State Forestry Department, the Department of State Lands and the State Department**
 14 **of Fish and Wildlife:**

15 **(a) Shall provide technical assistance:**

16 **(A) In the identification of the location and size of appropriate sending areas and re-**
 17 **ceiving areas to governmental units designing transferable development credit systems.**

18 **(B) For the banking operations required to implement a transferable development credit**
 19 **system.**

20 **(C) In crafting development bonuses and incentives, including the appropriate ratios of**
 21 **transferable development credit to severed development interest to generate market interest**
 22 **in transferable development credits.**

23 **(b) May provide, from moneys appropriated for the purpose, financial assistance to match**
 24 **other funds available to a governmental unit that is creating a transferable development**
 25 **credit system.**

26 **(2) The Department of Land Conservation and Development shall adopt administrative**
 27 **rules consistent with the provisions of sections 1 to 4 of this 2009 Act for transferable de-**
 28 **velopment credit systems.**

29 **SECTION 5. Section 11, chapter 424, Oregon Laws 2007, is amended to read:**

30 **Sec. 11. (1) A subdivision or partition of property, or the establishment of a dwelling on prop-**
 31 **erty, authorized under sections 5 to 11, **chapter 424, Oregon Laws 2007**, [of this 2007 Act] must**
 32 **comply with all applicable standards governing the siting or development of the dwelling, lot or**
 33 **parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or**
 34 **parcel. However, the standards must not be applied in a manner that has the effect of prohibiting**
 35 **the establishment of the dwelling, lot or parcel authorized under sections 5 to 11, **chapter 424,****
 36 ****Oregon Laws 2007** [of this 2007 Act] unless the standards are reasonably necessary to avoid or**
 37 **abate a nuisance, to protect public health or safety or to carry out federal law.**

38 **(2) Before beginning construction of any dwelling authorized under section 6 or 7, **chapter 424,****
 39 ****Oregon Laws 2007** [of this 2007 Act], the owner must comply with the requirements of ORS 215.293**
 40 **if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.**

41 **(3)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling au-**
 42 **thorized under sections 5 to 11, **chapter 424, Oregon Laws 2007** [of this 2007 Act]. However, a new**
 43 **lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone**
 44 **may not exceed:**

45 **(A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or**

1 on land within a ground water restricted area; or

2 (B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland
3 or on land within a ground water restricted area.

4 (b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest
5 zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant
6 lot or parcel for farm or forest use.

7 (4) If an owner is authorized to subdivide or partition more than one property, or to establish
8 dwellings on more than one property, under sections 5 to 11, **chapter 424, Oregon Laws 2007**, [*of*
9 *this 2007 Act*] and the properties are in an exclusive farm use zone, a forest zone or a mixed farm
10 and forest zone, the owner may cluster some or all of the dwellings, lots or parcels on one of the
11 properties if that property is less suitable than the other properties for farm or forest use. If one
12 of the properties is zoned for residential use, the owner may cluster some or all of the dwellings, lots
13 or parcels that would have been located in an exclusive farm use zone, a forest zone or a mixed farm
14 and forest zone on the property zoned for residential use.

15 (5) An owner is not eligible for more than 20 home site approvals under sections 5 to 11,
16 **chapter 424, Oregon Laws 2007** [*of this 2007 Act*], regardless of how many properties that person
17 owns or how many claims that person has filed.

18 (6) An authorization to partition or subdivide the property, or to establish dwellings on the
19 property, granted under section 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [*of this 2007 Act*] runs
20 with the property and may be either transferred with the property or encumbered by another person
21 without affecting the authorization. There is no time limit on when an authorization granted under
22 section 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [*of this 2007 Act*] must be carried out, except
23 that once the owner who obtained the authorization conveys the property to a person other than
24 the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subse-
25 quent owner of the property must create the lots or parcels and establish the dwellings authorized
26 by a waiver under section 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [*of this 2007 Act*] within 10
27 years of the conveyance. In addition:

28 (a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9, **chapter**
29 **424, Oregon Laws 2007**, [*of this 2007 Act*] remains a discrete lot or parcel, unless the lot or parcel
30 lines are vacated or the lot or parcel is further divided, as provided by law; and

31 (b) A dwelling or other residential use of the property based on an authorization under section
32 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [*of this 2007 Act*] is a permitted use and may be estab-
33 lished or continued by the claimant or a subsequent owner, except that once the claimant conveys
34 the property to a person other than the claimant's spouse or the trustee of a revocable trust in
35 which the claimant is the settlor, the subsequent owner must establish the dwellings or other resi-
36 dential use authorized under section 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [*of this 2007 Act*]
37 within 10 years of the conveyance.

38 (7) When relief has been claimed under sections 5 to 11, **chapter 424, Oregon Laws 2007** [*of this*
39 *2007 Act*]:

40 (a) Additional relief is not due; and

41 (b) An additional claim may not be filed, compensation is not due and a waiver may not be is-
42 sued with regard to the property under sections 5 to 11, **chapter 424, Oregon Laws 2007, and ORS**
43 **195.305 to 195.336** [*22 of this 2007 Act*] or **under ORS 197.352** as in effect immediately before [*the*
44 *effective date of this 2007 Act*] **December 6, 2007**, except with respect to a land use regulation en-
45 acted after January 1, 2007.

1 (8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to
2 carry out a use of land authorized under sections 5 to 11, **chapter 424, Oregon Laws 2007**, [*of this*
3 *2007 Act*] from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and
4 counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the
5 purchase and sale of severable development interests as described in [*ORS 94.531*] **sections 1 to 4**
6 **of this 2009 Act**. [*A system established under this subsection may provide for the transfer of severable*
7 *development interests between the jurisdictions of the public entities that are parties to the agreement*
8 *for the purpose of allowing development to occur in a location that is different from the location in*
9 *which the development interest arises.*]

10 (9) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or
11 **9, chapter 424, Oregon Laws 2007**, [*of this 2007 Act*] and an authorization to use the property
12 provided by a waiver under section 6, 7 or 9, **chapter 424, Oregon Laws 2007** [*of this 2007 Act*]:

13 (a) Is not affected by the death of the claimant if the death occurs on or after [*the effective date*
14 *of this 2007 Act*] **December 6, 2007**; and

15 (b) Passes to the person that acquires the property by devise or by operation of law.

16 **SECTION 6. ORS 94.531 is repealed.**

17