

A-Engrossed
House Bill 2228

Ordered by the House May 7
Including House Amendments dated May 7

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Land Conservation and Development)

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.

Authorizes establishment of one or two small-scale recreation communities on forestlands. Conditions establishment of communities on transfer of development opportunity from owner of Metolius resort site to owner of proposed site of small-scale recreation community. Specifies standards for establishment of communities.

Establishes pilot program to conserve resource lands by facilitating transfer of residential development rights from farm or forest property to other property.

Provides that if owner of Skyline Forest and South Country Tract transfers forest to land trust and tract to land trust or land management agency under certain circumstances, owner may retain and use 3,000 acres of land for specified uses.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to transfer of development rights from resource lands; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds that:**

5 **(1) Providing for rural unemployment reductions and living wage job opportunities brings**
6 **stability to economically distressed rural communities.**

7 **(2) Sections 1 to 9 of this 2009 Act are intended to reduce unemployment and create living**
8 **wage jobs in economically distressed counties.**

9 **(3) Working forests make vital contributions to Oregon by providing jobs, timber, timber**
10 **products, tax base and other social and economic benefits, by helping to maintain soil, air**
11 **and water resources, by reducing levels of carbon dioxide in the atmosphere and by providing**
12 **habitat for wildlife and aquatic life.**

13 **(4) Population growth, escalating land values, increasing risks due to wildfire and**
14 **invasive species, and changes in land ownership and management objectives, with a resulting**
15 **increase in conflict caused by dispersed residential development, require that new methods**
16 **be developed to facilitate continued management of private lands zoned for forest use for**
17 **timber harvest.**

18 **(5) It is the public policy of the State of Oregon to:**

19 **(a) Explore alternative methods to encourage the continued management of private**
20 **forestlands for timber production.**

21 **(b) Protect water quality, wildlife habitat and other important natural resources by lim-**
22 **iting location of dispersed residential development on forestlands.**

23 **(c) Provide for an orderly and efficient transition from rural to urban land uses by es-**

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 **tablishing locations at which residential development rights or development opportunities**
2 **transferred from forestlands may be used.**

3 **(d) Provide for a limited number of demonstration projects for small-scale recreation**
4 **communities that:**

5 **(A) Create incentives for economic development in areas that are in need of long-term**
6 **job creation;**

7 **(B) Enhance the state’s leadership in sustainability and natural resource stewardship;**

8 **(C) Encourage appropriate public access to and stewardship of recreational resources on**
9 **public lands consistent with the carrying capacity of the lands and resources; and**

10 **(D) Provide for additional sources of long-term funding for stewardship of natural re-**
11 **sources.**

12 **SECTION 1a. Sections 1 to 9 of this 2009 Act may be cited as the Rural Unemployment**
13 **Reductions and Living-Wage Job Opportunities Bring Stability Act or the RURAL JOBS Act.**

14 **SECTION 2. As used in sections 2 to 5 of this 2009 Act:**

15 **(1) “Management plan” means the management plan for the Metolius River Basin that**
16 **was recommended to the Legislative Assembly on April 2, 2009, by the Land Conservation**
17 **and Development Commission.**

18 **(2) “Metolius resort site” means land mapped as eligible for destination resort siting un-**
19 **der ORS 197.455 by Jefferson County or Deschutes County that has not been developed as a**
20 **resort and that is not owned by a resort.**

21 **(3) “Overnight lodgings” has the meaning given that term in ORS 197.435.**

22 **(4) “Tract” has the meaning given that term in ORS 215.010.**

23 **SECTION 3. (1) Notwithstanding ORS 215.700 to 215.780, one or two small-scale recreation**
24 **communities may be established on forestlands as specified in sections 2 to 5 of this 2009 Act.**

25 **(2) If, within 90 days after the effective date of this 2009 Act, the owner of a Metolius**
26 **resort site notifies the Department of Land Conservation and Development that it has**
27 **elected to seek approval of a small-scale recreation community, the owner may, within one**
28 **year after the effective date of this 2009 Act, apply to a county for approval of a small-scale**
29 **recreation community.**

30 **(3) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act**
31 **may be established only in conjunction with a transfer of development opportunity from a**
32 **Metolius resort site. A transfer of development opportunity must be carried out through an**
33 **agreement between the owner of a Metolius resort site and the owner of the site proposed**
34 **for development of a small-scale recreation community. In the agreement, the owner of the**
35 **Metolius resort site must:**

36 **(a) Agree to limit the use of the Metolius resort site, consistent with the management**
37 **plan in consideration for the opportunity to participate in the development of the small-scale**
38 **recreation community; and**

39 **(b) Agree to grant a conservation easement pursuant to ORS 271.715 to 271.795 that:**

40 **(A) Limits the use of the Metolius resort site to be consistent with the management plan;**

41 **(B) Allows public access to that portion of the site that is not developed; and**

42 **(C) Contains other provisions, as required by the Department of Land Conservation and**
43 **Development, that are necessary to ensure that the conservation easement is enforceable.**

44 **(4) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act**
45 **must be sited on land that is:**

1 (a) Planned and zoned for forest use; and

2 (b) Within a county that has a seasonally adjusted average annual unemployment rate
3 over the preceding 10 calendar years that is more than 110 percent of the unemployment rate
4 for the entire state over the same period, as reported by the Employment Department.

5 (5) A small-scale recreation community authorized under sections 2 to 5 of this 2009 Act
6 may not be sited on land that is:

7 (a) Within an area identified as "Area 1" or "Area 2" in the management plan.

8 (b) Within an area described in ORS 197.455 in which destination resorts may not be
9 sited.

10 (c) Within an area protected by or inventoried as a significant resource in an acknowl-
11 edged comprehensive plan provision implementing statewide land use planning goals relating
12 to:

13 (A) Open space, scenic and historic areas and natural resources;

14 (B) Estuarine resources;

15 (C) Coastal shorelands; or

16 (D) Beaches and dunes.

17 (d) Within an area identified as subject to a natural hazard by an acknowledged com-
18 prehensive plan provision implementing a statewide land use planning goal relating to pro-
19 tection from natural hazards.

20 **SECTION 4.** (1) A small-scale recreation community authorized under sections 2 to 5 of
21 this 2009 Act must meet the following development standards:

22 (a) The community must be located on a tract that contains 200 or fewer acres of land.

23 (b) The community must consist of 240 or fewer units and at least two-thirds must be
24 overnight lodging units.

25 (c) The community may contain one restaurant containing 5,000 or fewer square feet, and
26 accessory uses necessary to the operation of the community, including accessory recre-
27 ational facilities.

28 (d) The owner of the property must spend at least \$1.5 million on off-site resource en-
29 hancement or restoration projects on nearby public lands that will be used by individuals
30 from the community.

31 (e) The community may not include a golf course or related facilities.

32 (f) The community must be developed and operated in a sustainable manner by meeting
33 the following criteria:

34 (A) When fully developed, the community must use reclaimed water as the primary
35 source of water for any irrigation of grounds.

36 (B) Facilities for snowmobiling or other motorized recreational activities are not per-
37 mitted.

38 (C) At least 50 percent of the tract on which the community is located must be dedicated
39 to permanent open space that is contiguous and demonstrates the biological viability of the
40 site as habitat or that provides ecosystem services to the area.

41 (D) Significant natural resource functions and values on the site must be preserved.

42 (E) Impervious surfaces, including rooftops and paved roads, trails and parking areas
43 may not exceed 35 percent of the total site area.

44 (F) Potable water usage must achieve a 20 percent reduction below standard code-built
45 developments. Reclaimed water usage for nonpotable water needs may account for the entire

1 reduction required.

2 (G) Stormwater must be managed on-site. Off-site runoff must be limited to predevelop-
3 ment runoff rates.

4 (H) A restaurant, lodge or other nonresidential building must be designed and con-
5 structed to meet regionally or nationally recognized design standards for sustainable design
6 that are acceptable to the county having land use jurisdiction over the proposed development
7 site.

8 (I) Residential buildings must be designed and constructed to meet regionally or na-
9 tionally recognized design standards for sustainable design that are acceptable to the county
10 having land use jurisdiction over the proposed development site. The developer must achieve
11 certification for all buildings, with at least 50 percent of the buildings achieving a top-tier
12 rating under the rating system selected.

13 (J) Additional housing capable of housing at least 50 percent of the peak season employ-
14 ees must be provided on-site.

15 (2) In addition to the development standards described in subsection (1) of this section,
16 a small-scale recreation community must:

17 (a) Develop an environmental operations manual that describes core practices for oper-
18 ating the small-scale recreation community, including:

19 (A) Waste reduction, recycling and diversion practices.

20 (B) Cleaning and site maintenance practices.

21 (C) Staff education practices.

22 (D) Commitment of the community to environmental stewardship.

23 (b) Establish a conservation stewardship organization, as a separate nonprofit entity
24 funded through income generated by the development, that is charged with:

25 (A) Development of a baseline study that establishes the current level and condition of
26 the local environment. As part of the baseline study, the organization must develop a long-
27 term stewardship plan that targets net creation and rehabilitation of resources, on-site and
28 off-site.

29 (B) Ongoing review, election and management of habitat restoration projects that im-
30 plement the goal of the long-term stewardship plan.

31 (C) Education and outreach on environmental stewardship.

32 (c) Organize and manage volunteers working to conserve local resources.

33 (d) Monitor performance of energy and water usage and site development standards
34 versus actual practice.

35 (e) Audit and publish annually a report of the community's performance result for the
36 preceding year.

37 **SECTION 5.** (1) An application for a small-scale recreation community under sections 2
38 to 5 of this 2009 Act may be filed only by the owner of a Metolius resort site and the owner
39 of the site on which development of the small-scale recreation community is proposed and
40 must be filed jointly by the owners. The owners shall file a copy of the application with the
41 Department of Land Conservation and Development at the same time that the owners file
42 the application with the county having land use jurisdiction over the proposed development
43 site.

44 (2) A county shall review an application for a small-scale recreation community under
45 sections 2 to 5 of this 2009 Act as a conditional use in a forest zone and as a land division

1 under ORS chapter 92.

2 (3) In addition to the standards set forth in sections 2 to 5 of this 2009 Act, the small-
3 scale recreation community must meet the land division standards and other development
4 standards of the county, including standards for streets, utilities and services, unless the
5 standards conflict with sections 2 to 5 of this 2009 Act. If the development standards of the
6 county are dependent on the zoning of the site, the county shall apply the development
7 standards for an urban residential zone with the highest population density.

8 (4) If more than two applications for a small-scale recreation community are filed under
9 sections 2 to 5 of this 2009 Act and a county has not yet approved an application, the de-
10 partment shall determine which of the applications may proceed, taking into consideration:

11 (a) The time at which each application was filed;

12 (b) The unemployment rate in the counties, if more than one county is involved; and

13 (c) The findings set forth in section 1 of this 2009 Act.

14 (5) When two applications for small-scale recreation communities have been approved,
15 additional applications may not be considered.

16 (6) A county may charge a fee to cover the costs of processing an application.

17 **SECTION 6.** (1) There is established the Oregon Transfer of Development Rights Pilot
18 Program in the Department of Land Conservation and Development. Working with the State
19 Forestry Department, the State Department of Agriculture and local governments and with
20 other state agencies, as appropriate, the Department of Land Conservation and Development
21 shall implement the pilot program.

22 (2) The Land Conservation and Development Commission shall adopt rules to implement
23 the pilot program. The commission, by rule, may:

24 (a) Establish a maximum ratio of transferable development rights to severed development
25 interests in a sending area for each pilot project. The maximum ratio:

26 (A) Must be calculated to protect lands planned and zoned for forest use and to create
27 incentives for owners of land in the sending area to participate in the pilot project; and

28 (B) May not exceed one transferable development right to one severed development in-
29 terest if the receiving area is outside of an urban growth boundary.

30 (b) Require participating owners of land in a sending area to grant conservation ease-
31 ments pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that
32 additional residential development of their property does not occur.

33 (c) Require participating owners of land in a sending area to allow reasonable public ac-
34 cess to the property.

35 (3) The commission, by rule, shall establish a process for selecting pilot projects from
36 among potential projects nominated by local governments. The process must require local
37 governments to nominate potential projects by submitting a concept plan for each proposed
38 pilot project, including proposed amendments, if any, to the comprehensive plan and land use
39 regulations implementing the plan that are necessary to implement the pilot project.

40 (4) When selecting a pilot project, the commission must find that the pilot project is:

41 (a) Reasonably likely to provide a net benefit to the forest economy or the agricultural
42 economy of this state;

43 (b) Designed to avoid or minimize adverse effects on transportation, natural resources,
44 public facilities and services, nearby urban areas and nearby farm and forest uses; and

45 (c) Designed so that new development authorized in a receiving area does not conflict

1 with a resource or area inventoried under a statewide land use planning goal relating to na-
2 tural resources, scenic and historic areas and open spaces, or with an area identified as a
3 conservation opportunity area in the "Conservation Strategy" prepared in September of 2006
4 by the State Department of Fish and Wildlife.

5 (5) The commission may select up to five pilot projects for the transfer of development
6 rights under sections 6 to 8 of this 2009 Act. However, the number of pilot projects author-
7 ized by this section is reduced on a one-for-one basis for each owner of a Metolius resort site
8 that elects to pursue approval of a small-scale recreation community under sections 2 to 5
9 of this 2009 Act.

10 (6) A sending area for a pilot project under sections 6 to 8 of this 2009 Act:

11 (a) Must be planned and zoned for forest use;

12 (b) May not exceed 10,000 acres; and

13 (c) Must be likely to experience significant additional development in the form of forest
14 dwellings within 20 years after the effective date of this 2009 Act.

15 (7) The commission may establish additional requirements for sending areas.

16 (8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local govern-
17 ment participating in a pilot project shall select a receiving area for the pilot project based
18 on the following priorities:

19 (A) First priority is lands within an urban growth boundary;

20 (B) Second priority is lands that are adjacent to an urban growth boundary and that are
21 subject to an exception from a statewide land use planning goal relating to forestlands;

22 (C) Third priority is lands that are within a rural unincorporated community in an ac-
23 knowledged comprehensive plan;

24 (D) Fourth priority is lands that are adjacent to an urban growth boundary and that are
25 not subject to an exception from a statewide land use planning goal relating to forestlands;

26 (E) Fifth priority is lands that are planned and zoned as marginal lands or as
27 nonresource lands; and

28 (F) Sixth priority is forestlands not described in subparagraphs (A) to (E) of this para-
29 graph.

30 (b) The commission may authorize a local government to select lower priority lands over
31 higher priority lands for a receiving area in a pilot project only if the local government has
32 established, to the satisfaction of the commission, that selecting higher priority lands as the
33 receiving area is not likely to result in the severance and transfer of a significant proportion
34 of the development interests in the sending area within five years after the receiving area
35 is established.

36 (c) If lands described in paragraph (a)(B) of this subsection are selected for use as a re-
37 ceiving area in a pilot project, the minimum residential density of development must be at
38 least 10 dwelling units per net acre.

39 (d) If lands described in paragraph (a)(D), (E) or (F) of this subsection are used as a re-
40 ceiving area in a pilot project, the receiving area may not exceed 100 acres.

41 (e) A receiving area may not be located within 10 miles of the Portland metropolitan area
42 urban growth boundary.

43 (9) The commission may establish additional requirements for receiving areas.

44 (10) A pilot project must include affordable housing. The commission, by rule, may pro-
45 vide a bonus in the form of a higher ratio if a substantial portion of the new development in

1 the receiving area of the pilot project is affordable housing.

2 **SECTION 7.** (1) Notwithstanding contrary provisions of statewide land use planning goals
3 relating to forestlands, public facilities and services and urbanization, and notwithstanding
4 ORS 215.700 to 215.780, a local government may change its comprehensive plan and land use
5 regulations implementing the plan to allow residential development in a receiving area con-
6 sistent with sections 6 to 8 of this 2009 Act if the Land Conservation and Development
7 Commission has approved a concept plan for the pilot project.

8 (2) The local governments having land use jurisdiction over lands included in the sending
9 area and the receiving area for the pilot project shall adopt amendments to their respective
10 comprehensive plans and land use regulations implementing the plans that are consistent
11 with subsection (3) of this section.

12 (3) When the commission has approved a proposed concept plan, the local governments
13 having land use jurisdiction over the affected sending area and affected receiving area shall
14 adopt overlay zone provisions and corresponding amendments to the comprehensive plan and
15 land use regulations implementing the plan that identify the additional residential develop-
16 ment allowed through participation in the pilot project. The Department of Land Conserva-
17 tion and Development shall review the overlay zones and corresponding comprehensive plan
18 amendments in the manner of periodic review under ORS 197.628 to 197.650.

19 (4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relat-
20 ing to urbanization, a local government may amend its urban growth boundary to include
21 adjacent lands in a receiving area, consistent with an approved concept plan, if the net res-
22 idential density of development authorized in the receiving area is at least 10 dwelling units
23 per acre.

24 (5) Local governments or other entities may establish a development rights bank or other
25 system to facilitate the transfer of development rights.

26 (6) A county shall review an application for a pilot project under sections 6 to 8 of this
27 2009 Act as a comprehensive plan amendment. A county may apply other procedures, in-
28 cluding master plan approval, site plan review or conditional use review as the county finds
29 appropriate to subsequent phases of review of the pilot project.

30 **SECTION 8.** (1) The Department of Land Conservation and Development, the State
31 Forestry Department, a local government participating in the Oregon Transfer of Develop-
32 ment Rights Pilot Program or a third-party holder identified by the Department of Land
33 Conservation and Development may hold, monitor or enforce a conservation easement pur-
34 suant to ORS 271.715 to 271.795 or other property interest to ensure that lands in sending
35 areas do not retain residential development rights transferred under sections 6 to 8 of this
36 2009 Act.

37 (2) An entity that is eligible to be a holder of a conservation easement may acquire, from
38 a willing seller in the manner provided by ORS 271.715 to 271.795, the right to carry out a
39 use of land authorized under rules of the Land Conservation and Development Commission
40 implementing the pilot program.

41 **SECTION 9.** (1) As used in this section:

42 (a) "Community forestlands" has the meaning given that term in ORS 530.600.

43 (b) "Land trust" means a land trust that has been approved as an accredited land trust
44 by the Land Trust Alliance, a nonprofit corporation.

45 (2) The owner of the Skyline Forest and the South County Tract may carry out the use

1 described in subsection (3) of this section if:

2 (a) The owner transfers:

3 (A) The Skyline Forest to a land trust for the purpose of creating community forestlands;
4 and

5 (B) The South County Tract either to a land trust for the purpose of creating community
6 forestland or to a federal or state land management agency.

7 (b) The consideration for the transfer does not exceed the fair market timber value of
8 the property; and

9 (c) The community forestlands are managed so that wildlife and recreational values are
10 safeguarded and the overall forest health, including sustainable timber production and
11 wildfire prevention, is maintained over the long term.

12 (3) The owner of the Skyline Forest and South County Tract may retain an area of up
13 to 3,000 acres of land and, within the retained area, the owner may develop up to 197 com-
14 bined residential and overnight lodging units on a single node of 640 or fewer contiguous
15 acres, not including land for roads needed to access the property. Other uses within the
16 single node are limited to a restaurant, a small community store, an equestrian facility and
17 other small-scale uses oriented towards providing on-site recreational opportunities and
18 basic services necessary to support the development.

19 (4) The development may not contain a golf course.

20 (5) The development is limited to an annual water use of 150 acre-feet, not including
21 water for firefighting needs on-site or off-site.

22 (6) The development, including all access roads, must be sited in consultation with the
23 State Department of Fish & Wildlife to ensure that impacts to local wildlife, particularly to
24 local deer and elk populations, are minimized.

25 (7) The development must be sited in consultation with the State Forestry Department
26 and the United States Forest Service to ensure that the risks posed to the development by
27 wildfire are minimized.

28 (8) The landowner may use the remaining acreage retained under subsection (3) of this
29 section as open space for the primary purpose of minimizing the risk of wildfire to the de-
30 velopment, but also to maintain its habitat value for deer and elk. The owner shall cause a
31 conservation easement pursuant to ORS 271.715 to 271.795 to be recorded on the entirety of
32 the open space land prohibiting any development or partitions but allowing for the creation
33 of primitive recreational trails designed to provide public access between the development
34 and the community forestlands. The conservation easement must be held by a land trust and
35 the terms agreed to by the State Department of Fish and Wildlife and the State Forestry
36 Department.

37 (9) The landowner shall provide adequate firefighting facilities and services to address the
38 needs of the development.

39 (10) Deschutes County shall demonstrate, in the county's review under this section,
40 compliance with this section and with applicable site plan and land division requirements of
41 the county. The approval of a site plan and all related land use applications are land use
42 decisions. The county shall condition final land use approval on the recording of a conser-
43 vation easement on the lands identified in subsection (8) of this section and the transfer of
44 fee title of the remainder of the Skyline Forest and the South County Tract, other than lands
45 retained pursuant to this section, either to a land trust for the purpose of establishing

1 community forestlands or to a federal or state land management agency as provided in sub-
2 section (2) of this section. After the transfer of fee title of the Skyline Forest and the South
3 County Tract, other than lands retained pursuant to this section, development rights on the
4 portion of Skyline Forest and the South County Tract transferred to a land trust are extin-
5 guished.

6 (11) As a condition of transferring fee title of Skyline Forest and the South County Tract
7 pursuant to this section, the owner may require that the land trust or the federal or state
8 and management agency meet reasonable management standards to ensure that a buffer
9 area of the community forestlands that is closest to retained lands be managed in a manner
10 consistent with establishing forest health and managing wildfire risk. The buffer area may
11 not extend farther than 500 feet from the boundary that divides the retained lands from the
12 community forestlands.

13 (12) If the owner of the Skyline Forest and the South County Tract has not completed
14 the transfer of lands described in subsection (3) of this section within five years after the
15 effective date of this 2009 Act, the owner may not develop the residential and overnight
16 lodging units or the other uses on the single node that are described in subsection (3) of this
17 section.

18 SECTION 10. On or before February 1, 2013, the Department of Land Conservation and
19 Development shall make a report to the Seventy-seventh Legislative Assembly, in the man-
20 ner described in ORS 192.245:

21 (1) Evaluating the Oregon Transfer of Development Rights Pilot Program established in
22 sections 6 to 8 of this 2009 Act; and

23 (2) Recommending whether the pilot program should be continued, modified, expanded
24 or terminated.

25 SECTION 11. This 2009 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
27 on its passage.