

House Bill 2228

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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**.

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

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) **Working farms and forests make vital contributions to Oregon by providing jobs,**
6 **timber, agricultural products, tax base and other social and economic benefits, by helping to**
7 **maintain soil, air and water resources, by reducing levels of carbon dioxide in the atmos-**
8 **phere and by providing habitat for wildlife and aquatic life.**

9 (2) **Population growth, escalating land values, increasing risks due to wildfire and**
10 **invasive species, and changes in land ownership and management objectives, with a resulting**
11 **increase in conflict caused by dispersed residential development, require that new methods**
12 **be developed to facilitate continued management of private lands zoned for farm use, forest**
13 **use and mixed farm and forest use for agricultural production and timber harvest.**

14 (3) **It is the public policy of the State of Oregon to:**

15 (a) **Encourage and explore alternative methods to encourage the continued management**
16 **of private farm and forest lands for timber and agricultural production.**

17 (b) **Protect water quality, wildlife habitat and other important natural resources by lim-**
18 **iting location of dispersed residential development on farm and forest lands.**

19 (c) **Provide for an orderly and efficient transition from rural to urban land uses by es-**
20 **tablishing locations at which residential development rights transferred from farm or forest**
21 **lands may be used.**

22 **SECTION 2. (1) There is established the Oregon Transfer of Development Rights Pilot**
23 **Program in the Department of Land Conservation and Development. Working with the State**
24 **Forestry Department, the State Department of Agriculture and local governments and with**
25 **other state agencies, as appropriate, the Department of Land Conservation and Development**
26 **shall implement the pilot program.**

27 (2) **The Land Conservation and Development Commission shall adopt rules to implement**
28 **the pilot program. Notwithstanding ORS 197.225, the rules need not be in compliance with**
29 **the statewide land use planning goals.**

30 (3) **In adopting rules to implement the pilot program, the commission shall:**

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 (a) Establish procedures or requirements reasonably necessary to make a pilot project
2 consistent with statewide land use planning goals.

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

5 (A) Must be calculated to protect lands planned and zoned for farm use, forest use or
6 mixed farm and forest use and to create incentives for owners of land in the sending area
7 to participate in the pilot project; and

8 (B) May not exceed three transferable development rights to one severed development
9 interest.

10 (c) Require participating owners of land in a sending area to grant conservation ease-
11 ments, or otherwise obligate themselves, to ensure that additional residential development
12 of their property does not occur.

13 (d) Require that a pilot project be established prior to 2013.

14 (4) The commission, by rule, shall establish a process for selecting pilot projects from
15 among potential sites nominated by local governments. The process must require local gov-
16 ernments to nominate potential sites by submitting a concept plan for each proposed pilot
17 project, including proposed amendments to the comprehensive plan and land use regulations
18 necessary to implement the pilot project.

19 (5) When selecting a pilot project, the commission must find that the pilot project is:

20 (a) Reasonably likely to provide a net benefit to the forest economy or the agricultural
21 economy of this state; and

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

24 (6) The commission may select up to:

25 (a) Four pilot projects for the transfer of development rights from lands in a sending area
26 that are currently planned and zoned for forest use or mixed farm and forest use; and

27 (b) Two pilot projects for the transfer of development rights from lands in a sending area
28 that are currently planned and zoned for farm use or mixed farm and forest use.

29 (7) A sending area for a pilot project:

30 (a) May not exceed 10,000 acres; and

31 (b) Must, for at least one pilot project, contain a critical mass of lands that are planned
32 and zoned for farm, forest or mixed farm and forest uses and have a relatively low density
33 of residential development.

34 (8) The commission may establish additional requirements for sending areas.

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

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

39 (B) Second priority is lands that are adjacent to an urban growth boundary and subject
40 to an exception from the statewide land use planning goals for agricultural lands or
41 forestlands;

42 (C) Third priority is lands that are adjacent to an urban growth boundary and not subject
43 to an exception from goals for agricultural lands or forestlands;

44 (D) Fourth priority is lands that are not adjacent to an urban growth boundary and
45 subject to an exception from goals for agricultural lands or forestlands;

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

3 (F) Sixth priority is rural lands not described in subparagraphs (B) to (E) of this para-
4 graph.

5 (b) The commission may:

6 (A) Authorize a local government to select lower priority lands over higher priority lands
7 for a receiving area in a pilot project only if the local government has established, to the
8 satisfaction of the commission, that selecting higher priority lands as the receiving area is
9 not likely to result in the severance and transfer of a significant proportion of the develop-
10 ment interests in the sending area within five years after the receiving area is established.

11 (B) Notwithstanding the priorities established in this subsection, select one pilot project
12 in which all or part of the receiving area is on lands that are planned and zoned for forest
13 use or mixed farm and forest use and are not located adjacent to an urban growth boundary,
14 if:

15 (i) The receiving area does not exceed 100 acres; and

16 (ii) The commission finds that farm or forest use of the lands within the receiving area
17 are already impaired by residential uses and additional residential development in the re-
18 ceiving area can be accommodated in a manner that protects or improves farm or forest
19 management in areas in or adjacent to the receiving area.

20 (c) If lands described in paragraph (a)(B) or (C) of this subsection are selected for use
21 as a receiving area in a pilot project, the minimum residential density of development must
22 be at least 10 dwelling units per net acre.

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

25 (10) The commission may establish additional requirements for receiving areas.

26 **SECTION 3.** (1) Notwithstanding contrary provisions of the statewide land use planning
27 goals or the acknowledged comprehensive plan and land use regulations implementing the
28 plan and notwithstanding limitations on land division and residential development in ORS
29 chapter 215, the local government may allow residential development in a receiving area
30 consistent with administrative rules governing the Oregon Transfer of Development Rights
31 Pilot Program and a concept plan approved by the Land Conservation and Development
32 Commission if:

33 (a) For a pilot project that includes farmlands or mixed farm and forest lands in the
34 sending area or receiving area, the State Department of Agriculture has approved the con-
35 cept plan;

36 (b) For a pilot project that includes forestlands in the sending area or receiving area, the
37 State Forestry Department has approved the concept plan; and

38 (c) The local governments with land use jurisdiction over lands included in the sending
39 area and receiving area for the pilot project have:

40 (A) Approved the concept plan; and

41 (B) Adopted comprehensive plan and land use regulations consistent with subsection (2)
42 of this section.

43 (2) When the commission has approved a proposed concept plan and pilot project, the
44 local government with land use jurisdiction over the affected sending area and affected re-
45 ceiving area shall adopt overlay zone provisions and corresponding amendments to the com-

1 comprehensive plan that identify the additional residential development allowed through
 2 participation in the pilot project. The Department of Land Conservation and Development
 3 shall review the overlay zones and corresponding comprehensive plan amendments for com-
 4 pliance with the goals, as defined in ORS 197.747, in the manner of periodic review under ORS
 5 197.628 to 197.650.

6 (3) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relat-
 7 ing to urbanization, a local government may amend its urban growth boundary to include
 8 adjacent lands in a receiving area, consistent with the administrative rules implementing the
 9 pilot program and an approved concept plan, if the net residential density of development
 10 authorized in the receiving area is at least 10 dwelling units per acre.

11 (4) Local governments or other entities may establish a development rights bank, or
 12 other system, to facilitate the conveyance of transferable development rights.

13 **SECTION 4.** (1) The Department of Land Conservation and Development, the State
 14 Forestry Department, the State Department of Agriculture, a local government participating
 15 in the Oregon Transfer of Development Rights Pilot Program or a third-party holder identi-
 16 fied by the Department of Land Conservation and Development may hold, monitor or enforce
 17 a conservation easement or other property interest to ensure that lands in sending areas do
 18 not retain residential development rights transferred under sections 1 to 4 of this 2009 Act.

19 (2) An entity that is eligible to be a holder of a conservation easement under this section
 20 may acquire, from a willing seller in the manner provided by ORS 271.715 to 271.795, the
 21 rights to carry out a use of land authorized under rules of the Land Conservation and De-
 22 velopment Commission that implement the pilot program.

23 **SECTION 5.** The Department of Land Conservation and Development shall prepare and
 24 deliver a report to the Seventy-seventh Legislative Assembly:

25 (1) Evaluating the Oregon Transfer of Development Rights Pilot Program established in
 26 sections 1 to 4 of this 2009 Act; and

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

29 **SECTION 6.** This 2009 Act being necessary for the immediate preservation of the public
 30 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 31 on its passage.

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